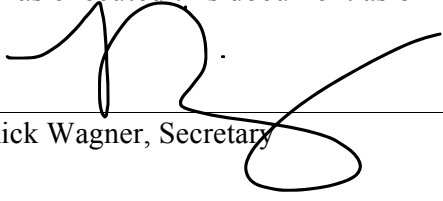


## SECRETARY'S CERTIFICATE

### Open Scalable File Systems, Inc.

The undersigned, being the Secretary of Open Scalable File Systems, Inc., a California mutual benefit corporation (the "Company"), hereby certifies that attached hereto as Exhibit A is a complete and correct copy of the Bylaws of the Company, which were adopted by the Board of Directors of the company on September 15, 2016, and are in full force and effect on the date hereof and the same have not been further amended or modified as of the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this document as of April 20, 2017.



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Rick Wagner, Secretary

EXHIBIT A

**Bylaws**

(See attached)

AMENDED AND RESTATED  
BYLAWS OF  
OPEN SCALABLE FILE SYSTEMS, INC.  
(A California Mutual Benefit Corporation)

## ARTICLE I - NAME

**1.1 Name of Corporation.** The name of this Corporation is Open Scalable File Systems, Inc.

## ARTICLE II - PURPOSES

**2.1 Principal Purposes.** The principal purposes of the Corporation shall be to provide an open forum to promote the free interchange of information and ideas which are of mutual interest and value to communities of users, system administrators and software developers of open scalable file systems, to provide a formal communications channel between Members and the associated vendor community, and any other purpose allowable under law. The Corporation may also help combine and channel resources of the community to develop, test, and improve open scalable file systems and promote the adoption of these technologies by a broader set of international users and institutions.

**2.2 Achieving Purposes.** To achieve these purposes the Corporation may:

**2.2.1** Organize and conduct meetings, discussion groups, forums, panels, lectures and other similar programs concerned with research and development and the exchange of technical data.

**2.2.2** Publish, as appropriate, the results of its research and make such publications available to the Members and Participants on a noncommittal and a non-discriminatory basis.

**2.2.3** Establish and continually improve standards for communicating research results and technical information to interested members of the public.

**2.3 Conducting Business.** To achieve these purposes, the business of the Corporation shall be conducted as appropriate at meetings of the Members (as specified in Article V of these Bylaws) and meetings of the Board (as specified in Article VI of these Bylaws).

**2.5 Not for Profit Corporation.** The Corporation shall operate as a private, not for profit entity, with the goal of attaining tax exempt entity from the appropriate tax authorities. No part of its net earnings shall inure to the benefit of, or be distributed to, its Members, Directors, Officers, or other private persons, except that the Board shall be authorized to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its purposes.

## ARTICLE III - DEFINITIONS

**3.1 The Corporation.** Open Scalable File Systems, Inc., a California mutual benefit corporation.

**3.2 Change in Control.** Either (a) the consummation of any consolidation or merger of Member pursuant to which Member is not the surviving entity; or (b) all or substantially (including membership in this Corporation) all of Member's assets shall be sold, leased, conveyed, or otherwise disposed of to a third party.

**3.3 Open Scalable File System (SFS).** A file system with source code generally available to the public for use and modification from its original design.

**3.4 Site.** Any organization or entity responsible for the management, operation, or utilization of one or more open scalable file systems who could not be categorized as a Vendor of open scalable file systems as determined by the Membership Committee.

**3.5 Member.** A Site that has been accepted for membership pursuant to **Article IV**.

**3.6 Participant.** Any organization or entity that is not a Site that has been accepted as a participant pursuant to **Article IV**. Participants may not be Members and may not vote.

**3.7 Member Delegate.** A person professionally associated with Open Scalable File Systems at a Member Site designated in writing to the Secretary by that Member to serve as that Member's official spokesperson at any function of the Corporation and to cast that Member's vote on all matters on which the Member may have the right to vote.

**3.8 Alternate Member Delegate.** Each Member may designate in writing to the Secretary an alternate to act in the event that the Member Delegate is unable to attend a meeting or act on its behalf. A Member Delegate or Alternate Member Delegate, if applicable, shall be the only person entitled to cast a vote on behalf of the Member.

**3.9 Site User.** Any bona fide user of a Member's Site, including remote users of a Member's Site, such Site User's status being contingent upon validation by the Member Delegate and Secretary, or the Secretary's delegate. A Site User is authorized to participate in Corporation functions on behalf of that Member Site.

