

BYLAWS

OF

DCML Organization Incorporated

a nonprofit mutual benefit corporation

BYLAWS

OF

DCML (Data Center Markup Language) Organization, Inc.

a nonprofit mutual benefit corporation

1.

Offices

1.1 Principal Office. The principal office for the transaction of the business of this Corporation is fixed and located at 2400 Camino Ramon, Suite 375, San Ramon, California USA 94583. The Board of Directors is hereby granted full power and authority to change the said principal office from one location to another.

1.2 Other Offices. Branch or subordinate offices may at any time be established by the Board of Directors at any place or places where this Corporation is qualified to do business.

2.

Purposes

2.1 Purposes. The Corporation is a non-profit mutual benefit corporation formed to define, develop and promote specifications for a standard data model and corresponding XML Schema-based format, representing "blueprint" information that describes how to construct IT environments and the resulting state of those environments.

The purposes for which the Corporation is organized are to:

(a) Define, establish and/or support one or more specifications, reference implementations, test suites, and best practices and procedures that enable automation and utility computing systems to describe how to construct and maintain the systems they manage, and foster the rapid adoption of Specifications, reference implementations, test suites, and best practices and procedures by developers and users of related products and services.

(b) To provide a forum and environment whereby the Corporation's Members and Non-voting Members may meet to suggest and or approve relevant Specifications; and, to provide a forum whereby users may meet with developers and providers of related products and services to identify requirements for interoperability and general usability.

(c) To educate the enterprise, media, and analyst communities as of the value, benefits and applications for Data Center Markup Language through public statements, publications, web site(s), trade shows demonstrations, seminar sponsorships and other programs established by the Corporation.

(d) To serve the needs of consumers and promote competition among vendors by supporting reference implementation(s) of DCML information to the community.

(e) To maintain relationships and liaisons with educational institutions, government research institutes, other technology consortia, and other organizations that support and contribute to the development of the Specifications; and to make appropriate submissions to established agencies and bodies with the purpose of ratifying these Specifications as internationally recognized standards;

(f) To foster competition in the development of new products and services based on Specifications developed by the Corporation in conformance with all applicable antitrust laws and regulations.

3.

Definitions

3.1 "Affiliate" means any firm, partnership, corporation, company or other entity (a) more than fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, now or hereafter, owned or controlled, directly or indirectly by a Member, but such firm, partnership, corporation, company or other entity shall be deemed to be an Affiliate only so long as such ownership or control exists; or (b) which does not have outstanding shares or securities, as may be the case, in a partnership, joint venture or unincorporated association, but more than fifty percent (50%) of whose ownership interest representing the right to make the decisions for such firm, partnership, corporation, company or other entity is, now or hereafter, owned or controlled, directly or indirectly, by a Member, but such firm, partnership, corporation, company or other entity shall be deemed to be a Affiliate only so long as such ownership or control exists.

3.2 "Annual & Regular Meetings" shall have the meaning set forth in Sections 5.2 and 5.3 of these Bylaws.

3.3 "Associate" shall mean an entity that has executed a copy of the required Non-voting Member Application and Agreement and has paid its Annual Dues.

3.4 "Board of Directors" shall have the meaning set forth in Section 6.1 of these Bylaws.

3.5 "Confidential Information" shall mean: (i) those Licensed Materials that are provided in tangible form and are clearly marked as "Confidential"; and (ii) information concerning matters under consideration by the DCML, including but not limited to Draft Specifications and Other Work or documents concerning governance that are provided in tangible form and are clearly marked as "Confidential," or if disclosed orally that are clearly identified as "Confidential" at the time of disclosure; provided that such information shall cease to be subject to confidentiality obligations hereunder if and when it is contained in a Final Specification or Final Other Work that is published as provided herein.

3.6 "Contributor" shall mean an entity that has executed a copy of the required Non-voting Member Application and Agreement and has paid its Annual Dues.

3.7 "Draft Specification" shall mean a document in draft or non-final form being worked on by a Working Group prior to adoption by the Board of Directors as a Final Specification that contains a set of

technical criteria (including reference to existing specifications and protocols) that support the Purposes of the DCML.

3.8 "Final Specification" shall mean a document recommended by a Working Group, approved by the Board of Directors as a final release pursuant to Section 7 which contains a set of technical criteria (including reference to existing specifications and protocols) that support the Purposes of the DCML. The term "Final Specification" shall also include any updates, revisions or new versions of the foregoing that are adopted by the Board of Directors pursuant to Section 7.1.2.

3.9 "Fully Compliant Implementation" shall mean (a) an implementation of a Final Specification or Other Work which supports or implements all of the portions of that Final Specification or Other Work defined as being "Required"; or (b) an implementation of an optional portion of a Final Specification or optional Final Specification or Other Work which supports all elements defined by that optional portion of the Final Specification or optional Final Specification as being "Required"; and, in each instance, (c) an implementation of all portions of a Final Specification or Other Work required for a specific type of product or component thereof.

3.10 "Licensed Materials" shall mean any literary work or other work of authorship, including but not limited to toolkits, software development kits, sample code, reference implementations, prototypes, software, including source code, software protocols, formats, interfaces and test tools, whether pre-existing or newly created or prepared under the auspices of a Working Group, that is offered by one or more Members Non-voting Member for use in the development of or for inclusion in a Specification or Other Work.

3.11 "Members" shall mean any entity participating in the DCML that has signed the required membership agreement, including Governing Members, Contributors, Associates, Universities and NonProfits. See Section 4.1 for a definition of the classes of Membership.

3.12 "Necessary Claims" shall mean those claims of all patents, pending patent applications and utility models, regardless of when issued or effective, of a Member or any of its Affiliates, which Member or any of its Affiliates, has the right to license in accordance with Section 10.5.3 at any time during such Member's membership in the Corporation and which are necessarily infringed by a Fully Compliant Implementation of a specific Final Specification (or of a required Other Work, if any) approved by the Board of Directors pursuant to Section 7.1.2, where such infringement could not have been avoided by another technically feasible non-infringing implementation of such Final Specification. Notwithstanding the foregoing sentence, Necessary Claims do not include any claims other than those set forth above even if contained in the same patent as Necessary Claims.

3.13 "Other Work" shall mean output other than a Final Specification (e.g. policies) recommended by a Working Group and approved (whether as a final or some form of early access release) by the Board of Directors pursuant to Section 7.

3.14 "Proposed Final Specification" means a Draft Specification that has been submitted to the Board Of Directors for approval, as provided in Section 7 of these Bylaws.

3.15 "Purposes" shall have the meaning set forth in Section 2.1 of these Bylaws.

3.16 "Quorum" shall mean that more than fifty percent (50%) of the Members of the applicable group (i.e. the Board of Directors or a Working Group) are present at a meeting, either in person, by telephone or by such other means as may be prescribed by such group or by these Bylaws, except as provided in Section 6.13.

3.17 "Working Group " shall have the meaning set forth in Section 9.1 of these Bylaws.

3.18 "IPR Review Period" shall mean the time period commencing on submission of a Draft Specification to the Board and ending on the earlier of (a) forty-five days following such submission, or (b) the date (if any) on which the Board of Directors rejects the Draft Specification.

