

**AMENDED AND RESTATED  
BYLAWS  
OF  
NVM Express, Inc.**  
A Delaware nonprofit corporation

**1. OFFICES**

**1.1 PRINCIPAL OFFICE.**

The principal office of NVM Express, Inc. (the “Corporation” or “NVMe”) shall be designated by the Board of Directors. The designation of the Corporation’s principal office may be changed from time to time by the Board of Directors, which change of address shall be effective upon written notice to all Members.

**1.2 Other Offices.**

The Corporation may also have offices at such other places, within or outside of the State of Delaware, where it is qualified to do business, as its business and activities may require, and as the Board of Directors may, from time to time, designate.

**2. PURPOSES**

**2.1 Code Section 501(c)(6) Purpose.**

The purposes for which this Corporation is organized are as follows:

- (1) The Corporation is formed as a business league within the meaning of section 501(c)(6) of the United States Internal Revenue Code of 1986, as amended (hereinafter referred to as the “Code”) and Section 1902(b)(3) of Title 30 of the Delaware Code. All references to the Code contained herein are deemed to include corresponding provisions of any future United States federal tax code.
- (2) The Corporation may exercise all of the rights and powers conferred on nonprofit non-stock corporations under the laws of the State of Delaware.
- (3) Notwithstanding any of the above statements of purposes and powers, the Corporation shall not engage in any activities or exercise any powers, whether express or implied, so as to disqualify the Corporation from exemption from federal income tax under section 501(a) of the Code by reason of being an organization described in section 501(c)(6) of the Code and from exemption from Delaware income tax by reason of being an organization described in Section 1902(b)(3) of Title 30 of the Delaware Code and corresponding provisions of any future United States federal tax code or Delaware code.

**2.2 Specific Purpose.**

The Corporation is a non-profit corporation formed for purposes that include, but are not limited to, developing Draft Specifications and then adopting, promoting, and managing the use of and compliance with Final Specifications which seek to enable the full performance potential provided by Non-Volatile Memory based storage technology in a standards based approach that enables broad ecosystem adoption.

**3. DEFINITIONS**

**3.1 “Adopter(s)”** means those Members who qualify as an “Adopter” in accordance with the provisions of Section 4.1.3.

- 3.2** “**Affiliate**” or “**Affiliates**” means any entity that is directly or indirectly controlled by, under common control with or that controls the subject party. For purposes of this definition, “control” means direct or indirect ownership of or the right to exercise: (a) greater than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of the subject entity; or (b) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity.
- 3.3** “**Applicant**” shall have the meaning as set forth in Section 4.4.1 of these Bylaws.
- 3.4** “**Antitrust Guidelines**” shall have the meaning as set forth in Section 4.2.3 of these Bylaws.
- 3.5** “**Board of Directors**” shall have the meaning as set forth in Section 5 of these Bylaws
- 3.6** “**Bylaws**” means these Bylaws as may be amended from time to time or at any time pursuant to the terms set forth herein.
- 3.7** “**Certificate of Incorporation**” means the Corporation’s Certificate of Incorporation as may be amended from time to time and at any time.
- 3.8** “**Code**” means the Internal Revenue Code of 1986, as amended from time to time.
- 3.9** “**Contribution(s)**” shall have the meaning as set forth in Corporation’s IPR Policy.
- 3.10** “**Contributor(s)**” means those Members who qualify as a “Contributor” in accordance with the provisions of Section 4.1.2.
- 3.11** “**Corporation**” means the **NVMe, Inc.**
- 3.12** “**Director(s)**” shall have the meaning as set forth in Section 5 of these Bylaws.
- 3.13** “**DGCL**” means the Delaware General Corporation Law, as it may be amended from time to time.
- 3.14** “**DGCL Member Voting Rights**” shall have the meaning as set forth in Section 4.2 of these Bylaws
- 3.15** “**Draft Specification(s)**” shall have the meaning as set forth in Corporation’s IPR Policy.
- 3.16** “**Final Specification(s)**” shall have the meaning as set forth in Corporation’s IPR Policy.
- 3.17** “**IPR Policy**” means the Corporation’s then current Intellectual Property Rights Policy, as it may be amended from time to time, and at any time, in accordance with its terms.
- 3.18** “**Member**” means a general reference to all members, and their Affiliates, in the numerous membership classes established from time to time by the Board of Directors pursuant to Section 4 of these Bylaws (including, without limitation, Promoters, Contributors and Adopters), who have qualified as members in such classification pursuant to the provisions of these Bylaws.
- 3.19** “**Participation**” means the right to participate as a Member pursuant to these Bylaws.
- 3.20** “**Participation Agreement**” means the applicable Participation Agreement approved by the Board of Directors of the Corporation and applicable to the Member and its Member class.
- 3.21** “**Participation Policies**” has the meaning as set forth in Section 4.2.3.
- 3.22** “**Promoter(s)**” means those Members who qualify as a “Promoter” in accordance with the provisions of Section 4.1.1.
- 3.23** “**Promoter Board Representative**” shall have the meaning as set forth in Section 4.1.1 of these Bylaws.

3.24 “**Work Group**” has the meaning as set forth in Section 6.1.

3.25 “**Technical Proposals**” means an outline of new features that has been ratified by a Work Group and is targeted for inclusion in a future Draft Specification.

#### 4. **MEMBER CLASSES; PARTICIPATION**

##### 4.1 **Member Classes**

There shall be three (3) classes of Members: (i) Promoter(s); (ii) Contributor(s); and (iii) Adopter (s). The Board of Directors may add or eliminate classes of Members at any time by a vote of the Directors pursuant to Section 5.7.8(ii). Except as expressly provided in, or authorized by, the applicable Participation Agreement, the Certificate of Incorporation of the Corporation ), the Bylaws, or provisions of law, Members shall have the rights, privileges, restrictions and conditions established by resolution of the Board of Directors. The benefits and privileges of each class of Participation are defined below:

###### 4.1.1 Promoters

The Corporation shall have a class of members called Promoters. All Promoters must execute a Participation Agreement, in the form approved by the Board of Directors, and pay at all times any fees called for therein for Promoters.

