



## Turfgrass Water Conservation Alliance® (TWCA) Bylaws Table of Contents

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**ARTICLE XI**



# Turfgrass Water Conservation Alliance®

Researching, Qualifying, and Promoting Water Conservation in the Turfgrass Industry



33725 Columbus St SE Albany OR 97322 [tgwca.org](http://tgwca.org) phone: 541-971-4418 email: [info@tgwca.org](mailto:info@tgwca.org)

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*Improving the environment and our standard of life through water conservation.  
Learn How to Make a Difference with TWCA.*



## AMENDMENTS

**Corrections and amendments are indicated by bold, underscored text.**

**i. Article IV Section 4.1 is amended to read:**

The Board of Directors shall meet upon call of the President at such time and place as may be designated and shall be called to meet upon demand of a majority of its members. Notice of all meetings shall be given to each member of the Board of Directors **fourteen days** in advance.

**(a) Regular Meetings** The annual meeting of the Board of Directors shall be held immediately after the adjournment of the regular annual meeting of members and on the same date (as defined in Section 10.1 (a)). **The regular annual meeting will be held the day before or the day after the annual Field Day event to maximize participation of the membership at large.**

**ii. Article VIII Section 8.1 (c) is amended to read :**

**Class E Member. A Class E Member is any individual that (i) has a vested interest in lawn and garden live good industry, (ii) is concerned with water conservation, and (iii) is in good standing with TWCA® as stated in Section 8.4.**

**Class E Membership is based on individual level. Class E Members shall have no voting rights, nor shall serve on the Board of Directors. This category of membership is not available to persons employed by firms or corporations qualified to be Class B Members.**

**iii. Article V Section 5.3 is added to read:**

**There shall exist a permanent Steering Committee consisting of one appointed delegate from the four founding members and Pure Seed. The Steering Committee will retain ultimate veto power over any action that may be come before the Board of Directors. In the case of there being no members beyond the four founders and Pure Seed the Standing Committee and the Board of Directors will remain one and the same.**

**a) Steering Committee Veto. The Steering Committee Veto is enacted by a 3/5 majority vote of the Steering Committee.**





## ARTICLE I

### NAME

**Section 1.1 Name.** The name of this Organization shall be the TURFGRASS WATER CONSERVATION ALLIANCE LIMITED, hereinafter referred to as TWCA®.

## ARTICLE II

### PURPOSE

**Section 2.1 Purpose.** TWCA is an industry-independent, non-profit association that oversees the voluntary TWCA®

Qualification Program. Its purpose is to improve the environment and the standard of life through water conservation. The TWCA® Qualification Program goal is to recognize consumer products that provide a clear water conservation benefit through advanced genetic breeding and selection of live goods products. Companies with products that become TWCA qualified will be able to utilize the TWCA® mark. TWCA is formed exclusively as a non-profit association, as set out in section 501(c)(3) of the Internal Revenue Code (the "Code").

## ARTICLE III

### BOARD OF DIRECTORS

**Section 3.1 Positions.** The Board of Directors ("Board") shall be comprised of a President, a Vice President, a Secretary -Treasurer, and the Past President from previous year.

**Section 3.2 Terms.** The Board shall be appointed per the process as provided in these Bylaws (Section 3.3) and shall hold office as described in Section 3.5. With the exception of the President and Vice President, Board members can be re-appointed; however, they can serve no more than three (3) consecutive years in same position. The Vice President shall automatically assume the office of the President beginning the first day of the new term year, and shall serve for twenty-four months as President.

**Section 3.3 Appointment Process.** With the exception of the position of President, the Board shall be appointed by the Membership by majority vote. The current President will first issue to the Membership a Call for Recommendations for Board of Directors nominees. The Board will confirm interest with the individuals who have been nominated. Once confirmed, the President will then issue to the Membership a Call for Vote for final appointments. Any discrepancies or equal votes will be mitigated by the Board by majority vote. As stated in Section 3.2, the current Vice President shall automatically assume office of the President beginning the first day of the new term year.

**Section 3.4 Powers and Duties.** The business and technical affairs of TWCA shall be managed by or under the direction of the Board. The Board shall also be empowered to adopt rules and regulations governing the action of the Board and TWCA, generally, and to allocate, distribute and/or pay out the moneys received by TWCA from time-to time, subject to section 501(c)(3) and other applicable provisions of the Code.





(a) **President.** The President shall preside at all regular, special and annual meetings of the Organization and at all meetings of the Board, and shall at all times direct the affairs of the organization. The President shall appoint chairs and may appoint members of all committees, unless otherwise noted in Bylaws. The Board shall approve all committee chair appointments by majority vote. The President shall be an ex-officio member of all committees, or reserves the right to appoint a Director in his/her place. The President shall perform other such duties as are incident to the office of President or as may be prescribed by the Board.

(b) **Vice President.** The Vice President shall preside at meetings of the membership and the Board in the President's absence. The Vice President shall also direct the affairs of the Organization should the President become incapacitated during the term of office for a period in excess of thirty (30) days, for as long a period as is required due to the President's incapacitation.

