# TABLE OF CONTENTS

PREFACE IV

REVISION RECORD ............................................................................................................... IV

INTENDED AUDIENCE ........................................................................................................ IV

COPYRIGHT IV

ARTICLE I MISSION............................................................................................................... 5

ARTICLE II OFFICES............................................................................................................. 6

2.01 PRINCIPAL OFFICE ........................................................................................................ 6
2.02 CHANGE OF ADDRESS ............................................................................................... 6

ARTICLE III MEMBERS....................................................................................................... 7

3.01 CLASSIFICATION AND QUALIFICATION OF MEMBERS ......................................... 7
3.02 ELIGIBILITY FOR MEMBERS ..................................................................................... 8
3.03 ADMISSION TO MEMBERS ......................................................................................... 8
3.04 APPLICATION FEE ....................................................................................................... 9
3.05 DUES ............................................................................................................................. 9
3.06 NUMBER OF MEMBERS ............................................................................................ 9
3.07 MEMBERSHIP BOOK ................................................................................................ 9
3.08 INSPECTION RIGHTS OF MEMBERS ....................................................................... 9
3.09 CERTIFICATES OF MEMBERS .................................................................................. 9
3.10 NONLIABILITY OF MEMBERS .................................................................................. 9
3.11 TRANSFERABILITY OF MEMBERS .......................................................................... 10
3.12 TERMINATION OF MEMBERS .................................................................................. 10

ARTICLE IV DIRECTORS.................................................................................................... 11

4.01 NUMBER ..................................................................................................................... 11
4.02 QUALIFICATIONS ....................................................................................................... 11
4.03 TERMS OF OFFICE ................................................................................................... 11
ARTICLE V MEMBERSHIP VOTES ............................................................................................... 13

5.01 DEFINITION............................................................................................................................... 13
5.02 INITIATION OF A MEMBERSHIP VOTE .................................................................................... 13
5.03 ELECTORATE AND QUORUM REQUIREMENTS ........................................................................ 13
5.04 BALLOTING .................................................................................................................................. 13
5.05 PASSAGE REQUIREMENTS .......................................................................................................... 14

ARTICLE VI OFFICERS ...................................................................................................................... 15

6.01 NUMBER AND TITLES .................................................................................................................. 15
6.02 APPOINTMENT AND RESIGNATION ............................................................................................. 15

ARTICLE VII CORPORATE RECORDS AND REPORTS .................................................................. 16

7.01 KEEPING RECORDS ..................................................................................................................... 16
7.02 ANNUAL REPORT .......................................................................................................................... 16
7.03 ANNUAL STATEMENT OF CERTAIN TRANSACTIONS AND INDEMNIFICATIONS ............... 16

ARTICLE VIII ADDITIONAL PROVISIONS ...................................................................................... 17

8.01 ASSIGNMENT OF RIGHTS AND LICENSES .............................................................................. 17
8.02 PUBLIC AVAILABILITY OF STANDARDS .................................................................................. 17
8.03 STANDARD OF CONDUCT ......................................................................................................... 17
8.04 AMENDMENT OF BYLAWS ....................................................................................................... 18
8.05 ARBITRATION .............................................................................................................................. 18
8.06 ADOPTION OF PUBLIC STANDARDS ....................................................................................... 18
PREFAE

REVISION RECORD

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<td>1/5/98</td>
<td>Many</td>
<td>Model TPC bylaws more closely</td>
<td>J. Stephens</td>
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<td>Remove draft status, update SPC address, phone, fax, email, and website information</td>
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<td>Modify Associate Membership requirements and create an Academic Membership class based on November 1999 Membership Vote</td>
<td>W. E. Baker</td>
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<td>4</td>
<td>Change dues structure (Article 2.05).</td>
<td>R. Reich</td>
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<td>W. E. Baker</td>
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<td>2.0</td>
<td>23 July 2012</td>
<td>Many</td>
<td>General review and alignment with current practice</td>
<td>J. Stephens</td>
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INTENDED AUDIENCE
This plan is intended for use by members of the Storage Performance Council.

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ARTICLE I      MISSION

The Storage Performance Council (SPC) is a non-profit corporation founded to define, standardize, and promote storage subsystem benchmarks as well as to disseminate objective, verifiable performance data to the computer industry and its customers.

