



## **Bylaws of the Global Prebiotic Association**

September 14, 2017

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## ARTICLE 1 DEFINITIONS

### SECTION 1.1

**Administrator** shall mean the individual appointed by the Executive Committee as the Executive Director of the Corporation and who is responsible for its day-to-day management.

## **SECTION 1.2**

**Affiliates** shall mean an entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity, so long as such Control exists.

## **SECTION 1.3**

**Alternate Director** shall mean an individual appointed to fill an Alternate Director vacancy by the Executive Committee in accordance with Section 4.6.

## **SECTION 1.4**

**Control** means beneficial ownership of more than fifty percent (50%) of the voting power or equity in an entity.

## **SECTION 1.5**

**Corporation** shall mean the Global Prebiotic Association

## **SECTION 1.6**

**Executive Committee** shall mean the Working Committee of Regular Directors serving as the Board of Directors of the Corporation.

## **SECTION 1.7**

**Executive Committee Member** shall mean organizations serving on the Executive Committee that are Leadership-level companies

## **SECTION 1.8**

**Member** shall mean a Member of the Corporation that is accepted for membership in accordance with the provisions of Article 13. Member includes and refers to Affiliate Members, Base Members, Plus Members and Leadership Members, unless the context otherwise requires.

## **SECTION 1.9**

**Regular Director** means an individual who is appointed or elected to a Regular Director position on the Executive Committee in accordance with these Bylaws.

## **SECTION 1.10**

**Working Committee** shall mean groups comprised of individuals who are employees of Members of the Corporation whose purpose is to address narrow aspects of Corporation's Specific Purpose as decided upon by the Executive Committee.

# **ARTICLE 2    PRINCIPAL OFFICE**

## **SECTION 2.1**

The principal office of the Corporation shall be at 18 Augusta Pines Drive, Suite 151 2W, Spring, TX, 77389. The Board of Directors may at any time and from time to time determine an alternate location.

# **ARTICLE 3    PURPOSE**

## **SECTION 3.1        TAX PURPOSES**

The Corporation has organized as a United States 501(c)(6) Corporation.

## **SECTION 3.2        SPECIFIC PURPOSE**

The Corporation's specific purpose ("Specific Purpose") is to raise awareness and education of the definition of, benefits and science supporting prebiotics. The primary focus of this organization will be to raise awareness of the ingredient category and reach out to a more broad range of associations, academia and media. GPA will work with government groups, the healthcare community and the industry:

- (i) GPA will help define and communication broadly a definition of prebiotics which will resonate with industry, the scientific community, the practitioner community and regulators.
- (ii) GPA will interact with support groups such as those associated with Celiac Disease.
- (iii) GPA will interact with physicians who do or could promote prebiotics.

- (iv) GPA will interact with trade and consumer media to promote greater awareness of prebiotics.
- (v) GPA will work with academia to provide liaison and outlet for clinical data projects.
- (vi) GPA will work with government groups to provide up to date and accurate ingredient information

The Specific Purpose of the Corporation includes establishing Working Committees that encourage active member involvement, allow members to address critical issues of prebiotic product manufacturing, research and marketing, and enact guidelines that advance responsible trade.

The Working Committees may include, but not be limited to:

- (i) Executive Committee;
- (ii) Dietary Supplement Committee (with North America, European & Asian sub-committees);
- (iii) Food Ingredient Committee (with North American, European & Asian sub-committees);
- (iv) Technical Committee
- (v) Scientific Committee
- (vi) Regulatory Committee; and
- (vii) Communications Committee.

This Section may not be amended except by the unanimous vote of the Executive Committee.

## **ARTICLE 4 EXECUTIVE COMMITTEE**

### **SECTION 4.1 POWERS OF THE EXECUTIVE COMMITTEE**

Subject to the provisions of Texas Corporation Law and any limitations in these Bylaws relating to action required to be taken or approved by the Members of this Corporation, the Corporation's activities and affairs shall be managed by, and all corporate powers shall be exercised by or under the direction of, its Board of Directors, which is referred to herein as the "Executive Committee."

The Executive Committee, as the Board of Directors of the Corporation, may, from time to time, establish Working Committees. The establishment of a Working

Committee, and the enumeration of the powers of and restrictions on the Working Committee, must be approved by the affirmative vote of half of the number of individuals authorized to serve on the Executive Committee, plus one. Such Working Committee shall not be deemed to be a committee of the Board of Directors. The Executive Committee (by a vote of half of the number of individuals authorized to serve on the Executive Committee, plus one) may appoint any persons it chooses to serve on the Working Committees, including Regular Directors. Such persons shall serve at the pleasure of the Executive Committee. To the extent permitted by law, the Executive Committee may delegate tasks to the Working Committees in the same manner that the Board of Directors may delegate tasks to officers of the Corporation. Within its delegated authority, the Working Committees may make decisions on operational and management issues in accordance with practices, policies and procedures that it establishes, so long as they are not in conflict with, or violation of, those set forth in these Bylaws.

The Executive Committee Members (but not other Members) shall have the right, acting singularly, to nominate an individual for election to the Executive Committee as a Regular Director.

Only the Executive Committee Members shall have the right to vote on proposed amendments to Section 3.2 of these Bylaws. The Executive Committee Members and Plus and Base Level Members shall also have the voting rights with respect to other amendments as set forth in Article 11.

## **SECTION 4.2            NUMBER OF INDIVIDUALS ON EXECUTIVE COMMITTEE**

The Executive Committee shall consist of individuals from all Leadership Level companies. Such individuals may be referred to herein as “Directors.” Collectively, they shall be known as the Executive Committee. There shall be no maximum or minimum number of Directors serving on the Executive Committee, but Alternate Director vacancies shall be maintained and may be filled from time to time in accordance with Section 4.6 below. The group of directors and vacancies set forth in the previous sentence shall be maintained, unless and until changed by a unanimous minus one (1) vote of the Executive Committee. The Executive Committee may choose to set a maximum or minimum limit on the number of individuals on the Executive Committee by the affirmative vote of two-thirds (2/3) of the class of the Executive Committee Members of the Corporation and by the affirmative vote of a majority of all Leadership, Plus, and Base level Members, voting as a single class.

