

# COIN-OR FOUNDATION, INC.

## BYLAWS

### Article I

#### Offices

The principal office of COIN-OR Foundation, Inc. (hereinafter the "Foundation") shall be located within the State of Maryland, at such place as is designated in the Articles of Incorporation. The Foundation may maintain additional offices at such other places within or without the State of Maryland as the Strategic Leadership Board may designate.

### Article II

#### Foundation Membership

The Foundation shall have three types of members: associate, full, and corporate.

##### Section 1 - *Associate Members*

Associate membership in the Foundation for a fixed term is available to any individual in return for a nominal contribution to the Foundation. The length of the term and the nature of the contribution will be as determined from time to time by the Strategic Leadership Board. The Foundation will provide an electronic news service for associate members and such other benefits as may be set by the Strategic Leadership Board.

##### Section 2 - *Full Members*

Full members of the Foundation are eligible to vote for members of the Strategic Leadership Board and the Technical Leadership Council.

Eligibility for consideration for full membership in the Foundation must be earned by a substantial non-monetary contribution to the work of the Foundation. This contribution can be in the form of code, documentation, or other substantial work, as determined by the Membership Committee. An application for full membership must be seconded by at least two full members of the Foundation. Full membership may be revoked if, after review, the Membership Committee finds that the member is no longer an active contributor to the work of the Foundation. The final decision on membership rests with the Membership Committee. Prior to the formation of the Membership Committee, this authority will rest with the Strategic Leadership Board.

The Technical Leadership Council may designate full members of the Foundation to be responsible for specific Foundation projects (hereinafter "Project Managers"). Prior to the formation of the Technical Leadership Council, this authority will rest with the Strategic Leadership Board.

The initial membership of the Foundation shall be the founding strategic directors, who shall constitute the initial membership of the Strategic Leadership Board and shall be full members of the Foundation.

##### Section 3 - *Corporate Members*

For purposes of this section, Corporation denotes any legally recognised group of individuals, including, but not limited to, for-profit and non-profit corporations and institutions, government entities, and military organisations.

Corporations that make a significant contribution to the work of the Foundation may be invited to become corporate members of the Foundation. Corporate membership is by invitation only and for a fixed

term. The length of the term and the level of contribution required for, and benefits accruing to, corporate membership will be determined on a case-by-case basis by the Strategic Leadership Board.

## Article III Strategic Leadership Board

The Strategic Leadership Board (hereinafter the “Board”) shall conduct the business affairs of the Foundation, set the overall strategic direction of the Foundation, and in all ways function as the legal Board of Directors of the Foundation.

### Section 1 - *Membership of the Board*

The Board will comprise not less than three (3) nor more than ten (10) members (hereinafter the “Strategic Directors”). Excepting the initial membership, at least one strategic director will be chosen from academia, at least one from industry, and at least one from outside the full members of the Foundation. Following the formation of the Technical Leadership Council, its Chair will also be a member of the Board.

The number of strategic directors may be increased or decreased by amendment of these Bylaws, or by action of the Board as hereinafter provided. A majority of the entire Board may alter the number of strategic directors set by the Articles of Incorporation or these Bylaws, provided that no decrease shall affect the tenure of office of any incumbent strategic director, and provided further that there shall be at least three (3) strategic directors at all times.

### Section 2 - *Power of the Board*

The business affairs and strategic direction of the Foundation shall be managed under the direction of the Board. The Board shall have the power to elect officers and to admit, suspend, or remove strategic directors as provided in these Bylaws; to appoint committees on particular subjects, such committee members to be chosen from among the members of the Board or nonmembers; to designate such committees as standing committees or special committees; to print and circulate documents and publish articles relating to the purposes for which the Foundation is formed; to carry on correspondence in relation to the Foundation’s affairs; and to do and perform all other acts necessary or useful for the furtherance of the Foundation’s purposes as described in its Articles of Incorporation.

### Section 3 - *Election and Term of Directors*

Each strategic director position shall be subject to election every three (3) years according to the procedures of Article VI. Insofar as is possible, the terms of office shall be staggered so that one-third (1/3) of the strategic directors are elected each year.