**3.10 Site Representative.** A Member Delegate or Site User.

**3.11 Participant Delegate.** A person professionally associated with Open Scalable File Systems with a Participant, designated in writing to the Secretary by that Participant to serve as that Participant's official spokesperson at any function of the Corporation.

**3.12 Vendor.** Means a for-profit entity or person that is engaged in the commercialization of open scalable file system related hardware or software products and services.

## ARTICLE IV - MEMBERSHIP AND PARTICIPATION

**4.1 Membership.** There shall be one class of membership for the Members. Any organization may be eligible to become a Member that meets the membership criteria established by the Board, or its delegate, including the criteria set forth in the definition of Member. The Board, or its delegate, shall also establish participation criteria for Participants. The Board, or its delegate, shall establish policies to govern the rights, privileges, and benefits of both Members and Participants. Member eligibility will be restricted as described in **Sections 4.4** and **4.5**. Participants are not Members of the Corporation.

**4.2 Additional Classes of Members.** The Members, by a majority vote, may create one or more additional classes of membership and affiliation and may prescribe the designations, voting rights, if any, powers and privileges for each such class.

**4.3 Application Procedures.** An organization desiring to become a Member or Participant shall submit an application to the Corporation's Secretary. The completed application shall provide such information as shall from time to time be prescribed by the Board, including sufficient information to determine whether the organization should be a Member or Participant.

**4.4 Qualification as Member or Participant.** The Membership Committee, or its delegate, shall review each application for membership or participation, based on any criteria set forth herein or adopted by the Board, or its delegate, pursuant to Section 4.1 above. If the Membership Committee is satisfied with the application, the membership chair shall notify the prospective Member or Participant of admission. The Membership Committee shall consider all applications within thirty (30) days. The application may be rejected for any legally permissible reason. If any applicant disagrees with the decision of the Membership Committee, it may request in writing no later than 30 days after receipt of the Membership Committee's decision, an appeal to the Board to review the original application for membership or participation along with any clarifying information.

**4.5 Obligations of all Members.** Each Member shall abide by the Bylaws and the rules and regulations of the Corporation as they may be amended, and shall instruct and cause its Site Representatives to do the same.

**4.6 Termination of Membership.** A Member's membership shall be terminated within thirty days after receiving written or electronic notice from the Secretary to the Member Delegate (the "Termination Notice") that one or more of the following have occurred and the basis for termination of membership:

**4.6.1** The Member ceases to qualify as a Member;

**4.6.2** The Member fails to pay its membership dues;

**4.6.3** The Board determines that the Member jeopardizes the Corporation's tax-exempt status; or

**4.6.4** The Board determines that the Member failed to abide by the Bylaws or rules and regulations of the Corporation.

**4.7 Termination of Participation.** A Participant's rights as a Participant shall be terminated within thirty days after receiving a Termination Notice from the Secretary to the Participant Delegate that one or more of the following have occurred and the basis for termination of membership:

**4.7.1** The Participant ceases to qualify as a Participant;

**4.7.2** The Participant fails to pay any amounts due;

**4.7.3** The Board determines that the Participant jeopardizes the Corporation's tax-exempt status; or

**4.7.4** The Board determines that the Participant failed to abide by the Bylaws or rules and regulations of the Corporation.

**4.8 Appeal.** Within thirty days of the receipt of the Termination Notice, the recipient may appeal in writing (submission by ordinary mail, fax or e-mail addressed to the President) to the Board to have the Termination Notice set aside. The sole basis upon which such appeal may be made shall be (i) proof satisfactory to the Board that the ground(s) set forth in the Termination Notice is (are) not valid; or (ii) a statement of extenuating circumstances. The Board shall consider the appeal within sixty days of its receipt and shall notify the appellant in writing of its decision within thirty days thereafter.

**4.9 Withdrawal.** A Member may voluntarily withdraw from the Corporation at any time by giving written or electronic notification of the desire to so withdraw that is signed by the Member Delegate and addressed to the Secretary. Such withdrawal shall become effective upon receipt by the Secretary. Withdrawal of membership will not entitle a Member to a refund of any membership fees.

**4.10 Rights of Members.** The right to vote for the election of the Board and Officers and to vote on all issues, subject to Member approval, is conferred solely upon the Members. Only a Member Delegate or Site User is eligible to be a member of the Board or to hold office in the Corporation.

**4.11 Rights of Participants.** Participants have the right to (i) attend to Annual Meetings of Members, subject to Section 5.1, (ii) be members of working groups and committees, chair working groups and committees, and (iii) enjoy such other privileges as the Board may so decide.