(c) **Secretary-Treasurer.** The Secretary-Treasurer (S-T) will be elected by the Board of Directors at the first annual meeting. The S-T shall sign on behalf of the corporation all deeds, contracts, and other instruments binding upon the corporation unless otherwise especially directed by the Board of Directors. The S-T shall keep a fair and correct record of all the meetings of the members and directors and other official business of the corporation. The S-T shall prepare and submit at every meeting of the members of the corporation a certified list of those entitled to vote at such meeting and such list shall be prima facie evidence of who are members and have the right to vote. The S-T shall have the custody of the corporate seal and shall have the duty to affix the same to all deeds, leases, contracts, certificates of stock, and/or documents executed by the corporation. The S-T shall also give notice of meetings to the members and directors and shall perform such other duties as may be required by the Board of Directors or by the President who provides supervision to the S-T. It shall be the duty of the S-T to receive all moneys and funds of the corporation and to deposit the same in the bank or banks designated by the Board of Directors and in the name of and to the account of the corporation. Such funds shall be paid out only as may be directed by the Board of Directors of the corporation. The S-T shall keep full and accurate books of account and shall make such reports of official transactions and of the finances of the company as may from time to time be required by the Board of Directors, except to the extent that some other person or persons may be specifically authorized by the Board of Directors to so do. The S-T shall make, execute, and endorse all checks and other commercial paper on behalf of the corporation.

### Section 3.5 Directors

(a) The Board of Directors of this corporation shall consist of at least four Class A members for a term of office for 2 years, with two members being replaced by election each year.

(b) A vacancy or an addition in number of the Board of Directors shall be filled by the remaining director or directors. The person so elected to fill such vacancy shall hold office until the next annual meeting of the membership and until a successor is elected and qualified.





(c) The directors shall act only as a board and the individual directors shall have no power as such.

(d) The board of Directors of this corporation shall have the general management of its affairs and shall elect all officers of this corporation and provide for compensation, if any, of all officers and employees.

(e) Directors may be removed by the affirmative vote of a majority of all members of the Board at any regular or special meeting.

**Section 3.6 Vacancies.** In the event of a vacancy in the office of President during a term, the Vice President shall become President. All other vacancies occurring during a term shall be filled by the Board. Any individual filling a vacancy will fulfill the remaining term of the previous individual. The appointment process shall still occur at next scheduled appointment election date per process stated in Section 3.3. Individuals filling a vacancy can be appointed by the Membership to a full term at the next appointment election date in accordance to the Appointment process stated in Section 3.3.

### **Section 3.7 Resignation and Removal.**

(a) **Resignation.** Any Director may resign at any time by giving written notice to the Board. A resignation is effective upon the date provided in the notice. Once delivered, a notice of resignation is irrevocable unless permitted to be withdrawn by the Board prior to its effectiveness.

(b) **Removal for Cause.** Any Director may be removed “For Cause” at a meeting called for that purpose. For the purposes of this Section 3.7, “For Cause” shall mean when any Director has been (i) declared of unsound mind by a final order of court, (ii) convicted of a felony, or (iii) found by the Board to have breached any duty arising under these Bylaws or the Certificate of Incorporation of TWCA®. Such Director may only be removed “For Cause” after the affirmative vote of a majority of the Directors in Good Standing (exclusive of the Director facing removal) represented at a Board meeting at which a quorum is present.

(c) **Removal without Cause.** Any Director, as applicable, may be removed without cause at a special meeting called for that purpose. Such Director(s) may be removed hereunder only by the affirmative vote of two-thirds (2/3) of the Board at a special meeting at which a quorum is present.







**(d) Removal for Default; Dues Delinquent.** In the event a Director is in Default or Dues Delinquent (as set forth in Section 8.5(d) hereof), such Director shall be removed from the Board, without further action by the Board or the Membership At-Large.

**Section 3.8 Reimbursement.** Directors and members of Standing Committees (as defined in Section 5.1) may receive such reimbursement for expenses as may be fixed or determined by resolution of the Board; *provided, that*, such reimbursement for expenses shall be reasonable and shall be comparable to reimbursements paid by unaffiliated entities for a like position.

## ARTICLE IV

### BOARD MEETINGS

**Section 4.1 Board Meetings.** The Board of Directors shall meet upon call of the President at such time and place as may be designated and shall be called to meet upon demand of a majority of its members. Notice of all meetings shall be given to each member of the Board of Directors fourteen days in advance.

**(a) Regular Meetings** The annual meeting of the Board of Directors shall be held immediately after the adjournment of the regular annual meeting of members and on the same date (as defined in Section 10.1 (a)). The regular annual meeting will be held the day before or the day after the annual Field Day event to maximize participation of the membership at large.

No Director will be intentionally excluded from Board meetings and all Directors shall receive notice of the meeting as specified above; however, Board meetings need not be delayed or rescheduled merely because one or more of the Directors cannot attend or participate so long as at least a quorum of the Board (as defined in Section 4.4 below) is represented at the Board meeting.