Following the Corporation’s acceptance of a Participation Agreement and for so long as such Participation Agreement and the Member’s status as a Promoter shall remain in effect, but subject to continued compliance with all requirements applicable to Members contemplated by these Bylaws (including, without limitation, being current on its payment of Member dues), the Participation Policies and the Participation Agreement, all Promoters shall be entitled to all rights, and will be bound by all obligations, stated therein as well as the following additional rights:

- a. Those benefits generally afforded to and imposed upon all Contributors as well as the following additional rights:
  - (1) Subject to Section 5.3 below, the right to select one representative to serve as a Director on the Board of Directors of the Corporation (the “**Promoter Board Representative**”) and one representative to serve as alternate (the “**Alternate**”) to the Promoter Board Representative;
  - (2) The right to participate in the exercise of any DGCL Member Voting Rights, if any are applicable;
  - (3) The right to vote on all matters presented to the Members for a vote;
  - (4) Listed as a Promoter on the Corporation’s web site and in Corporation’s marketing material; and
  - (5) Listed as a Promoter in all press releases, and at all events of the Corporation;
- b. In addition to the foregoing, the Board of Directors may from time to time approve other benefits to which all Promoters may be entitled.

###### 4.1.2 Contributors.

The Corporation shall have a class of members called Contributors. All Contributors must execute a Participation Agreement, in a form approved by the Board of Directors, and pay at all times any fees called for therein for Contributors.

Following the Corporation's acceptance of a Participation Agreement and for so long as such Participation Agreement shall remain in effect, but subject to continued compliance with all requirements applicable to Members contemplated by these Bylaws (including, without limitation, being current on its payment of Member dues), the Participation Policies and the Participation Agreement, all Contributors shall be entitled to all rights, and will be bound by all obligations, stated therein as well as the following additional rights:

- a. Those benefits generally afforded to and imposed upon all Adopters as well as the following additional rights:
  1. Subject to, and pursuant to the procedures set forth in, the IPR Policy, the right to participate in Work Groups;
  2. The right to vote as a participant of a Work Group on matters presented to Work Group participants for such vote;
  3. The right to review Draft Specifications.
- b. In addition to the foregoing, the Board of Directors may from time to time approve other benefits to which all Contributors may be entitled.

#### **4.1.3. Adopters.**

The Corporation shall have a class of members called Adopters. All Adopters must execute a Participation Agreement, in a form approved by the Board of Directors, and pay any associated fees called for therein for Adopters.

Following the Corporation's acceptance of a Participation Agreement and for so long as such Participation Agreement shall remain in effect, but subject to continued compliance with all requirements applicable to Members contemplated by these Bylaws (including, without limitation, being current on its payment of Member dues), the Participation Policies and the Participation Agreement, all Adopter shall be entitled to all rights, and will be bound by all obligations, stated therein as well as the following additional rights:

1. The right to have access to ratified Technical Proposals;
2. The right to participate in the annual all-Member meeting but only in a non-voting capacity;
3. The right to actively participate in the Corporation's marketing and promotional activities at trade shows and other industry events;
4. The right to participate in any logo or certification mark licensing program ("**Logo Program**") provided by the Corporation for the benefit of Members in accordance with the terms and conditions of any such Logo Program as set forth by the Board of Directors;
5. Adopter will be given reasonable early access to a Final Specification before it is released to the general public.

## **4.2 General Member Requirements; Participation Policies; Member Voting Rights.**

### **4.2.1 General Member Requirements.**

As a general condition of accepting an Applicant's application to be a Member, and as a condition of a Member's continued Participation in the Corporation, all Members and Applicants are required to: (i) abide

by, and remain in compliance with, these Bylaws and all Participation Policies; and (ii) execute a Participation Agreement and to abide by, and remain in compliance with, the Participation Agreement.

#### **4.2.2 Voting Rights of Members.**

Notwithstanding any other provision in these Bylaws which may be to the contrary, the following governs the voting rights of the Members of the Corporation:

- (i) Any voting rights which may be granted to “members” of the Corporation pursuant to the DGCL (“**DGCL Member Voting Right(s)**”) shall be exclusively granted to, and exclusively exercised by, the Promoters but no other Members shall have any such voting right whatsoever.
- (ii) Any voting rights which may be granted to Members of the Corporation pursuant to the Certificate of Incorporation, these Bylaws, or any Participation Policy shall be exercised exclusively by the Promoters (but no other Member shall have any voting right whatsoever); provided, however, if a provision of these Bylaws, the IPR Policy, or any other Participation Policy explicitly grants a particular voting right to the Contributors (“**Multi-class Voting Issue**”) then, in such case only, the Promoters and Contributors will have the only right, as separate classes, to vote on the applicable Multi-class Voting Issue (but no other Members shall have any such voting right whatsoever).
- (iii) Adopters have no voting rights whatsoever, including, without limitation, no DGCL Member Voting Rights.

#### **4.2.3 Participation Policies.**

In addition to other requirements and qualifications set forth in these Bylaws applicable to Applicants and Members, the Board of Directors may adopt, at any time and from time to time, policies and procedures which the Board and Directors deems appropriate related to the admission of Applicants into the Corporation, the admission into each of the particular classes of Members, and any other requirements for ongoing Participation as a Member in the Corporation (“**Participation Policies**”). Participation Policies may be approved, and existing Participation Policies may be amended, by a vote of the Directors pursuant to Section 5.7.8(ii). Participation Policies shall be effective as of the date set forth therein and shall be applicable to all then-existing Members and all pending Applicants. For purposes of these Bylaws, the term “Participation Policies” include, without limitation, the IPR Policy and any antitrust guidelines (“**Antitrust Guidelines**”).

### **4.3 Member and Participation Qualifications.**

#### **4.3.1 General Member and Participation Qualifications.**

In addition to all other qualifications and requirements for Members and their Participation set forth in these Bylaws (including, without limitation, in this Section 4), the following are additional general qualifications for Participation by an Applicant and for continued Participation by a Member in the Corporation:

- (i) Applicant and Member must be supportive of the Corporation’s Purposes as defined in Section 2 of these Bylaws. “Supportive of the Corporation’s Purposes” means that the Member is supportive of the Corporation’s efforts to create Final Specifications and that the Member will also be supportive of the implementation of the Final Specifications.
- (ii) Applicant and Member must not otherwise be prohibited by treaty, law or regulation from abiding by the terms of the Bylaws or any Participation Policies;
- (iii) Applicant must pay, and the Member must continue to pay, the then-current annual dues applicable to the relevant Member class;

- (iv) Each Member hereby agrees not to load the Participation of any Work Group for the purpose of obstructing the purpose of the Corporation or the progress or purpose of that Work Group.