3.19 "Specification" means a Draft Specification and/or Final Specification where, in the specific context in which the term is used in these Bylaws, there is no need to distinguish whether the document in question is a Draft Specification or a Final Specification.

3.20 "University or NonProfit" shall mean a University, governmental agency or other not-for-profit entity that has executed a copy of the Non-voting Member Application and Agreement.

4.

Membership

4.1 Classes of Membership. There shall be only one (1) voting class of membership in the Corporation within the meaning of California Corporations Code Section 5056; and such members are referred to in these Bylaws as "**Governing Members.**" The Corporation may, pursuant to resolutions adopted by the Board of Directors, create one or more classes of Non-voting Members of the Corporation. The following classes of non-voting Members have been established; Contributor, Associate, University and Nonprofit. Such Non-voting Members shall have only the rights and privileges specifically given to them by the resolutions adopted by the Board of Directors, and shall be subject to any conditions imposed thereon by the Board of Directors. Such classes of Non-voting Members shall not be considered statutory members within the meaning of California Corporations Code Section 5056.

4.2 Membership Qualifications. Governing Members of the Corporation shall be those entities listed on the Governing Membership maintained by the Corporation (attached hereto as Exhibit A). Additional entities may be admitted pursuant to Section 4.3 A Governing Member shall automatically cease to be a Governing Member in the event of its termination from the Corporation as set forth in Section 4.5. The Secretary of the Corporation shall have the responsibility to maintain a list of Governing Members and to make any necessary changes thereto to reflect any admissions or withdrawals of Governing Members.

4.3 Admission to Membership. Admission of a new Governing Member shall require a 2/3 majority vote of all then-existing Governing Members, and such a determination shall be based on the then-current criteria and conditions of membership adopted by the Board of Directors. Additionally, admission to Governing Membership shall require execution of the Governing Member Agreement and payment of then current applicable annual dues. Unless otherwise approved of by the Board of Directors, Affiliates of any Member who are not themselves Members of the Corporation shall have no right to participate and/or vote in or with respect to the business of the Corporation, including any technical forums or meetings.

4.4 Fees, Dues and Assessments The Board of Directors shall determine the initial membership fees, dues and assessments for membership and/or participation in the Corporation whether as a Governing Member or Non-voting Member. Fees, dues and assessments for membership and/or participation in the Corporation may be increased or decreased from time to time as the Board, in its discretion, determines. Membership in the Corporation will automatically renew on an annual basis, and membership fees will be invoiced prior to each subsequent anniversary period and Members shall be obligated to make payment of annual fees, dues and assessments within thirty (30) calendar days of the anniversary date. The amount of membership fees (dues or assessments) to be invoiced on each such anniversary or at anytime shall be the subject of a resolution of the Board, which must be notified to all Members. Any changes and/or modifications to a then in force fee structure and/or any specially assessed dues or assessments shall require an affirmative vote of the Board of Directors as specified in section 6.13.

4.5 Termination of Membership. The membership of any Member shall terminate upon the occurrence of any one or more of the following:

4.5.1 Resignation. Any Member may resign from the Corporation at any time by filing a resignation letter with the President or Secretary of the Corporation. No pro rata refund of any initial membership fee, dues or assessments shall be made for the balance of the calendar year in which the resignation is effective, or otherwise.

4.5.2 Expiration and Disqualification. A membership issued for a period of time shall expire when such period of time has elapsed unless the membership is renewed, if at all, in accordance with the applicable renewal terms and conditions, if any.

4.5.3 Dues and Assessments. Membership shall terminate upon the failure of the Member to pay dues or assessments within the time periods established by the Board of Directors.

4.5.4 Bankruptcy or Dissolution. Membership shall terminate upon the bankruptcy, insolvency or dissolution of a Member .

4.5.5 Expulsion, Suspension, or other Sanction. Membership shall terminate upon the determination of a seventy-five percent (75%) vote of the Board of Directors (such vote not including the vote of the Member facing expulsion, suspension, or other sanction) after a hearing duly held in accordance with this Section 4.5(e), that the Member has failed in a material respect to observe the rules of conduct promulgated from time to time by the Board of Directors and applicable to Members, or otherwise has failed in some material respect to merit continued membership privileges or has undertaken actions that were adverse to the interests of the Corporation or otherwise disruptive to the Corporation. Such determination shall be made in the sole and absolute discretion of the Board of Directors. Following the determination by the Board of Directors that a Member should be expelled, suspended, or other sanction the following procedures shall be implemented:

- (i) A notice shall be sent by mail by prepaid, first-class, certified or registered mail to the most recent address of the Member as shown on the Corporation's records, setting forth the expulsion, suspension, or other sanction and the reasons therefore. Such notice shall be sent at least fifteen (15) days before the proposed effective date of the expulsion, suspension, or other sanction.

- (ii) The Member facing expulsion, suspension, or other sanction shall be given an opportunity to be heard, either orally or in writing, at a hearing to be held no fewer than five (5) days before the effective date of the proposed suspension, expulsion, or other sanction. The hearing shall be held by the Board of Directors. The notice to the Member of its proposed expulsion, suspension, or other sanction shall state that such Member is entitled, upon request, to such hearing, shall state that a date, time and place of the hearing will be established upon receipt of request therefore, and shall state, that in the absence of such request, the effective date of the proposed suspension or expulsion.
- (iii) In the event that a hearing is held, then following the hearing, the Board of Directors shall decide whether the Member should in fact be expelled, suspended, or sanctioned in some other way. The decision of the Board of Directors shall be final.
- (iv) Any legal action challenging an expulsion or suspension of membership or participation of a Member, including any claim alleging defective notice, must be commenced within one (1) year after the date of the expulsion, suspension, or other sanction.

4.6 Reinstatement. Members suspended or expelled pursuant to Section 4.5.5 may be reinstated upon the absolute two-thirds (2/3) vote of the Board of Directors.

4.7 Property Rights No Member shall have any right or interest in any of the property or assets of this Corporation.

4.8 Nonliability. No Member shall be personally liable for the debts, liabilities, or obligations of this Corporation.

4.9 Nontransferability. No Member may transfer for value or otherwise, a membership or any right arising therefrom, and all rights of membership shall cease upon a Member's bankruptcy, resignation, expulsion, suspension, sanction, or dissolution pursuant to Section 4.5. In the case of a merger or acquisition of a Member company by another company, the rights of membership shall be continued to the new legal entity.

4.10 Distribution of Assets Upon Dissolution. Except as otherwise agreed by the Board of Directors in connection with a transaction described in Section 6.20 (Merger of Corporation), upon a dissolution of this Corporation and after all of the known debts and liabilities of this Corporation have been paid or adequately provided for in accordance with Section 8713 of the California Nonprofit Corporation Law, any remaining net assets of this Corporation shall be distributed by the Board of Directors to one or more organizations qualified under U.S. Internal Revenue Code Sections 501(c)(3) or 501(c)(6) selected by the Board of Directors which will help to further the purposes of this Corporation. No part of the Corporation's net earnings will inure to the benefit of any Member, Director or private person. Any such plan of distribution will be conducted in accordance with the Corporation's tax status under United States Internal Revenue Code Section 501(c)(6).

5.