The SPC strives to maintain a healthy, safe and productive work environment which is free from discrimination or harassment based on race, color, religion, sex, sexual orientation, age, national origin, disability, veteran status, membership or an application for membership in a uniformed service, such as the military or a public health service, or other factors that are unrelated to the SPC’s legitimate business interests.
ARTICLE II  OFFICES

2.01  PRINCIPAL OFFICE

The principal office of the Corporation for its transaction of business is located in the City of Redwood City and County of San Mateo in the State of California.

2.02  CHANGE OF ADDRESS

The Board of Directors is hereby granted full power and authority to change the principal office of the Corporation from one location to another within or outside the State of California. Any such change shall be noted by the Secretary in these Bylaws, and shall not be considered an amendment of these Bylaws.
ARTICLE III    MEMBERS

3.01 CLASSIFICATION AND QUALIFICATION OF MEMBERS

The Storage Performance Council (hereafter “the Corporation” or “SPC”) shall have three classes of members: Full, Associate, and Academic. No person or entity shall hold more than one membership in the Corporation at any one time.

(a) Full Member: Any company or organization may apply to become a Full Member of the SPC. (Note: all references to “members” in the SPC bylaws and policies refer to Full Members unless stated otherwise). A Full Member of the SPC is entitled to the following:

1. Right to appoint a director, as defined in ARTICLE III, to the Board of Directors. This person is also referred to as the ‘Primary Representative’ of the member. For all intents and purposes, ‘Primary Representative’ and ‘Director’ are synonymous.
2. Right of access to all internal SPC documents.
3. Right to vote on final approval of any and all proposed SPC Benchmark Standards and any other SPC Matter
4. Right to voluntarily participate in technical subcommittee activities under the guidelines and policies set forth in this document as well as the SPC Policies and Procedures.

Only the identified Primary Representative of a member can be nominated and elected to the SPC Steering Committee. Full members are required to follow all SPC bylaws and policies.

(b) Associate Member: Any company or organization may apply to become an associate SPC member. Associate Members are required to follow all SPC bylaws and policies. An Associate Member of the SPC is entitled to the following:

1. Right to receive all SPC mailings and information shared with members;
2. Right to attend SPC Board meetings as an invited guest;
3. Right to participate, as a non-voting member, in SPC technical subcommittees as an invited guest.

Associate Members are not eligible to:

1. Vote on any SPC matter;
2. Chair any SPC subcommittee or act as an officer of the corporation;
3. Appoint a member to the Board of Directors;
4. Attend SPC Board (General Council) or subcommittee meetings other than as an invited guest.

(c) Academic Member: Academic membership is open to both accredited academic institutions and individuals associated with such institutions. Academic members are required to follow all SPC bylaws and policies. An Academic member is entitled to the following:

1. Right to receive all SPC mailings and information shared with members;
2. Right to participate, as a non-voting member, in SPC technical subcommittees,
3. Right to attend SPC Board meetings as an invited guest.

Academic members are not eligible to:

1. Vote on any SPC matter;
2. Chair any SPC subcommittee or act as an officer of the corporation;
3. Appoint a member to the Board of Directors
4. Attend SPC Board (General Council) or subcommittee meetings other than as an invited guest.

The Table III-1 illustrates the rights and privileges for each type of SPC member class.
3.02 ELIGIBILITY FOR MEMBERSHIP

Any person, as defined in Section 5065 of the California Corporations Code (the “Code”), who pays the annual dues and who is not a subsidiary or affiliate of one or more members is eligible to be a member of the Corporation. For purposes of eligibility an entity or corporation shall be a subsidiary of one or more members if one or more members own, directly or indirectly, voting stock sufficient to elect a majority of the Board of Directors of said entity or corporation. For purposes of eligibility an affiliate of a member shall be any person, entity or corporation who directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a member.

3.03 ADMISSION TO MEMBERSHIP

(a) Any person, as defined in Section 5065 of the Corporations Code, eligible for membership (see Clause 3.01) may apply for membership by submitting to the Administrator of the Corporation an application in such form and in such manner as shall be prescribed by the Steering Committee. The application must be accompanied by an agreement in writing, in the form of a purchase order or other written document acceptable to the Administrator, to pay within ninety (90) days the first year’s annual dues.

(b) Upon receipt of a membership application, the Administrator shall determine whether an applicant may be granted membership and forward a recommendation to the Steering Committee. While membership will generally be granted, the Administrator has the discretion to recommend against membership for any applicant when granting said membership would not be in the best interests of the Corporation.

(c) Membership shall be granted to the applicant upon passage of a motion by the Steering Committee accepting the membership application. Should the Steering Committee motion granting membership fail, the applicant’s membership application is denied.

