

**BYLAWS OF NEES CONSORTIUM, INC.**  
*A California Nonprofit Public Benefit Corporation*

**ARTICLE I**  
**NAME AND LOCATION**

Section 1. NAME. The name of this corporation is NEES Consortium, Inc.

Section 2. PRINCIPAL OFFICE. The principal office for the transaction of the activities and affairs of this corporation is located at 1301 S. 46th Street, Richmond, California 94804-4698. The Board of Directors may change the location of the principal office. Any such change of location must be noted by the Secretary on these Bylaws opposite this Section; alternatively, this Section may be amended to state the new location.

Section 3. OTHER OFFICES. The corporation may also have offices at such other places where it is qualified to do business, as its business may require and as the Board of Directors may, from time to time, designate.

**ARTICLE II**  
**DEFINITIONS**

For purposes of these Bylaws the following terms shall have the following meanings:

“Board” means the Board of Directors of NEES Consortium, Inc.

“Board-elected Directors” means the Individual Members that the Board is entitled to elect to the Board pursuant to Article V, Section 2.D.

“Equipment Site” means any of the engineering laboratory facilities for NEES research funded by the National Science Foundation during the National Science Foundation’s Fiscal Years 2000-2004 under program solicitations NSF 00-06 and NSF 01-164 and meeting the terms of either a National Science Foundation cooperative agreement for NEES facility construction or a current award or subaward from the NEES Consortium for maintenance and operation.

“Equipment Site Directors” means the Directors of the Board that Equipment Site Members, voting as a class, are entitled to elect.

“Equipment Site Members” means those members of the NEES Consortium specified in Article IV, Section 1.C.

“Individual Directors” means the Directors of the Board that Individual Members, voting as a class, are entitled to elect.

“Individual Members” means those members of the NEES Consortium specified in Article IV, Section 1.B.

“Initial Directors” means the NEES Consortium’s first Directors appointed by the incorporator after its

formation pursuant to California Corporations Code Section 5134.

“Institutional Directors” means the Directors of the Board that Institutional Members, voting as a class, are entitled to elect.

“Institutional Members” means those members of the NEES Consortium specified in Article IV, Section 1.A.

“Members” means Institutional Members, Individual Members, and/or Equipment Site Members.

“NEES” means the George E. Brown, Jr. Network for Earthquake Engineering Simulation (NEES), a program funded by the National Science Foundation during FY2000-FY2004 as a Major Research Equipment and Facility Construction project.

“NEES Consortium” or “the NEES Consortium” means this corporation.

“Person” includes both a legal entity and an individual person.

“Representative” means:

(a) With respect to Institutional Members, an official with qualifications defined by the Board or in the absence of such definition, shall be (i) if an academic institution, the department chair or dean; (ii) if a research institute or non-profit organization, the executive or other chief executive; or board of directors, or (iii) if a governmental agency, the head administrator of the agency or of the branch of the agency relevant to NEES; and

(b) With respect to Equipment Site Members, the current Principal Investigator of an Equipment Site award from the National Science Foundation or the Principal Investigator of an Equipment Site maintenance and operation subaward from the NEES Consortium.

### **ARTICLE III** **PURPOSE**

Section 1. **GENERAL PURPOSE.** The NEES Consortium is organized under the California Nonprofit Public Benefit Corporation law for the public and charitable, education and scientific purposes of managing NEES.

Section 2. **GOAL OF NEES.** NEES is a national, networked, simulation resource that includes geographically-distributed, shared-use, next-generation experimental research Equipment Sites built and operated to advance earthquake engineering research and education through collaborative and integrated experimentation, theory, data archiving, and model-based simulation. The goal of NEES is to accelerate progress in earthquake engineering research and to improve the seismic design and performance of civil and mechanical infrastructure systems through the integration of people, ideas, and tools in a collaboratory environment. Open access to and use of NEES research facilities and data by all elements of the earthquake engineering community, including researchers, educators, students, practitioners, and information technology experts, is a key element of this goal.

To ensure fulfillment of the goal of NEES and to foster the broadest participation in NEES collaboratory activities, policies established by the NEES Consortium should be acceptable to the broad earthquake engineering community, including the Equipment Sites.

Section 3. MISSION OF THE NEES CONSORTIUM. The NEES Consortium manages NEES as a national shared-use research facility for the earthquake engineering community. To accomplish this, the NEES Consortium:

- A. Promotes the goal of NEES;
- B. Provides leadership and planning to ensure that NEES remains a state-of-the-art distributed facility accessible to the earthquake engineering community;
- C. Manages the shared-use maintenance and operations budget for Equipment Sites;
- D. Facilitates the scheduling of NEES research activities at Equipment Sites;
- E. Manages the system-wide information technology infrastructure of the NEES Collaboratory, providing access to a broad range of users;
- F. Maintains repositories for NEES data and simulation tools;
- G. Manages an education, outreach, and training program;
- H. Advances NEES infrastructure capabilities through the pursuit of opportunities for technology development;
- I. Fosters linkages and partnerships with federal, state, and local government entities, national laboratories, the private sector, and international collaborators; and
- J. Facilitates advanced research usage of NEES, while not competing with the NEES Consortium members in the conduct of research.

#### **ARTICLE IV** **MEMBERS**

Section 1. MEMBERSHIP CATEGORIES. The NEES Consortium shall have three (3) classes of Members, designated as “Institutional Members,” “Individual Members,” and “Equipment Site Members,” all as defined below. To be eligible to become a Member, an individual person or an organization must meet the applicable requirements specified hereunder, and shall become a Member only upon approval as set forth in Article IV, Section 2 and timely payment of such dues and fees as the Board may fix from time to time.