### **SECTION 4.3            DUTIES OF EXECUTIVE COMMITTEE**

It shall be the duty of the Executive Committee to:

- (i)     Assure that the Corporation confines its activities to those in furtherance of its Specific Purpose;
- (ii)    Perform all duties imposed on them collectively or individually by law, or by these Bylaws;
- (iii)   Meet at such times and places as required by these Bylaws;
- (iv)    Register the addresses of the individuals serving on the Executive Committee with the Administrator of the Corporation (in which event notices of meetings provided to the individual at such addresses shall be valid notices thereof);
- (v)     Elect annually a Chair or Co-Chairs who shall perform all duties as required by these Bylaws;
- (vi)    Set the direction for the Corporation;
- (vii)   Elect annually Working Committee Chairs or Co-Chairs;
- (viii)   Establish the charter for, form, and disband Working Committees as appropriate to conduct the work of the Corporation;
- (ix)    Approve the Corporation's annual budget. If the annual budget is not approved at the start of each fiscal year, the Corporation shall operate based on the prior yearly budget, to the extent practical, until an annual budget is approved;
- (x)     Establish annual dues for all Member classes, and establish privileges and benefits for all classes of Members consistent with these Bylaws;
- (xi)    Administer and establish policies consistent with the Membership Agreement;
- (xii)   Amend the Membership Agreement as needed; and
- (xiii)   Take other action that it deems appropriate in furtherance of the Specific Purpose of the Corporation.

### **SECTION 4.4            COMPOSITION OF THE EXECUTIVE COMMITTEE**

The Regular Directors of the Executive Committee shall consist of individuals appointed by the Executive Committee Members. Each Executive Committee Member shall appoint one individual to the Executive Committee to serve as a Regular Director. No more than one (1) Regular Director serving on the Executive Committee may be employed by the same Executive Committee Member.

The Executive Committee Members consists of all Leadership Level companies listed as members prior to the start of the fiscal year.

## **SECTION 4.5            QUALIFICATIONS**

An individual serving on the Executive Committee as a Regular Director or an Alternate Director must be an employee of an Executive Committee Member. The individual's tenure on the Executive Committee shall automatically terminate, if he or she ceases to be an employee of the Executive Member by whom he/she was employed at the time of his/her appointment, or if his/her employer ceases to be an Executive Committee Member.

An individual serving on the Executive Committee as a Regular Director is expected to attend, in person or by telephone, at least seventy-five percent (75%) of all duly noticed Executive Committee meetings and not to miss three (3) consecutive meetings, or to make available a suitable proposed Alternate Director. If an individual does not meet this requirement, the individual is subject to removal as provided in Section 4.7.

## **SECTION 4.6            ALTERNATE DIRECTORS**

The Executive Committee shall maintain Alternate Director vacancies, which may only be filled as provided in this Subsection. For any Regular Director who does not attend a specific meeting of the Executive Committee (an "Absent Regular Director"), the Absent Regular Director shall appoint by written notice (at least 24 hours prior to the meeting) an Alternate Director to fill one (1) of the vacancies for the Absent Regular Director. An Alternate Director must be an employee of the Executive Committee Member that employs the Absent Regular Director whose absence from the meeting permits the appointment of such Alternate Director.

The Alternate Director shall serve on the Executive Committee only until the earlier to occur of (i) adjournment of the meeting at which such Alternate Director is appointed or (ii) arrival at such meeting of the Absent Regular Director whose absence resulted in the appointment of the Alternate Director. Such Alternate Director shall have all of the rights, including voting rights, and duties of a Regular Director for the duration his or her appointment.

## **SECTION 4.7            VACANCIES, RESIGNATIONS, REMOVALS**

Vacancies of the Regular Directors on the Executive Committee shall exist: (1) whenever the number of Leadership Level companies on the Executive Committee is

increased, or (2) whenever a Regular Director on the Executive Committee is removed or resigns or his or her tenure otherwise terminates.

Any Regular Director serving the Executive Committee may resign effective upon giving written notice to the Administrator or Executive Committee, unless the notice specifies a later time for the effectiveness of such resignation.

Any Regular Director serving on the Executive Committee may be removed if, without a leave of absence approved by the Chair, the individual (or an individual appointed as an Alternate Director in his or her absence) fails to attend three (3) consecutive meetings or misses more than twenty-five percent (25%) of meetings within a twelve (12) month period.

If two (2) or more Executive Committee Members that have employees serving on the Executive Committee become Affiliates, only one (1) of their employees may remain on the Executive Committee as a Regular Director and the other employee(s) tenure on the Executive Committee shall automatically terminate.

Regular Directors on the Executive Committee may be removed by a unanimous (with the exception of the individual under consideration) vote of the Executive Committee. Only one (1) Regular Director on the Executive Committee may be removed at any one (1) Executive Committee meeting. In addition, any Executive Committee Member's status as an Executive Committee Member may be revoked upon a unanimous minus one (1) vote of the Executive Committee, provided that the Executive Committee Member is first given thirty (30) days prior written notice and the opportunity to be heard on the issue of revocation.

#### **SECTION 4.8            FILLING VACANCIES OF REGULAR DIRECTORS**

A vacancy of a Regular Director shall be filled by an individual appointed by the Executive Committee Member who appointed the Regular Director whose resignation or removal created the vacancy. If such Executive Committee Member has ceased to exist, has become an Affiliate of another Executive Committee Member, or become a Plus, Base or Affiliate level member, then this vacancy becomes devoid.

#### **SECTION 4.9            NO LIABILITY**

No individual serving on the Executive Committee nor any of the Executive Committee Members shall be personally liable for the debts, liabilities, or other obligations of the Corporation.

#### **SECTION 4.10      TERM OF OFFICE**

During the Initial Period, Regular Directors serving on the Executive Committee shall serve a term of one (1) year or until the end of the Initial Period, subject thereafter to reappointment to successive terms.

After the Initial Period, Regular Directors serving on the Executive Committee shall serve a one (1) year term, subject thereafter to reappointment to successive terms.

#### **SECTION 4.11      COMPENSATION**

Except as provided in Section 6.9, individuals on the Executive Committee shall serve without compensation from the Corporation.

#### **SECTION 4.12      PLACE OF MEETINGS**

Regular Executive Committee meetings shall be held at places and times agreed to by the majority of the Executive Committee. Meetings may be held in person or by any combination of audio or video conferencing techniques, so long as the participants in the meeting may hear one another.

#### **SECTION 4.13      ANNUAL MEETING**

The annual organizational meeting of the Executive Committee shall be held within ninety (90) days of the end of the Corporation's fiscal year.

#### **SECTION 4.14      REGULAR AND SPECIAL MEETINGS**

Regular and special meetings of the Executive Committee may be called by the Chair or by one-third (1/3) of the Regular Directors of the Executive Committee, or, if different, by the persons specifically authorized under the laws of the State of Texas to call meetings of the Executive Committee.

#### **SECTION 4.15      NOTICE OF MEETINGS**

Unless otherwise provided in these Bylaws or by provisions of law, the following provisions shall govern the giving of notice for meetings of the Executive Committee:

- (a) Annual Meetings. At least thirty (30) days' prior written notice shall be given by the Administrator to each Regular Director serving on the Executive Committee.
- (b) Regular and Special Meetings. At least seven (7) calendar days' prior written notice shall be given by the Administrator to each Regular Director (and, in addition, to one alternate for each Regular Director who designates an alternate for purposes of notice) of each regular and special meeting of the Executive Committee.

