

Amended and Restated Bylaws

[Note: In line with customary law firm practice, these form bylaws contain bracketed annotations to guide the drafter when preparing bylaws for a client. Unless otherwise specified, section numbers refer to applicable sections of the California Nonprofit Corporation Law. These annotations are for reference purposes only and should be removed before sending a draft to the client.]

1. Name

The name of this corporation is _____ (“Client”).

2. Membership

Client shall have no members, as defined in Section 5056 of the California Nonprofit Public Benefit Corporation Law, as amended (the “Nonprofit Corporation Law”). Client may from time to time use the term “members” to refer to persons associated with it, but such persons shall not be members within the meaning of Section 5056 of the Nonprofit Corporation Law. [§§5310, 5056]

3. Board of Directors

3.1 Powers

Subject to the provisions of the Nonprofit Corporation Law, Articles of Incorporation, and these Bylaws, Client’s activities and affairs shall be conducted, and all corporate powers shall be exercised, by or under the direction of the Board of Directors of Client (the “Board”). [§5210]

3.2 Number of Directors

The number of authorized directors of Client shall be not less than [_____] (___) nor more than [_____] (___), with the exact number of authorized directors to be fixed by resolution of the Board from time to time. [§5151(a)]

3.3 Qualification of Directors

No more than forty-nine percent (49%) of the directors serving on the Board may be interested persons[, as defined in Section 5227 of the Nonprofit Corporation Law]. [§5227(a)] [An interested person, as defined in Section 5227 of the Nonprofit Corporation Law, includes: (a) any person currently being compensated by Client for services rendered to it within the previous 12 months, whether as a full- or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director as director; or (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person. [§5227(b)]] However, any violation of this Section 3.3 shall not affect the validity or enforceability of any transaction entered into by Client. [§5227(d)]

3.4 Election and Term of Office

The Board shall elect directors to serve for one-year terms. [§5220(a)] Election requires approval of the Board. [A director may not serve for more than [_____] (___) consecutive terms, unless otherwise determined by the Board. However, a director may be elected to the Board to serve for any number of additional terms so long as there is at least a one-year break following every set of [_____] (___) consecutive terms.] An in-office director shall hold office until a successor has been elected and duly qualified or until that director’s earlier resignation or removal in accordance with these Bylaws. [§5220(b)]

3.5 Vacancies

A vacancy or vacancies on the Board shall exist in the event that the actual number of directors is less than the authorized number for any reason. In addition, the Board may declare by resolution a vacancy in the office of any director who has been declared of unsound mind by a final order of court, convicted of a felony, or found by final order or judgment of any court to have breached any duty under Article 3 of Chapter 2 of the Nonprofit Corporation Law. [§5221(a)]

3.6 Resignation

Except as provided below, any director may resign at any time by giving written notice to the Chair, the Executive Director, or the Secretary (as each is defined in Section 6.1). The resignation shall take effect upon receipt of notice or at any later time specified in the notice. [§5224(c)] Unless otherwise specified in the notice, the resignation need not be accepted to be effective. If a director's resignation is effective at a later time, the Board may elect a successor to take office as of the date when the resignation becomes effective. [§5224(c)] Except on notice to the Attorney General of California, no director may resign if Client would be left without a duly elected director or directors in charge of its affairs. [§5226]

3.7 Removal

A director may be removed from office at any time, with or without cause, by approval of a majority of directors then in office. [§5222(a)] No reduction in the authorized number of directors shall have the effect of removing any director before that director's term of office expires unless the reduction also provides for the removal of that specified director in accordance with these Bylaws and the Nonprofit Corporation Law. [§5222(c)]

3.8 Filling Vacancies

Vacancies on the Board may be filled, at a regular or special meeting of the Board, by approval of the Board or, if the number of directors then in office is less than a quorum, by (a) the unanimous written consent of the directors then in office, (b) the affirmative vote of a majority of directors then in office at a meeting held with notice in accordance with Section 4.4 or waiver of notice in accordance with Section 4.6, or (c) a sole remaining director. [§5224(a)] A director elected to fill an existing vacancy shall hold office for the unexpired portion of the term, or until their death, resignation, or removal from office. [§5220(b)] [A director's service filling an unexpired term shall not count as a term for purposes of the term limits set out in Section 3.4.]

