

[AMENDED AND RESTATED] BYLAWS¹ OF
[Name of the Corporation] (the “Corporation”)
as of [insert date here]

ARTICLE I

MEMBERS

The Corporation shall have no members.²

ARTICLE II

OFFICES

The principal office of the Corporation shall be in the **[the applicable county]**, State of New York. The Corporation may also have offices at such other places as the Board of Directors (the “Board”) may from time to time determine or the business of the Corporation may require.

ARTICLE III

BOARD OF DIRECTORS

Section 1. Powers and Duties. The Board shall have general power to control and manage the affairs and property of the Corporation subject to applicable law and in accordance with the purposes and limitations set forth in the Certificate of Incorporation and herein. The Board may exercise all other powers necessary to manage the affairs and further the purposes of the Corporation in conformity with the Certificate of Incorporation and these Bylaws.

Section 2. Number. There shall be at least three **[and no more than [•]]**³ Directors. **[Subject to such range,]** the number of Directors may be increased or decreased from time to time, by resolution of the Board, but such action by the Board shall require a vote of a majority of the entire Board and no decrease shall shorten the term of any incumbent Director. The “entire Board” shall consist of the number of

¹ The following resources may have additional helpful information: Lawyers Alliance’s publications “Getting Organized,” “Advising Nonprofits,” and “Bylaws That Work: A Manual for New York Nonprofits.”

² Please see Lawyers Alliance’s model bylaws for membership organizations as an alternative structure.

³ N-PCL § 702 requires at least three board members, but organizations may choose to have more. It is advantageous to include a relevant range, rather than leaving the number of directors open-ended. N-PCL § 102(a)(6-1) defines “entire Board” differently depending on whether the bylaws set forth a fixed number of directors or a range. If the bylaws provide for a range of directors, vacant director seats will not count in the definition of “entire Board.” If the number of directors is fixed, the definition of “entire Board” is the specified number of directors and will include the vacant seats. Accordingly, including a range may make achieving a quorum easier.

directors that were elected or appointed at the most recently-held election of Directors, plus those Directors continuing to serve.

Section 3. Election and Term of Office. **[The initial Directors shall be the persons named in the Certificate of Incorporation and shall serve until the first annual meeting of the Board.]**⁴ To become a Director, a person shall be nominated by a Director or committee of the Board and elected by the Board by a majority of votes, when a quorum is present. The Directors shall hold office for **[one, two, three, four or five]-year terms;**⁵ provided, however, that any Director elected to fill an unexpired term (whether resulting from the death, resignation or removal or created by an increase in the number of Directors) shall hold office until the next annual meeting at which the election of Directors is in the regular order of business and until his or her successor is elected or appointed and qualified. Directors may be elected to any number of consecutive terms **[or may serve a maximum of [•] consecutive terms].**

Section 4. Qualification for Directors.⁶ Each Director shall be at least 18 years of age.⁷

[Section 5. Classification of Directors. At the [first]⁸ annual meeting at which the election of Directors is in the regular order of business, the Directors shall be divided into [three] classes that are as equal in number as possible. The term of office of the first class shall expire at the first annual meeting of the Corporation following the annual meeting at which Directors are first elected. The term of office of the second class shall expire at the following annual meeting and the third class at the third annual meeting after the annual meeting at which Directors are first elected. At each annual meeting after Directors are first elected, Directors shall be elected for a term of three years to replace those whose terms shall expire.]⁹

Section 6. Removal. Any Director may be removed at any time for cause¹⁰ by a vote of Directors then in office at a regular meeting or at a special meeting of the Board called for that purpose[; **provided that, present at such meeting are at least a majority of the Directors then in office; provided further that the entire Board has been given at least one week's notice of the proposed action.**]

Section 7. Resignation. Any Director may resign from the Board at any time. Such resignation shall be made in writing or electronically, directed to the **[President/Chair]**, and shall take effect at the time specified in the written resignation,

⁴ This is not necessary for existing organizations updating their bylaws.

⁵ If there are two or more classes of directors provided in section 5 below, then the length of their terms may be stated there, not here. The term of each director may not exceed a number of years equal to the number of classes into which the board is classified. N-PCL § 703(b).

⁶ Some organizations may want to set forth additional qualifications for their directors. Please consult with an attorney to determine which, if any, additional qualifications your organization might want for its directors.

