

# **AMENDED AND RESTATED BY-LAWS OF CGM OPEN FOUNDATION**

Adopted: September 23, 2013

## **ARTICLE 1: DEFINITIONS**

### **SECTION 1.1**

"Corporation" shall mean the CGM Open Foundation.

### **SECTION 1.2**

"Member" shall mean any corporation, governmental organization, educational institution or other enterprise or individual which meets the qualifications for membership in the Corporation, and which has been admitted to membership in accordance with Section 12 of these By-laws.

### **SECTION 1.3**

"Voting Member" shall mean a Member of the Corporation which has been admitted to a membership class having voting rights, as specified in Section 12 of these By-laws.

## **ARTICLE 2: OFFICES**

### **SECTION 2.1 PRINCIPAL OFFICE**

The principal office of the Corporation shall be located at 800 Wilcrest, Suite 210, Houston, TX 77042, USA.

### **SECTION 2.2 CHANGE OF ADDRESS**

The designation of the Corporation's principal office may be changed by the Board of Directors.

### **SECTION 2.3 OTHER OFFICES**

The Corporation may have offices at such other places, within or without Texas, where it is qualified to do business, as its business and activities may require, and as the Board of Directors may, from time to time, designate.

## **ARTICLE 3: NONPROFIT PURPOSES**

### **SECTION 3.1 US IRC SECTION 501 (c) (6) PURPOSES**

The Corporation is organized and shall be operated exclusively for one or more of the purposes as specified in Section 501 (c) (6) of the United States Internal Revenue Code, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501 (c) (6) of the United States Internal Revenue Code.

## **SECTION 3.2 SPECIFIC OBJECTIVES AND PURPOSES**

The Corporation is a non-profit, international association of companies, organizations and individuals, dedicated to accelerating the further adoption, application, and implementation of the Computer Graphics Metafile (CGM), the international standard for open interchange of structured graphical objects and their associated attributes.

The Corporation shall provide its members with an open forum to discuss market needs and directions, and to develop and provide guidelines to enhance product interoperability. The Corporation shall receive, coordinate, and disseminate information describing CGM methodologies, technologies, and implementations.

The Corporation shall, as an ongoing activity, survey the CGM community at large for requirements for new CGM-related functionality, including but not limited to new profiles of CGM or new versions of existing profiles of CGM, and shall provide a venue for the processing and publication of such enhanced standardized functionality.

The work of the Corporation shall complement that of standards bodies, focusing on making CGM easy to adopt, and CGM based products practical to use, in real-world, open system applications.

## **ARTICLE 4: DIRECTORS**

### **SECTION 4.1 NUMBER**

The Corporation shall have a Board of Directors consisting of three (3) persons.

### **SECTION 4.2 POWERS**

Subject to the provisions of the Texas Business Organizations Code and any limitations in the Certificate of Formation and these By-laws relating to action required or permitted to be taken or approved by the Members, if any, of this Corporation, the activities and affairs of this Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors.

### **SECTION 4.3 DUTIES**

It shall be the duty of the Directors to:

- a. Perform any and all duties imposed on them collectively or individually by law, by the Certificate of Formation, or by these By-laws;

- b. Appoint and remove, employ and discharge, and, except as otherwise provided in these By-laws, prescribe the duties and fix the compensation, if any, of all officers, agents and employees of the Corporation;
- c. Supervise all officers, agents and employees of the Corporation to assure that their duties are performed properly;
- d. Meet at such times and places as required by these By-laws;
- e. Register their addresses with the Secretary of the Corporation, and notices of meetings mailed or telegraphed to them at such addresses shall be valid notices thereof;
- f. Elect annually a Chairman who shall be the Chief Executive Officer of the Corporation and shall perform all duties as required by these By-laws;
- g. Establish and disband committees as may be necessary or appropriate to further the objectives and purposes of the Corporation, and determine the membership, responsibilities and authority of such committees;
- h. Establish and/or recommend policies to the membership relating to confidentiality, ownership rights, license grants, warranties, public relations, and other criteria which shall apply to all Members of the Corporation;
- i. Approve the Corporation's annual budget. If the annual budget is not approved at the start of each calendar year, the Corporation shall operate based on the prior yearly budget, to the extent practical, until an annual budget is approved;
- j. Establish annual dues for all Membership classes;
- k. Communicate with the Corporation's Membership on a regular basis concerning actions related to the duties specified in this Section.

