

**BYLAWS OF  
SOFTWARE ASSURANCE FORUM FOR EXCELLENCE IN CODE**  
As Amended and Restated on 4 April 2014

**ARTICLE I  
NAME AND OFFICE**

1.01 Name. This Corporation shall be known as the Software Assurance Forum for Excellence in Code and abbreviated as "SAFECode".

1.02 Office. The principal office of the Corporation shall be located in such place as the Board of Directors may from time to time appoint or as the purposes of the Corporation may require.

**ARTICLE II  
PURPOSE**

2.01 Purpose of the Software Assurance Forum for Excellence in Code. The SAFECode is a center of industry expertise on software assurance and integrity controls related to hardware, software, and services and its mission includes working to improve practices within and among IT vendors and raising awareness among governments and critical infrastructure providers and large enterprises. SAFECode is organized and shall be operated exclusively for educational and charitable purposes within the meaning of Section 501 (c) (3) of the Internal Revenue Code. SAFECode functions shall include but not be limited to:

- a) Identifying and sharing knowledge regarding software development and product integrity best practices, techniques and tools, as appropriate.
- b) Evangelizing and promoting secure development methods and integrity controls within and among technology providers.
- c) Educating owner and operators of large enterprises about the software development methods and integrity controls used in designing, developing and delivering IT products and services.
- d) Providing information technology associations with technical materials and guides that can raise awareness about IT vendor efforts and enhance government and enterprise security and risk management efforts.
- e) Developing and recommending improvements in educational curricula.
- f) Identifying and promoting relevant metrics.
- g) Such additional purposes as the SAFECode Board of Directors may from time to time approve consistent with the foregoing purposes.

## **ARTICLE III MEMBERSHIP**

3.01 Membership Classes and Eligibility. SAFECode membership includes two types of members: Charter Members and Associate Members, as described more fully below.

Membership Classes:

(A) Charter Membership.

a. Charter Membership Qualifications. Charter Membership is intended for technology providers with (a) significant global business activity in IT products such as: hardware, software, and services; and (b) dedicated to product/service assurance and integrity controls.

b. Charter Membership Process. The Board may extend an invitation to a potential Charter Member to apply for Charter Membership upon a Simple Majority vote (as defined in Section 4.12). No applications for Charter Membership will be considered absent the Board's prior invitation to apply. Upon completing a Charter Membership application and submitting it to the Secretary of SAFECode, the application shall be placed on the agenda of the next occurring Board of Directors meeting, or if none is scheduled within sixty (60) days, the Secretary shall call a special meeting of the Board of Directors for the purpose of evaluating the application. If the Board of Directors declines to approve the prospective member, the application shall be returned to the prospective Charter member with an explanation of the basis for the Board's action. Charter Membership applicants are subject to approval as set forth in Section 4.12.

(B) Associate Membership.

a. Associate Membership Qualifications. Associate Membership is intended for any organization that agrees to support and help promote the SAFECode mission and Principles.

b. Associate Membership Process. A prospective Associate Member meeting the qualifications set forth above may complete a membership application for Associate Membership and submit it to the Secretary of SAFECode. The application shall be placed on the agenda of the next occurring Board of Directors meeting, or if none is scheduled within sixty (60) days, the Secretary shall call a special meeting of the Board of Directors for the purpose of evaluating the application. If the Board of Directors declines to approve the prospective member, the application shall be returned to the prospective Associate Member with an explanation of the basis for the Board's action. Associate applicants are subject to approval as set forth in Section 4.12.

3.03 Qualification. An organization which has been approved for a membership in SAFECode in the manner specified by the Board of Directors and paid the necessary dues will become a member of the corporation.

3.04 Rights and Privileges. Charter Members may participate in all work streams established by the Board of Directors. Associate Members may participate only in those work streams so designated by the Board of Directors; in general, these may be the more technically focused activities of SAFECode such as working groups and project teams. Associate Members do not have voting rights in any SAFECode Board activities.

3.05 Obligations of Membership. Members shall be obligated to abide by these Bylaws and any other rules or policies, including SAFECode Principles, adopted by the Board of Directors, as well as remain current in all dues and any other financial obligations. In addition, Members shall enter a

confidentiality and non-disclosure agreement with respect to information provided by other Members and information developed by or through SAFECODE.