⁷ Directors between the ages of 16 and 18 are permitted for youth organizations, as defined in N-PCL § 701.

⁸ This may not be necessary for existing organizations updating their bylaws.

⁹ There is no requirement that directors have staggered terms. Some boards prefer it in order to ensure that they always have some experienced directors. In this example, the term of office for each Director would be 3 years. N-PCL § 704(a) sets forth a maximum of 5 classes.

¹⁰ Organizations may choose to specify what constitutes "cause," for its directors; for example, missing a certain number of consecutive meetings or director malfeasance. However, if examples of "cause" are included in the bylaws, the provision should clearly state that any stated examples are not intended to be exhaustive and the Board may remove directors for additional reasons not contained in the bylaws.

and if no time is specified, at the time of its receipt by the Corporation or the President. The acceptance of a resignation by the Board shall not be necessary to make it effective, but no resignation shall discharge any accrued obligation or duty of a Director.

Section 8. Vacancies and Newly Created Directorships. Any newly created Directorships, and any vacancies on the Board arising at any time and from any cause, may be filled at any meeting of the Board by a majority of votes, when a quorum is present, regardless of their number. Each Director so elected shall serve until the next annual meeting at which the election of Directors is the regular order of business and his or her successor is elected or appointed or qualified. A vacancy in the Board shall be deemed to exist on the occurrence of any of the following:

- (a) the death, resignation or removal of any Director;
- (b) an increase in the authorized number of Directors by resolution of the Board; or
- (c) the failure of the Directors, at any annual or other meeting of Directors at which any one or more Directors are to be elected, to elect the full authorized number of Directors to be voted for at that meeting.

[Each Director elected to fill a newly created directorship due to an increase in the number of Directors shall serve for a term coinciding with one of the [three] classes of Directors.] Each Director elected to fill a vacancy arising from the death, resignation, or removal of a Director shall serve until the next annual meeting of Directors, and then at such meeting may be elected for a term coinciding with the balance of the unexpired term of the replaced director. **[However, one or more such new directors instead may be elected for an unexpired term coinciding with the unexpired term of directors in a class other than the class of the replaced director until such time as the imbalance in the size of the classes of directors existing the day before the following annual meeting has been remedied.]**¹¹

Section 9. Meetings. The annual meeting of the Board shall be held in [month] of each year or at a date, time, and place fixed by the Board, and at such meeting, the Board shall receive an annual report. Regular meetings of the Board shall be held no less than [number] times at a time and place fixed by the Board. Special meetings of the Board shall be held whenever called by (a) the President of the Board; (b) the **[Executive Director/Chief Executive Officer][or other Officer]**; or (c) by any Director upon written demand of not less than one-fifth (1/5) of the Directors of the Board, in each case at such time and place as shall be fixed by the person or persons calling the meeting.

Section 10. Notice of Meetings. Regular meetings may be held without notice of the time and place if such meetings are fixed by the Board. In the case of each annual and special meetings, such notice must be accompanied by a written agenda setting forth all matters upon which action is proposed to be taken. Notice of the time and place of the annual meeting, each regular meeting not fixed by the Board, and each special meeting of the Board shall be:

¹¹ The bracketed language in this section may be used for organizations with staggered boards in an effort to maintain equal numbers of members between classes.

- (a) delivered to each Director by e-mail at least five (5) days before the day on which the meeting is to be held; or
- (b) mailed to each Director, postage prepaid, addressed to him or her at his or her residence or usual place of business (or at such other address as he or she may have designated in a written request filed with the Secretary at least seven (7) days before the day on which the meeting is to be held).

To discuss matters requiring prompt action, notice of special meetings may be sent to each Director by e-mail or telephone, or given personally, no less than forty-eight (48) hours before the time at which such meeting is to be held, unless the meeting must be held within forty-eight (48) hours. Notice of a meeting need not be given to any Director who submits a signed waiver of notice before or after the meeting, or who attends the meeting without protesting the lack of notice to him or her prior to or at the beginning of the meeting. Waivers of notice sent by email will be valid if the Director is clearly identified in such waivers.