3.9 Compensation and Reimbursement

Directors shall not receive any compensation for their services as directors. [§5235(a)] The Board may authorize the advancement or reimbursement to a director of actual reasonable expenses incurred in carrying out his or her duties as a director. [§5236(a)]

3.10 Conflict of Interest Policy

The Board shall adopt a policy that (a) requires directors, officers, and key employees to disclose any interest that constitutes or could result in a conflict of interest and (b) sets out procedures for reviewing and resolving such matters in accordance with law. [IRS Form 990 Part VI.B, Lines 12a, b, c; Internal Revenue Code §§501(c)(3), 4958]

4. Board Meetings

4.1 Regular Meetings

Regular meetings of the Board shall be held at such dates, times, and places as determined by the Board. [§5211(a)(2)] Each year, the Board shall hold at least one meeting [designated as the annual meeting], and shall hold at least one meeting at which the agenda includes filling vacancies on the Board, if any, arising from expiration of terms or from newly-created Board positions that have not previously been filled under Section 3.8.

4.2 Special Meetings

Special meetings of the Board, for any purpose, may be called at any time by the Chair, the Executive Director, the Secretary, or any two directors. [§§5211(a)(1), (2)] A special meeting shall be held at a place within California as designated by the person or persons calling the meeting, and in the absence of such designation, at the principal office of Client. [§5211(a)(5)]

4.3 Telephone and Electronic Meetings; [Public Meetings]

Any meeting may be held by conference telephone, video conference, or similar communication equipment, as long as all directors participating in the meeting can hear one another and, in the case of video conferences, have some form of access to all materials screen-shared or otherwise presented at such conferences. [§5211(a)(6)] All such directors shall be deemed to be present in person at such a meeting. [§5211(a)(6)] [The Board shall hold public meetings as required by applicable law.]

4.4 Notice

Regular meetings may be held without notice if the date, time, and place of the regular meetings are fixed by action of the Board. [§5211(a)(2)] Notice of the date, time, and place of a special meeting, or of a regular meeting if not designated by the Board, shall be given to each director by one of the following methods: (a) upon at least four (4) days' notice if by first-class mail; or (b) at least forty-eight (48) hours before the meeting if (i) by personal delivery of written notice; (ii) by telephone, whether directly to the director, to a person at the director's office who would reasonably be expected to communicate that notice promptly to the director, or by voice-messaging system; (iii) by facsimile transmission; or (iv) by e-mail. [§5211(a)(2)] All such notices shall be given or sent to the director's address, facsimile number, e-mail address, or telephone number as shown on the records of Client. The notice shall state the date and time of the meeting, and the place if other than the principal office of Client. It need not specify the purpose of the meeting. [§5211(a)(2)] Notices given by facsimile transmission or by e-mail may be given only in accordance with Section 8.4.

4.5 Voting

Each director present and voting at a meeting shall have one vote on each matter presented to the Board for action at that meeting. No director may vote at any meeting by proxy. [§5211(c)]

4.6 Waiver of Notice

Notice of a meeting need not be given to any director who signs a waiver of notice, a written consent to the holding of the meeting, or an approval of the minutes of the meeting, whether before or after the meeting, or attends the meeting without protesting the lack of notice, either before or at the commencement of the meeting. [§5211(a)(3)] The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. [§5211(a)(3)]

4.7 Quorum

A majority of the total number of directors then in office (but no fewer than two (2) directors or one-fifth (1/5) of the authorized number of directors, whichever is greater) shall constitute a quorum. [§5211(a)(7)] The Board shall not transact any business at any meeting at which a quorum is not present, except that the directors at a duly held meeting at which a quorum is initially present may continue to transact business, despite the departure of directors, if any action taken or decision made is approved by at least a majority of the required quorum for that meeting. [§5211(a)(8)]

4.8 Board Approval

An action taken or decision made by a majority of the directors present at a duly held meeting at which a quorum is present shall be the act of the Board, except as provided

by Section 5211 of the Nonprofit Corporation Law or as elsewhere provided in these Bylaws. [§5211(a)(8)]

4.9 Adjournment

A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place.[§5211(a)(4)] Notice of adjournment to another time or place need not be given unless the original meeting is adjourned for more than twenty-four (24) hours, in which case notice shall be given, before the time of the adjourned meeting, to the directors who were not present at the time of the adjournment. [§5211(a)(4)]

4.10 Minutes

The Board shall keep minutes of each meeting, which shall be kept and filed with the corporate records. [§§5215, 6320(a)(2)]