A. INSTITUTIONAL MEMBERS. Institutional Members must be colleges or universities, governmental agencies, or non-profit research institutes or professional, educational, or research organizations that are or desire to be actively engaged in NEES earthquake engineering research, education, or implementation. They must be committed to the goals of the NEES Consortium and have their principal location in the United States. Each Institutional Member shall designate or redesignate from time to time one Representative who shall have the voting authority of such Institutional Member. Each Institutional Member shall also designate or redesignate from time to time one Alternate Representative who shall have voting authority should the Institutional Member Representative not be available. To remain an Institutional Member, Representative or Alternate Representative vacancies must be filled promptly according to reasonable deadlines set by the Board. An Institutional Member cannot also be an Equipment Site Member.

B. INDIVIDUAL MEMBERS. Individual Members must be individuals who are or desire to be actively engaged in NEES earthquake engineering research, education, or implementation. They must be committed to the goals of the NEES Consortium, have the minimum qualification of an undergraduate degree, and shall be legal residents of the United States. An individual person may have membership in the NEES Consortium as an Individual Member, and also serve as the Representative or Alternate Representative of an Institutional Member or an Equipment Site Member.

C. EQUIPMENT SITE MEMBERS. For each Equipment Site, the university that received the prime award from the National Science Foundation to develop the facility, or, after the expiration of such National Science Foundation award, the university that receives the prime subaward from the NEES Consortium, Inc. for maintenance and operation of the Equipment Site, shall be eligible to be an Equipment Site Member, subject to the confirmation of the Board that it continues to meet the definition of an Equipment Site. Each Equipment Site Member shall designate or redesignate from time to time one Alternate Representative who shall have voting authority should the Equipment Site Member Representative not be available. To remain an Equipment Site Member, Representative or Alternate Representative vacancies must be filled promptly according to reasonable deadlines set by the Board. An Equipment Site Member cannot also be an Institutional Member.

Section 2. APPROVAL BY BOARD OR EXECUTIVE COMMITTEE. To become a Member, an eligible individual's or organization's membership application must be approved by the Board or by the Executive Committee (as defined in Article V, Section 11). At its discretion, the Board may require from applicants résumés, statements of a commitment to support the goals of the NEES Consortium, or other information relevant to the qualifications for membership.

Section 3. VOTING RIGHTS OF MEMBERS. All Institutional Members, Individual Members, and Equipment Site Members shall have the right to vote, as set forth in these Bylaws and under the California Nonprofit Public Benefit Corporation Law.

A. ELECTION OF BOARD OF DIRECTORS.

(i) INSTITUTIONAL MEMBERS. Institutional Directors shall be elected by the majority vote of all Institutional Members, voting as a class.

(ii) EQUIPMENT SITE MEMBERS. Equipment Site Directors shall be elected by the majority vote of all Equipment Site Members, voting as a class.

(iii) INDIVIDUAL MEMBERS. Individual Directors shall be elected by the majority vote of all Individual Members, voting as a class.

B. VOTING RIGHTS ON ALL OTHER MATTERS; WEIGHTED VOTING. Except as otherwise specified in these Bylaws, the Members shall vote together (and not in separate classes), provided however, that with respect to all matters upon which the Members are entitled to vote, each Institutional Member shall have its vote weighted by a factor of three, each Equipment Site Member shall have its vote weighted by a factor of three, and each Individual Member shall have his or her vote weighted by a factor of one.

Section 4. MEMBERS' DUES FEES AND ASSESSMENTS. The Board will set membership application or other fees and annual membership dues for each class of Members. Each Member must pay, within the time and on the conditions set by the Board, the dues, fees, and assessments in amounts to be fixed from time to time by the Board. The dues, fees, and assessments shall be equal for all Members of each class, but the Board may, at its discretion, set different dues, fees, and assessments for each class.

Section 5. TERMINATION OF MEMBERSHIP. A membership shall terminate on occurrence of any of the following events:

A. Resignation of the Member, such resignation taking effect at the time of receipt of the notice, or at any later time specified therein.

B. Expiration of the period of membership, unless the membership is renewed on the renewal terms fixed by the Board;

C. The Member's failure to pay dues, fees, or assessments as set by the Board within thirty (30) days after notice is sent by the NEES Consortium to the delinquent Member that such amounts are due and payable;

D. Any event that renders the Member ineligible for membership, or failure to satisfy membership qualifications; or

E. Pursuant to Article IV, Section 6, termination of membership under this Section 5 of these Bylaws by the affirmative vote of the Board that the Member has failed in a material degree to observe the rules of conduct of the NEES Consortium as adopted by the Board, including, without limitation, a persistent pattern of inactivity such as failing to vote, lack of attendance at meetings, or lack of response to membership polls or other communications, or has engaged in conduct seriously prejudicial to the NEES Consortium's purposes and interests.

Section 6. PROCEDURE FOR TERMINATION OF MEMBERSHIP. If grounds appear to exist for terminating a Member under Article IV, Sections 5 of these Bylaws, the following procedure shall be followed:

A. The Board shall give the Member at least 15 days prior notice of the proposed termination and the reasons for the proposed termination. Notice shall be given by any method reasonably calculated to provide actual notice. Notice given by mail shall be sent by first-class or registered mail to the Member's last address as shown on the NEES Consortium's records.

