



**ADMIRAL
NIMITZ
FOUNDATION**

BYLAWS

**ARTICLE I
NAME, AND OFFICES**

1. **Name.** The name of this corporation is The Admiral Nimitz Foundation ("Foundation").
2. **Offices.** The principal office of the Foundation shall be located at Fredericksburg, Texas. The Foundation may also have offices at such other places as the Board of Directors may from time to time determine necessary for the purposes of the Foundation.

**ARTICLE II
PURPOSES**

1. **Purposes.** The Foundation shall be operated for the following purposes:

To honor Fleet Admiral Chester W. Nimitz and the men and women who served in and supported World War II in the Asiatic-Pacific Theater Operations by educating and inspiring future generations.

To operate and support the State-owned Museum experience through its extensive collection, to educate and inspire present and future generations about World War II in the Asiatic-Pacific Theater, and the relevance of its lessons by:

- a. Educating present and future generations about World War II in the Pacific and its relevance today;
- b. Using the Collection to provide programs that inspire and educate;

- c. Enhancing and maintaining the quality of the National Museum of the Pacific War and its grounds;
- d. Providing resources to accomplish the Foundation's vision and mission;
- e. Enhancing Constituency and Community Engagement.

To uphold the Foundation's core values of:

- a. Maintaining the highest ethical standards;
- b. Ensuring the highest standards of historical accuracy and academic integrity;
- c. Honoring our patriotic legacies;
- d. Providing a superior work environment;
- e. Incorporating a commitment to excellence in all that we do.

2. **Activities.** In carrying out its purposes the Foundation may:

- a. Acquire and store documents, books, relics, pictures, artifacts, memorabilia, oral histories, and information pertaining to the history of the World War II in the Pacific and to promote and provide for their preservation, perpetuation, and appropriate exploitation and display to include the raising and investment of funds for these purposes.
- b. Engage in enterprises such as the operation of gift shops and bookstores on the premises of the museum and other similar enterprises whose purposes are to generate income to support the Foundation's mission.
- c. Provide support for World War II in the Pacific historical programs through the solicitation of funds and the acquisition of gifts of value.
- d. Encourage all efforts to publicize the historical heritage of World War II in the Pacific through the support of research, studies, and publications of value to the Foundation's historical program.
- e. Sell, donate, or otherwise dispose of any such articles or property as are in its possession, with such disposal or sale to be conducted in accordance with directions approved by the Board of Directors.

- f. Engage in major fund-raising activities.
- g. Manage activities and facilities.
- h. Enter into public-private partnerships and contractual agreements.
- i. Engage in and perform all other acts which the Board of Directors considers necessary to carry out the purposes stated in these Bylaws, so long as such acts are legal, are not inconsistent with the Articles of Incorporation, and do not invalidate its 501(c)(3) status.

ARTICLE III **FOUNDATION MEMBERS**

1. **Members**. The Board of Directors may designate those who make contributions for the financial support of the Foundation as “non-voting members”; however, such designations by the Board of Directors are merely nominal and are used to identify and classify donors who provide financial support for the activities of the Foundation, and such designations do not and shall not be construed to cause the Foundation to have members, or to confer any rights of membership to any person, under the IRS Code or Chapter 22 of the Texas Business Organizations Code, or under any other state or federal law.

Non-voting membership in the Foundation shall be open to all individuals and institutions interested in the purposes for which the Foundation was incorporated. A schedule of contributions shall be approved as needed by the Board of Directors. There shall be two classes of membership as follows:

- a. **Individual Members**. Individuals who make an annual contribution in an amount designated by the Board of Directors.
- b. **Institutional Members**. Organizations, corporations, or other institutions, who undertake to make an annual contribution in an amount designated by the Board of Directors.

ARTICLE IV **DIRECTORS**

1. **General Powers**. The business and affairs of the Foundation shall be managed by a Board of Directors, which shall exercise all the powers of the Foundation.

2. **Number of Directors**

- a. The affairs of the Foundation shall be conducted by a Board of Directors (Board) consisting of not fewer than twelve (12) and not more than twenty (20) persons, all of whom shall be Individual Members of the Foundation in good standing, elected by the Board. Directors need not be residents of Texas.
- b. To facilitate the recruitment of qualified Directors the number of Directors may temporarily exceed the maximum of twenty (20), with the excess number being resolved by normal attrition or action deemed appropriate by the Board.

