

**AMENDED AND RESTATED
BYLAWS OF THE
STORAGE PERFORMANCE COUNCIL (SPC)**

Official Version 2.2

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PREFACE

REVISION RECORD

Revision	Date	Page / Clause	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
1.8	6 Feb 2003		Change to pro-rated Membership dues (<i>reverses above revision</i>)	W. E. Baker
2.0	23 July 2012	Many	General review and alignment with current practice	J. Stephens
2.1	9 January 2017	Many	Define membership change process Define meeting invitation requirements General review and alignment with corporate legal requirements	J. Stephens
2.2	18 July 2017	3.01 3.03	Define Emeritus membership status	J. Stephens

INTENDED AUDIENCE

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

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ARTICLE I NAME AND PURPOSE

1.01. NAME

The name of this corporation is Storage Performance Council (hereafter, "the Corporation" or "SPC"). It is a non-profit corporation.

1.02 PURPOSE

The specific purposes for which SPC is formed are as stated in its Articles of Incorporation, which currently state that its purposes are to define, standardize, and promote vendor-neutral storage subsystem benchmarks, as well as to disseminate objective, verifiable performance data to the computer industry and its customers. The SPC seeks to promote performance improvement in storage subsystems by fostering the free and open exchange of ideas and information, and to ensure lawful, fair, and vigorous competition among vendors as a means for improving the products and services available to the public. It is the policy of the SPC to comply fully with all federal, state and local laws, including the federal and state antitrust laws of the United States and applicable foreign competition laws.

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 (also referred to herein as "SPC Board" or the "Board") 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 SPC shall have four classes of members: Full, Associate, Academic, and Emeritus. 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. Full Members are "members" as that term is defined in Section 5056 of the California Corporations Code or any successor statute (also referred to herein as the "Code"). (Note: all references to "members" in the SPC bylaws and policies refer to Full Members unless stated otherwise). Full Members have all the rights of members of a California Nonprofit Mutual Benefit Corporation which are provided in the Code and these Bylaws, including 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 these Bylaws as well as the SPC Policies and Procedures.
 - (5) Right to nominate a guest to attend SPC Board meetings.
 - (6) Right to nominate a guest to participate, as a non-voting member, in an SPC technical subcommittee.

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 Member. Associate Members are not "members" as that term is defined in the Code and do not have any of the rights of members provided by the Code unless expressly provided in these Bylaws or expressly granted by resolution of the Board. 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, if invited;
 - (3) Right to participate, as a non-voting member, in SPC technical subcommittees, if invited.

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 not "members" as that term is defined in the Code and do not have any of the rights of members provided by the Code unless expressly provided in these Bylaws or expressly granted by resolution of the Board. 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, if invited;
 - (3) Right to attend SPC Board meetings, if invited.

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.

(d) **Member Emeritus:** Member Emeritus is awarded by the Board to an individual after long service as a representative. Members Emeritus are not "members" as that term is defined in the Code and do not have any of the rights of members provided by the Code unless expressly provided in these Bylaws or expressly granted by resolution of the Board. Members Emeritus are required to follow all SPC bylaws and policies. A Member Emeritus is entitled to the following:

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

Members Emeritus are not eligible to:

- 1) Vote on any SPC matter;
- 2) Chair any SPC subcommittee or act as an officer of the Corporation;
- 3) Serve on the Board of Directors.

Table III-1 illustrates the rights and privileges for each SPC member class.

Table III-1 Membership Rights

	Full Member	Associate Member	Academic Member	Member Emeritus
Membership Dues	Set by SC	Set by SC	Set by SC	None
Formal motions/voting rights	Yes	No	No	No
Attend Board meetings	Yes	If invited	If invited	Yes
Attend technical subcommittee meetings	Yes	If invited	If invited	Yes, as a non-voting participant
Access to Members Only website	Yes	Yes	Yes	Yes

3.02 INVITED GUESTS

The procedures for inviting a guest to attend a meeting of the Board or of a technical subcommittee shall be governed by the policies and procedures of the SPC in force at the time of the attendance request.

3.03 ELIGIBILITY FOR MEMBERSHIP

Any person or entity 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 is 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 is any person, or entity who directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with said member.

Eligibility for Member Emeritus is limited to individuals who have retired after lengthy service as a representative.

3.04 ADMISSION TO MEMBERSHIP

- (a) Any person or entity that is 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.

3.05 APPLICATION FEE

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

3.06 CHANGES IN MEMBERSHIP CLASS

A Full Member who wishes to become an Associate Member may do so at any time, by providing a written request to the Administrator of the Corporation. The change in membership class shall not result in a refund of any annual dues that have been paid for the current year at the time of the request.