Such notice may be given personally or by postal mail, by express mail, by courier, by facsimile machine, or by electronic mail. The notice shall be deemed delivered on the day it is personally delivered, or on the next business day if it is sent by express mail or by courier. If the notice is given by electronic message or by facsimile, it shall be deemed delivered on the next business day after it is sent, or, if it is given by mail, seven (7) days after it is sent by first-class mail, postage prepaid. Such notice shall state the place, date, time and proposed duration of the meeting.

A valid meeting may be scheduled and held on shortened notice if a shorter notice is approved in writing or by electronic message by all Regular Directors, or if all Regular Directors attend the meeting.

A meeting may extend beyond the proposed duration stated in the notice only if such extension is approved by all Regular Directors and Alternate Directors present at the meeting.

#### **SECTION 4.16      AGENDA REQUIREMENTS, MEETING POSTPONEMENT**

The notice required by Section 4.15 shall also state all agenda items known at the time the notice is given. Additional agenda items may be added up to twenty-four (24) hours' prior to the time of the meeting. A matter not on the agenda may be taken up at a meeting provided that at least half, plus one, of the Regular Directors or Alternate Directors present at the meeting determine that such matter is of an urgent nature and approve placing the matter on the agenda.

However, no action may be taken or motion passed at any meeting, if the adoption of the action or passage of the motion requires more than the affirmative vote of a majority of individuals authorized to serve on the Executive Committee, unless the subject matter of the proposed action or motion was generally stated on an agenda delivered at least seven (7) days prior to the meeting, or unless each Regular Director who is not present at the meeting has agreed prior to the meeting that the action or motion may be considered and passed. Further, even if seven (7) days notice was given, the

Executive Committee shall (on a “one time” basis) postpone consideration of any action or motion for at least seven (7) additional days, upon the written request received prior to the meeting from any Regular Director who is unable to be present at the noticed meeting when such matter was to be first considered, and who is also unable to send to the meeting a suitable nominee as Alternate Director.

Nothing in this Section shall apply to the appointment of Alternate Directors.

#### **SECTION 4.17 QUORUM FOR MEETINGS**

A quorum shall consist of fifty (50) percent of the number of individuals authorized to serve on the Executive Committee as Regular Directors, plus one additional Regular Director. However, an Alternate Director who is appointed for a particular meeting shall be counted as a Regular Director in determining whether a quorum exists for that particular meeting. Accordingly, for example, so long as the Executive Committee is composed of twelve Regular Directors, the quorum is seven, where the seven may be comprised of either or both Regular Directors or Alternate Directors present at a meeting in person or as provided by Section 4.21.

#### **SECTION 4.18 EXECUTIVE COMMITTEE ACTION**

Every motion, act or decision passed, done or made by the affirmative vote of Regular Directors and Alternate Directors in attendance at a meeting, if the number of affirmative votes equals or exceeds two-thirds (2/3) of the number of Regular Directors and Alternate Directors in attendance, is the motion, act or decision of the Executive Committee, unless Section 4.19, another section of these Bylaws, or provisions of law require a greater or different voting percentage or different rules for approval of a matter by the Executive Committee.

#### **SECTION 4.19 REQUIRED VOTING PERCENTAGES**

Except as otherwise provided in Section 3.2, the following voting percentages shall be required for any motion, act or decision to be a valid motion, act, or decision of the Executive Committee:

<u>Matter to be Voted On</u>	<u>Number of Affirmative Votes Required</u>
(a) General business matters	- Fifty (50) percent, plus one (1), of the Regular Directors, or Alternate Directors voting in place of a Regular Director.

- |     |   |   |
|-----|---|---|
| (b) | Establishing the charter of, or materially changing the charter of, Working Committee | - Fifty (50) percent, plus one (1), of the Regular Directors, or Alternate a Directors voting in place of a Regular Director. |
| (c) | Revocation of the Executive Committee Member Status of an Executive Committee Member  | - The number of Regular Directors authorized to serve on the Executive Committee, minus one.                                  |
| (d) | Termination of the membership of an Executive Committee Member                        | - The number of Regular Directors authorized to serve on the Executive Committee, minus one.                                  |
| (e) | Termination of the membership of a Regular Member                                     | - The number of Regular Directors authorized to serve on the Executive Committee, minus one.                                  |

“Number of Regular Directors authorized to serve on the Executive Committee,” as used in these Bylaws, refers to the number of authorized Directors set forth in Section 4.2 of these Bylaws. If an individual serving on the Executive Committee, whether a Regular Director or an appointed Alternate Director, is present at a meeting, but abstains from voting on a matter, for purposes of that vote, the number of “individuals authorized to serve on the Executive Committee” or “number of Regular Directors authorized to serve on the Executive Committee” shall be deemed reduced by one (1) for each individual abstaining, provided that the total number may not be reduced to less than five (5).

## **SECTION 4.20      CONDUCT OF MEETINGS**

The Executive Committee shall be presided over by the Chair or Co-Chairs or, in his, her or their absence, by the Vice-Chair or by a temporary Chair chosen by a majority of the Executive Committee present at the meeting. The Secretary of the Corporation shall act as secretary of all meetings of the Executive Committee, provided that, in his or her absence, the presiding officer shall appoint another person to act as secretary of the meeting.

Meetings shall be governed by such procedures as may be approved from time to time by the Executive Committee, insofar as such rules are not inconsistent with or in conflict with these Bylaws or with provisions of law.

#### **SECTION 4.21 MEETINGS BY TELEPHONE OR VIDEOCONFERENCE**

Executive Committee individuals may participate in a regular or special meeting through use of conference telephone, videoconference, or similar communications device, or in person, so long as all people participating in such meeting can hear one another. Participation in a meeting pursuant to this Section constitutes presence at such meeting for all purposes, including the existence of a quorum and voting.

#### **SECTION 4.22 EXECUTIVE COMMITTEE ACTION WITHOUT MEETING**

Any action that the Executive Committee is required or permitted to take may be taken without a meeting if all Regular Directors on the Executive Committee consent in writing or by electronic message to that action. Such action by written consent shall have the same force and effect as any other validly approved action of the Executive Committee. All consents shall be filed with the minutes of the proceedings of the Executive Committee.

#### **SECTION 4.23 INDEMNIFICATION**

The Corporation shall indemnify individuals serving on the Executive Committee and Executive Committee Members to the fullest extent permissible under the laws of the State of Texas.

#### **SECTION 4.24 INSURANCE FOR CORPORATE AGENTS**

Except as may be otherwise provided under provisions of law, the Executive Committee may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the Corporation (including individuals serving on the Executive Committee and employees or other agents of the Corporation) against liabilities asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Corporation would have the power to indemnify the agent against such liability under these Bylaws or provisions of law.