3.06 Termination of Membership. A Member's membership may be terminated by the Board upon Super Majority Vote for the following reasons:

- a) for failure to pay the Member's dues in a timely manner (per Article XIII);
- b) for breach of or other failure to abide by the terms of the SAFECODE NDA, as determined by the Board of Directors;
- c) for failure to satisfy any of the qualifications for membership, as determined by the Board of Directors; or
- d) for other good cause as determined by the Board of Directors, including actions by the Member within or external to SAFECODE that run counter to the SAFECODE Principles

provided that the Member in question is given notice of the reasons for termination at least fifteen (15) days before such termination. The notice shall specify that the Member shall have the right to appeal such termination, orally or in writing, to the Board of Directors, with such appeal to be heard and determined not less than five (5) days prior to the effective date of termination. Upon hearing such appeal, the Board of Directors conduct a Super Majority vote (at least 67% of Board members present and entitled to vote at an authorized meeting of the Board when quorum is present) to determine whether to proceed with the termination, and shall provide to the Member in writing its decision, which shall be considered final.

#### **ARTICLE IV BOARD OF DIRECTORS**

4.01 Directors. The corporation shall be governed by a Board of Directors, sometimes hereinafter referred to in these Bylaws as "the Board". The number of Directors shall be equal to the number of Charter Members of the organization. The number of Charter Members, within the limits prescribed by this Article, may be increased or decreased at any meeting of the Board of Directors, via Super Majority vote, provided that no decrease in number shall be valid to the extent that it would operate to eliminate an incumbent Charter Member from being represented on the Board.

4.02 Powers. All the corporate powers, except such as are otherwise provided for or limited in these Bylaws or in the laws of the District of Columbia, shall be and are hereby vested in and shall be exercised by the Directors serving as a Board of Directors.

4.03 Composition. The Board of Directors shall be comprised of one representative designated from each Charter Member of the organization.

Each Charter Member shall appoint one representative, or Director, to the Board. Any Director may resign by delivering a written resignation to the Chair or Secretary of the Corporation. In the case of a resignation, removal or death of a Director, the Charter Member company which designated the member shall, at its earliest convenience, but within 30 days, designate a new representative to the Board, where such designation becomes effective upon receipt. During any period where there is a gap

between the effective resignation date of a Charter Member representative to the Board and the formal appointment of a replacement representative, that Charter Member shall be considered not having a vote on the Board, and quorum shall be adjusted accordingly.

4.04 Vacancies. Vacancies on the Board of Directors shall be filled in accordance with the Bylaws.

4.05 Removal of Directors. Directors may not be removed from the board except by Super Majority vote of the remaining members of the Board, per Section 4.12. Directors who are being voted on for removal shall be given 30 days notice and opportunity to appeal the decision prior to the vote by the Board. In the event of removal of a Director, the Charter Member represented by that Director may name a replacement per Section 4.03.

4.06 Regular Meetings. Regular meetings of the Directors of the Corporation shall be held annually at the principal office of the Corporation or at such other place within or outside the District of Columbia, on such dates and at such times as the Board shall from time to time designate by resolution.

4.07 Special Meetings. Special meetings of the Board other than those required by statute, may be called at any time by the Chair. Additionally, the Chair upon the receipt of the request of any three Directors shall call a special meeting. Meetings shall be held at the principal office of the Corporation or at such other place within or outside of the District of Columbia as the Chair shall designate, including by means of telephone conference.

4.08 Meeting by Telephone. Any or all Directors may participate in any meeting of the Board by means of conference telephone or any means of communication by which all persons participating in the meeting are able to hear each other.

4.09 Notice of Meetings. Notice of the time, place, and purpose or purposes of regular or special meetings shall be given or served, either personally, by U.S. mail, or electronic communication upon each person who appears upon the books of this Corporation as a Director. Notice of any regular or special meeting of the Board shall be given not less than three (3) nor more than thirty (30) days prior to the date of such meeting. Such notice, if mailed, shall be directed to the Director at his address as it appears on the books of the Corporation, unless he shall have filed with the Secretary of the Corporation a written request that notices intended for him be mailed to some other address, in which case it shall be mailed to the address designated in such request.

4.10 Waiver of Notice. Whenever, under the provisions of any law or under the provisions of the Certificate of Incorporation or Bylaws of this Corporation, the Board or any committee thereof is authorized to take any action after notice to the Board or to the members of a committee or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of any period of time, if any time before or after such action be completed, provided, however, that such requirement be waived in writing by the person or persons entitled to such notice or entitled to participate in the action to be taken.

