

AMENDED AND RESTATED
CONSTITUTION AND BYLAWS
OF
THE UNITED STATES NAVAL INSTITUTE



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We the Members of the United States Naval Institute establish our Constitution and Bylaws to provide for the organization and governance of our Institute; to provide direction to the Institute's Board of Directors, officers and staff in the accomplishment of our Mission as a voluntary nonprofit association of Members; and to ensure that our Institute provides an independent forum for those who dare to read, think, speak and write in order to advance the professional, literary and scientific understanding of sea power and other related issues critical to the defense and national security of the United States of America.

ARTICLE I

NAME, MISSION, PURPOSE AND HEADQUARTERS

- 1.1 **Name.** This association is a voluntary, private, nonprofit association that shall be called the United States Naval Institute (the "Institute").
- 1.2 **Mission.** The Mission of the Institute is "to provide an independent forum for those who dare to read, think, speak, and write in order to advance the professional, literary, and scientific understanding of sea power and other issues critical to national defense."
- 1.3 **Purpose, Organization and Operation.** The Institute is organized and shall be operated exclusively for charitable, scientific, literary and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any corresponding provision or provisions of subsequent superseding Federal revenue laws (the "Code"). Notwithstanding any other provision in this Constitution and Bylaws, the Institute's purposes are limited to and shall include only charitable, scientific, literary and educational purposes within the meaning of those terms as used in section 501(c)(3) of the Code or the corresponding section of any future federal tax code, and all references to the purposes of the Institute shall be construed to include this limitation. The Institute shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of the Institute as so limited.

- 1.4 **Headquarters.** The Institute shall be headquartered at Beach Hall at the United States Naval Academy, Annapolis, Maryland, or at another location determined by the Board of Directors.

ARTICLE II
MEMBERSHIP

2.1 **Types of Membership.**

- 2.1.1 The Institute shall have three types of membership: Regular, Life and Golden Life. (Regular Members, Life Members and Golden Life Members are collectively referred to in this Constitution and Bylaws as "Members" and individually as a "Member.")
- 2.1.2 A Regular Member ("Regular Member") shall be an individual who pays the dues that have been set by the Board of Directors for Regular Members. In order to offer different pricing or products and services, the Board may establish various categories of Regular Members, such as Student Members and Online Members; however, irrespective of category, each shall be a Regular Member.
- 2.1.3 A Member shall become a Life Member ("Life Member") upon payment of a fee set by the Board of Directors; and, once fully paid, no further fees shall be required.
- 2.1.4 Effective on the first day of January in the year next following the year in which a Regular Member or a Life Member shall complete fifty consecutive years of membership in the Institute, that Member shall be designated as a Golden Life Member ("Golden Life Member"). Golden Life Members shall not be required to pay dues.
- 2.1.5 Membership shall be open to all United States and foreign citizens who are interested in the Mission of the Institute. Each Member shall be an individual and membership shall not be transferable.
- 2.1.6 Entities such as ships, stations, school and libraries may subscribe to the Institute's periodicals with fees and services for each set by the Board of Directors.
- 2.2 **Membership Dues.**
- 2.2.1 Membership dues shall be recommended by the Chief Executive Officer and approved by the Board of Directors. Any change in dues shall be announced to Members in the Institute's periodicals, and , as well as on

1 Drafting Note: The Mission is unchanged from the Mission set forth in the current USNI Constitution and Bylaws.

the Institute's website no less than 60 days prior to the effective date of the change.

2.2.2 Membership is effective as of the date membership dues are received by the Institute. Payments of dues for Members renewing their memberships are due each year on the anniversary date of membership ("Anniversary Date").

2.2.3 A former Member shall have the option of paying past dues, at the current dues rate, in order to maintain continuity of membership toward becoming a Golden Life Member.

2.3 Membership in Good Standing; Termination of Membership.

2.3.1 Membership in Good Standing. Any Regular Member who has not paid his or her membership dues within 30 days of the Member's Anniversary Date will not be in good standing as a Member of the Institute. As provided in Section 2.5.1.3, a Member not in good standing cannot vote. In addition, a Member not in good standing will not be permitted access to the information regarding the Institute, as set forth in Section 2.4.2.

2.3.2 Non-payment of Dues. Any Regular Member who has not paid his or her membership dues within 90 days of that Member's Anniversary Date shall be removed automatically from membership without further action of the Board of Directors. A former Member who wishes to rejoin the Institute (A) shall pay the applicable annual dues for that Regular Member's category of membership; and; (B) upon payment of the applicable annual dues, that individual shall become a Member in good standing and that Member's Anniversary Date shall be changed to the date that the dues were received by the Institute.

2.3.3 Involuntary Termination of Membership.

2.3.3.1 The Board of Directors in its sole discretion may terminate the membership of any Member who is dismissed from the United States armed forces, who resigns for the good of the service under circumstances involving moral turpitude, or who is convicted of a felony.

2.3.3.2 Membership in the Institute may be terminated for good cause shown by a vote of two-thirds of the Voting Directors then serving on the Board, if the continued membership of the Member is determined by the Board to be contrary to the best interests of the Institute; provided that (i) the Member is notified of the reason or reasons why the Board proposes to terminate the Member's membership at least 90 days before the termination becomes final, and (ii) the Member is given an opportunity to respond in writing to the Board.

2.4 Membership Benefits and Rights of Access.

2.4.1 Each Member shall be entitled to receive member benefits and publications as prescribed by the Board of Directors for each designated type and category of membership.

2.4.2 Members in good standing shall have the right of access to the following information in a member area of the Institute's website or at the Institute's headquarters:

2.4.2.1 Audited financial statements of the Institute;

2.4.2.2 Minutes of Board of Directors meetings, once approved by the Board;

2.4.2.3 Organization chart of the Institute;

2.4.2.4 At the annual meeting of Members, the Members will be provided with a report on the state of the Institute including a summary of the Institute's financial condition and the results of annual elections and, as provided in Section 4.2.4, access to vote totals upon request of the Member; and

2.4.2.5 Other information as the Board of Directors determines to keep members informed as to the activities, operations and financial condition of the Institute.

2.5 Membership Action and Meetings.

2.5.1 Membership Action.

2.5.1.1 As a professional membership organization, the Institute places the highest priority on the views of Members. On all issues requiring a vote, the membership will receive advance notice. Each issue requiring a vote will be presented to the Members in a manner so as to afford time for review and allow votes by as many Members as possible.

2.5.1.2 The following actions shall require the approval of the Members: the election pursuant to Article IV of Elected Directors (as defined in Section 3.3) and members of the Editorial Board (as provided for in Section 7.3); termination or dissolution of the Institute pursuant to Article X; amendments to this Constitution and Bylaws pursuant to Article XI; and any other

action required by law to be submitted to the members of a nonprofit organization such as the Institute. In addition to matters required to be submitted to the Members, the Board of Directors may submit additional matters for approval by the Members and the approval of any matter by the Members shall be binding on the Board.

