

**BYLAWS OF  
SOFTWARE ASSURANCE FORUM FOR  
EXCELLENCE IN CODE**

As Amended and Restated on November 21, 2023

**ARTICLE I  
DEFINITIONS**

“**Affiliate**” means any corporation, partnership, or other entity that, directly or indirectly, owns, is owned by, or is under common ownership with a particular entity for so long as such ownership exists. For purposes of the foregoing definition, “own,” “owned,” or “ownership” shall mean holding ownership of, or the right to vote, more than fifty percent (50%) of the voting stock or ownership interest entitled to elect a board of directors or a comparable managing authority.

“**Board**” means the Board of Directors.

“**Board of Directors**” means the governing body provided in Article V.

“**Corporation**” means the Software Assurance Forum for Excellence in Code (also referred to as “**SAFECode**”).

“**DC Code**” means the Code of the District of Columbia as may be amended from time to time.

“**Director**” means a director of the Corporation as provided in Section 5.1.

“**Internal Revenue Code**” means the Internal Revenue Code of 1986, as may be amended from time to time.

“**IT**” means information technology.

“**Majority Vote**” means the affirmative vote (*i.e.*, not including any abstentions) of more than fifty percent (50.0%) of those eligible and present (*i.e.*, part of a quorum) to vote on a matter.

“**Member**” means a member of the Corporation as provided in Article IV.

“**Member Work(s)**” means a Member’s pre-existing work(s) as provided in Section 14.1.

“**Membership Council**” means the designated body as provided in Article VI.

“**Membership Council Representative**” means the representative of each Member on the Membership Council, as provided in Section 6.1.

“**Remote Attendance**” shall mean attendance via telephone or remote means or any means of communication by which all persons participating in the meeting are able to hear each other.

“**Rules of Procedure**” means a document approved by the Membership Council which sets out rules of procedure for the Membership Council and/or Board of Directors.

“**SAFECode**” means the Software Assurance Forum for Excellence in Code (also referred to as “**Corporation**”).

“**SAFECode Principles**” means a document by this name adopted by the Membership Council which sets out certain principles for the operation of and membership in SAFECode.

“**Solicited SAFECode Works**” means a work authored by a Member as requested by SAFECode as provided in Section 14.1.

“**Supermajority Vote**” means the affirmative vote (*i.e.*, not including any abstentions) of sixty six percent (66.0%) or more of those eligible and present (*i.e.*, part of a quorum) to vote on a matter.

## ARTICLE II NAME AND OFFICE

2.1 Name. This corporation shall be known as the Software Assurance Forum for Excellence in Code ("**Corporation**" or "**SAFECode**").

2.2 Office. The principal office of the Corporation shall be 401 Edgewater Place, Suite 600, Wakefield, Massachusetts 01880 or such other and/or additional place as the Membership Council may from time to time appoint.

## ARTICLE III PURPOSE

3.1 Purpose. SAFECode is a center of industry expertise on software assurance and integrity controls related to hardware, software, and services and its mission is to increase trust in information and communications technology products and services through the advancement of effective software assurance methods. SAFECode is a global, industry-led effort to identify and promote best practices for developing and delivering more secure and reliable software, hardware, and services. 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's activities may include, but shall 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 information technology ("**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 industry metrics.
- (g) Such additional purposes as the SAFECode Membership Council may from time to time approve consistent with the foregoing purposes.

## ARTICLE IV MEMBERSHIP

4.1 Membership Classes. SAFECode shall have a single class of membership ("**Member**") as follows, subject to the ability of the Membership Council to create new membership classes and modify or eliminate existing classes of membership by Majority Vote.

4.2 Member Qualifications. Technology providers, developers, and/or consumers (including in-house or other internal departments of a business which may not be otherwise focused on the technology space), whether individual or organization, with (a) established business activity in IT hardware, software, and services; (b) demonstrated dedication to IT product/service assurance and integrity, and (c) an affirmative commitment to the principles contained in the SAFECode Principles may qualify as a Member of SAFECode.