Section 11. Quorum.¹² **[In the case of an entire Board of fifteen (15) Directors or less, the quorum shall be one-third of the entire number of Directors. In the case of a board of more than fifteen (15) Directors, the quorum shall be five (5) directors plus one additional Director for every ten (1) Directors (or fraction thereof) in excess of fifteen.]**

Section 12. Voting. At any meeting of the Board at which a quorum is present, the affirmative vote of a majority of the Directors present at the time of the vote shall be the act of the Board, except as otherwise provided by law or these Bylaws. If at any meeting of the Board less than a quorum is present, the Directors present may adjourn the meeting until a quorum is obtained. Any one or more Directors may participate in a meeting of the Board or committee by telephone, video conference or similar communications equipment, provided that all persons participating in the meeting can hear each other and can participate in all matters before the Board. Participation by such means shall constitute presence in person at a meeting.

The following acts of the Board require the affirmative vote of at least two-thirds (2/3) of the entire Board:

- (a) a purchase, sale, mortgage or lease of real property of the Corporation if the property constitutes all or substantially all of the assets of the Corporation;
- (b) a sale, lease, exchange or other disposition of all or substantially all of the assets of the Corporation; or
- (c) amendment of these Bylaws or Certificate of Incorporation of the Corporation that would increase the quorum requirement to greater than a majority of the entire Board, or would increase the vote requirement to greater than a majority of the Board present at the time of the vote.

¹² Unless otherwise specified or required by law, by default quorum shall be a majority of the entire Board. N-PCL § 707. This section sets the quorum at the lowest level permitted by the statute, one-third plus one more director for each additional five over fifteen directors. However, organizations can choose to set quorum at a higher level.

Section 13. Adjournment of Meeting. A majority of the Directors present, whether or not a quorum is present, may adjourn the meeting to another time and place. Notice of the time and place of such adjourned meeting shall be given to Directors who were not present at the time of such adjournment and, if such time and place was not announced at such meeting, to all other Directors. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 14. Action Without a Meeting. Any action required or permitted to be taken by the Board or committee may be taken without a meeting if the entire Board or all members of the committee unanimously consents in writing to the adoption of a resolution authorizing the action. Such consent may be written or electronic. If the consent is written, it must be signed by the Director. If consent is electronic, such consent will be valid if the Director is clearly identified in such consent. Any resolution and the written consents shall be filed with the minutes of the proceedings of the Board or committee.

Section 15. Compensation. No compensation of any kind shall be paid to any Director for the performance of his or her duties as Director. This shall in no way limit the reimbursement of reasonable expenses incurred in connection with board service. Subject to the Corporation's Conflicts of Interest Policy, a Director may receive payment for services provided to the Corporation in any capacity separate from his or her responsibilities as a Director.

ARTICLE IV OFFICERS, EMPLOYEES, AND AGENTS

Section 1. Number and Qualifications. The Board shall select all officers, if any, for the Corporation (each officer an "Officer" and collectively, "Officers").¹³ The Officers shall be a **[President/Chair]**, a Secretary, a Treasurer and any other Officers that the Board may from time to time appoint, including one or more **[Vice Presidents/Vice-Chairs]**. One person may hold more than one office in the Corporation, except that no one person may hold the offices of President and Secretary at the same time. **[The [President/Chair] shall be a Director and shall not be an employee of the Corporation OR The appointment of an employee of the Corporation as [President/Chair] shall require a resolution of the Board documenting the affirmative vote of at least two-thirds (2/3) of the entire Board and the basis for the appointment.]** The other Officers may, but need not, be Directors.¹⁴ No instrument required to be signed by more than one Officer may be signed by one person in more than one capacity.

Section 2. Election and Term of Office. The Officers shall be elected for a **[one-year term]**¹⁵ at the annual meeting of the Board, and each shall continue in office until

¹³ Please see N-PCL § 713 for options regarding appointing officers.

¹⁴ A nonprofit corporation may have officers who are Board members, staff, or other individuals. It may also have staff, such as the Chief Executive Officer or Chief Financial Officer, serve as officers of the corporation. This is a nuanced subject and counsel should consult other resources, including Lawyers Alliance's publication "Advising Nonprofits" for more information on this topic.

¹⁵ Per N-PCL § 713(c), longer terms are permissible. If officers serve for a longer term, they need not be elected at each annual meeting.

his or her successor has been elected or appointed and qualified, or until his or her death, resignation, or removal.