**(b) Special Meetings.** Special meetings of the Board for any purpose or purposes may be called at any time by the President or by fifty percent (50%) or more of the Directors then in Good Standing and notice of such special meeting shall be given to all of the Directors in accordance with Section 4.1 above.

**(c) Telephonic Meetings.** The Board shall permit any or all Directors to participate in a regular or special meeting by, or conduct the meeting through, use of any means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present at the meeting.

**Section 4.2 Action by the Board.** No action may be taken or approved by the Board that is outside the stated purpose of TWCA® as set forth in Section 2.1. Except as provided herein, the Board may undertake an action only if it was identified in a Board Meeting notice or otherwise





identified in a notice of special meeting and approved by the requisite number of Directors as described below:

**(a) Simple Majority Required.** For all other actions not specified by Sections 4.2 (b) or (c) below, and for which the Board has authority to take within the stated purpose of TWCA® as set forth in Section 2.1, such actions must be approved by no less than a simple majority of those Directors in Good Standing represented at a Board meeting at which a quorum is present. Such actions requiring a simple majority vote include, but are not limited to, (i) approving the appointment of an officer; (ii) approving the Board’s regular meeting schedule; (iii) confirming appointments to Standing Committees (as defined in Section 5.1); (iv) appointing an Advisory Board (as defined in Section 7.1);

**(b) Super-Majority Consent Required.** For actions, (i) approving or changing the name of TWCA®; (ii) amending the Membership Agreement; (iii) except for actions specified in Section 13.1 as they relate to amending the Bylaws, amending these Bylaws or the Certificate of Incorporation of TWCA®; (iv) terminating a Member’s Agreement in accordance with its terms; (v) selecting and/or terminating an Officer; (vi) approving changes to annual Member contribution requirements (Membership Dues); (vii) approving changes to TWCA® Qualification Application Process; (viii) the amending the terms of the TWCA® Seal (the “TWCAS”) Usage Policy; (ix) selecting outside legal counsel; (x) approving changes to TWCA® Antitrust Policy; (xi) entering into any formal affiliation with another organization; and (xii) approving changes to the IP Policy; such actions must be approved by no less than two-thirds (2/3) of the Directors in Good Standing represented at a Board meeting at which a quorum is present.

**(c) Unanimous Consent Required.** For actions (i) amending the payment structure for TWCA® membership, (ii) amending the Protocol for any live good category, (iii) approving any product for TWCA Qualification; any such actions must be approved by all Directors in Good Standing represented at a Board meeting at which a quorum is present.

**(d) Action Without Meeting.** Any action required or permitted to be taken by the Board at a meeting may be taken without a meeting if all of the Directors in Good Standing shall consent in writing to such action. The action shall be evidenced by one or more written consents describing the action taken, signed by each Director, and included in the minutes or filed with the corporate records reflecting the action taken. Any action taken hereunder shall be effective upon the receipt of the written consent of all of the Directors in Good Standing for approval of the action under consideration. Electronic voting shall be permitted in conjunction with the solicitation of written consents as set forth in Section 4.3.





## Section 4.3 Voting.

**(a) General.** Each Director in Good Standing shall be entitled to one (1) vote on each matter submitted to a vote of the Board. All members of the Board of Directors, present and constituting a quorum, shall have the right to vote on matters. However, the President may cast a vote only in case of a tie. Majority decision will prevail unless otherwise directed by these Bylaws. Voting rights of a member of the Board of Directors may not be delegated to another nor exercised by proxy.

**(b) Electronic Voting.** Electronic voting may be used in connection with both meetings of the Board and the solicitation of written consents as follows:

**i) Voting with Meeting.** For purposes of soliciting electronic votes in connection with a meeting of the Board at which a quorum was present, the requisite number of votes that would have been required at such meeting to pass an action shall be required to pass an action via this electronic voting provision. Only those Directors in attendance of the meeting shall be permitted to vote with respect to this Section 4.3(i). The deadline for receipt of electronic votes with respect to any such vote shall be no later than two (2) weeks from the date of the meeting, as announced prior to adjournment of such meeting. Any action required or permitted to be taken at any meeting of the board of Directors may be taken without a meeting if a written consent to such action is signed by a majority of the Directors and such written consent is filed with the minutes. Such action is effective when the required number of Directors have signed the consent unless the consent specifies a different effective date. Such consent may be transmitted electronically. A Director transmitting his or her consent to the Association electronically shall sign the consent by typing his or her name on the consent. The Secretary shall take reasonable measures to ensure that the consent is being transmitted by the Director signing the ballot. The Secretary shall print out all consents received electronically and file these consents with the minutes.

