

DOCKETED

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Filer:	Alex Vantaggiato
Organization:	CHEERS
Submitter Role:	Applicant Representative
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**ConSol Home Energy Efficiency Rating Services (CHEERS),
Inc. application to be certified as a Non-Residential
Provider under the 2013 code**

DOCUMENT SUBMISSION & CHANGE LOG

Updated By:	Date Updated	Version	Update Details
Alex Vantaggiato	1.30.17	1.0	New Initial Draft

CHEERS, Inc. application to be certified ~~as a~~ Non-Residential ~~Provider~~ under the 2013 code

to provide Registered

Forms

Title 20, Chapter 4, Article 8, Section 1674: Certification of Providers and Rating Systems

1674(a)

4 signed copies of this application are included with this revised submittal from CHEERS, Inc.

1674(a)(1)

A complete copy of all rating procedures, manuals, handbooks, Rating System descriptions, and training materials.

The following training documentation is included as part of this application and due to size is available for download and review to the California Energy Commission at www.cheerstraining.com:

1. 2013 Training Curriculum (Non-Residential)

Please note the curriculum was filed as **CONFIDENTIAL** with the CEC Docket Unit. The Non-Residential Training Curricula was rebuilt to reflect the 2013 Code. The new curricula sufficiently includes all of the content to provide classroom and field training on the topics listed in sections 1673(a)(1) – 1673(a)(5).

1674(a)(2)

Detailed explanation of how the Rating System meets each requirement of Section 1672:

1672(a)

Not applicable for this submission

1672(b)(1)

Not applicable for this submission

1672(b)(2)

Not applicable for this submission

1672(b)(3)

For ratings of Non-Residential units to establish compliance with Title 24, Part 6, through field verification and diagnostic testing, data will be collected or specified by the Reference Appendices to Title 24, Part 6. A Rater who collects such data and performs such diagnostic tests shall be certified by CHEERS as a California Field Verification and Diagnostic Testing Rater.

1672(c) – 1672(k)

Not applicable for this submission

1672(l)

CHEERS agrees to provide training, proctored certification examinations, certification and oversight through the use of Quality Assurance (QA) inspections of CHEERS raters to ensure said raters are providing complete and accurate Field Verification and Diagnostic Testing as required by the 2013 Title 24, Part 6, Building Energy Efficiency Standards and Reference Appendices. See attached **Exhibit H** for QA Policies & Procedures.

1672(m)

CHEERS affirms that it will not knowingly: (1) provide untrue, inaccurate, or incomplete rating information; (2) report rating results that were not conducted in compliance with the HERS Regulations; nor (3) accept payment or other consideration in exchange for reporting a rating result that was not conducted and reported in compliance with the HERS Regulations. All raters certified by CHEERS will be required to agree to the same conditions and sign the CHEERS Rater and Registry Agreements. See attached **Exhibit G**.

1674(a)(3)

Detailed explanation of how the Rating System meets each requirement of Section 1673:

1673(a)(1)

Not applicable for this submission

1673(a)(2)

Not applicable for this submission

1673(a)(3)

Not applicable for this submission

1673(a)(4)

The newly developed 2013 curriculum provides specific training in Sections 1673(a)(1)(H) and (K) through (M) and general training in Sections 1673(a)(1)(A) to (G) and (P) in both a classroom and field setting. The curriculum, applies to training material for field verification and diagnostic testing for T-24 compliance of Non-Residential buildings. Please see www.cheerstraining.com for the submitted training curriculum.

1673(a)(5)

CHEERS' training includes thorough instruction in using the Provider's Rating system and database. The registry training videos and curriculum showing how to use the CHEERS registry are part of the CHEERS On Demand Learning Center, and are a requirement for obtaining a CHEERS certification. In addition, the same videos are available to the public for reference and use thru the CHEERS registry:

https://www.cheerstraining.com/training_videos

1673(a)(6)

CHEERS has qualified QA Reviewers on staff to sufficiently provide direct supervision of Rater applicants performing Field Verification (FV) and Diagnostic Testing (DT) per the requirements of 1673(a)(6). The rater training and testing will include at least one rating of a home that includes FV&DT under the supervision of a trainer or Quality Assurance (QA) reviewer before becoming an approved Rater.