Membership Meetings

5.1 Place of Meetings. All meetings of Members shall be held at any place which may be designated by the Board of Directors pursuant to the authority hereinafter granted to the said Board, or by the written consent of all Governing Members entitled to vote thereat, given either before or after the meeting and filed with the Secretary of the Corporation.

5.2 Regular Meetings. Regular meetings of Members of the Corporation shall be held at such dates and at such times and places as determined by resolution of the Board of Directors but in any event not less than once per calendar year. Additional Member meetings may be set as determined by the Board of Directors and pursuant to notification as defined in these Bylaws.

5.3 Special Meetings. Special meetings of Members, for any lawful purpose or purposes whatsoever, may be called at any time by the President, the Board of Directors, or by a minimum of 50% the Members. Notice of such request must be submitted in writing and mailed to the principal office of the Corporation, or delivered to the President, the Vice President or Secretary, by any person or persons other than the Board entitled to call a special meeting of Members. The notice must state the business to be transacted at the special meeting. It shall be the duty of the officer to cause notice to be given, within twenty (20) days from receipt of such a request, to the Members of such meeting scheduled and to be held not less than thirty-five (35) days nor more than ninety (90) days after the receipt of such a request. A quorum of Members must be present at the special meeting in order to conduct the business of the Corporation.

5.4 Notice of Annual Meetings. A notice of each annual meeting, written ballot for election of Directors or otherwise, if any, and special meeting shall be given by the President or, in case of his failure or refusal, by any other officer or any Director; shall specify the place, time, day and hour of the meeting or the date on which the ballot shall be returned, if applicable; in the case of an annual meeting at which Directors shall be elected, shall specify the names of all those who are candidates for election of Directors at the time the notice is given, and in the case of special meetings, the nature of the business to be transacted thereat. Such notice shall be given in writing to every Member, provided that such notice shall be accompanied by a ballot when given to every Member who, on the record date for notice of the meeting, is entitled to vote thereat. Such notice shall be given either personally or by sending a copy thereof by first-class mail, postage or charges prepaid, or by electronic or telephonic communication, including e-mail, to the Member's address appearing on the books of the Corporation, at least ten (10) days but no more than ninety (90) days prior to the date fixed for such meeting; provided, however, that if notice is given by mail and is not sent first class, registered or certified mail, notice shall be given not less than twenty (20) days before the meeting.

5.5 Recessed Meetings. Any Members' meeting, annual or special, whether or not a quorum is present, may be recessed from time to time by the vote of a majority of the Members either present in person or represented by proxy thereat, but in the absence of a quorum no other business may be transacted at any such meeting. No meeting may be recessed for more than 45 days, annual or special, to another time or place. It shall not be necessary to give any such notice of the time and place of the recessed meeting or of the business to be transacted thereat, other than by an announcement at the meeting at which such recess is taken. If after the recess a new record date is fixed for notice or voting, a notice of the recessed meeting shall be given to each Member who, on the record date for notice of the meeting, is entitled to vote at the meeting.

5.6 Quorum. The presence in person or by proxy of a majority (more than one-half) of the Members of the Corporation shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until a quorum is no longer present.

5.7 Voting. Each Governing Member in good standing with the right to vote, (i.e., Governing Members who have paid their membership fees, dues and assessments in accordance with these Bylaws and whose membership has not been terminated pursuant to Section 4.5) is entitled to one vote on each matter submitted to a vote of the Governing Members. Voting shall be by voice vote, and/or electronic mail and/or written response as directed by the chair of the meeting. No single vote shall be split into fractional votes. Cumulative voting shall not be authorized.

5.8 Action Without Meeting by Written Ballot. Any action, which may be taken at any regular or special meeting of members, may be taken without a meeting if the Corporation distributes a written ballot to every member entitled to vote on the matter. Such ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the Corporation. Approval by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds a quorum of the members, and the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. Ballots shall be distributed to members in accordance with Section 5.4 hereof. All ballots distributed in accordance with this Section 5.8 shall indicate the number of responses needed to meet the quorum requirement and shall state the percentage of approvals necessary to pass the measure submitted. All written ballots distributed in accordance with this Section 5.8 shall specify the time by which the ballot must be received in order to be counted. The use of electronic mail shall be permitted and allowed as written in the ballot.

5.9 Proxies. Every Governing Member shall have the right to do so in person or by one or more agents authorized by a written proxy executed by such person or his duly authorized agent and filed with the Secretary of the Corporation; but no such proxy shall be valid after the expiration of eleven (11) months from the date of its execution, unless the person executing it specifies therein the length of time for which such proxy is to continue in force.

5.10 Conduct of Meetings. Meetings of Members shall be presided over by the President of the Corporation, or in his absence, by the Vice President, and in the absence of both of them, by the chair chosen by a majority of the members present. The Secretary of the Corporation shall act as the secretary of all meetings of members, provided that in his absence the presiding officer shall appoint another member to act as Acting Secretary of the meeting.

6.

Board of Directors

6.1 Powers. Subject to the limitations of the Articles of Incorporation, of the Bylaws, and of the California Nonprofit Corporation Law and subject to the duties of Directors as prescribed by the Bylaws, all corporate powers shall be exercised by or under the authority of, and the business and affairs of this

Corporation shall be controlled by, the Board of Directors. The Board of Directors shall have the power to select and remove all officers, agents, employees and contractors, and to fix reasonable compensation thereof, to authorize and empower officers or agents to enter into contracts and other commitments on behalf of this Corporation, and to appoint and delegate responsibilities and authority to committees, officers and agents.

6.2 Qualification for Board of Directors. Governing Members only shall have the right to serve on the Board of Directors. No other Members shall have the right to serve on the Board of Directors.

6.2.1 Number of Directors. The authorized number of Directors shall not be more than nine (9) and shall be not less than three (3) with the exact number of authorized Directors to be fixed from time to time by resolution of the Board of Directors.

6.2.2 Election of Directors. The initial three (3) Directors shall be appointed by Action of Sole Incorporator and shall be entitled to permanent seats on the Board. If the initial size of the Board is increased in the first year, additional Directors may be added to the Board by 2/3 majority election of the Board. Annually thereafter, the Governing Members shall elect the Directors. Candidates for Directors must be employees or duly appointed representatives of the Governing Member on behalf of which it is serving. Candidates may be nominated by a vote of a majority of the Directors or upon written nomination signed by two (2) of the Governing Members 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 Governing Member with a written ballot containing the names of all nominees.

Voting for the election of Directors shall be by written ballot and shall occur prior to the Annual Meeting of Members. Each Governing 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. Each of these Directors shall serve a two (2) year term unless sooner removed by the respective Governing Member that designated such Director. At the end of each such Director's term, or upon the resignation or cessation of service on the Board by such Director for any reason, the Governing Member who originally designated such Director shall be entitled to re-designate such Director or any other person as candidate for another term, or appoint and designate another person as a successor to such Director for the remaining term, as the case may be.

6.2.3 Composition of Board of Directors. Pursuant to California Corporations Code Section 7220(d), if elected or appointed, each Governing Member shall designate one (1) Director and one (1) Alternate Director (as more specifically defined in Section 6.3) to serve on the Board of Directors. Each of the Directors must be an employee or duly appointed representative of the Governing Member on behalf of which it is serving. Each such Governing Member shall have the option to remove the Director it has designated and replace such Director at any time, with or without cause. No other entity or entities, including without limitation the Board of Directors, shall have any right to remove a Director designated pursuant to this Section 6.2. Notwithstanding the foregoing, the Board of Directors may remove a Director for cause pursuant to Section 5620.2; in the event of such a removal the respective Governing Member shall designate a different Director for the remaining term.