**ii) Voting without Meeting.** For purposes of taking action without a meeting, solicitation via electronic balloting and voting shall be permitted hereunder. Such procedure shall be initiated by the electronic distribution of ballots and all related materials for consideration by the Board to all of the Directors in Good Standing at the time of such distribution. Thereafter, such Directors shall be permitted to cast their votes electronically in response to the distributed ballots. The deadline for receipt of such electronic votes cast by the Directors shall be no less than two (2) weeks from the date of mailing of the balloting materials, as set forth therein.

**Section 4.4 Quorum.** Unless otherwise provided herein, a simple majority of the Directors in Good Standing shall be necessary to constitute a quorum for the transaction of business, except that when the number of Directors constituting the Board shall be an even number, one-half of the Directors in Good Standing shall constitute a quorum.





**Section 4.5 Absence.** Any member of the Board of Directors who fails to attend its meetings may, at the discretion of the President, be required to explain absences in writing. The remaining members of the Board of Directors shall consider whether absences are excusable and, if not, shall notify the affected Board member in writing accordingly. Prior to a final decision of the Board regarding removal of a Board member for unexcused absence(s) from Board meetings, the affected Board member shall be given an opportunity to defend his or her absence(s) in person at the next regularly scheduled Board of Directors' meeting.

**Section 4.6 Good Standing.** A Director shall be deemed to be in Good Standing, and thus eligible to vote on issues coming before the Board, if the Director has attended (in person or telephonically) a minimum of three (3) of the last four (4) Board meetings (if there have been at least four meetings), unless such absence has been approved by the President (as defined in Section 4.5), in his or her reasonable discretion. A Director shall be immediately removed from the Board upon the termination of the membership of such Director's Member organization in accordance with Section 3.7.

## ARTICLE V

### STANDING COMMITTEES

**Section 5.1 Standing Committees.** The Board may create Standing Committees to handle on-going projects. Each committee shall consist of two (2) or more members ("Standing Committee Directors") nominated by the Board, including the designation of one Standing Committee member as the Chairman, and confirmed by a simple majority of the Directors in Good Standing represented at a Board meeting at which a quorum is present. Standing Committee Directors may delegate their committee responsibilities to any individual that is an employee, officer, Director, or consultant of an existing Member. Each Standing Committee may invite non-Director advisors to participate in or attend certain committee meetings in order to assist the Standing Committee in the performance of its duties. The Board shall retain the right to limit the powers and duties of each Standing Committee.

**Section 5.2 Powers and Authority of Committees.** The Board may delegate to any Committee having the authority of the Board, any of the powers and authority of the Board in the management of the business and affairs of TWCA®; *provided, however*, that no Committee may: (a) authorize payment of a dividend or any part of the income or profit of TWCA® to its Directors or officers; (b) approve dissolution, merger, or the sale, pledge or transfer of all or substantially all of TWCA®'s assets; (c) elect, appoint, or remove Directors or fill vacancies on the Board or on any of its committees; (d) adopt, amend or repeal the Certificate of Incorporation of TWCA®, Bylaws or any resolution by the Board; or (e) perform Board actions specified in Section 4.2 herein.

### Section 5.3 Steering Committee

There shall exist a permanent Steering Committee consisting of one appointed delegate from the four founding members and Pure Seed. The Steering Committee will retain ultimate veto





power over any action that may be come before the Board of Directors. In the case of there being no members beyond the four founders and Pure Seed the Standing Committee and the Board of Directors will remain one and the same.

- a) **Steering Committee Veto.** The Steering Committee Veto is enacted by a 3/5 majority vote of the Steering Committee.

## ARTICLE VI

### APPOINTED OFFICERS

**Section 6.1: Appointed Officers.** The Board of Directors may employ staff, or may contract with an association management firm to provide staff assistance. One person may hold two or more offices in TWCA®, unless otherwise stated herein.

**(a) Executive Director.** It would be the duty of the Executive Director to serve as the Corporate Secretary, to keep the records of the Association, to be in charge of the overall operation of TWCA®, to manage the staff, and to carry out the duties described in the Executive Director’s job description and other assignments delegated by the Board of Directors. The Executive Director shall perform other duties assigned from time-to-time by the Board. The Executive Director would be an ex-officio, nonvoting member of the Board of Directors.

i) **Reports to Membership At-Large.** The Executive Director, with the Secretary’s assistance, shall be responsible for providing periodic written reports to the Membership At-Large with respect to any and all material developments within TWCA® (“Update Reports”). In addition to any material development updates, the Executive Director shall issue general reports on the status of TWCA® on a semi-annual basis (“Semi-Annual Reports”). Such reports shall include: (i) status reports on development projects, (ii) financial information reports, (iii) membership information reports; and (iv) any other material information with respect to TWCA.

## ARTICLE VII

### ADVISORY BOARD

**Section 7.1 Advisory Board.** The Board of Directors may, by resolution, establish a Board of Advisors (the “Advisory Board”) to be comprised of one or more individuals chosen by the Board at its sole discretion. The Board shall not be bound by any advice or decision of the Advisory Board. The members of the Advisory Board shall not have the rights or privileges of Directors or the Breeder Member and Consumer Product Member classes’ membership of TWCA, and shall have no power or authority over the operation of TWCA. Associate Members may reside on the Advisory Board. A member of the Advisory Board may be removed at any time by the affirmative vote of a majority of the Board with or without cause.