#### **4.3.2 Additional Qualifications for Promoters.**

Promoters must also agree to:

- (i) select its one (1) Promoter Board Representative to serve as a member of the Board of Directors and optionally its one (1) Alternate as contemplated by, and in accordance with the notice provisions set forth in, Sections 4.1.1 (a)(1) and 5.3 of these Bylaws. The Promoter must commit to sending its Promoter Board Representative or Alternate to at least 50% of the regularly scheduled Board of Directors meetings held during each 12 month period.
- (ii) assign one (1) “full time equivalent” representative of the Member to participate in the activities of the Corporation; and
- (iii) must commit to send at least one (1) representative(s) from that Promoter to attend at least twelve (12) meetings per year sponsored by the Corporation;
- (iv) Must commit to send at least one (1) representative to any annual face-to-face meeting of Members, if one is held.

#### **4.4 Admission of Members; Additional Participation Requirements and Conditions**

##### **4.4.1 Initial Applications for Participation as a Member**

Applicants seeking admission as a Member in the Corporation (“**Applicant**”) must first satisfy the following conditions: (i) Applicant must submit a completed Participation Agreement to the Board of Directors; and (ii) Applicant must satisfy all requirements contemplated by these Bylaws and the Participation Policies for admission as a Member.

##### **4.4.2 Admission as Promoter.**

Applicants applying as a Promoter may be admitted to Participation as a Promoter subject to the following additional conditions:

- (i) provided the Board of Directors has not yet reached the maximum number of allowable Directors pursuant to Section 5.2 of these Bylaws;
- (ii) Applicant/Member must qualify under, and must be in compliance with all other provisions of, these Bylaws and all Participation Policies as a Promoter;
- (iii) Applicant’s Participation as Promoter is approved by a vote of the Directors pursuant to Section 5.7.8(ii); and
- (iv) Applicant/Member’s execution of a Participation Agreement, and payment of the applicable annual dues as specified in the Participation Agreement.

##### **4.4.3 Promoter Term**

A Promoter Member is elected to a two-year term. At the conclusion of the term, the Promoter Member’s position is open for election. All Contributor and Promoter Members in good standing are eligible to seek election to the position. Each term shall begin January 1 of the calendar year after which the Member was elected and end two years later on December 31.

The number of Promoters shall be determined by the Board of Directors pursuant to Section 5.7.8(i), subject to the limitations on the maximum number of allowable Directors pursuant to Section 5.2 of these Bylaws. There shall initially be thirteen (13) Promoters. Promoters shall be divided into two classes, Class I and Class II, by resolution of the Directors pursuant to Section 5.7.8(i). Beginning January 1, 2015, six (6) Promoter places will be open for election (Class I). On January 1, 2016, the remaining seven (7) Promoter positions will be open for election (Class II). Elections will be held each year subsequently and continue this alternating cycle. Therefore, Class I Promoters shall be subject to election as of November 30, 2014 and every two years thereafter. Class II Promoters shall be subject to election as of November 30, 2015 and every two years thereafter. Each newly admitted Promoter shall be assigned the class that is subject to election in the year that the newly admitted Promoter is admitted as a Promoter. The division of Promoters into Class I and Class II shall solely be for purposes of setting election dates, and does not denote any other distinction between rights, obligations or privileges.

Nominations for election to Promoter shall be made in accordance with the NVM Express Policies and Procedures as approved by the Board of Directors. Notwithstanding the procedures set forth in the NVM Express Policies and Procedures, all nominations shall be made in writing and shall include a general description of the Member's qualifications, including its technical and marketing resources and previous participation in the Corporation.

The vote for the election of Promoters in any given year shall be submitted to the Directors annually, provided, however, that if the applicable vote has not been submitted to or voted on by the Board of Directors at the expiration of the applicable term for that year, each Promoter subject to re-election shall automatically continue as Promoters on a month to month basis until such election vote is held. The election vote, whenever held, shall only be effective to set the two-year term of the Promoters as set forth above, and not to create a new term of two years from the date of such vote (i.e. if the election vote for the Class I Promoters is not held until July 1, 2015, such vote will still only approve a two-year term ending December 31, 2016). Directors may vote with respect to all Promoter candidates regardless of whether a Promoter candidate is the Member that appointed such Director to the Board of Directors. The vote for all expiring Promoter positions of a class will be held at the same time. In order to protect the confidentiality of the process, votes shall be conducted by closed written ballot, subject only to the inspection of the Chair of the Board and Secretary.

In determining whether to elect a Promoter, the Directors may consider the following:

- (i) Continuing qualification under, and compliance with all provisions of these Bylaws as a Promoter or Contributor, including as set forth in Section 4.3 (Member and Participation Qualifications);
- (ii) Compliance with these Bylaws and all Participation Policies;
- (iii) Compliance with the Participation Agreement, including, without limitation, its payment of the applicable annual dues as specified in the Participation Agreement.

All rights of a Member as a Promoter shall cease upon failure to be re-elected as contemplated by this Section 4.4.3, and the Member shall become a Contributor, provided such Member is in compliance with Section 4.3.1. The Member shall not receive any refund of dues already paid for the current dues period. Nothing herein is intended to in any way limit the rights of the Corporation to terminate any Member in accordance with Section 4.10.

In electing Promoter positions, all Directors are eligible to vote, subject to the limitations above. In the year where six (6) positions are open, each Director will be given six (6) votes to vote for candidates seeking a Promoter position. In the year where seven (7) positions are open, each Director will be given seven (7) votes to vote for candidates seeking a Promoter position. Each Director may only cast one (1) vote per candidate.

Candidates receiving the highest number of votes will be elected to a Promoter position. If all Promoter positions are not filled, example: there is a three-way tie for the 5<sup>th</sup> and 6<sup>th</sup> Promoter positions, a run-off election will be held between the candidates with the Directors having votes corresponding to the number of positions subject to the run-off election. Additional run-off elections will be held until all Promoter positions are filled.

Example: 6 Open Promoter Positions

Candidate	A	B	C	D	E	F	G	H
Votes	13	12	10	9	8	8	8	8

Candidates A, B, C, & D are elected, a run-off election is held between E, F, G and H for the remaining two (2) positions.

Run-off Election

Candidate	E	F	G	H
Votes	7	6	7	6

Candidates E and G are elected.

**4.4.4 Admission as Contributor.**

Applicants applying as a Contributor may be admitted to Participation as a Contributor subject to the following additional conditions:

- (i) Applicants/Members must qualify under, and must be in compliance with all other provisions of, these Bylaws and all Participation Policies as a Contributor; and
- (ii) Applicant/Member’s execution of a Participation Agreement, and payment of the applicable annual dues as specified in the Participation Agreement.

**4.4.5 Admission as Adopter.**

Applicants applying as an Adopter may be admitted to Participation as an Adopter subject to the following additional conditions:

- (i) Applicants/Members must qualify under, and must be in compliance with all other provisions of, these Bylaws and all Participation Policies as an Adopter;
- (ii) Applicant/Member’s execution of a Participation Agreement, and payment of the applicable annual dues as specified in the Participation Agreement.