Section 3. Employees and Other Agents. The Board may from time to time appoint such employees and other agents as it shall deem necessary, each of whom shall hold office at the pleasure of the Board, and shall have such authority and perform such duties and shall receive such reasonable compensation, if any, as the Board may from time to time determine. To the fullest extent allowed by law, the Board may delegate to any employee or agent any powers possessed by the Board and may prescribe their respective title, terms of office, authorities, and duties.

Section 4. Removal. Any Officer, employee or agent of the Corporation may be removed with or without cause by a vote of the majority of the Board. Termination of employment of any employee also serving as an Officer shall result in removal effective as of the date of termination.

Section 5. Resignation. Any Officer may resign at any time by giving notice (either written or electronic) to the **[Executive Director/Chief Executive Officer]**, provided that any Officer who is an employee of the Corporation must abide by the terms of his or her employment, including service as an Officer. The resignation shall take effect at the time specified therein, and if no time is specified, at the time of its receipt by the **[Executive Director/Chief Executive Officer]**, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. In case of any vacancy in any office, a successor to fill the unexpired portion of the term may be appointed by the Board.

Section 7. **[President/Chair]: Powers and Duties**. The **[President/Chair]** shall preside at all meetings of the Board and the Executive Committee. The **[President/Chair]** shall have general supervision of the affairs of the Corporation and shall keep the Board fully informed about the activities of the Corporation. He or she has the power to sign and execute alone, in the name of the Corporation, all contracts authorized either generally or specifically by the Board, unless the Board shall specifically require an additional signature. The **[President/Chair]** shall perform such other duties as from time to time may be assigned by the Board.

Section 8. **[Vice-President/Vice-Chair]: Powers and Duties**. A **[Vice President/Vice-Chair]** shall have such powers and duties as may be assigned to him or her by the Board. In the absence of the **[President/Chair]**, the **[Vice President(s)/Vice-Chair(s)]**, in the order designated by the Board, shall perform the duties of the President.

Section 9. Secretary: Powers and Duties. The Secretary shall keep the minutes of the annual meeting and all meetings of the Board in books provided for that purpose. He or she shall be responsible for giving and serving all notices of the Corporation, receiving the annual disclosure statements required by the Corporation's Conflicts of Interest Policy and shall perform such other duties as shall from time to time be assigned by the Board.

Section 10. Treasurer: Powers and Duties. The Treasurer shall keep or cause to be kept full and accurate accounts of receipts and disbursements of the Corporation,

and shall deposit or cause to be deposited all moneys, evidences of indebtedness and other valuable documents of the Corporation in the name and to the credit of the Corporation in such banks or depositories as the Board may designate. At the annual meeting, the Board shall direct the President and Treasurer of the Corporation to present a financial report, verified by the President and Treasurer or a majority of the Directors, or certified by an independent public accountant or certified public accountant or a firm of such accountants selected by the Board.¹⁶ At such meeting, the Treasurer shall render a report of the Corporation's accounts showing in appropriate detail: (a) the assets and liabilities of the Corporation as of a twelve-month fiscal period terminating not more than six (6) months prior to the meeting; (b) the principal changes in assets and liabilities during that fiscal period; (c) the revenues or receipts of the Corporation, both unrestricted and restricted to particular purposes during that fiscal period; and (d) the expenses or disbursements of the Corporation, for both general and restricted purposes during said fiscal period.¹⁷ The Treasurer shall, at all reasonable times, exhibit the Corporation's books and accounts to any Officer or Director of the Corporation, and whenever required by the Board, render a statement of the Corporation's accounts, subject to the control of the Board.

Section 11. Compensation. Any Officer who is not a Director but is an employee or agent of the Corporation is authorized to receive a reasonable salary or other reasonable compensation for services rendered to the Corporation as an employee or agent when authorized by a majority of the entire Board, and only when so authorized.¹⁸

[Section 12. Sureties and Bonds. If so required by the Board, any Officer or agent of the Corporation shall execute for the Corporation a bond in such sum and with such surety or sureties as the Board may direct, conditioned upon the faithful performance of his or her duties to the Corporation and including responsibility for negligence and for the accounting for all property or funds of the Corporation that may come into his or her hands.]¹⁹

ARTICLE V

COMMITTEES²⁰

Section 1. Committees of the Board.²¹ A committee of the Board is one that shall have authority to bind the Corporation and shall be comprised solely of Directors. Committees of the Board may be appointed by resolution of the Board at a meeting at which a quorum is present. The members of such committees shall be appointed by the **[President][or committee(s)]** of the Board, subject to the approval of the Board. Each

¹⁶ N-PCL § 519.