#### **SECTION 4.4 NOMINATION AND ELECTION OF DIRECTORS**

- a. Directors shall be elected at the Annual Meeting of the Members of the Corporation.
- b. All three of the Corporation's directors shall be elected by the eligible Voting Members of the Corporation, in accordance with the following procedures:
  - 1. Candidates for Directors must be employees of or duly appointed representatives of a Member. A candidacy shall be official upon written nomination signed by one of the Members of the Corporation and submitted to the Secretary of the Corporation at least thirty (30) days prior to the date of the election. At such time as all nominees for the Directors are known, but in no event later than twenty-one (21) days prior to the date of the election, the Secretary shall provide each Voting Member with a written ballot containing the names of all nominees.
  - 2. Voting for the election of Directors shall be by written ballot. Each Voting Member shall cast one vote per candidate, and may vote for as many candidates as the number of candidates to be elected to the Board. The candidates receiving the highest number of votes, up to the number of Directors to be elected, shall be elected.
  - 3. In the case of a tie vote, the tie shall be broken by mutual agreement amongst the candidates. If the candidates cannot reach mutual agreement, the tie shall be broken by a random-selection process to be specified by the existing Directors.

#### **SECTION 4.5 TERM OF OFFICE**

- α. Subject to the provisions of subsection (b) of this section, and Section 4.14, below, Directors of the Corporation shall be elected for a term of three (3) years, and shall serve until their successors are elected and qualify. The terms of the Directors shall be staggered, so that one director is elected each year.
- β. At the first election of Directors the candidates elected by the Voting Members shall serve terms of one (1), two (2) and three (3) years, with the candidate receiving the largest number of votes being elected for a term of three (3) years, the candidate receiving the second largest number of votes being elected for a term of two (2) years, the candidate receiving the third largest number of votes being elected for a term of one (1) year. In the case of a tie, the tie shall be broken by mutual agreement amongst the candidates, or failing that, by a random-selection process to be specified by the existing Directors. Thereafter, all Directors shall be elected for a term of three (3) years.

#### **SECTION 4.6 COMPENSATION**

Directors shall serve without compensation.

Nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation therefor so long as such compensation is approved by a majority of disinterested Directors.

#### **SECTION 4.7 PLACE OF MEETINGS**

Meetings of the Board of Directors may be held at any location specified by the Directors, reflecting the global nature of the Corporation and to encourage maximum participation. Meetings may be held in person or by any combination of audio, document or video conferencing techniques.

#### **SECTION 4.8 QUARTERLY AND ANNUAL MEETINGS**

The Board of Directors shall meet once every calendar quarter on a date and time specified by the Directors. An annual meeting of the Board of Directors shall be held in conjunction with the annual meeting of the Members of the Corporation.

#### **SECTION 4.9 SPECIAL MEETINGS**

Special meetings of the Board of Directors may be called by any two Directors, or, if different, by the persons specifically authorized under the laws of the state of Texas to call special meetings of the Board.

#### **SECTION 4.10 NOTICE OF MEETINGS**

Unless otherwise provided by the Certificate of Formation, these By-laws, or provisions of law, the following provisions shall govern the giving of notice for meetings of the Board of Directors:

- α. Quarterly and Annual Meetings. At least 30 days prior notice of Quarterly and the Annual Meetings shall be given by the Secretary of the Corporation to each Director.
- β. Special Meetings. At least one week's prior notice of any Special Meeting shall be given by the Secretary of the Corporation to each Director.

The notices required by this section may be oral or written, may be given personally, by mail, by telephone, by facsimile machine, or by electronic message, and shall state the place, date and time of the meeting and the matters proposed to be acted upon at the meeting. In the case of facsimile notification or electronic message, the Director to be contacted shall acknowledge personal receipt of the facsimile notice or electronic message by a return facsimile, or electronic message or telephone call within three (3) working days of the first notification.

#### **SECTION 4.11 QUORUM FOR MEETINGS**

A quorum shall consist of a majority of the members of the Board of Directors.

In the absence of a quorum at any meeting of the Board of Directors, a majority of the Directors present may adjourn the meeting. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of enough Directors to leave less than a quorum, if any action taken is approved by at least a majority of the required quorum for such meeting.

#### **SECTION 4.12 MAJORITY ACTION AS BOARD ACTION**

Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present is the act of the Board of Directors, unless the Certificate of Formation, these By-laws, or provisions of law require a greater percentage or different voting rules for approval of a matter by the Board.

#### **SECTION 4.13 CONDUCT OF MEETINGS**

Meetings of the Board of Directors shall be presided over by the Chairman or, in his or her absence, by the Secretary. The Secretary of the Corporation shall act as secretary of all meetings of the Board, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary of the Meeting.