**4.5 Membership Fees.**

The annual fees payable to the Corporation by each class of Members shall be established and may be changed from time to time by a vote of the Directors pursuant to Section 5.7.8(i). Initial fees, if any, shall be due and payable upon execution of a Participation Agreement according to terms defined in the Participation Agreement. In addition to the other termination provisions of Section 4.10, any Member that is delinquent in the payment of any fee(s) is subject to termination as a Member in accordance with Section 4.10.1.

**4.6 Number of Members.**

Subject to the other provisions of this Section 4 and the Participation Policies, there is no limit on the number of Members the Corporation may admit.

**4.7 Member Roll.**

The Corporation shall keep a Member roll containing the name and address of each Member, the date upon which the Applicant became a Member, and the name and contact information of one (1) individual from each Member organization who shall serve as a primary contact for the Corporation, receive all correspondence, notices and



information on behalf of the Member, and then distribute such correspondence, notices and information within his or her Member organization. Termination of any Member shall be recorded in the roll, together with the date of termination of such Member. Such roll shall be kept by the Secretary of the Corporation. The Corporation shall use addresses and other contact information provided by Members on their Participation Agreements. If the address or other contact information of a Member changes it shall be the responsibility of the Member to provide the Corporation with updated information.

#### **4.8 Non-liability of Members.**

No Member of the Corporation, as such, shall be individually liable for the debts, liabilities, or obligations of the Corporation.

#### **4.9 Non-transferability of Member Status**

All rights as a Member shall cease upon the Member's dissolution. No membership in the Corporation may be assigned without the prior written consent of the Corporation, unless such transfer is an intra-company transfer or between Affiliates, and any purported assignment without such written consent shall be null and void. Notice of an intra-company transfer or Affiliate transfer shall be provided to the Board of Directors.

#### **4.10 Termination of Member's Participation.**

Notwithstanding anything to the contrary in the Participation Agreement, the Participation of a Member as a Member of the Corporation shall terminate upon the occurrence of any of the following events:

##### **4.10.1 Failure to Renew Participation as a Member.**

Upon a failure to initiate or renew Participation as a Member by paying dues on or before their due date (as set forth in the applicable Participation Agreement), such termination to be effective thirty (30) days after a written notification of delinquency is given personally or mailed to such Member by the Corporation. A Member may avoid such termination by paying the amount of delinquent dues within a thirty (30) day period following the Member's receipt of the written notification of delinquency.

##### **4.10.2 Termination of Member.**

- (i) Termination of Promoters. Upon thirty (30) days' written notice from the Promoter; in which case the effective date of termination is thirty (30) days from the date of notice of termination.
- (ii) Termination of Contributor or Adopter. Upon thirty (30) days' written notice from a Contributor or Adopter; in which case the effective date of termination is thirty (30) from the date of notice of termination.

##### **4.10.3 Violation of Policies or Duties of Participation.**

Upon unanimous vote of all disinterested Directors in office when such Board of Directors determine, after affording the Member in question the right to be heard on the issue, that the Member has violated any provision of the Bylaws, the Member's Participation Agreement, any Participation Policy, or any other policies and procedures duly approved by the Board of Directors, or caused the Corporation to be in violation of any provision of the Certificate of Incorporation, and failed to cure where, in the discretion of a majority of the disinterested Directors, such violation can be cured.

##### **4.10.4 Member's Dissolution or Merger.**

In the event that two (2) or more Member organizations are merged or a Member organization is acquired by another Member organization, the resulting entity shall have only one (1) membership and one (1) vote in all Member votes thereafter.

#### **4.11 Effect of Member's Termination.**

All rights of a Member shall cease on termination as a Member as herein provided. A Member terminated from the Corporation shall not receive any refund of dues already paid for the current dues period. Upon termination of a Promoter, an election may be held to fill the vacancy created in accordance with Section 4.4.3, and the newly elected Promoter shall be appointed to the group of the terminated member.

#### **4.12 Use of Member Name and Company Logo**

Members agree that, subject to the Members' company logo and/or trademark usage guidelines provided to the Corporation, the Corporation may reproduce the Member's designated company logo, company trademark, and company name on the Corporation's website and in press releases, marketing material, and other material of the Corporation for the purposes of acknowledging the Member's status as a Member and its Participation in the Corporation. Upon notice of termination as a Member, a Member's company name shall be removed from the Corporation's public lists of Members, press releases, and any yet-to-be released marketing materials. No Member, for purposes other than in connection with the Corporation, shall have any right to use the company logo, company trademark or company name of any other Member.

### **5. BOARD OF DIRECTORS**

#### **5.1 Powers.**

Subject to the limitations of the Certificate of Incorporation, of the Bylaws, and of the DGCL, and subject to the duties of Directors as prescribed by the Bylaws, all corporate powers shall be exercised by or under the authority of, and the business and affairs of this Corporation shall be controlled by, the Board of Directors of the Corporation ("**Board of Directors**"). The Board of Directors shall have the power to (i) select and remove all officers, agents, employees and contractors, and to fix reasonable compensation thereof, (ii) to authorize and empower officers or agents to enter into contracts and other commitments on behalf of this Corporation, and (iii) to create committees and appoint and delegate responsibilities and authority to such committees, officers and agents.

#### **5.2 Composition and Size; Selection.**

**5.2.1 Size of Board.** The Board of Directors (each person referred to individually as a "**Director**" and collectively as "**Directors**") shall consist of a maximum of thirteen (13) Directors and a minimum of seven (7) Directors.

**5.2.2 Selection** The Board of Directors shall only consist of Promoter Board Representatives selected by the Promoters. Each Promoter shall be entitled to appoint only one (1) Promoter Board Representative to the Board of Directors. In accordance with the procedure set forth below in Section 5.3, a Promoter, by providing written notice to the Secretary or President of the Corporation, may replace an individual appointed by that Promoter as its Promoter Board Representative to serve as a Director at any time with another designated Promoter Board Representative to serve as such Director.

#### **5.3 Qualification, Initial Appointment, and Election of Directors**

##### **5.3.1 Qualification.**

The Directors on the Board of Directors are limited to the individual Promoter Board Representatives selected by each Promoter pursuant to Section 4.1.1(a)(1). Directors must be employees of the selecting Promoter or its Affiliate. No Promoter may have more than one (1) Promoter Board Representative serving as a Director on

the Board of Directors or more than one (1) Alternate. For purposes of the Bylaws, a Member and its Affiliates shall be deemed as one (1) Member.

