

**BYLAWS
Of
DuraSpace**

**ARTICLE I
*Offices***

1.1 Location. DuraSpace is a non-profit entity incorporated in the State of New York. The principal office of DuraSpace shall be located in Ithaca, New York. The Corporation may also maintain additional offices at such other places within or outside the State of New York as the Board of Directors may from time to time determine.

**ARTICLE II
*Non-Profit Organization***

2.1 Non-Profit. DuraSpace is formed exclusively for non-profit purposes, as contemplated by Section 501(c)(3) of the Internal Revenue Code of 1986 (any reference herein to any provision of such Code shall be deemed to mean provisions as now or hereafter existing, amended, supplemented, or superseded), and applicable provisions of the New York State Not-For-Profit Law.

**ARTICLE III
*Purpose***

3.1 Purpose. DuraSpace is committed to providing leadership and innovation in the development and deployment of open technologies that promote durable, persistent access to digital data. We collaborate with academic, scientific, cultural, and technology communities in creating practical solutions to help ensure that current and future generations have digital access to our collective heritage.

**ARTICLE IV
*Board of Directors***

4.1 Power of Board and Responsibilities of Directors. The Corporation shall be managed by its Board of Directors. Each director shall be at least eighteen years of age. The responsibilities of Board include:

- Determine the organization's mission and purposes
- Select the Chief Executive Officer through an appropriate process
- Provide ongoing support and strategic guidance to the Executive Team

(i.e., Chief Executive Officer, Chief Business Officer, and Chief Technology Officer)

- Build strategic relationships, including making connections to potential supporters, funders, customers, stakeholders; enable the building of alliances, partnerships, and business relationships
- Provide fiscal oversight and risk management, including review and approval of corporate financial reports and high-level decision making to ensure the fiscal health of the organization
- Review and approve business strategies, revenue-generating, and fund raising strategies, working with the Executive Team
- Monitor the organization's programs and services
- Enhance the organization's public image
- Assess the performance of the Executive Team
- Assess its own performance

4.2 Number of Directors. The entire Board shall consist of not less than three nor more than eleven directors as shall be determined from time to time by a majority of the entire Board unless otherwise increased or decreased as hereinafter provided. The number of directors may be increased or decreased at any time and from time to time by amendment of the Bylaws, or by majority vote of the entire Board, except that in no case may any decrease in the number of directors shorten the term of any incumbent director, nor specify a number of directors less than three or any other then current minimum number of directors specified in the Not-for-Profit Corporation Law.

4.3 Election and Term of Directors. Subject to the provisions of this Section, directors shall be elected at an annual meeting of the Board of Directors by an affirmative vote of a majority of the directors then in office, and each shall continue in office until his or her term expires or until his or her death, resignation or removal. The tenure of incumbent members of the Board of Directors shall not be affected by an increase or decrease in the number of directors. Directors need not be residents of the State of New York.

Directors shall be elected to a term of 2-years.

The initial board will be established with 50% of directors on a 1-year initial term and 50% of directors on 2-year initial term. A director can be re-elected, but can have a maximum of 3 consecutive terms. This means the maximum time for directors with a 1-year initial term would be 5 years, as they could be re-elected for two more terms of 2 years. The maximum time for directors with a 2-year initial term would be 6 years, as they could be re-elected for two more terms of 2 years. Consequently, the entire initial board membership would change after 6 years.

A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office.

4.4 Newly-Created Directorships and Vacancies. Newly created directorships resulting from an increase in the number of directors elected and vacancies occurring in the Board for any reason may be filled by vote of a majority of the directors then in office, although less than a quorum exists.

4.5 Resignation. Any director may resign from office at any time by delivering a resignation in writing to the Corporation. Such resignation shall take effect at the time specified therein, and unless otherwise specified, no acceptances of such resignation shall be necessary to make it effective.

4.6 Removal of Directors. Any director may be removed for cause by vote of the Board of Directors provided there is a quorum of not less than a majority of the entire Board present at the meeting of directors at which such action is taken. Three consecutive unexcused absences from Board meetings shall constitute cause for removal from the Board.

4.7 Meetings of the Board. Meetings of the Board of Directors, annual, regular, or special, may be held at any place within or without the State of New York as may be fixed by the Board from time to time or as shall be specified in the respective notice or waivers of notice thereof. The Board may fix times and places for regular meetings of the Board and no notice of such meetings need be given. Special meetings of the Board may be called at any time by the Chief Executive Officer, or by any director upon written demand of not less than one fifth of the entire board. Notice of a meeting need not be given to any alternate director nor to a director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting the lack of notice, prior thereto or at its commencement. A notice or waiver of notice need not specify the purpose of any regular or special meeting of the Board. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of any adjournment of a meeting of the Board to another time or place shall be given to the directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

4.8 Quorum and Voting. Unless a greater proportion is required by law, or by the Certificate of Incorporation, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business or of any specified item of business. Except as otherwise provided by law, the vote of a majority of the directors present at a meeting at the time of the vote, if a quorum is present at such time, shall be the act of the Board.