#### **SECTION 4.25 CONFIDENTIALITY**

All Regular Directors and Alternate Directors, in their capacity as Directors of the Executive Committee of Global Prebiotic Association, must protect and keep confidential all membership details or issues relating to Global Prebiotic Association member companies, strategic documents of Global Prebiotic Association, ethics complaints about member companies or other proprietary knowledge held by Global Prebiotic Association (collectively referred to as "Confidential Information") which is disclosed to them and to

protect the same against any disclosure by it or other person controlled by it to unauthorized third parties. They shall maintain all Confidential Information which is provided to them, and all notes of information obtained, with the same safeguards they accord their own confidential and proprietary information. Regular Directors and Alternate Directors shall not use any Confidential Information, directly or indirectly, for their own benefit, the benefit of their own company, or for the benefit of any person, firm or corporation other than Global Prebiotic Association.

Notwithstanding anything to the contrary herein, the Regular Directors and Alternate Directors shall not be obligated to maintain the confidentiality of any information provided in their capacity as Directors of the Executive Committee of Global Prebiotic Association which:

- (a) is already in the public domain at the time of disclosure;
- (b) at any time after disclosure becomes public knowledge through no fault of either Global Prebiotic Association, the Regular Director or Alternate Director;
- (c) is disclosed by any person, firm or corporation unrelated to the Global Prebiotic Association; or
- (d) is disclosed with the prior written consent of the Global Prebiotic Association.

These confidentiality undertakings shall survive the Regular Director or Alternate Director's term as a Director on the Executive Committee of Global Prebiotic Association and for five years thereafter.

## **ARTICLE 5 ADMINISTRATION**

### **SECTION 5.1 ADMINISTRATOR**

The Administrator of the Corporation shall be selected by the affirmative vote of two-thirds (2/3) of the individuals authorized to serve on the Executive Committee and serve as Administrator for a one (1) year term. The Administrator of the Corporation may resign at any time by submitting thirty (30) days' written notice to the Executive Committee.

### **SECTION 5.2 ADMINISTRATOR DUTIES**

Subject to policies and procedures adopted by, or specific directions from, the Executive Committee, the Administrator of the Corporation agrees to perform such undertakings as are necessary to manage the day-to-day needs of the Corporation, including:

- (a) Scheduling and setting up meetings of the Executive Committee and membership;
- (b) Facilitating communication between Members, including providing timely notices of meetings;
- (c) Acting as the liaison to other consortiums or associations with which the Corporation may choose to associate;
- (d) Providing individuals on the Executive Committee and Members with timely minutes, summaries and other reports with respect to the activities of the Corporation;
- (e) Receiving and processing membership applications;
- (f) Receiving and holding in trust for the Corporation all membership dues, fees and assessments to be applied solely for the purposes as set forth in these Bylaws;
- (g) Such other activities delegated or authorized by the Executive Committee;
- (h) Receive, and give receipt for, monies due and payable to the Corporation from any source whatsoever;
- (i) Make decisions related to hiring and termination of employees of the Corporation in staff positions; and
- (i) Disburse, or cause to be disbursed, the funds of the Corporation as may be directed by the Executive Committee, taking proper vouchers for such disbursements.

Subject to approval by the Executive Committee, the Administrator may engage third parties to undertake such activities, provided that the Administrator enters into appropriate contracts protective of the Corporation, and ensures compliance with terms and conditions of these Bylaws including confidentiality obligations.

Except as otherwise expressly provided by law, by the Articles of Incorporation, or by these Bylaws, the Administrator shall, in the name of the Corporation, execute such deeds, mortgages, bonds, contracts, checks, or other instruments which may from time to time be authorized by the Executive Committee.

### **SECTION 5.3            DISPOSITION OF MEMBERSHIP DUES**

The Administrator shall have the authority to collect dues, fees, and assessments, as determined by the Executive Committee. The Administrator may use the dues, fees and assessments it collects only (i) to pay such administrative costs as the Executive Committee reasonably deems appropriate; (ii) to pay the expenses of any materials or workshops that the Corporation may furnish to the Members; and (iii) for any other purposes that the Executive Committee may authorize consistent with these Bylaws and the Membership Agreement. The Administrator shall open, in the name of the Corporation, such federally insured bank accounts as the Administrator reasonably may deem appropriate and shall hold all dues and fees it collects from Members in those accounts until disbursement in accordance with the policies and procedures established by the Executive Committee.

## **ARTICLE 6     OFFICERS**

### **SECTION 6.1            DESIGNATION OF OFFICERS**

The officers of the Corporation shall be a Chair, a Vice Chair, a Secretary, and a Treasurer. The Corporation may also have one (1) or more Vice Chairs, Assistant Secretaries, Assistant Treasurers, and other such officers with such titles as may be determined from time to time by the Executive Committee. Officers shall be employees of Executive Committee Members and/or employees of the Corporation. The Officers shall be Regular Directors. The same person may hold more than one office.

### **SECTION 6.2            ELECTION AND TERM OF OFFICE**

Officers shall be elected by the Leadership Level Members at each Annual Meeting, and each officer shall hold office for a one-year term or until he or she resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected, whichever occurs first.

### **SECTION 6.3            REMOVAL AND RESIGNATION**

Subject to the provisions of Section 6.2, any officer may be removed, either with or without cause, by the Executive Committee at any time. Any officer may resign at any time by giving written notice to the Executive Committee or to the Chair or Secretary of the Corporation.

Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

## **SECTION 6.4        VACANCIES**

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the Executive Committee. In case of a vacancy in any office other than that of Chair, such vacancy may be filled temporarily by appointment by the Chair until the Executive Committee shall fill the vacancy. Vacancies occurring in offices of officers appointed at the discretion of the Executive Committee may or may not be filled, as the Executive Committee shall determine.

## **SECTION 6.5        DUTIES OF CHAIR**

The Chair shall be the chief executive officer of the Corporation and shall, subject to the control of the Executive Committee, supervise and control the affairs of the Corporation and the activities of the officers. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the Articles of Incorporation, or by these Bylaws, or which may be prescribed from time to time by the Executive Committee.

## **SECTION 6.6        DUTIES OF VICE-CHAIR**

In the absence of a Chair, or in the event of his or her inability or refusal to act, the Vice Chair shall perform all the duties of the Chair, and when so acting shall have all the powers of, and be subject to all the restrictions on, the Chair.

The Vice Chair shall have other powers and perform such other duties as may be prescribed by law, by the Articles of Incorporation, or by these Bylaws, or as may be prescribed by the Executive Committee.

## **SECTION 6.7        DUTIES OF SECRETARY**

The Secretary shall:

Certify and keep at the principal office of the Corporation the original, or a copy, of these Bylaws as amended or otherwise altered to date.

Keep at the principal office of the Corporation or at such other place as the Executive Committee may determine, a book of minutes of all meetings of the Executive Committee, and, if applicable, of Members, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names

of those present or represented at the meeting, and the proceedings thereof, including all ballots and proxies.