4.11 Quorum. At any meeting of the Board or a committee, the presence of a majority of the Directors of the Board or committee members shall be necessary to constitute a quorum for all purposes, except as otherwise provided by law or in these Bylaws, and the act of a majority of those present at any meeting at which there is a quorum shall be the act of such body, except as may be

otherwise specifically provided by statute or by these Bylaws. In the absence of a quorum, or when a quorum is present, a meeting may be adjourned from time to time by vote of the majority of those present in person, without notice to those not in attendance other than by announcement at the meeting. At least twenty-four (24) hours notice of the date of the adjourned meeting shall be given to any absent member. At any adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally called.

4.12 Board Voting. At every meeting of Directors, each Director shall be entitled to one (1) vote. By default, Board votes shall require a quorum and a Simple Majority vote (more than 50% of the affirmative votes cast, where “abstain” votes are not considered cast), except for votes to: amend these Bylaws; approve new Charter Members; increase or decrease the number of Charter Members pursuant to Section 4.01; and remove a Director from the Board, all of which shall require Super Majority (at least 67% of Board members approving). Further procedures around Board voting may be covered in a Rules of Procedure document, if one is ratified.

4.13 Action by Consent. Any action that may be taken at any meeting of Board may be taken without a meeting if the corporation distributes a written or electronic mail ballot to each Board member entitled to vote on the matter. The ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of each proposal, and provide a reasonable time to return the ballot to the corporation. The ballots must specify the time by which they must be received by the corporation in order to be counted, and votes will only be counted upon the close of the voting period.

Approval of action by written or electronic ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

## **ARTICLE V COMMITTEES OF THE BOARD OF DIRECTORS**

5.01 Committees. The Board, by resolution adopted by a majority of the entire board, may appoint from among the Directors an Executive Committee and one or more other committees, each of which shall have at least two members. To the extent provided in the resolution, each committee shall have and may exercise all the authority of the Board, except the authority specifically and exclusively reserved to the Board by law. However, no such committee shall have the authority of the Board to amend, alter or repeal the Articles of Incorporation or Bylaws; elect, appoint or remove any director or officer of SAFECode; authorize or effect the merger, consolidation, or dissolution of SAFECode or revoke proceedings therefor; transfer the assets of SAFECode not in the ordinary course of business; or amend, alter or repeal any resolution of the Board of Directors which by its terms provides that it shall not be amended, altered or repealed by such committee. A Chair of the Executive Committee or any other committee may be elected by a majority vote of the members of such committee(s). Any member of a committee may be removed by the Board of Directors.

5.02 Advisory Committees. The Board may establish advisory committees to engage with important stakeholders groups including government, critical infrastructure owners and operators, academia, relevant trade associations, and other groups as appropriate. Among other functions, these

committees would help SAFECode determine requirements and refine materials to better address IT ecosystem needs. Committee recommendations would not be binding on SAFECode. The Board, at its discretion, may restrict an advisory committee to participation by Charter Members only.

5.03 Working Groups and Project Teams. At any time the Board may authorize a working group or project team. All such established groups shall have a charter, approved by the Board, describing the purpose of goals and activity. At the time it authorizes such activity, or at any later date, the Board shall determine whether Associate Members may participate in that activity. All working group and project deliverables are subject to the Board's approval.

## ARTICLE VI OFFICERS

6.01 Number. The Board shall elect annually a Chair, a Vice Chair, a Secretary and a Treasurer, and such other officers with such powers and duties not inconsistent with these Bylaws, as may be determined by the Board. The officers shall serve for one (1) year terms or until earlier periods occasioned by the death, resignation or removal of him, her or them as provided herein.

6.02 Vacancies. In case any office of the Corporation becomes vacant by death, resignation, retirement, disqualification, or any other cause, the Board may elect an officer to fill such vacancy, and the officer so elected shall hold office and serve until the election and qualification of his successor.

6.03 Chair. The Chair shall be the chief elected officer of the Corporation. He shall preside at all meetings of the Board and the Corporation and shall do and perform such other duties as may be assigned to him by the Board.

6.04 Vice Chair. At the request of the Chair, or in the event of his absence or disability, the Vice Chair shall perform the duties and possess and exercise the powers of the Chair; and to the extent authorized by law the Vice Chair shall have such other powers as the Board may determine, and shall perform such other duties as may be assigned to him by the Board.