A Director may designate an alternate representative from the same organization to attend a Board of Directors meeting as an observer when that Director is unable to attend a meeting. A Director's designee may not vote on matters coming before the Board of Directors; a Director must be present in person at any meeting to vote.

Meetings shall be governed by such procedures as may be approved from time to time by the Board, insofar as such rules are not inconsistent with or in conflict with the Certificate of Formation, these By-laws, or with provisions of law.

Directors may participate in a regular or special meeting through use of conference telephone or similar communications, so long as all people participating in such meeting can hear one another. Participation in a meeting pursuant to this Section constitutes presence in person at such meeting.

#### **SECTION 4.14 VACANCIES, RESIGNATIONS**

- a. Vacancies on the Board of Directors shall exist: (1) on the death, resignation or removal of any Director; (2) whenever the number of authorized Directors is increased by amendment to the Corporation's Certificate of Formation or these By-laws; (3) whenever a Director's employer terminates its membership in the Corporation; and (4) whenever a Director's employment with his or her employer is terminated for any reason.
- b. Any Director may resign effective upon giving written notice to the Chairman, the Secretary, or the Board of Directors, unless the notice specifies a later time for the effectiveness of such resignation. No Director may resign if the Corporation would then be left without a duly elected Director or Directors in charge of its affairs.
- c. Directors may be removed from office, with or without cause, as permitted by and in accordance with the laws of the state of Texas, by a vote of a majority of the Voting Members.
- d. When a vacancy exists with respect to a Director, the Member employing the vacating Director may propose a qualified employee to the Board of Directors to replace the vacating Director. If the Member's nominated replacement is rejected by a majority of the Board of Directors, the Board may by majority vote fill the vacancy by consideration of qualified candidates nominated by other Members to fill the vacancy.

When a vacancy on the Board is filled by approval of a majority of the Directors then in office or by a sole remaining Director, the person approved or elected to fill the vacancy shall hold office until the next Annual Meeting of the Members of the Corporation, at which time an election shall be held to fill the vacancy, in accordance with the procedures specified in Section 4.4.

#### **SECTION 4.15 NON-LIABILITY OF DIRECTORS**

The Directors shall not be personally liable for the debts, liabilities, or other obligations of the Corporation.

#### **SECTION 4.16 INDEMNIFICATION BY THE CORPORATION OF DIRECTORS AND OFFICERS**

The Directors and officers of the Corporation shall be indemnified by the Corporation to the fullest extent permissible under the laws of the state of Texas, including (without limitation) to the extent authorized by Chapter 8 of the Texas Business Organizations Code.

#### **SECTION 4.17 INSURANCE FOR CORPORATE AGENTS**

Except as may be otherwise provided under provisions of law, the Board of Directors may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the Corporation (including a Director, officer, employee or other agent of the Corporation) against liabilities asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Corporation would have the power to indemnify the agent against such liability under the Certificate of Formation, these By-laws or provisions of law.

#### **SECTION 4.18 BOARD ACTION WITHOUT A MEETING**

Any action that the Board of Directors is required or permitted to take may be taken without a meeting if all members of the Board consent in writing to that action. Such action by written consent shall have the same force and effect as any other validly approved action of the Board. All consents shall be filed with the minutes of the proceedings of the Board.

### **ARTICLE 5: OFFICERS**

#### **SECTION 5.1 DESIGNATION OF OFFICERS**

The officers of the Corporation shall be a Chairman, a Secretary and a Treasurer. The Corporation may also have other officers with such titles and responsibilities as may be determined from time to time by the Board of Directors.

#### **SECTION 5.2 ELECTION AND TERM OF OFFICE**

Officers shall be elected by the Board of Directors at each annual meeting of the Board of Directors. The Chairman, Secretary and Treasurer of the Corporation shall be elected from the members of the Board of Directors. Other officers, if any, may be elected from employees or representatives of Members of the Corporation. Each officer shall hold office until his or her successor shall be elected and qualified.

#### **SECTION 5.3 REMOVAL AND RESIGNATION**

Any officer may be removed, either with or without cause, by the Board of Directors, at any time. Any officer may resign at any time by giving written notice to the Board of Directors or to the Chairman or Secretary of the Corporation. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The above provisions of this Section shall be superseded by any conflicting terms of a contract which has been approved or ratified by the Board of Directors relating to the employment of any officer of the Corporation.

#### **SECTION 5.4 VACANCIES**

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the Board of Directors. In the event of a vacancy in any office other than that of Chairman, such vacancy may be filled temporarily by appointment by the

Chairman until such time as the Board shall fill the vacancy. Vacancies occurring in offices of officers appointed at the discretion of the Board may or may not be filled as the Board shall determine.