The Board membership reserved for the Chair of the Technical Leadership Council is not subject to the election procedure specified in this section.

### Section 4 - *Voting*

Each strategic director shall have one vote. Unless otherwise specified, in any vote taken by the Board a simple majority constitutes approval.

### Section 5 - *Election of Foundation Officers*

The members of the Board shall elect as officers of the Foundation a President, Secretary, and Treasurer, as specified in Article VI. Such officers are not required to be members of the Board. The Board may designate one of its members, other than the President of the Foundation, to act as Chair for the purpose of conducting Board meetings.

**Section 6 - *Vacancies***

Unless otherwise restricted by the Articles of Incorporation or these Bylaws, any vacancies that may occur on either the Board or in the Foundation officer positions may be filled by the Board from among those individuals that the Board determines are competent to fulfill the requirements of the open position.

**Section 7 - *Removal***

A strategic director may be removed, without cause, as determined by a two-thirds (2/3) vote of the Board present at any meeting at which there is a quorum.

**Section 8 - *Resignation***

A strategic director may resign only by submitting a written resignation to the other strategic directors.

## **Article IV**

### **Technical Leadership Council**

The Technical Leadership Council (hereinafter the “Council”) shall be responsible for specifying the technical direction required to achieve the strategic goals of the Foundation as set by the Board, and for setting the technical standards applicable to all Foundation projects.

**Section 1 - *Membership of the Council***

The Council will comprise not less than five (5) nor more than ten (10) members (hereinafter the “Technical Directors”). Sixty percent (60%) of the technical directors shall be Foundation project managers and forty percent (40%) shall be drawn from the Foundation membership at large and from individuals outside the Foundation. Where these percentages mandate fractions of a person, the rounding shall be in favour of the project managers. The number of technical directors may be increased or decreased by amendment of these Bylaws, or by action of the Board, as hereinafter provided. A majority of the entire Board may alter the number of technical directors set by the Articles of Incorporation or these Bylaws provided that no decrease shall affect the tenure of office of any incumbent technical director, and provided further that there shall be at least five (5) technical directors at all times.

**Section 2 - *Power of the Council***

The mandate of the Council shall be to provide the technical direction required to achieve the strategic goals of the Foundation as specified by the Board, and to specify technical standards applicable to all Foundation projects. The Council shall have the power to admit, suspend, or remove technical directors as provided in these Bylaws; to specify additional requirements to balance the expertise of technical directors across technical disciplines relevant to Foundation projects; to appoint committees on particular subjects, such committee members to be chosen from among the members of the Council or nonmembers; to designate such committees as standing committees or special committees; to print and circulate documents and publish articles relating to the mandate of the Council; to carry on correspondence in relation to the Council’s affairs; and to do and perform all other acts necessary or useful for the furtherance of the Council’s mandate except those reserved in these Bylaws to the Board.

**Section 3 - *Election and Term of Directors***

Each technical director position shall be subject to election every three (3) years according to the procedures of Article VI. Insofar as is possible, the terms of office shall be staggered so that one-third (1/3) of the technical directors are elected each year, and so that one-third (1/3) of the directors who are project managers and one-third (1/3) of the directors drawn from other groups are elected each year.

**Section 4 - *Voting***

Each technical director shall have one vote. Unless otherwise specified, in any vote taken by the Council a simple majority constitutes approval.

**Section 5 - *Election of Council Officers***

The members of the Council shall elect as officers a Chair and a Secretary to act at meetings of the Council, as specified in Article VI. These officers shall be elected for a one year term of office. The Secretary is not required to be a member of the Council. Any Council officer may be removed by the Council if, in the judgement of the Council, the best interests of the Foundation will be served.

**Section 6 - *Vacancies***

Unless otherwise restricted by the Articles of Incorporation or these Bylaws, any vacancies that may occur on either the Council or in its officer positions may be filled by the Council from among those individuals that the Council determines are competent to fulfill the requirements of the open position.