**4.12 Fees.** An annual Member fee payable by Members and Participants shall be determined by the Board.

**4.13 Non-liability of Members and Participants.** No Member or Participant of this Corporation, as such, shall be individually liable for the debts, liabilities, or obligations of the Corporation.

**4.14 Permissible Transfer of Membership.** In the event that two (2) or more Members or Participants combine (through merger, acquisition or otherwise), the resulting combined entity is permitted to only maintain one (1) membership agreement and, if one of the two combining entities was a Member, have one (1) vote in all Member votes thereafter. For the avoidance of doubt, if two Participants combine, the surviving entity will not be entitled to a vote by virtue of the combination. Prior to the occurrence of any such corporate combination, the affected Members or Participants will notify the Corporation as to which membership agreement will survive the merger or acquisition and whether that membership agreement will be assigned in connection with the Change of Control (should assignment be required, the Corporation shall be deemed to automatically consent to the assignment upon such notice). Upon completion of the combination, any non-surviving membership agreement will automatically terminate.

All rights of a Member or Participant in the Corporation shall cease on termination of its membership agreement as herein provided. The termination of a membership agreement shall not result in any refund of dues already paid for the current dues period.

**4.15 Non-transferability of Membership.** No membership agreement may be assigned without the prior written permission of the Membership Committee, and any purported assignment without such written approval shall be null and void. Except as set forth in Section 4.14, and notwithstanding the foregoing, upon written notice to the Corporation, the Corporation shall automatically consent to an assignment pursuant to a bona fide Change in Control of a Member.

## **ARTICLE V - MEETING OF MEMBERS**

**5.1 Annual Meetings.** The Annual Meeting of Members shall be held at least once in each calendar year at such time and place, including electronically, as shall be determined by the Board and designated by the Board in the notice or waiver of notice, defined in (Sections 5.3 and 5.4) of the meeting. The Board shall endeavor to announce the dates and locations for Annual Meetings a year in advance. The Members entitled to vote shall elect officers and directors as prescribed by **Article VIII** at the Annual Meeting. At any Annual Meeting the Members may transact such business as may properly come before the meeting. Participants may attend Annual Meetings, provided however that the Board may designate certain portions of the Annual Meetings as for Members only.



**5.2 Special Meetings.** Special Meetings of the Members may be called at any time by the Board. Upon receipt of a petition (stating the purpose of the proposed meeting) signed by at least one third of the Member Delegates representing Members entitled to participate, the President shall call a Special Meeting.

**5.3 Notices.** Written Notice of Annual and Special Meetings of the Members of the Corporation shall be given by the President or the Secretary, and sent to each Member entitled to vote thereat, by mail or electronic mail, addressed to the Member Delegate at the address appearing on the records of the Corporation, not less than thirty days before the time designated for such meeting.

**5.4 Waiver of Notice.** Any meeting and any action otherwise properly taken thereat shall be valid if notice of the time, place and purposes of such meeting shall be waived in writing (including mail, fax, or e-mail), before, at or after such meeting by all Members to whom notices should have been received but were not as provided in these Bylaws.

**5.5 Organization.** At every Annual Meeting of Members, the President, and in the absence of the President, the Vice President, shall act as the Chair of the meeting. The Secretary shall act as Secretary of the meeting. In case none of the officers above designated to act as the Chair or the Secretary to the meeting respectively, shall be present, the Chair or Secretary of the meeting, as the case may be, shall be chosen by a majority of the votes cast at such meeting by the Members entitled to vote at the meeting. At any meeting of the Members the Members may request that the Participants be either excused from the meeting or limit participation in the meeting while Member business is to be discussed or nominations and elections are being held. Furthermore, at any meeting where the Members desire to have confidential discussions with a SFS Vendor, the Members may exclude any or all Participants.

**5.6 Voting.** The Members shall have the exclusive right to vote on all matters pertaining to the general affairs of the Corporation on which a vote of the Members is required or deemed by the Board to be desirable. Each Member in good standing shall be entitled to one vote. Voting electronically shall be allowed, but shall be restricted to the official Member Delegate. Participants may not vote.

**5.7 Quorum.** Members holding a majority of the voting power held by all Members eligible to vote on the business to be transacted, present in person of a duly authorized Member Delegate or present by proxy, shall constitute a quorum for meetings of the Members.