## **SECTION 5.5 DUTIES OF CHAIRMAN**

The Chairman shall be the chief executive officer of the Corporation and shall, subject to the control of the Board of Directors, supervise and control the affairs of the Corporation and the activities of the officers. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the Certificate of Formation, or by these By-laws, or which may be prescribed from time to time by the Board of Directors, including presiding as chairperson at all meetings of the Board of Directors and at all meetings of the Members.

Except as otherwise expressly provided by law, by the Certificate of Formation, or by these By-laws, the Chairman shall, in the name of the Corporation, execute such deeds, mortgages, bonds, contracts, checks, or other instruments which may from time to time be authorized by the Board of Directors.

## **SECTION 5.6 DUTIES OF SECRETARY**

The Secretary shall:

- Certify and keep at the principal office of the Corporation the original, or a copy, of these By-laws as amended or otherwise altered to date.
- Keep at the principal office of the Corporation or at such other place as the board may determine, a book of minutes of all meetings of the Directors, and, if applicable, meetings of committees of Directors and of Members, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof, including all ballots and proxies.
- See that all notices are duly given in accordance with the provisions of these By-laws or as required by law. Advise the Members in writing of all results of any election of Directors.
- Be custodian of the records and of the seal of the Corporation and affix the seal, as authorized by law or the provisions of these By-laws, to duly executed documents of the Corporation.
- Keep at the principal office of the Corporation a membership book containing the name and address of each and any Members, and, in the case where any membership has been terminated, he or she shall record such fact in the membership book together with the date on which such membership ceased.
- Exhibit at all reasonable time to any Director of the Corporation, or to his or her agent or attorney, on request therefor, the By-laws, the membership book, and the minutes of the proceedings of the Directors of the Corporation.

In general, perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Certificate of Formation of the Corporation, or by these By-laws, or which may be assigned to him or her from time to time by the Board of Directors.



## **SECTION 5.7 DUTIES OF TREASURER**

The Treasurer shall

- 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 Board of Directors.
- Receive, and give receipt for, moneys due and payable to the Corporation from any source whatsoever.
- Disburse, or cause to be disbursed, the funds of the Corporation as may be directed by the Board of Directors, taking proper vouchers for such disbursements.
- 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.
- Exhibit at all reasonable times the books of account and financial records to any Director of the Corporation, or to his or her agent or attorney, on request therefore.
- Render to the Chairman and Directors, whenever requested, an account of any or all of his or her transactions as Treasurer and of the financial condition of the Corporation.
- Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.

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 Formation of the Corporation, or by these By-laws, or which may be assigned to him or her from time to time by the Board of Directors.

## **SECTION 5.8 COMPENSATION**

The officers shall serve without compensation.

Nothing herein contained shall be construed to preclude any officer from serving the Corporation in any other capacity as an agent, employee, or otherwise, and receiving compensation therefore as long as such compensation is approved by a majority of disinterested Directors.

## **ARTICLE 6: COMMITTEES**

The Corporation shall have such committees as may from time to time be designated by resolution of the Board of Directors or upon majority vote of the Voting Members. These committees shall be composed of persons who are not also Members of the Board of Directors and shall act in an advisory capacity to the Board. The resolution establishing the committee shall specify the number and qualification of its members, its responsibilities, and the period for which it is established.

Meetings and action of the committees shall be governed by, noticed, held and taken in accordance with the provisions of these By-laws concerning meetings of the Board of Directors, with such changes in the context of such Bylaw provisions as are necessary to substitute the committee and its Members for the Board of Directors, except that the time for

regular and special meetings of committees may be fixed by resolution of the Board of Directors or by the committee. The Board of Directors may also adopt rules and regulations pertaining to the conduct of meetings of committees to the extent that such rules and regulations are not inconsistent with the provisions of these By-laws.

## **ARTICLE 7: EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS**

### **SECTION 7.1 EXECUTION OF INSTRUMENTS**

The Board of Directors, except as otherwise provided in these By-laws, may by resolution authorize any officer or agent of the Corporation 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 specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

### **SECTION 7.2 CHECKS AND NOTES**

Except as otherwise specifically determined by resolution of the Board of Directors, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Corporation shall be manually signed by the Treasurer and approved by the Chairman of the Corporation, except in cases where the amount exceeds a pre-determined threshold set by the Board; in such cases a check shall require a second signature by an officer of the Corporation.

### **SECTION 7.3 DEPOSITS**

All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

### **SECTION 7.4 GIFTS**

The Board of Directors may accept on behalf, and for the benefit, of the Corporation any contribution, gift, bequest, or device for the nonprofit purposes of this Corporation.