(d) The Administrator may, and upon the written request of five or more members shall, submit to the Board of Directors the question of whether an applicant meets the membership requirements. In such a case, a Board Vote shall be taken to determine whether or not the applicant is granted membership in the Corporation.

(e) Upon admission to membership each member shall be entitled to all rights accorded to their membership class.

Table III-1 Membership Rights

<table>
<thead>
<tr>
<th>Membership Dues</th>
<th>Full Member</th>
<th>Associate Member</th>
<th>Academic Member</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formal motions/voting rights</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Straw vote</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Attend Board meetings</td>
<td>Yes</td>
<td>Invited guest</td>
<td>Invited guest</td>
</tr>
<tr>
<td>Attend technical</td>
<td>Yes</td>
<td>Invited guest</td>
<td>Invited guest</td>
</tr>
<tr>
<td>subcommittee meetings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Access to Members Only website</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Submit email to the SPC reflector</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
3.04 APPLICATION FEE
There shall be no fee for making an application for membership in the Corporation.

3.05 DUES
(a) The annual dues for any given year are payable to the Corporation by members in such amount as shall be determined by resolution of the Steering Committee.

(b) The membership shall be notified of the dues levels for a given year as soon after the resolution as is practical.

(c) The payment schedule for annual dues, including any deadlines, penalties or actions due to non-payment of annual dues shall be governed by the policies and procedures or the SPC in force at the time of the notification of the dues level for a given year.

3.06 NUMBER OF MEMBERS
There shall be no limit on the number of members that the Corporation may admit.

3.07 MEMBERSHIP BOOK
The Corporation shall keep in written form a membership book containing the name and address of each member. The book shall also contain the fact of termination and the date on which such membership ceased. Such book shall be kept at the principal offices of the Corporation and shall be subject to the rights of inspection required by law and set forth in these Bylaws. The Administrator shall be responsible for maintaining such membership book.

3.08 INSPECTION RIGHTS OF MEMBERS
(a) Demand. Subject to the Corporation’s right to set aside a demand for inspection pursuant to Section 8331 of the Code and the power of the court to limit inspection rights pursuant to Section 8332 of the Code, any member may do either or both of the following:

1) Inspect and copy the record of all the members’ names, addresses and voting rights at reasonable times, on ten (10) business days prior written demand on the Corporation, which demand shall state the purpose for which the inspection rights are requested; or

2) Obtain from the Administrator, on written demand and tender of a reasonable charge (as set by the Administrator), a list of the names, addresses and voting rights of those members entitled to vote for the election of Directors, as of the most recent record date for which it has been compiled or as of the date of demand. The demand shall state the purpose for which the list is requested. The membership list shall be available on or before the later of ten (10) business days after the demand is received or after the date specified therein as the date of which the list is to be compiled.

3.09 CERTIFICATES OF MEMBERSHIP
The Corporation shall not issue membership certificates.

3.10 NONLIABILITY OF MEMBERS
(a) Members and their representatives shall not be subject to or responsible for the liabilities of the Corporation.
3.11 TRANSFERABILITY OF MEMBERSHIP

Neither the membership in the Corporation nor any rights in the membership may be transferred for value nor otherwise without the consent of the Board, which shall not be unreasonably withheld.

3.12 TERMINATION OF MEMBERSHIP

(a) Causes. Membership and all rights of membership shall automatically be terminated on the occurrence of any of the following causes:

(1) The voluntary resignation of a member with notice as prescribed by these Bylaws;
(2) Where a membership is issued for a period of time, the expiration of such period of time;
(3) The death of a member who is an individual or him or her becoming an affiliate of another member;
(4) The dissolution of a member that is a corporation or its becoming an affiliate of another member;
(5) The nonpayment of dues, subject to the limitation set forth in Section 7341 of the California Corporations Code.
(6) Expulsion of the member based on the good faith determination by the board that the member has failed in a material and serious degree to observe the rules of conduct of the Corporation or has engaged in conduct materially and seriously prejudicial to the purposes and interests of the Corporation.

(b) Resignation by Giving Notice. The membership of any member of the Corporation shall automatically terminate on such member’s written request for such termination delivered to the Administrator of the Corporation personally or deposited in United States first-class mail, postage prepaid.

(c) Effect of Termination. All rights of a member in the Corporation and in its property shall cease on the termination of such member’s membership. Termination shall not relieve the member from any obligation for charges incurred, services or benefits actually rendered, dues, or fees, whether arising from contract or otherwise. The Corporation shall retain the right to enforce any such obligation or obtain damages for its breach.