**5.8 Action by Majority Vote.** All matters submitted to the Members, except as otherwise provided by law or by the Bylaws, shall be decided by a majority of votes cast by the Members entitled to vote who shall have voted thereon, except as provided for in Section 8.7 in connection with the election of Directors and Officers.

**5.9 Procedures for Voting on Proposals when there is no Annual Meeting.**

Voting electronically shall be permitted for any item of business. All proposals to be acted upon electronically shall be proposed by at least four Members or proposed by action of the Board. Proposals shall be addressed to the Secretary. The Secretary shall thereupon cause proposals to be sent to all Members. All Members may, within three days, submit comments with respect to said proposals to the Secretary, who shall group or categorize such comments as shall be deemed appropriate, and cause representative commentary to be sent to all Members of the Corporation. The proposal shall then be called to a vote by the Secretary. All electronic ballots shall be cast by the Member Delegate of the Member eligible to vote on the proposal within 30 days of the call for a vote. If a simple majority of those eligible Members voting shall vote in favor of the proposal, it shall be approved.

**5.10 Procedures for Voting at an Annual Meeting on Proposals and on the Election of Officers and Directors.** At any meeting of the Members where a vote is required, there shall be a specified voting session. Voting shall be allowed by Members who are entitled to vote and who are either properly represented at the meeting or whose Member Delegate choose to vote electronically. Any reference to the Member Delegate shall also include the Alternate Member Delegate for purposes of casting votes and representing the Member at meetings of the Corporation.

**ARTICLE VI - DIRECTORS**

**6.1 Powers.** The Board shall exercise all powers of the Corporation, except as otherwise expressly provided by law or by these Bylaws. The members of the Board shall act only as a board and the individual members shall have no power as such. Among such powers are:

**6.1.1** Develop and execute Corporation policy.

**6.1.2** Interpret and implement decisions of the Members and the Board.

**6.1.3** Approve the Corporation budget and, if desired, designate an independent certified public accounting firm to audit the Corporation financial records.

**6.1.4** Establish all fees for the Corporation.

**6.1.5** Create and terminate working groups or committees and appoint or remove working group or committee chairs.

**6.1.6** Approve the use of the Corporation name, in whole or in part, by individuals or other organizations.

**6.2 Number.** The number of directors of the Corporation shall not be less than five. However, the number of directors beyond five may be increased or decreased by the Members at any Annual Meeting or the Board at any meeting at any time. The

Corporation's President, Vice President, Secretary and Treasurer shall automatically become directors when elected to their office. The President and Treasurer shall be elected on odd-numbered years. The Vice President and Secretary shall be elected on even-numbered years. For the avoidance of doubt, if the first election for President and Treasurer is held in 2017, then the elected President and Treasurer shall serve until 2019. The retiring President shall automatically become a member of the Board upon the election of his or her successor as President and shall remain a Director-at-Large for two years. If there is no Past President, the Board will appoint a Director-at-Large to a two-year term. Any eligible person may be reelected as a director one or more times.

**6.3 Term of Office.** The term for all Directors shall be two years and shall continue until the next Annual Meeting following such Directors second anniversary on the Board at which the successor is elected and qualified. The term of the Secretary and Treasurer will expire on alternating years. The Directors-at-Large shall be elected for terms of two years with half the Directors ending their terms on alternate years. The term of office of any Director may be terminated at any time, with or without cause, by an affirmative vote of two thirds of the votes cast by Members entitled to vote and who shall have voted thereon.

**6.4 Qualification.** To qualify as a director of the Corporation each individual must have a bona fide professional association with a Member for the entire term of office and agrees to be bound by the confidentiality obligations contained herein or established by the Corporation.

**6.5 First Meeting.** Each duly constituted Board may hold its first meeting for the purpose of organization and the transaction of other business, if a quorum be present, without notice of such meeting, on the same day(s) at the same place the Annual Meeting of Members having elected said Board is held, and as soon as practicable after such Annual Meeting. Such first meeting may be held at any other time and place as specified in a notice as hereinafter provided in **Section 6.7** of this Article for Special Meetings of the Board, or in a waiver of notice thereof.

**6.6 Regular and Special Meetings.** Regular meetings of the Board may be held at such places and times as may be fixed from time to time by resolution of the Board to conduct such business that may properly come before it; and unless otherwise required by resolution of the Board, notice of any such meeting need not be given. The President or the Secretary may call, and upon written request signed by any one other director, the Secretary shall call, Special Meetings of the Board. Meetings of the Board shall be held at the place designated in the notice or waiver of notice of such meeting.

