

BYLAWS

OF THE

TRANSACTION PROCESSING PERFORMANCE COUNCIL

Version 2.9

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ARTICLE I - OFFICES

1.1 PRINCIPAL OFFICE

The principal office of the Corporation for its transaction of business is located in the City and County of San Francisco, California.

1.2 CHANGE OF ADDRESS

The Board of Directors is hereby granted full power and authority to change the principal office of the Corporation from one location to another in California. Any such change shall be noted by the Secretary in these Bylaws, but shall not be considered an amendment of these Bylaws.

ARTICLE II - MEMBERS

2.1 CLASSIFICATION AND QUALIFICATION OF MEMBERS

The Corporation shall have three classes of members, namely associate members, committee members and full members. No person shall hold more than one membership in the Corporation.

Full Member: Organizations may apply to become TPC members. TPC members enjoy all rights and benefits detailed in the TPC bylaws and policies and must follow all TPC bylaws and policies (Note: all references to "members" in the TPC bylaws and policies refer to full members unless stated otherwise).

Committee member: Committee members enjoy the same rights and benefits (and are subject to the same obligation to follow all TPC bylaws and policies as full members) except they do not have a seat on the Board of Directors. Committee members are eligible to participate and vote in TPC subcommittees but not in the Standing Committees.

Associate member: Only the following types of organizations are eligible for associate membership: non-profit organizations, educational institutions, market researchers, publishers, consultants, governments, and organizations and businesses who do not create, market or sell computer products or services.

Associate members have the same obligation to follow all TPC policies/bylaws as regular members. Associate members will be eligible to: (a) receive all TPC mailings and information shared with members, and (b) attend TPC meetings. Associate members will not be eligible to: (a) vote, or (b) hold any official TPC subcommittee or officer position.

As an option, associate members may also join the TPC as members.

2.2 ELIGIBILITY FOR MEMBERSHIP

Any person, as defined in Section 5065 of the Corporations Code, who pays the annual dues set forth in Section 2.5 is eligible to be a member of the Corporation.

Affiliate is defined by the California Corporations Code Section 150 (A corporation is an "affiliate" of, or a corporation is "affiliated" with, another specified corporation if it directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the other specified corporation.)

Subsidiary is defined by the California Corporations Code Section 189 (a) ("subsidiary" of a specified corporation means a corporation shares of which possessing more than 50 percent of the voting power are owned directly or indirectly through one or more subsidiaries by the specified corporation).

The foregoing definitions shall apply to limited liability companies as well as corporations. For purposes of this Article II, the definition of affiliate is limited to mean that 50% or less of the voting power is of the entity is owned directly or indirectly with the intention that related companies shall be categorized as either an affiliate or a subsidiary.

An affiliate of a member shall be free to join the Corporation as a full member, with all the rights and benefits thereof including having a seat on the Board of Directors and any Standing Committee.

A subsidiary of a member shall be free to join the Corporation as a full member. However, a member and its subsidiary(ies) shall be deemed a single member for purposes of having a seat on the Board of Directors and any of the Standing Committees

A subsidiary of a member is eligible to vote in a designated TPC committee, work group, or any other subgroup of the Corporation where they participate as peers.

Membership classification changes may occur at any time provided that the criteria in Section 2.1 and Section 2.2 are met, provided that shall be effective immediately.

2.3 ADMISSION TO MEMBERSHIP

A person, as defined in Section 5065 of the Corporations Code, shall be admitted to membership only on the approval by the Administrator of the Corporation of an application submitted by such person in such form and in such manner as shall be prescribed by the Board of Directors and on such person's agreement in writing, in the form of a purchase order or other written document acceptable to the Administrator, to pay within ninety (90) days the first annual dues as specified in Section 2.5 of these Bylaws provided, however, that the Administrator may, and upon the written request of five or more members the Administrator shall, submit to the Board of Directors the question of whether an applicant meets the eligibility standards of Section 2.2. In such a case, the decision of a majority of the directors present at a duly called meeting of the Board of Directors at which a quorum is present shall be binding on the Corporation. Upon admission to membership as set forth in this Section 2.3, and subject to the conditions of Section 2.2, each member shall be entitled to appoint one member to the Corporation's Board of Directors.