B. The Member shall be given an opportunity to be heard, either orally or in writing at the Board's discretion, at least five days before the effective date of the proposed termination. The hearing shall be held, or the written statement considered, by the Board to determine whether the termination should occur.

C. The Board shall decide by the affirmative vote of two-thirds of all of the Directors authorized under Article V, Section 2 whether the Member should be expelled, or sanctioned in any way. The decision of the Board shall be final.

D. Any action challenging a termination of membership, including a claim alleging defective notice, must be commenced within one year after the date of the termination.

Section 7. NO TRANSFER OF MEMBERSHIP PERMITTED. No membership or right arising from membership shall be transferred. All membership rights cease on the member's death (in the case of Individual Members) or dissolution (in the case of Institutional Members or Equipment Site Members).

Section 8. SERVICES TO NON-MEMBERS. The Board may establish programs and services and any associated fees for those who do not meet the qualifications for Members, including, without limitation, K-12 or undergraduate students, the general public, private companies, and researchers outside the United States, provided that such affiliates do not have any of the voting rights of Members.

Section 9. MEETINGS.

A. GENERAL MEETINGS.

(i) ANNUAL MEETING. An annual meeting of Members shall be held in May of each year, unless the Board fixes another date or time and so notifies Members as provided in Article IV, Sections 10.A, 10.B, and 10.C of these Bylaws.

(ii) PLACE OF MEETING. Meetings of the members shall be held at any place designated by the Board.

B. SPECIAL MEETINGS.

(i) AUTHORITY TO CALL SPECIAL MEETINGS. The Board or the President, or 5 percent or more of the Members, may call a special meeting of the Members for any lawful purpose at any time.

(ii) CALLING SPECIAL MEETINGS. A special meeting called by any Person entitled to call a meeting (other than the Board) shall be called by written request, specifying the general nature of the business proposed to be transacted, and submitted to the President, Vice-President, or the Secretary of the NEES Consortium. The officer receiving the request shall cause notice to be given promptly to the Members entitled to vote, under Article IV, Sections 10.A, 10.B, and 10.C of these Bylaws, stating that a meeting will be held at a specified time and date fixed by the Board, provided, however, that the meeting date shall be at least 35 but no more than 90 days after receipt of the request. If the notice is not given within 20 days after the request is received, the person or persons requesting the meeting may give the notice. Nothing in this Section shall be construed as limiting, fixing, or affecting the time at which a meeting of members may be held when the meeting is called by the Board.

(iii) PROPER BUSINESS OF SPECIAL MEETING. No business, other than the business that was set forth in the notice of the meeting, may be transacted at a special meeting.

Section 10. NOTICE.

A. GENERAL NOTICE REQUIREMENTS. Whenever Members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given, under Article IV, Sections 10.A, 10.B, and 10.C. of these Bylaws, to each Member entitled to vote at that meeting. The notice shall specify the place, date, and hour of the meeting. For the annual meeting, the notice shall state the matters that the Board, at the time notice is given, intends to present for action by the Members. For a special meeting, the notice shall state the general nature of the business to be transacted and shall state that no other business may be transacted. The notice of any meeting at which Directors are to be elected shall include the names of all persons who are nominees when notice is given. Except as provided in Article IV, Section 10.B of these Bylaws, any proper matter may be presented at the meeting.

B. NOTICE OF CERTAIN AGENDA ITEMS. Approval by the Members of any of the following proposals, other than by unanimous approval by those entitled to vote, is valid only if the notice or written waiver of notice states the general nature of the proposal or proposals:

- (i) Removing a Director without cause;
- (ii) Filling vacancies on the Board;
- (iii) Amending the articles of incorporation or Bylaws; or

(iv) Electing to end and dissolve the NEES Consortium.

C. MANNER OF GIVING NOTICE. Notice of any meeting of Members shall be in writing and shall be given at least 10 but no more than 90 days before the meeting date. The notice shall be given either personally or by first-class, registered, or certified mail, or by other means of written communication, charges prepaid, and shall be addressed to each Member entitled to vote, at the address of that Member as it appears on the books of the NEES Consortium or at the address given by the Member to the NEES Consortium for purposes of notice. If no address appears on the NEES Consortium's books and no address for notice has been so given, notice shall be deemed to have been given if either (i) notice is sent to that Member by first-class mail or facsimile, or other written communication to the NEES Consortium's principal office or (ii) notice is published at least once in a newspaper of general circulation in the county in which the principal office is located.

D. AFFIDAVIT OF MAILING NOTICE. An affidavit of the mailing of any notice of any Members' meeting, or of the giving of such notice by other means, may be executed by the Secretary, or Assistant Secretary of the NEES Consortium, and if so executed, shall be filed and maintained in the NEES Consortium's minute book.

Section 11. QUORUM. Thirty-Three and One-Third percent (33.33%) of the voting power shall constitute a quorum for the transaction of business at any meeting of Members.

Except as otherwise required by law, the articles, or these Bylaws, the Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, even if enough Members have withdrawn to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the Members required to constitute a quorum.

Section 12. VOTING.

A. ELIGIBILITY TO VOTE. Subject to the California Nonprofit Public Benefit Corporation Law, Members as of the record date as determined under Article IV, Sections 14.A and 14.B of these Bylaws shall be entitled to vote at any meeting of Members.