2.5.1.3 Only Members in good standing on the date that a matter is submitted to the Members pursuant to this Section 2.5.1 shall be entitled to vote. A Member shall be "not in good standing" as provided in Section 2.3.1.

2.5.1.4 Each Member is entitled to cast a single vote with respect to a matter submitted to the Members; provided that, pursuant to Section 4.2.2 with respect to elections, each Member is entitled to cast one vote for an individual candidate and may cast votes for the number of candidates equal to the same number of positions on the Board of Directors and Editorial Board that are open for election.

2.5.1.5 As provided in Section 11.1, the votes of two-thirds of the Members voting shall be necessary to amend this Constitution and Bylaws. With respect to other issues submitted to the Members, the votes of a majority of the Members voting with respect to the matter shall be necessary for approval of the matter.

2.5.1.6 Notice of any action that is to be submitted to the Members for their consideration shall be given via (i) Institute periodicals or separate mailing; and (ii) online or other electronic means. The notice shall include the full text of the proposed action along with instructions for voting. A mailed-in ballot shall be sent to those Members who receive non-electronic copies of Institute periodicals. Proposed actions shall include a discussion justifying or explaining the proposed action. Each Voting Director shall have the right to express his or her individual opinion in *Proceedings* regarding matters proposed for consideration by the membership.

2.5.1.7 Notice of the proposed action shall be sent to all Members in good standing no less than 45 days prior to the date on which all ballots must be cast.

2.5.1.8 Votes shall be submitted for the election of Elected Directors and members of the Editorial Board pursuant to Section 4.2.3. On other matters submitted to the members for action, Members shall return ballots so that the ballots are received by a date set by the Board of Directors in the notice of the proposed action. Ballots shall be submitted to the Institute either by (i) returning the signed ballot; or (ii) by secure electronic means, as the Board shall specify.

2.5.2 Membership Submissions.

Membership involvement and feedback is critical to the success of the Institute. Therefore, Members with questions, suggestions or concerns regarding the Institute, or its operations or programs, are encouraged to submit those questions, suggestions or concerns to the Institute's staff who will review and respond to those questions, suggestions or concerns. The Chief Executive Officer shall raise issues requiring action by the Board of Directors to the Board for its review.

2.5.3 Membership Meetings.

2.5.3.1 An annual meeting of Members shall be held in the manner in which the Board of Directors may determine. The annual meeting of Members shall be held within the first five months of each year. The annual meeting shall be held for the purpose of reporting to the Members regarding the state of the Institute, presenting to the Members the results of elections and of the vote on any other matter submitted to the Members pursuant to Section 2.5.1.2, future plans for the Institute, a profile of the membership, and other matters that the Board wishes to bring before the Members.

2.5.3.2 Special Membership meetings may be scheduled by the Board of Directors. Not less than 45 days prior to each meeting of the Members, notice of the meeting shall be provided in writing to the Members. Since all binding actions of the Members are to be taken pursuant to the procedures provided in Section 2.5.1, no binding action of the Members may be taken at any membership meeting. However, Members may propose nonbinding resolutions at membership meetings which, if adopted by a majority of Members attending the meeting, shall be submitted to the Board for its consideration.

2.5.3.3 The Chair of the Board of Directors shall preside at meetings of the Members at which the Chair is present. If the Chair is not present, the Vice-Chair of the Board shall preside. The Board may provide for the agenda and conduct of membership meetings; however, unless otherwise provided

in this Constitution and Bylaws or by the Board, meetings of the Members shall be conducted in accordance with the current version of Robert's Rules of Order.

ARTICLE III BOARD OF DIRECTORS

3.1 **Eligibility.** A Director shall be a Member.

3.2 **Duties and Responsibilities.**

3.2.1 The U.S. Naval Institute Board of Directors (the "Board") is vested with the responsibility to approve and oversee the management and execution of the Institute's policies to accomplish the Mission of the Institute and for the benefit of the Members. The Board shall respect the authority expressly reserved to the Members or otherwise expressly granted to others in this Constitution and Bylaws. Any powers not so expressly reserved are hereby granted to and vested in the Board. The voting members of the Board of Directors are a Board of equals, which means that, with respect to each other, they share equal authority, accountability and obligation of fiduciary duty.

3.2.2 Without in any way limiting the authority of the Board of Directors to exercise all of the powers granted to it in Section 3.2.1, the Board shall have the following powers and duties:

3.2.2.1 Oversee the management, affairs, operations and representatives of the Institute; and exercise all of the powers and means appropriate to accomplish the Mission of the Institute and to serve the Members.

3.2.2.2 Ensure the organization has sufficient resources, including people, funding, and assets.

3.2.2.3 Approve an annual business plan (operating budget) and capital budget; any modifications of the business plan or capital budget; review the Institute's strategic plan in conjunction with adoption of the business plan; and periodically, as necessary, revise the strategic plan. The CEO periodically shall report to the Board regarding implementation of the business plan, capital budget and strategic plan.

3.2.2.4 Establish Member dues and resolve all questions with respect to membership.

3.2.2.5 Oversee the financial affairs of the Institute, including but not limited to those matters involving funds and investments of the Institute. Specifically, but not in limitation of the Board's authority:

(A) Except as otherwise provided in this Constitution and Bylaws, prospectively or retroactively authorize any officer or agent in the name, and on behalf of the Institute, to enter into any contract, or execute and deliver any instrument as may be necessary to carry out the Mission of the Institute.

(B) The funds of the Institute shall be deposited to its credit in a manner and in depositories as the Board of Directors may from time to time designate and shall be subject to withdrawal by check, draft or other order by such officer as may from time to time be designated by the Board to have that authority; provided that, any expenditures not contained in the annual budget approved by the Board, and in excess of an amount as determined by the Board, must be approved by the Board in advance of the payment of the expenditure; and provided further, that any capital expenditures not in accordance with the capital budget and in excess of \$10,000, must be approved by the Board in advance of any payment.

(C) The Board of Directors may direct the Chief Financial Officer to invest funds of the Institute and shall determine the allocation of Institute funds among various investments. Consistent with its Mission, the Institute may buy and sell property, including real property. The Board at all times shall handle the investments and affairs of the Institute in the same manner in which persons of prudence, discretion, and intelligence handle their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds considering the probable income and safety of the capital to be invested.

(D) The income and property of the Institute, from whatever source derived, shall be applied exclusively toward the promotion of its Mission, but no portion thereof shall be paid or transferred, directly or indirectly, to the persons who at any time are or have been Members, or to any person claiming through any of them; provided that, nothing contained herein shall prevent the payment in good faith of reasonable remuneration to any officer, employee, Member, or other person, in return for services rendered to the Institute. The Institute shall not lend any of its funds, make its services available to, buy property from, sell property to, or engage in any other transaction with any officer, Director, or Member other than at fair and reasonable values and in the ordinary course of conducting the Institute's

customary programs in accordance with its conflict of interest policy. The Board of Directors may authorize donations to any worthy cause consistent with the Mission of the Institute.