4.11 Action Without a Meeting

[Subject to the requirements of any public meeting laws,] Any action that the Board is required or permitted to take may be taken without a meeting if all directors, individually or collectively, consent in writing to the action; provided that the consent of any "interested director" as defined in Section 5233 of the Nonprofit Corporation Law shall not be required for approval of that transaction and provided further that the procedures set out in Section 5211(b) of the Nonprofit Corporation Law are followed. Such action by written consent shall have the same force and effect as a unanimous vote of the directors. All such consents shall be filed with the minutes of the proceedings of the Board. [§5211(b)]

5. Committees

5.1 Board Committees

The Board may, by resolution of a majority of directors then in office, provided that a quorum is present, create, and appoint members to, one (1) or more committees ("Board Committees"), each consisting of two (2) or more directors, to serve at the pleasure of the Board. [§5212(a)] Only directors may serve on any Board Committee. [§5212(b)] The Board may appoint one (1) or more directors as alternate members of any such Board Committee, who may replace any absent Board Committee member at any meeting of the Board Committee. [§5212(a)] Any Board Committee, to the extent provided in the Board resolution creating such Board Committee, shall have all the authority of the Board, subject to the limitations set out in Section 5212 of the Nonprofit Corporation Law. [§5212(a)(1)-(8)] The Board may, at any time by vote of a majority of directors then in office, revoke or modify any or all of the authority so delegated to a Board Committee.

5.2 Action of Board Committees

Except as may otherwise be determined by the Board or as the situation may require, meetings and actions of Board Committees shall be governed by, held, and taken in accordance with the provisions of these Bylaws concerning meetings and other Board actions. Each Board Committee shall keep minutes of each meeting, which shall be kept and filed with the corporate records. [§§5215, 6320(a)(2)]

5.3 Advisory Committees

The Board may create and appoint individuals to one (1) or more advisory committees ("Advisory Committees"), each consisting of two (2) or more directors, non-directors, or a combination of directors and non-directors. Advisory Committees may not exercise the authority of the Board to make decisions on behalf of Client. [§5212(b)] Advisory Committees shall be restricted to making recommendations to the Board or Board Committees and implementing Board or Board Committee decisions and policies under the supervision and control of the Board or Board Committee. The Board may, at any

time, revoke or modify any or all of the responsibilities assigned to an Advisory Committee.

5.4 Audit Committee

The Board shall create an audit committee if required by the California Nonprofit Integrity Act of 2004 (the "Nonprofit Integrity Act"). [*§5212(d); California Government Code §12586(e)(2)*]

5.5 Advisory Council

The Board may create and appoint individuals to one or more advisory councils or similar bodies (each, an "Advisory Council"), consisting of persons who are not officers or directors of Client, with such responsibilities as determined by the Board. [*§5212(b)*] Any such Advisory Council shall act only in an advisory capacity to the Board, shall have no legal authority to act for Client, and shall clearly be held out as an "advisory council" or similar name. The Board may, at any time, revoke or modify any or all of the responsibilities assigned to an Advisory Council. [*conform to client situation; Advisory Councils are typically established for fundraising, PR, or ambassadorship purposes*]

6. Officers

6.1 Officers

The officers of Client shall be a chair of the Board (the "Chair"), a chief executive officer who shall be called the executive director (the "Executive Director"), a secretary (the "Secretary"), a treasurer (the "Treasurer"), [a chief financial officer (the "CFO"),] any number of vice-chairs (each a "Vice-Chair"), and such other officers as the Board may determine. [*§5213(a), SB 351*] The Chair must be a director. The same individual may hold any number of offices, except that neither the Secretary nor the Treasurer may serve concurrently as either the Executive Director or the Chair. [*§5213(a)*]

6.2 Election and Term

The officers of Client shall be elected by the Board at any time and shall serve at the pleasure of the Board, subject to the rights, if any, of any officer under any contract of employment. [The Chair, Vice-Chair, Secretary, and Treasurer shall each serve for one-year terms.] [*§§5213(b), (c)*]

6.3 Resignation

Any officer may resign at any time by giving written notice to the Chair, the Executive Director, or the Secretary. [*§5213(b)*] The resignation shall take effect upon receipt of notice or at any later time specified in the notice. Unless otherwise specified in the notice, the resignation need not be accepted to be effective. Any resignation shall be without prejudice to the rights, if any, of Client under any contract to which the officer is a party. [*§5213(b)*]

6.4 Removal

Any officer may be removed with or without cause by the Board or by any officer on whom the Board may confer that power of removal, without prejudice to any rights of an officer under any contract of employment. [*§5213(b)*]

6.5 Vacancies

A vacancy in any office for any reason shall be filled in the manner prescribed in these Bylaws for regular appointments to that office.