¹⁷ The report to the Board may consist of a verified or certified copy of any report by the Corporation to the Internal Revenue Service or the Attorney General of the State of New York which includes the information specified above.

¹⁸ Note that officers' compensation is subject to the organization's Conflicts of Interest Policy as well as the Internal Revenue Service's regulations regarding excess benefit transactions. See <https://www.irs.gov/charities-non-profits/charitable-organizations/intermediate-sanctions-excess-benefit-transactions> for more information.

¹⁹ This section may be relevant to organizations whose staff or agents handle large quantities of cash.

²⁰ For more information, see Lawyers Alliance's Legal Alert "Committees of the Board vs. Committees of the Corporation."

²¹ An organization may choose to include authorization for specific committees in the text of the bylaws or in separate committee charters. For more language on specific committees of the Board, please see Schedule 1, attached hereto.

committee must consist of at least three (3) Directors²² with such powers and duties as the Board may prescribe, except that no committee shall have authority as to the following matters:

- (a) the filling of vacancies on the Board or on any committee;
- (b) the amendment or repeal of the Bylaws or the adoption of new Bylaws;
- (c) the amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable;
- (d) the fixing of compensation of the Directors for serving on the Board or any committee;
- (e) the election or removal of officers and directors;
- (f) the approval of a merger or plan of dissolution;
- (g) the authorization of a transaction involving the sale, lease, exchange or other disposition of all or substantially all the assets of the corporation; and
- (h) the approval of amendments to the Certificate of Incorporation.

Section 2. Committees of the Corporation.²³ The Board by resolution may appoint from time to time any number of persons as advisors of the Corporation to act as a committee of the Corporation. No such committee shall have the authority to bind the Board. Each advisor shall hold office at the pleasure of the Board and shall have only the responsibilities as the Board may from time to time determine. No advisor to the Corporation shall receive, directly or indirectly, any salary or compensation for any service rendered to the Corporation as a member of a committee of the Corporation, except that the Board may authorize reimbursement of expenditures reasonably incurred.

ARTICLE VI

CONTRACTS, CHECKS, AND BANK ACCOUNTS

The Board is authorized to select the banks or depositories it deems proper for the funds of the Corporation and shall determine who shall be authorized on the Corporation's behalf to sign checks, drafts, or other orders for the payment of money, acceptances, notes, or other evidences of indebtedness, to enter into contracts or to execute and deliver other documents and instruments.

ARTICLE VII

²² There is no statutory requirement for committee quorums. See N-PCL § 712. Organizations may consider specifying what constitutes quorum for committee actions, particularly for those decisions that bind the Corporation. For example, "Two-thirds of the members of a committee shall constitute a quorum thereof for the transaction of business by such committee. The affirmative vote of a majority of the committee members present at the time of the vote, if a quorum is present at such time, shall be the act of such committee."

²³ An organization may choose to include authorization for specific committees in the text of the bylaws. Common committees of the corporation include Strategic Planning Committees, Gala/ Special Event Committees, Fundraising Committees, Scholarship Committees, or other advisory committees.

BOOKS AND RECORDS

Correct books or account of the activities and transactions of the Corporation, including the minute book (containing a copy of the Certificate of Incorporation, a copy of these bylaws and all minutes of meetings of the Board **[and the Executive Committee]**²⁴) shall be kept at the office of the Corporation.

ARTICLE VIII

FISCAL YEAR

The fiscal year of the Corporation shall begin on [●] and end on [●], or such other date as determined by the Board.

ARTICLE IX

INDEMNIFICATION AND INSURANCE

Section 1. General. To the fullest extent permitted by law, the Corporation **[may/shall]** indemnify any person (and his or her heirs, executors, guardians, administrators, assigns, and any other legal representative of that person) who was or is a party or is threatened to be made a party to or is involved in (including being a witness) any threatened, pending, or completed action, suit, proceeding or inquiry (brought in the right of the Corporation or otherwise), whether civil, criminal, administrative, or investigative, and whether formal or informal, including appeals, by reason of the fact that he or she is or was a Director or Officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, for and against all expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by that person or that person's heirs, executors, guardians, administrators, assigns, or legal representatives in connection with that action, suit, proceeding, or inquiry, including appeals. Notwithstanding the foregoing, the Corporation shall indemnify any person seeking indemnification in connection with an action, suit, proceeding, inquiry (or part thereof) initiated by that person only if that action, suit, proceeding or inquiry (or part thereof) was authorized by the Board.