3.2.2.6 Fill vacancies on the Board of Directors, as provided in Section 3.5.

3.2.2.7 Appoint, remove and, subject to the provisions of Section 6.3.2.1, provide for the duties of the Chief Executive Officer; provided, that the Chief Executive Officer's compensation and other terms of employment shall be reviewed by the Compensation Committee, which shall make a recommendation to the Board of Directors for the Board's approval. In addition, the Board shall conduct an annual review of the Chief Executive Officer's performance, review with him or her the results of that annual review, and determine his or her annual performance goals.

3.2.2.8 Appoint and remove Board officers and administrative officers as provided in Article VI.

3.2.2.9 Create or dissolve standing committees and special bodies to the extent permitted in Article VII.

3.2.2.10 Review and adjust, if necessary, consistent with the provisions of this Constitution and Bylaws, the fees, benefits and services associated with each type and category of membership.

3.2.3 Ensure that the flagship publication of the Institute will remain the U.S. Naval Institute (*Proceedings*), unless otherwise directed by a majority vote of the Members. *Proceedings* and all other media and publications will contain articles, documents, commentary and professional notes that advance the Mission of the Institute.

3.3 **Number and Selection.**

3.3.1 There shall be 15 elected Directors (the "Elected Directors"), nominated and elected pursuant to Article IV. Each Elected Director shall be a voting member of the Board of Directors.

3.3.2 The Board of Directors from time to time may, but is not required to, appoint up to 2 additional Directors ("Appointed Directors"), for the purpose of better membership representation or acquiring such special and unique expertise as may be helpful to the Board in its governance of the Institute. The total number of Elected Directors plus Appointed Directors shall not exceed 17. An Appointed Director shall be appointed by a vote of two-thirds of the Voting Directors then serving on the Board. Each Appointed Director shall be a voting member of the Board.

3.3.3 The Chief Executive Officer and the Chair of the Editorial Board (collectively the "Ex-Officio Voting Directors") each shall be an ex-officio, voting members of the Board. The term of office as a member of the Board of Directors of each Ex-Officio Voting Member shall automatically terminate when that Ex-Officio Voting Director ceases to hold the position by virtue of which he or she serves as an Ex-Officio Voting Director.

3.3.4 The Elected Directors, the Ex-Officio Voting Directors, any Appointed Directors, and any additional Directors appointed pursuant to Section 3.5.2 are referred to in this Constitution and Bylaws as "Voting Directors."

3.4 **Term and Term Limits.**

3.4.1 In order to provide for orderly turnover on the Board of Directors, except as provided in Section 12.2 (regarding transition provisions), each Elected Director shall serve a term of three years or until the Elected Director's successor has been selected and qualified, or until the Elected Director's earlier death, resignation, or removal. The terms of one-third of the Elected Directors shall expire at each regular annual meeting of the Members.

3.4.2 No Director shall serve more than 6 years cumulatively as an Elected Director or as an Appointed Director. After a Director has served as an Elected Director or an Appointed Director for a total of 6 years, the individual is not eligible to serve again as an Elected Director or as an Appointed Director.

3.4.3 Each Appointed Director shall serve a one year year term from the date of appointment. At the end of an Appointed Director's one year term, the Appointed Director shall be eligible for appointment for one additional year. Thereafter, the Appointed Director shall not be eligible for re-appointment; however, the Appointed Director shall be eligible to be nominated and elected as an Elected Director in the manner provided in this Constitution and Bylaws. The 6 year term limit set forth in Section 3.4.2 shall apply to the time an Appointed Director serves as a member of the Board of Directors.

3.5 **Vacancies.**

3.5.1 Vacancies in the position of Elected Director shall be filled at the next annual election of Directors. Elected Directors filling a vacancy shall serve the remaining portion of the unexpired term of the predecessor in the office.

3.5.2 If a vacancy occurs that results in the number of Voting Directors being less than 11 Voting Directors, then, notwithstanding the provisions of Section 3.3.2 (regarding Appointed Directors), the Board of Directors may appoint additional Voting Directors so that the total number of Voting Directors equals 11. Any Director appointed pursuant to this Section 3.5.2 shall serve until his or her successor takes office after the next annual election of Directors.

3.6 **Committee Service.** Each Director shall serve on at least one standing committee of the Institute.

3.7 **Compensation.** Directors shall serve without compensation, except that they shall be allowed reasonable reimbursement of expenses incurred in the performance of their regular duties as determined by the Board of Directors and reasonable compensation for other authorized services provided to the Institute in any capacity other than as a Director. In all of these matters, the Institute shall comply with the rules for excess benefit transactions established under § 4958 of the Code and the regulations promulgated thereunder.

3.8 Meetings.

3.8.1 Regular Board Meetings.

3.8.1.1 There shall be at least 4 regular meetings of the Board of Directors each year, one of which shall be the organization meeting of the Board of Directors.

3.8.1.2 The organization meeting of the Board of Directors shall be held at the first Board meeting after the Institute's annual meeting of Members. The purpose of the organization meeting is to elect or reaffirm the Chair and Vice Chair and other Board officers; constitute the membership of the Institute's standing committees; approve the appointment of committee chairs; and set the calendar for regular board meetings for the ensuing year.

3.8.1.3 Regular Board meetings shall be held on the date and time set by the Board at the yearly organization meeting or as otherwise provided by the Board. Unless otherwise determined by the Board, regular meetings shall be held at the Institute's headquarters.

3.8.2 **Special Board Meetings.** A special meeting of the Board of Directors may be called by the Chair or by 20% of any of the Voting Directors then in office. Notice of a special meeting, sent pursuant to Section 3.8.4.2, shall state the general nature of the business to be transacted at that meeting, and only the business identified in the notice of the special meeting may be considered at the special meeting.

3.8.3 **Chair.** The Chair of the Board of Directors, elected pursuant to Section 6.2, shall preside at meetings of the Board at which the Chair is present. If the Chair is not present, the Vice-Chair of the Board shall preside.

3.8.4 Notice.

3.8.4.1 Not less than 30 days prior to each regular meeting, the Chief Executive Officer, or an individual authorized by the Chief Executive Officer shall send notice in writing or by electronic transmission of the time and place of the regular meeting.

3.8.4.2 Not less than five or more than 60 days prior to a special meeting described in Section 3.8.3, the Chief Executive Officer, or an individual authorized by the Chief Executive Officer shall send notice in writing or by electronic transmission of the purpose, time and place of the special meeting.

3.8.5 **Executive Sessions.** The Board of Directors may meet in executive session, with or without the attendance of one or both of the Ex-Officio Voting Members, as the other Voting Members of the Board shall determine. Additional individuals, other than Voting Members, may be permitted to attend an executive session as the Board shall determine.