4.3 Membership Process. The Membership Council may approve an application for Membership upon a Majority Vote. Applications shall be placed on the agenda of the next occurring Membership Council meeting, or if none is scheduled within sixty (60) days, the Secretary shall call a special meeting of the Membership Council for the purpose of determining whether the prospective member meets the qualification criteria of Section 4.2 above, and if the Membership Council determines such qualification criteria have been met, such applicant shall be admitted as a Member upon payment of the applicable membership dues and completion of a membership agreement approved by the Membership Council. If the Membership Council declines to approve the prospective member, the application shall be returned to the prospective member with an explanation of the basis for the Membership Council’s action.

4.4 Rights and Privileges. Members may participate in all work streams established by the Membership Council.

4.5 Obligations of Membership. Members shall be obligated to abide by these Bylaws and any other rules or policies, including SAFECODE Principles, adopted by the Membership Council, 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.

4.6 Termination of Membership. A Member’s membership shall be terminated automatically upon failure to pay applicable membership dues in full within ninety (90) days after the due date, unless extended by the Membership Council, in its sole discretion, in response to a written request of such Member, and may be terminated by the Membership Council upon Supermajority Vote for the following reasons:

- (a) for breach of or other failure to abide by the terms of the SAFECODE NDA, as determined by the Membership Council;
- (b) for failure to satisfy any of the qualifications for membership, as determined by the Membership Council;
- (c) if such Member’s participation in the Corporation activities or access to Corporation materials would cause, or likely cause, the Corporation to violate any laws, regulations, or court order; or
- (d) for other good cause as determined by the Membership Council, 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 written 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, in writing within thirty (30) days of such termination, to the Board of Directors, with such appeal to be heard and determined within sixty (60) days of receipt of such appeal. During the pendency of such appeal, Member’s membership shall be suspended, and no rights of membership may be exercised by Member. Upon receiving such appeal, the Board of Directors may, by Supermajority Vote, reverse such termination, and, if the Board does so, shall provide to the Membership Council and the Member in writing its decision. If, by the end of such sixty (60) day period, the Board (i) confirms such termination, or (ii) does not reverse such termination, such termination shall be considered final.

**ARTICLE V  
BOARD OF DIRECTORS**

5.1 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 three (3), and shall be

comprised of the President, Treasurer, and Membership Council Chair (each, a “**Director**”). The President shall act as Board Chair. If the Corporation has appointed an Executive Director, such Executive Director shall attend Board meetings on a non-voting basis.

5.2 Powers. All the corporate powers shall be and are hereby vested in and shall be exercised by the Directors serving as a Board of Directors, except (i) those powers granted hereunder to the Membership Council as a “designated body” as provided by §29-406.12 of the DC Code, (ii) as otherwise provided for or limited in these Bylaws or by applicable law. The Membership Council shall exercise the Board’s primary operational decision-making authority, subject to oversight and review by the Board. In extraordinary circumstances, the Board shall have the authority to override or veto any decision by the Membership Council by Supermajority Vote (or as expressly provided in these Bylaws). As provided in §29-406.12 of the DC Code, the rights, powers, obligations, and liabilities hereunder applicable to the Board and/or individual Directors shall apply to the Membership Council and/or individual Membership Council Representatives thereof, as applicable and the Board and/or individual Directors, as applicable, shall be relieved of such rights, powers, obligations, and liabilities.

5.3 Vacancies. Vacancies on the Board of Directors shall be filled by the Membership Council by Majority Vote.

5.4 Removal of Directors. Directors may not be removed from the Board except by Supermajority Vote of the Membership Council, per Section 6.10 (via the power to remove any officer). Directors who are being voted on for removal shall be given thirty (30) days notice. In the event of removal of a Director, the Membership Council shall name a replacement per Section 5.2.

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

5.6 Special Meetings. Special meetings of the Board other than those required by statute, may be called at any time by the Board Chair. Additionally, the Board Chair upon the receipt of the request of any Director 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 Board Chair shall designate, including by means of Remote Attendance.