Section 2. Exclusions. No indemnification shall be made to or on behalf of a director or officer if a judgment or other financial adjudication adverse to the director or officer establishes that his or her acts were committed in bad faith or were the result of active or deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

Section 3. Expenses. To the fullest extent permitted by law, the Corporation shall pay expenses as incurred by any person described in this Article in connection with

²⁴ If the organization has an executive committee, its minutes must be retained per N-PCL § 621.

any action, suit, proceeding or inquiry described in this Article; provided that if these expenses are to be paid in advance of the final disposition (including appeals) of an action, suit, proceeding or inquiry, then the payment of expenses shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of the person, to repay all amounts so advanced if it is ultimately determined that the person is not entitled to be indemnified under this Article or otherwise.

Section 4. Insurance. The Corporation may purchase and maintain insurance on behalf of any person described in this Article against any liability asserted against him or her, whether or not the Corporation would have the power to indemnify him or her against that liability under the provisions of this Article or otherwise.

Section 5. Application. The provisions of this Article shall be applicable to all actions, suits, proceedings or inquiries made or commenced after the adoption of this Article, whether arising from acts or omissions occurring before or after its adoption. The provisions of this Article shall be deemed a contract between the Corporation and each director or officer who serves in such capacity at any time while this Article and the relevant provisions of the laws of the State of New York and other applicable law, if any, are in effect, and any repeal or modification of this Article shall not adversely affect any right or protection of any person described in this Article in respect of any act or omission occurring prior to the time of the repeal or modification.

Section 6. Validity and Limitations. If any provision of this Article shall be found to be invalid or limited in application by reason of any law or regulation, that finding shall not affect the validity of the remaining provisions of this Article. The rights of indemnification provided in this Article shall neither be exclusive of, nor be deemed in limitation of, any rights to which any person described in this Article may otherwise be entitled or permitted by contract, vote of the Board of Directors, or otherwise, as a matter of law, both as to actions in his or her official capacity and actions in any other capacity while holding such office, it being the policy of the Corporation that indemnification of any person described in this Article shall be made to the fullest extent permitted by law.

Section 7. Definitions. For purposes of this Article: references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and reference to serving at the request of the Corporation” shall include any service as a director or officer of the Corporation which imposes duties on, or involves services by, that director or officer with respect to an employee benefit plan, its participants, or beneficiaries.

ARTICLE X

AMENDMENTS AND REFERENCES

Section 1. Amendments. These Bylaws may be amended or repealed at any meeting of the Board by **[a vote of the majority of the entire Board] [the majority vote of the Directors present, so long as a quorum is present]**, except that an amendment of

these Bylaws that would increase the quorum requirement to greater than a majority of the entire Board, or would increase the vote requirement to greater than a majority of the Board present at the time of the vote, shall require a two-thirds vote of the entire Board. Any amendment or repeal of these Bylaws is authorized only at a duly called and held meeting of the Board. To be duly called, written notice of such meeting, including the proposed amendment or repeal, must be given in accordance with the notice provisions for special meetings set forth in these Bylaws or at a meeting of the Board prior to the meeting to amend or repeal the Bylaws at which the amendment or repeal is on the agenda, if notice of such meeting is given and the written proposed amendment or repeal of the Bylaws given.

Section 2. Reference to Certificate of Incorporation. References in these Bylaws to the Certificate of Incorporation shall include all amendments thereto, unless specifically excepted by these Bylaws. In the event of a conflict between the Certificate of Incorporation and these Bylaws, the Certificate of Incorporation shall govern.

Schedule 1
Committees of the Board

Organizations may choose to include specific committees of the Board in their bylaws or in more detail in separate committee charters.²⁵ Some common committees include:

- (a) Executive Committee. An Executive Committee which shall consist of at least three Directors, one of whom shall be the President of the Board, who shall also serve as chair of the Executive Committee. The other members of the Executive Committee shall be appointed by the President, subject to the approval of the entire Board.²⁶ The Executive Committee shall have all the authority of the Board except as to the following matters:
- i. the filling of vacancies on the Board or on any committee;
 - ii. the amendment or repeal of the Bylaws or the adoption of new Bylaws;
 - iii. the amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable;
 - iv. the fixing of compensation of the Directors for serving on the Board or any committee;
 - v. the election or removal of officers and directors;
 - vi. the approval of a merger or plan of dissolution;
 - vii. the authorization of a transaction involving the sale, lease, exchange or other disposition of all or substantially all the assets of the corporation; and
 - viii. the approval of amendments to the certificate of incorporation.