**Section 7 - *Removal***

A technical director may be removed, without cause, as determined by a two-thirds (2/3) vote of the Council present at any meeting at which there is a quorum.

**Section 8 - *Resignation***

A technical director may resign only by submitting a written resignation to the other technical directors.

## **Article V**

### **Relationship of the Strategic Leadership Board and Technical Leadership Council**

Unless otherwise specified in the Articles of Incorporation or these Bylaws, the guiding principle in the relationship between the Strategic Leadership Board and Technical Leadership Council is that the Board sets the overall strategic direction of the Foundation and handles the business affairs of the Foundation, while the Council sets the specific technical means and standards to accomplish the strategic goals set by the Board.

**Section 1 - *Dispute of Decisions***

The Board is the legal Board of Directors of the Foundation. In all cases of dispute between the Board and the Council, ultimate authority rests with the Board.

## **Article VI**

### **Election and Installation of Directors**

Elections for strategic and technical directors shall be held at the annual meeting of the Foundation membership (hereinafter the “AGM”).

**Section 1 - *Nominations***

No less than eight (8) weeks prior to the AGM, the Secretary of the Foundation shall issue a call for the nomination of candidates for the director positions to be elected in that year. Candidates can be nominated

by any member of the Foundation and must be seconded by a full member of the Foundation. Incumbent directors are eligible for nomination.

For the Board, there shall be a single pool of candidates.

For the Council, there shall be separate pools of candidates for the constituencies of project managers and non-project managers.

Nominations must be received by the Secretary no less than five (5) weeks prior to the date of the AGM. A candidate may include a short biography and statement, not exceeding 500 words in total.

### Section 2 - *Distribution of Candidate Information to the Membership*

The Secretary will distribute to the membership the names, biographies, and statements of candidates for director positions. Distribution of information to the membership will be carried out as specified in Article VII.

### Section 3 - *Voting Procedures*

The directors to be elected in that year shall be elected by vote of the full members present at the AGM and those voting electronically as specified in Article VII.

The electoral method shall be approval voting. A vote for a candidate indicates a member's approval of that candidate. Members may vote for as many candidates as they wish. The ballot shall provide for write-in candidates.

To determine the result of the election, the candidates shall be ranked in order of votes received, within the three pools specified in §VI.1. For each pool, the candidate receiving the most votes shall be considered elected unless this would make it impossible to satisfy the diversity requirements of the Board or Council, in which case the candidate is disqualified. Whether the candidate is elected or is disqualified, the candidate's name will be removed from the ranked list and the procedure repeated until a sufficient number of candidates have been declared elected, or no candidates remain. A candidate receiving no approval votes cannot be elected.

If the pool of candidates for strategic director positions is emptied and a vacant position remains, the position will remain open and a byelection will be called as specified in §VI.4.

If either pool of candidates for technical director positions is emptied and a vacant position remains for that constituency, the position will remain open and a byelection will be called as specified in §VI.4.

In the event that two candidates for a strategic director position receive the same number of votes, the tie will be broken by decision of the Board members who are not candidates in the election. For purposes of determining if the diversity requirements can be met, a candidate can represent at most one constituency. If there is any ambiguity about the constituency of a candidate, it shall be resolved by decision of the Board members who are not candidates in the election.

In the event that two candidates for a technical director position receive the same number of votes, the tie will be broken by decision of the Council members who are not candidates in the election.

### Section 4 - *Byelections*

If a director position on the Board or Council remains vacant following the election held at the AGM, a byelection shall be called at the next meeting of the Board for the purpose of filling the vacant position. The timing of this election shall be as specified in the preceding sections, with the scheduled date of the election substituted for the date of the AGM. All voting shall be conducted by electronic vote as specified in Article VII.

If a director position on the Board or Council becomes vacant for any other reason, a byelection shall be called at the next meeting of the Board, provided that the election can be completed at least four (4) months prior to the AGM.