## **ARTICLE 8: CORPORATE RECORDS, REPORTS AND SEAL**

### **SECTION 8.1 MAINTENANCE OF CORPORATE RECORDS**

The Corporation shall keep at its principal office:

- a. Minutes of all meetings of Directors, committees of the board and, if this Corporation has Members, of all meetings of Members, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof including all proxies;

- b. Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses;
- c. A record of its Members, if any, indicating their names and addresses and, if applicable, the class of membership held by each Member and the termination date of any membership;
- d. A copy of the Corporation's Certificate of Formation and By-laws as amended to date, which shall be open to inspection by the Members, if any, of the Corporation at all reasonable times during office hours.

## **SECTION 8.2 CORPORATE SEAL**

The Board of Directors may adopt, use, and at will alter, a corporate seal. Such seal shall be kept at the principal office of the Corporation. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

## **SECTION 8.3 DIRECTORS' INSPECTION RIGHTS**

Every Director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation and shall have such other rights to inspect the books, records and properties of this Corporation as may be required under the Certificate of Formation, other provisions of these By-laws, and provisions of law.

## **SECTION 8.4 RIGHT TO COPY AND MAKE EXTRACTS**

Any inspection under the provisions of this Article may be made in person or by agent or attorney and the right to inspection shall include the right to copy and make extracts.

## **SECTION 8.5 PERIODIC REPORT**

The Board shall cause any annual or periodic report required under law to be prepared and delivered to an office in Texas or to the Members, if any, of this Corporation, to be so prepared and delivered within the time limits set by law.

## **ARTICLE 9: US IRC 501 (c) (6) TAX EXEMPTION PROVISIONS**

### **SECTION 9.1 LIMITATION ON ACTIVITIES**

Notwithstanding any other provisions of these By-laws, the Corporation shall not carry on any activities not permitted to be carried on by a Corporation exempt from United States federal income tax under Section 501 (c) (6) of the United States Internal Revenue Code.

### **SECTION 9.2 PROHIBITION AGAINST PRIVATE INUREMENT**

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its Members, Directors or trustees, officers, or other private persons, except that the

Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of the Corporation.

### **SECTION 9.3 DISTRIBUTION OF ASSETS**

Upon the dissolution of the Corporation, its assets remaining after payment, or provision for payment of all debts and liabilities of the Corporation shall be distributed for one or more exempt purposes within the meaning of Section 501 (c) (3) or Section 501 (c) (6) of the United States Internal Revenue Code or shall be distributed to the federal government, or to a state or local government, for a public purpose. Such distribution shall be made in accordance with all applicable provisions of the laws of the State of Texas.

### **ARTICLE 10: AMENDMENT OF BY-LAWS**

These By-laws, or any of them, may be altered, amended, or repealed and new By-laws adopted by approval of two-thirds (2/3) of the Voting Members of the Corporation.

### **ARTICLE 11: CONSTRUCTION AND TERMS**

If there is any conflict between the provisions of these By-laws and the Certificate of Formation of the Corporation, the provisions of the Certificate of Formation shall govern.

Should any of the provisions or portions of these By-laws be held unenforceable or invalid for any reason, the remaining provisions and portions of these By-laws shall be unaffected by such holdings.

All references in these By-laws to the Certificate of Formation shall be to the Certificate of Formation or other founding document of the Corporation filed with an office of the State of Texas and used to establish the legal existence of the Corporation.

All references in these By-laws to a section or sections of the United States Internal Revenue Code shall be to such sections of the United States Internal Revenue Code of 1986 as amended from time to time, or to corresponding provisions of any future federal tax code.

### **ARTICLE 12: MEMBERSHIP PROVISIONS**

#### **SECTION 12.1 QUALIFICATIONS FOR MEMBERSHIP**

The qualifications for membership in this Corporation are as follows:

Any Profit Corporation, Nonprofit Corporation, Government Organization, Educational Institution or other enterprise or individual supportive of this Corporation's goals, policies and procedures is qualified to become a Member of the Corporation.

## **SECTION 12.2 ADMISSION TO MEMBERSHIP**

Applicants which satisfy the qualifications for membership in the Corporation shall be admitted to membership upon completion of a Registration Form and payment of the first annual dues as specified in these By-laws.