3. **Term.**

- a. Directors shall be elected to serve for an initial term of one (1), two (2), or three (3) years to stagger term expirations. All subsequent terms shall be for three (3) years. The term of a Director shall begin on January 1 following the date of that Director's election, or at such other time as designated by the Board. The Director terms shall end on December 31. Whenever the number of Directors is decreased by amendment of the Bylaws, all Directors in office at the time of such amendment shall serve until their terms expire or until their resignations or removal as herein provided.
- b. The Foundation President/CEO and the Texas Historical Commission Representative on the Board of Directors shall be permanent members of the Board of Directors. They will serve at the pleasure of the Foundation and the Texas Historical Commission, respectively.
- c. Directors will normally voluntarily retire at the end of the term in which they reach 75 years of age. All such Directors who have served more than one term on the Board will be considered for Director Emeritus status. (See Article IV.16. below)

4. **Election.** Directors may be elected by voice vote of a simple majority at any meeting of the Board of Directors or by email between meetings of the Board, unless secret ballot is requested by three or more Directors.

5. **Vacancies.**

- a. Vacancies on the Board may be allowed to continue until the next regular election or may be filled earlier as the Board deems in the Foundation's best interest.

- b. The Nominating Committee will submit nominations to the Executive Committee along with a statement of each nominee's qualifications. The Executive Committee will submit nominations to the Board of Directors for approval.

6. **Compensation.** Directors and officers of the Foundation may be reimbursed for any extraordinary expenses (not associated with Board or Committee meetings) incurred by them while serving the Foundation. However, no Director and/or other officer of the Foundation shall be paid any salary for services to the Foundation except a Director employed as President/CEO may be compensated in a manner approved by the Board.

7. **Director Financial Support.** Directors shall continually maintain membership in the Five-Star Circle. In addition, each Director shall assist the Foundation in raising funds through both individual and corporate donations and support the Foundation's capital campaigns. Finally, all Directors are encouraged to make an additional annual monetary donation to the Foundation within their individual means, and to become a member of the Nimitz Legacy Society.

8. **Rules and Regulations.** The Board of Directors shall have the power to make and adopt such rules and regulations consistent with the Articles of Incorporation of the Foundation, the Bylaws, or the laws of the State of Texas, as it may deem advisable for the management, administration, and regulation of the business and affairs of the Foundation.

9. **Accounting System and Reports.** The Board of Directors shall insure that a complete accounting system is established and maintained in accordance with generally accepted accounting principles and the laws of Texas, audited annually by an independent auditor approved by the Board, and open to inspection by any authorized person at any reasonable time.

10. **Regular Meetings.**

- a. The Board of Directors shall meet at least three (3) times a year, inclusive of the Annual meeting, on a date and at a location designated by the Chairman. The first meeting of the calendar year will be the Annual meeting of the Foundation. One meeting of the calendar year may be a teleconference meeting.
- b. Where the business pending before the Board will not be adversely impacted, and with prior notice and approval by the Chairman, Directors may attend meetings by telephone conference or videoconference.

11. **Special Meetings.** Special meetings of the Board shall be held at the written request of any five (5) Directors or the Chairman, and shall then be called by the Chairman at a time and place and by a method designated by the Chairman.

12. **Notice of Meetings.** Notice of any meeting of the Directors, regular or special, stating the time and place of meeting shall be served personally, by mail, email, or by telephone facsimile upon each Director not less than seven (7) days before the meeting, which notice time limit may be waived personally, in writing, email or by telephone facsimile by the Directors. The notice of any special meeting shall state the purpose of the proposed meeting. Business transacted at any special meeting shall be confined to the subjects stated in the call and matters germane thereto.

13. **Quorum.** At any meeting of the Board, fifty percent (50%) of the members of the Board present either physically, by telephone conference, or by videoconference shall constitute a quorum.

14. **Manner of Acting.** The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

15. **Voting.**

- a. Each Director shall have one vote. There shall be no voting by proxy.
- b. Directors in attendance at any meeting may vote at any Board of Directors meeting by voice vote, roll-call voice vote, show of hands or written ballot. Directors participating by telephone conference call may vote by roll-call voice vote or by mail, email or telephone facsimile ballot. The Chairman shall specify the voting procedure and the method of voting to be used on each matter before the Board of Directors.
- c. Any action required to be taken at a meeting of the Board of Directors or a Board Committee may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed (email signatures permitted) by a majority of the Directors or Committee Members. Such consent shall have the same force and effect as a vote of the Directors or Committee Members.

