

National Association of Educational Procurement, Inc.

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BYLAWS

Restated _____, _____

Article I. Name and Origin

The name of this corporation is the **National Association of Educational Procurement, Inc.**, (NAEP). NAEP is incorporated under the Not-for-Profit Corporation Law of New York by a Certificate of Incorporation filed April 22, 1988 and has filed a Restated Certificate of Incorporation on August 31, 1993.

Article II. Purposes

NAEP is organized exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 as amended. Within this general limitation, the specific purposes for which NAEP is organized and operated are to:

- 1) provide for the open interchange of information concerning the purchasing profession;
- 2) enhance the development and implementation of effective purchasing management among educational institutions;
- 3) actively encourage cooperative relationships among member institutions (Member or Members);
- 4) maintain communications with NAEP regional groups;
- 5) promote adherence to the NAEP Code of Ethics;
- 6) provide opportunities for the personal professional growth of Members; and
- 7) encourage and facilitate research and investigation.

Article III. Membership

A) Classes / Voting Rights. Membership in NAEP may comprise the following classes along with their respective voting rights.

- 1) **Accredited Not-for-Profit Institutions of Higher Education.** Members of this class shall have the right to vote, and individuals from these member institutions shall be eligible to hold elected office within NAEP. Institutions in this class may

include comprehensive and doctoral institutions, research universities, community colleges, or small institutions.

- 2) **Systems or District Offices that Administratively Service, Support, or Control Accredited Not-for-Profit Institutions of Higher Education.** In order to be eligible for membership in NAEP, at least two of the administratively controlled institutions must have full-time staffed procurement offices and be regular members of an NAEP regional association. Members of this class shall have the right to vote, and individuals from these member governing boards shall be eligible to hold elected office. Each administratively controlled member institution must maintain its own membership and pay its own dues in accordance with NAEP's dues schedule.
- 3) **Non-accredited Not-for-Profit Institutions of Higher Education.** In order to be eligible for membership in NAEP, credits awarded by this class must be accepted either by appropriate state agencies or by three other accredited institutions. Members of this class shall not have the right to vote, and individuals from these member institutions shall not be eligible to hold elected office. Institutions in this class may include comprehensive and doctoral institutions, research universities, community colleges, or small institutions.
- 4) **Governing Boards of Accredited Not-for-Profit Institutions of Higher Education.** In order to be eligible for membership in NAEP, at least two of the governed institutions must be regular members of an NAEP regional association. Members of this class shall not have the right to vote, and individuals from these member governing boards shall not be eligible to hold elected office. Each governed member institution must maintain its own membership and pay its own dues in accordance with NAEP's dues schedule.
- 5) **Governing Boards, District Offices, and Affiliated Oversight Entities with no Student Enrollments.** Entities in this class may obtain membership by paying the governing boards and systems offices dues assessment. Members of this class shall not have the right to vote, and individuals from these member governing boards shall not be eligible to hold elected office. Any subordinate member institution must maintain its own membership and pay its own dues in accordance with NAEP's dues schedule.
- 6) **For-Profit Higher Education Members.** This class of membership shall comprise firms or institutions in the for-profit sector that provide post-secondary course work or certificate of degree granting education. Participation within NAEP must be compatible with NAEP's exempt purposes under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended. Eligibility for this membership shall be determined in accordance with NAEP's policies and procedures as approved by the NAEP Board of Directors. Members of this class shall not have the right to vote, and individuals from these member governing boards shall not be eligible to hold elected office.