6.3 Alternate Directors. The following procedures shall apply to Alternate Directors:

6.3.1 Alternate Directors; Voting. Each Director shall have an alternate to serve in the capacity of Director in the event of the death, resignation, removal, or absence of the Director; such alternate shall be referred to as an “Alternate Director”. When serving in the capacity of Director, the Alternate Director shall have all the rights, privileges and responsibilities of the Director. Alternate Directors shall be entitled to attend all regular and special meetings of the Board of Directors and shall have all rights (including voting rights) of the Director in the absence of the Director.

6.3.2 Role of Alternate Director. In the event that the Alternate Director is serving as a Director due to the absence of the Director, such Director shall regain all of the rights, privileges and responsibilities of director status upon the termination of his absence. In the event that the Alternate Director is serving as a Director due to the death, resignation, or removal of the Director, the Alternate Director shall immediately become a Director, and the corresponding position of Alternate Director shall become vacant.

6.3.3 Application of Bylaws. All provisions of these Bylaws apply equally to the Alternate Directors as to the Directors, unless otherwise noted.

6.4 Observers. In the event that neither the Director nor the Alternate Director is capable of serving due to absence or otherwise, the Governing Member in question shall have the right to appoint a nonvoting observer to attend Board meetings.

6.5 Vacancies. Vacancies in the Board of Directors, if not filled by Alternate Directors pursuant to Section 6.3 or by the Governing Member(s) pursuant to Section 6.2, may be filled by two-thirds majority of the remaining Directors then in office.

6.6 Place of Meeting. All meetings of the Board of Directors may be held at any place that has been designated from time to time by resolution of the Board or by the written notice of the President.

6.7 Board Meetings. Meetings of the Board of Directors shall be held from time to time as the Board of Directors may fix, as may be specified and noticed by the Board of Directors or by the President of this Corporation.

6.8 Special Meetings. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the President, the Secretary or by any two (2) of the Directors.

6.9 Notice of Meetings; Attendance. Notice of the time and place of each meeting of the Board of Directors not fixed by an express provision of the Bylaws or by a standing Resolution of the Board of Directors shall be given to each Director and Alternate Director not less than two (2) business days before the date of the meeting if given personally, by telephone or by electronic means including e-mail, and not less than ten (10) days before the date of the meeting if given by first-class mail.

6.10 Consent to Meetings. The transactions of the Board of Directors at any meeting however called and noticed or wherever held, shall be as valid as though done at a meeting duly held after call and notice if a quorum be present and if either before or after the meeting each Director not present (i) signs a written waiver of notice, or (ii) signs a consent to the holding of such meeting, or (iii) approves the minutes thereof. Each Director who attends the meeting without protesting, prior thereto or at its commencement shall be deemed conclusively to have consented to the holding of the meeting and to have waived the lack of

notice to such Director. All such waivers, consents or approvals shall be filed with the corporate records and made a part of the minutes of the meeting.

6.11 Action Without Meeting. Any action required or permitted to be taken by the Board of Directors under any provision of the California Nonprofit Corporation Law may be taken without a meeting if all members of the Board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as a unanimous vote of such Directors. Any certificate or other document filed under any provision of the California Nonprofit Corporation Law which relates to action so taken shall state that the action was taken by unanimous written consent of the Board of Directors without a meeting, and that the Bylaws authorize the Directors to so act. For the purposes of this section only, "all members of the Board" shall not include any "Interested Director" as defined in Section 6.18.

6.12 Telephonic Meetings. Directors may participate in a meeting through use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another. Participation in a meeting through use of telephone or similar communications equipment shall constitute presence in person at such meeting.

6.13 Quorum. A majority (one-half plus one) of the Directors in office from time to time shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided in Section 6.14. 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, provided however that the affirmative votes cast must represent 51% of the number of Board seats then occupied, shall be regarded as the act of the Board of Directors unless a greater number be required by law, or by the Articles of Incorporation, or by these Bylaws.

6.14 Adjournment. A majority of the Directors present, whether or not a quorum is present, may adjourn any Directors' meeting to meet again at another time or place. In the event a meeting of the Board of Directors is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place shall be given prior to the time set for the rescheduled meeting to the Directors who were not present at the time of the adjournment.

6.15 Fees and 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.

6.16 Indemnity for Litigation. This Corporation hereby agrees to exercise the power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding by reason of the fact that such person is or was a Director or Alternate Director or officer of this Corporation and acting within the scope of his/her capacity as a Director, to the full extent allowed under the provisions of Section 7237 of the California Nonprofit Corporation Law relating to the power of a corporation to indemnify any such person. The amount of such indemnity shall be so much as the Board of Directors determines and finds to be reasonable, or, if required by said Section 7237 of the California Nonprofit Corporation Law, the amount of such indemnity shall be so much as the court determines and finds to be reasonable.

6.17 Standard of Conduct. Pursuant to Section 7231 of the California Nonprofit Corporation Law, a Director shall perform the duties of a Director, including duties as a member of any committee of the Board upon which the Director may serve, in good faith, in a manner such Director believes to be in the best interests of this Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. In performing the duties of a Director, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

6.17.1 One or more officers or employees of this Corporation whom the Director believes to be reliable and competent in the matters presented;

6.17.2 Legal counsel, independent accountants or other professionals as to matters which the Director believes to be within such person's professional or expert competence; or

6.17.3 A committee of the Board upon which the Director does not serve, as to matters within the committee's designated authority, which committee the Director believes to merit confidence. Provided, that in any such case, the Director acts in good faith, after reasonable inquiry when the need therefore is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

6.18 Self-Dealing Transactions. As used in this section, a "self-dealing contract" is any contract or transaction (i) between this Corporation and one or more of its Directors, or between this Corporation and any corporation, firm or association in which one or more of the Directors or, to the best of each respective Director's knowledge at the time the contract or transaction is proposed, or thereafter one or more Governing Members has a material financial interest, or (ii) between this Corporation and a corporation, firm or association of which one or more of its directors are Directors of this Corporation (collectively, "Interested Director(s)"). Pursuant to Section 7233 of the California Nonprofit Corporation Law, no self-dealing contract shall be void or voidable because such Interested Director(s) or corporation, firm or association are parties or because such Interested Director(s) are present at the meeting of the Board or committee which authorizes, approves or ratifies the self-dealing contract, if:

6.18.1 Membership Approval. All material facts are fully disclosed to or otherwise known by the Governing Members and the self-dealing contract is approved by the members in good faith including the abstention from voting by any membership owned by such Interested Director(s); or

6.18.2 Board or Committee Approval. All material facts are fully disclosed to or otherwise known by the Board or committee and the Board or committee authorizes, approves, or ratifies the self-dealing contract in good faith (including the abstention from voting by the Interested Director(s)), and, in the case of a self-dealing contract described above, the Board or committee resolves and finds that the contract is just and reasonable at the time it is authorized, approved or ratified; or

6.18.3 Just and Reasonable Contract. The person asserting the validity of the self-dealing contract sustains the burden of proving that the contract was just and reasonable as to the Corporation at the time it was authorized, approved or ratified.