3.8.6 **Action by Unanimous Consent.** Any action that may be taken at a meeting of the Board of Directors may be taken without a meeting, if one or more written consents, initiated by any director, setting forth the action to be taken shall be agreed to by all of the Directors entitled to vote.

3.8.7 **Minutes and Procedural Rules.** Minutes of each meeting of the Board of Directors shall be filed as a permanent record of the Institute after they have been circulated to the Board and approved by a majority of the Board. The minutes of Board meetings shall include a notation of the dissent or abstention of any Voting Director, if requested by that Voting Director at the time the meeting is held. Unless otherwise provided in this Constitution and Bylaws or upon adoption of any other rules by the Board, the current edition of Robert's Rules of Order shall govern the meetings of the Board.

3.9 **Quorum and Action by the Board.** A majority of Directors entitled to vote shall constitute a quorum. Except as expressly otherwise provided in this Constitution and Bylaws, the acts of a majority of Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors.

3.10 **Teleconference Meetings.** One or more Directors may attend and participate in a meeting of the Board of Directors or any committee thereof by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time.

3.11 **Conflict of Interest.** The Board of Directors shall adopt, and be responsible for the Institute's compliance with, a conflict of interest policy to protect the Institute's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of Interested Persons, as defined in the conflict of interest policy, or might result in a possible excess benefit transaction. The policy will establish procedures to be adhered to whenever the Institute is contemplating entering into those types of transactions or arrangements, as well as whenever the Institute determines appropriate levels of compensation for Interested Persons. Each Board member shall sign annually the Institute's conflict of interest policy.

3.12 Resignation and removal.

3.12.1 A Director may resign at any time by giving notice thereof in writing to the Chair or the Chief Executive Officer. Any resignation shall take effect at the time specified therein or, if the time is not specified therein, upon receipt of the notice. Acceptance of a resignation shall not be necessary to make it effective. The Chair or CEO shall promptly notify all members of the Board of any such resignation and its effective date.

3.12.2 Any Elected Director who is not present in person or via participation by teleconference as provided in Section 3.10, at three consecutive regular Board of Directors meetings, held pursuant to Section 3.8.2, shall be removed automatically from office and the vacancy shall be filled in accordance with the filling of vacancies procedures as set forth in this Constitution and Bylaws.

3.12.3 A member of the Board of Directors may be removed from office for (i) fraud; (ii) embezzlement or comparable dishonest activity; (iii) indictment or conviction of any felony; (iv) substantial breach or neglect of duties as a Director; or (v) substantial violation of the Constitution and Bylaws or policies of the Institute, by a vote of two-thirds of the Voting Directors then serving on the Board, exclusive of the person whose removal is at issue; provided that written notice of the intention to consider removal of a Director has been included in the notice of the meeting. No Director shall be removed without having the opportunity to be heard at that meeting, but no formal hearing procedure needs to be followed.

3.13 **Board Evaluation.** The Board shall conduct a review and evaluation of the performance of the Board at least every two years. This evaluation shall be concerned with the overall performance of the Board.

3.14 **Inquiries of Counsel.** Upon the request of one or more Voting Directors, the Board, by a vote of a majority of the Voting Directors present at a meeting at which a quorum is present, may direct the Chief Executive Officer to instruct counsel to respond to an inquiry of a director.

ARTICLE IV ELECTIONS

4.1 Nominations.

4.1.1 Pursuant to procedures established by the Board of Directors, each year the Nominating and Governance Committee shall recommend to the Board a list of candidates for the positions of Elected Director and Editorial Board member to be voted on by the Members. The Committee shall request from all Voting Directors their suggestions for nominees. The Board shall review and approve, or modify and approve, the proposed list of candidates, and obtain written consent to the nomination and acknowledgement of duties of the position from each person nominated for election. The Board shall have no less than 10 days to complete its review of the Committee's proposal prior to the call for a vote on the list of candidates.

4.1.2 Members may submit to the Institute additional nominations of individuals to be elected to the office of Elected Director or Editorial Board member; provided that (i) nominations by Members must be submitted on a petition bearing the signatures of at least 25 Members in good standing; (ii) each petition may nominate only one individual; and (iii) each nominating petition must be accompanied by a written consent to the nomination and acknowledgement of Board duties from the individual nominated by the petition. Members not on active duty and deployed with the armed forces of the United States shall have 30 days following the publication of nominees on the Institute's website to submit additional nominations as provided in this Section 4.1.2. Members who are on active duty and deployed with the armed forces

of the United States shall have 40 days following the publication of nominees on the Institute's website to submit additional nominations as provided in this Section 4.1.2.

4.2 Elections. Elections for the Board of Directors and Editorial Board shall be held by ballot prior to the annual meeting of Members.

4.2.1 At least 75 days prior to the annual meeting of Members, a ballot containing the names of all candidates for Elected Director and Editorial Board member who were properly nominated pursuant to Section 4.1, shall be submitted to the Members in Institute periodicals and electronically. Additional means of communication may also be used, as determined by the Board of Directors to provide maximum opportunity for Member participation in the ballot and voting process. Consistent with Sections 2.5.1.6 and 2.5.1.7, the ballot may include any question that requires approval of the Members or with respect to which the Board considers it advisable to have the views of the Members.

4.2.2 Each Member, consistent with Section 2.5.1.4, is entitled to cast one vote for an individual candidate and may cast votes for the number of candidates equal to the same number of positions on the Board of Directors and Editorial Board that are open for election.

4.2.3 Members must cast their votes so that their ballot is received by the Institute no later than the date specified in the ballot by either (i) returning to the Institute a signed ballot included in Institute periodicals; or (ii) by electronic submission by such secure electronic means as the Board shall specify.

4.2.4 The number of candidates equal to the number of Elected Directors whose terms expire at the annual meeting, as provided in Section 3.4, and the nine candidates for the Editorial Board receiving the highest number of votes shall be declared elected at the annual meeting, assume the duties of their respective offices from that date, and hold office until their successors are elected and qualify. As provided in Section 2.4.2 with respect to the annual election, the result of the annual election shall be announced at the annual meeting of Members. In addition, the vote count for each candidate shall be made available to any Member in good standing who so requests.

ARTICLE V ADVISORY BOARD

5.1 Advisory Board. The United States Naval Institute Advisory Board (the "Advisory Board") shall be comprised of a commissioned officer of flag or general officer rank serving on active duty from each of the Sea Services of the United States (United States Navy, Marine Corps and Coast Guard). The Board of Directors shall request that each of the Sea Services of the United States designate one commissioned officer of flag or general officer rank on active duty to serve as a member of the Advisory Board.

5.2 Duties and Responsibilities. Members of the Advisory Board may attend meetings of the Board of Directors for the purpose of providing the Board the senior, active-duty perspective of the Sea Services. Each member of the Advisory Board serves in a non-voting, advisory capacity and is not responsible for and has no fiduciary duty or legal obligation for the governance or management of the Institute.