Correct books or account of the activities and transactions of the Executive Committee, including the minute book containing all minutes or meetings of the Executive Committee, shall be kept at the office of the Corporation.

- (b) Finance Committee. A Finance Committee which shall consist of at least three (3) Directors, one of whom shall be the Treasurer. The other members of the Finance Committee shall be appointed by the President of the Board, subject to the approval of the Board. The Finance Committee shall advise the Treasurer and the Board in regard to the financial management²⁷ of the Corporation.

²⁵ For more information on specific committee charters, please see “Guide to Nonprofit Governance 2019” published by Weil, Gotshal & Manges LLP.

²⁶ N-PCL § 712(a) permits boards with 30 or more directors to appoint Executive Committee members by at least 3/4 of the directors present at the time of the vote, so long as a quorum is present at the time.

²⁷ If an organization has an investment committee, consider substituting this language with “investments and general fiscal policy.”

- (c) Audit Committee.²⁸ An Audit Committee comprised at least three (3) directors each of whom is an Independent Director as defined below. The members of the Audit Committee shall be appointed by Board. [The Committee will annually review or retain the independent auditor and upon completion of the audit review the results of the audit and any related management letter with the independent auditor.²⁹

In addition, the Committee shall³⁰:

- i. review with the independent auditor the scope and planning of the audit prior to the audit's commencement;
- ii. upon completion of the audit, review, and discuss with the independent auditor:
 - any material risks and weaknesses in internal controls identified by the auditor;
 - any restrictions placed on the scope of the auditor's activities or access to requested information;
 - any significant disagreements between the auditor and management; and
 - the adequacy of the corporation's accounting and financial reporting processes.
- iii. annually consider the performance and independence of the auditor; and
- iv. report on the Committee's activities to the Board.

AUDIT COMMITTEE DEFINITIONS

Section 1: Affiliate. An affiliate of the Corporation is a person or entity that is directly or indirectly through one or more intermediaries, controlled by, or in control of the Corporation.

Section 2: Financial Interest. A person has a Financial Interest if such person would receive an economic benefit, directly or indirectly, from any transaction, agreement, compensation agreement, including direct or indirect remuneration as well as gifts or favors that are not insubstantial or other arrangement involving the Corporation.

Section 3: Independent Director. A member of the Board of Directors (the "Board") who:

²⁸ Nonprofit corporations are not required by the N-PCL to have an audit committee, but if the corporation does not have an audit committee, then Board itself must fulfill these obligations.

²⁹ Until June 30, 2012, this applies to Corporations with at least \$750,000 in revenue. Beginning July 1, 2021, the threshold is at least \$1,000,000 in revenue. See Executive Law 172-b.

³⁰ These additional obligations apply to Corporations with \$1,000,000 or more of annual or anticipated annual revenue:

(a) Has not been an employee or Key Person of the Corporation or an Affiliate of the Corporation within the last three (3) years;

(b) Does not have a Relative who has been a Key Person of the Corporation or an Affiliate of the Corporation within the last three (3) years;

(c) Has not received and does not have a Relative who has received more than \$10,000 in compensation directly from the Corporation or an Affiliate of the Corporation in any of the last three (3) years (not including reasonable compensation or reimbursement for services as a Director, as set by the Corporation);

(d) Does not have a substantial Financial Interest in and is an employee of, and does not have a Relative who has a substantial Financial Interest in or is an Officer of, any entity that has provided payments, property or services to, or received payments, property or services from, the Corporation or an Affiliate of the Corporation if the amount paid by the Corporation to the entity or received by the Corporation from the entity for such property or services, in any of the last three fiscal years, exceeded:

- the lesser of \$10,000 or 2% of such entity's consolidated gross revenues if the entity's consolidated gross revenue was less than \$500,000;
- \$25,000 if the entity's consolidated gross revenue was \$500,000 or more but less than \$10,000,000; or
- \$100,000 if the entity's consolidated gross revenue was \$10 million or more;