2.4 APPLICATION FEE

There shall be no fee for making an application for membership in the Corporation.

2.5 DUES

The annual dues are payable to the Corporation by all classes of members of such amount as shall be determined by resolution of the Board of Directors. Dues shall be payable for the first year within ninety (90) days of admission to membership in accordance with Section 2.3 and annually thereafter at such time or times as may be fixed by the Board of Directors. A member (of any class), on learning of the amount of dues determined by the Board of Directors and the time or times of payment fixed by the Board of Directors, may avoid liability for the dues by promptly resigning from membership, except where the member is, by contract or otherwise, liable for the dues.

2.6 ASSESSMENTS

Memberships shall be non-assessable.

2.7 NUMBER OF MEMBERS

There shall be no limit on the number of members that the Corporation may admit.

2.8 MEMBERSHIP BOOK

The Corporation shall keep in written form a membership book containing the name and address of each member. The book shall also contain the fact of termination and the date on which such membership ceased. Such book shall be kept at the principal office of the Corporation and shall be subject to the rights of inspection required by law as set forth in Section 2.9 of these Bylaws. The Administrator shall be responsible for maintaining such membership book.

2.9 INSPECTION RIGHTS OF MEMBERS

Demand. Subject to the Corporation's right to set aside a demand for inspection pursuant to Section 8331 of the Corporations Code and the power of the court to limit inspection rights pursuant to Section 8332 of the Corporations Code, any member may do either or both of the following:

- (1) Inspect and copy the record of all the members' names, addresses and voting rights, at reasonable times, on five (5) business days' prior written demand on the Corporation, which demand shall state the purpose for which the inspection rights are requested; or
- (2) Obtain from the Secretary of the Corporation, on written demand and tender of a reasonable charge, a list of the names, addresses and voting rights of those members entitled to vote for the election of Directors, as of the most recent record date for which it has been compiled or as of the date of demand. The demand shall state the purpose for which the list is requested. The membership list shall be available on or before the later of ten (10) business days after the demand is received or after the date specified therein as the date as of which the list is to be compiled.

2.10 CERTIFICATES OF MEMBERSHIP

The Corporation shall not issue membership certificates.

2.11 NON-LIABILITY OF MEMBERS

A member of the Corporation shall not solely because of such membership be personally liable for the debts, obligations, or liabilities of the Corporation.

2.12 TRANSFERABILITY OF MEMBERSHIP

Neither the membership in the Corporation nor any rights in the membership may be transferred for value or otherwise.

2.13 TERMINATION OF MEMBERSHIP

(a) **Causes.** The Membership and all rights of membership shall automatically terminate on the occurrence of any of the following causes:

- (i) The voluntary resignation of a member with notice as prescribed by Section 2.13(b) of these Bylaws;
- (ii) Where a membership is issued for a period of time, the expiration of such period of time;
- (iii) The death of a member;
- (iv) The dissolution of a member who is a corporation; and
- (v) The nonpayment of dues, subject to the limitation set forth in Section 7341 of the California Corporations Code.

Expulsion of the member based on the good faith determination by the board that the member has failed in a material and serious degree to observe the rules of conduct of the Corporation or has engaged in conduct materially and seriously prejudicial to the purposes and interests of the Corporation.

(b) **Giving Notice of Resignation.** The membership of any member of the Corporation shall automatically terminate on such member's written request for such termination delivered to the Administrator of the Corporation personally or deposited in United States first-class mail, postage prepaid. If such resignation is delivered during the first six months of the Corporation's fiscal year, the Corporation shall, unless prohibited by applicable law, refund to the resigning member one-half of the annual dues previously paid by such member for such fiscal year. If such resignation is delivered after the first six months of the Corporation's fiscal year, no portion of such dues shall be refunded.

(c) **Effect of Termination.** All rights of a member in the Corporation and in its property shall cease on the termination of such member's membership. Termination shall not relieve the member from any obligation for charges incurred, services or benefits actually rendered, dues, or fees, or arising from contract or otherwise. The Corporation shall retain the right to enforce any such obligation or obtain damages for its breach.