5.3 Term. Each member of the Advisory Board may serve until his or her successor has been appointed.

ARTICLE VI OFFICERS

6.1 Number, Titles and Eligibility.

6.1.1 The officers of the Board of Directors shall be a Chair, a Vice-Chair and other officers as the Board from time to time may designate. Only a member of the Board shall be eligible to be a Board officer.

6.1.2 The administrative officers of the Institute shall be a Chief Executive Officer, a Chief Operating Officer, a Chief Financial Officer, and other officers as the Board of Directors from time to time may designate.

6.1.3 The Board of Directors also may name one or more Members as Honorary Chairs of the Institute; however, Honorary Chairs shall have no fiduciary duty or legal obligation in the governance or management of the Institute.

6.2 Selection, Term, Resignation and Removal.

6.2.1 Board officers.

6.2.1.1 The Chair, Vice-Chair and other Board officers shall be elected or reaffirmed at each annual organization meeting of the Board, as provided in Section 3.8.1.2. Each shall serve at the pleasure of the Board of Directors

from the date of election or reaffirmation until the officer's successor has been selected and qualified or until the officer's earlier death, resignation or removal.

6.2.1.2 Each Board officer may be removed for any reason, without cause, by a vote of a majority of Directors in office; provided that (A) the officer shall have been provided at least 15 days advance notice of the Board of Directors' intent to hold such a vote; and (B) the officer shall have the opportunity to be heard at that meeting, but no formal hearing procedure needs to be followed.

6.2.2 Administrative officers.

6.2.2.1 The Chief Executive Officer shall be appointed by the Board of Directors pursuant to procedures established by the Board and shall enter into an employment agreement setting forth the terms of his or her employment. The Chief Executive Officer shall serve for the term that is provided in his or her employment agreement, with the reasonableness of his or her compensation being reviewed by the Compensation Committee as provided in Section 7.1.4.2. The Chief Executive Officer may be removed from office at any time by the Board; provided that removal of the Chief Executive Officer shall not affect any contractual obligation of the Institute to the Chief Executive Officer, as set forth in the Chief Executive Officer's employment agreement.

6.2.2.2 The Chief Operating Officer and the Chief Financial Officer shall be hired by the Chief Executive Officer, with the prior approval of the Board of Directors, pursuant to employment and compensation terms set by the Chief Executive Officer, with the approval of the Board. The Compensation Committee shall review compensation of The Chief Operating Officer and the Chief Financial Officer as provided in Section 7.1.4.3. The Chief Operating Officer and the Chief Financial Officer shall serve until the officer's death, resignation or removal. The Chief Operating Officer and the Chief Financial Officer may be removed at any time by the Chief Executive Officer, with the prior approval of the Board of Directors.

6.2.2.3 The Board of Directors may provide for the appointment of additional administrative officers. Additional administrative officers shall be appointed and may be removed in the manner provided by the Board.

6.2.3 An officer may resign at any time by giving notice thereof in writing to the Chief Executive Officer. Any resignation shall take effect at the time specified therein or, if the time is not specified therein, upon receipt of the notice. Acceptance of a resignation shall not be necessary to make it effective. The resignation of the Chief Operating Officer, the Chief Financial Officer and any other administrative officer shall be reported to the Board promptly.

6.3 Duties and Responsibilities. The powers and duties of the officers shall be those customarily exercised by officers of nonprofit organizations holding such offices, except to the extent that such duties and powers are inconsistent with this Constitution and Bylaws, the policies of the Board of Directors or with any provision made pursuant hereto.

6.3.1 Board Officers.

6.3.1.1 Chair. The Chair of the Board shall provide leadership to the Board of Directors in order to assist the Board in accomplishing the Mission of the Institute and fulfilling the Board's duties as provided in this Constitution and Bylaws. The Chair shall serve as the presiding officer at meetings of the Board and at meetings of the Members; and appoint the chairs of each Institute committee, with the approval of the Board. The Chair shall maintain open, two-way communication with the Chief Executive Officer; be responsible for discussing with the Chief Executive Officer any concerns of the Members, the Board, and any of the Institute's other constituencies; provide guidance regarding any concerns that the Chief Executive Officer and other staff members have with respect to the role of the Board or individual Directors; prepare the agenda for each meeting of the Board and of the Members, after consultation with the Chief Executive Officer. The Chair shall perform such other duties as provided in this Constitution and Bylaws or as may be prescribed by the Board. In preparing the agenda for Board meetings, the Chair shall ask members of the Board for items to be included in the meeting agenda.

6.3.1.2 Vice-Chair. The Vice-Chair of the Board of Directors shall act in the Chair's stead in the event of the absence or disability of the Chair; serve as the chair of the Nominating and Governance Committee; and perform such other duties as shall be provided in this Constitution and Bylaws, or as may be prescribed by the Board.

6.3.2 Administrative officers.

6.3.2.1 **Chief Executive Officer:** The Chief Executive Officer of the Institute, subject to the control of the Board of Directors, shall perform all duties customary to that office; supervise and control all of the day-to-day affairs of the Institute in accordance with any policies and directives approved by the Board of Directors; attend all meetings of the Members and of the Board of Directors, except executive sessions and portions of meetings of the Board where the performance of the Chief Executive Officer are being reviewed; be responsible for seeing that minutes are kept of Board and committee meetings; serve as custodian of the Constitution and Bylaws; oversee the maintenance of the membership records of the Institute; supervise the staff of the Institute; oversee the publishing activities of the Institute with the advice of the Editorial Board; employ and terminate Institute employees, as necessary, subject to (A) the provisions of Section 6.2 regarding the terms of officers; and (B) the authority of the Compensation Committee and the Board to review and approve, compensation of the administrative officers and senior staff directly reporting to the Chief Executive Officer, and provided that any personnel expenditures shall be within the Institute's business plan (operating budget) and capital budgets or as otherwise approved by the Board; be accountable for and shall have the authority to disburse funds of the Institute in support of its Mission, provided that any funds disbursed shall be within the Institute's annual business plan (operating budget) or capital budget, or as otherwise approved by the Board; in coordination with the Chief Financial Officer and the Finance Committee, be responsible for the submission of a current financial statement, together with such other information as the Board of Directors may require, at each regular meeting of the Board; be responsible for the preparation of the annual business plan (operating budget), capital budget and strategic plan to be adopted by the Board as provided in Section 3.2.2.3 and periodically reporting to the Board regarding implementation of the business plan (operating budget), capital budget and strategic plan; execute all instruments requiring execution, except to the extent that signing and execution thereof is expressly delegated by the Board to some other officer or agent of the Institute; upon request of the Board, report to it regarding the operations and finances of the Institute and other matters as requested by the Board; and perform such other duties and have such other powers as shall be designated by the Board. The Chief Executive Officer shall not serve as a member of the Audit Committee or the Compensation Committee.