See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law. Advise the Members in writing of all results of any election of Executive Committee Members.

Be custodian of the records and of the seal of the Corporation and affix the seal, as authorized by law or the provisions of these Bylaws, to duly executed documents of the Corporation.

Keep at the principal office of the Corporation a membership book containing the name and address of each and any Members, and, in the case where any membership has been terminated, he or she shall record such fact in the membership book together with the date on which such membership ceased.

Exhibit at all reasonable times to any Member of the Corporation, or to his or her agent or attorney, on request therefor, the Bylaws, a list of Members, the minutes of the proceedings of the Executive Committee, and the minutes of the proceedings of the Members of the Corporation.

Act as secretary at Executive Committee meetings.

In general, perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Articles of Incorporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Executive Committee.

## **SECTION 6.8        DUTIES OF THE TREASURER**

The Treasurer shall:

Have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds in the name of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Executive Committee.

Keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses.

Exhibit at all reasonable times the books of account and financial records to any Executive Committee Member, or to his or her agent or attorney, on request therefor.

Render to the Executive Committee Members, whenever requested, an account of any or all of his or her transactions as Treasurer and of the financial condition of the Corporation.

Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.

Be responsible for overseeing tax matters for the Corporation.

In general, perform all duties incident to the office of Treasurer and such other duties as may be required by law, by the Articles of Incorporation of the Corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Executive Committee.

## **SECTION 6.9          COMPENSATION**

The officers shall serve without compensation, unless compensation is authorized by the affirmative vote of two-thirds (2/3) of the individuals authorized to serve on the Executive Committee.

Nothing herein contained shall be construed to preclude any officer from serving the Corporation in any other capacity as an agent, employee, or otherwise, and receiving compensation therefore as long as such compensation is approved by a majority of disinterested Executive Committee Members.

# **ARTICLE 7      WORKING COMMITTEES**

## **SECTION 7.1          WORKING COMMITTEES**

The Corporation shall have such Working Committees as may from time to time be determined by the Executive Committee. There may be Primary Working Committees and Subordinate Working Committees. There initially will be six (6) standing Primary Working Committees, which shall be:

- (i) Dietary Supplement Committee (with North America, European & Asian subcommittees);
- (ii) Food Ingredient Committee (with North American, European & Asian subcommittees);

- (iii) Technical Committee
- (iv) Scientific Committee
- (v) Regulatory Committee; and (vi) Communications Committee.

In addition to employees from Executive Committee Members, the Working Committees may further consist of persons who are employees of Plus or Base Level Members, and Affiliate Level Members who have obtained special permission by a majority vote of the Executive Committee. The Primary Working Committees shall act in an advisory capacity to the Executive Committee and report to the Executive Committee. The Subordinate Working Committees shall act in an advisory capacity to their respective Primary Working Committees and report to that Primary Working Committee.

## **SECTION 7.2 MEETINGS AND ACTION OF WORKING COMMITTEES**

Meetings of the Working Committees shall be governed by, noticed, held and taken in accordance with policies and procedures established by the Working Committees, as approved or ratified by the Executive Committee. Notice of the time and place and purpose of holding any meeting of a Working Committee shall be given by the Administrator to the persons entitled to participate in such meeting at least seven (7) calendar days prior to the scheduled date for the meeting. The Executive Committee may also adopt rules and regulations pertaining to the conduct of meetings of Working Committees to the extent that such rules and regulations are not inconsistent with the provisions of these Bylaws.

## **SECTION 7.3 COMPOSITION OF WORKING COMMITTEES**

The Executive Committee shall select the Chair or Co-Chairs of a Working Committee. Such Chair or Co-Chairs shall serve for a one (1) year term. All active Members of the Corporation in good standing are eligible to submit a request to a Working Committee Chair or Co-Chairs to have an employee included in a Working Committee. A Working Committee Chair or Co-Chairs shall select the individuals to serve on a Working Committee. If a Working Committee's Co-Chairs cannot decide on the individuals to serve, the Executive Committee shall select the remaining individuals to serve on a Working Committee. For reasons of operational efficiency of a Working Committee, the Chair or Co-Chairs have the discretion to limit the size of a Working Committee.

## **SECTION 7.4 SCHEDULE OF MEETINGS**

At the first meeting of a Working Committee or an established subgroup, a schedule for meetings and completion dates will be proposed.

## **SECTION 7.5      CONDUCT OF MEETINGS**

The Working Committees will maintain minutes of their meetings. Representatives of at least two-thirds (2/3) of the Members represented on a Working Committee, in attendance in person or by electronic means, shall be necessary to constitute a quorum for the submission of a proposal to the Executive Committee or Working Committee, as appropriate.

## **SECTION 7.6      VOTING**

Each Member with a representative(s) on a Working Committee may have only one (1) vote on matters put before such Working Committee. Each Member with a representative on a Working Committee must have had a representative (or a substitute representative) present at three (3) of the last four (4) meetings of a Working Committee in order for its representative to be eligible to vote. A majority vote of Working Committee Members represented at a meeting at which a quorum is present shall be required to adopt any resolution or proposal before a Working Committee. Upon completion of a recommendation, a Working Committee must agree by a majority vote before submitting the recommendation to the Executive Committee or Working Committee, as appropriate.

# **ARTICLE 8      EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS**

## **SECTION 8.1      EXECUTION OF INSTRUMENTS**

The Executive Committee, except as otherwise provided in these Bylaws, may by resolution authorize any agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

## **SECTION 8.2      CHECKS AND NOTES**

Except as otherwise specifically determined by resolution of the Executive Committee, or as otherwise required by law, checks, drafts, promissory notes, orders for

the payment of money, and other evidence of indebtedness of the Corporation shall be signed by the Administrator, the Treasurer or the Executive Committee Chair, except in cases where the amount exceeds a first pre-determined threshold set by the Executive Committee; in such cases a check shall require a second signature by the Treasurer or the Executive Committee Chair, and except in cases where the amount exceeds a second predetermined threshold set by the Executive Committee; in such cases a check shall require the signature of both the Treasurer and the Executive Committee Chair.

### **SECTION 8.3        DEPOSITS**

All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Treasurer may select.

## **ARTICLE 9        CORPORATE RECORDS, REPORTS AND SEALS**

### **SECTION 9.1        MAINTENANCE OF CORPORATE RECORDS**

The Corporation shall keep at its principal office:

- (a) Minutes of all meetings of Executive Committee, committees of the Executive Committee, and all meetings of Members, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof including all proxies;
- (b) Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses;
- (c) A record of its Members, if any, indicating their names and addresses and, if applicable, the class of membership held by each Member and the termination date of any membership;
- (d) A copy of the Corporation's Articles of Incorporation and these Bylaws, as amended to date, which shall be open to inspection by the Members, if any, of the Corporation at all reasonable times during office hours.