B. MANNER OF VOTING. Voting may be by voice or by ballot, except that any election of Directors must be by ballot if demanded before the voting begins by any Member at the meeting.

C. NUMBER OF VOTES. Each Member entitled to vote may cast such weighted votes on each matter submitted to a vote of the Members as specified in Article IV, Section 3.B, provided however, that with respect to the election of Directors, voting shall be conducted within each class of Members.

D. APPROVAL BY MAJORITY VOTE. If a quorum is present, the affirmative vote of a majority of the voting power represented at the meeting, entitled to vote and voting on any matter, shall be deemed the act of the Members unless the vote of a greater number, or voting by classes, is required by these Bylaws or by the articles of incorporation.

E. WAIVER OF NOTICE OR CONSENT. The transactions of any meeting of Members, however called or noticed and wherever held, shall be as valid as though taken at a meeting duly held after standard call and notice, if (a) a quorum is present and (b) either before or after the meeting, each Member entitled to vote, not present in person, signs a written waiver of notice, a consent to the holding of the meeting, or an approval of the minutes of the meeting. The waiver of notice, consent, or approval need not

specify either the business to be transacted or the purpose of the meeting except that, if action is taken or proposed to be taken for approval of any matter specified in Article IV, Section 10.B of these Bylaws, the waiver of notice, consent, or approval shall state the general nature of the proposal. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

A Member's attendance at a meeting shall also constitute a waiver of notice of and presence at that meeting unless the Member objects at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened. Also, attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice of the meeting but not so included, if that objection is expressly made at the meeting.

Section 13. ACTION WITHOUT MEETINGS.

A. ACTION BY WRITTEN BALLOT. Any action that Members may take at any meeting of Members may also be taken without a meeting by complying with Article IV, Sections 13.B, 13.C, and 13.D, of these Bylaws.

B. SOLICITATION OF WRITTEN BALLOTS. The NEES Consortium shall distribute one written ballot to each Member entitled to vote on the matter. The ballots shall be mailed or delivered in the manner required by Article IV, Section 10.C of these Bylaws. All solicitations of votes by written ballot shall (a) state the number of responses needed to meet the quorum requirement; (b) state, with respect to ballots other than for election of Directors, the percentage of approvals necessary to pass the measure or measures; and (c) specify the time by which the ballot must be received in order to be counted. Each ballot so distributed shall (a) set forth the proposed action; (b) give the Members an opportunity to specify approval or disapproval of each proposal and state that that his/her/its vote shall be cast in accordance with such choice; and (c) provide a reasonable time in which to return the ballot to the NEES Consortium.

C. NUMBER OF VOTES AND APPROVALS REQUIRED. Approval by written ballot shall be valid only when (a) the number of votes cast by ballot (including ballots that are marked "withhold" or otherwise indicate that authority to vote is withheld) within the time specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and (b) the number of approvals equals or exceeds the number of weighted votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot without a meeting.

D. BALLOTS MARKED "WITHHOLD" IN DIRECTOR ELECTION. In any election of Directors, any form of written ballot in which the Directors to be voted upon are named as candidates and which is marked by a Member "withhold" or "abstain" or otherwise marked in a manner indicating that the authority to vote for the election of Directors is withheld shall not be counted either for or against the election of a Director.

E. NO REVOCATION OF BALLOTS. A written ballot may not be revoked.

Section 14. RECORD DATE.

A. RECORD DATE FOR NOTICE, VOTING, WRITTEN BALLOTS, AND OTHER BOARD ACTIONS. For purposes of establishing the Members entitled to receive notice of any meeting,



entitled to vote at any meeting, entitled to vote by written ballot, or entitled to exercise any rights in any lawful action, the Board may, in advance, fix a record date. The record date so fixed for:

- (i) Sending notice of a meeting shall be no more than 90 nor less than 10 days before the date of the meeting;
- (ii) Voting at a meeting shall be no more than 60 days before the date of the meeting;
- (iii) Voting by written ballot shall be no more than 60 days before the day on which the first written ballot is mailed or solicited; and
- (iv) Taking any other action shall be no more than 60 days before that action.

B. RECORD DATE FOR ACTIONS NOT SET BY BOARD. If not otherwise fixed by the Board, the record date for determining Members entitled to receive notice of a meeting of Members shall be the next business day preceding the day on which notice is given or, if notice is waived, the next business day preceding the day on which the meeting is held. If not otherwise fixed by the Board, the record date for determining Members entitled to vote at the meeting shall be the day on which the meeting is held.

If not otherwise fixed by the Board, the record date for determining Members entitled to vote by written ballot shall be the day on which the first written ballot is mailed or solicited.

If not otherwise fixed by the Board, the record date for determining Members entitled to exercise any rights with respect to any other lawful action shall be the date on which the Board adopts the resolution relating to that action, or the 60th day before the date of that action, whichever is later.

For purposes of Article IV, Sections 14.A and 14.B of these Bylaws, a Person (individual or organization) holding a membership at the close of business on the record date shall be a Member of record.

Section 15. NO PROXY RIGHTS. No Member may authorize another Person (individual or organization) to act by proxy with respect to the exercise of the rights of membership under these Bylaws.

Section 16. ADJOURNMENT AND NOTICE OF ADJOURNED MEETINGS. Any Members' meeting, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of the Members represented at the meeting. No meeting may be adjourned for more than 45 days. When a Members' meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the Meeting at which adjournment is taken. If after adjournment a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each Member who, on the record date for notice of the meeting, is entitled to vote at the meeting. At the adjourned meeting, The NEES Consortium may transact any business that might have been transacted at the original meeting.