(d) **Challenge of Termination.** Any action challenging an expulsion or termination of membership, including a claim alleging defective notice, must be commenced within one year after the date of the expulsion or termination.

ARTICLE III - DIRECTORS

3.1 NUMBER

The Corporation shall have one director for each member. The number of directors is only limited by the number of members. Upon admission or termination of a member, the size of the Board will be considered to be automatically adjusted. No action on the Board's part is required after accepting a membership application or termination of a member.

3.2 QUALIFICATIONS

The Directors of the Corporation may be any person, including a person who is a member, or an employee of a member, of the Corporation.

3.3 TERMS OF OFFICE

Each Director shall hold office for so long as he or she is a member or, if such director is a representative of a member, until such member replaces such director with another representative.

3.4 COMPENSATION

The Directors shall serve without compensation.

3.5 MEETINGS

(a) **Call of Meetings.** Meetings of the Board may be called by the Administrator or any third of the Directors.

(b) **Place of Meetings.** Meetings of the Board shall be held at such place as the Administrator shall designate or the directors calling the meeting pursuant to Section 3.5(a).

(c) **Notice of Meetings.** Meetings shall be held on four (4) days' notice by first class mail, postage prepaid, or on forty-eight (48) hours' notice delivered personally or by telephone or telegraph or electronic mail. Meeting notice shall designate, for in-person meetings, the time and location of the meeting, or for meetings by telephone conference the time and method of attendance. Notice of the meeting need not be given to any director who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of such notice to such Director. All such waivers, consents, and approval shall be filed with the corporate record or made a part of the minutes of the meetings.

(d) **Quorum.** Greater than one third of the authorized number of Directors constitutes a quorum of the Board for the transaction of business, except as hereinafter provided.

(e) **Transactions of Board.** A Super Majority is defined as two thirds of the Directors present and voting, excluding abstentions. A Simple Majority is defined as greater than 50% of Members present and voting. Except as otherwise provided in the Articles, in these Bylaws, or by law, every act or decision done or made by a Super Majority at a meeting duly held at which a quorum is present is the act of the Board. A Simple Majority is required for election of individuals to Standing Committees, approval of members on Technical Subcommittees, election of Chairman for Standing Committees and Technical Subcommittees, determination of time and location of General Meetings, revocation of Auditor certification, non-compliance of a Result, and policy violations.

(f) **Conduct of Meetings.** The Chairman of the Steering Committee or, in his or her absence, any director selected by the Directors present shall preside at meetings of the Board of Directors. The Secretary of the Corporation or such other person appointed by the presiding officer, shall act as Secretary of the Board. Meetings shall be either conducted in-person or through the use of telephone conference or similar communications equipment, as specified in the meeting notice. For in-person meetings, physical attendance by Members of the Board at the designated location is required for purposes of establishing quorum and voting. For meeting by telephone conference, all members participating in such meeting must be able to hear one another for purposes of establishing quorum and voting. Meetings shall be conducted according to Robert's Rules of Order, except as otherwise provided in the Bylaws or Policies.

(g) **Adjournment.** A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of the adjournment to another time or place must be given prior to the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

3.6 ACTION WITHOUT MEETING

Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as the unanimous vote of such Directors.

3.7 RESIGNATION OF DIRECTOR

Any Director may resign effective on giving written notice to the Administrator or the Board of Directors of the Corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

3.8 VACANCIES IN THE BOARD

(a) **Causes.** Vacancies on the Board of Directors shall exist on the death or resignation of any Director.

(b) **Filling Vacancies by Members.** Any vacancy created by the death or resignation of a Director shall be filled by the member who was represented by such Director appointing a replacement Director. If the Director who died or resigned was a member rather than a representative of a member, all rights of membership shall automatically terminate as set forth in Section 2.13 and the size of the board shall be automatically adjusted as set forth in Section 3.1.