### **5.3.2 Initial Appointment of Directors.**

The initial Directors that will serve on the Board of Directors shall be appointed by the incorporator and consist of one representative of each of the Promoter existing as of the date of the approval of these Bylaws.

### **5.3.3 Subsequent Appointments of Directors.**

Each Promoter must provide the Secretary or President of the Corporation with written notice of: (i) its initial selection of its Promoter Board Representative pursuant to its right to select its Promoter Board Representative to serve on the Board of Directors as contemplated by Section 4.1.1(a)(1); (ii) its decision to remove its Promoter Board Representative as a Director or its designated Alternate; or (iii) its decision to replace, and the name of its replacement(s) as, its Promoter Board Representative as a Director or its designated Alternate. As of the date of the Secretary's or President's receipt of such notice from the Promoter, the following shall be deemed to have automatically occurred, and the Secretary or President of the Corporation shall note the following in the Corporation's official records:

- (i) with regard to the notice of the initially selected Promoter Board Representative, that person will be deemed to a Director on the Board of Directors of the Corporation.
- (ii) with regard to the notice of the initially selected Alternate, that person will be deemed to be the designed Alternate for that Promoter.
- (iii) with regard to any subsequent notice(s) about removing or replacing the Promoter Board Representative or the Alternate, the following applies:
  - (a) the then current Promoter Board Representative for that Promoter will be deemed to have resigned as a Director on the Board of Directors or in the case of the Alternate the current Alternate will be deemed to have resigned as an Alternate and will no longer have any rights as an alternate to a Director; and
  - (b) if a replacement Promoter Board Representative or Alternate is named in the notice, if any, then the newly selected Promoter Board Representative will be deemed to a Director on the Board of Directors or in the case of an Alternate will be deemed to an alternate to a Director with the accompanying rights and obligations.

## **5.4 Directors Term of Office.**

Promoter Board Representatives shall serve so long as the Promoter who appointed them remains a Promoter of the Corporation in accordance with Section 4.4 of these Bylaws; subject, however, to: (i) the Corporation's Secretary receipt of written notice from the Promoter of its decision to remove its Promoter Board Representative as a Director as contemplated by Section 5.3.3 above; (ii) the Corporation's Secretary receipt of written notice from the Promoter with the name of a replacement Promoter Board Representative to serve as such Director as contemplated by Section 5.3.3 above; (iii) a vacancy as contemplated by Section 5.5.1; or (iv) removal as contemplated by Section 5.5.2 below.

## **5.5 Vacancies; Resignations; Removal by Board.**

### **5.5.1 Vacancies; Resignations.**

- (i) Vacancies on the Board of Directors shall exist: (1) whenever an individual Director resigns from the Board of Directors; (2) whenever a Promoter Board Representative who is serving as a Director resigns from, or is terminated from, employment with the Promoter's (or its Affiliate's) organization that engaged that Promoter Board Representative at the time of the Director's appointment by that

Promoter; (3) whenever a Director's Promoter organization terminates its Participation as a Promoter in the Corporation; (4) wherever a Director is removed from office by the Promoter that selected such Promoter Board Representative to serve as such Director; or (5) any Removal of a Director by the Board of Directors pursuant to Section 5.5.2 below .

- (ii) Any Director may resign effective upon giving written notice to the President, the Secretary, or the Board of Directors. No Director may resign if the Corporation would then be left without a duly appointed Director or Directors in charge of its affairs, except upon notice to the Office of the Attorney General or other appropriate agency of the State of Delaware.
- (iii) Subject to the procedures and terms of Section 5.3.3 of these Bylaws, the Promoter engaging the resigning, expiring, terminated or removed Director shall replace that Director with another Promoter Board Representative by providing the Secretary or President with written notice of the same within **thirty (30) days** after the effective date of the Director's resignation, expiration, termination or removal. Such position shall be deemed to be vacant unless and until that particular Promoter selects a replacement Director in accordance with the procedure set forth in Section 5.3.3 of these Bylaws. The Board of Directors may not otherwise fill a vacancy existing under this section.
- (iv) Except as otherwise herein provided, a Director shall be ineligible to serve as a Director and such person's term of office shall immediately cease if the Director's employment with the Promoter (or the applicable Affiliate of such Promoter) is for any reason terminated. A person appointed to fill a vacancy on the Board of Directors shall hold office until his or her death, resignation, removal from office, or his or her employment with the applicable Promoter (or the applicable Affiliate of such Promoter) is terminated.
- (v) In the event that two (2) or more Board of Directors Member organizations are merged or a Director's Member organization is acquired by another Director's Member organization, the resulting or acquiring Board of Directors Member shall designate which of the Directors is to remain on the Board and the term of office of the other Director or Directors will cease from the Board immediately upon the closing of the acquisition or merger.

#### **5.5.2 Board's Removal of a Member of the Board of Directors.**

A Director may be removed from the Board of Directors by a vote of the Directors pursuant to Section 5.7.8(ii) if that Director has failed to attend 50% or more of the regularly scheduled meetings held during each 12 month period. Upon any such vote by the Board of Directors, that Director's office shall be deemed to be vacant and shall only be replaced by the applicable Promoter (namely, the Promoter that initially selected the removed Director) as contemplated by Section 5.2 above.

#### **5.6 Chair of the Board.**

The Chair of the Board (also referred to herein as "Chair") presides at all meetings of the Board of Directors, and is a voting member of the Board. The Chair may also serve as President of the Corporation and have such other powers and duties as may be designated from time to time by the Board of Directors. The Chair may be appointed from time to time by the Board of Directors pursuant to the vote required by Section 5.7.8. Only Promoters are eligible to have their Director serve as Chair of the Board. Any removal of a Member's Director from the Chair position does not limit the Promoter's rights as a member of the Board of Directors.

#### **5.7 Meetings.**

##### **5.7.1 Regular Meetings.**

A regular meeting of the Board of Directors shall be held prior to the annual meeting of the Corporation, either within or without the State of Delaware. The Board of Directors may provide, by resolution, the time and place, either within or without the State of Delaware, for the holding of additional regular meetings.

### **5.7.2 Special Meetings.**

Special meetings of the Board of Directors may be called by or at the request of any Director, or by the persons authorized under the DGCL to call Special Meetings of the Board of Directors. The person or persons authorized to call special meetings of the Board of Directors may fix any place, either within or without the State of Delaware, as the place for holding any special meeting of the Board of Directors called by them.