## **ARTICLE V** **BOARD OF DIRECTORS**

Section 1. GENERAL POWERS OF BOARD. Full power to establish policies and govern the affairs of the NEES Consortium is vested in the Board. To this end and without limitation of the foregoing or of its powers expressly conferred by these Bylaws, the Board shall have power to authorize such action on behalf of the NEES Consortium, make such rules or regulations for its management, create such additional offices or special committees and select, employ or remove such of its officers, agents or employees as it shall deem best.

Section 2. NUMBER OF AND QUALIFICATIONS FOR DIRECTORS. All Directors must be Members of NEES Corporation. The authorized number of Directors shall be fifteen (15). The qualifications for Directors are as follows:

(A) INSTITUTIONAL DIRECTORS. Three (3) of the Directors shall be Institutional Directors, representing Institutional Members on the Board through their respective Representatives.

(B) EQUIPMENT SITE DIRECTORS. Six (6) of the Directors shall be Equipment Site Directors, representing the Equipment Site Member class on the Board through election by the Equipment Site Members.

(C) INDIVIDUAL DIRECTORS. Three (3) of the Directors shall be Individual Directors.

(D) BOARD-ELECTED DIRECTORS. Three (3) of the Directors shall be Board-elected Directors.

Section 3. INITIAL DIRECTORS. Provided however, notwithstanding anything in these Bylaws to the contrary, after the filing of the articles forming the NEES Consortium, the incorporator, pursuant to California Corporations Code Section 5134, may appoint the Initial Directors who need not possess the qualifications as set forth in Article V, Section 2 above, but who nonetheless may serve as Directors until such time as the Board is able to recruit and admit a sufficient number of Members of each class, solicit nominations for the election of Directors who shall possess the applicable qualifications specified in Article V, Section 2, properly notice and convene a meeting of such Members and hold elections for such Directors in accordance with these Bylaws to replace the Initial Directors.

Section 4. TERMS OF OFFICE. No Director can serve for more than two consecutive full terms. To create a schedule of staggered terms that will provide for one third of the Board terms expiring in any given year, the Initial Directors, by resolution, shall assign one-year terms to five of the Director positions, two-year terms to five other Director positions, and three-year terms to the remaining five Director positions, and such assignments shall continue by successor Boards until such time as all Director terms can be three (3) years in duration with one third of the Director terms expiring in any given year.

Section 5. RESTRICTION ON INTERESTED PERSONS AS DIRECTORS. No more than 49 percent of the Persons serving on the Board may be "interested persons." An interested person is (a) any Person compensated by the NEES Consortium for services rendered to it within the previous 12 months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a Director as Director; and (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of such person. However, any violation of this paragraph shall not affect the validity or enforceability of transactions entered into by the NEES Consortium.

Section 6. NOMINATIONS BY COMMITTEE. The Board shall form a nominating committee that shall propose reasonable procedures for the nomination of candidates for Director and candidates to fill vacancies on advisory committees to the Board.

Section 7. EVENTS CAUSING VACANCIES ON BOARD.

A. SPECIFIED EVENTS. A vacancy or vacancies on the Board of Directors shall occur in the event of (a) the death or resignation of any Director; (b) the declaration by resolution of the Board of a vacancy in the office of a Director who has been convicted of a felony, declared of unsound mind by a court order, or found by final order or judgment of any court to have breached a duty under California Nonprofit Public Benefit Corporation Law, Chapter 2, Article 3; (c) the vote of the Members of any class voting as a class to remove its/their Director (d) the increase of the authorized number of Directors; or (e) the failure of the Members, at any meeting of Members at which any Director or Directors are to be elected, to elect the number of Directors required to be elected at such meeting.

B. RESIGNATION OF DIRECTORS. Except as provided below, any Director may resign by giving written notice to the President or the Secretary of the Board. The resignation shall be effective when the notice is given unless it specifies a later time for the resignation to become effective. If a Director's resignation is effective at a later time, the Board may elect a successor to take office as of the date when the resignation becomes effective. Except on notice to the California Attorney General, no Director may resign if the NEES Consortium would be left without a duly elected Director or Directors.

C. VACANCIES FILLED BY BOARD. Except for a vacancy created by the removal of a Director by the Members of the applicable class, vacancies on the Board may be filled by approval of the Board or, if the number of Directors then in office is less than a quorum, by (1) the unanimous written consent of the Directors then in office, (2) the affirmative vote of a majority of the Directors then in office at a meeting held according to notice or waivers of notice complying with Corporations Code section 5211, or (3) a sole remaining Director.

The Members of the applicable class may elect a Director or Directors at any time to fill any vacancy or vacancies not filled by the Directors.

## Section 8. MEETINGS OF BOARD OF DIRECTORS.

A. PLACE OF BOARD MEETINGS. Meetings of the Board shall be held at any place that has been designated by resolution of the Board or in the notice of the meeting or, if not so designated, at the principal office of the NEES Consortium.

B. MEETINGS BY TELECOMMUNICATIONS EQUIPMENT. Any Board meeting may be held by conference telephone, video screen communication, or other communications equipment. Participation in a meeting under this Section shall constitute presence in person at the meeting if all of the following apply:

- (i) Each member participating in the meeting can communicate concurrently with all other members.
- (ii) Each member 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 NEES Consortium.
- (iii) The Board has adopted and implemented a means of verifying both of the following:
  - (a) A person communicating by telephone, video screen, or other communications equipment is a Director entitled to participate in the Board meeting.
  - (b) All statements, questions, actions, or votes were made by that Director and not by another person not permitted to participate as a Director.