6.05 Secretary. The Secretary shall in general perform all the duties incident to the office of Secretary, subject to the control of the Board, and shall do and perform such other duties as may be assigned to him by the Board.

6.06 Treasurer. The Treasurer shall in general, perform all the duties incident to the office of Treasurer, subject to the control of the Board and shall do and perform such other duties as may be assigned to him by the Board.

6.07 Removal. Any officer may be removed from office without cause by the affirmative vote of a Super Majority of all Directors of this Corporation then in office at any regular meeting of the Board or at any special meeting called for that purpose.

**ARTICLE VII  
AGENTS AND REPRESENTATIVES**

7.01 Authority. The Board may appoint such agents and representatives of the Corporation with such powers and authority to perform such acts or duties on behalf of the Corporation as the Board may see fit, so far as may be consistent with these Bylaws, and to the extent authorized or permitted by law. Major decisions involving the investment and disbursement of Corporate funds must be made by the Board, unless otherwise delegated by the Board to the Executive Committee or other committee. General administration and execution of funds to run SAFECode can be made by the Executive Director.

7.02 Executive Director. The Board of Directors may appoint an Executive Director who shall be the chief staff officer of SAFECode. The specific functions of the position shall include, but not be limited to, working closely with board and policy committees to (a) implement board directions, (b) facilitate member consensus, (c) identify and manage the full lifecycle of SAFECode deliverables, (d) act as SAFECode spokesperson including talking to press or testifying, (e) recruit new members, (f) foster relations with key stakeholders (government, industry and associations) and (g) oversee SAFECode administrative functions including managing budgets and contractors.

**ARTICLE VIII  
ANTITRUST COMPLIANCE**

8.01 Regulatory Intent. Members acknowledge that they compete with one another in various lines of business and that it is therefore imperative that they and their representatives act in a manner that does not violate any applicable antitrust laws and regulations. Each Member may have similar agreements with others. Each Member may design, develop, manufacture, acquire or market competitive specifications, products and services, and conduct its business in whatever way it chooses. No Member is obligated to announce or market any products or services. Without limiting the generality of the foregoing, the Members agree not to have any discussion relating to product pricing, methods or channels of product distribution, any division of markets, or allocation of customers or any other topic which should not be discussed among competitors. Accordingly, each Member hereby assumes responsibility to provide appropriate legal counsel to its representatives regarding the importance of limiting their discussions to subjects that relate to the purposes of the agreement, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise.

**ARTICLE IX  
CONTRACTS AND ADMINISTRATION OF FUNDS**

9.01 Agency. The Board, except as otherwise provided in these Bylaws, may authorize any officer or the Executive Director to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to a specific instance; provided, however, that any and all such actions shall at all times be consistent with policies and procedures adopted from time to time by the Board.

**ARTICLE X  
FISCAL YEAR**

10.01 The fiscal year of the Corporation shall be January 1 to December 31.

## **ARTICLE XI INDEMNIFICATION**

11.01 Indemnification by the Corporation. Each person who was or is a defendant or respondent, or is threatened to be made a defendant or respondent, in any action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal, by reason of the fact that he or she is or was a director or officer of the Corporation, shall be indemnified and held harmless by the Corporation for the defense of such action, suit or proceeding, against all costs, charges, expenses, liabilities and losses (including reasonable attorneys' fees, judgments, fines, taxes, or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith, except in the event of willful misconduct or a knowing violation of criminal law, and such indemnification shall continue as to a person who has ceased to be a Director, officer, or employee and shall inure to the benefit of his or her heirs, executors and administrators. However, in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Corporation. Further, this indemnification obligation of SAFECode is limited to the amount of available insurance proceeds under any liability policy held by SAFECode.

11.02 Not in Restriction of Other Privilege. Such right of indemnification shall be in addition to, and not in restriction or limitation of, any other privilege or power which the Corporation may have with respect to the indemnification or reimbursement of members of the Board, officers, agents or employees.

## **ARTICLE XII AMENDMENTS**

12.01 Amendments to Bylaws. These Bylaws may be altered or amended by a Super Majority (at least 67% of Board members present and entitled to vote at an authorized meeting of the Board when quorum is present) vote at any meeting of the Board held for this purpose provided, however, that notice in writing be given by the Secretary to each member of the Board at least ten (10) days in advance of the meeting; and further provided that any such action shall not be effective until it is ratified by the voting members.