### **5.7.3 Notice for Special Meetings.**

Notice shall be given to each Director of the date, time and place of any special meeting of the Board of Directors. Such notice shall be given at least 24 hours prior to the meeting by any means provided by law, including communication in person, by mail or other method of delivery, by telephone or by voice mail, or other electronic transmission. If notice to the Director is written notice, it is effective:

- (a) Upon deposit in the United States mail addressed to the director at the Director's business address, with postage thereon prepaid; or
- (b) When electronically transmitted to the director in a manner authorized by the Director. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

### **5.7.4 Consent to Meetings.**

The transactions of the Board of Directors at any meeting however called and noticed or wherever held, shall be as valid as though done at a meeting duly held after call and notice if a quorum is present and if either before or after the meeting each Director not present (i) signs a written waiver of notice, or (ii) signs a consent to the holding of such meeting, or (iii) approves the minutes thereof. Each Director who attends the meeting without protesting, prior thereto or at its commencement shall be deemed conclusively to have consented to the holding of the meeting and to have waived the lack of notice to such Director. All such waivers, consents or approvals shall be filed with the corporate records and made a part of the minutes of the meeting.

### **5.7.5 Action without Meeting.**

Any action that is required or permitted to be taken by the Board of Directors at a meeting may be taken without a meeting if a consent in writing or by electronic transmission, setting forth the action so taken shall be adopted by all of the directors entitled to vote on the matter. The action shall be effective on the date when the last signature is placed on the consent or at such earlier or later time as is set forth therein. Such consent, which shall have the same effect as a unanimous vote of the Directors, shall be filed with the minutes of the corporation.

### **5.7.6 Conducting Meetings of Board of Directors by Telephone Conference or Similar Communications Equipment.**

Directors on the Board of Directors may hold a meeting of the Board of Directors by conference telephone, videoconference, or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at such meeting.

### **5.7.7 Quorum.**

Except as may be otherwise explicitly set forth in the table in Section 5.7.8 (ii) below, greater than fifty percent (50%) of the Directors in office shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided.

**5.7.8 Voting and Action of Board of Directors.**

- (i) The act of the majority of the Directors at a meeting at which a quorum is present shall be the act of the Board of Directors, unless a different number is provided by law, the Certificate of Incorporation, or by these Bylaws.
- (ii) The table below sets forth specific acts or decisions and the number of affirmative votes required for the decision to be regarded as an act of the Board of Directors at a meeting at which a quorum is present:

Matter to be Voted On	Number of Votes Required
Amendment to Certificate of Incorporation	All of the Directors in office, minus 1 Director (N-1)
Changing the Corporation Purpose; dissolution or merger of the Corporation	All of the Directors in office, minus 1 Director (N-1)
Amendment to these Bylaws	All of the Directors in office, minus 1 Director (N-1)
Adoption of, and amendments to, the IPR Policy	All of the Directors in office, minus 1 Director (N-1)
Addition or elimination of classes of Members	All of the Directors in office, minus 1 Director (N-1)
Election of Chair of Board, President, Secretary and/or any other officer	2/3 of all Directors in office
Removal of Chair of Board, President, Secretary and/or any other officer	2/3 of all Directors in office
Removal of a member of the Board of Directors as contemplated by Section 5.5.2	2/3 of all Directors in office
Approving Final Specification	2/3 of all Directors in office
Election of a Promoter	Votes of Directors in office in accordance with Promoter election process (See Section 4.4.3)
Adoption of, and amendments to, the Antitrust Guidelines or any other Participation Policies (excluding the IPR Policy)	2/3 of the Directors at a meeting at which a quorum is present
Establishment of Work Groups and the appointment of Work Group chair (as per Section 5.6, the defined term “Chair” when capitalized designates the Chair of the Board; whereas the use of the lowercase “chair” refers to a Work Group chair or committee chair)	2/3 of the Directors at a meeting at which a quorum is present

**5.7.9 Adjournment.**

A majority of the Directors present, whether or not a quorum is present, may adjourn any Directors' meeting to meet again at another time or place. In the event a meeting of the Board of Directors is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place shall be given prior to the time set for the rescheduled meeting to the Directors who were not present at the time of the adjournment.

#### **5.7.10 Conduct of Meetings.**

Meetings of the Board of Directors shall be presided over by the Chair of the Board of Directors, or in his or her absence, by an acting Chair chosen by a majority of the Directors present at that meeting. The Secretary of the Corporation shall act as secretary of all meetings of the Board of Directors, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary of the Meeting. Meetings shall be governed by such procedures as may be approved from time to time by the Board of Directors, insofar as such rules are not inconsistent with or in conflict with the Certificate of Incorporation, the Bylaws, or with provisions of applicable law. Where practical, the Board of Directors will model its procedures and actions on *Robert's Rules of Order*, although the Board shall not be required to adopt *Robert's Rules of Order* in its entirety or any part thereof.

#### **5.8 Compensation.**

Directors shall serve without compensation by the Corporation.

#### **5.9 Standard of Conduct.**

A Director shall perform the duties of a Director, including duties as a member of any committee of the Board of Directors upon which the Director may serve, in good faith, in a manner such Director believes to be in the best interests of the Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. In performing the duties of a Director, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) One or more officers or employees of the Corporation whom the Director believes to be reliable and competent in the matters presented; or
- (b) Legal counsel, independent accountants or other professionals as to matters which the Director believes to be within such person's professional or expert competence; or
- (c) A committee of the Board of Directors upon which the Director does not serve, as to matters within the committee's designated authority, which committee the Director believes to merit confidence; provided, that in any such case, the Director acts in good faith, after reasonable inquiry when the need therefore is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

#### **5.10 Self-Dealing Transactions.**

As used in this section, a "self-dealing transaction" is any contract or transaction (i) between the Corporation and one or more of its Directors, or between the Corporation and any corporation, firm or association in which one or more of the Directors or, to the best of each respective Director's knowledge at the time the contract or transaction is proposed, or thereafter, one or more Members is employed or has a material financial interest, or (ii) between the Corporation and a corporation, firm or association of which one or more of its directors or employees or consultants are Directors of the Corporation (collectively, "**Interested Director(s)**"). Pursuant to the DGCL, no self-dealing contract shall be void or voidable because such Interested Director(s) or corporation, firm or association is a party or because such Interested Director(s) are present at the meeting of the Board of Directors or committee which authorizes, approves or ratifies the self-dealing contract, if:

- (a) Board of Directors or Committee Approval. The material facts as to the Interested Director's relationship or interest and as to the self-dealing contract are disclosed or are known to the Board of Directors or committee, and the Board of Directors or committee in good faith authorizes the self-dealing contract by

the affirmative votes of two-thirds (2/3) of the disinterested Directors in office, even though the disinterested Directors be less than a quorum; or

- (b) The self-dealing contract is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors or committee thereof.