## ARTICLE VIII

### MEMBERSHIP AT-LARGE

**Section 8.1 Classes of Membership.** There shall be four (4) classes of membership in TWCA: (i) Class A; (ii) Class B; (iii) Class C; and (iv) Class D. As used herein, the term “Member” shall be used to refer generically to all Class

Members. All four classes of membership shall be collectively referred to as the “Membership At-Large.” Classes A, B and C will be limited to two (2) members per organization. The following shall be the requirements for membership in each given membership class:

**(a) Class A Member.** A Class A Member is a corporation, firm or organization that (i) currently holds TWCA Qualified status on at least one (1) lawn and garden live goods product, or is in the process of applying for qualification of a lawn and garden live goods product for TWCA Qualification status; and (ii) is in good standing with TWCA, as stated in Section 8.4 of the TWCA Bylaws. Class A Membership is based on organization and company level, not individual. A Class A Member shall designate one person to serve as its representative. The Class A Member may change this representative at its discretion upon filing written notice of such change with the Secretary. A Class A Member representative who changes his or her employer may not transfer membership. Individuals must be Class A Member or Class B Member to represent the TWCA in any official capacity. Class A Members shall be entitled to voting rights in accordance with Section 9.6(a) of the Bylaws. The Class A Member can designate up to two (2) additional individuals (“Affiliates”) under its membership. Affiliates will not have voting rights, and will not be able to transfer membership when changing employer. The Class B Member may change its Affiliates at its discretion upon filing written notice of such change with the S-T.

**(b) Class B Member.** A Class B member is an organization that (i) actively conducts research and development of cultivars utilized in consumer products for the lawn and garden live goods industry, and (ii) is in good standing with TWCA® as stated in Section 8.4 of the TWCA® Bylaws. Class B Membership shall be open to individuals who are in positions where they are responsible for the breeding, (or in the case of apomictic and vegetative crops, selecting) of turfgrass varieties subject to a peer review process. Such processes include Plant Variety Protection (PVP), Plant Patent (PP) or Plant Variety Review (PVR). Individuals may be elected to the Board of Directors and may hold office within the corporation. Individuals must be Class A Member or Class B Member to represent the TWCA in any official capacity. There is a limit of two (2) Class B Members per company or organization. Class B Members shall be entitled to voting rights in accordance with Section 9.6(a) of the Bylaws.

The Class B Member may designate up to two (2) additional individuals (“Affiliates”) under its membership. Affiliates will not have voting rights, and will not be able to transfer membership when changing employer. The Class B Member may change its Affiliates at its discretion upon filing written notice of such change with the S-T.





**(c) Class E Member.** A Class E Member is any individual that (i) has a vested interest in lawn and garden live good industry, (ii) is concerned with water conservation, and (iii) is in good standing with TWCA® as stated in Section 8.4.

Class E Membership is based on individual level. Class E Members shall have no voting rights, nor shall serve on the Board of Directors. This category of membership is not available to persons employed by firms or corporations qualified to be Class B Members.

**(d) Class D Member.** A Class D Membership is open to individuals with full-time public sector appointments including research, extension, government, and education faculty and staff. Class D membership shall also be open to individuals with full-time student status. Individuals in this class are non-voting members, but shall be afforded all other rights provided to other membership classes concerning annual meetings and notification of process.

**Section 8.2 Membership Qualifications.** Members are expected to adhere to the following criteria:

**(a) All Members.** All Members must (i) express public support for TWCA and the TWCA Seal; (ii) sign TWCA Membership Agreement and abide by its terms; (iii) fulfill their monetary obligations to TWCA (e.g., dues and fees) as stated in Section 9.1, and (iii) remain in Good Standing with TWCA in accordance to Section 8.4.

**(b) Class A Member.** For a Class A Member to maintain membership status, it must, as stated in Section 8.1 (a) (i) currently hold TWCA Qualified status on at least one (1) lawn and garden live goods product, or (ii) be in the process of applying for TWCA Qualification of at least one (1) lawn and garden live goods product. Class B Members may maintain membership status without meeting the above qualifications, by paying a nominal dues fee as set forth in the Membership Agreement document.

**Section 8.3 Additional Rights of Membership-At-Large.** The Board may by resolution establish such additional rights, privileges and duties corresponding to any class of members; *provided, that,* such rights, privileges or duties are not inconsistent with the Bylaws.