6.3.2.2 **Chief Operating Officer.** Subject to the control of the Board and oversight by the Chief Executive Officer, the Chief Operating Officer shall oversee the daily operations of the Institute. The Chief Operating Officer shall report directly to the Chief Executive Officer and shall have such other duties and have such other powers as shall be designated by the Chief Executive Officer or the Board.

6.3.2.3 **Chief Financial Officer.** Subject to the control of the Board of Directors, in coordination with, and oversight by, the Chief Executive Officer, the Chief Financial Officer shall oversee the financial activity of the Institute. The Chief Financial Officer shall supervise the preparation of the budget; and make financial information available to the Board and the Members. The Chief Financial Officer shall make available to the Finance Committee and the Audit Committee any information or data concerning the Institute that the Committee or its members may request. The Chief Financial Officer shall be an ex-officio non-voting member of the Finance Committee. The Chief Financial Officer shall report directly to the Chief Executive Officer and shall have such other duties and have such other powers as shall be designated by the Chief Executive Officer or the Board.

ARTICLE VII COMMITTEES

7.1 **Standing Committees.** Standing committees shall consist of three or more Voting Directors and may have other members, as provided in this Section 7.1. Voting Director members of standing committees shall be appointed by the Board of Directors upon the recommendation of the Nominating and Governance Committee, which appointments shall take into account the preferences of the Voting Directors. The Chair of each Committee may appoint additional Members possessing expertise and experience useful to the committee to serve as volunteer members of that Committee. If any person who is not a Voting Director is appointed to any standing committee, that non-Voting Director shall have no right to vote on any question that would create a bind-

ing obligation on the Institute. The chair of each standing committee shall be appointed by the Chair with the approval of the Board, as provided in Section 6.3.1.1, and shall be a member of that committee. Each standing committee shall select one member of the committee to oversee the preparation of minutes of the committee's meetings and actions and make those minutes available to the Board. Each standing committee shall maintain a committee charter that shall be approved by the Board and periodically reviewed and revised as necessary. The following are the standing committees of the Institute:

7.1.1 **Nominating and Governance Committee.** The Nominating and Governance Committee shall consist of the Vice-Chair, who shall serve as chair of the committee, the Chair, plus at least two other Directors elected by the Board pursuant to Section 7.1, above. The Nominating and Governance Committee shall facilitate, subject to Board oversight, the Board of Directors nomination and election process as provided in Article IV; recommend to the Board necessary changes to the Constitution and Bylaws and to the Institute's operating procedures; identify and develop potential Board candidates; oversee the orientation provided to new Directors; and undertake such other duties as may be prescribed by the Board. The Committee may solicit input from the Directors not serving on the Nominating and Governance Committee and from the Members.

7.1.2 **Finance Committee.** Finance Committee members shall be elected pursuant to Section 7.1, above. The Finance Committee shall be responsible for reviewing and overseeing the Institute's financial affairs, including reviewing the annual budget prepared by the staff and recommending an annual budget to the Board of Directors. The Board must approve the budget and all expenditures must be within the budget or as otherwise approved by the Board. Any material change in the budget must be approved by the Board. The Finance Committee shall be responsible for approving the investment of Institute funds, subject to oversight and policy approval by the Board; and shall undertake such other duties as may be prescribed by the Board.

7.1.3 Audit Committee.

7.1.3.1 **Audit Committee members** shall be elected pursuant to Section 7.1. The membership of the Audit Committee shall not include the Chief Executive Officer, the Chief Financial Officer, the Chair, the Vice Chair or any officer with authority to approve expenditures by the Institute, any other employee of the Institute or any person with a material financial interest in any entity doing business with the Institute. Members of the Audit Committee shall meet criteria for membership on the Audit Committee, as shall be established by the Board of Directors. Such criteria shall include a requirement that each member of the Audit Committee have relevant experience in financial matters and that only independent and disinterested individuals shall be appointed and serve as members of the Audit Committee. Further, at least one member of the Audit Committee shall be experienced in the fields of finance and accounting. The Board shall ensure that Audit Committee members have relevant experience, independence and are disinterested.

7.1.3.2 **The Audit Committee** shall make recommendations to the Board of Directors regarding the hiring and termination of an auditor, who shall be an independent certified public accountant; determine the scope of any audit of the Institute and submit such determination to the Board for its approval; recommend to the Board the retention of expert advisors or consultants to assist the Audit Committee in carrying out its duties, provided that any such recommendation shall be submitted to the Board for approval at the Board's next meeting and such submission shall be deemed approved automatically, without further action, unless such recommendation is disapproved by at least a two-thirds vote of those Directors present at that Board meeting at which a quorum is present; and further provided, that the Chief Executive Officer shall not vote on whether to approve any such recommendation from the Audit committee.

7.1.3.3 **The Audit Committee** shall prepare, with the help of the Institute's management, a request for proposals for a possible change in auditor at least once every seven years (and more often if the Audit Committee or the Board of Directors decides to do so); review responses to the request for proposals, interview prospective auditors, recommend selection to the Board, and if so authorized by the Board, negotiate the auditor's compensation; consult with the auditor in order to satisfy the members of the Audit Committee that the Institute's financial affairs are in order; monitor the independence and performance of the auditor; monitor the integrity of the Institute's financial accounting process and systems of internal controls regarding finance, accounting and use of assets; make available to the Board, the annual Form 990 Return of Organization Exempt From Income Tax prior to its filing; report to the Board, from time to

time, regarding the Institute's compliance with legal or regulatory requirements, the performance and independence of the auditor, the performance of the internal audit function and other issues relating to the financial affairs of the Institute; and undertake such other duties as may be prescribed by the Board.

7.1.4 Compensation Committee.

7.1.4.1 Compensation Committee members shall be elected pursuant to Section 7.1. No employee of the Institute shall serve as a member of the Compensation Committee.

7.1.4.2 Based on an annual review of the Chief Executive Officer's performance conducted by the Board of Directors, the Compensation Committee shall assure the reasonableness of his or her total compensation in relation to the marketplace and make recommendations to the Board for any changes in the Chief Executive Officer's compensation or the terms of his or her employment, severance or retention agreement, if any.

7.1.4.3 The Compensation Committee shall review compensation of the administrative officers and senior staff directly reporting to the Chief Executive Officer for consistency with the Institute's budget and business plan, and shall undertake such other duties as may be prescribed by the Board of Directors.