### **5.11 Advances for Expenses.**

To the extent a Director or officer of the Corporation, or other third party acting on behalf of the Corporation, is a party to an action, suit or proceeding as a result of such Director's, officer's or third party's service to the Corporation, the Corporation shall pay for or reimburse the reasonable expenses incurred by such Director, officer, or third party in advance of final disposition of the action, suit or proceeding to the fullest extent permitted by the DGCL, as it exists on the date hereof or is hereafter amended.

## **6. WORK GROUPS**

### **6.1 Work Groups.**

The Corporation shall have such work groups ("**Work Group(s)**") as may from time to time be designated upon vote of the Board of Directors. Development of Draft Specifications shall be carried out by such Work Groups as may from time to time be designated as set forth herein. It is anticipated that the Board of Directors shall designate, at a minimum, the **Director Group**, the Technical Work Group and the Marketing Work Group. Meetings and actions of Work Groups shall be governed by, noticed and held in accordance with written Work Group procedures to be adopted, and from time to time amended by, the Board of Directors ("**Work Group Procedures**"). Upon establishment of a Work Group, that Work Group may, through its chair appointed pursuant to Section 6.2, propose specific procedures to govern that Work Group; such specific procedures shall be subject to ratification by the Board of Directors. Work Group-specific procedures not otherwise incorporated into the general Work Group procedures shall apply only to the Work Group proposing such procedures.

### **6.2 Formation.**

Any Promoter, through its Promoter Board Representative may propose a vote, at a duly called meeting of the Board of Directors, for the establishment of one (1) or more Work Groups to carry out the work of the Corporation as assigned by the Board of Directors. Such proposal shall include the proposed charter of such Work Group. The Board of Directors shall (i) approve or disapprove the formation of each Work Group, (ii) approve or disapprove the charter of such Work Group and (iii) appoint the initial and any replacement chair of such Work Group (such appointment to be by a vote of the Directors pursuant to Section 5.7.8(ii) ), which chair shall serve for a term of one (1) year, after which time the Board of Directors must either replace or reappoint said chair. All output of Work Group, including but not limited to Draft Specifications, and modifications thereto, shall be subject to review and approval of the Board of Directors.

### **6.3 Composition of Work Groups.**

Only Promoters and Contributors are eligible to serve on Work Groups. Only Promoters and Contributors are eligible to serve as the chair of a Work Group and shall be appointed by the Board of Directors (as set forth in Section 6.2 above). The Promoters and Contributors participating in any Work Group shall have the right to vote on any matters brought before such Work Group, subject to Work Group procedures adopted in accordance with Section 6.1.

### **6.4 Record of Activities.**

Each Work Group shall elect a secretary or other person to document and record the minutes of Work Group meetings.

### **6.5 Meetings.**



Work Groups shall hold regular meetings on a schedule determined by the Work Group Procedures. The noticing of meetings of the Work Group and the governance thereof shall be subject to the Work Group Procedures. Where practical, *Robert's Rules of Order* shall be used as a guide in the conduct of meetings.

## **6.6 Removal from Work Groups.**

The then-current Work Group Procedures shall govern the removal of any member of a Work Group.

## **7. OFFICERS**

### **7.1 Officers.**

The required officers of the Corporation shall be a President and Secretary. The Corporation may have a Vice President and such other officers with such titles as may be determined from time to time by the Board of Directors. All officers shall be an employee of a Promoter or its Affiliate. One person may hold two or more offices except no single individual may authorize an act of the Corporation that requires the approval of two or more officers.

### **7.2 Election.**

The officers of the Corporation shall be elected by the Board of Directors in accordance with Section 5.7.8, and each officer shall hold his or her office for a term of two (2) years, or until he or she shall resign or shall be removed or his or her successor shall be elected and qualified. The Incorporator shall designate an interim President and Secretary from the Promoters who will serve until the Board of Directors holds an election or before the first annual meeting, whichever comes first.

### **7.3 Removal and Resignation.**

#### **7.3.1 Removal.**

Any officer may be removed, either with or without cause, by the Board of Directors at any regular or special meeting (subject to the rights, if any, of an officer under any contract of employment).

#### **7.3.2 Resignation.**

Any officer may resign at any time by giving written notice to the Board of Directors, or to any officer of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Such resignation shall not prejudice the rights of the Corporation under any contract to which the officer is a party.

### **7.4 Vacancies.**

A vacancy in any officer position because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in the Bylaws for regular appointments to such officer position.

### **7.5 President.**

The President may serve as both the Chair of the Board of Directors and the President of the Corporation. Subject to the control of the Board of Directors, the President shall have general supervision, direction and control of the business and affairs of this Corporation. The President shall have such other powers and duties as may be designated from time to time by the Board of Directors.

### **7.6 Secretary.**

The Secretary shall keep a full and complete record of the proceedings of the Board of Directors, shall make service of such notices as may be necessary or proper, shall supervise the keeping of the records of the Corporation, and shall

deliver the annual Statement required in the Bylaws to the Board of Directors. The Secretary shall have such other powers and duties as may be designated from time to time by the Board of Directors.

## **8. MISCELLANEOUS**

### **8.1 Confidential Information.**

#### **8.1.1 Definitions**

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

(i) **“NVMe Confidential Information”** means (a) any and all minutes, notes or any other documents produced during meetings of the Board of Directors or any NVMe committee (including, but not limited to, any Work Group); (b) any other information or material marked or otherwise designated by the Board of Directors or Secretary of the Corporation or, with regard to information or material of any NVMe committee (including, but not limited to, any Work Group), by the chair of that NVMe committee or Work Group; or (c) any other Confidential Material, as such term is defined, and governed by, the IPR Policy.

(ii) **“Permitted Release Date”** means (a) with regard to minutes or notes from the meetings of the Board of Directors, the date that the Board of Directors has voted to publicly release the applicable document without any duty of confidentiality; (b) with regard to minutes or notes of meetings of any NVMe committee (including, but not limited to, any Work Group), the date that the chair of that committee or Work Group has elected to publicly release the applicable document without any duty of confidentiality; or (c) with regard to any Confidential Material, as such term is defined by the IPR Policy, the date, if any, that the IPR Policy explicitly designates such Confidential Material is no longer subject to a duty of confidentiality.