### **SECTION 9.2        CORPORATE SEAL**

The Executive Committee may adopt, use, and, at will, alter, a corporate seal. Such seal shall be kept at the principal office of the Corporation. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

### **SECTION 9.3 MEMBERS' INSPECTION RIGHTS**

Every Executive Committee Member shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation. Executive Committee Members and other Members shall have such other rights to inspect the books, records and properties of this Corporation as may be required by law.

### **SECTION 9.4 RIGHT TO COPY AND MAKE EXTRACTS**

Any inspection under the provisions of this Article may be made in person or by agent or attorney and the right to inspection shall include the right to copy and make extracts.

### **SECTION 9.5 PERIODIC REPORT**

The Executive Committee shall cause any annual or periodic report required under law to be prepared and delivered to an office of the state of Texas, if required by law, and to the Members of this Corporation, if and within the time required by law.

## **ARTICLE 10 DISTRIBUTION OF ASSETS ON DISSOLUTION**

Upon the dissolution of the Corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of the Corporation shall be distributed as determined by the Executive Committee, in accordance with the requirements of federal and state laws.

## **ARTICLE 11 AMENDMENT OF BYLAWS**

These Bylaws may be altered, amended, or repealed and new Bylaws adopted by the affirmative vote of fifty (50) percent, plus one, of the individuals authorized to serve on the Executive Committee (as defined in Section 4.19 of these Bylaws). In addition, an amendment shall also require: (i) the affirmative vote of fifty (50) percent, plus one, of the individuals authorized to serve on the Executive Committee (as defined in Section

4.19 of these Bylaws) if the amendment adversely affects any class's rights, powers, or benefits; and (ii) the affirmative vote of a majority of the class of Regular Members if the amendment adversely affects such class's rights, powers, or benefits.

Notwithstanding the foregoing, (i) Section 3.2 may only be amended as provided in Section 3.2; (ii) Section 4.2 specifying the size of the Executive Committee during the Initial Period may not be amended, except by the affirmative vote of the number of Regular Directors authorized to serve as Executive Committee Members, minus one (1) vote; and (iii) any amendment of a provision requiring a supermajority vote of a class of Members or of authorized Regular Directors may only be amended if passed by the supermajority of the applicable class or authorized Regular Directors required by the provision being amended.

## **ARTICLE 12 CONSTRUCTION AND TERMS**

Should any of the provisions or portions of these Bylaws be held unenforceable or invalid for any reason, the remaining provisions and portions of these Bylaws shall be unaffected by such holdings.

All references in these Bylaws to the Articles of Incorporation shall be to the Articles of Incorporation or other founding document of the Corporation filed with an office of the State of Texas and used to establish the legal existence of the Corporation.

## **ARTICLE 13 MEMBERSHIP PROVISIONS**

### **SECTION 13.1 CLASSES OF MEMBERS AND DIFFERENT RIGHTS**

The Corporation shall have four (4) separate classes of Members: Leadership Members, Plus Members, Base Members and Affiliate Members.

Leadership Members have the automatic right to Executive Committee seats or any other Working Committee and have full voting privileges and are eligible for Officer Elections.

Plus and Base Level Members shall have the right to serve on any Working Committee, except the Executive Committee, and have voting privileges.

Affiliate level members have the right to serve on any Working Committee, by special invitation of the Executive Committee, and do not have voting privileges.

All Members shall also have the right to have their company logos displayed at public events sponsored by the Corporation.

Otherwise, Members shall have such other rights, privileges, benefits, and restrictions established by these Bylaws, by the Executive Committee, or by law.

## **SECTION 13.2      QUALIFICATION FOR MEMBERSHIP CLASSES**

The qualifications for membership in this Corporation are as follows: Subject to Section 13.3 specifying the Members in or membership criteria for particular classes, membership will be available to all individuals, corporations, partnerships and other legal business organizations that are, but not limited to, processors, refiners, brokers, brand marketers, retailers, ingredient suppliers, researchers, educators, consultants, attorneys, the media, and medical and healthcare professionals and advocates, and that are interested in the ethical growth, development and sustainability of prebiotics as vital components in maintaining good health.

All Members shall agree to adhere to the Corporation's Membership Agreement, as amended from time to time, to these Bylaws as amended from time to time, and to policies and procedures duly adopted by the Executive Committee.

## **SECTION 13.3      ADMISSION TO MEMBERSHIP CLASSES**

Any processor, refiner, manufacturer, broker, brand marketer, or retailer of Prebiotic ingredients or products containing Prebiotics have the right to become a Leadership Level Member if it wishes. The class of Leadership Level Members shall consist of commercial enterprises that meet the requirements of Section 13.2 and of this subsection, that execute a Membership Agreement as a Leadership Level Member, and that tender the appropriate dues within a deadline established by the Executive Committee. Leadership Level Members shall serve one (1) year terms.

Any processor, refiner, manufacturer, broker, brand marketer, or retailer of Prebiotic ingredients or products containing Prebiotics have the right to become a Plus Level Member if it wishes. The class of Plus Level Members shall consist of commercial enterprises that meet the requirements of Section 13.2 and of this subsection, that execute a Membership Agreement as a Plus Level Member, and that tender the appropriate dues within a deadline established by the Executive Committee. Plus Level Members shall serve one (1) year terms.

Any processor, refiner, manufacturer, broker, brand marketer, or retailer of Prebiotic ingredients or products containing Prebiotics have the right to become a Base

Level Member if it wishes. The class of Base Level Members shall consist of commercial enterprises that meet the requirements of Section 13.2 and of this subsection, that execute a Membership Agreement as a Base Level Member, and that tender the appropriate dues within a deadline established by the Executive Committee. Base Level Members shall serve one (1) year terms.

Any individual, corporation, partnership, and other legal business organization that is not directly engaged in the Prebiotic industry value chain, but that serves the Prebiotic industry sector have the right to become an Affiliate Level Member if it wishes. The class of Affiliate Level Members shall consist of commercial enterprises or individuals that meet the requirements of Section 13.2 and of this subsection, that execute a Membership Agreement as an Affiliate Level Member, and that tender the appropriate dues within a deadline established by the Executive Committee. Affiliate Level Members shall serve one (1) year terms.

#### **SECTION 13.4 FEES AND DUES**

The annual dues payable to the Corporation by each class of Members shall be established and may be changed from time to time by resolution of the Executive Committee.

Dues may vary between Member classes and within a class based on reasonable and nondiscriminatory criteria approved by the Executive Committee.

Initial dues shall be thirty thousand United States dollars (US\$30,000) for Leadership Level Members payable in full on receipt of the Membership Application or in two (2) installments of twelve thousand United States dollars (US\$15,000) at the beginning of the first and seventh months after receipt of the Membership Application

Initial dues shall be twenty thousand United States dollars (US\$20,000) for all Plus Level Members, payable in full on receipt of the Membership Application or in two (2) installments of six-thousand United States dollars (US\$10,000) at the beginning of the first and seventh months after receipt of the Membership Application.