C. ANNUAL AND OTHER MEETINGS. Immediately after each annual meeting of members, the Board may hold a general meeting for purposes of organization, election of officers, or the transaction of other business. Notice of this meeting is not required.

Other general meetings of the Board may be held without notice at such time and place as the Board may fix from time to time.

D. SPECIAL MEETINGS.

- (i) AUTHORITY TO CALL SPECIAL MEETINGS. Special meetings of the Board for any purpose may be called at any time by the President or Vice-President, the Secretary, or any two Directors.
- (ii) NOTICE OF SPECIAL MEETINGS. Notice of the time and place of special meetings shall be given to each Director by (a) personal delivery of written notice; (b) first-class mail, postage prepaid; (c) telephone, including a voice messaging system or other system or technology designed to record and communicate messages, either directly to the Director or to a person at the Director's office who would reasonably be expected to communicate that notice promptly to the Director; (d) facsimile; (e) electronic mail; or (f) other electronic means. All such notices shall be given or sent to the Director's address or telephone number as shown on the NEES Consortium's records. Notices sent by first-class mail shall be deposited in the United States mail at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, electronic mail, or facsimile shall be delivered, telephoned, or sent respectively, at least 48 hours before the time set for the meeting. The notice shall state the time of the meeting and the place. The notice need not specify the purpose of the meeting.

E. QUORUM. A majority of the authorized number of Directors shall constitute a quorum for the transaction of any business except adjournment. Every action taken or decision made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be an act of the Board, subject to the more stringent provisions of the California Nonprofit Public Benefit Corporation Law, including, without limitation, those provisions relating to (a) approval of contracts or transactions in which a Director has a direct or indirect material financial interest, (b) approval of certain transactions between corporations having common directorships, (c) creation of and appointments to committees of the Board, and (d) indemnification of Directors. A meeting at which a quorum is initially present may continue to transact business, despite the withdrawal of some Directors, if any action taken or decision made is approved by at least a majority of the required quorum for that meeting.

F. VOTING. Each Director shall be entitled to one vote and may not delegate that right to anyone else. Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present is the act of the Board except that the affirmative vote of two-thirds of all of the Directors authorized under Article V, Section 2 shall be required for:

- (i) Adoption and revision of the Bylaws;
- (ii) Removal of Members;
- (iii) Establishment or modification of policies for Standing Committees with respect to their composition and the number of votes necessary to pass resolutions.

G. WAIVER OF NOTICE. Notice of a meeting need not be given to any Director who, either before or after the meeting, signs a waiver of notice, a written consent to the holding of the meeting, or an approval of the minutes of the meeting. The waiver of notice or consent need not specify the purpose of the

meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings. Notice of a meeting need not be given to any Director who attends the meeting and who, before or at the beginning of the meeting, does not protest the lack of notice to him or her.

H. ADJOURNMENT. A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place.

I. NOTICE OF ADJOURNED MEETING. Notice of the time and place of holding an adjourned meeting need not be given unless the original meeting is adjourned for more than 24 hours. If the original meeting is adjourned for more than 24 hours, notice of any adjournment to another time and place shall be given, before the time of the adjourned meeting, to the Directors who were not present at the time of the adjournment.

Section 9. ACTION WITHOUT A MEETING. Any action that the Board is required or permitted to take may be taken without a meeting if all Board members consent in writing to the action; provided, however, that the consent of any Director who has a material financial interest in a transaction to which the NEES Consortium is a party and who is an “interested Director” as defined in Corporations Code section 5233 shall not be required for approval of that transaction. Such action by written consent shall have the same force and effect as any other validly approved action of the Board. All such consents shall be filed with the minutes of the proceedings of the Board.

Section 10. REIMBURSEMENT. Directors may receive such reimbursement of expenses, as the Board may establish by resolution to be just and reasonable as to the NEES Consortium at the time that the resolution is adopted.

Section 11. COMMITTEES OF BOARD OF DIRECTORS.

A. CREATION AND POWERS OF EXECUTIVE COMMITTEE. There shall be an “Executive Committee” of the Board consisting of the President, Vice-President, Secretary, Treasurer, and one other Director elected by the Board who has at least a two-year term (see Article V, Section 4). At its discretion, from time to time, the Board may add additional Directors to the Executive Committee or change its selection of its elected member of the Executive Committee. The Board may appoint one or more Directors as alternate members of the Executive Committee, who may replace any absent member at any meeting. The Executive Committee shall have all the authority of the Board, to the extent provided in the Board resolution, except that it may not:

- (i) Take any final action on any matter that, under the California Nonprofit Public Benefit Corporation Law, also requires approval of the Members or approval of a majority of all Members or the Members of any class;
- (ii) Fill vacancies on the Board or any committee of the Board;
- (iii) Fix compensation of the Directors for serving on the Board or on any committee;
- (iv) Amend or repeal Bylaws or adopt new Bylaws;
- (v) Amend or repeal any resolution of the Board that by its express terms is not so amendable or repealable; or
- (vi) Create any other committees of the Board or appoint the members of committees of the Board;
- (vii) Approve the NEES Consortium annual budget; or
- (viii) Establish or modify policies for Standing Committees.