**No Member may hold more than one membership in the Corporation. The Board of Directors may adopt written guidelines, consistent with this limitation, governing the acceptance or denial of applications for membership submitted by organizations that are parents or subsidiaries of Members, or which are affiliated with Members through common ownership or control.**

## **SECTION 12.3 MEMBERSHIP DUES**

The annual dues payable to the Corporation by each class of Members shall be established and may be changed from time to time by resolution of the Board of Directors. Dues shall be due and payable upon written commitment to join the Corporation. Dues shall be for the twelve months from the date of the applicant's written commitment to join and shall be due and payable each successive year on that same date provided membership is retained by the Member. If any Member is delinquent in the payment of dues, such Member's rights, including all voting rights, shall be deemed revoked upon written notice from the Corporation until all delinquent dues are paid.

Members who qualify shall be designated as Legacy Members. To qualify as a Legacy Member, the Member must be a member in good standing of the OASIS CGM Open Member Section (CGMO MS) at the time of joining the Corporation. Notwithstanding the provisions of the preceding paragraph, dues for a Legacy Member shall be waived until the anniversary of the Legacy Member's membership renewal in the CGMO MS. Thereafter, normal annual Corporation dues shall apply.

## **SECTION 12.4 CLASSES OF MEMBERSHIP**

The Corporation shall have the two classes of membership, with the qualifications, rights and privileges set forth herein.

### **(a) SPONSOR MEMBERS**

Sponsor Membership is the Corporation's most comprehensive category, providing the complete range of business and marketing benefits, as well as technical benefits and participation rights. Organizations eligible for membership as a Sponsor are financially committed to CGM and expect to continue to invest based upon Corporation work, such as software vendors that offer CGM-compliant products and large user organizations.

Sponsor Members shall be eligible to receive all of the rights and privileges of Membership in the Corporation, including without limitation:

1. Potential opportunity to serve on Corporation's Board of Directors.
2. Right to vote on technical resolutions and participate in technical editorial review.
3. Participation in marketing committees and in joint marketing efforts.
4. Inclusion in all Corporation press releases and public relations materials.
5. Company and product descriptions featured on CGM Open Foundation web site with link to company home page.
6. Company press releases featured on CGM Open Foundation web site.
7. Opportunity to participate in Corporation seminars, conference panels and exhibits.
8. Ability to submit, review and distribute Corporation developed materials, including presentations, white papers and educational materials.
9. Use of the CGM Open Foundation logo(s) on member marketing materials.
10. Access to Corporation mailing lists.
11. Voting rights for Board of Directors pursuant to Section 4.4 of these By-laws.
12. Attendance at Corporation events and committee meetings.
13. Participation in technical discussion groups.
14. Access to the Corporation's technical output.
15. Listing in Corporation referral mechanisms, including its member directory.
16. Member discounts at exhibitions, conferences and other events (where offered).

## **(b) PARTICIPANT MEMBERS**

Participant Members are those organizations that have invested in CGM, but have no need to obtain higher visibility within the industry. Participant Members are primarily interested in the technical work that is done by the Corporation, either to help drive interoperability or to understand the directions taken by other members, especially organizations which do not actively sell a product or service to the CGM market. Participant Members have full rights to participate in the technical work and governance of the Corporation, but have less access to commercial, promotional, and marketing benefits of the Corporation.

Participant Members shall be eligible to receive the following rights and privileges of Membership in the Corporation:

1. Potential opportunity to serve on Corporation's Board of Directors.
2. Right to vote on technical resolutions and participate in technical editorial review.
3. Opportunity to participate in Corporation seminars and conference panels.
4. Voting rights for Board of Directors pursuant to Section 4.4 of these By-laws.
5. Attendance at Corporation events and committee meetings.
6. Participation in technical discussion groups.
7. Access to the Corporation's technical output.
8. Listing in the Corporation's member directory.
9. Member discounts at exhibitions, conferences and other events (where offered).

## **SECTION 12.5 NUMBER OF MEMBERS**

There is no limit on the number of Members the Corporation may admit.

## **SECTION 12.6 MEMBERSHIP BOOK**

The Corporation shall keep a membership book containing the name and address of each Member, the date upon which the applicant became a Member, and the name of one individual from each Member organization who shall serve as a primary contact for the Corporation and vote on all issues submitted to a vote on behalf of the voting member, receive all correspondence and information, and distribute this information within his/her organization. Termination of the membership of any Member shall be recorded in the book, together with the date of termination of such membership. Such book shall be kept at the Corporation's principal office.

## **SECTION 12.7 NON LIABILITY OF MEMBERS**

No Member of this Corporation is, as such, individually liable for the debts, liabilities, or obligations of the Corporation.

## **SECTION 12.8 NON TRANSFERABILITY OF MEMBERSHIPS**

No Member may transfer a membership or any right arising therefrom. All rights of membership cease upon the Member's dissolution.