16. **Director Emeritus.**

- a. To record and reward for service those members of the Board of Directors who have provided extraordinary service to the Foundation, the position of Director Emeritus is established.
- b. A Director who has served more than one term may be nominated and elected as a Director Emeritus at any meeting of the Foundation. Election of Directors Emeritus shall be by a majority of the members of the Board of Directors.
- c. In determining the nomination of a Director Emeritus, the Nominating Committee shall take into consideration such Director's tenure and contribution to the Board and the Foundation.
- d. A Director Emeritus shall neither serve as an officer nor be considered as a member of the Board, or be counted as part of the maximum allowable number of Directors.
- e. A Director Emeritus shall be elected to serve a lifetime term. Director Emeritus shall have all the privileges of a director, such as committee membership and attendance at meetings, except that Director Emeritus shall not have any voting rights.
- f. Director Emeritus shall be indemnified by the Foundation under Article XIII below to the same extent a Director is indemnified pursuant to such Article.

17. **Conflicts of Interest.** It is the policy of the Foundation that its Directors, officers and other employees avoid any situation which may constitute a conflict of interest, that is, any situation in which an individual uses or could use his or her position with the Foundation for personal gain to the individual, members of the individual's family, or other organizations with whom the individual is affiliated, to the actual or potential detriment of the Foundation. The Board of Directors shall establish an implementing policy with reference to conflicts of interest.

ARTICLE V
HONORARY TRUSTEES

1. **Honorary Trustees.** The Board of Directors may from time to time honor persons who have provided particular assistance and support to the Foundation by appointing them "Honorary Trustees". An Honorary Trustee is an honorary designation by the Board of Directors. Honorary Trustees are not members of the Board of Directors and do not have any of the rights, duties, obligations or

authority of the Board of Directors. Without limiting the generality of the foregoing, Honorary Trustees shall not have any voting rights and shall not be counted for purposes of determining the existence of a quorum. Although the Board of Directors may, in its sole discretion, permit Honorary Trustees to attend meetings of the Board of Directors, Honorary Trustees do not have the right to attend any such meetings.

2. **Number and Appointment of Honorary Trustees.**

- a. There shall be no restriction on the number of Honorary Trustees that may be appointed.
- b. In determining recommended additions and/or deletions to the Honorary Trustee list to the Executive Committee, the Nominating Committee shall take into consideration such Trustee's assistance and support to the Board and the Foundation.
- c. The Executive Committee will present to the Board for approval recommended additions and deletions to the Honorary Trustee List.

3. **Indemnification.** Honorary Trustees shall be indemnified by the Foundation under Article XIII below to the same extent a Director is indemnified pursuant to such Article.

ARTICLE VI
COMMITTEES

1. **Committee Structure.**

- a. All Standing Committees shall consist of not less than three (3) voting members. All Standing Committee voting members shall be members of the Board of Directors. Wherever possible, no Chairman of a Standing Committee shall serve as Chairman of another Standing Committee.
- b. All Standing Committee voting members shall be appointed by the Chairman of the Board of Directors. The Chairman shall appoint one of the Standing Committee voting members as the Committee Chair. The Chairman may also remove and replace members and the Committee Chair.
- c. All Standing Committees may appoint non-voting advisory members to assist the Standing Committee. Such non-voting advisory members need not be members of the Board of Directors.

2. **Executive Committee.** There shall be an Executive Committee consisting of the Chairman, and Vice Chairman, and there may be at least five (5) and no more than nine (9) at-large Executive Committee members appointed by the Chairman as the Chairman deems in the best interest of the Foundation. In addition to those members, the President/CEO shall be an Executive Committee member.