Interested Director(s) may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof which authorizes, approves or ratifies a contract or transaction as provided in this Section 6.18.

6.19 Resignation and Removal.

6.19.1 Resignation. Any Director or Alternate Director may resign at any time by giving written notice to the Board of Directors, to the President or to the Secretary of this Corporation.

6.19.2 Removal. Any Director or Alternate Director may be removed by the Board for any of the following, all of which constitute removal for cause: (i) conviction or entry of a plea of nolo contendere for a crime; (ii) intentional breach of fiduciary duties; (iii) public disparagement or ridicule of the Corporation; or (iv) gross mismanagement or waste. Any Director may also be removed by the Governing Member that appointed such Director pursuant to Section 6.3.

6.19.3 Advisory Board. The Board of Directors may, at its sole discretion, appoint a board of advisors ("Advisory Board") with which the Board of Directors shall consult on matters relating to the operation of the Corporation. The members of the Advisory Board shall not have the rights or privileges of Directors or Members as set forth in Sections 5047 and 5056 of the Nonprofit Public Benefit Law of the State of California and shall have no power or authority over the operation of the Corporation. The Board of Directors in its sole and absolute discretion may remove a member of the Advisory Board at any time.

6.20 Merger of Corporation. Any decision to merge the Corporation with another entity, or to transfer all or substantially all of the assets of the Corporation to a third party or to otherwise effectuate a change in control of the Corporation (each one of the foregoing being referred to herein as a "Merger Transaction") shall require the seventy-five percent (75%) vote of the Board of Directors and in such event the Board of Directors will amend these Bylaws as necessary to effectuate the Merger Transaction, including without limitation taking into account the terms in Section 4.9 (Non-Transferability) and Section 4.10 (Distribution of Assets Upon Dissolution)

7.

Creation of Specifications and Other Works

7.1 Approval of Specification and Other Work.

7.1.1 Interim Drafts. A Working Group shall circulate interim drafts or releases of Draft Specification or Other Work to Members for review and comment.

7.1.2 Adoption of Draft and Final Specifications. The primary deliverable of a Working Group shall be a Draft Specification or Other Work in the form of final drafts or proposals on the subject matter or undertaking assigned to such Working Group, which drafts or proposals shall be formally submitted to the Board of Directors. When the Working Group, by consensus as determined by its chairperson, or in the absence of consensus, by a seventy five per cent (75%) majority vote of those members voting when a Quorum exists, reports to the Board of Directors that a Draft Specification and/or Other Work proposed for final approval is complete, or at any other time upon majority vote of the Board of Directors, the Board of

Directors will take steps to accept or reject the Draft Specification and/or Other Work as set forth herein. To adopt the Draft Specification or Other Work, written notice (which shall include a copy of the Draft Specification and Other Work proposed to be made final) shall be sent to all Working Group Members and Members advising that a Board of Directors meeting will be held for the purposes of adopting such Draft Specification and Other Work. Such meeting shall take place no sooner than forty-five (45) days after submission to the Board of Directors of the Draft Specification proposed to be made final. Such written notice shall commence the period for reviewing the intellectual property by the Members for Necessary Claims (the IPR Review Period) as set forth in Section 10.8 of these Bylaws. At such meeting, the Board of Directors shall vote on the submitted Draft Specification or Other Work. Adoption of the Draft Specification and Other Work, or any update to a Final Specification or Other Work, requires approval of seventy-five percent (75%) of the Board of Directors. Such Final Specification and Other Work shall be published by the DCML after adoption.

7.1.3 Alterations. After any Final Specification or Other Work has been approved in accordance with Section 7.1.2 above, any updates or alterations thereto shall be treated as a proposal to develop a new Draft Specification or Other Work and shall be subject to the same processes and procedures used for development as set forth above. The adoption of new Final Specification and Other Work shall not terminate any right or obligation of any Member under these Bylaws, including any licenses or covenants granted or received by a Member with respect to any earlier adopted Final Specification or Other Work.

8.

Officers

8.1 Officers. The principal officers of this Corporation shall be a President, Vice President, Chief Financial Officer or Treasurer, and Secretary and such other officers as the Board of Directors may appoint. One person may hold two or more offices.

8.2 Election. The officers of this Corporation, except such officers as may be appointed in accordance with the provisions of Section 8.3 or Section 8.4 shall be elected by the Board of Directors in accordance with this Article 8, and each officer shall hold his or her office for a term of one (1) year, or until he or she shall resign or shall be removed or his or her successor shall be elected and qualified.

8.3 Removal and Resignation.

8.3.1 Removal. Any officer may be removed, either with or without cause, by the Board of Directors at any regular or special meeting (subject to the rights, if any, of an officer under any contract of employment).

8.3.2 Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, or to any officer of this Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Such resignation shall not prejudice the rights of the Corporation under any contract to which the officer is a party.

8.4 Vacancies. A vacancy in any officer position because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to such officer position.

8.5 President. The President shall serve as the Chief Executive Officer of this Corporation. Subject to the control of the Board of Directors, the President shall have general supervision, direction and control of the business and affairs of this Corporation. The President may serve as an ex officio voting member of all committees, and shall have such other powers and duties as may be designated from time to time by the Board of Directors. The President shall be a member of the Board of Directors and preside at all meetings of the Board of Directors.

8.6 Vice President. In the absence of the President, or in the event of his or her inability or refusal to act, the Vice President shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions on, the President. The Vice President shall have such other powers and duties as may be designated from time to time by the Board of Directors. There shall be no limit on the number of Vice Presidents that may be appointed by the Board of Directors.

8.7 Chief Financial Officer/Treasurer. The Chief Financial Officer shall oversee the financial and accounting matters of this Corporation with respect to the receipt and deposit of funds. The Chief Financial Officer shall have such other powers and duties as may be designated from time to time by the Board of Directors.

8.8 Secretary. The Secretary shall keep a full and complete record of the proceedings of the Board of Directors, shall keep the seal of this Corporation and affix it to such papers and instruments as may be required in the regular course of business, shall make service of such notices as may be necessary or proper, shall supervise the keeping of the records of this Corporation, and shall deliver the Annual Statement required by Section 14.6 to the Directors. The Secretary shall have such other powers and duties as may be designated from time to time by the Board of Directors.

9.

Committees

9.1 Appointment of Committees. The Board of Directors may appoint such committees as the Board from time to time deems necessary or appropriate to conduct the business and further the objectives of this Corporation. The appointment by the Board of any committee having the authority of the Board shall be by resolution adopted by a majority of Directors then in office. Committees may include, but shall not be limited to a Working Group, a Technical Steering Committee, Marketing Steering Committee, and Executive Steering Committee. Each Working Group or Committee shall consist of one (1) Governing Member and any number of other Members as specified by the Board of Directors.

9.2 Powers and Authority of Committees. The Board of Directors may delegate to any committee having the authority of the Board, any of the powers and authority of the Board of Directors in the management of the business and affairs of this Corporation, except the following:

9.2.1 The approval of any action for which the California Nonprofit Corporation Law also requires the approval of members of a corporation.