Initial dues shall be ten thousand United States dollars (US\$10,000) for all Base Level Members, payable in full on receipt of the Membership Application or in two (2) installments of three - thousand United States dollars (US\$ 5,000) at the beginning of the first and seventh months after the receipt of the Membership Application.

Initial dues shall be three thousand United States dollars (US\$ 3,000) for all Affiliate Level Members, payable in full on receipt of the Membership Application.

All due levels are subject to change annually, adjusted for inflation by no more than 10% per increase.

Ongoing dues for all classes are payable annually on the anniversary of receipt of the Membership Application or at the beginning of the Corporation's fiscal year if, and only if, the Member joined the Corporation during the middle of a fiscal year and its dues had been prorated according to the membership structure outlined in a previous version of these Bylaws.

If any Member is delinquent by more than thirty (30) days in the payment of dues, such Member's rights, including voting rights, shall be deemed suspended upon written notice from the Corporation until all delinquent dues are paid. A Member is not in good standing if its dues have not been paid within the time required.

### **SECTION 13.5      NUMBER OF MEMBERS**

There is no limit on the number of Members that the Executive Committee may admit to any class of Members.

### **SECTION 13.6      MEMBERSHIP RECORDS AND DESIGNATION OF REPRESENTATIVE**

The Corporation shall keep a membership record containing the name and address of each Member and the date upon which the applicant became a Member. Termination of the membership of any Member shall be recorded in the record, together with the date of termination of such membership. Such record shall be kept at the Corporation's principal office or at the office of the Administrator or Secretary. The Member shall designate in writing one (1) individual as the representative authorized to vote and otherwise act on behalf of the Member. The Member may change its representative by written notice to the Corporation. The Member may designate in writing a substitute representative to exercise its voting rights at any meeting of Members. The representative and substitute representative must be employees of the Member.

### **SECTION 13.7      NON-LIABILITY OF MEMBERS**

No Member of this Corporation is, as such, individually liable for the particular debts, liabilities, or obligations of the Corporation. A Member exercising management powers or responsibilities for or on behalf of the Corporation will not have personal liability to the Corporation or its Members for damages for any breach of duty in that capacity, provided that nothing in this Section shall eliminate or limit: (a) the liability of

any Member if a judgment or other final adjudication adverse to him or her establishes that his or her acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled, or that, with respect to a distribution to Members, his or her acts were not performed in accordance with the applicable provisions of the laws and codes of the State of Texas.

#### **SECTION 13.8        NON-TRANSFERABILITY OF MEMBERSHIP**

No Member may transfer a membership or any right arising therefrom unless approved by the Executive Committee. All rights of membership cease upon the Member's dissolution.

#### **SECTION 13.9        AFFILIATED ENTITIES – ONE MEMBER**

Notwithstanding status as separate legal entities or payment of more than one (1) membership fee, Affiliates shall be treated as one (1) Member entitled collectively to only one (1) vote. This section shall apply to Members that become Affiliates before or after becoming Members of the Corporation.

#### **SECTION 13.10      TERMINATION OF MEMBERSHIP**

The membership of a Member shall terminate upon the occurrence of any of the following events:

- (1) Upon the Member's decision to terminate its membership in the Corporation, upon written notice to the Corporation;
- (2) Upon a failure of a Member to initiate or renew membership by paying dues on or before their due date, such termination to be effective thirty (30) days after a written notification of delinquency is sent to such Member by the Administrator of the Corporation. A Member may avoid such termination by paying the amount of delinquent dues within a thirty (30) day period following the Member's receipt of the written notification delinquency;
- (3) After providing the Member with prior written notice of the proposed termination and the reason(s) therefore, in no event less than fifteen (15) days, and an opportunity to be heard either orally or in writing not less than five (5) days before the effective date of termination, upon a determination by the affirmative vote of the number of Regular Directors authorized to serve on the Executive Committee, minus one (1): (i) that the Member is in breach of these Bylaws or its Membership Agreement; (ii) that the Member fails to satisfy the

qualifications for membership; or (iii) that there are other grounds supporting termination that are fair and reasonable under the circumstances.

All rights of a Member in the Corporation shall cease on termination of membership as herein provided. A Member terminated from the Corporation (whether voluntarily or involuntarily) shall not receive a refund of dues already paid for the current dues period.

#### **SECTION 13.11 NO OWNERSHIP INTEREST**

Members shall not have any ownership interest in or right to possess the assets of the Corporation, except as expressly provided in the Member's Membership Agreement.

### **ARTICLE 14 MEETINGS OF MEMBERS**

#### **SECTION 14.1 PLACE OF MEETINGS**

Meetings of Members shall be designated from time to time by resolution of the Executive Committee and be held at places and times reflecting the global nature of the Corporation and to encourage maximum participation. Meetings may be held in person or by any combination of audio or video teleconferencing techniques, if such cost is deemed reasonable by the Executive Committee.

#### **SECTION 14.2 REGULAR MEETINGS**

There will be an Annual Meeting of Executive Committee Members and an Annual Meeting of all Members. Annual Meetings of the Executive Committee Members shall be held for the purpose of transacting any business that may properly come before the meeting. The Annual Meeting of all Members shall be held for the purpose of electing Executive Committee Members and transmitting other business as may come before the meeting.

Other regular meetings of the Members shall be held on dates and at times to be determined by the Executive Committee.

#### **SECTION 14.3 SPECIAL MEETINGS OF THE MEMBERS**

Special meetings of the Members for any purpose may be called by the Executive Committee, or by written request of two-thirds (2/3) of any class of Members.

#### **SECTION 14.4 NOTICE OF MEETINGS**

Unless otherwise provided by these Bylaws or provisions of law, written notice stating the place, day and hour of a meeting of Members and, in the case of a special meeting of Members, the purpose or purposes for which the meeting is called, shall be delivered to each Member not less than fifteen (15) days before the date of the meeting, at the direction of the Executive Committee Chair or the Administrator, or the persons calling the meeting by personal delivery, by postal mail, by express mail, by electronic mail, by facsimile transmission, or by other electronic means. If mailed, such notice shall be deemed to be delivered seven (7) days after being deposited in the mail addressed to the Member's prime contact at his or her address as it appears on the records of the Corporation, with postage prepaid, or, if sent by express mail, such notice shall be deemed delivered on the following business day. If the notice is sent by electronic mail, by facsimile transmission or by other electronic means, the notice shall be deemed delivered the first business day following the day it is sent. If the notice is personally delivered, the notice shall be deemed delivered on the day it is personally delivered.