- a. The Executive Committee shall have and shall exercise all the powers of the Board of Directors, subject to such limitations as these Bylaws or resolutions of the Board of Directors may impose and shall be responsible for CEO succession planning and execution. A majority of voting members of the Executive Committee shall constitute a quorum.
- b. The Board Chairman shall serve as Chairman of the Executive Committee. Minutes shall be kept recording the actions of the Executive Committee and all such minutes shall be distributed to the Executive Committee for approval within ten (10) days of each meeting, and to the Board thereafter within fifteen (15) days of each meeting of the Executive Committee.
- c. Any matters addressed by the Executive Committee deemed by the Executive Committee to require a vote of the Board, and needing action before the next Board meeting, shall be submitted to each Director by mail, email or by telephone facsimile, with a ballot to be returned to the Secretary, requiring a separate vote on each ballot issue. The Secretary shall record all votes and minutes of the meeting and shall certify the accuracy of those minutes. Minutes of all Executive Committee meetings shall be reviewed and accepted/approved at the subsequent Executive Committee meeting.
- d. The Executive Committee will meet on the call of the Chairman. Notice of all meetings of the Executive Committee, stating the time and place of the meeting shall be served personally, by mail, email or by telephone, facsimile upon each Executive Committee member not less than seven (7) days before the meeting. This notice time limit may be waived by the Executive Committee members.
- e. The Executive Committee shall have oversight over Bylaws, and corporate and strategic governance. It shall also be responsible for Director development and education.
- f. In recognition of the Foundation's obligations to conduct its business effectively, the Board of Directors authorizes and directs the Executive Committee to establish a "Performance Evaluation and Effectiveness Program" requiring Management to submit to the Board of Directors an

assessment of the Foundation's previous year's goals and objectives and the proposed goals and objectives for the upcoming year. The Performance Evaluation and Effectiveness Report shall be submitted to the Executive Committee for review and subsequent approval by the Board of Directors at their first meeting of each calendar year.

- g. The Executive Committee shall not have the authority to:
- (1) Amend the Bylaws
 - (2) Elect or Remove Board members
 - (3) Hire or Fire the President/CEO
 - (4) Dissolve the Corporation

3. **Audit Committee**. Each Audit Committee member will be both independent and financially experienced, as defined by applicable regulations and the Board of Directors. No member shall be a paid officer or employee of the Foundation or any affiliate of the Foundation, or shall have served in such capacity within 36 months of becoming a Committee member. No member shall receive any direct or indirect compensation from the Foundation or any affiliate of the Foundation for consulting or other professional services. The Committee shall assist the Board of Directors in fulfilling its oversight responsibilities for the financial reporting process, the system of internal controls over financial reporting, the audit process, and the Foundation's process for monitoring compliance with laws and regulations. The Committee shall have cognizance over the financial and budget affairs of the Foundation. The Committee shall develop policies affecting the audit and budget affairs of the Foundation and shall recommend such policies to the Board of Directors for approval.

4. **Development Committee**. The Development Committee shall have responsibility for the development and planned giving opportunities offered by the Foundation. These opportunities shall be designed to increase the quality and quantity of all gifts, either restricted or unrestricted, including charitable bequests. The President/CEO shall be an *ex-officio*, non-voting member of the Development Committee.

5. **Nimitz Golf Classic Committee**. The Nimitz Golf Classic Committee shall have responsibility for the Annual Nimitz Golf Classic to include planning and coordinating activities, programs, venues, financial support, necessary services, and marketing and promotional programs.

6. **Investment Committee.** The Investment Committee shall ensure that the investment objectives of the Foundation are pursued. The Committee shall develop and amend investment objectives and the investment policy statement for the Foundation for approval by the Executive Committee as needed. The Committee shall review the Foundation investment portfolio, monitor the performance of advisors, and make recommendations to the Board of Directors. The President/CEO shall be an *ex-officio*, non-voting, member of the Investment Committee.

7. **Nominating Committee.** The Nominating Committee shall recommend to the Executive Committee Director and Officer nominations along with a statement of each nominee's qualifications. In determining the nomination of a Director for an additional term, the Nominating Committee shall take into consideration such Director's participation in Board and Committee meetings, and other significant contributions of support.

8. **Other Committees.** The Executive Committee shall from time to time appoint such standing or special committees as are required. All acts of such committees shall be subject to the approval of the Board.

ARTICLE VII **OFFICERS**

1. **Officers.** The officers of the Board of Directors shall be the Chairman, Vice Chairman, and Secretary. All officers shall be individual members of the Foundation and shall serve without compensation

2. **Election and Term of Office.** During the Annual Board of Directors meeting, the Board shall elect the Chairman and Vice Chairman, who must be members of the Board. Officer's terms shall coincide with their terms as Directors. Vacancies may be filled at any meeting of the Board. Each officer shall hold office at the pleasure of the Board.

3. **Removal.** Any officer or agent elected or appointed by the Board or the Chairman may be removed by the Board by a majority vote of the Directors present, physically or by telephone, and voting whenever, in its judgment, the best interests of the Foundation would be served thereby.