#### **8.1.2 Duty of Confidentiality.**

(i) Until there is a Permitted Release Date (as defined in Section 8.1.1(i) above), each Member will (a) maintain all versions and revisions of each NVMe Confidential Information in confidence with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances; and (b) will not use, disclose or copy the NVMe Confidential Information except: (1) as necessary for its employees (on a need to know basis), and authorized contractors (on a need to know basis and who have signed a written non-disclosure agreement with the applicable Member that disclosed that information or, if applicable with NVMe, with terms no less restrictive than those contained herein) in order to assist the Member with its participation as a Member of NVMe; (2) with the prior written consent of the NVMe; (3) as otherwise may be required by law or legal process, including to legal and financial advisors in their capacity of advising a party in such matters; (iv) during the course of litigation, so long as the disclosure of such terms and conditions are restricted in the same manner as is the confidential information of other litigating parties; (4) in confidence to its legal counsel, accountants, banks and financing sources and their advisors solely in connection with complying with financial transactions; or, (5) in confidence to its legal counsel in connection with providing any other legal advice associated with Member’s participation in NVMe.

(ii) After the Permitted Release Date, the restrictions set forth in Section 8.1.2 (i) shall no longer apply to the applicable NVMe Confidential Information.

(iii) Notwithstanding any provision in these Bylaws that may be interpreted to the contrary, if there is any conflict between these Bylaws and the IPR Policy regarding a Member’s duty of confidentiality with regard to any applicable NVMe Confidential Information (including, without limitation, any Confidential Material), then the provisions of the IPR Policy shall govern the applicable NVMe Confidential Information.

### **8.2 Fiscal Year.**

The fiscal year of the Corporation shall start on January 1 and end on December 31 of each year.  
Final NVM Express Board of Directors Approved – 27-January-2025

### **8.3 Inspection of Corporate Records.**

The books of account and minutes of the proceedings of the Board of Directors, and of any committees of the Board of Directors, shall be open to inspection at the principal office of the Corporation by each Member at any reasonable time upon the written demand of any Member. Such inspection may be made in person or by an agent or attorney, and shall include the right to make photocopies and extracts at the requesting Member's expense.

### **8.4 Checks, Drafts, Etc.**

All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to the Corporation and any and all securities owned by or held by this Corporation requiring signature for transfer shall be signed or endorsed by such person or persons and in such manner as from time to time shall be determined by the Board of Directors.

### **8.5 Execution of Contracts.**

The Board of Directors may authorize any officer, employee, or agent to enter into any contract or execute any contract or execute any instrument in the name of and on behalf of this Corporation and such authority may be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, agent, or employee shall have any power or authority to bind this Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

### **8.6 Corporate Loans, Guarantees and Advances.**

The Corporation shall not make any advances or make any loan of money or property to or guarantee the obligation of any Director or officer, except as is expressly allowed under the DGCL and the Code.

### **8.7 Public Inspection and Disclosure.**

The Corporation shall have available for public inspection at its principal office a copy of its three (3) most recent annual exempt organization information returns and a copy of its application for recognition of exemption and determination letter. In addition, in the event that the Corporation provides services or information to the public for a fee, and such services or information are available from the federal government free of charge or for a nominal cost, such availability shall be conspicuously disclosed in an easily recognizable format in any solicitation or offer by the Corporation.

### **8.8 Political Activities.**

The Corporation shall not make any political expenditure or lobbying expenditure, which will result in the loss of, or otherwise adversely affect, its status as a tax exempt organization under the United States Internal Revenue Code. No substantial part of the Corporation's activities shall consist of attempting to influence legislation by propaganda or otherwise (except as provided in Section 501(h) of the Code, or any successor section that may be hereafter enacted, if the benefits of that section are elected) or participating directly or indirectly in, or intervening in, any political campaign on behalf of, or in opposition to, any candidate for public office.

### **8.9 Communication Policies.**

Prior to the public launch of the Corporation as decided by the Board of Directors, no Member that signs a Participation Agreement may make any public statement regarding the formation or existence of the Corporation or its participation as a Members. After the launch of the Corporation, no Member may make a press or other public announcement regarding its activities as a Member of the Corporation or which names the identities of any other Member unless prior written consent is received from any Member named in the press release or public announcement. The Corporation may make a press or other public announcement regarding any subject germane to its purposes

subject to Section 5.7.8 and may identify a Member as a Member in the Corporation, provided that prior written consent is received from any Member named in the press release or public announcement for any other purpose.

#### **8.10 Waiver of Warranties.**

ALL DRAFT SPECIFICATIONS, FINAL SPECIFICATIONS AND ALL OTHER DELIVERABLES OF THE CORPORATION, ANY INTELLECTUAL PROPERTY OF THE CORPORATION THEREIN, AND ANY CONTRIBUTIONS TO DRAFT SPECIFICATIONS AND/OR FINAL SPECIFICATIONS MADE BY MEMBERS ARE PROVIDED “AS IS,” AND WITHOUT ANY WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

#### **8.11 Limitation of Liability.**

IN NO EVENT SHALL THE CORPORATION BE LIABLE TO THE MEMBERS, OR THE MEMBERS LIABLE TO THE CORPORATION, IN CONNECTION WITH THE CONTRACTUAL NATURE OF THE BYLAWS OR ANY INTELLECTUAL PROPERTY RIGHTS AGREEMENTS OF THE CORPORATION, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY RELEASES EACH OTHER PARTY AND ALL OF SUCH OTHER PARTY’S AFFILIATES, EMPLOYEES, AND AGENTS FROM ANY SUCH DAMAGES.

#### **8.12 Mediation.**

The parties agree to first submit any controversy or claim between any Member and the Corporation arising out of or relating to the Bylaws, or the breach thereof, to nonbinding mediation in Portland, Oregon by a mediator to be selected by the parties from a panel selected by the International Chamber of Commerce (“ICC”) ADR Dispute Resolutions Services. The parties agree to mediate in good faith over a minimum period of thirty (30) days. Any costs or fees shall be split equally.

### **9. EFFECTIVE DATE AND AMENDMENTS**

#### **9.1 Effective Date.**

The Bylaws shall become effective immediately upon their adoption by the Board of Directors.

#### **9.2 Amendments.**

The Bylaws may be altered, amended or repealed, or new Bylaws may be approved, only by a vote of the Directors pursuant to Section 5.7.8 (ii) and effective as of the date the Board of Directors vote.

## CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

1. That I am the Secretary of the NVM Express, Inc.
2. That the foregoing Amended and Restated Bylaws constitute the Amended and Restated Bylaws of the said Corporation adopted by the Board of Directors on 27-January-2025, and which amend and restate the Bylaws adopted by the Board of Directors on December 3, 2018, and which amend and restate the Bylaws adopted by the Board of Directors on June 21, 2014, which previously amended and restated the Bylaws adopted by the Board of Directors on January 21, 2014.

DATED: 27-January, 2025



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Dave Landsman, Secretary