B. MEETINGS AND ACTIONS OF EXECUTIVE COMMITTEE. Meetings and actions of the Executive Committee shall be governed by, held, and taken under the provisions of these Bylaws concerning meetings and other Board actions, except that the time for general meetings of the Executive Committee and the calling of special meetings of the Executive Committee may be set either by Board resolution or, if none, by resolution of the Executive Committee. A quorum for meetings of the Executive Committee shall be a majority of the Executive Committee members. If a quorum is present, the affirmative vote of a majority of all of the members of the Executive Committee shall be considered an act of the Executive Committee. Minutes of each meeting shall be kept and shall be filed with the corporate records. The Board may adopt rules for the governance of the Executive Committee as long as the rules are consistent with these Bylaws. If the Board has not adopted rules, the Executive Committee may do so.

C. AD HOC COMMITTEES. The Board may create ad hoc committees as may be deemed desirable to assist the NEES Consortium in the conduct of its affairs with regard to topics of a temporary or specialized nature.

D. STANDING COMMITTEES. By resolution adopted by the Board of Directors, the Board may designate one or more Standing Committees.

## **ARTICLE VI** **OFFICERS**

### Section 1. OFFICES HELD.

A. OFFICERS. The officers of the NEES Consortium shall be a President, Vice-President, a Secretary, and a Treasurer. The NEES Consortium, at the Board's discretion, may also have one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers as may be appointed under Article VI, Section 2 of these Bylaws.

B. QUALIFICATIONS, ELECTION, RESIGNATION, REMOVAL, VACANCIES, AND TERM OF OFFICE. The President, Vice-President, Secretary, and Treasurer must be Directors, provided however that Assistant Secretaries or Assistant Treasurers need not be Directors. Officers shall be elected by the Board, and each officer shall hold office until resignation or removal by the Board or a successor shall be elected and qualified, whichever occurs first. Officers may be re-elected by the Board to any office. Subject to Article V, Section 4, terms of the President, Vice-President, Secretary, and Treasurer, unless otherwise specified by the Board, shall begin no later than two months prior to the date of the Annual Meeting of the Members and shall be two years in duration. An officer may be removed, either with or without cause, by the Board at any time. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary of the NEES Consortium. Any such resignation shall take effect at the date of the receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy of any officer shall be filled by the Board. In the event of a vacancy in any office other than that of President, such vacancy may be filled temporarily by appointment by the President until such time as the Board shall fill the vacancy.

Section 2. APPOINTMENT OF OTHER OFFICERS. The Board may appoint any other officers that the NEES Consortium may require, including without limitation, an Executive Director, one or more Assistant Secretaries, or one or more Assistant Treasurers. Each appointed officer shall have the title and

authority, hold office for the period, and perform the duties specified in the Bylaws or established by the Board.

Section 3. DUTIES OF OFFICERS.

A. PRESIDENT. The President shall preside at all meetings of the Members, the Board, and the Executive Committee, or, in the President's absence, the meeting shall be chaired according to the following order of succession: Vice-President, Secretary, Treasurer. In the event none of these individuals is present at a meeting, the chair shall be chosen by a majority of the Directors present at the meeting.

B. VICE-PRESIDENT. If the President is absent or disabled, the Vice-President shall perform all duties of the President. When so acting, the Vice-President shall have all powers of and be subject to all restrictions on the President. The Vice-President shall have such other powers and perform such other duties as the Board or the Bylaws may require.

C. SECRETARY. The Secretary shall be responsible for overseeing the maintenance of appropriate records of the NEES Consortium, including a book of minutes of all meetings, proceedings, and actions of the Board, of committees of the Board, and of Members' meetings. The minutes of meetings shall include the time and place that the meeting was held; whether the meeting was annual, general, or special, and, if special, how authorized; the notice given; the names of persons present at Board and committee meetings; and the number of Members present or represented at Members' meetings.

The Secretary shall keep or cause to be kept, at the principal office, a copy of the articles of incorporation and Bylaws, as amended to date.

The Secretary shall keep or cause to be kept, at the NEES Consortium's principal office or at a place determined by resolution of the Board, a record of the NEES Consortium's Members, showing each Member's name, address, and class of membership.

The Secretary shall give, or cause to be given, notice of all meetings of Members, of the Board, and of committees of the Board that these Bylaws require to be given. The Secretary shall keep the corporate seal, if any, in safe custody and shall have such other powers and perform such other duties as the Board or the Bylaws may require.

D. TREASURER. The Treasurer shall be responsible for overseeing the financial affairs of the NEES Consortium, including the preparation of necessary tax or other financial reports, and the receipt, disbursement, and investment of funds.

E. EXECUTIVE DIRECTOR. If the Board approves the hiring of an agent or employee to serve as Executive Director, the duties of that position shall be to manage the affairs of the NEES Consortium under the direction of the Board and supervise any other employees hired by the NEES Consortium. As with all officers, the Executive Director shall serve at the pleasure of the Board and may be terminated by the Board in its sole discretion. The Board delegates to the Executive Director the authority to sign contracts, hire and terminate employees, have signatory authority over bank accounts, and represent the interests of the NEES Consortium in dealings with the National Science Foundation or others, unless the Board defines, limits, or revokes such authority. No other employee may have such authority unless specifically authorized by the Board.