4. **Chairman.** The Chairman shall preside at all meetings of the members of the Foundation, the Executive Committee, and the Board of Directors, and shall be a voting member of the latter two. The Chairman shall be an *ex officio* member, without a vote, of all committees.

5. **Vice Chairman.** The Vice Chairman shall have such powers as are designated from time to time by the Chairman. In addition, the Vice Chairman shall have the powers and authority to perform the duties of the Chairman during the absence or disability of the Chairman.

6. **Secretary.** The Secretary of the Foundation shall be appointed by the Board and shall have all powers and shall perform all duties commonly incident to and vested in the office of secretary of a foundation, including the following duties and responsibilities. The Secretary shall:

- a. Attend all meetings of the Board of Directors and the Executive Committee and be responsible for keeping true minutes of the proceedings of all such meetings.
- b. Ensure that all notices are given in accordance with the Bylaws.
- c. Perform such other duties as the Chairman may designate.

ARTICLE VIII **NIMITZ ADVISORY COUNCIL**

1. **Advisors.** There shall be a Nimitz Advisory Council to consist of persons who are committed to the established purposes of the Foundation and who have professionally distinguished themselves in areas of expertise that might not otherwise be available to the Foundation. Any Director may nominate an individual to serve on this Council. The Chairman will make the final selection. The number of advisors shall be determined by the Chairman, but shall not normally exceed twenty (20).

2. **Duties.** The support, advice and counsel of the members of the Nimitz Advisory Council may be sought individually or at such meetings as may be called from time to time by the Chairman of the Board of Directors. The Council shall conduct such other meetings as the advisors deem appropriate. Advisors may be called upon by the Board to serve as non-member consultants to specific Board committees. The Council will support the Foundation's staff in the development and operation of its programs, as well as the National Museum of the Pacific War and its programs and outreach. Advisors will represent the Foundation in various events, organizing, supporting and participating in fundraising activities, and consulting with the Foundation and Museum staff relating to museum displays and programs.

3. **Term.** The term of office shall be three (3) years, which may be terminated or, with the advisor's consent, extended for a second term at the pleasure of the Chairman.

ARTICLE IX
PRESIDENT/CHIEF EXECUTIVE OFFICER (CEO)

1. The Board of Directors shall select and employ a President/CEO who, as the Foundation's Chief Executive Officer shall, under the direction and supervision of the Board of Directors, see that the policies and directives of the Board are properly carried out in accordance with the provisions of the Articles of Incorporation, all applicable laws and regulations, and the Foundation Bylaws, and who shall, in general, conduct the business affairs of the Foundation.

2. The President/CEO shall be a salaried employee of the Foundation, appointed by the Board of Directors for such term and compensation to which have been mutually agreed. The President/CEO is the senior full-time staff member the Foundation and a voting member of the Board. He or she shall have the full responsibility to direct the execution of policies and programs at the Foundation, in accord with the Board of Directors.

3. The President/CEO duties will be set forth in employment documentation approved by the Board of Directors. Such duties shall include, but not be limited to, the following:

- a. Approve contracts; employ professional and other personnel and determine compensation, except as provided in Article X.2. below.
- b. Invest and disburse funds in accordance with such policies as established by the Board of Directors and to borrow funds, subject to prior Board approval.
- c. Act as the Foundation spokesperson.
- d. Designate an employee as custodian of all records of the Foundation.
- e. Maintain a record of all communications, received and sent, in connection with Foundation activities.
- f. Make recommendations to the Chairman of the Board regarding preparation of the agenda for meetings of the Board and the Executive Committee.

- g. Administratively support the officers of the Foundation in the conduct of meetings of the Board and the Executive Committee.
- h. Attend all meetings of the Board of Directors and the Executive Committee.
- i. Perform other duties as assigned by the Board of Directors.

ARTICLE X **EMPLOYEES**

1. **General.** The Foundation may have such agents and employees as shall be determined by the Board of Directors. The President/CEO may hire employees to fill such employment positions as the Board of Directors determines to be needed in order to allow the Foundation to appropriately conduct its activities.
2. **Compensation for Foundation Staff Officers.** Such officers as shall be determined by the Board of Directors as eligible to receive compensation for services rendered to the Foundation, shall have the amount of such compensation fixed by the Board of Directors or the Executive Committee.