- 7) **Affiliate Members.** This class of membership may include institutions, associations, or organizations engaged in or concerned with primary or secondary education, or any other phase of education other than higher education (familiarily: K-12 Schools. Such entities must be entitled to exemption under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended. Members of this class shall not have the right to vote, and individuals from these member governing boards shall not be eligible to hold elected office.
- 8) **International Members.** This class of membership may include institutions, associations, or organizations established outside of the United States, Mexico, and Canada, and their respective territories, which are engaged in or concerned with higher education. Members of this class shall not have the right to vote, and individuals from these member governing boards shall not be eligible to hold elected office.
- 9) **Associate Members.** This class of membership may include institutions, associations, or organizations concerned with higher education that are not otherwise eligible for Institutional, For-Profit, Affiliate, or International membership. Such entities may include without limitation museums, libraries, coordinating boards or agencies, foundations, and societies. They must be entitled to exemption under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended. Members of this class shall not have the right to vote, and individuals from these member governing boards shall not be eligible to hold elected office.
- 10) **Heritage Partner.** This membership is uniquely reserved for and available only to Educational & Institutional Cooperative Services, Inc. (E&I).
- 11) **Business Partner.** This class of membership may include organizations, firms, and persons in the for-profit business sector, that provide a service for or have an interest in higher education, provided that the limited participation of the organization, firm, or person is compatible with NAEP's exempt purposes under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended. Business Partner membership will be determined by NAEP in accordance with its policies and procedures, as approved by the NAEP Board of Directors. Members of this class shall not have the right to vote, and individuals from these member governing boards shall not be eligible to hold elected office.
- 12) **Retiree / Student Members.** This class of membership may include (1) individuals who have an interest in higher education business and financial management who have retired from an NAEP member institution and earn no income from an institution / organization eligible for NAEP membership or as a consultant within higher education, or (2) individuals actively pursuing a degree within an accredited academic program. Members of this class shall not have the right to vote, and individuals from these member governing boards shall not be eligible to hold elected office.

B) Admission. An institution, organization or individual becomes an active Voting or Nonvoting Member upon acceptance of application by the NAEP Board of Directors and payment of the appropriate dues.

C) Dues

- 1) **Rate Schedule.** The NAEP Board of Directors of Directors shall determine from time to time the annual dues to be paid by Members. Dues may be fairly and reasonably pro-rated, compatible with the facts and circumstances obtaining at the time.
- 2) **Payment.** Invoices for dues shall be delivered to members by any generally accepted method such as in-person, first-class mail, e-mail, fax, or similar (Effective Method). Delivery shall allow sufficient time for members to make payment by the first day of NAEP's fiscal year.

D) Termination

- 1) **Procedure.** Any Membership may be voluntarily terminated upon written notice to NAEP. The NAEP Board of Directors may terminate for cause the Membership of any Member.
- 2) **Appeal of Termination.** A Member that has had its Membership terminated for due cause by action of the NAEP Board of Directors may appeal the action to the full Voting Membership by a written request to the Chair. Upon receipt of such request, the Chair shall communicate such receipt to the NAEP Board of Directors and Voting Members using any Effective Method. At NAEP's next Annual Meeting, both the NAEP Board of Directors and the appellant may present arguments relative to the termination action, and the Voting Members present shall then vote to either sustain or revoke the action, with a simple majority deciding.

Article IV. Meetings of Members

- A) Time and Place.** Meetings of Members may be held at such time and place within or without the State of New York as shall be determined from time to time by the NAEP Board of Directors, or when a special meeting is called by another party, as indicated in the notice of the meeting.
- B) Annual Meeting.** The Members shall hold at least one meeting every year (Annual Meeting). The time and place of the Annual Meeting shall be set by the NAEP Board of Directors. Notice of the Annual Meeting shall be communicated to each Member at least sixty days prior thereto by any Effective Method.
- C) Special Meetings.** Special meetings of the Members may be called by the Chair, the Executive Director, the NAEP Board of Directors, or by the number of Voting Members entitled to cast ten percent of the total number of votes at the meeting. (§603(c)) ¹

¹ This citation and those that follow are due to the New York Not-for-Profit Corporation Law; bylaw provisions that are so cited are based closely on the Act and should not be amended without consulting legal counsel.