9.2.2 The filling of vacancies on the Board or in any committee that has the authority of the Board.

9.2.3 The fixing of compensation of the Directors for serving on the Board or on any committee.

9.2.4 The amendment or repeal of Bylaws or the adoption of new Bylaws.

9.2.5 The amendment or repeal of any resolution of the Board, which by its express terms is not so amendable or repealable.

9.2.6 The appointment of committees of the Board or the members thereof.

9.2.7 The expenditure of corporate funds to support a nominee for Director after there are more people nominated for Director than can be elected.

10.

Intellectual Property Rights

10.1 Retained Ownership. Each Member shall retain ownership (including, but not limited to, the right to publish or distribute without any obligation of confidentiality, notwithstanding any terms of these Bylaws to the contrary) of any of its Confidential Information and Licensed Materials that such Member offers for use in the development of or for inclusion in a Specification or Other Work, as well as such Member's implementations of a Specification. Where two or more Members jointly develop Licensed Materials or intellectual property appurtenant thereto (such as copyrights or patent rights) as part of their work in the Corporation, such Member shall jointly own any such Licensed Materials and intellectual property, without any obligation of accounting to each other or to the other Members. All the foregoing ownership rights are subject to any underlying licenses granted in these Bylaws.

10.2 Copyright in Specifications or Other Works. To the extent to which a Specification or Other Work constitutes a copyrightable work distinct from any Members copyright interests in Licensed Materials included as part of such Specification or Other Work or from which they are derived, the copyright in such Specification or Other Work shall be owned by the Corporation.

10.3 No Obligation to Include Materials. Each Member understands and agrees that neither any Working Group nor the Board of Directors has any obligation to include as part of any Specification or Other Work any Licensed Materials offered by such Member.

10.4 License to Members to Conduct Work. Each Member hereby grants to each other Member a limited, irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license of such Member's Licensed Materials and under such Member's Necessary Claims solely to conduct the work of the Working Group up to the point at which the Board of Directors approves (or rejects) a Draft Specification or Other Work recommended by the Working Group in question.

10.5 Licenses to the Public. If and to the extent a specific Final Specification or Other Work includes any Copyright of the Corporation, or any Licensed Materials or is subject to any Necessary Claims of a Member, the Corporation and Members grant licenses as follows:

10.5.1 Corporation Copyright License: The Corporation hereby grants to all other parties (whether or not they are Members), under the Corporation's copyright(s) in a Final Specification or Other Work, as described in Section 10.2, above an irrevocable, perpetual, non-exclusive, worldwide, paid-up royalty-free copyright license to reproduce, display, distribute and transmit such Final Specification or Other Work, and to prepare derivative works based upon any software code contained therein, provided that such license is granted solely for the purpose of developing and distributing Fully Compliant Implementations of such Final Specification or Other Work.

10.5.2 Member Copyright Licenses. Each Member (on behalf of itself and any Affiliates) hereby grants to all other parties (whether or not they are Members), under the Members' copyrights in any Licensed Materials included in a Final Specification or Other Work, an irrevocable, perpetual, non-exclusive, worldwide, paid-up royalty-free copyright license to reproduce, display, distribute and transmit such Licensed Materials included in a Final Specification or Other Work, and to prepare derivative works based upon any software code contained therein, provided that such licenses are granted solely for the purpose of developing and distributing Fully Compliant Implementations of such Final Specification or Other Work.

10.5.3 Member Patent Licenses. Each Member (on behalf of itself and any Affiliates) hereby covenants to grant to any other person or legal entity (whether or not such person or entity is also a Member) a royalty-free, nonexclusive, nontransferable, license under its Necessary Claims to implement the Final Specification or Other Work, but only to the extent needed to be a Fully Compliant Implementation, and to make, use, sell, offer to sell, license, import or otherwise promote or distribute the resulting Fully Compliant Implementation, which license may be made subject to the condition that those who seek licenses under this Section 10.5.3 agree to grant reciprocal, royalty-free, non-exclusive, nontransferable licenses under their Necessary Claims to such Members and all other parties who implement the Final Specification or Other Work as a Fully Compliant Implementation, and to make, use, sell, offer to sell, license, import or otherwise promote or distribute the resulting Fully Compliant Implementation. Except as set forth herein, the negotiation of licenses pursuant to this Section 10.5.3 shall be left to the parties concerned. Notwithstanding the foregoing, no Member shall be required to grant a license pursuant to this Section 10.5.3 with respect to; (i) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with a Final Specification or Other Work, but are not themselves expressly set forth in that Final Specification or Other Work (e.g. semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, database technology, etc.); (ii) the implementation of other specifications, even if referred to in a Final Specification or Other Work; or (iii) any portion of any product and any combinations thereof the sole purpose or function of which is not required in order to be a Fully Compliant Implementation of a Final Specification or Other Work.

10.6 No Implied Requirement to License. Except as explicitly set forth in these Bylaws, a Member is not required to grant any other Member or third party any rights or licenses to any patents, copyrights, trademarks, trade secrets or other intellectual property rights of such Member.

10.7 Trademark Licensing. By a seventy five percent (75%) majority vote of its members, the Board of Directors may agree to establish one or more trademarks ("Trademarks") where the Board concludes that such establishment will serve the goals and objectives of the Corporation, including for example to indicate compliance of a Fully Compliant Implementation of a Final Specification and other requirements approved by the Board of Directors; provided, however, that the Board of Directors shall use reasonable efforts and act in good faith not to establish a Trademark that would be confusingly similar to any trademark or service mark owned by any Member. Any Trademark established under this Section 10.7 shall be owned by the Corporation. The Corporation will use commercially reasonable efforts to clear and register the Trademark in those countries designated by the Board of Directors as necessary countries, with appropriate input from the Governing Members. The Corporation will license all Members to use the Trademark pursuant to terms to be stated in a license agreement in a form approved by the Corporation and Board of Directors.

10.8 Disclosure of Necessary Claims. During the IPR Review Period, each Member shall disclose to the Board of Directors, in writing, the existence of its Necessary Claims ("Disclosure Notice") that it has determined cover a Proposed Final Specification or Other Work that are personally known to the individuals acting on behalf of such Member, provided that it is understood and agreed that such individuals do not represent that they personally know of all potentially pertinent claims of patents and patent applications owned or claimed by the Member they represent or any third parties.

10.9 No Obligation to Search. The obligation set forth in Section 10.8 above does not, however, imply any obligations on Members (collectively or individually) to perform or conduct patent searches. Further, nothing in these Bylaws nor the act of a Member submitting, supporting, or approving a proposal for a Final Specification or Other Work shall be construed or otherwise interpreted as any kind of express or implied representation that such Member does or does not hold any patents or patent applications which contain claims that cover such Final Specification or Other Work.

10.10 Withdrawal of Necessary Claims.

10.10.1 Notwithstanding Section 10.5.3 each Member shall have until the end of the IPR Review Period to propose a withdrawal of Necessary Claims.