### Section 5 - *Installation of Directors and Election of Officers*

Strategic directors elected at the AGM shall take office at the first Board meeting following the election which satisfies the notification requirements of Article VII; the terms of all strategic directors not reelected shall end simultaneously. This meeting must be held within four (4) weeks of the election. The first order of business at this meeting shall be the election of Foundation officers.

Strategic directors elected in a byelection shall take office at the first meeting of the Board following their election.

Technical directors elected at the AGM shall take office at the first Council meeting following the election which satisfies the notification requirements of Article VII; the terms of all technical directors not reelected shall end simultaneously. This meeting must be held within four (4) weeks of the election. The first order of business at this meeting shall be the election of Council officers.

Technical directors elected in a byelection shall take office at the first meeting of the Council following their election.

## **Article VII**

### **Meetings**

#### **Section 1 - *Annual Meetings***

There shall be an annual meeting of the Board of the Foundation for the purpose of receiving the annual reports, election of directors, and for the transaction of such other business as may come before the meeting. The time and place for holding the annual meeting shall be fixed by the Board. This annual meeting of the Board shall be considered simultaneously the annual general meeting (AGM) of the Foundation membership.

There shall be an annual meeting of the Council of the Foundation. The time and place for holding the annual meeting shall be fixed by the Council.

#### **Section 2 - *Special Meetings***

Special meetings of the members of the Board may be called when and at such places as the Board may deem necessary or upon written request to the Chair of the Board of twenty-five percent (25%) of the Board members.

Special meetings of the members of the Council may be called when and at such places as the Council may deem necessary or upon written request to the Chair of the Council of twenty-five percent (25%) of the Council members.

#### **Section 3 - *Notices***

Notices of Board or Council meetings shall be given in writing, at least ten (10) days prior to such meeting, to all affected directors. Such notices may be mailed postage prepaid to each such director at his or her postal address, or sent by secure and verifiable email to each such director at his or her email address, as it appears in the records of the Foundation. Attendance of a director at a meeting shall waive any lack of notice of the meeting or any defect in the notice of meeting.

#### **Section 4 - *Quorum and Voting***

At meetings of the Board or Council, a majority of the member directors, and in no case less than three (3) member directors, shall constitute a quorum for the transaction of business. Unless otherwise specified in these Bylaws, a majority in number of the votes cast at any such meeting shall constitute approval. If at any meeting there shall not be a quorum present, those directors present shall have the power to adjourn the meeting to a stated date not less than ten (10) days from the date of such adjourned meeting, such reconvened

meeting to be held at the hour and at the place designated for the adjourned meeting. Within three (3) days after the adjournment of such meeting, the Secretary of the Board (in the case of the Council, the Secretary of the Council) shall give notice to all affected directors of the date selected for the reconvening of the meeting and shall notify all affected directors that those present at the reconvened meeting shall constitute a quorum and shall have the power to take any and all actions which might be taken at any meeting of the Board or Council of the Foundation.

#### **Section 5 - *Informal Action by Directors – Meetings by Conference Telephone or by Other Electronic Means***

Unless otherwise restricted by the Articles of Incorporation or these Bylaws, any action required or permitted to be taken by the directors at any annual or special meeting may be taken without a meeting if a unanimous written consent which sets forth the action, signed in hardcopy or by secure and verifiable digital means by each director entitled to vote on the matter, is filed with the records of directors' meetings. Unless otherwise restricted by the Articles of Incorporation or these Bylaws, directors may vote by mail or by secure and verifiable digitally signed email without a meeting on a stated proposal or for the election of any officers who are elected by the directors.

Except as otherwise required by law or restricted by the Articles of Incorporation or these Bylaws, the directors may participate in a meeting of the directors by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and such participation shall constitute presence in person at the meeting.

#### **Section 6 - *Quorum and Voting by the Membership***

For a vote on any question put before the full members of the Foundation other than the election of directors, one-third (1/3) of the membership eligible to vote shall constitute a quorum. A simple majority of those voting constitutes approval.

#### **Section 7 - *Notices to the Membership***

The interval between distribution of a proposal to the full members of the Foundation and the close of the electronic voting period shall be at least fifteen (15) days.