**Section 8.4 Good Standing.** All classes of members shall be deemed to be in Good Standing, and thus eligible to vote on issues coming before the Board, if the Member has fulfilled its monetary obligations as set forth in Section 9.1

**Section 8.5 Termination of Membership.** The membership of any Member shall terminate upon the occurrence of any one or more of the following:

**(a) Resignation.** Any Member may resign from TWCA in writing filed with the Secretary. The resignation of a Member shall not relieve the Member from any payment obligations the Member





may have to TWCA as a result of obligations incurred or commitments made prior to resignation. Except as otherwise set forth in these Bylaws, a resigning Member shall not be entitled to receive any refund, pro rata or otherwise, of any membership fee, dues or assessments for the balance of the calendar year in which the resignation is effective. Within ten (10) days of resigning from TWCA, a Member may appeal in writing to the Board for a pro rata refund of its annual membership dues. The appeal will specifically set forth any circumstances that the Member believes justify a refund in its case. The Board shall decide by simple majority upon the appeal in its sole discretion at its first meeting following the appeal scheduled under Section 4.1.

**(b) Expulsion, Termination or Suspension.** The membership of any Member may be terminated “For Cause” upon the affirmative vote of two-thirds (2/3) of the Board of Directors after a hearing duly held in accordance with Section 4.1. As used in this Section 8.5, two-thirds (2/3) vote means two-thirds (2/3) of the members of the Board. For purposes of this Section 8.5, “For Cause” shall mean the Member has materially breached the Membership Agreement, Bylaws, IP Policy, Antitrust Policy, EPL and/or other related TWCA agreements or policies, and has not cured such breach within thirty (30) days of receipt of written notice from TWCA. Such determination shall be made in the sole and absolute discretion of the Board. Following the determination by the Board that a Member should be terminated the following procedures shall apply:

1. A notice shall be sent by prepaid, first-class or certified mail to the most recent address of such Member as shown on TWCA's records, setting forth the termination and the reasons therefore. Such notice shall be sent at least thirty (30) days before the proposed effective date of the termination.
2. The Member being terminated shall be given an opportunity to be heard, either orally or in writing, at a hearing to be held no fewer than five (5) days before the effective date of the proposed termination. The hearing shall be held by the Board. The notice to the Member of its proposed termination shall state that such Member is entitled, upon request, to such hearing, shall state that a date, time and place of the hearing will be established upon receipt of request therefore, and shall state, that in the absence of such request, the effective date of the proposed termination.
3. In the event that a hearing is held, then following such hearing the Board shall decide whether such Member should in fact be terminated, or sanctioned via written reprimand as determined by the Board; *provided, that*, any such decision to terminate or sanction such Member must be approved by a vote of two-thirds (2/3) of the Board. The decision of the Board shall be final.
4. Any action challenging a termination of membership of a Member, including any claim alleging defective notice, must be commenced within fifteen (15) days after the date of the termination.

**(c) Delinquency; Non-Payment of Dues.** In the event that a Member does not pay its annual membership dues and all compounded late fees within ninety (90) days of the invoice due date (“Dues Delinquent”), the membership of such Member shall, without further action by the Board of Directors or the Membership At-Large, be terminated.







**(d) Delinquency; Non-Payment of Fees.** In the event that a Member does not pay its TWCA qualification application fees, and/or TWCA® seal usage fees, and all compounded late fees within ninety (90) days of the invoice due date (“Fee Delinquent”), the membership of all Members under that organization/company shall, without further action by the Board of Directors or the Membership At-Large, be terminated. Further action may be taken by TWCA as set forth under the heading “Delinquency” in the TWCA Qualification Application, as amended from time-to-time in accordance with any and all requirements of these Bylaws set forth herein.

**(e) Misuse or Unauthorized Use of TWCA Seal.**

**Section 8.6 Reinstatement.** Members terminated pursuant to Section 8.5 may only be reinstated upon the affirmative vote of at least two-thirds (2/3) of the Directors in Good Standing represented at a Board meeting at which a quorum is present and only after any monies due to TWCA are paid in full.

**Section 8.7 Nonliability.** No Member shall be liable for the debts, liabilities, or obligations of TWCA merely by reason of being a Member.

**Section 8.8 Assignment.** Upon the completion of any acquisition or merger involving a Member in which the Member is not the surviving entity, the Board, at its sole discretion, may permit such Member’s membership to be transferred to the surviving entity.

**Section 8.9 Definition of Affiliates.** Multiple “Affiliates” of an entity shall constitute one (1) member only, regardless of membership class. For purposes of these Bylaws, “Affiliate” means any entity that is directly or indirectly controlled by, under common control with or that controls the subject party, and “control” means direct or indirect ownership of or the right to exercise (i) greater than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of Directors or similar managing authority of the subject entity; or (ii) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity.

## ARTICLE IX DUES AND FEES

### Section 9.1 Dues; Class A Member

**(a) Funding.** A Class A Member will pay annual dues of \$20,000, as set forth in the Membership Agreement if membership is established in the first year of TWCA. Membership dues after year one shall be set annually by the board of directors.

**(b) Payment.** The Secretary will send out invoices in compliance with reasonable invoicing requirements (*e.g.*, receipt of invoices at least forty-five (45) days prior to the due date). The





Secretary will promptly send out a written notice (“Dues Notice”) to any Member that has not paid its dues within ten (10) days after the date upon which such dues are required to be paid.