**6.7 Notice of Special Meetings.** Notice of Special Meetings of the Board shall be in writing, signed by the President or the Secretary, and shall be sent to each Director by mail, fax, or e-mail message with a request for acknowledgement addressed to arrive at his or her last known address at least twenty days before the time designated for such meetings.

**6.8 Waiver of Notice.** Notice of a meeting, although otherwise required, need not be given to any director who (1) either before or after the meeting signs a waiver of notice or a consent to holding the meeting without being given notice, (2) signs an approval of the minutes of the meeting, or (3) attends the meeting without protesting the lack of notice before or at the beginning of the meeting. Waivers of notice or consents need not specify the purpose of the meeting. All waivers, consents, and approvals of the minutes will be filed with the corporate records or made a part of the minutes of the meeting.

Any meeting of Directors and any action otherwise properly taken thereat shall be valid if notice of the time, place and purposes of such meeting shall be waived in writing (including mail, fax, or e-mail) before, at, or after such meeting by all Directors to whom timely

**6.9 Quorum.** A majority of directors in office shall be necessary and sufficient to constitute a quorum for the transaction of business at any meeting of the Board, but a smaller number may adjourn any such meeting to a later date. At least one day's notice of such adjourned meeting shall be given in the manner provided in **Section 6.7** of this Article to each director who was not present at such meeting.

**6.10 Action by Majority Vote.** Except as otherwise expressly required by law or by these Bylaws, the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board. Except as otherwise expressly required by law or by these Bylaws, the act of two-thirds of the directors present at a meeting at which a quorum is present shall be required to amend these Bylaws, remove a Director, or dissolve the Corporation.

**6.11 Filling Vacancies.** Any vacancy in the Board, whether caused by death, resignation, disqualification, removal, increase in the number of Directors or otherwise, may be filled for the unexpired term by a majority vote of the remaining directors. The individual selected must meet the same qualifications as a nominee for a directorship.

**6.12 Reports to the Membership.** The actions of the directors at any meeting of the Board shall be reported to the Members within thirty days of that meeting.

**6.13 Submission of Matter to Mail Vote of the Members.** The Board may submit any matter to a mail vote of the Members, when required or deemed advisable or desirable by the Board. Any such mail vote shall be pursuant to **Section 5.6, 5.7, and 5.8.**

**6.14 Board Action Without a Meeting.** Any Action that the Board is required or permitted to take may be taken without a meeting if all Directors consent in writing to that action. Consent by a Director sent by email or other electronic means is considered written consent to the extent permissible under California law, as it exists on the date hereof or is hereafter amended. Such action by signed consent shall have the

same force and effect as any other validly approved action of the Board. All consents shall be filed with the minutes of the proceedings of the Board.

**6.15 Compensation.** Directors shall serve without compensation by the Corporation.

## **ARTICLE VII - OFFICERS**

**7.1 Officers.** The officers of the Corporation shall be the President, Vice President, Secretary and Treasurer, each to have such duties or functions as are provided in these Bylaws or as the Board may from time to time determine. One person may not hold any two or more of the foregoing offices, provided that the person serving as President shall not serve as Secretary or Treasurer at the same time.

**7.2 Nominations and Elections.** Nominations and elections shall be in accordance with **Article VIII**.

**7.3 Terms and Qualifications.** The term of for all officers shall be two years. The terms commence with the election of each officer and ends when the successor is elected and qualifies and may be terminated at any time with or without cause, by an affirmative vote of two thirds of the votes cast by Members entitled to vote according to Section 5.7 and who shall have voted thereon.

**7.4 Resignations.** Any Officer may resign at any time, orally or in writing, by notifying the Board or the President or the Secretary of the Corporation. Such resignation shall take effect at the time therein specified, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

**7.5 Vacancies.** A vacancy in any office caused by death, resignation, removal, disqualification or other cause may be filled in accordance with **Section 6.11** for the unexpired portion of the term of the officer at any regular or special meeting.

**7.6 The President.** The President shall be the chief executive officer of the Corporation and shall have general supervision over the affairs to the Corporation, subject, however, to the control of the Board. The President shall, if present, preside at all Annual Meetings, and at all meetings of the Board. In general, the President shall perform all the duties incident to the office of the chief executive officer of a corporation and such other duties as are provided for by these Bylaws and as from time to time may be assigned to the President by the Board.