- D) Notice and Waiver of Notice.** Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, the person(s) calling the meeting and the purpose or purposes for which the meeting is called, shall be delivered to each Member not less than ten (10) or more than fifty (50) days before the date of the meeting by any Effective Method. If by first class mail, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at its address as it appears on the records of NAEP, with postage thereon prepaid. (§605(a))

Any Member may waive notice of any meeting of Members. Waiver of notice shall be effective whether given before, at, or after the meeting and whether given in writing or by attendance. Attendance by a Member at a meeting, by person or by proxy, is a waiver of notice of that meeting, except when such Member objects prior to the conclusion of the meeting to the transaction of business because the meeting is not lawfully called or convened.

- E) Quorum.** Members present at a meeting at which no business is to be transacted shall constitute a quorum. For the transaction of any business at a meeting members entitled to cast a majority of the total number of votes entitled to be cast thereat shall constitute a quorum. The Members present at a meeting may adjourn the meeting despite the absence of a quorum. (§608(a))

- F) Voting and Proxies.** Each Voting Member shall have one vote in the affairs of NAEP, which shall be cast by the Voting Member's designated representative. The Members may approve proposed actions by the affirmative vote of a majority of Voting Members present and entitled to vote, in person or by proxy, except where a different manner of voting is required by law, the Certificate of Incorporation, or these Bylaws. Notwithstanding the preceding sentence, Directors are elected by a plurality of the Voting Members present and entitled to vote, in person or by proxy, at a meeting at which a quorum is present, and District Directors are elected by a plurality of the Voting Members of the District present and entitled to vote, in person or by proxy, at a meeting at which a quorum is present, unless the Articles of Incorporation have provided otherwise.

A Voting Member may vote in person or by proxy. Every appointment of a proxy shall be in writing signed by the Voting Member's representative, or by causing his or her signature to be affixed to such writing by any reasonable means and shall be filed with the Secretary of NAEP at or before the meeting at which the appointment is to be effective. The appointment of a proxy shall be valid for no more than eleven (11) months, unless a longer period is expressly provided in the appointment. All questions regarding the qualification of voters, the validity of appointments of proxies, and the acceptance or rejection of votes shall be decided by the presiding Officer of the meeting.

- G) Rules.** Questions on procedure shall be resolved by Robert's Rules of Order when not in conflict with these Bylaws.

Article V. Board of Directors

A) General Powers. The NAEP Board of Directors (Board) shall supervise the management of NAEP; determine its policies within the limit of its Restated Certificate of Incorporation and its Bylaws as amended or restated; actively pursue its purposes; and have discretion in the distribution of its funds. The Board may adopt such policies for the conduct of its business as shall be deemed necessary, reasonable, and advisable, and may, in the execution of its powers, appoint such agents as it may consider necessary.

The Board may formally deem as "Strategic" any item brought before it for action. Any such formally deemed item requires a three-fourths (3/4) vote of the entire Board for approval. Any such approved item requires a three-fourths (3/4) vote of the entire Board in order to be overturned.

B) Directors

1) Number. The number of Directors constituting the entire Board shall be not less than three (3) (§702(a)). The Board, upon a majority vote of the entire Board, may increase or decrease (but not below three [3]) the number of Directors constituting the Board.

2) Representation, Responsibilities, and Voting Power. The general make-up of the Board's representation shall be (1) At-Large Directors, (2) District Directors, and (3) the NAEP Executive Director. The Board shall determine the number of At-Large Directors and the number of District Directors. At-Large and Directors must be representatives of their respective Voting Members of NAEP. No Voting Member of NAEP may be represented by more than one Director at any point in time. Additionally, representatives from a specific District may not exceed three (3) Directors at any point in time. NAEP's Executive Director, a full-time salaried employee of NAEP, participates in Board matters ex-officio.

All Directors shall have voting power relative to any business needing Board action. The NAEP Executive Director shall not have voting power.

The Board may invite and / or allow individuals to participate in Board meetings, generally or for specified purposes (e.g., E&I Liaison, consultants, accountants, and similar). Such individuals shall not have voting power.

3) Terms of Office.

- a) Each At-Large Director shall serve no longer than a five-year term. The At-Large Director Terms shall be staggered to facilitate representational continuity.
- b) Each District Director shall serve no longer than a three-year term. The District Director terms shall be staggered to facilitate representational continuity.
- c) No individual may serve as an At-Large and/or District Director for more than one full term in the same capacity without a break in service of at least three

(3) years. In no case may any individual (except the NAEP Executive Director) serve on the Board longer than eight (8) consecutive years without undergoing the referenced break in service.

