

BYLAWS OF THE
STORAGE PERFORMANCE COUNCIL

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PREFACE

REVISION RECORD

Revision	Date	Page	Description of Change	Originator
1.0	1/12/97	All	Draft Release	F. Raab/R. Reich
1.1	6/28/97	many	Change name from I/O-PC to SPC	R. Reich
1.2	10/15/97	Many	Conversion to Word97 for first meeting	J. Stephens
1.3	10/31/97	many	Include changes for 10/22/97 meeting	J. Stephens
1.4	12/12/97	Many	Include Changes from document reviews	J. Stephens
1.5	12/18/97	Many	Include changes for 12/16/97 Teleconference	J. Stephens
1.5.1	1/5/98	Many	Model TPC bylaws more closely	J. Stephens
1.6.0	1/28/98	Many	Incorporate Changes from T. Skornia	J. Stephens
1.6.1	2/2/98	11	Super-majority for Bylaws amendment	J. Stephens
1.6.2	1/24/99	1	Remove draft status, update SPC address, phone, fax, email, and website information	W. E. Baker
1.7.0	12/15/99	1	Modify Associate Membership requirements and create an Academic Membership class based on November 1999 Membership Vote	W. E. Baker
1.7.1	10/10/01	4	Change dues structure (Article 2.05).	R. Reich

INTENDED AUDIENCE

This plan is intended for use by members of the Storage Performance Council.

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ARTICLE I OFFICES

1.01 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.

1.02 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 II MEMBERS

2.01 CLASSIFICATION AND QUALIFICATION OF MEMBERS

The Storage Performance Council (hereafter “the Corporation”) 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 individual, company or organization may apply to become a full SPC member. Full SPC members enjoy all rights and benefits detailed in the SPC bylaws and policies (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 to the Board of Directors. For purposes of the SPC, 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, including SPC Progress Reports distributed periodically by the SPC Administrator.
 - (3) Right to vote on final approval of any and all proposed SPC Benchmark Standards.
 - (4) Right to voluntarily participate in technical subcommittee activities under the guidelines and policies set forth in this document as well as other SPC policies and procedures.

Only the identified 'Primary' Representative of a member can be nominated and elected to the SPC Steering Committee.

- (b) **Associate Member:** Associate membership is open to individuals, companies and organizations. Associate members have the same obligation to follow all SPC bylaws and policies as full members. Associate members are eligible to:
- (1) receive all SPC mailings and information shared with members;
 - (2) attend SPC Board meetings as an invited guest;
 - (3) 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 have the same obligation to follow all SPC bylaws and policies as full members. Academic members are eligible to:
- (1) receive all SPC mailings and information shared with members;
 - (2) participate, as a non-voting member, in SPC technical subcommittees,
 - (3) 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 below illustrates the rights and privileges for each type of SPC member class.

	Full Member	Associate Member	Academic Member
Membership Dues	Set by SC	Set by SC	Set by SC
Formal motions/voting rights	Yes	No	No
Straw vote	Yes	No	Yes
Attend Board meetings	Yes	Invited guest	Invited guest
Attend technical subcommittee meetings	Yes	Invited guest	Yes
Access to Members Only website	Yes	Yes	Yes
Submit email to the SPC reflector	Yes	No	Yes

2.02 ELIGIBILITY FOR MEMBERSHIP

Any person, as defined in Section 5065 of the California Corporations Code (the "Code"), who pays the initiation fees and 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 said member.

2.03 ADMISSION TO MEMBERSHIP

- (a) Any person, as defined in Section 5065 of the Corporations Code, eligible for membership (see Clause 2.01) 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 initiation fees and annual dues.
- (b) Upon receipt of a membership application, the Administrator shall determine whether an applicant may be granted membership. While membership will generally be granted, the Administrator has the discretion to deny membership to any applicant when granting said membership would not be in the best interests of the Corporation. All membership determinations made by the Administrator shall be communicated to the Board, and will remain provisional for thirty (30) days or until the next board meeting. 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 eligibility standards. In such a case, the board shall vote on the question of eligibility and the result shall be binding on the Corporation.
- (c) Upon admission to membership each member shall be entitled to appoint one individual to the corporation's Board of Directors.

2.04 APPLICATION FEE

There shall be no fee for making an application for membership in the Corporation.

2.05 DUES

The annual dues are payable to the Corporation by members in such amount as shall be determined by resolution of the Steering Committee. Dues shall be payable for the first year within ninety (90) days of admission to membership and annually thereafter at such time or times as may be fixed by the Steering

Committee. A member, on learning of the amount of dues determined by the Steering Committee for a given year, may avoid liability for the dues by resigning from membership within sixty (60) days of being notified of the dues amount. However, should a member be liable for the dues from a prior year, said liability cannot be avoided through resignation.

Sixty (60) days prior to the end of each calendar year, a bill for the following year's dues will be mailed to each Member. If payment for these dues is not received by March 1st of the year for which they were assessed, all membership rights and privileges (including access to SPC meetings and mailing of SPC materials) will be suspended. Membership rights and privileges will be reinstated if the SPC receives payment within sixty (60) days of suspension. Memberships suspended for non-payment of dues for longer than 60 days will be terminated. Any company that joins the membership in the course of the calendar year will pay full dues unless otherwise approved by the Board.

2.06 NUMBER OF MEMBERS

There shall be no limit on the number of members that the Corporation may admit.

2.07 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.

2.08 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.

2.09 CERTIFICATES OF MEMBERSHIP

The Corporation shall not issue membership certificates.

2.10 NONLIABILITY OF MEMBERS

- (a) Members and their representatives shall not be subject to or responsible for the liabilities of the Corporation.
- (b) A member of the Corporation and its individual representatives shall not solely because of such membership be personally liable for the debts, obligations, or liabilities of the Corporation.

2.11 TRANSFERABILITY OF MEMBERSHIP

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

2.12 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 which 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. If such resignation is delivered during the first three months of the Corporation's fiscal year, the Corporation shall, unless prohibited by applicable law, refund to the resigning member one-half of the annual dues previously paid by such member for such fiscal year. If such resignation is delivered after the first three months of the Corporation's fiscal year no portion of such dues shall be refunded.
- (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 III DIRECTORS

3.01 NUMBER

The Corporation shall have one Director for each member. The number of Directors is only limited by the number of members. Upon admission or termination of a 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 membership application or the termination of a membership.

3.02 QUALIFICATIONS

A Director of the Corporation may be any person who is a member, or an employee of a member which is itself a corporation.

3.03 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.

3.04 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.

3.05 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 3.05(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.

3.06 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.

3.07 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.

3.08 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 IV OFFICERS

4.01 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.

4.02 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 V CORPORATE RECORDS AND REPORTS

5.01 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.

5.02 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.

5.03 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 VI ADDITIONAL PROVISIONS

6.01 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. The corporation retains rights to derivative works it creates. 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.

6.02 PUBLIC AVAILABILITY OF STANDARDS

After any standard or criteria for performance measurement is approved by the members in accordance with the Policies and Procedures of the SPC, 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.

6.03 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.

6.04 AMENDMENT OF BYLAWS

Any provision of these Bylaws may be amended only by means of a vote of two thirds of the membership.

6.05 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.

6.06 ADOPTION OF PUBLIC STANDARDS

Any standard or criteria for performance measurement can be adopted by the Corporation only by the passage of a membership vote.