4.9 Written Consent of Directors. Any action required or permitted to be taken

by the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or such committee consent in writing to the adoption of a resolution authorizing such action. Each resolution so adopted and the written consents thereto by members of the Board or such committee shall be filed with the minutes of the proceedings of the Board or such committee.

4.10 Meetings by Conference Telephone. Any one or more members of the Board of Directors or of any committee thereof may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

4.11 Committees of the Board. The Board of Directors, by resolution adopted by a majority of the entire Board, may designate from among its members an Executive Committee and other standing committees, each consisting of three or more directors, and each of which, to the extent provided in the resolution, shall have all the authority of the Board, except that no such committee shall have authority as to the following matters:

- a. filling vacancies in the Board of Directors or in any committee;
- b. amending or repealing the Bylaws or adopting new Bylaws; and
- c. amending or repealing any resolution of the Board which by its terms shall not be so amended or repealed.

The Board may designate one or more Directors as alternate members of any standing committee, who may replace any absent member or members at any meeting of such committee. The Board of Directors may create such additional special committees as it deems desirable, the members thereof to be appointed by the Chairperson of the Board. Such special committees shall have only the powers specifically delegated to them by the Board and in no case shall have powers which are not authorized for standing committees.

Each committee of the Board shall serve at the pleasure of the Board. The designation of any such committee and the delegation thereto of authority shall not alone relieve any Director of his or her duty under the law to the Corporation.

4.12 Compensation of Directors. Members of the Board of Directors shall receive no compensation for their services but, by resolution of the Board, may be reimbursed for expenses incurred while acting on behalf of the Corporation.

4.13 Annual Report of Directors. The Chief Executive Officer and the Chief Business Officer shall present at the annual meeting of the Board a report, verified by the Chairperson of the Board and Treasurer or by a majority of the directors, or certified by an independent public or certified public accountant or a firm of such accountants selected by the Board, showing in appropriate detail the following: (1) the assets and liabilities, including the trust funds, or the

Corporation as of the end of a twelve-month fiscal period terminating not more than six months prior to said meeting; (2) the principal changes in assets and liabilities, including trust funds, during said fiscal period; (3) the revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, during said fiscal period; and (4) the expenses or disbursements of the Corporation, for both general and restricted purposes during said fiscal period. The annual report of the Chief Executive Officer and Treasurer shall be filed with the records of the annual meeting of the Board.

4.14 Purchase, Sale, Mortgage, and Lease of Real Property. No purchase of real property shall be made by the Corporation and the Corporation shall not sell, mortgage or lease real property unless authorized by the majority vote of the entire Board of Directors. If the sale of real property constitutes disposition of all or substantially all of the assets of the corporation, the transaction must be approved by a vote of two thirds of the entire Board of Directors shall be required; provided, however, that if there are twenty-one or more directors, the vote of a majority of the entire Board shall be sufficient.

ARTICLE V

Officers, Agents, and Employees

5.1 General Provisions. The officers of the Corporation shall be members of the Board of Directors and shall consist of the Chairperson of the Board, Vice Chairperson of the Board, Treasurer, and Secretary.

5.2 Term of Office, Vacancies and Removal. The officers shall be elected by the Board of Directors at the annual meeting of the Board for a term of one year. Officers may serve for up to two consecutive years, except in the case of the Treasurer and Secretary, who may serve for up to six years. If an office becomes vacant for any reason, the Board may fill such vacancy. Any officer so appointed or elected shall serve only until such time as the unexpired term of his or her successor shall have expired unless re-elected by the Board. Any officer may be removed by the Board with or without cause.

5.3 Powers and Duties of Officers.

- a. ***Chairperson of Board.*** The Chairperson shall preside at all meetings of the Board of Directors and perform all duties customary to that office, and shall supervise and control all of the affairs of the Corporation in accordance with policies and directives approved by the Board. The Chairperson shall be authorized to sign checks and, if required by the Board, give such bond or security for the faithful performance of his or her duties as the Board may require. The Chairperson shall assist the Chief Executive Officer in achieving the

mission of the Corporation.

b. **Vice-Chairperson.** All the powers and duties of the Chairperson are transferred to the Vice-Chairperson in the Chairperson's absence or in the event of the Chairperson's inability or refusal to act. In the event that the Chairperson vacates office during his or her term, the Vice-Chairperson assumes succession to that office. The Vice-Chairperson shall also perform such other duties as may from time to time be assigned to him or her by the Chairperson.

c. **Treasurer.** The Director of Finance (or, if there is no such employee, the Chief Executive Officer) shall keep the Treasurer informed of all revenues and expenditures of the Corporation. The Treasurer shall have access to all financial documents of the Corporation. The Treasurer shall be authorized to sign checks and, if required by the Board, give such bond or security for the faithful performance of his or her duties as the Board may require.

d. **Secretary.** The Secretary shall be responsible for the keeping of an accurate record of the proceedings of all meetings of the Board of Directors, shall give or cause to be given all notices in accordance with these Bylaws or as required by law, and, in general, shall perform all duties customary to the office of Secretary.