- d) A Director's eligibility to serve on the Board in that capacity shall end if, for any reason, the individual's status as the representative of an NAEP Voting Member within terminates. The Board may, by appointment following a nomination by the respective Nominating Committee, fill any resulting vacancy for the remainder of such vacancy's year and no longer. Subsequent filling of the vacancy may only be accomplished through the prescribed nominating and voting process.

4) Nomination of At-Large Directors.

- a) The Chair, in consultation with the Vice-Chair and the Treasurer, shall nominate an At-Large Director to serve as the Chair of the nominating committee (Nominating Committee). Such nomination shall be brought before the Board and may be regarded as an appointment unless overruled by vote of the Board.
- b) The task of the Nominating Committee is to seek and consider eligible candidates serving as At-Large Directors, determine who among them are willing and able to serve, and establish a resulting slate of qualified individuals. With the advice and consent of the NAEP Board of Directors, the Chair shall appoint the members of the Nominating Committee.
- c) At the prescribed time, the Nominating Committee Chair shall duly identify (1) the Directors who indicate willingness to continue serving their respective terms, and (2) the vacancies otherwise to be filled. The Nominating Committee Chair shall, by any Effective Method, announce to the Members (1) the appointment of the Nominating Committee and (2) the list of the vacancies to be filled. The announcement shall request Voting Members to recommend prospective candidates. The Executive Director shall verify the eligibility of the individuals recommended (i.e., primarily whether the individual is or is not a representative of a Voting Member).
- d) The Nominating Committee shall then duly consider the potential candidates, approve a slate for presentation to the Members, and formally communicate the results to the Board.

5) Nomination of District Directors.

- a) The several NAEP Regions shall be grouped and classified into Districts as may be duly established by Board. The Regional Presidents within each District shall serve as that District's Nominating Committee.
- b) At the prescribed time the District Nominating Committee Chair shall duly identify (1) the Directors who indicate willingness to continue serving their respective terms, and (2) the vacancies otherwise to be filled. The District Nominating Committee Chair shall then timely convene a meeting of the District

Nominating Committee to consider the potential candidates and approve the slate for presentation to the Members.

- c) Each District Nominating Committee, with advice from the Membership of its respective Region, shall then timely identify and consider two eligible and willing candidates from the Voting Members, unless only one candidate is eligible and willing and communicate same to the Executive Director. The Executive Director shall verify the eligibility of the individuals recommended (i.e., primarily whether the individual is, in fact, a representative of a Voting Member).

6) Election of Directors.

- a) At the prescribed time, the NAEP Board of Directors shall set a date (to be no later than March 5) for the special purpose of electing NAEP At-Large Directors and District Directors. The Chair of the Board, in consultation with the Executive Director, shall appoint the Teller of the Ballots (Teller), who shall be a representative of a Voting Member.
- b) The Executive Director shall then timely communicate by any Effective Method to each Voting Member notice of the election and the process for casting votes (specifically including that votes shall be submitted only to the Teller and to no other party or individual).
- c) Upon completion of the vote tally, the Executive Director shall timely notify the newly elected Directors and the NAEP Board of Directors of the election results and shall communicate them to the Members by any Effective Method.
- d) In the event of a tie vote, the Executive Director, at the meeting of the Members, in the presence of witnesses, shall break the tie by the flip of a coin.

C) Positions

1) Titled Positions.

- a) The titled positions of the NAEP Board of Directors shall be Chair, Vice-Chair, Treasurer, and Secretary.
- b) The positions of Chair, Vice-Chair, and Treasurer shall each be served by an At-Large Director. Nominations shall be formally made from within the NAEP Board of Directors, and election shall be effective only upon a majority vote of the NAEP Board of Directors. Such nominations and election shall be held annually, preferably immediately upon the adjournment of the NAEP Annual Meeting (absent Board action to the contrary, such nominations and election presume that the Director serving as Treasurer shall continue to do so throughout that Director's five-year term).
- c) Unless otherwise specifically determined by Board action, the position of Secretary shall be served by the NAEP Executive Director. The NAEP Executive Director may appoint an NAEP staff member to undertake the actual

recording and distribution of minutes. Such staff member shall not have voting power.