ARTICLE XI **GENERAL COUNSEL**

1. **Appointment.** The Board of Directors is authorized to appoint a General Counsel who shall serve as the principal legal advisor to the Foundation.
2. **Duties.** The General Counsel shall review contracts, legal documents, and all other matters in which the receipt of legal advice would be in the best interest of the Foundation. The General Counsel shall attend Board and Committee meetings as needed, as an *ex-officio* non-voting member. General Counsel shall perform other such duties as may be assigned by the Chairman.

ARTICLE XII **FISCAL YEAR**

The fiscal year of the Foundation shall begin on the first day of January of each year and shall end on the 31st day of December of the same year.

ARTICLE XIII

INDEMNIFICATION

1. **Definitions.** When used in this Article, unless the context otherwise requires:
 - a. The term "Foundation" includes any domestic or foreign predecessor entity of the Foundation in a merger, consolidation, or other transaction in which the liabilities of the predecessor are transferred to the Foundation by operation of law and in any other transaction in which the Foundation assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of this Article;
 - b. The term "Director" means any person who is or was a Director or Honorary Trustee of the Foundation and any person who, while a Director of the Foundation is or was serving at the request of the Foundation as a Director, officer, partner, venture, proprietor, trustee, employee, agent, or similar functionary of any foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise;
 - c. The term "expenses" includes court costs and attorneys' fees;
 - d. The term "official capacity" means (a) when used with respect to a Director, the office of Director of the Foundation and (b) when used with respect to a person other than a Director, the elective or appointive office in the Foundation held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the Foundation, but in each case does not include service for any other foreign or domestic corporation or any partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise; and
 - e. The term "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

2. **Indemnification of Directors.**

- a. The Foundation shall indemnify a person who was, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a Director or officer of the Foundation if it is determined in accordance with the procedure set forth in Section 4 of this Article that the person:

- (1) conducted himself in good faith;
 - (2) reasonably believed (a) in the case of conduct in his official capacity that his conduct was in the Foundation's best interest, and (b), in all other cases, that his conduct was at least not opposed to the Foundation's best interests; and in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.
- b. A person shall not be indemnified under this Section for obligations resulting from a proceeding (a) in which he is found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in his official capacity, or (b) in which he is found liable to the Foundation. The termination of a proceeding by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent is not of itself determinative that the person did not meet the requirements set forth in this Section. A person shall be indemnified under this Section against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by him in connection with the proceeding; but, if the proceeding was brought by or in behalf of the Foundation, the indemnification is limited to reasonable expenses actually incurred by the person in connection with the proceeding.

3. Payment or Reimbursement of Expenses in Advance of Final Disposition.

Reasonable expenses incurred by a Director or officer who was, or is threatened to be made a named defendant or respondent in a proceeding may be paid or reimbursed by the Foundation in advance of the final disposition of the proceeding after:

- a. the Foundation receives a written affirmation by the person of his good faith belief that he has met the standard of conduct necessary for indemnification under this Article and a written undertaking by or on behalf of the person to repay the amount paid or reimbursed if it is ultimately determined that he has not met those requirements; and,
- b. a determination that the facts then known to those making the determination would not preclude indemnification under this Article.

The written undertaking required by this Section must be an unlimited general obligation of the person but need not be secured. It may be accepted without reference to financial ability to make repayment. Determinations and authorizations of payment under this Section must be made in the manner specified

by Section 4 of this Article for determining that indemnification is permissible. Notwithstanding any other provision of this article, the Foundation shall pay or reimburse reasonable expenses incurred by a Director or officer in connection with his appearance as a witness or other participation in a proceeding involving the Foundation at a time when he is not a named defendant or respondent in the proceeding.

4. Determination of Indemnification and Payment or Reimbursement of Expenses. A determination of indemnification or payment or reimbursement of expenses under this Article must be made:

- a. by a majority vote of a quorum consisting of Directors who at the time of the vote are not named defendants or respondents in the proceeding;
- b. if such a quorum cannot be obtained, by a majority vote of a committee of the Board of Directors, designated to act in the manner by a majority vote of all Directors, consisting solely of two or more Directors who at the time of the vote are not named defendants or respondents in the proceeding; or
- c. by special legal counsel selected by the Board of Directors or a committee thereof by vote as set forth in (a) or (b) of this section, or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all Directors.

Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as set forth in this Section for the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization or indemnification and determination as to reasonableness of expenses must be made in the manner specified by this Section for the selection of special legal counsel.