1673(a)(7)

New written and practical examinations have been developed to match the new training curriculum, at www.cheerstraining.com. These newly developed tests comply with the requirements of section 1673(a)(7) and 1673(a)(8). CHEERS will not conduct 2013 HERS Rater certification testing until CHEERS receives CEC approval/certification to do so. CHEERS will require Energy Commission approved written and practical testing of Rater competence in the applicable subject areas from 1673(a)(1). CHEERS will retain all written and practical test results for five years from the dates the tests were taken. A detailed explanation of CHEERS' testing protocols and procedures can be found in **Exhibit J**. Please note **Exhibit J** was filed as **CONFIDENTIAL** with the CEC Docket Unit.

1673(a)(8)

Individuals certified as HERS Raters under a different provider, holding a HERS license type that CHEERS is approved for, are allowed to take the CHEERS challenge exam. A detailed explanation of CHEERS' challenge exam can be found in **Exhibit J (CONFIDENTIAL)**.

1673(a)(9)

CHEERS assets do not include the Building Performance Contractor (BPC) training curriculum or certification examinations. CHEERS intends to obtain approval from the Energy Commission to oversee HERS Raters conducting Whole-House HERS ratings and audits prior to getting approval for overseeing a BPC program.

1673(b)

Current CHEERS Raters certified to the 2013 Standards will be required to take an update class and a proctored 2013 recertification exam with a required pass rate of 80% as explained in **Exhibit J (CONFIDENTIAL)**. New CHEERS Raters will take the CHEERS new Rater training program, which includes classroom and field-training sessions, in addition to taking proctored written and practical examinations with a required pass rate of 80% as explained in **Exhibit J (CONFIDENTIAL)**. If a Rater is successful in passing the required examinations, then he/she will electronically sign a new registry and rater agreement with CHEERS, thru the CHEERS online registration portal:

<http://www.cheers.org/register.html>

The CHEERS Registry and Rater Agreement complies with sections 1673(b)(1) – 1673(b)(4) by specifically requiring raters to:

- Provide energy rating and field verification services in compliance with the HERS regulations
- Provide true, accurate, and complete data collection, analysis, ratings, and field verification and diagnostic testing.

- Not accept payment or consideration in exchange for reporting data gathered for a rating, analytical results used for a rating, or a rating result that was not in fact conducted and reported in compliance with these regulations.
- Comply with the conflict of interest requirements as specified in Section 1673(j).

Copies of both the registry and rater agreement are available to the Raters for record after they sign. If a current signed agreement for the Rater is on file, a new one will be required because there is no expiration date, and there are no changes between the 2008 and 2013 agreement. Please see attached **Exhibit G** for copies of the CHEERS Registry and Rater Agreement provided to the Raters. A detailed explanation of CHEERS' certification process and requirements are found in **Exhibit J (CONFIDENTIAL)**.

1673(c)

Not applicable for this submission.

1673(d)

CHEERS meets all the applicable requirements of sections 1673(a) and 1673(b) as stated above, and certifies that a CHEERS Rater will meet the same requirements of 1673(a) and will enter into an agreement with CHEERS that meets the requirements of 1673(b). Training curriculum **(CONFIDENTIAL)** has been made available for download and review on www.cheerstraining.com to the Energy Commission as required by section 1673(a) and copies of CHEERS Rater agreements have been submitted to the Energy Commission as required by section 1673(b) as **Exhibit G**. As also indicated above, this application submission is not applicable to the Building Performance Contractor Registry. CHEERS will maintain a registry of all Raters, persons, or firms that CHEERS has certified to the Energy Commission. Upon written request from the CEC, CHEERS will provide an electronic or printed copy of the registry to the Energy Commission.