- d) As invited and / or allowed by the Board, the participation of the E&I Liaison shall receive the unique honor of displaying that title and shall be included in any listings of the NAEP Board of Directors. The E&I Liaison shall have no voting power.

2) Duties of the Titled Positions.

a) The Chair shall:

- 1) Exercise general supervision over the affairs of NAEP;
- 2) Preside at meetings of the Members and the NAEP Board of Directors;
- 3) Develop content to prepare the agenda and program for meetings of the NAEP Board of Directors and Members;
- 4) Provide the NAEP Board of Directors whenever feasible with agendas and all reports pertinent to the business of NAEP at least ten days prior to any scheduled meeting of the NAEP Board of Directors;
- 5) Appoint chairpersons and Members of committees, with the advice and consent of the NAEP Board of Directors;
- 6) Communicate regularly with the other Directors of NAEP and with the Executive Director; and
- 7) Delegate duties to the Directors and through the Executive Director to the staff of NAEP.

b) The Vice-Chair shall assist the Chair, serve as Chair in the event of the Chair's absence, and perform other duties as may be assigned by the NAEP Board of Directors upon recommendation of the Chair.

c) The Treasurer shall:

- 1) Frequently communicate and work closely with NAEP staff to ensure the safeguarding of all funds received by NAEP or any of its committees, and that such funds are disbursed only under the effective compliance of NAEP's well designed and operated system of internal controls;
- 2) Ensure and monitor that NAEP's staff keep correct and complete records of account, make annual financial reports as required by the NAEP Board of Directors, and make all such records available to be inspected by any Member in accordance with New York law (§621); and
- 3) Perform such other duties as may be assigned by the NAEP Board of Directors upon recommendation of the Chair.

d) The Secretary shall:

- 1) Attend all meetings of the NAEP Board of Directors and of the Members and shall maintain records of, and whenever necessary, certify all proceedings of the NAEP Board of Directors and of the Members;
- 2) Give or cause to be given notice of meetings of the Members and of meetings of the NAEP Board of Directors; and
- 3) Perform such other duties and have such other powers as the NAEP Board of Directors may prescribe from time to time.

D) Removal. Any Director may be removed from office only by a majority vote of the Voting Members, but such individual's authority to act as a Director and meet with the Board may be suspended for cause by the NAEP Board of Directors. (§714(a))

E) Board Meetings

- 1) **Time and Place.** Regular or special meetings of the NAEP Board of Directors may be held at such places within or without the State of New York as may be prescribed by the Chair or by a majority of the Directors; provided, however that the meeting of newly elected Directors shall be held as soon after NAEP's Annual Meeting as conditions reasonably allow.
- 2) **Notice and Waiver of Notice.**
 - a) Written notice stating the place, date, and time of the meeting shall be delivered not less than ten days prior to the date of the meeting. Delivery to each Director shall be by any commercially effective means.
 - b) Notice of a meeting need not be given to any Director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her. (§711(c))
- 3) **Quorum and Voting.** A majority of the voting Directors shall constitute a quorum for the transaction of business, and the act of the majority of the Directors present at meeting at which a quorum is present shall be the act of the Board of Directors. (§707, 708)
- 4) **Telephone or Video Meetings.** Any or all of the Directors may participate in a meeting of the Board of Directors or a committee of the Board by means of conference telephone or similar means of communication equipment allowing all persons participating in the meeting to hear each other at the same time. Such participation shall constitute presence in person at the meeting. (§708(c))
- 5) **Action in Writing in Lieu of a Meeting.** Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all Members of the Board or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the Members of the Board or committee shall be filed with the minutes of the proceedings of the Board or the committee. (§708(b))

Article VI. Executive Director

A) Appointment and Status. The Board shall appoint an Executive Director, a full-time salaried employee of NAEP, and shall control the term of office, fix the salary, and provide all necessary funds and facilities for the proper performance of the Executive Director's assigned responsibilities.