10.10.2 Such withdrawal shall be made by notifying the Board of Directors in writing ("Withdrawal Notice") on a good faith basis, based upon evidence reasonably satisfactory to the Board of Directors and its advisors, that the notifying Member seeks to withdraw such Necessary Claims from the license grant set forth in Section 10.5.3. The Withdrawal Notice shall be submitted as follows:

- i. The notifying Member shall establish (A) that the Member or its Affiliate is the sole owner of certain Necessary Claims, and (B) that neither the Member nor its Affiliate participated in the Working Group that created the Proposed Final Specification or Other Work or otherwise contributed to the Proposed Final Specification or Other Work.
- ii. For each Necessary Claim identified in the Withdrawal Notice pertaining to such specific Proposed Final Specification or Other Work, the following information must be provided:
 - (A) the countries in which the patent(s) or application(s) in which they are contained was issued or is pending,

(B) the patent number for such patent (or serial number of such patent application, including a copy of the patent application as filed if the patent application has not yet been published, where such serial number and patent application may be declared as Confidential Information of the notifying Member as described in Section 11 of these Bylaws),

(C) the portion of the Draft Specification or Other Work as to which the notifying Member believes an infringement would arise, and

(D) an explanation of the nature of the infringement which shall include a claim chart mapping each element of an identified Necessary Claim with the corresponding element of the specific Specification or Other Work ..

10.10.3 The Board of Directors shall advise the notifying Member that it has received such notice and, if true, that the Withdrawal Notice meets the requirements of this Section to be received. In the event that the Board of Directors deems the submission to be incomplete, the Board of Directors shall notify the notifying Member of such incompleteness within seven (7) days of the delivery of such submission setting forth the provisions of this Section which are incomplete. The Board of Directors shall notify each notifying Member that has submitted an incomplete Withdrawal Notice that it does not deem such notice to be effective. Failure of the notifying Member to provide a complete Withdrawal Notice within the applicable IPR Review Period shall render such notice ineffective to withdraw such proposed Necessary Claims from the provision of Section 10.5.3.

10.10.4 The Board of Directors shall promptly evaluate any Withdrawal Notice received hereunder. This evaluation may include soliciting advice from the relevant Working Group, legal counsel and/or other expert advisors. Based on such evaluation, the Board of Directors, in its reasonable discretion, may elect one of the following:

(1) The Board of Directors may refer the Proposed Final Specification back to the Working Group and instruct the Working Group to amend the Specification so as to avoid infringement of the Necessary Claims. If a Draft Specification (or, with respect to Section 10.10.7, a Final Specification) is modified in response to a Withdrawal Notice, then the notifying Member shall have 45 days from the date on which the modified Specification is provided to that Member to again submit a Withdrawal Notice to the Board of Directors.

(2) The Board of Directors may, at its discretion, elect to grant the notifying Member's request to withdraw and adopt the Proposed Final Specification with the Necessary Claims of the withdrawing Member in the Final Specification. In this event, the withdrawing Member hereby covenants to grant to any other person or legal entity (whether or not such person or entity is also a Member) a nonexclusive, nontransferable license under its Necessary Claims on terms that are fair, reasonable and non-discriminatory to implement the Final Specification or Other Work, but only to the extent needed to be a Fully Compliant Implementation, and to make, use, sell, offer to sell, license, import or otherwise promote or distribute the resulting Fully Complaint Implementation, which license may be made subject to the condition that those who seek licenses under this Section 10.5.3 agree to grant reciprocal licenses on terms that are fair, reasonable and non-discriminatory to implement the Final Specification or Other Work, and to make, use, sell, offer to sell, license, import or otherwise promote or distribute

the resulting Fully Complaint Implementation.

10.10.5 Except as provided in Section 10.10.7, a Member cannot withdraw from the Section 10.5.3 license any Necessary Claims that were relevant to a previously circulated Proposed Final Specification or Other Work that were not identified in a Necessary Claims Withdrawal Notice during the applicable IPR Review Period.

10.10.6 A Member also cannot exercise its rights under this Section 10.10 with respect to Necessary Claims that pertain to Licensed Materials where any individual acting on the Member's behalf contributed such Licensed Materials with knowledge that such materials likely would be subject to the Member's Necessary Claims.

10.10.7 Any Member that becomes a Member of the Corporation after the Board of Directors has already adopted a Final Specification or Other Work shall have until 45 days after entering into adopting these Bylaws to deliver a Disclosure Notice relating to such Final Specification or Other Work to the Board of Directors as set forth in Section 10.8 and covenants to license such Necessary Claims in accordance with Section 10.5.3

10.11 Publication. Once an Proposed Draft Specification gains the designation of a Final Specification pursuant to this Section, the Board of Directors shall determine the process, nature and scope of publication and/or release of the Final Specification.

11.

Marking Requirements

11.1 Any Final Specification published by the Board of Directors shall contain the following printed notice in a clear and conspicuous place:

"Implementation of certain elements of this Specification may require licenses under third party intellectual property rights, including without limitation, patent rights. The Members of DCML Organization, Inc. and any other contributors to the Specification are not, and shall not be held responsible in any manner, for identifying or failing to identify any or all such third party intellectual property rights. This Specification is provided "AS IS", and no Member in the DCML makes any warranty of any kind, express or implied, including any implied warranties of merchantability, non-infringement of third party intellectual property rights, and fitness for a particular purpose. Implementors of this Specification are advised to review the DCML Project's website (<http://www.DCML.org>) for information concerning any Necessary Claims Disclosure Notices that have been received by the DCML Board of Directors."

Similarly, any forms of Other Work published by the Board of Directors that require conformance with or to them in order for an implementation of a Final Specification to be a Fully Compliant Implementation shall be published with a notice substantially similar to the foregoing.

11.2 For any published Final Specification or Other Work for which any relevant non-Member patent has been reported to the Board of Directors a notice shall be published on the Corporation's Project's website accessible to those who may wish to implement the Final Specification and Other Work to which such patent relates. The notice shall include an identification of the relevant patent owner(s), the owner, if known, and any known contact at such owner and the Final Specification or Other Work to which such patent(s) are claimed to be relevant. The notice on the website shall include the following in a clear and conspicuous place

“Implementation of Specifications or Other Work may involve the use of one or more of the following identified patents. The sponsors of the Specification and Other Work take no position concerning the validity and scope of this claimed patent right. Implementation of certain elements of this Specification and Other Work may also require licenses under third party intellectual property rights other than those identified above, including without limitation, patent rights. The sponsors of the Specification and Other Work are not and shall not be held responsible in any manner for identifying or failing to identify any or all such intellectual property rights that may be involved in the implementation of the Specifications and Other Work.”

12.

Confidentiality

12.1 As a general principle, no Member wishes to receive from any other Member under these Bylaws any information which the disclosing Member considers to be confidential; however, the Members do wish to allow the work of the Corporation to proceed in a constructive manner under conditions which promote candid and open discussions.

12.2 Unless and until Confidential Information is made available to the public through the processes set forth herein or established by the Board of Directors, each Member (except the owner or authorized licensor) shall use the same degree of care and discretion it uses to avoid disclosure of its own Confidential Information not to disclose such Confidential Information to any entity or person who is not a Member engaged in the activities for which such Confidential Information was provided.

12.3 The obligation of confidentiality set forth in this Section 12 shall expire three (3) years from the date the Confidential Information is first disclosed to the Member, and shall not apply to any information which: (i) is or becomes publicly available other than by the Member's breach of a duty; (ii) is rightfully received from a third party without any obligation of confidentiality; (iii) is rightfully known by the Member without any limitation on disclosure prior to its receipt; (iv) is independently developed by the Member without use of the Confidential Information; or (v) is released for disclosure by the Member with the disclosing party's prior written consent.