**7.7 The Vice President.** At the request of the President, or in the President's absence the Vice President shall perform all duties of the President and in so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall perform such other duties as may from time be assigned to the Vice President by the President or by the Board.

**7.8 The Secretary.** The Secretary shall act as Secretary of all meetings of the Board, and of the Members of the Corporation, and shall keep the minutes thereof in the proper medium to be provided for that purpose. The Secretary shall cause all notices required to be given by the Corporation to be duly given and served; shall have charge of the other books, records and papers of the Corporation; shall cause the report, statements and other documents required by law to be properly kept and filed; shall maintain a current list of Members and Participants, and be responsible for Membership applications; shall act as editor for correspondence received for publication and distribute this information at intervals not greater than six months; and shall, in general, perform all the duties incident to the office of Secretary and such other duties as may from time to time be assigned to the Secretary by the Board or by the President.

**7.9 The Treasurer.** The Treasurer shall collect, and keep account of all moneys received and expended for the use of the Corporation. The Treasurer shall deposit sums received by the Corporation in the name of the Corporation in such depositories as shall be approved by the Board; prepare appropriate financial reports for review by the Board; and be a member of the Finance Committee.

## **ARTICLE VIII - ELECTIONS**

**8.1 Nominations.** The members of the Nominating Committee shall select candidates for each of the positions of officer or director to be filled at the next scheduled election. The Nominating Committee shall determine how many candidates it will nominate for each position.

**8.2 Report.** At the Annual Meeting, the Nominating Committee shall report the names of candidates for each office scheduled to be filled during the election.

**8.3 Nominating by Petition.** Any eligible individual may be nominated for any office or as a director by a Petition signed on his or her behalf by not less than two Member Delegates. Nominating petitions and assurances from the candidates must be submitted to the Secretary. The Secretary shall ensure that all Member Delegates have been sent notification of any additions that have been submitted by petition at the Annual Meeting.

**8.4 Qualification and Assurance of Candidates.** At the time of nomination for any Board of Officer position, each Candidate must have a bona fide professional association with a Member. The Chairperson of the Nominating Committee shall require in writing from each candidate for office for the Board (whether such candidate has been named by the Nominating Committee or by Petition) a written statement by which the candidate offers assurances that, if elected, he or she will diligently fulfill the duties of the office or the position on the Board for which nominated during the term thereof. A candidate by petition must submit an assurance statement with the completed petition on his or her behalf. Assurance statements should be turned over to the Secretary prior to the election.

**8.5 Withdrawal from Candidacy.** Any duly nominated candidate may withdraw his or her name from nomination by submitting a written request to such effect to the Secretary. The Secretary shall ensure that all Member Delegates have been sent notification of any withdrawals that have been submitted.

**8.6 Election Procedure.** At the Annual Meeting, the Chairperson of the Nominating Committee shall announce the names of those persons who have been nominated for each Office and for positions as Directors, who have given the requisite written assurances of performance in the event of election, and who have not withdrawn. If a nominee for an Office shall be unopposed, the President shall declare such individual elected. As to those persons who are opposed for Office and for candidates for the Board, an election shall be held by either written ballots or previously submitted electronic ballots, with specific procedures to be developed and approved by the Board. The Secretary shall cause ballots to be distributed to the present Member Delegate or to the Alternate Member Delegate of each Member. The election result will be drawn from both the ballots collected at the meeting and the previously submitted electronic ballots.

**8.7 Vote Required for Election to Office.** When more than one candidate is nominated for election to each director position (except for the Directors-at-Large), the winning candidate must receive a majority of the votes cast (for that office) in order to be elected to that office. In the event that no candidate receives a majority, the two candidates receiving the greatest plurality will remain in nomination for that office, and a runoff election (following the applicable rules of election procedures, excluding electronic voting) will be held for all offices in which majorities were not obtained. Ties will be broken by a runoff election by qualified Voting Delegates present at the meeting. When vacancies for the Directors-at-Large are to be filled by election and there are more candidates than vacancies, the following procedure will be used. The candidates will be ranked according to the number of votes received, most to least. The first candidate on the list will fill one directorship-at-large, the next candidate, the next directorship-at-large, etc., until all directorships-at-large are filled unless the last candidate to fill a directorship-at-large is tied with the next candidate on the ordered list; in which case, these candidates will be entered in a runoff election by Voting Delegates present at the meeting, and the candidates receiving a majority of the votes cast will fill that directorship-at-large.