B) Duties. The Executive Director shall:

- 1) Supervise and manage NAEP and its affairs under the control of the Board of Directors;
- 2) Report to and be accountable to the Board, and advise the Board on matters concerning the administration of NAEP, but shall have no vote;
- 3) Attend the meetings of NAEP and Board and serve as its Secretary;
- 4) Prepare minutes of the proceedings of the Board of Directors and of any committee having the authority of the Board;
- 5) Distribute the minutes of such meetings to the Board of Directors and Members;
- 6) Keep at NAEP's principal office a record of the names and addresses of its Members, and of the Board of Directors, and allow such records to be inspected by any Member in accordance with applicable law (§621); and
- 7) Perform such other duties as determined by the Board of Directors.

Article VII. Committees

A) Committees with Board Authority. The Board of Directors, by resolution adopted by a majority of the entire Board, or the Bylaws may designate and appoint one or more standing committees, each consisting of three or more Directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the Board of Directors in the management of NAEP, subject to the limitations of applicable law. (§712 (2))

A committee with Board authority may bind NAEP on any matter except: (1) the submission to a Member of any action requiring the Member's consent under the New York Corporation Not-for-Profit Law and any successor provisions or amendments thereto; (2) the filling of vacancies in the Board or in any committee; (3) the fixing of compensation of Directors for serving on the Board or on any committee; (4) the amendment or repeal of the Bylaws or the adoption of new Bylaws; or (5) the amendment or repeal of any resolution of the Board that by its terms shall not be so amendable or repeal-able.

B) Committees of NAEP / Committees without Board Authority.

- 1) **Designation by Board.** Other committees not having and exercising the authority of the Board of Directors in the management of NAEP may be designated and

appointed by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present.

- 2) **Appointment by Board Chair.** When authorized by Board resolution, the Board Chair shall appoint the membership of committees designated by the Board, with the consent of the Board. (§712(c))

- D) **Procedures and Reports.** The provisions of these Bylaws shall apply to committees and the Members thereof to the same extent they apply to the Board of Directors and Directors. This shall include, without limitation, the provisions with respect to meetings and notice thereof, absent Members, written actions, and valid acts. Each committee shall keep regular minutes of its proceedings and report the same to the Board of Directors.

Article VIII. Conflict of Interest and Compensation

- A) **Purpose.** The purpose of the conflict of interest policy is to protect NAEP's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or Director or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

B) Definitions.

- 1) **Interested Person.** Any Director, officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.
- 2) **Financial Interest.** A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:
 - a) An ownership or investment interest in any entity with which NAEP has a transaction or arrangement,
 - b) A compensation arrangement with NAEP or with any entity or individual with which NAEP has a transaction or arrangement, or
 - c) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which NAEP is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. A person who has a financial interest may have a conflict of interest only if the Board of Directors or appropriate governing committee duly deems that a conflict of interest exists.

3) Procedures.

- a) Duty to Disclose. In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the Board of Directors and members of committees with governing Board delegated powers considering the proposed transaction or arrangement.
- b) Determining Whether a Conflict of Interest Exists. After disclosure of the financial interest and all material facts, and after any discussion with the interested person, s/he shall leave the governing Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or committee members shall decide if a conflict of interest exists.
- c) Procedures for Addressing the Conflict of Interest
 - 1) An interested person may make a presentation at the governing Board or committee meeting, but after the presentation, s/he shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
 - 2) The Chair of the governing Board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
 - 3) After exercising due diligence, the governing Board or committee shall determine whether NAEP can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
 - 4) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing Board or committee shall determine by a majority vote of the disinterested Directors whether the transaction or arrangement is in NAEP's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.
- d) Violations of the Conflict of Interest Policy
 - 1) If the governing Board or committee has reasonable cause to believe an individual has failed to disclose actual or possible conflicts of interest, it shall inform the individual of the basis for such belief and afford him/her an opportunity to explain the alleged failure to disclose.
 - 2) If, after hearing the individual's response and after making further investigation as warranted by the circumstances, the governing Board or committee determines the individual has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