#### **Section 8 - *Electronic Voting by the Membership***

Unless otherwise restricted by the Articles of Incorporation or these Bylaws, the Board may specify, for any vote of the full members of the Foundation, a generally accessible means of distributing the proposal to be voted on, and a secure and verifiable means for members to cast votes electronically. Such votes must be registered prior to the start of voting by members present at the meeting where the vote is being held.

## **Article VIII**

## **Order of Business**

The order of business shall be as follows at all meetings of the Foundation:

1. Roll Call;
2. Reading of Minutes of last meeting;
3. Reports of Officers;
4. Reports of Committees;
5. Unfinished Business; and

## 6. New Business.

Any question as to priority of business shall be decided by the chair without debate. This order of business may be altered or suspended at any meeting by a majority vote of the directors present. Any motion or resolution made or offered at any meeting shall, upon request, be reduced to writing and furnished to the secretary before the question shall be put to a vote.

Meetings shall be conducted according to Robert's Rules of Order.

## Article IX Foundation Officers

The Foundation officers shall be a President, a Secretary, a Treasurer, and such other officers and assistant officers as the Board from time to time may consider necessary to properly carry out the purposes of the Foundation. These officers shall be elected by the Board as specified in Article VI. Any Foundation officer may be removed by the Board if, in the judgement of the Board, the best interests of the Foundation will be served.

All Foundation officers shall hold office for one year or until their successors have been elected and take office. Any Foundation officer may resign at any time by giving written notice to the Board. Unless otherwise specified in the written notice, the resignation shall be effective upon delivery to the Board.

The functions of two or more of the Foundation offices may be combined in one person, except that, should the Board appoint a Vice-President, one person may not serve simultaneously in this position and as President.

## Article X Duties of Foundation Officers

### Section 1 - ***President***

The President shall be the executive officer of the Foundation, enforce the Bylaws and carry into execution all resolutions of the Foundation and of the Board and Council; be responsible for accomplishment of the objectives of the Foundation; employ all help necessary and within the limitations of the budget and execute all authorised contracts and agreements. If for any reason the President is unable to perform his or her duties, the Vice-President shall act as the executive officer of the Foundation.

### Section 2 - ***Vice-President***

The Vice-President shall perform all of the duties of the President in the absence or disability of the latter. He or she shall also perform such duties as may be assigned to him or her by the President or the Board.

### Section 3 - ***Secretary***

The Secretary shall give notice of all meetings of the Board; keep a record of all proceedings at such meetings; compile official reports authorised by the Board; preserve all communications received by him or her pertaining to the affairs of the Foundation; have custody of the seal of the Foundation and affix the same to any document or instrument when authorised so to do and to attest to the same; and perform such other duties as are assigned to him or her by the Board.

### Section 4 - ***Treasurer***

The Treasurer shall be responsible for all funds belonging to the Foundation, and shall deposit them in a depository to be designated by the Board. The Treasurer shall pay out such monies only upon the approval of the President or, in the President's absence, of the Vice-President, in accordance with vouchers showing the details of such accounts, which shall be preserved in the office of the Treasurer. The Treasurer shall keep proper books of account, which shall be open at all times to the inspection of all strategic directors, and at the close of his or her term of office, shall deliver to his or her successor all monies, books, papers, and other valuables belonging to the Foundation which shall be in his or her custody or possession.

## Article XI Compensation

No compensation shall be paid to Foundation or Council officers nor to members of the Board or Council for their services as such.

## Article XII Committees

### Section 1 - *Executive Committee and Other Committees*

The Board may appoint from among its members an Executive Committee and other committees, each consisting of two or more directors, and delegate to these committees any of the powers of the Board, except the power to (i) recommend to the members any action that requires approval by the members, (ii) amend the Bylaws, and (iii) approve any merger that does not require approval by the members.

The Council may appoint from among its members an Executive Committee and other committees, each consisting of two or more directors, and delegate to these committees any of the powers of the Council, except the power to recommend to the members any action that requires approval by the members.