7.2 **Special Bodies.** The Board of Directors may, by resolution adopted by a majority of Directors attending a meeting at which a quorum is present, establish "special bodies of the Institute" which shall include, without limitation, special committees, ad hoc committees, task forces, and special advisory committees (in addition to the Advisory Board provided for in Article V). Special bodies of the Institute shall be established to perform specific functions. The Board shall define the function, membership, term and reporting requirements of each special body of the Institute; provided, however, that a special body of the Institute shall not have or exercise the authority of the Board in the management of the Institute. Special bodies of the Institute shall consist of at least three members, at least one of whom shall be a Voting Director. Members of special bodies of the Institute shall be appointed as provided in Section 7.1 and a chair shall be appointed by the Chair pursuant to Section 6.3.1.1. The Board shall conduct an annual review of each special body of the Institute. No special body of the Institute shall have authority to create a binding obligation on the Institute; nor shall any such special body of the Institute exist for more than one year without the Board's review and approval.

7.3 Editorial Board.

7.3.1 Purpose and Editorial Policy. The Institute shall have an Editorial Board, which will provide advice to the Chief Executive Officer, publisher, editors, and staff of the Institute regarding editorial content of the Institute's publications. The Chief Executive Officer shall have overall responsibility for developing and executing the editorial policy of the Institute. The Chief Executive Officer shall submit periodic reports at least annually to the Board of Directors regarding the Institute's editorial policy and the Board shall oversee and approve the editorial policy.

7.3.2 Composition. The Editorial Board shall consist of (i) at least nine members elected by the Members pursuant to the procedures set forth in Article IV, (ii) the Chief Executive Officer or the Chief Executive Officer's designated representative, and (iii) other individuals as the Board of Directors may from time to time designate. The Chair and Vice-Chair of the Editorial Board shall be elected to office by a majority of the Editorial Board.

ARTICLE VIII

PERSONAL LIABILITY OF DIRECTORS; INDEMNIFICATION; INSURANCE

8.1 Personal Liability of Directors.

8.1.1 A Director of this Institute shall not be personally liable for monetary damages beyond the limits of any insurance the Director may have in any suit that arises from an act or omission of that Director, unless:

8.1.1.1 the Director knew or should have known of an act or omission of a particular officer, director, employee, trustee or other volunteer, and the Director authorized, approved, or otherwise actively participated in that act or omission; or

8.1.1.2 the Director ratifies the act or omission of a particular officer, director, employee, trustee, or other volunteer, with full knowledge of that act or omission.

8.1.2 A Director shall not be liable for monetary damages beyond the limits of any insurance the Director may have in any suit that arises from the Director's act or omission in connection with services provided or duties performed by the Director on behalf of the Institute, unless an act or omission of

the Director constitutes gross negligence, reckless, willful, or wanton misconduct, or intentionally tortious conduct.

8.2 **Mandatory Indemnification of Directors and Officers.** The Institute shall, to the fullest extent permitted by applicable law, indemnify any present or former Director or officer who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding, issue or matter, whether civil, criminal, legislative, administrative, or investigative (whether or not such action, suit or proceeding arises or arose by or in the right of the Institute or other entity) by reason of the fact that such Director or officer is or was a Director or officer of the Institute or is or was serving at the request of the Institute as a director, officer, employee, partner, trustee, agent or fiduciary of another corporation, partnership, limited liability company, joint venture, trust or other enterprise (including service with respect to employee benefit plans), against expenses (including, but not limited to, attorneys' fees and costs), judgments, fines (including excise taxes assessed on a person with respect to any employee benefit plan) and amounts paid in settlement actually and reasonably incurred by such Director or officer in connection with such action, suit, proceeding, issue or matter, except as otherwise provided in Sections 8.4 or 8.6 hereof. A Director or officer of the Institute entitled to indemnification under this Section 8.2 is hereafter called a "person covered by Section 8.2 hereof."

8.3 **Advance of Expenses.** Expenses (including attorneys' fees and costs) incurred by a person covered by Section 8.2 hereof in defending a threatened, pending or completed civil or criminal action, suit, proceeding, issue or matter shall be paid by the Institute in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Institute, except as otherwise provided in Sections 8.4 or 8.6. The Director's or officer's right to advancement of expenses shall not be subject to any condition other than submission of such an undertaking. The undertaking need not be secured and shall be accepted without reference to the financial ability of the Director or officer to make repayment.

8.4 **Exceptions.** No indemnification under Section 8.2 or advancement or reimbursement of expenses under Section 8.3 shall be provided to a person covered by Section 8.2 hereof (a) if a final unappealable judgment or award establishes that such Director or officer engaged in self-dealing, willful misconduct or recklessness; (b) for expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, and amounts paid in settlement) which have been paid directly to such person by an insurance carrier under a policy of officers' and Directors' liability insurance maintained by the Institute or other enterprise; or (c) for amounts paid in settlement of any threatened, pending or completed action, suit, proceeding, issue or matter without the written consent of the Institute, which written consent shall not be unreasonably withheld. The Board of Directors is hereby authorized, at any time by resolution, to add to the above list of exceptions from the right of indemnification under Section 8.2 or advancement or reimbursement of expenses under Section 8.3, but any such additional exception shall not apply with respect to any event, act or omission which has occurred prior to the date that the Board in fact adopts such resolution. Any such additional exception may, at any time after its adoption, be amended, supplemented, waived or terminated by further resolution of the Board.

8.5 **Continuation of Rights.** The indemnification and advancement or reimbursement of expenses provided by, or granted pursuant to, this Article VIII shall continue as to a person who has ceased to be a Director or officer of the Institute, and shall inure to the benefit of the heirs, executors and administrators of such person.

8.6 **Notice of Commencement of Action.** As a condition of any right to indemnification hereunder, the Director or officer shall give the Institute written notice of the commencement of a claim, action, suit, proceeding, issue or matter against him or her as soon as practicable, but in any event, no later than 60 days from when he or she becomes aware of such claim, action, suit, proceeding, issue or matter. Where a Director or officer fails to give such notice and that failure causes the Institute material prejudice, the Institute may, in its discretion, choose not to indemnify such Director or officer for any expenses incurred by him or her with respect to such claim, action, suit, proceeding, issue or matter. The Institute shall have the right, at its election and expense, to assume or participate in the defense of any such civil action, suit or proceeding, if to do so will not subject it to a conflict of interest and is not unreasonable under the circumstances. If the Institute assumes the defense, the Director or officer may participate in the defense at his or her own expense. The Institute shall only be obligated to pay a settlement of a civil action, suit, proceeding, issue or matter to

which it consents in writing, its consent not to be unreasonably withheld. If the Institute is obligated to indemnify or advance expenses to a Director or officer as to a proceeding relating to his or her service at the Institute's request as a director, officer, employee, partner, trustee, agent or fiduciary of another corporation, partnership, limited liability company, joint venture, trust or other enterprise (including service with respect to employee benefit plans), the Institute's obligation shall be secondary to and in excess of any indemnification and advancement obligation owed by such other corporation, partnership, limited liability company, joint venture, trust or enterprise, or its insurer, and the Institute shall be subrogated to the Director's or officer's rights to such obligation of indemnification, advancement or insurance, if not duly paid.