(d) Challenge of Termination. Any action challenging an expulsion or termination of membership, including a claim alleging defective notice, must be commenced within one year after the date of the expulsion or termination.
ARTICLE IV  DIRECTORS

4.01 NUMBER
The Corporation shall have one Director for each Full Member. The number of Directors is only limited by the number of Full Members. Upon admission or termination of a Full Member, the size of the Board will be considered to be automatically adjusted. No action on the Board's part is required after accepting a Full Member's membership application or the termination of a Full Member's membership.

4.02 QUALIFICATIONS
A Director of the Corporation may be any person who is a Full Member, or an employee of a Full Member that is itself a corporation.

4.03 TERMS OF OFFICE
Each Director shall hold office for so long as he or she is a member or, if such director is an employee of a member, until such member terminates its membership or replaces said director with another representative.

4.04 COMPENSATION
The Directors shall serve without compensation from the Corporation, but may be reimbursed actual expenses associated with such service as may be approved by the Board.

4.05 MEETINGS OF THE BOARD

(a) Call of Meetings. Meetings of the Board may be called by the Steering Committee or scheduled in advance by the Board.

(b) Place of Meetings. Meetings of the Board shall be held at such place as the Board or Steering Committee shall designate.

(c) Notice of Meetings. Unless scheduled in advance by the Board, meetings shall be held on five (5) days notice by first class mail, postage prepaid, or on two (2) days notice delivered personally or by telephone or telegraph. Notice of the meeting need not be given to any Director who has waived his right to notice (see Clause 4.05(d)). All such waivers, consents, and approval shall be filed with the corporate record or made a part the minutes of the meetings.

(d) Waiver of Notice. A Director will be deemed to have waived his right to notice of a meeting upon receipt by the Administrator of one or more of the following:

- a waiver of notice signed by the Director
- a written consent to holding the meeting signed by the Director
- an approval of the minutes of the meeting, whether before or after the meeting, signed by the Director
- proof of attendance at the meeting without protesting, either prior thereto or at its commencement, by the Director.

(e) Quorum. Greater than one third of the Directors constitutes a quorum of the Board for the transaction of business, except as hereinafter provided.
(f) **Transactions of Board.** Except as otherwise provided in the Articles, in these Bylaws, or by law, every act or decision done or made by a majority of the Directors present at a meeting at which a quorum is present is the act of the Board.

(g) **Conduct of Meetings.** The Chairman of the Steering Committee or, in his or her absence any director selected by the Chairman of the Steering Committee, shall preside at meetings of the Board of Directors. The Secretary of the Corporation or such other person appointed by the presiding officer shall act as Secretary of the Board. Members of the Board 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. Such participation shall constitute personal presence at the meeting.

(h) **Adjournment.** A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of the adjournment to another time or place must be given prior to the meeting’s being reconvened to Directors who were not present at the time of the adjournment.

### 4.06 ACTION WITHOUT MEETING

Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board 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 the unanimous vote of said Directors.

### 4.07 RESIGNATION OF DIRECTOR

Any Director may resign effective on giving written notice to the Administrator of the Corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

### 4.08 VACANCIES IN THE BOARD

(a) **Causes.** A vacancy on the Board of Directors shall exist upon the death or resignation of any Director or on the termination of a Director's membership.

(b) **Filling Vacancies by Members.** Any vacancy, as a result of expulsion, death or resignation of a Director, shall, in the case of a Director who is an employee of a member, be filled by the member who was represented by said Director by appointing a replacement Director. If a Director who died or resigned was a member rather than an employee of a member, all rights of membership shall automatically terminate and the size of the board shall be automatically adjusted. If a Director’s membership is terminated the size the board shall be automatically adjusted.
ARTICLE V  MEMBERSHIP VOTES

5.01 DEFINITION

Membership Votes are those votes that are presented to the Full Members of the SPC and conducted by the Administrator. They are reserved for substantive changes or milestones for the SPC, including:

- Changes to the Bylaws, and
- Approval of new standards.

5.02 INITIATION OF A MEMBERSHIP VOTE

An affirmative Board Vote, as defined by the then-current SPC Policies and Procedures, is required to begin the Membership Vote process for a specific SPC action. Upon passage of the Board Vote, the Administrator shall establish the electorate for the Membership Vote.