The notice of any meeting of Members at which Executive Committee Members are to be elected by the Members shall also state the names of all those who are nominees or candidates for election to the Executive Committee at the time notice is given or as soon thereafter as such information is known.

Whenever any notice of a meeting of Members is required to be given to any Member of this Corporation under provisions of these Bylaws or the law of this state, a waiver of notice in writing signed by the Member, whether before or after the time of the meeting, shall be equivalent to the giving of such notice.

#### **SECTION 14.5 QUORUM FOR MEETINGS**

A majority of the Executive Committee Members and at least twenty-five percent (25%) of the classes of Plus and Base Level Members, present in the person of a duly authorized employee or present by proxy, shall constitute a quorum for meetings of the Membership.

#### **SECTION 14.6 MEMBERSHIP ACTION**

Every act or decision done or made by a majority of each class of Members present in person or by proxy at a duly held meeting is the act of the Members, unless these Bylaws or provisions of law require a greater number or different method of calculation.

#### **SECTION 14.7 APPOINTMENT OF THE EXECUTIVE COMMITTEE**

The Executive Committee comprises of all Leadership Level Member Companies. Only the Executive Committee Members are entitled to appoint the individuals to serve on the Executive Committee as Regular Directors.

#### **SECTION 14.8 VOTING PROCEDURE**

Each Leadership Level, Plus Level, and Base Level Member shall have one (1) vote on each matter submitted to a vote by the Members. Voting on all matters shall be by a show of hands if held in person, or by voice ballot if held by audio or video teleconferencing, unless otherwise required, or by secret ballot if requested by a majority of any class of voting-eligible Members. Results of all ballots shall duly be distributed to all Members within thirty (30) days of each ballot.

#### **SECTION 14.9 ACTION BY WRITTEN OR ELECTRONIC BALLOT**

Except as otherwise provided under these Bylaws or provisions of law, any action which may be taken at any regular or special meeting of Members may be taken without a meeting if the Corporation distributes a written or electronic ballot to each eligible voting Member (under section 14.8).

The ballot shall:

- (1) Set forth the proposed action;
- (2) Provide an opportunity to specify approval or disapproval of each proposal;
- (3) State the percentage of approvals necessary to pass the measure submitted; and
- (4) Shall specify the date by which the ballot must be received by the Corporation in order to be counted. The date set shall afford Members a reasonable time within which to return the ballots to the Corporation.

Ballots shall be mailed or delivered in the manner required for giving notice of membership meetings as specified in these Bylaws.

#### **SECTION 14.10 CONDUCT OF MEETINGS**

Meetings of Members shall be presided over by the Chair or Co-Chair of the Executive Committee or, in his or her absence, by another individual serving on the

Executive Committee or, in the absence of all of these persons, by the Administrator. The Administrator of the Corporation shall act as secretary of all meetings of Members, provided that, in his or her absence or when the Administrator is presiding, the presiding officer shall appoint another person to act as secretary of the Meeting.

Meetings shall be conducted to allow for active, fair and open participation by all Members attending the meeting. All participants shall have the right to express opinions on the subject matter, whether or not the opinions differ from those of the majority. Where a decision is called for, it shall be determined by voice vote, and each Member that is eligible to vote (under section 14.8) shall have the opportunity to vote on the outcome, provided they are eligible to vote by their class of membership. Meetings may not be adjourned until questions, opinions and comments from all participating Members are voiced and duly recorded by the presiding officers, subject to reasonable limitations on the time and duration of meetings.

#### **SECTION 14.11 PROXIES**

Every Member eligible to vote (under section 14.8) shall have the right to vote either in person or by one (1) or more agents authorized by a proxy validly executed by the Member. A proxy may be executed by written authorization signed, or by electronic transmission authorized, by the Member, giving the proxy holder(s) the power to vote on behalf of the Member. A proxy shall be deemed signed if the Member's name or other authorization is placed on the proxy (whether by manual signature, typewriting, telegraphic or electronic transmission or otherwise) by the Member. A proxy may only be held by a Member of the Corporation.

A validly executed proxy that does not state that it is irrevocable shall continue in full force and effect unless revoked by the person executing it, prior to the vote pursuant thereto, by a writing delivered to the cooperation stating that the proxy is revoked or by a subsequent proxy executed by, or attendance at the meeting by the person executing the proxy; provided, however, that no such proxy shall be valid after the expiration of eleven (11) months from the date of such a proxy, unless otherwise provided in the proxy. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the applicable provisions of the Corporations Code of the State of Texas.

#### **SECTION 14.12 NON-LIABILITY OF MEMBERS**

The Members do not have any liability for the obligations or liabilities of the Corporation, except to the extent provided by the Corporate Code of the State of Texas.

## **ARTICLE 15 ANTITRUST**

Each Member acknowledges that the Members are committed to fostering competition in the development of the market for Prebiotics and that the Corporation's Specific Purpose is intended to promote such competition. The Members further acknowledge that some of them may compete with one another in various lines of business and that it is therefore imperative that they and their representatives act in a manner that does not violate any applicable antitrust laws and regulations. Without limiting the generality of the foregoing, the Members acknowledge that the Members that are competitors shall not discuss issues relating to product costs, product pricing, methods or channels of product distribution, any division of markets, or allocation of customers or any other topic that would be prohibited by applicable antitrust laws. Accordingly, each Member hereby assumes responsibility to provide appropriate legal counsel to its representatives acting according to these Bylaws regarding the importance of limiting their discussions to subjects that relate to the purposes of the Corporation, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise.

Each Member consents to the Corporation's giving notice of Member's membership in the Corporation, to the extent necessary for the Corporation to invoke the protection of the National Cooperative Research and Production Act of 1993. (15 U.S.C. §§4301 et seq.)

## **ARTICLE 16 VOLUNTARY DISSOLUTION**

The Corporation may dissolve voluntarily upon the affirmative vote of two-thirds (2/3) of the individuals authorized to serve as Regular Directors on the Executive Committee and the approval of a majority of Members (voting together as a single class) that are eligible to cast votes. In addition, the Corporation shall dissolve if less than four (4) Regular Directors are appointed or elected to serve on the Steering Committee.

In the event that the Corporation shall be dissolved or wound up at any time, all of the remaining properties, monies, and assets of the Corporation, after provision has been made for its known debts and liabilities as provided by law, shall be distributed in the manner determined by the Executive Committee, in accordance with the requirements of applicable federal and state laws.

## **ARTICLE 17 MISCELLANEOUS**

### **SECTION 17.1 FREEDOM OF ACTION**

No provision of these Bylaws or the Membership Agreement shall be interpreted to prevent any Member from engaging in any other activities or business ventures, independently or with others, whether or not competitive with the activities contemplated herein or those of any Member and regardless of the effect thereof on the Corporation.

### **SECTION 17.2 GOVERNING LAW**

These Bylaws shall be governed by, and construed in accordance with, the laws of the State of Texas.

– END –