1673(e)

The database, application web interface, and reporting functionality used by CHEERS will adequately address all of the data maintenance and retention requirements of 1673(e). Per these requirements, data will be retained for a minimum of ten (10) years.

1673(f)

The database, application web interface, and reporting functionality used by CHEERS will adequately address all of the data retention requirements of 1673(e)(2) for a minimum of 10 percent random sample of homes actually field verified and diagnostically tested annually, or 500 such homes annually, whichever is less. CHEERS will provide to the Energy Commission the FV&DT evaluation data in electronic format on an annual basis and the data will be organized by climate zones.

1673(g)

CHEERS will submit to the Energy Commission information recorded pursuant to section 1673(e) and will provide the Energy Commission with “ongoing access” to the CHEERS registry and database.

1673(h)

CHEERS will retain for at least five years after the last date they are used, at least one copy of all materials used to train Raters.

1673(i)

Please see attached **Exhibit H** for a copy of the CHEERS Quality Assurance Program that includes guidelines for how CHEERS will manage its Complaint Response System.

1673(i)(1)

CHEERS has a designated Quality Assurance Manager to oversee the quality assurance project. The following is a listing of our current QA staff:

Alex Vantaggiato (QA Manager) – Resume attached (**Exhibit C**)

Rob Starr (QA Supervisor) – Resume attached (**Exhibit D**)

Andrew Negd (QA Reviewer) – Resume attached (**Exhibit E**)

Geoff Cox (QA Reviewer) – Resume attached (**Exhibit F**)

1673(i)(2)

As documented in the CHEERS Quality Assurance Program documentation (**Exhibit H**), CHEERS shall review and approve for accuracy and completeness the rating documentation for at least the first five homes which a Rater performs after completion of the requirements specified in Section 1673(a)(1) through Section 1673(a)(6), not including those homes rated under the Provider’s direct supervision as specified in Section 1673(a)(6).

1673(i)(3)(A)

As documented in the CHEERS Quality Assurance Program documentation (**Exhibit H**), for each Rater, CHEERS shall annually evaluate the greater of one rating, randomly selected or one percent of the Rater’s past 12 month’s total number of ratings (rounded up to the nearest whole number) for each measure tested by the Rater. For Raters that have had at least one quality assurance evaluation for any measure in the past 12 months, this evaluation shall only be required to be done for those measures that have been tested by the Rater at least 10 times in the past 18 months. CHEERS shall independently repeat the rating to check whether the Rater accurately completed the rating, and determine whether information was completely collected and reported. CHEERS also shall conduct the same check on one percent of all ratings conducted through the Provider, selected randomly from the Provider’s entire pool of ratings on an ongoing basis.

1673(i)(3)(B)

As documented in the CHEERS Quality Assurance Program documentation (**Exhibit H**), raters shall not be informed by CHEERS that a building or installation will be QA’d until after the Raters have conducted the original rating, and will not be notified before the QA is taking place.

1673(i)(3)(C)

As documented in the CHEERS Quality Assurance Program documentation (**Exhibit H**), the evaluations by CHEERS' Quality Assurance personnel shall be documented in the CHEERS' database and include the results of all testing performed by the CHEERS' Quality Assurance personnel. If CHEERS' Quality Assurance personnel determine that the Rater's results did not meet the criteria for truth, accuracy, or completeness of these regulations, then CHEERS shall report the quality assurance failure on its registry for a period of six months. In addition, the CHEERS' Quality Assurance personnel shall evaluate two additional ratings of the failed measure by the same Rater performed in the past 12 months. If a second deficiency is found, then the Rater shall have two percent (rounded up to the nearest whole number) of his ratings of the failed measure evaluated for the next 12 months by all Providers. CHEERS' Quality Assurance Manager shall notify other Providers in writing or by electronic mail of Raters that are required to have additional quality assurance verification as required by this provision.