## Section 9.2 Dues; Class B Member

**(a) Funding.** A Class B Member will pay annual dues as set forth in the Membership Agreement, as amended from time-to-time by the Board.

**(b) Payment.** The Secretary will send out invoices in compliance with reasonable invoicing requirements (*e.g.*, receipt of invoices at least forty-five (45) days prior to the due date). The Secretary will promptly send out a written notice (“Dues Notice”) to any Member that has not paid its dues within ten (10) days after the date upon which such dues are required to be paid.

## Section 9.3 Dues; Class C Member

**(a) Funding.** The designating company or organization of a Class C Member will be responsible for the payment of annual dues as set forth by the board of directors at its annual meeting.

**(c) Payment.** The Secretary will send out invoices in compliance with reasonable invoicing requirements (*e.g.*, receipt of invoices at least forty-five (45) days prior to the due date). The Secretary will promptly send out a written notice (“Dues Notice”) to any Corporation/Organization that has not paid its dues within ten (10) days after the date upon which such dues are required to be paid.

**(d)**

## Section 9.4 Dues; Class D Member

**(a) Funding.** The designating company or organization of a Class D Member will be not be responsible for the payment of annual dues.

## ARTICLE X

### MEMBERSHIP MEETINGS

**Section 10.1 Membership Meetings.** Any Member shall be permitted to participate in any and all meetings of the Membership At-Large (including Special Meetings as set forth in Section 10.1(b) below).

**(a) Regular Meetings.** The annual meetings of the Membership At-Large shall be held annually at which time the members shall elect a board of Directors and transact such other business as may legally come before the meeting. The time and place of the annual meeting shall be announced at least 60 days prior to the meeting. No Member will be intentionally excluded from Membership meetings.

**(b) Special Meetings.** Special meetings of the Membership At-Large shall be held at the call of the President. Notice of a special meeting shall be given at least thirty (30) days prior to such meeting in accordance with Section 10.4 below.





**Section 10.2 Conduct of Meetings.** Meetings of the Membership At-Large shall be presided over by the President, or in the absence of the President, by the Vice President. The Secretary shall act as the secretary of all meetings of the Membership At-Large, *provided, that*, in his or her absence the President shall appoint another Member to act as Acting Secretary of the meeting.

**Section 10.3 Place of Meetings.** All meetings of the Membership At-Large shall be held either at the principal office of TWCA or at any other place as determined by resolution of the Board.

**Section 10.4 Notice of Meetings.** Notice of each annual and special meeting of the Membership At-Large shall be given to each Member at the last address of record, by first class mail or via email with acknowledgement, at least thirty (30) days before the meeting. The notice shall include the date, time, and place of the meeting or the date on which any ballot enclosed therewith shall be required to be returned for inclusion in TWCA's voting process. Notice of each annual and special meeting shall include a description of any matter or matters that must be approved by the Membership At-Large pursuant to these Bylaws or applicable law. In the case of special meetings, the notice shall specify the purpose or purposes for which the meeting is called. Such notice shall be given in writing to every Member who, on the record date for notice of the meeting, is entitled to vote thereat.

### **Section 10.5 Voting.**

**(a) General.** With the exception of Associate and Affiliate Members, each Member is entitled to one (1) vote on each matter submitted to a vote of the Membership At-Large.

**(b) Electronic Voting.** Electronic voting may be used in connection with both meetings of the Members and the solicitation of written consents as follows:

**(i) Action with Meeting.** For purposes of electronic votes solicited in connection with a meeting of the Membership At-Large at which a quorum was present, the requisite number of votes that would have been required at such meeting to pass an action shall be required to pass an action via this electronic voting provision. Only those members in attendance of the meeting shall be permitted to vote with respect to this Section 10.5. The deadline for receipt of electronic votes with respect to any such vote shall be no later than two (2) weeks from the date of the meeting, as announced prior to adjournment of such meeting.

**(ii) Action without Meeting.** Any action required or permitted to be taken by the Membership At-Large at a meeting may be taken without a meeting. For purposes of taking action without a meeting solicitation via electronic balloting and voting shall be permitted hereunder. Such procedure shall be initiated by the electronic distribution of ballots and all related materials for consideration by the Membership At-Large to all of the Members at the time of such distribution. Thereafter, the Members shall be permitted to cast their votes electronically in response to the distributed ballots. The deadline for receipt of such electronic votes cast by the Members shall be no less than two (2) weeks from the date of the meeting, as set forth in the balloting materials.





**Section 10.6 Quorum.** Unless otherwise provided herein, the presence in person of at least a simple majority of the Membership At-Large shall constitute a quorum for the transaction of business. For purposes of calculating the quorum requirements set forth in this Section 10.6, Members who are employed by the same organization (including Affiliates) shall collectively be considered one (1) Member.