The members of any committee present at any meeting, whether or not they constitute a quorum, may appoint a director to act in the place of any absent member.

### Section 2 - *Committee Rules*

Unless the Board or Council appointing the committee otherwise provides, each committee designated by the Board or Council may make, alter, and repeal rules for the conduct of business. In the absence of a contrary provision by the Board or Council, or in rules adopted by such committee, a majority of the entire authorised number of members of each committee shall constitute a quorum for the transaction of business, the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee, and each committee shall otherwise conduct its business in the same manner as the appointing Board or Council conducts its business.

Unless otherwise restricted by the Articles of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of such committee may be taken without a meeting if a unanimous written consent which sets forth the action taken, signed in hardcopy or by secure and verifiable digital means by each member of the committee, is filed with the minutes of the proceedings of such committee. Unless otherwise restricted by the Articles of Incorporation or these Bylaws, members of a committee may vote by mail or by secure and verifiable digitally signed email without a meeting on a stated proposal or for the election of any officers who are elected by the committee members.

Except as otherwise required by law or restricted by the Articles of Incorporation or these Bylaws, members of a committee appointed by the Board or Council may participate in a meeting of the committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and such participation shall constitute

presence in person at the meeting.

#### Section 3 - *Service of Committees*

Each committee appointed by the Board or Council shall serve at the pleasure of the appointing body. The appointment of any committee, the delegation of authority to it, or action by it under that authority does not constitute, of itself, compliance by any director, not a member of the committee, with the standard provided under §2-405.1 of the Foundations and Associations Article of the Maryland Code for the performance of duties of directors.

#### Section 4 - *Records*

Minutes shall be kept of each meeting of each committee. Copies of the minutes of each such meeting shall be filed with the Foundation records.

## **Article XIII Amendments**

These Bylaws and the Articles of Incorporation may be amended in whole or in part at any duly organised meeting of the Board, provided that any proposed amendment or amendments are signed by at least one strategic director and are submitted by mail to the last recorded postal address of each strategic director of the Foundation, or by secure and verifiable email to the last recorded email address of each strategic director of the Foundation, at least fifteen (15) days prior to the time of the meeting which is to consider the change.

At the scheduled meeting, the proposed amendment or amendments may be adopted by a two-thirds (2/3) vote of strategic directors present and voting.

If there is any change or alteration at such meeting of the proposed amendment or amendments, or if new amendments are proposed at such meeting, all such changes, alterations, or new amendments proposed shall be reported to all strategic directors for the purpose of obtaining a vote of such directors.

If any such change, alteration or additional amendment proposed receives a two-thirds (2/3) vote of those votes received from strategic directors within three weeks after such submission to the Board, any such change, alteration, or amendment proposed shall be adopted.

## **Article XIV Indemnification of Directors, Officers, Employees and Agents**

The Foundation shall provide any indemnification required or permitted by the laws of Maryland and shall indemnify directors, officers, agents, and employees as follows.

#### Section 1 - *Indemnification for Action in Good Faith*

The Foundation shall indemnify any present or former director or officer of the Foundation 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 Foundation) by reason of the fact that he or she is or was such director or officer or an employee or agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorney's fees), judgements, 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 which he or she reasonably believed to be in or not opposed to the best interests of the Foundation, and with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was

unlawful.

#### Section 2 - *No Indemnification for Negligence*

The Foundation shall indemnify any present or former director or officer of the Foundation 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 Foundation to procure a judgement in its favour, by reason of the fact that he or she is or was such a director or officer or an employee or agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorney's 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 Foundation, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Foundation unless and only to the extent that the court in which such action or suit was brought, or any other court having jurisdiction in the premises, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expense which such court shall deem proper.

#### Section 3 - *Indemnification if not Legally Liable*

To the extent that a director or officer of the Foundation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in §§XIV.1 or XIV.2 or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expense (including attorney's fees) actually and reasonably incurred by him or her in connection therewith, without the necessity for the determination as to the standard of conduct as provided in §XIV.4.