5.7 Meeting by Remote Attendance. Any or all Directors may participate in any meeting of the Board by means of Remote Attendance.

5.8 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. Notwithstanding the first sentence of this Section 5.8, such notice shall generally be sent via electronic mail at the email address appearing on the books of the Corporation for each Director, and each Director shall provide an electronic email address for such notices. A Director may request, in writing, that such notice be mailed, and, if mailed, shall be directed to the Director at the Director’s address appearing on the books of the Corporation, unless the Director shall have filed with the Corporation a written request that notices be mailed to some other address, in which case it shall be mailed to the address designated in such request.

5.9 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.

5.10 Quorum. At any meeting of the Board, the presence of a majority of the Directors of the Board 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 Director. 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.

5.11 Board Voting. At every meeting of Directors, each Director shall be entitled to one (1) vote for each matter subject to a vote. By default, Board decisions shall be by Majority Vote. Further procedures regarding Board voting may be covered in a Rules of Procedure document, if one is approved by the Membership Council.

5.12 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 or a request to submit a vote via electronic mail to each Director 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 an 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 such action, and the number of affirmative votes 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.

5.13 Proxy Voting. A Director may, by written notice to the Corporation, appoint a temporary substitute to attend meetings and cast votes on behalf of such Director.

## **ARTICLE VI MEMBERSHIP COUNCIL**

6.1 Membership Council. As provided in Section 5.2 above, the Membership Council shall exercise primary operational and decision-making authority for SAFECode, subject to review and veto by the Board, as a “designated body” pursuant to §29-406.12 of the DC Code. The Membership Council shall be comprised of a single representative designated in writing by each respective Member (each a “**Membership Council Representative**”).

6.2 Vacancies. Vacancies on the Membership Council shall be filled by each applicable Member.

6.3 Removal of Membership Council Representatives. Membership Council Representatives may not be removed from the Membership Council except by Supermajority Vote of the remaining Membership Council Representatives, per Section 6.10. Membership Council Representatives who are being voted on for removal shall be given thirty (30) days notice and opportunity to appeal the

decision prior to the vote by the Membership Council. In the event of removal of a Membership Council Representative, the Member represented by that Membership Council Representative may name a replacement per Section 6.2.

6.4 Regular Meetings. Meetings of the Membership Council shall be held at least monthly at the principal office of the Corporation or at such other place within or outside the District of Columbia, or via Remote Attendance, on such dates and at such times as the Membership Council shall from time to time designate by resolution.

6.5 Special Meetings. Special meetings of the Membership Council other than those required by statute, may be called at any time by the Membership Council Chair. Additionally, the Membership Council Chair upon the receipt of the request of any three (3) Member Representatives 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 Remote Attendance.

6.6 Meeting by Remote Attendance. Any or all Membership Council Representatives may participate in any meeting of the Membership Council by means of Remote Attendance.

6.7 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 Membership Council Representative. Notice of any regular or special meeting of the Membership Council shall be given not less than three (3) nor more than thirty (30) days prior to the date of such meeting. Notwithstanding the first sentence of this Section 6.7, such notice shall generally be sent via electronic mail at the email address appearing on the books of the Corporation for each Membership Council Representative, and each Membership Council Representative shall provide an electronic email address for such notices. A Membership Council Representative may request, in writing, that such notice be mailed, and, if mailed, shall be directed to the Membership Council Representative at the address appearing on the books of the Corporation, unless such Membership Council Representative shall have filed with the Corporation a written request that notices be mailed to some other address, in which case it shall be mailed to the address designated in such request.

6.8 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 Membership Council or any committee thereof is authorized to take any action after notice to the Membership Council 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.

6.9 Quorum. At any meeting of the Membership Council, the presence of a majority of the Membership Council Representatives 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.