5.03 ELECTORATE AND QUORUM REQUIREMENTS

The Administrator shall establish the electorate for a Membership Vote as follows:

a) An electronic message will be sent to the Primary Representative of each member to determine if that member wishes to participate in the Membership Vote.

b) The electronic message will be formatted so that it is clearly identified as an "SPC Membership Voting Action" and include a clear statement of the SPC action proposed for the Membership Vote.

c) A confirmation electronic message will be sent one week after the initial electronic message to ensure notification. The confirmation will contain the same content as the initial confirmation.

d) Primary representatives must respond affirmatively within fourteen (14) calendar days from the distribution date of the initial message in order to be included as a participant in the Membership Vote. Responses must be in the form of a clearly identifiable message delivered to the Administrator.

If at least one-third of the SPC membership at the time of the Board Vote required by 5.02 responds affirmatively within the required time period, the quorum requirement for the Membership Vote is satisfied, and the electorate for the Membership Vote is members who responded affirmatively.

If fewer than one-third of the SPC membership at the time of the Board Vote required by 5.02 responds affirmatively within the required time period, the Membership Vote is not taken and the proposed SPC action fails.

5.04 BALLOTING

After the electorate has been established for the Membership Vote, it will be balloted as follows:

a) An ballot will be sent to the Primary Representative of each member in the electorate.

b) The ballot will be formatted to clearly identify it as an "SPC Membership Voting Action" and will contain the complete motion submitted for a Membership Vote.

c) A confirmation will be sent one week after the initial ballot to ensure notification. The confirmation will contain the same content as the initial ballot.

d) Members of the electorate for the Membership Vote must respond within fourteen (14) calendar days from the initial distribution date of the ballot. Responses must be in the form of a clearly identifiable message delivered to the Administrator.

e) Members in the electorate that do not respond within the required time period will be recorded as abstentions.

f) Negative votes will be counted as abstentions unless the voting member submits a new version of the specification, document, or text that would result in their affirmative vote.
5.05 PASSAGE REQUIREMENTS

a) Abstentions will be recorded for the Membership Vote but will not be considered in determining the passage or failure of the Membership Vote.

b) Passage of the Membership Vote will require at least two-thirds of the electorate to respond in the affirmative.
ARTICLE VI  OFFICERS

6.01  NUMBER AND TITLES
The duties and powers of officers of the Corporation (President and Chief Executive Officer, Secretary and Chief Financial Officer) for purposes of Section 7213 of the Code, reside in a six- (6) member standing committee of the Board of Directors hereinafter referred to as the 'Steering Committee'. The chairman of the Steering Committee shall be the legal representative of the Corporation.

6.02  APPOINTMENT AND RESIGNATION

(a) The membership of the Steering Committee consists of five (5) directors of the Corporation who are formally nominated and elected by a Board vote during the first meeting of the Board of Directors in a given calendar year. The Administrator as a non-voting member shall hold one of the six seats on the Steering Committee. After the election of the Steering Committee, a Board vote shall be conducted to elect a chairman and such other officers as it may choose from among its members.

(b) Any member of the Steering Committee may resign at any time on written notice to the Corporation without prejudice to the rights, if any, of the Corporation under any contract to which the officer was a party. The resignation of a Director from the Steering Committee shall have no effect on the membership of that Director in the Corporation.
ARTICLE VII CORPORATE RECORDS AND REPORTS

7.01 KEEPING RECORDS

The Corporation shall keep complete and accurate financial records and minutes of the proceedings of its Board, Steering Committee, general membership, and subcommittee meetings. The records shall be kept in either printed form or in any other form capable of being converted into printed form.

7.02 ANNUAL REPORT

The Corporation shall notify each member yearly of the member's right to receive a financial report pursuant to Code Section 8321(a). Except where the Corporation has fewer than one hundred (100) members and less than ten thousand dollars ($10,000) in assets at all times during the fiscal year, on the written request of a member, the board shall promptly cause the most recent annual report to be sent to the requesting member. The annual report shall be prepared not later than one hundred and twenty (120) days after the close of the Corporation's fiscal year. The annual report shall contain in appropriate detail the following:

1. a balance sheet as of the end of such fiscal year and an income statement and statement of changes in financial position for such fiscal year;
2. a statement of place where the names and addresses of the current members are located
3. information concerning certain transactions and indemnifications required by Code Section 8322.

The annual report shall be accompanied by any report thereon of an independent accountant or, if there is not such a report, the certificate of any authorized officer of the Corporation that such statements were prepared without audit from the books and records of the Corporation.