The termination of any proceeding by a judgement, order, settlement, conviction, or on a plea of *nolo contendere* or its equivalent, does not of itself create a presumption that the individual 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 Foundation and, with respect to any criminal proceeding, had reasonable cause to believe that his or her conduct was unlawful.

#### Section 4 - *Standard of Conduct*

Any indemnification under §§XIV.1 or XIV.2 (unless ordered by a court) shall be made by the Foundation only as authorised in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in §§XIV.1 or XIV.2. Such determination shall be made (i) by the Board of the Foundation by a majority vote of a quorum consisting of the strategic directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable, if such a quorum of disinterested directors so directs, by independent legal counsel (who may be regular counsel for the Foundation) in a written opinion and any determination so made shall be conclusive.

#### Section 5 - *Expense*

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Foundation in advance of the final disposition of such action, suit or proceeding, as authorised by the Board in the specific case, upon receipt of an undertaking by or on behalf of the director or officer to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Foundation as authorised in this section.

#### Section 6 - *Agents and Employees*

Agents and employees of the Foundation who are not directors or officers of the Foundation may be indemnified under the same standards and procedures set forth above, at the discretion of the Board of the

Foundation.

#### Section 7 - ***Remedy not Exclusive***

Any indemnification pursuant to this Article XIV shall not be deemed exclusive of any other rights to which those indemnified may be entitled and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person.

#### Section 8 - ***Insurance***

The Board may authorise the purchase of insurance on behalf of any director, officer, employee, or agent of the Foundation, or such person who while a director, officer, employee or agent of the Foundation is or was serving at the request of the Foundation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan, against any liability asserted against and incurred by him or her arising out of such person's position, whether or not the Foundation would have the power to indemnify such person against that liability under law.

In no case, however, shall the Foundation indemnify, reimburse, or insure any person for any taxes imposed on such individual under Chapter 42 of the Internal Revenue Code of 1986, as now in effect or as may hereafter be amended (hereinafter the "Code"). Further, if at any time the Foundation is deemed to be a private foundation within the meaning of §509 of the Code then, during such time, no payment shall be made under this Article if such payment would constitute an act of self-dealing or a taxable expenditure, as defined in §§4941(d) or 4945(d), respectively, of the Code.

## **Article XV**

## **Miscellaneous**

#### Section 1 - ***Nondiscrimination***

It is the policy of the Foundation to provide its services and any products without regard to race, color, religion, national origin, sex, or sexual orientation.

#### Section 2 - ***Fiscal Year***

The fiscal year of the Foundation shall begin on the first day of May and end on the last day of April or such other period as may be fixed by the Board.

#### Section 3 - ***Corporate Seal***

Should the Board determine that the Foundation shall have a corporate seal, it shall be polyhedral in form, shall contain a picture of a bearded seal (*Erignathus barbatus*), shall have the name of the Foundation inscribed thereon and shall contain the words "Corporate Seal" and "Maryland" and the year the Foundation was formed, placed so as not to obscure the picture of the seal, or shall be in such form as may be approved from time to time by the Board.

#### Section 4 - ***Checks, Notes, Contracts***

The Board shall determine who shall be authorised from time to time on the Foundation's behalf to sign checks, drafts, or other orders for payment of money; to sign acceptances, notes, or other evidences of indebtedness; to enter into contracts; or to execute and deliver other documents and instruments.

#### Section 5 - ***Books and Records***

The Foundation shall keep at its office correct and complete books and records of account, the activities and transactions of the Foundation, minutes of the proceedings of the Board, Council, and any committee of the Foundation, and a current list of the directors and officers of the Foundation and their postal and email addresses. Any of the books, minutes and records of the Foundation may be in written form or in any other form capable of being converted into written form within a reasonable time. Records kept in electronic form shall be kept on unalterable ('write once') media.

#### Section 6 - *Invalidity*

If any part of these Bylaws shall be found in any action, suit, or proceeding to be invalid or ineffective, the validity and the effectiveness of the remaining parts shall not be affected.