6.10 Membership Council Voting. At every meeting of the Membership Council, each Membership Council Representative shall be entitled to one (1) vote for each matter subject to a

vote. By default, Membership Council votes shall be by Majority Vote, except for votes to: amend these Bylaws; approve new Members; remove any officer (including an officer who is also a Director), and remove a Membership Council Representative from the Membership Council, all of which shall require Supermajority Vote or any other matter expressly provided in these Bylaws as requiring another voting standard. Further procedures regarding Membership Council voting may be covered in a Rules of Procedure document, if one is approved by the Membership Council.

6.11 Action by Consent. Any action that may be taken at any meeting of Membership Council may be taken without a meeting if the Corporation distributes a written or electronic mail ballot to each Membership Council Representative 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 affirmative votes 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.

6.12 Proxy Voting. A Membership Council Representative may, by written notice to the Corporation, appoint a temporary substitute to attend meetings and cast votes on behalf of such Membership Council Representative.

**ARTICLE VII  
COMMITTEES OF THE BOARD OF DIRECTORS AND MEMBERSHIP COUNCIL**

7.1 Committees. The Board and the Membership Council may each, by resolution adopted by Majority Vote, appoint from among the Directors or Membership Council Representatives, as applicable, one or more 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 or Membership Council, as applicable, except the authority specifically and exclusively reserved to the Board or Membership Council (as a “designated body”), as applicable, by law. However, no such committee shall have the authority of the Board or Membership Council to amend, alter or repeal the Articles of Incorporation or these 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 or Membership Council, as applicable, which by its terms provides that it shall not be amended, altered or repealed by such committee. Any member of a committee may be removed by the Board or Membership Council, as applicable.

7.2 Advisory Committees. The Membership Council may establish advisory committees to engage with important stakeholder 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.

7.3 Working Groups and Project Teams. At any time, the Membership Council may authorize a working group or project team. All such established groups shall have a charter, approved by the Membership Council, describing the purpose, goals, and activities of the working group or project

team. All working group and project deliverables are subject to the Membership Council's approval.

## **ARTICLE VIII OFFICERS**

8.1 Officers; Terms. The Membership Council shall elect annually a President, a Treasurer, a Membership Council Chair, a Membership Council Vice-Chair, and such other officers with such powers and duties not inconsistent with these Bylaws, as may be determined by the Membership Council. Each officer shall serve for a one (1) year term or until earlier period occasioned by the death, resignation, or removal of such officer as provided herein.

8.2 Vacancies. In case any office of the Corporation becomes vacant by death, resignation, retirement, disqualification, or any other cause, the Membership Council may elect an officer to fill such vacancy, and the officer so elected shall hold office and serve the remainder of the then-current term for that office.

8.3 President. The President shall also serve as a Director and preside as Board Chair at all meetings of the Board of Directors and perform such other duties as may be required by law, by the Certificate of Incorporation of the Corporation, or by these Bylaws, or which may be assigned to the President from time to time by the Membership Council.

8.4 Treasurer. The Treasurer shall also serve as a Director and shall have such powers and perform such duties as are incident to the office of Treasurer; and shall:

- (a) Have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds in the name of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Membership Council;
- (b) Receive, and give receipt for, monies due and payable to the Corporation from any source whatsoever;
- (c) Disburse, or cause to be disbursed, the funds of the Corporation as may be directed by the Membership Council, taking proper vouchers for such disbursements;
- (d) Keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains, and losses;
- (e) Exhibit at all reasonable times the books of account and financial records to any Director of the Corporation or Membership Council Representative, or to his or her agent or attorney, on written request therefore;
- (f) Render to the President, Board, and Membership Council, whenever requested, an account of any or all of his or her transactions as Treasurer and of the financial condition of the Corporation;
- (g) Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports; and
- (h) In general, perform all duties incident to the office of Treasurer and such other duties as may be required by law, by the Certificate of Incorporation of the Corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Membership Council.