6.6 Chair

The Chair shall preside at all meetings of the Board, if present, and shall exercise and perform such other powers and duties as the Board or these Bylaws may prescribe.

6.7 Vice-Chair

The Vice-Chair shall have such powers and perform such duties as the Board or these Bylaws may prescribe. In the absence of the Chair, a Vice-Chair selected by the Board shall preside at Board meetings.

6.8 Executive Director

The Executive Director shall be the general manager and chief executive officer of Client as contemplated by Section 5213 of the Nonprofit Corporation Law and shall be responsible for the day-to-day management of Client's activities and affairs. The Executive Director shall have such other powers and duties as the Board or these Bylaws may prescribe. [§5213(a)] Unless otherwise directed by the Board or relevant Board Committee, or unless the Board determines to meet in an executive session, the Executive Director, if not a director, may attend all Board and Board Committee meetings.

6.9 Secretary

The Secretary shall supervise the maintenance of Client's Articles of Incorporation, Bylaws, and minutes and records of the proceedings of the Board and its committees, and the giving of notices as may be proper or necessary. The Secretary shall have such other powers and duties as the Board or these Bylaws may prescribe. [§6320]

6.10 Treasurer

The Treasurer shall be the chief financial officer of Client as contemplated by Section 5213 of the Nonprofit Corporation Law. The Treasurer shall engage with staff and lead the Board's (a) oversight of Client's budgeting and planning processes; (b) monitoring of financial performance and financial condition; and (c) oversight of funds management. The Treasurer shall have such other powers and duties as the Board or these Bylaws may prescribe. [§5213(a)]

[Alternative to Section 6.10:

6.10 Treasurer

The Treasurer shall engage with the CFO and other Client staff lead the Board's (a) oversight of Client's budgeting and planning processes; (b) monitoring of financial performance and financial condition; and (c) oversight of funds management. The Treasurer shall have such other powers and duties as the Board or as these Bylaws may prescribe.

6.11 Chief Financial Officer

The CFO shall be Client's chief financial officer as contemplated by Section 5213 of the Nonprofit Corporation Law. The CFO shall supervise the charge and custody of all funds of Client, the deposit of such funds in the manner determined by the Board, and the keeping and maintaining of adequate and correct accounts of Client's properties and business transactions, and shall render reports and accountings as required by law, these Bylaws, by the Board, or by the Executive Director. [Unless otherwise directed by the Board or relevant Board Committee, or unless the Board determines to meet in an executive session, the CFO, if not a director, may attend all Board and Board Committee meetings.]

6.11 Compensation Review

The Board shall take such actions to review, approve, and document the approval process for officer and key employee compensation as may be required under the Nonprofit Integrity Act, federal tax law, and other applicable law, which may include adoption of a written policy setting forth guidelines for such actions. [§5213(a); California Government Code §12586(g); IRS Form 990 Part VI.B, Line 15a, b; Internal Revenue Code §§501(c)(3), 4958]

7. Indemnification and Insurance

7.1 Definitions

For purposes of this Section 7, “Agent” means any person who is or was a director, officer, employee, or other agent of Client, or is or was serving at the request of Client as a director, officer, employee, or other agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a director, officer, employee, or agent of a predecessor corporation of Client or another enterprise at the request of such predecessor corporation; “Proceeding” means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and “Expenses” includes, without limitation, attorneys’ fees and any expenses incurred in establishing a right to indemnification under Section 7.2. [§5238(a)]

7.2 Right of Indemnity

To the fullest extent permitted by law and subject to Section 7.3 and the other provisions of these Bylaws, Client [may] [shall] indemnify any person who was or is a party or is threatened to be made a party by reason of the fact that such person is or was an Agent of Client, against all Expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the Proceeding. [§§5238(b), (c)]

7.3 Approval of Indemnity

On written request to the Board by any Agent seeking indemnification, to the extent that the Agent has been successful on the merits, the Board shall promptly authorize indemnification in accordance with Section 5238(d) of the Nonprofit Corporation Law. Otherwise, the Board shall promptly determine, by a majority vote of a quorum consisting of directors who are not parties to the Proceeding, whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) of the Nonprofit Corporation Law has been met and, if so, may authorize indemnification.