ARTICLE IV - OFFICERS

4.1 NUMBER AND TITLES

The duties of officers of the Corporation; President and Chief Executive Officer, Secretary, and Chief Financial Officer, for purposes of Section 7213 of the California Corporations Code, reside in a five (5) member standing committee of the Board of Directors hereinafter referred to as the 'Steering Committee'. The Chairman of the Steering Committee is the legal representative of the Corporation.

4.2 APPOINTMENT AND RESIGNATION

The membership of the Steering Committee consists of five (5) representatives from the membership of the Corporation who are formally nominated and elected in a closed ballot annually in the first meeting of the board of directors in a given calendar year. Any member of the Steering Committee may resign at any time on written notice to the Corporation without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

ARTICLE V - CORPORATE RECORDS AND REPORTS

5.1 KEEPING RECORDS

The Corporation shall keep adequate and correct records of account and minutes of the proceedings of its Board and committees of the Board. The corporation shall also keep a record of its members giving their names and addresses. The minutes shall be kept in written form. Other books and records shall be kept in either written form or in any other form capable of being converted into written form.

5.2 ANNUAL REPORT

The Corporation shall notify each member yearly of the member's right to receive a financial report pursuant to Corporations Code Section 8321(a). Except where the Corporation does not have more than one hundred (100) members or more than ten thousand dollars (\$10,000) in assets at any time during the fiscal year, on the written request of a member the board shall promptly cause the most recent annual report to be

sent to the requesting member. The annual report shall be prepared not later than one hundred and twenty (120) days after the close of the Corporation's fiscal year. The annual report shall contain in appropriate detail the following; (1) a balance sheet as of the end of such fiscal year and an income statement and statement of changes in financial position for such fiscal year; (2) a statement of the place where the names and addresses of the current members are located; and (3) any information concerning certain transactions and indemnifications required by Corporations Code Section 8322. The annual report shall be accompanied by any report thereon of independent accountants or, if there is not such a report, the certificate of any authorized officer of the Corporation that such statements were prepared without audit from the books and records of the Corporation.

5.3 ANNUAL STATEMENT OF CERTAIN TRANSACTIONS AND INDEMNIFICATIONS

The Corporation shall furnish annually to its members a statement of any transaction or indemnification described in Corporations Code Section 8322(d) and (e), if such transaction or indemnification took place. Such annual statement shall be affixed to and sent with the annual report described in Section 5.2 of these Bylaws.

ARTICLE VI - ADDITIONAL PROVISIONS

6.1 RIGHTS TO DOCUMENTS

Upon written request from any member, the Corporation shall provide copies of any report, study or other document made available to any other member of the Corporation, upon payment of such reasonable reproduction costs as the Administrator may establish.

6.2 REPRODUCTION LICENSE

Each member shall have an unlimited, perpetual, royalty-free license to reproduce an unlimited number of copies of any report, study or other document published and made available to the general public by the Corporation. This Section 6.2 shall not be deemed to apply to documents which are circulated only among members.

6.3 PUBLIC AVAILABILITY OF STANDARDS

After any standard or criteria for performance measurement of transaction processing systems is approved by the members in accordance with these bylaws, the Corporation shall make such standards and/or criteria available to the public at a nominal charge as soon as practicable after such approval, and in any event no later than six (6) months after such approval. The Corporation shall reserve to itself all copyrights on any benchmark specification developed by the Corporation as well as all proprietary rights on any benchmark implementation or other product developed by or commissioned by the Corporation. The Corporation also reserves to itself all proprietary rights regarding TPC trademarks.

6.4 AMENDMENT OF BYLAWS

Any provision of these Bylaws may be amended only by the express written consent of two thirds of the total number of Directors of the Corporation.

6.5 ARBITRATION

In the event a dispute among the members arises with respect to any provision of these Bylaws, or the application of these Bylaws to the business conducted by the Corporation, such dispute shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The arbitrator will apply the law of California to this arbitration and the arbitration will take place in Los Altos, California, or such other place as the parties may agree. Written notice of any such arbitration will be given to all members at least 10 business days prior to commencement of arbitration.

6.6 ADOPTION OF PUBLIC STANDARDS

The method of adoption of a Benchmark Standard or criteria for performance measurement, or major revision to a current Benchmark Standard, shall be specified in the TPC Policies.