8.5 Membership Council Chair. The Membership Council Chair shall have all of the powers normally associated with the role of chief executive officer and shall preside at all meetings of the Membership Council, and shall manage the activities thereof, shall also serve as a Director, and shall do and perform such other duties as may be assigned by the Membership Council. The



Membership Council Chair shall oversee the management of the business of the Corporation and see that all orders and resolutions of the Membership Council are carried into effect. Without limiting the foregoing, the Membership Council Chair shall:

- (a) implement Board and Membership Council 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 (e.g., government, industry and associations);
- (g) oversee SAFECODE administrative functions including managing budgets and contractors;
- (h) Execute bonds, mortgages, and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Membership Council to some other officer or agent of the Corporation;
- (i) Supervise the Executive Director (if any); and
- (j) In general, perform all duties incident to the office of the chief executive officer and such other duties as may be required by law, by the Certificate of Incorporation of the Corporation, or by these Bylaws, or which may be assigned to the Membership Council Chair from time to time by the Membership Council.

8.6 Membership Council Vice-Chair. The Membership Council Vice-Chair shall, at the direction of the Membership Council Chair assist in the management of the Membership Council, and shall act as Membership Council Chair in the Membership Council Chair's absence.

8.7 Executive Director. The Membership Council may appoint an Executive Director who shall be the chief staff officer of SAFECODE. The Executive Director shall work under the direction of the Membership Council Chair and perform such other duties and have such other powers as the Membership Council may from time to time prescribe.

8.8 Removal. Any officer may be removed from office without cause by Supermajority Vote of the Membership Council at any regular meeting of the Membership Council or at any special meeting called for that purpose.

8.9 Compensation. The officers, with the exception of the Executive Director, who may be a paid employee or contractor of the Corporation, shall serve without compensation, though the Membership Council may reimburse reasonable expenses incurred in the course of performing the duties of such offices on behalf of the Corporation.

8.10 Other Agents and Representatives. The Membership Council 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 Membership Council may see fit, so far as may be consistent with these Bylaws, and to the extent authorized or permitted by law.

## **ARTICLE IX ANTITRUST COMPLIANCE**

9.1 Regulatory Intent. Members acknowledge that they may 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 or competition laws and regulations. Each Member may enter into agreements with others as it sees fit. 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 Corporation, whether or not such discussions take place during formal meetings of any group within the Corporation (e.g., the Board, the Membership Council, any committee, or any work group), informal gatherings, or otherwise. Members are advised that violation of antitrust and competition laws can result in penalties applied to individuals, not only corporate entities.

## **ARTICLE X CONTRACTS AND ADMINISTRATION OF FUNDS**

10.1 Agency The Membership Council, 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 Membership Council.

## **ARTICLE XI FISCAL YEAR**

11.1 Fiscal Year. The fiscal year of the Corporation shall be January 1 to December 31, or such other fiscal year as the Membership Council may set by Supermajority Vote.

## **ARTICLE XII INDEMNIFICATION**

12.1 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 such person is or was a Director, Membership Council Representative, officer, or employee 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, Membership Council Representative, officer, or employee and shall inure to the benefit of such person's heirs, executors, and administrators. However, in the event of a settlement, the indemnification herein shall apply only when the Membership Council 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.

12.2 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 Directors, Membership Council

Representatives, officers, agents, or employees.

### **ARTICLE XIII AMENDMENTS**

13.1 Amendments to Bylaws. These Bylaws may be altered or amended by a Supermajority Vote at any meeting of the Membership Council held for this purpose provided, however, that notice in writing be given by the Corporation to each Membership Council Representative at least ten (10) days in advance of the meeting.

### **ARTICLE XIV INTELLECTUAL PROPERTY**

14.1 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 subsequently 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)(3) of the Internal Revenue 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 deemed to not be a work made for hire, the Member assigns all copyrights in the Solicited SAFECode Works to SAFECode upon agreement to perform such authoring.

14.2 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 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 14.2 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)(3) of the Internal Revenue Code, or from limiting distribution pursuant to its intellectual property rights.

14.3 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 Membership Council, as the case may be, on appropriate ownership, licensing, and other intellectual property terms. This Section 14.3 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.

14.4 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.

14.5 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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