**ARTICLE VII**  
**CONTRACTS WITH DIRECTORS AND OFFICERS**

No Director of the NEES Consortium nor any other corporation, firm, association, or other entity in which one or more of the NEES Consortium's Directors are Directors or have a material financial interest, shall be interested, directly or indirectly, in any contract or transaction, unless (a) the material facts regarding that Director's financial interest in such contract or transaction or regarding such common directorship, officership, or financial interest are fully disclosed in good faith and noted in the minutes, or are known to all members of the Board prior to the Board's consideration of such contract or transaction; (b) such contract or transaction is authorized in good faith by a majority of the Board by a vote sufficient for that purpose without counting the votes of the interested Directors; (c) before authorizing or approving the transaction, the Board considers and in good faith decides after reasonable investigation that the NEES Consortium could not obtain a more advantageous arrangement with reasonable effort under the circumstances; and (d) the NEES Consortium for its own benefit enters into the transaction, which is fair and reasonable to the NEES Consortium at the time the transaction is entered into.

This Section does not apply to a transaction that is part of an educational or charitable program of the NEES Consortium if it (a) is approved or authorized by the NEES Consortium in good faith and without unjustified favoritism and (b) results in a benefit to one or more Directors or their families because they are in the class of persons intended to be benefited by the educational or charitable program of the NEES Consortium.

**ARTICLE VIII**  
**INDEMNIFICATION**

To the fullest extent permitted by law, the NEES Consortium shall indemnify its Directors, officers, employees, and other persons described in Corporations Code section 5238(a), including persons formerly occupying any such positions, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding," as that term is used in that section, and including an action by or in the right of the NEES Consortium, by reason of the fact that the person is or was a person described in that section. "Expenses," as used in this bylaw, shall have the same meaning as in that section of the Corporations Code.

On written request to the Board by any person seeking indemnification under Corporations Code section 5238(b) or section 5238(c), the Board shall promptly decide under Corporations Code section 5238(e) whether the applicable standard of conduct set forth in Corporations Code section 5238(b) or section 5238(c) has been met and, if so, the Board shall authorize indemnification. If the Board cannot authorize indemnification, because the number of Directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of Directors who are not parties to that proceeding, the Board shall promptly call a meeting of members. At that meeting, the Members shall determine under Corporations Code section 5238(e) whether the applicable standard of conduct has been met and, if so, the members present at the meeting shall authorize indemnification.

To the fullest extent permitted by law and except as otherwise determined by the Board in a specific instance, expenses incurred by a person seeking indemnification under Article VIII of these Bylaws in defending any proceeding covered by those Sections shall be advanced by the NEES Consortium before final disposition of the proceeding, on receipt by the corporation of an undertaking by or on behalf of that



person that the advance will be repaid unless it is ultimately found that the person is entitled to be indemnified by the corporation for those expenses.

## **ARTICLE IX INSURANCE**

The NEES Consortium shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, Directors, employees, and other agents, to cover any liability asserted against or incurred by any officer, Director, employee, or agent in such capacity or arising from the officer's, Director's, employee's, or agent's status as such.

## **ARTICLE X REQUIRED REPORTS**

The Board shall cause such annual reports and statements to be sent to the Members and Directors as required by applicable law.

## **ARTICLE XI AMENDMENT TO BYLAWS**

Section 1. AMENDMENT BY BOARD. Subject to the Members' rights under Article XI, Section 2 of these Bylaws and the limitations set forth below, by the affirmative vote of two-thirds of all of the Directors authorized under Article V, Section 2 the Board may adopt, amend, or repeal Bylaws unless doing so would materially and adversely affect the Members' rights as to voting. The Board may not extend a Director's term beyond that for which the Director was elected.

Section 2. AMENDMENT BY MEMBERS. New Bylaws may be adopted, or these Bylaws may be amended or repealed, by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present or by written ballot; provided however that any adoption, repeal, or amendment that would materially and adversely affect the rights of a class as to voting in a manner different than the action affects another class must be approved by a majority of all of the Members of that adversely affected class. No amendment may extend the term of a Director beyond that for which the Director was elected.

## **ARTICLE XII CONSTRUCTION**

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the California Nonprofit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the preceding sentence, the masculine gender includes the feminine and neuter, and the singular includes the plural, the plural includes the singular.

**ARTICLE XIII**  
**DEDICATION OF ASSETS**

The NEES Consortium's assets are irrevocably dedicated to public benefit purposes. No part of the net earnings, properties, or assets of the NEES Consortium, on dissolution or otherwise, shall inure to the benefit of any private person or individual, or to any Director or officer of the NEES Consortium. On liquidation or dissolution, all properties and assets remaining after payment, or provision for payment, of all debts and liabilities of the corporation shall be distributed to a nonprofit fund, foundation, or corporation that is organized and operated exclusively for charitable purposes and that has established its exempt status under Internal Revenue Code section 501(c)(3).

**CERTIFICATE OF SECRETARY**

I certify that I am the duly elected and acting Secretary of NEES Consortium, Inc., a California nonprofit public benefit corporation; that these Bylaws, consisting of 17 pages, are the Bylaws of NEES Consortium, Inc. as adopted by the Board of Directors on January 31, 2003, and that these Bylaws have not been amended or modified since that date.

Executed on (date): 11 Feb 03

at (city, state): Richmond, CA

\_\_\_\_\_  
*[signature]*

Stephen Mahin  
*[printed name]*

***Secretary of NEES Consortium, Inc.***

Amended by resolution of unanimous consent of the Board of Directors April 23, 2003 (to make a correction of a typographical error by deleting an extraneous word, "also," from the second sentence of Article IV, Section C).