**Section 10.8 Major Decisions.** For actions (i) approving or changing the name of TWCA; (ii) approving or amending the Membership Agreement, or (iii) amending these Bylaws or the Certificate of Incorporation of TWCA; such action must be approved by two-thirds (2/3) of the Membership At-Large represented at a meeting in which a quorum is present.

## ARTICLE XI

### INDEMNIFICATION OF DIRECTORS, OFFICERS AND AGENTS

**Section 11.1 Indemnification of Directors, Officers and Agents.** TWCA shall indemnify any person made or threatened to be made a party to an action by or in the right of TWCA to procure a judgment in its favor by reason of the fact that he, his testator or intestate is or was a Director or officer of TWCA, against amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred by him in connection with the defense or settlement of such action or in connection with an appeal therein, except in relation to matters as to which such person is adjudged to have breached his duty to TWCA. TWCA shall indemnify any person, made, or threatened to be made, a party to any action or proceeding other than as described in the preceding sentence (i.e., other than one by or in the right of TWCA to procure a judgment in its favor), whether civil or criminal, including an action by or in the right of any other organization of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any such person served in any capacity at the request of TWCA, by reason of the fact that he, his testator or intestate was a Director or officer of TWCA, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such person acted, in good faith, for a purpose which he reasonably believed to be in the best interests of TWCA and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his conduct was unlawful. Notwithstanding the above, TWCA shall only be subject to these indemnification provisions if: (i) the party seeking the indemnity provides notice of the claim promptly to TWCA; (ii) TWCA is given sole control of the defense and settlement of the claim; (iii) TWCA receives from the party seeking the indemnity all available information, assistance and authority to defend such claim; and (iv) the party seeking the indemnity has not compromised or settled such proceeding without TWCA's prior written consent. Expenses incurred by a person described in this section in defending a civil or criminal action or proceeding may be paid by TWCA in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of such person to repay the amounts so advanced if it should be ultimately determined that such person is not entitled to be indemnified hereunder. In no event shall individual Members of TWCA be subject to the indemnification and advancement of expenses obligations of TWCA under this section. The indemnification and advancement of expenses granted pursuant to, or provided by, this section shall not be deemed exclusive of any other rights to which a Director, officer,





employee or other agent of TWCA seeking indemnification of expenses may be entitled, whether contained in the certificate of incorporation or these Bylaws, or in a resolution of the Board, or an agreement providing for such indemnification or under law or otherwise; provided, that no indemnification may be made to or on behalf of any Director or officer if a judgment or other final adjudication adverse to the Director or officer establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled. To the fullest extent permitted by applicable law, TWCA may purchase and maintain insurance on behalf of any person who is a Director or officer, or was serving at the request of TWCA as a Director or officer or in any other capacity against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not TWCA would have the power to indemnify him or her under this section.

## ARTICLE XII MISCELLANEOUS

**Section 12.1 Fiscal Year.** The fiscal year of TWCA shall begin on July 1 and end on June 30 of the next year.

**Section 12.2 Disbursements.** A process for approving expenditures (including documenting payments received and expenditures allocated, preventing commingling of funds, disposition of the funds upon bankruptcy of the Secretary, etc.) will be developed by the Board.

**Section 12.3 Expenses.** Each Member will bear its own costs and expenses in connection with its performance of its rights and duties in respect of TWCA, including, without limitation, compensation of its employees, and all travel and living expenses associated with any Member's participation in any meetings and conferences called in connection with the activities of TWCA.

**Section 12.4 Checks, Notes and Contracts.** The Board is authorized to select such depositories as it shall deem proper for the funds of TWCA and shall determine who shall be authorized in TWCA's behalf to sign bills, notes, receipts, acceptances, endorsements, checks, releases, contracts and documents.

**Section 12.5 Investments.** The funds of TWCA may be retained in whole or in part in cash or be invested and reinvested from time to time in such property, real, personal or otherwise, or stocks, bonds or other securities, as the Board in its discretion may deem desirable.

**Section 12.6 Books.** There shall be kept at the office of TWCA correct books of account of the activities and transactions of TWCA, including a minute book which shall contain a copy of the certificate of incorporation, a copy of these Bylaws, and all minutes of the meetings of the Board.





**Section 12.7 Distribution of Assets Upon Dissolution.** Upon a dissolution of TWCA, and after all of the known debts and liabilities of TWCA have been paid or adequately provided for, any remaining net assets of TWCA shall be distributed by the Board to one or more organizations selected by the Board which will help to further the purposes of TWCA as set forth in Section 2.1.

## **ARTICLE XIII AMENDMENTS**

**Section 13.1 Amendments.** These Bylaws may not be amended without (i) the consent of at least two-thirds (2/3) of the Membership At-Large in accordance with Section 10.8; and (ii) any other consent requirements expressly set forth herein with respect to such amendment's proposed subject matter. Additionally, to the extent a proposed amendment would alter a provision that would require the unanimous consent of the Membership At-Large for certain actions, then such amendment must be unanimously approved in order to amend these Bylaws. The provisions of any such amended Bylaws will be binding upon all of the Membership At-Large.