8.7 General Provisions.

8.7.1 The term "to the fullest extent permitted by applicable law," as used in this Article VIII, shall mean the maximum extent permitted by public policy, common law or statute. Any person covered by Section 8.2 hereof may, to the fullest extent permitted by applicable law, elect to have the right to indemnification, or to advancement or reimbursement of expenses, interpreted (i) on the basis of the applicable law on the date this Article VIII was adopted; (ii) on the basis of the applicable law in effect at the time of the occurrence of the event or events giving rise to the action, suit or proceeding; or (iii) on the basis of the applicable law in effect at the time indemnification is sought.

8.7.2 The right of a person covered by Section 8.2 hereof to be indemnified or to receive an advancement or reimbursement of expenses pursuant to Section 8.3 (i) may also be enforced as a contract right pursuant to which the person entitled thereto may bring suit as if the provisions hereof were set forth in a separate written contract between the Institute and such person; and (ii) shall continue to exist after the rescission or restrictive modification (as determined by such person) of this Article VI, with respect to events, acts or omissions occurring before such rescission or restrictive modification is adopted.

8.7.3 If a request for indemnification or for the advancement or reimbursement of expenses pursuant hereto is not paid in full by the Institute within 30 days after a written claim has been received by the Institute together with all supporting information reasonably requested by the Institute, the claimant may at any time thereafter bring suit against the Institute to recover the unpaid amount of the claim (plus interest at the prime rate announced from time to time by the Institute's primary banker) and, if successful in whole or in part, the claimant shall be entitled also to be paid the expenses (including, but not limited to, attorneys' fees and costs) of prosecuting such claim. Neither the failure of the Institute (including its Board of Directors or independent legal counsel) to have made a determination prior to the commencement of such action that indemnification of or the advancement or reimbursement of expenses to the claimant is proper in the circumstances, nor an actual determination by the Institute (including its Board of Directors or independent legal counsel) that the claimant is not entitled to indemnification or to the reimbursement or advancement of expenses, shall be a defense to the action or create a presumption that the claimant is not so entitled.

8.7.4 The indemnification and advancement or reimbursement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement or reimbursement of expenses may be entitled under any bylaw, agreement, vote of the Directors or otherwise, both as to action in such Director's or officer's official capacity and as to action in another capacity while holding that office.

8.7.5 Nothing contained in this Article VIII shall be construed to limit the rights and powers the Institute possesses under applicable law to purchase and maintain insurance, create funds to secure or insure its indemnification obligations, and any other rights or powers the Institute may otherwise have under applicable law.

8.7.6 The provisions of this Article VIII may, at any time (and whether before or after there is any basis for a claim for indemnification or for the advancement of reimbursement of expenses pursuant hereto), be amended, supplemented, waived, or terminated, in whole or in part, with respect to any person covered by Section 8.2 hereof by a written agreement signed by the Institute and such person.

8.8 Indemnification of Employees; Optional Indemnification. The Institute may indemnify employees on the same terms and conditions as its Directors and officers or otherwise, if the Board of Directors decides that it is in the best interests of the Institute to indemnify any such employee. The Institute may, to the fullest extent permitted by applicable law, indemnify and advance or reimburse expenses for persons in all situations other than that covered by this Article VIII.

8.9 Insurance. The Institute shall have the power to purchase liability insurance on behalf of any person who is or was serving as a Director, officer, or employee of the Institute, or is or was serving at the request of the Institute as a Director, officer, employee, partner, trustee, or agent of another corporation, partnership, limited liability company, joint venture, trust, other enterprise (including service with respect to employee benefit plans).

8.10 Severability of Provisions. Each provision of this Article VIII is intended to be severable, and, if any term or provision is invalid for any reason whatsoever, such invalidity shall not affect the validity of the remainder of this Article.

ARTICLE IX MISCELLANEOUS

9.1 Annual Accounting Period. The annual accounting period of the Institute shall be the calendar year.

9.2 Audits. The Institute's accounts shall be formally reviewed by outside auditors in accordance with generally accepted accounting principles at the end of every calendar year, and at such other times as the Audit Committee may direct. The availability of the annual audit statement shall be announced in publications of the Institute and appropriate media. The annual audit statement shall promptly be sent at no charge to Members requesting it.

ARTICLE X TERMINATION AND DISSOLUTION

10.1 General. In the event of winding up or dissolution of the Institute, all outstanding debts and liabilities shall be satisfied.

10.2 Distribution. If, after satisfaction of all debts and liabilities, there remains any property, the same shall not be paid or distributed among the Members, but shall be given to some other organization dedicated to similar purposes and qualifying under section 501(c)(3) of the Code or the corresponding section of any future federal tax code, or to the federal government or an agency or department thereof, as may be determined by the Members at or before the time of dissolution.

ARTICLE XI AMENDMENTS

11.1 Amendment, Restatement or Repeal by Members. This Constitution and Bylaws may be amended, restated or repealed, in whole or in part, after the Board of Directors shall first have approved the amendment and its submission to the Members and the proposed amendment is approved by a two-thirds vote of Members submitting a ballot; provided, however, that written notice of the proposed amendment, including its text, is published in and at least 45 days before ballots must be submitted on the proposed amendment.

11.2 Recording Amendments and Repeals. The text of all amendments, restatements and repeals to this Constitution and Bylaws shall be attached to the Constitution and Bylaws with a notation of the date of each amendment or repeal.

ARTICLE XII ADOPTION OF AMENDED AND RESTATED CONSTITUTION AND BYLAWS; EFFECT OF ADOPTION; TRANSITION PROVISIONS; AND RECORD OF FURTHER AMENDMENTS AND REPEALS

12.1 Adoption and Effective Date. This amended and restated Constitution and Bylaws have been adopted pursuant to Article XVI, Section 1 of the prior Constitution and By-Laws of the Institute as of _____, 20____ and this amended and restated Constitution and Bylaws shall supersede all previous versions of the Constitution and By-Laws.

12.2 Transition Provisions. At the elections to be held pursuant to Article IV in 2014, Elected Directors shall be chosen as follows: 5 Elected Directors shall be chosen for one-year terms; 5 Elected Directors shall be chosen for two-year terms; and 5 Elected Directors shall be chosen for three-year terms. At the elections to be held pursuant to Article IV in 2014 and thereafter, successors to Elected Directors whose terms expire at that annual meeting pursuant to Section 3.4 shall be chosen for three-year terms as provided in Section 3.4.1. All Directors in office on the effective date of this Amended and Restated Constitution and Bylaws shall remain in office until the Annual meeting in 2014 or until the Director's earlier death or resignation; provided that such Directors shall be subject to the term limit set forth in Section 3.4.2, which term limit shall apply to service on the Board of Directors prior to the effective date of this amended and restated Constitution and Bylaws.

12.3 Recording of Amendments, Restatements or Repeals.

Section Involved

Date of Amendment,
Restatement or Repeal