- 4) Records of Proceedings.** The minutes of the governing board and all committees with board delegated powers shall contain: (a) The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing Board's or committee's decision as to whether a conflict of interest in fact existed; and (b) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.
- 5) Compensation.**
- a) A voting member of the governing Board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
 - b) A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from NAEP for services is precluded from voting on matters pertaining to that member's compensation.
 - c) No voting member of the governing Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from NAEP, either individually or collectively, is prohibited from providing information to any committee regarding compensation.
- 6) Annual Statements.** Each Director, officer and member of a committee with Board delegated powers shall annually sign a statement which affirms such person: (a) has received a copy of the conflicts of interest policy, (b) has read and understands the policy, (c) has agreed to comply with the policy, and (d) understands NAEP is a charitable organization and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.
- 7) Periodic Reviews.** To ensure that NAEP operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:
- a) Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
 - b) Whether partnerships, joint ventures, and arrangements with management organizations conform to NAEP's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

- 8) Use of Outside Experts.** When conducting periodic reviews, NAEP may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing Board of its responsibility for ensuring periodic reviews are conducted.

Article IX. Indemnification

- A) General.** To the full extent authorized under the laws of New York, NAEP shall indemnify any Director, officer, employee, or agent, or any person who may have served at NAEP's request as a Director or officer of another corporation (each of the foregoing is referred to in this Article individually as an "indemnitee"), against expenses actually and necessarily incurred by such indemnitee in connection with the defense of any action, suit, or proceeding in which that indemnitee is made a party by reason of being or having been such member, Director, officer, employee, or agent, except in relation to matters as to which that indemnitee shall have been adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of a duty. The foregoing indemnification shall not be deemed exclusive of any other rights to which an indemnitee may be entitled under any bylaw, agreement, resolution of the Board of Directors, or otherwise.
- B) Expenses.** Expenses (including reasonable attorneys' fees) incurred in defending a civil or criminal action, suit, or proceeding may be paid by NAEP in advance of the final disposition of such action, suit, or proceeding, if authorized by the Board of Directors, upon receipt of an undertaking by or on behalf of the indemnitee to repay such amount if it shall ultimately be determined that such indemnitee is not entitled to be indemnified hereunder.
- C) Insurance.** NAEP shall procure and maintain insurance on behalf of any person who is or was a member, Director, officer, employee, or agent against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not NAEP would have the power or obligation to indemnify such person against such liability under this Article.

Article X. Registered Office and Agent

- D) Designation.** The Secretary of State is designated as agent for NAEP upon whom process against NAEP may be served in the State of New York. NAEP's primary business address, the address where its books and records shall be kept, and the address to which the secretary may send any such services of process is:
- 8840 Stanford Boulevard, Suite 2000, Columbia, Maryland 21045.
- B) Change.** Any change of NAEP's registered office or agent shall be authorized by resolution duly adopted by the Board of Directors and the submission of a statement to the Department of State of the State of New York. (§803(1))

Article XI. Books and Records

NAEP shall keep complete books and records of account and minutes of the proceedings of the Board of Directors and committees.