**8.8 Voting Formula.** Each Member has the right to cast one vote for each position to be filled.

**8.9 Extension of Term of Office.** In the event that a successor for an officer or director-at-large whose term has otherwise expired is not elected at an Annual Meeting, the present holder of the office or directorship shall continue in office until a successor is qualified and takes office.

## **ARTICLE IX - COMMITTEES**

**9.1 Committees.** The Board by majority vote may from time to time create or terminate standing and ad hoc committees and may determine the names of such committees and the qualification of the members of such committees; and, to the extent permitted by law, may delegate the powers and duties of the Board to such other committees, and, to such extent, may otherwise determine such powers and duties. The Board may elect the members of such committees or may authorize the President and/or any other officer or officers to select the members of any such committee.

**9.2 Standing Committees.** The following standing committees of the Board are permanently established.

**9.2.1 Membership Committee** - The Chairperson of which committee shall be the Secretary, and shall consist of not less than one other officer or director appointed by the President.

**9.2.2 Finance Committee** - The Chairpersons of which committee shall be the President and the Treasurer. The Treasurer serves as Secretary of the Finance Committee. The duties of the Finance Committee shall consist of preparation of the Corporation's budget for approval by the Board, and review and approval of requests for non-budgeted expenditures, supervision of accounting methods and procedures, and the preparation of and delivery to members of an annual report of the Corporation's financial status.

**9.2.3 Nominating Committee** – The Board shall appoint the chair of the Nominating Committee. The Nominating Committee chair shall appoint two other Member Delegates to serve on the Nominating Committee. Any Member Delegate is eligible to serve. No member of the Nominating Committee may be a candidate for a Director or officer position. Current Corporation directors or officers are not eligible to serve on the Nominating Committee. The Nominating Committee shall cease to exist upon filing its report to the Members.

## **ARTICLE X - LIMITATIONS ON CIRCULATION OF INFORMATION**

**10.1 Scholarly and Scientific Endeavor.** Persons affiliated with Members may refer to and accept material from communications among the Corporation's Members, publishing scholarly articles or giving educational courses or conducting scientific experiments. This section shall be construed liberally for the purposes of advancing scientific research, education and scholarship in the public interest, but shall be construed restrictively to avoid commercialism, journalism, editorializing and notoriety.

**10.2 Persons in Computer Field.** The President shall, at the request of any individual engaged in the computer field (other than in the news or communication media related thereto) and having a legitimate interest in information disseminated by the Corporation, make available to any such individual at cost (within reasonable



bounds as to quantity of material furnished), any matter formally disseminated to members. Any such distribution may be subject to a non-disclosure agreement to be signed by the receiving party.

**10.3 Information Referral.** It is the policy of the Corporation to disseminate information and data freely to those having a legitimate interest therein pursuant to **Section 10.1** and **10.2** hereof. In furtherance of this policy, all members shall refer all inquiries or requests with respect to publications and data of the Corporation to the Corporation, and such inquiries and requests will be acted upon by the Corporation in accordance with **Sections 10.1** and **10.2**.

## **ARTICLE XI - CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, VOTING OF SECURITIES, ETC.**

**11.1 Execution of Contracts.** The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, in the name and on behalf of the Corporation to enter into any contract or execute and satisfy any instrument, and any such authority may be general or confined to specific instances.

**11.2 Checks, Drafts, etc.** All checks, drafts and other orders for payment of money out of the funds of the Corporation shall be signed in accordance with such internal controls as the Board shall approve.

**11.4 Deposits.** The funds of the Corporation not otherwise employed shall be deposited from time to time to the order of the Corporation in such banks, trust companies or other depositories as the Board may select.

## **ARTICLE XII - BOOKS AND RECORDS**

**12.1 Books and Records.** There shall be kept at the principal place of employment of the Treasurer correct books of account of all the business and transactions of the Corporation.

**12.2 Other Books and Records.** All books and records not covered by **Section 12.1** shall be kept in the custody of the Secretary.

## **ARTICLE XIII - LOGO**

**13.1 Logo.** The Board shall approve the design of a corporate logo and authorize its use and seek appropriate trademark protection thereof.

**13.2 Alternate Logo.** The Board shall approve the design of any alternate logo(s) and authorize usage.

## **ARTICLE XIV - PARLIAMENTARY AUTHORITY**

**14.1 Parliamentary Authority.** “Robert's Rules of Order, Revised” shall prevail, except that where they conflict with these Bylaws, the Bylaws shall govern.