(for the purposes of this subparagraph (d), "payment" does not include charitable contributions, dues or fees paid to the Corporation for services which the Corporation performs as part of its nonprofit purposes, or payments made by the corporation at fixed or non-negotiable rates or amounts for services received; provided, however, that such services by and to the corporation are available to individual members of the public on the same terms and such services received by the corporation are not available from another source);

(e) Is not in an employment relationship under control or direction of any Related Party and does not receive payments subject to approval of a Related Party;

(f) Is not and does not have a Relative who is a current owner, whether wholly or partially, director, officer or employee of the Corporation's outside auditor or who has worked on the Corporation's audit at any time during the past three (3) years; or

(g) Does not approve a transaction providing economic benefits to any Related Party who in turn has approved or will approve a transaction providing economic benefits to the Director.

Section 4: Key Person. A Key Person is a person who (a) has responsibilities, or exercises powers or influence over the Corporation as a whole similar to the responsibilities, powers, or influence of directors and officers; (b) manages the Corporation, or a segment of the Corporation that represents a substantial portion of the activities, assets, income or expenses of the Corporation; or (c) alone or with others controls or determines a substantial portion of the Corporation's capital expenditures or operating budget.³¹

Section 5: Related Party. Persons who may be considered a Related Party of the Corporation or an Affiliate of the Corporation under this Policy include:

(a) Directors, Officers, or Key Persons of the Corporation or an Affiliate of the Corporation;

(b) Relatives of Directors, Officers, or Key Persons;

(c) any entity in which a person in (i) or (ii) has a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%;

(d) Founders of the Corporation;

(e) Substantial contributors to the Corporation (within the current fiscal year or the past five fiscal years);

(f) Persons owning a controlling interest (through votes or value) in the Corporation;

³¹ Consider identifying in the Policy the staff positions identified in this bullet and the preceding bullet.

(g) Any non-stock entity controlled by one or more Key Persons.

Section 6: Relative. A Relative is a spouse or domestic partner (as defined in section 2994-A of the New York Public Health Law), ancestor, child (whether natural or adopted), grandchild, great grandchild, sibling (whether whole or half blood), or spouse or domestic partner of a child (whether natural or adopted), grandchild, great grandchild or sibling (whether whole or half blood).

(d) Nominating and Governance Committee. A Nominating and Governance Committee consisting of three (3) or more Directors. The members of the Nominating and Governance Committee shall be appointed by the President of the Board, subject to the approval of the entire Board. The Nominating and Governance Committee shall have the following responsibilities:

- i. develop and provide oversight of implementation of policies and procedures regarding Board size, leadership, and composition;
- ii. recommend candidates for nomination to the Board;
- iii. determine qualifications and characteristics required to become a Director;
- iv. identify and screen individuals who are qualified to serve as Directors;
- v. recommend to the Board candidates for nomination and election or appointment to the Board, and its committees, or to fill Board vacancies;
- vi. assist in orientation programs for newly-appointed directors; coordinate and oversee self-evaluations of the Board and its committees; and
- vii. review on a regular basis the overall governance of the Corporation and recommend improvements for approval by the Board where appropriate.

(e) Investment Committee. An Investment Committee, consisting of three or more Directors. The members of the Investment Committee shall be appointed by the President of the Board, subject to the approval of the entire Board. The Investment Committee shall assist the Board in fulfilling its oversight responsibilities relating to fiscal management by:

- i. overseeing the management of organization-wide financial assets;
- ii. reviewing investment policies and strategies;

- iii. reviewing financial results;
 - iv. ensuring the maintenance of an appropriate capital structure;
 - v. reviewing and recommending an annual operating budget for approval by the Board; and
 - vi. ensuring the Corporation employs personnel, systems and investment managers, capable of providing timely and accurate financial information to key decision-makers.
- (f) Development Committee. A Development Committee, consisting of three (3) or more Directors. The members of the Development Committee shall be appointed by the President of the Board, subject to the approval of the entire Board. The Development Committee shall raise financial and other resources for the Corporation by assisting Board members in their own fundraising efforts; recruiting potential donors; and assisting staff in planning fundraising events.
- (g) Other Committees of the Board. The Board may establish and appoint other committees of the Board consisting of at least three (3) Directors with such powers and duties as the Board may prescribe. The members of such committees shall be appointed by the President of the Board, subject to the approval of the Board.