Article XII. Finances

- A) Control.** All funds of NAEP shall be under the control of the Board of Directors. The Executive Director shall be an authorized signatory on the bank accounts of NAEP, along with other persons designated by the Board of Directors. Each Director on the Board of Directors and the Executive Director of NAEP has the authority to make such inquiries and perform such tests with the objective of ensuring that the internal controls of NAEP are well designed, effective, operating, and enforced.
- B) Fiscal Year.** The fiscal year of NAEP shall run from January 1 to December 31.
- C) Audit of NAEP / Review of the Regions / Filing of Returns.** Annually, NAEP shall engage a Certified Public Accountant (CPA Firm) to, in accordance with applicable generally accepted professional standards, (1) audit the financial statements of NAEP for the fiscal year then ended, (2) review the corresponding annual financial statements of NAEP's Regions taken as a whole, (3) duly prepare and file NAEP's information returns, and (4) duly prepare and file the information returns for NAEP's Regions taken as a whole. Selection of the CPA Firm shall be as a result of competitive solicitation. The same CPA firm may be so engaged no more than five (5) consecutive years.
- D) Loans.** No loans shall be made by NAEP to its Directors or Officers. (§716)
- E) Significant Financial Transactions.** The acquisition, mortgage, lease (for a term of 5, or more, years), sale, exchange or other disposition of real property or other assets that constitute all, or substantially all, of the assets of NAEP requires approval by a two-thirds majority of the entire Board. If such transactions do not involve all, or substantially all, NAEP assets, a majority vote of the entire Board is required. With respect to such transactions, "entire Board" and "all, or substantially all" must be documented and defined.
- F) Compensation of Officers.** Each Director and Officer of NAEP shall be entitled to be reimbursed for necessary expenses incurred in the performance of corporate duties, but not for the value of their services rendered to NAEP in such capacity except that the Executive Director of NAEP shall be entitled to reasonable compensation for such officer's services to NAEP.
- G) Not-for-Profit Status.** NAEP is not organized for profit and shall have no capital stock. No part of the net earnings, gains, or assets of NAEP shall inure to the benefit of or be distributed to its Directors, Officers, other private individuals, or organizations organized and operated for a profit.
- H) No Personal Liability.** To the full extent authorized under the laws of New York, the Directors, Officers, and employees of NAEP shall not be personally liable for the

payment of any debts or obligations of NAEP of any nature whatsoever, nor shall any of the property of any Director, Officer, or employee be subject to the payment of the debts or obligations of NAEP to any extent whatsoever.

- I) Bonds.** The Treasurer, and any other Officers or employees, at the discretion of the Board, shall give bond for the proper performance of assigned duties in such amount and with such surety as the Board may require, the premium on such bond to be paid by NAEP.

Article XIII. Regional Groups

- A) Group Exemption Letter.** Regional Groups of NAEP Members may qualify for exemption from Federal income taxes under section 501(c)(3) of the Internal Revenue Code by meeting the requirements for inclusion in the Group Exemption Letter issued by the Internal Revenue Service to NAEP. A copy of the Group Exemption Letter shall be provided to any NAEP regional president on request.

- B) Exemption Requirements.** These requirements include:

- 1) Obtaining a Federal Employer Identification Number;
- 2) Adopting Articles of Association in the form prescribed by NAEP;
- 3) Adopting Bylaws consistent with the Articles of Association;
- 4) Complying with the reporting requirements established by NAEP from time to time; and
- 5) Being approved by inclusion in the Group Exemption letter by NAEP and the Internal Revenue Service.

Article XIV. Alteration, Amendment, or Restatement

- A) Certificate of Incorporation or Bylaws.** Any proposed alteration, amendment, or restatement (Change) of NAEP's Certificate of Incorporation or its Bylaws, whether introduced by the Board of Directors or by the Members, must be lawful. Any proposed Change must first be voted upon by the Board of Directors and shall be accepted only upon a majority vote of the Directors entitled to vote. Any such accepted Change must then be communicated to the Members by any Effective Method. The Change must then be voted upon by the Members. If such vote is held in conjunction with the annual election of Directors, approval requires a majority vote of the Members entitled to vote. If such vote is held at a meeting of the Members, approval requires a majority vote of the Members entitled to vote who are present at the meeting and who are represented by proxy. Any duly adopted Change shall be rendered void if it is later determined to be unlawful.

- B) Notification of Results.** The Executive Director shall report the results of any Change to the Membership by any Effective Method.

Adoption of Bylaws

The foregoing Bylaws were duly approved by the NAEP membership at the NAEP Annual Meeting on the _____ day of _____, _____.

Attested this ____ day of _____, _____.

Kevin Holmes, Chair

Krista Ferrell, Executive Director and Secretary