## **ARTICLE XV - INTELLECTUAL PROPERTY**

**15.1 Contributions.** Each contribution of any intellectual property is subject to the licensing terms applicable to the Member’s or Participant’s contribution of such intellectual property to the individual open scalable file system project.

### **15.2 Trademarks.**

A. **Selection.** Each Member or Participant agrees not to assert against any other Member or Participant, the Corporation or licensee, any trademark, trade name, or similar rights it may have now or hereafter in the names “Open Scalable File Systems” or “OpenSFS”. Subject to legal requirements and the legal rights of other parties, the Corporation may develop, own, and register trademarks (“Trademarks”) relating to its activities or to an OpenSFS.

B. **Use of the Trademarks.** Each Member or Participant agrees to not use as a trademark “Open Scalable File Systems” or “OpenSFS” or any Trademarks that have been registered by the Corporation unless such use is either subject to the terms and conditions of a license agreement with the Corporation or otherwise permitted by law.

## **ARTICLE XVI - CONFIDENTIALITY**

**16.1 Maintenance of Confidentiality.** The Board may deem the content of its deliberations and the Corporation’s business plans to be “Confidential Information”. To be protected as provided in these Bylaws, Confidential Information, if embodied in tangible form must be marked with a restrictive legend, or if disclosed orally, must be identified as confidential at the time of disclosure. Each Member or Participant agrees not to disclose the Confidential Information and agrees to maintain the confidentiality of the Confidential Information with at least the same degree of care as it maintains its own similar confidential information, for a period of three (3) years from the date of disclosure of such Confidential Information. Notwithstanding the foregoing, any Member or Participant that is a United States governmental entity contractor may disclose any Confidential Information to such governmental entity that is required to be disclosed pursuant to its contract with the governmental entity.

**16.2 Exclusions.** Confidential Information does not include any information that is publicly available other than by breach of a duty of confidentiality; rightfully received from a third party without any obligation of confidentiality; rightfully known to the receiving party without any limitation on disclosure prior to or after its receipt from the disclosing party (including a Member’s or Participant’s own code, documentation and/or other information provided to the Corporation); disclosed as required by law.

**16.3 Residuals.** Members or Participants shall be free to use the residuals of Confidential Information for any purpose including use in the development, manufacture, marketing and maintenance of products and services, subject only to the obligations herein with respect to maintaining the confidentiality of such Confidential Information. The term “residuals” means that Confidential Information in non-tangible form, which may be retained in the memories of individuals who have had rightful access to such Confidential Information. It is understood that receipt of Confidential Information shall not create any obligation in any way limiting or restricting the assignment or reassignment of any employees within an organization. Nothing in this paragraph shall be construed to grant a patent license or other intellectual property license, express or implied.

## **ARTICLE XVII - AMENDMENTS OF BYLAWS**

**17.1 Proposals.** Proposed amendments may be directed to or initiated by the Board. Written notice of the proposed change, the originator, and the recommendation of the Board, if applicable, will be sent to each Member by mail, fax, or e-mail addressed to the Member Delegate at the address appearing on the records of the Corporation, not less than thirty days before the time designated for an Annual Meeting of the Members.

**17.2 Voting Procedure.** These Bylaws, or any one or more of the provisions thereof, may, at any duly constituted Annual Meeting of the Members, be amended by changing, altering, suspending, supplementing or repealing the same, by an affirmative vote of two thirds of the votes cast by the Board and an affirmative vote of two thirds of the votes cast by Members, who shall have voted thereon at such meeting, but only in accordance with a proposed amendment duly published and mailed according to the provisions of **Section 17.1** of this Article.

## **ARTICLE XVIII - DISSOLUTION**

**18.1 Procedure.** Dissolution of the Corporation is proposed and approved in the same manner as an Amendment of the Bylaws.

**18.2 Liabilities.** All liabilities and obligations of the Corporation shall be paid, satisfied and discharged, or adequate provisions shall be made therefore.

**18.3 Remaining Assets.** Remaining assets shall be transferred or conveyed to one or more domestic or foreign corporations, trusts, societies or other organizations engaged in charitable, religious, eleemosynary, benevolent, education or similar activities, but in no case, shall any part of the assets be distributed to members of the Corporation.

## **ARTICLE XIX - INDEMNIFICATION**

**19.1 Indemnification.** The Corporation shall provide for the indemnification of the Corporation and all officers, directors, employees, and agents of the Corporation, to the full extent permitted by the California law, and shall be entitled to purchase insurance for such indemnification to the full extent as determined from time to time by the Board of the Corporation.