An Associate Member who wishes to become a Full Member shall submit a new membership application, in accordance with 3.04. If that membership is granted, the Associate Member shall become a Full Member once the then current difference between the dues level for Associate Members and Full Members has been paid. If that membership application is rejected, the Associate Membership shall continue without change.

3.07 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.

3.08 NUMBER OF MEMBERS

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

3.09 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.

3.10 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.

3.11 CERTIFICATES OF MEMBERSHIP

The Corporation shall not issue membership certificates.

3.12 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.

3.13 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.

3.14 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, with the procedures for expulsion being as established and published by the Board.
- (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. Membership terminates on the date that the Administrator receives the request.
- (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. Board meetings may be held in person or by conference telephone or similar communications equipment, so long as all Directors participating in such meeting can hear one another. Such participation shall constitute personal presence at the meeting, if all of the following apply:
- Each Director participating in the meeting can communicate with all of the other Directors concurrently;
 - Each Director is provided the means of participating in all matters before the Board, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the Board; and
 - The Board adopts and implements some means of verifying both of the following:
 - A person communicating by telephone, electronic video screen, or other communications equipment is a Director entitled to participate in the Board meeting; and
 - All statements, questions, actions, or votes were made by that Director and not by another person not permitted to participate as a Director.
- (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 the membership of the member represented by a Director.
- (b) **Filling Vacancies.** 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 the membership of that member has terminated, however, all rights of membership shall automatically terminate and the size of the board shall be automatically adjusted.

4.09 COMMITTEES

The Board, by resolution adopted by a majority of the Directors then in office provided a quorum is present, may create one or more committees to serve at the pleasure of the Board. Any such committee composed entirely of Directors shall have such authority as the Board shall set forth by resolution, to the extent permitted by law. The Board may also establish advisory committees, which may include non-Directors and which shall not have the authority of the Board. Unless expressly provided by the Board, all references to subcommittees refer to advisory committees.

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) A 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 STEERING COMMITTEE

The Corporation will have a six- (6) member standing committee of the Board of Directors hereinafter referred to as the 'Steering Committee'. Each member of the Steering Committee is an officer of the Corporation.

6.02 APPOINTMENT AND RESIGNATION

- (a) The voting 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 the sixth seat on the Steering Committee. After the election of the Steering Committee, a Board vote shall be conducted to elect a Chair, Secretary, and Treasurer, as it may choose among the members of the Steering Committee; and such elected officers will serve as officers of the Corporation for purposes of Section 7213 of the Code. The Board may also elect such other officers as it may choose from among members of the Steering Committee or other members of the Corporation.
- (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 also holding the office of Chair, Secretary, or Treasurer is also a resignation from such office. The resignation of a Director from the Steering Committee shall have no effect on the membership of the member represented by that Director in the Corporation.

6.03 VACANCIES IN OFFICER POSITIONS OR STEERING COMMITTEE

- (a) **Causes.** A vacancy in the office of Chair, Secretary, or Treasurer or on the Steering Committee shall exist upon the death or resignation of a Director holding such office or position or on the termination of the membership of the member represented by a Director holding such office or position.
- (b) **Filling Vacancies.** Any vacancy, as set forth in 6.03(a), shall be filled by appointment by the Steering Committee.

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. 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.

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 SPC and those members acting in its behalf shall conduct business in an open, public and non-exclusionary fashion. At no time shall the SPC 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.

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 DISSOLUTION

In the event that the Corporation is dissolved or wound up at any time, all of the remaining properties, monies, and assets of the Corporation after provision has been made for its known debts and liabilities as provided by law, shall be distributed in a manner consistent with the purposes of the Corporation, as determined by the Board upon such dissolution or winding up; provided, however, that any such distribution shall be performed in a manner consistent with Section 501(c)(6) of the Internal Revenue Code of 1986, as amended.

8.05 AMENDMENT OF BYLAWS

Any provision of these Bylaws may be amended only by means of a Membership Vote (see 4.09).

8.07 ADOPTION OF PUBLIC STANDARDS

Any standard for performance measurement shall be adopted by the Corporation through the passage of a Membership Vote (see 4.09).

8.08 DEFINITION OF WRITTEN

"Written" or "writing," when used in these Bylaws, includes communication by electronic means.

8.09 CALIFORNIA LAW

To the extent provided in Section 5003 of the Code, California law shall govern the operation of the Corporation and the interpretation of these Bylaws.