## **ARTICLE XIII DUES**

13.01 Annual Dues. The Board of Directors may determine from time to time the amount of initiation fee, if any, and annual dues payable to the corporation by members of each class.

13.02 Payment of Dues. Annual dues for each member shall be determined by the Board and shall be payable in advance on the first day of January in each fiscal year. Annual dues of a new member shall be payable on the first day of the month after such new member is elected to membership.

13.03 Default and Termination of Membership. When any member of any class shall be in default of the payment of dues for a period of two months from the beginning of the fiscal year or a period for which such dues become payable, his membership may thereupon be terminated by the Board of Directors.



## **ARTICLE XIV INTELLECTUAL PROPERTY**

14.01 It is anticipated that the Members will provide expertise, information, and materials to SAFECode in order to enable SAFECode to develop informational products or works, and distribute those works to the membership and general public. Members who contribute their existing works (“Member Works”) shall retain their respective ownership and intellectual property rights in Member Works but grant to SAFECode the following royalty free, perpetual (except as otherwise restricted by a Member) worldwide rights, as may be applicable in copyright for Member Works: to reproduce, publicly display and perform (including by means of digital transmission), distribute, and prepare derivative works there from, and without attribution (unless requested by a Member). Member Works shall not include any materials that are marked as “Not a Contribution” or with language of equivalent meaning, and no rights are granted for such marked materials. Members shall undertake commercially reasonable efforts to ensure that they have sufficient copyright rights to contribute any Member Works under the terms of this agreement and that such contribution will not violate any agreement with or obligation of confidentiality to any third party.

SAFECode may exercise these rights either directly or indirectly (via third parties authorized by SAFECode, including Members). SAFECode is free to share such Member Works with Members, the general public, or a specific set of intended recipients, so long as such sharing does not violate SAFECode’s non-disclosure obligations and furthers its exempt purposes consistent with the SAFECode’s status as an organization described in Section 501(c)(6) of the Code. If Members wish to receive attribution or place restrictions on the rights granted above with respect to their contributed Member Works, they must indicate these requests and restrictions at the time of submission of such contributed works.

If SAFECode requests and a Member agrees to author all or a portion of any new SAFECode work (“Solicited SAFECode Works”), such Solicited SAFECode Works will be deemed to be “work made for hire” with all copyright and title retained by SAFECode, subject to the rights granted Members herein; to the extent any Solicited SAFECode Works is not deemed a work made for hire, the Member agrees to assign all copyrights in the Solicited SAFECode Works to SAFECode.

14.02 Part of SAFECode’s mission is to benefit the community by way of enhancing the integrity and security of the Internet, and it is anticipated that SAFECode will develop materials that will further that goal. Accordingly, it is the members’ intention that some of those materials developed by the Corporation including Solicited SAFECode Works be made freely available to the both Members and non-Members. Members are hereby granted a royalty-free license in the copyright to reproduce SAFECode works, including translations of SAFECode products, with appropriate citation to SAFECode’s intellectual property rights.

(This Section 14.02 is not intended to and does not prevent the Corporation from charging for materials that it develops as permitted by organizations that are exempt under Section 501(c)(6) of the Code, or from limiting distribution pursuant to its intellectual property rights.)

14.03 It is not anticipated that SAFECode’s members will develop or share source code through their membership in SAFECode, nor is it anticipated that members will provide source code to SAFECode, other than the use of examples used in published material. Before taking any such steps, the respective members will agree among themselves and/or with the SAFECode’s Board of Directors, as the

case may be, on appropriate ownership, licensing, and other intellectual property terms. This Section 14.03 is not intended to and does not limit any members' right to develop, share, or provide source code other than through their membership in SAFECode or to entities other than SAFECode.

14.04 Finally, this Article XIV does not apply to Confidential Information subject to the SAFECode Member Confidentiality And Non-Disclosure Agreement, and in the event of any conflict between this Article XIV and the SAFECode Member Confidentiality And Non-Disclosure Agreement, the latter shall prevail.

14.05 The Participants agree no patent license, immunity or other right is granted under this Article XIV by any SAFECode Member or its Affiliates to any other SAFECode Member or their Affiliates or to SAFECode or to any third party, either directly or by implication, estoppel or otherwise.

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