7.4 Advancement of Expenses

The Board may authorize, by a majority vote of a quorum consisting of directors who are not parties to the Proceeding, the advance of Expenses incurred by or on behalf of an Agent in defending any Proceeding, before final disposition of the Proceeding, if (a) the Board finds that the requested advances are reasonable in amount under the circumstances, and (b) the Agent submits a written undertaking to repay the advance, unless it is determined ultimately that the Agent is entitled to be indemnified by Client for those Expenses. [§5238(f)]

7.5 Insurance

Client shall have the right to purchase and maintain insurance on behalf of any Agent against any liability asserted against or incurred by the Agent in such capacity or arising out of the Agent’s status as such, whether or not Client would have the power to indemnify the Agent against such liability under this Section 7, provided, that Client shall not have the power to purchase and maintain such insurance to indemnify any Agent of Client for a violation of Section 5233 of the Nonprofit Corporation Law. [§5238(i)]

8. Records, Reports and Communications

8.1 Inspection by Directors

Every director shall have the right at any reasonable time to inspect Client’s books, records, documents, and physical properties. The inspection may be made in person or by the director’s agent or attorney. The right of inspection includes the right to copy and make extracts. [§6334]

8.2 Financial Reporting

Client shall produce and distribute the financial and other reports required by the Nonprofit Corporation Law, including, without limitation, the annual report required by

Section 6321 of the Nonprofit Corporation Law and the statement of transactions or indemnification required by Section 6322 of the Nonprofit Corporation Law, and if required, shall produce and make publicly available the financial statements required by the Nonprofit Integrity Act. [*California Government Code §12586(e)(1)*]

8.3 Fiscal Year

The fiscal year of Client shall begin on _____ and end on _____ each year, unless otherwise determined by the Board.

8.4 Electronic Transmissions

Unless otherwise provided in these Bylaws, and subject to any guidelines and procedures that the Board may adopt from time to time, the terms “written” and “in writing” as used in these Bylaws (including, without limitation, the written consents contemplated by Section 4.11) include any form of recorded message capable of comprehension by ordinary visual means, and may include electronic transmissions, such as facsimile or e-mail; provided that (a) Client has obtained a valid written consent from the recipient to the use of such means of communication; (b) for electronic transmissions to Client, Client has in effect reasonable measures to verify that the sender is the individual purporting to have sent such transmission; and (c) the transmission creates a record that can be retained, retrieved, reviewed, and rendered into clearly legible, tangible form. [*§§20, 21*]

9. Gifts, Grants and Contracts

9.1 Gifts

The Board or its designee may accept on behalf of Client any contribution, gift, bequest, or devise for the charitable purposes of Client.

9.2 Grants

The Board shall exercise itself, or delegate, subject to its supervision, control over grants, contributions, and other financial assistance provided by Client, [including, without limitation, those made in connection with fiscal sponsorship relationships].

9.3 Deposits

All funds of Client shall be deposited to the credit of Client in such banks, trust companies, or other depositories or agency organizations as the Board may authorize.

9.4 Contracts

The Board may authorize any officer(s) or agent(s), in the name of and on behalf of Client, to enter into any contract or execute any instrument. Any such authority may be general or confined to specific instances, or otherwise limited. In the absence of any action by the Board to the contrary, the Chair, the Executive Director, and the Treasurer are each authorized to execute such instruments on behalf of the corporation.

[*§§5141(b), 5214*]

9.5 Payment of Money

Except as otherwise specifically determined by resolution of the Board, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of Client may be signed by each of the Chair, the Executive Director, or the Treasurer. [*§§5141(b), 5214*]

10. Office

10.1 Principal Office

The principal office of Client for the transaction of its business shall be located in _____, California, or in such other place as may be specified by resolution of the Board.

10.2 Other Offices

Client may also have branch or subordinate offices at other places, within or outside California, as the Board may determine.

11. Emergency Provisions

In anticipation of or during an emergency, as defined in Section 5140(n)(5) of the Nonprofit Corporation Law, Client may take any of the actions set out in Section 5140(n) of the Nonprofit Corporation Law. [§§5140(n), 5151(g)]

12. Amendment

Except as otherwise provided by law, these Bylaws may be amended or repealed and new bylaws adopted by approval of the Board. [§5150]

[Amended and restated] on:_____