7.03 ANNUAL STATEMENT OF CERTAIN TRANSACTIONS AND INDEMNIFICATIONS

The Corporation shall furnish annually to its members a statement of any transaction or indemnification required by Code Section 8322(d) and (e), if such transaction or indemnification took place. Such annual statement shall be affixed to and sent with the annual report.
ARTICLE VIII  ADDITIONAL PROVISIONS

8.01 ASSIGNMENT OF RIGHTS AND LICENSES

Unless otherwise agreed to by the Steering Committee, all work done by a Board member on behalf of the Corporation, including but not limited to the drafting of specifications, the contribution or creation of benchmarks, their associated tools, documentation and software, shall constitute a donation by the member of a worldwide, royalty-free, perpetual non-revocable, non-exclusive license of such work to the Corporation. The Corporation is free to expand on this contribution, use it as the basis for further work and in general employ it in any way it sees fit so as to benefit the Corporation. It is the responsibility of individual Board members to assure that any contribution they make to the Corporation does not conflict with prior rights, licenses or agreements.

(a) The property rights and interest of any member in any and all patents, copyrights, trademarks, service marks, trade secrets, or other intellectual property (hereafter, collectively, “Intellectual Property”) owned, held or created by or on behalf of any member separately from the Corporation shall be and remain the Intellectual Property of that member.

(b) Technology and Intellectual Property developed by the Corporation will be owned by it as long as the corporation continues operating as a not-for-profit corporation. In the event of the dissolution of the corporation or change in not-for-profit status, all Intellectual Property rights shall be transferred on a non-exclusive, royalty-free basis to all eligible members as defined by the Board.

(c) Any member whose membership in this organization shall have terminated by resignation, cessation of business, expulsion or other cause shall forfeit thereby all interest in any and all funds, property, and interests of the organization.

(d) No member has any property rights in any assets of this corporation, except as set forth upon dissolution.

8.02 PUBLIC AVAILABILITY OF STANDARDS

After any standard or criteria for performance measurement is approved by the members in accordance with the SPC Policies and Procedures, the Corporation shall make such standards and/or criteria available to the public at a nominal charge as soon as is practical, and in any event no later than two (2) months after such approval. The Corporation shall reserve to itself all copyrights on any benchmark specification developed by the Corporation as well as all proprietary rights on any benchmark implementation or other product developed by or commissioned by the Corporation. The Corporation also reserves to itself all proprietary rights regarding SPC trademarks and gives the Administrator all rights to use the trademarks in pursuit of the Corporation’s business. The Administrator has the right to apply the trademarks of the corporation to products, results, and services associated with the SPC.

8.03 STANDARD OF CONDUCT

The Corporation and those members acting in its behalf shall endeavor at all times to conduct business in an open, public and non-exclusionary fashion. At no time shall the Corporation undertake any action that might call into question its status as a body contributing to the Public Good and promoting the open exchange of technical information and ideas. In furtherance of this goal, members of the Corporation shall not engage in any discussions, or exchange any information, regarding non-public pricing or product plans, or share other confidential competitive information, for the purpose of unlawfully restraining competition in the storage products industry. Upon being notified of the appearance of any action in conflict with this goal, whether from within the membership or from the general public, the Board shall make a diligent, good faith effort to investigate and redress the alleged infringement.

(a) The Corporation will operate at all times within applicable national and international anti-trust rules.
(b) In furtherance of its stated purposes, the corporation and its members shall comply with the National Cooperative Research and Production Act of 1984 as amended, 15 U.S.C. Sections 4301, et seq., ("the Act") in order to engage in a "joint research and development venture" as defined in the Act.

(c) Notwithstanding anything contained herein to the contrary, nothing contained in these Bylaws shall authorize the corporation to engage, directly or indirectly, in any act or activity incidental to or connected with the purposes set forth herein which would cause the corporation to be disqualified as a business league within the meaning of 501 (c) (6) of the United States Internal Revenue Code.

8.04 AMENDMENT OF BYLAWS

Any provision of these Bylaws may be amended only by means of a Membership Vote (see Article V).

8.05 ARBITRATION

In the event a dispute among the members arises with respect to any provision of these Bylaws, or the application of these Bylaws to the business conducted by the Corporation, such dispute shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The arbitrator will apply the law of California to this arbitration and the arbitration will take place in the city housing the principal office of the corporation or such other place as the parties may agree. Written notice of any such arbitration will be given to all members at least ten (10) business days prior to commencement of arbitration.

8.06 ADOPTION OF PUBLIC STANDARDS

Any standard for performance measurement shall be adopted by the Corporation through the passage of a Membership Vote (see Article V).