## **SECTION 12.9 TERMINATION OF MEMBERSHIP**

The membership of a Member shall terminate upon the occurrence of any of the following events:

1. Upon a failure to renew membership by paying dues on or before their due date, such termination to be effective thirty (30) days after a written notification of delinquency is given personally or mailed to such Member by the Secretary of the Corporation. A Member may avoid such termination by paying the amount of delinquent dues within a thirty (30) day period following the Member's receipt of the written notification delinquency.
2. After providing the Member with reasonable written notice and an opportunity to be heard either orally or in writing, upon a determination by the Board of Directors that the Member has engaged in conduct materially and seriously prejudicial to the interests or purposes of the Corporation. Any Member expelled from the Corporation shall receive a pro-rated refund of dues already paid for the current dues period.

All rights of a Member in the Corporation shall cease on termination of membership as herein provided.

## **ARTICLE 13: MEETINGS OF MEMBERS**

### **SECTION 13.1 PLACE OF MEETINGS**

Meetings of Members shall be designated from time to time by resolution of the Board of Directors and be held at places and times reflecting the global nature of the Corporation and to encourage maximum participation. Meetings may be held in person or by any combination of audio, document or video teleconferencing techniques.

### **SECTION 13.2 REGULAR MEETINGS**

The Corporation shall hold an Annual Meeting of Members in May of each year for the purpose of conducting the elections of Directors and transacting such other business as may come before the meeting. The Annual Meeting of Members shall be deemed a regular meeting.

Other regular meetings of the Members shall be held on dates and at times to be determined by the Board of Directors. The Corporation shall endeavor, but shall not be required, to hold at least one additional meeting of Members each year.

### **SECTION 13.3 SPECIAL MEETINGS OF MEMBERS**

Special meetings of the Members for any purpose shall be called by the Board of Directors, or by written request of two-thirds (2/3) of the Members.

### **SECTION 13.4 NOTICE OF MEETINGS**

Unless otherwise provided by the Certificate of Formation, these By-laws, or provisions of law, notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than thirty (30) nor more than forty-five (45) days before the date of the meeting, at the direction of the Chairman, or the Secretary, or the persons calling the meeting, personally by mail, or by facsimile transmission or other electronic means to each Member. If mailed, such notice shall be deemed to be delivered when deposited in the mail addressed to the Member's prime contact at his or her address as it appears on the records of the Corporation, with postage prepaid. Personal notification includes notification by telephone, facsimile machine, or other electronic means provided however, in the case of facsimile notification or electronic message, the Member to be contacted shall acknowledge personal receipt of the facsimile notice or electronic message by a return facsimile or electronic message or telephone call within three (3) working days of the first notification.

The notice of any meeting of Members at which Directors are to be elected shall also state the names of all those who are nominees or candidates for election to the Board at the time notice is given or as soon thereafter as such information is known.

Whenever any notice of a meeting is required to be given to any Member of this Corporation under provisions of the Certificate of Formation, these By-laws, or the law of Texas a waiver of notice in writing signed by the Member, whether before or after the time of the meeting, shall be equivalent to the giving of such notice.



## **SECTION 13.5 QUORUM FOR MEETINGS**

A quorum shall consist of a majority of the Members of the Corporation.

Except as otherwise provided under the Certificate of Formation, these By-laws, or provisions of law, no business shall be considered by the Members at any meeting at which the required quorum is not present, and the only motion which the chair shall entertain at such meeting is a motion to adjourn.

## **SECTION 13.6 MAJORITY ACTION AS MEMBERSHIP ACTION**

Every act or decision done or made by a majority of Members present in person or by proxy at a duly held meeting at which a quorum is present is the act of the Members, unless the Certificate of Formation, these By-laws, or provisions of law require a greater number.

## **SECTION 13.7 VOTING RIGHTS**

Each Member is entitled to one vote on each matter submitted to a vote of the Members. Voting at duly held meetings shall be by a show of hands if held in person, or by voice ballot if held by audio, video or document teleconferencing, unless otherwise required. Results of all ballots shall duly be distributed to all Members within 30 days of each ballot.

All classes of Members as defined in 12.4 are entitled to vote on any matter submitted to a vote of the Members.

## **SECTION 13.8 ACTION BY WRITTEN CONSENT**

Except as otherwise provided under the Certificate of Formation, these By-laws, or provisions of law, any action which may be taken at any regular or special meeting of Members may be taken without a meeting, without prior notice, and without a vote if consents in writing, setting forth the action so taken, shall be signed by Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the Members of the Corporation having a right to vote thereon were present and voted.