12.4 Disclosure of Confidential Information is not prohibited if prior notice is given to its owner and if such disclosure is (a) compelled pursuant to a legal proceeding or (b) otherwise required by law; provided, however, that the party proposing to make such disclosure will first have made a reasonable effort to obtain a

protective order or to have informed the owner of the intended disclosure of the Confidential Information so as to allow it a reasonable opportunity to seek such an order.

13.

Compliance with Antitrust Laws

13.1 The Members will be combining unique experience and skills to create an open standard for a data center XML language, protocol and test suites for multiple providers of data center hardware, software, services and devices, and this purpose is believed by the Members to be more difficult to achieve through the independent efforts of each company. The Members are committed to fostering open competition in the development and sales of products and services designed for operation in the data center. The Members also understand that in certain lines of business they are direct competitors and that it is imperative that they and their representatives act in a manner which does not violate any applicable antitrust or competition laws pertaining to monopolistic or anti-competitive practices. Thus, all Members shall comply with all applicable antitrust and competition laws of all relevant jurisdictions. In addition, with the advice of counsel the Board of Directors shall from time to time promulgate detailed Antitrust Compliance Guidelines for the consideration of the Members concerning their participation in the Corporation. These Guidelines are not intended to replace or displace each Member's own antitrust policies, but shall operate to guide the Member's participation in the Corporation.

13.2 As a result of signing these Bylaws, participating in the development of Specifications, or in any way voting for or endorsing Specifications or Other Work, the Members are not required to develop or market any offerings, and are not precluded from engaging in any business activities whatsoever, even if they are competitive with the activities conducted under these Bylaws.

14.

Miscellaneous

14.1 Fiscal Year. The fiscal year of this Corporation shall end on the last day of December of each year.

14.2 Inspection of Corporate Records. The books of account and minutes of the proceedings of the Board of Directors, and of any committees of the Board of Directors, shall be open to inspection at the principal office of this Corporation by each Director at any reasonable time upon the written demand of any Director. Such inspection may be made in person or by an agent or attorney, and shall include the right to make photocopies and extracts at the requesting Director's expense.

14.3 Representation of Shares of Other Corporations. Any officer of this Corporation is authorized to vote, represent and exercise on behalf of this Corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this Corporation. The authority herein granted to said officers may be exercised by such officers in person or by other persons authorized to do so by proxy duly executed by such officers.

14.4 Checks, Drafts, Etc. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to this Corporation and any and all securities owned by or held by this Corporation requiring signature for transfer shall be signed or endorsed by such person or persons and in such manner as from time to time shall be determined by the Board of Directors.

14.5 Execution of Contracts. The Board of Directors may authorize any officer, employee, or agent to enter into any contract or execute any contract or execute any instrument in the name of and on behalf of this Corporation and such authority may be general or confirmed to specific instances. Unless so authorized by the Board of Directors, no officer, agent, or employee shall have any power or authority to bind this Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount. Provided, that pursuant to Section 7214 of the California Nonprofit Corporation Law, any such contract or instrument between this Corporation and any third person, when signed by (i) the President or Vice President, and (ii) the Secretary or Chief Financial Officer of this Corporation, shall be valid and binding upon this Corporation in the absence of actual knowledge on the part of said third person that the signing officers had no authority to execute the same.

14.6 Annual Statement of Certain Transactions and Indemnifications. Pursuant to Section 8322 of the California Nonprofit Corporation Law, the Board of Directors shall cause an annual statement of certain transactions and indemnifications to be delivered to the Board of Directors not later than one hundred twenty (120) days after the close of the fiscal year. If this Corporation issues an annual report, this requirement shall be satisfied by including the required information, as set forth below, in said annual report. Such annual statement shall describe:

14.6.1 The amount and circumstances of any loans, guarantees, indemnifications or advances aggregating more than One Thousand Dollars (\$1,000) paid during the fiscal year of this Corporation to any officer or Director of this Corporation; provided, that no such report need be made in the case of any loan, guarantee, indemnification or advance approved by the Governing Members; and

14.6.2 Any "covered transaction" (defined below) during the previous fiscal year of this Corporation involving (1) more than Five Thousand Dollars (\$5,000) or, (2) which was one of a number of "covered transactions" in which the same "interested person" (defined below) had a direct or indirect material financial interest, and which transactions in the aggregate involved more than Five Thousand Dollars (\$5,000). The statement shall describe the names of any "interested persons" involved in such covered transactions, including such "interested person's" relationship to the transaction, and, where practicable, the amount of such interest; provided, that in the case of a transaction with a partnership of which the interested person is only a partner, only the interest of the partnership need be stated. For the purposes of this section, a "covered transaction" is a transaction in which this Corporation, or its parent or subsidiary, was a party, and in which either of the following had a direct or indirect material financial interest:

- (i) Any Director or officer of this Corporation, or its parent or subsidiary; or
- (ii) Any holder of more than ten percent (10%) of the voting power of this Corporation, or of its parent or subsidiary.

For purposes of this section, any person described in either subparagraph (i) or (ii) above is an "interested person."

14.7 Corporate Loans, Guarantees and Advances. This Corporation shall not make any advances or make any loan of money or property to or guarantee the obligation of any director or officer, except as is expressly allowed under Section 7235 of the California Nonprofit Corporation Law.

14.8 Public Inspection and Disclosure. The Corporation shall have available for public inspection at its principal office a copy of its three (3) most recent annual exempt organization information returns and a copy of its application for recognition of exemption and determination letter. In addition, in the event that the Corporation provides services or information to the public for a fee, and such services or information are available from the federal government free of charge or for a nominal cost, such availability shall be conspicuously disclosed in an easily recognizable format in any solicitation or offer by the Corporation.

14.9 Political Activities. The Corporation shall not make any political expenditure or lobbying expenditure, which will result in the loss of, or otherwise adversely affect, its status as a tax-exempt organization under the United States Internal Revenue Code.

15.

Effective Date and Amendments

15.1 Effective Date. These Bylaws shall become effective immediately upon their adoption. Amendments to these Bylaws shall become effective immediately upon their adoption unless the Board of Directors of this Corporation in adopting them provided that they are to become effective at a later date.

15.2 Amendments. These Bylaws may be amended or repealed and new Bylaws adopted by a seventy-five percent (75%) vote of the Board of Directors upon proper notice, unless such action is reserved for approval by Governing Members pursuant to applicable law.

EXHIBIT A

DCML Organization, Inc. Governing Members

As of February 4th, 2004, the following companies are Governing Members of the DCML Organization:

Computer Associates

One Computer Associates Plaza
Islandia, NY 11749 USA

EDS Hosting Services

5400 Legacy Drive
Mail Stop H3-GF-05
Plano, Texas 75024 USA

Opsware, Inc.

599 N. Mathilda Ave.
Sunnyvale, CA 94085 USA

CERTIFICATE OF INCORPORATOR

I, the undersigned, do hereby certify:

1. That I am the incorporator of DCML Organization, Inc..
2. That the foregoing Bylaws constitute the Bylaws of the said Corporation adopted by me.

DATED: _____, 200__

Paul Reinhardt, Incorporator