5. Indemnification of Other Persons. The Foundation shall indemnify and advance expenses to a person who is not or was not an officer, employee, or agent of the Foundation but who is or was serving at the request of the Foundation as a Director, officer, partner, venture, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, or other enterprise, or employee benefit plan to the same extent that it may indemnify and advance expenses to Directors under this Article. Determinations of indemnification and advancement of expenses under this Section must be made in the manner specified by Section 4 of this Article.

6. **Indemnification of Directors and Officers; Successful Defense.** The Foundation shall indemnify a Director or officer of the Foundation against any reasonable expenses incurred by him in connection with a proceeding in which he is a named defendant or respondent because he is or was a Director or officer of the Foundation if he has been wholly successful, on the merits or otherwise, in the defense of the proceeding. If, in a suit for the indemnification required by this Section, a court of competent jurisdiction determines that the Director is entitled to indemnification under this Section, or Chapter 22 of the Texas Business Organization Code, the court shall order indemnification and shall award to the Director the expenses incurred in securing the indemnification.

7. **Liability Insurance.** The Foundation may purchase and maintain insurance on behalf of any person who is or was a Director, officer, partner, venture, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, other enterprise, or employee benefit plan, against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person, whether or not the Foundation would have the power to indemnify him against the liability under this Article.

8. **Report to Members.** Any indemnification of or advance of expenses to a Director or officer in accordance with this Article shall be reported in writing to the members of the Board of Directors with or before the notice or waiver of notice of the next meeting of members or with or before the next submission to members of a consent to action without a meeting and, in any case, within the twelve-month period immediately following the date of the indemnification or advance.

ARTICLE XIV **INTERESTED PERSONS**

1. A contract or transaction between the Foundation and one or more of its Directors, Officers, or members of the Executive Committee or another committee, or between the Foundation and any other corporation, partnership, association, or other organization in which one or more of its Directors, Officers, or members of the Executive Committee or another committee, are directors, officers, or members, or have a financial interest, is not void or voidable solely for that reason, solely because the Director, Officer, or member of the Executive Committee or another committee is present at or participates in the meeting of the Board of Directors, Executive Committee or other committee that authorizes the contract or transaction, or solely because the interested Director's, Officer's, or member's votes are counted for that purpose, if:

- a. The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors, the Executive Committee or such other committee, and the Board of Directors, Executive Committee or other committee in good faith and with ordinary care authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors or committee members, even though the disinterested Directors or committee members are less than a quorum; or,
- b. The contract or transaction is fair to the Foundation when it is authorized, approved, or ratified by the Board of Directors, or the Executive Committee or such other committee.

2. Common or interested Directors or committee members may be counted in determining the presence of a quorum at a meeting of the Board of Directors, Executive Committee or other committee that authorizes the contract or transaction.

ARTICLE XV **TEXAS BUSINESS ORGANIZATIONS CODE**

It is expressly recognized that when the Bylaws are silent as to the manner of performing any corporate function, the provisions of Chapter 22 of the Texas Business Organizations Code shall control.

ARTICLE XVI **AMENDMENTS**

The Board of Directors shall have the power to make, alter, amend or repeal the Bylaws of the Foundation, when not inconsistent with the Articles of Incorporation, by a majority vote of the Directors at any regular or special meeting where notice of such proposed action has been announced in the notice of such meeting.

ARTICLE XVII **DISSOLUTION**

In the event of dissolution or termination of the Foundation, title to and possession of all property of the Foundation shall pass forthwith to such organization or organizations qualified for tax-exemption under the Internal Revenue Code as amended, that in the opinion of the Board of Directors is or are best fitted to carry on the charitable and educational purposes of the Foundation.

ARTICLE XVIII
PARLIAMENTARY AUTHORITY

The current issue of Roberts Rules of Order, newly revised, shall be the parliamentary authority for all matters and procedures not specifically covered by these Bylaws.

ARTICLE XIX
EFFECT

These Bylaws are effective 31 October 2019 and supersede in their entirety all other Bylaws heretofore adopted by the Foundation.

SECRETARY'S CERTIFICATE

THIS IS TO CERTIFY:

That I am the duly elected, qualified and acting Secretary of the Admiral Nimitz Foundation, Inc. and that the above and foregoing bylaws were adopted/amended as the bylaws of said Foundation by the Board of Directors pursuant to a resolution adopted on October 11, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of October, 2019.

Nancy Dreher
Nancy Dreher, Secretary