The consents shall:

1. set forth the proposed action;
2. be signed and dated by the member; and
3. be delivered to the Secretary of the Corporation at the Corporation's principal place of business.

No written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in the manner required herein, written consents signed by a sufficient number of Members to take action are delivered to the Corporation at its principal place of business.

Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those Members who have not consented in writing.

## **SECTION 13.9 CONDUCT OF MEETINGS**

Meetings of Members shall be presided over by the Chairman of the Corporation or, in his or her absence, by the Chairman of the Corporation or, in the absence of all of these persons, by a Chairperson chosen by a majority of the voting Members, present at the meeting. The Secretary of the Corporation shall act as Secretary of all meetings of Members, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary of the Meeting.

Meetings shall be conducted so as to allow for active, fair and open participation by all Members attending the meeting. All participants shall have the right to express opinions on the subject matter, whether or not these opinions dissent with that of the majority. Where a decision is called for it shall be effected by consensus or the matter shall be put to voice vote and each Member shall have the opportunity to vote on the outcome. Meetings may not be adjourned until questions, opinions and comments from all participating Members are voiced and duly recorded by the presiding person.

## **SECTION 13.10 PROXIES**

Every Member shall have the right to vote either in person or by one or more agents authorized by a proxy validly executed by the Member. A proxy may be executed by written authorization signed, or by electronic transmission authorized, by the Member, giving the proxy holder(s) the power, to vote the vote. A proxy shall be deemed signed if the Member's name or other authorization is placed on the proxy (whether by manual signature, typewriting, telegraphic or electronic transmission or otherwise) by the Member. A proxy may only be held by a Member of the Corporation.

A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless revoked by the person executing it, prior to the vote pursuant thereto, by a writing delivered to the Corporation stating that the proxy is revoked or by a subsequent proxy executed by, or attendance at the meeting and voting in person by the person executing the proxy; provided, however, that no such proxy shall be valid after the expiration, of eleven, (11) months from the date of such a proxy, unless otherwise provided in the proxy. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of the Texas Business Organizations Code.

## **ARTICLE 14 CONFLICT OF INTEREST POLICY**

### **SECTION 14.1 PURPOSE**

The purpose of the conflict of interest policy is to protect this tax-exempt organization's (Corporation) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Corporation or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any

applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

## **SECTION 14.2 DEFINITIONS**

### **1. Interested Person.**

Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

### **2. Financial Interest.**

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- a. An ownership or investment interest in any entity with which the Corporation has a transaction or arrangement,
- b. A compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

## **SECTION 14.3 PROCEDURES**

### **1. Duty to Disclose**

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

### **2. Determining Whether a Conflict of Interest Exists**

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

### **3. Procedures for Addressing the Conflict of Interest**

- a.** An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b.** The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c.** After exercising due diligence, the governing board or committee shall determine whether the Corporation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d.** If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Corporation's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

### **4. Violations of the Conflicts of Interest Policy**

- a.** If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b.** If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

## **SECTION 14.4 RECORDS OF PROCEEDINGS**

The minutes of the governing board and all committees with board delegated powers shall contain:

a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.

b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

## **SECTION 14.5 COMPENSATION**

a. A voting member of the governing board who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

c. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

## **SECTION 14.6 ANNUAL STATEMENTS**

Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

a. Has received a copy of the conflicts of interest policy,

b. Has read and understands the policy,

c. Has agreed to comply with the policy, and

d. Understands the Corporation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

## **SECTION 14.7 PERIODIC REVIEWS**

To ensure the Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.

b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

## **SECTION 14.8 USE OF OUTSIDE EXPERTS**

When conducting the periodic reviews as provided in Section 14.7, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

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### **CERTIFICATE OF AMENDED AND RESTATED BYLAWS**

I hereby certify that the foregoing Amended and Restated Bylaws, consisting of 22 pages, are the Amended and Restated Bylaws of the CGM Open Foundation, a Texas nonprofit corporation, which were adopted by its Board of Directors on September 23, 2013.

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Lofton Henderson, Secretary

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### **Appendix A – Revision History**

- [20130719](#) [1] – First version of Bylaws as approved by Board of Directors.
- [20130923](#) [2] – Amended to clarify that records can reside at locations approved by the Directors; add Secretary Certification block and Revision History at end.

#### **Links (above):**

[1] <http://www.cgmopenfoundation.org/Legal/Bylaws-CGMO-Foundation-20130719.pdf>

[2] <http://www.cgmopenfoundation.org/Legal/Bylaws-CGMO-Foundation-20130719.pdf>