5.4 Agents and Employees.

5.4.1 Chief Executive Officer. The Board of Directors shall appoint the Chief Executive Officer. The Board may remove the Chief Executive Officer at any time with or without cause. Removal without cause shall be without prejudice to such person's contract rights, if any, and the appointment of such person shall not itself create contract rights. The Board of Directors shall determine the compensation of the Chief Executive Officer.

The Chief Executive Officer shall be subject to the oversight of the Board. The Chief Executive Officer may execute on behalf of DuraSpace all contracts, agreements, membership certificates and other instruments. The Chief Executive Officer shall periodically report to the Board all matters within the Chief Executive Officer's knowledge affecting DuraSpace that should be brought to the attention of the Board.

5.4.2 Other employees and agents. The Chief Executive Officer may hire and dismiss other employees and contract with agents as he or she deems appropriate and shall be responsible for supervision of such employees and agents.

5.4.3 The Chief Executive Officer may require employees to give security for the faithful performances of their duties.

ARTICLE VI ***Miscellaneous***

6.1 Fiscal Year. The fiscal year of the Corporation shall be the calendar year or such other period as may be fixed by the Board of Directors.

6.2 Checks, Notes, Contracts. The Board of Directors shall determine who shall be authorized from time to time on the Corporation's behalf to sign checks, notes, drafts, acceptances, bills of exchange and other orders or obligations for the payment of money; to enter into contracts; or to execute and deliver other documents and instruments.

6.3 Books and Records. The Corporation shall keep at its principal office in the State of New York (1) correct and complete books and records of accounts (2) minutes of the proceedings of its members, Board and any committee of the Corporation, and (3) a current list or record containing the names and addresses of all directors and officers of the Corporation. Any of the books, records and minutes of the Corporation may be in written form or in any other form capable of being converted into written form within a reasonable time.

6.4 Amendments to Certificate and Bylaws. The Certificate of Incorporation may be amended by a majority of the entire Board of Directors pursuant to § 802 of the New York Not-for-Profit Corporation Law. These Bylaws may be altered, amended, added to, or repealed by majority vote of the entire Board of Directors as is necessary or appropriate to carry out the purposes of the Corporation to the fullest extent permitted by law. No such alteration, amendment, repeal or adoption shall in any way conflict with the purposes of the Corporation as stated in its Articles of Incorporation or otherwise cause the Corporation to lose its qualification as an organization described in Internal Revenue Code Section 5019c)(3). Specific notice of the proposed amendments to the Bylaws must be given to each director at least one week in advance of the meeting at which the amendments will be considered.

6.5 Indemnification and Insurance. The Corporation shall indemnify, to the fullest extent allowed by law, any person, made, or threatened to be made, a party to an action or proceeding other than one by or in the right of the Corporation to procure a judgment in its favor, whether civil or criminal, including an action by or in the right of any other corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any director or officer of the Corporation served in any capacity at the request of the Corporation, by reason of the fact that he or she, his or her testator or intestate, was a director or officer of the Corporation, or served such

other Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such director or officer acted, in good faith, for a purpose which he or she reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the Corporation and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his or her conduct was unlawful. The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation and its directors and officers to the full extent such indemnification is permitted by law.

In no case, however, shall the Corporation indemnify, reimburse, or insure any person for any taxes imposed on such individual under chapter 42 of the Internal Revenue Code of 1986, as now in effect or as may hereafter be amended ("the Code"). Further, if at any time the Corporation is deemed to be a private foundation within the meaning of section 509 of the Code then, during such time, no payment shall be made under this Article if such payment would constitute an act of self-dealing or a taxable expenditure, as defined in § 4941(d) or § 4945(d), respectively, of the Code.

If any part of this Article shall be found in any action, suit, or proceeding to be invalid or ineffective, the validity and the effectiveness of the remaining parts shall not be affected.

6.6 Loans to Directors or Officers. No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by the Corporation to its directors or officers, or to any other corporation, firm, association or other entity in which one or more of its directors or officers are directors or officers of the Corporation, or hold a substantial financial interest, except that the Corporation may make a loan to any corporation which is a Type B corporation under the New York Not-for-Profit Corporation Law.