1673(i)(4)(A)

As documented in the CHEERS Quality Assurance Program documentation (**Exhibit H**), for installations passed as part of a sampling group but not specifically field verified or rated by a Rater, the greater of one installation or one percent of all unrated or untested buildings or installations in groups sampled by the Rater shall be independently rated or field verified by the CHEERS's Quality Assurance personnel.

1673(i)(4)(B)

As documented in the CHEERS Quality Assurance Program documentation (**Exhibit H**), the quality assurance verifications mentioned in 1673(i)(4)(A) shall be blind tests in that CHEERS shall not inform the installer, builder, or the Rater that the specific building or installation will be verified.

1673(i)(4)(C)

As documented in the CHEERS Quality Assurance Program documentation (**Exhibit H**), the results of the quality assurance verifications mentioned in 1673(i)(4)(A) shall be entered into the CHEERS's database. CHEERS shall summarize the results of these quality assurance verifications, submit them to the Energy Commission on an annual basis, and provide the Energy Commission with ongoing access to the database and associated summaries of the results of these verifications.

1673(i)(5)

CHEERS has a system for receiving complaints, thru its email system or the anonymous complaint report system found on its website. CHEERS will respond to and resolve complaints related to ratings, field verification, diagnostic testing services, and reports. CHEERS shall ensure that Raters inform purchasers and recipients of ratings and field verifications and diagnostic testing services about the complaint system. CHEERS shall retain all records of complaints received and responses to complaints for five years after the date the complaint is presented to CHEERS and annually report a summary of all complaints and action taken to the Executive Director of the Energy Commission. More detailed information on the CHEERS customer service, support program, and complaint response

system is available in attached **Exhibit I**. Please note **Exhibit I** was filed as **CONFIDENTIAL** with the CEC Docket Unit.

1673(j)

Explanation of how ConSol Program Management (like Fresno) and Ratings (Compliance or Whole House/EEM) will be handled to avoid a conflict of interest, in conjunction with Section 1673(j).

Please see **Attachment 4** for a signed copy of the Conditions of Certification.

1673(k)

Not applicable for this submission

1674(a)(4)

The name, address, and telephone number of the Provider and a statement of where its principal place of business is and where and upon who service of legal process can be made.

Business physical location and mailing address:

CHEERS, Inc.

5757 Pacific Ave, Ste 220

Stockton, CA 95207

1-800-424-3377

Service of legal process to:

Michael Hodgson

5757 Pacific Ave, Ste 220

Stockton, CA 95207

1-800-424-3377

1674(a)(5)

If the Provider is a corporation, a copy of the Articles of Incorporation and the current by-laws.

See attached **Exhibits A and B**.

1674(a)(6)

If the Provider is a partnership, the names, addresses, telephone numbers, and partnership status (for example, general, managing) of all the partners, and a copy of the current partnership agreement.

Provider is not a partnership

1674(a)(7)

The names, addresses, telephone numbers, and business relationships of all the Provider's owners, parents, subsidiaries, and affiliates.

CHEERS

Michael G. Hodgson – 100% ownership

5843 E. Ashley Lane

Stockton, CA 95212

800-424-3377

Other Companies owned by Provider's owner:

ConSol
Michael G. Hodgson – 100% ownership
5757 Pacific Ave, Ste 220
Stockton, CA 95207
Mike Hodgson (209) 473-5008

CHEERS has no parent, subsidiary, affiliate, or any other business relationship with ConSol, other than being owned by the same owner. ConSol and/or CHEERS have no other parent, subsidiary, affiliate, or any other business relationship with any other entities.

1674(a)(8)

A statement that ratings are accurate, consistent, and uniform, utility bill estimates are reasonable and recommendations on cost-effective energy efficiency improvement measures are reliable.

"CHEERS Inc. states that ratings are accurate, consistent, and uniform, and certifies the reliability and accuracy of the Data Registry when used for registration of Compliance Documents in accordance with the requirements of Standards Section 10-103(a), Reference Joint Appendix JA7"



Jay Lenzmeier
Executive Director
CHEERS Inc.

1674(a)(9)

A statement that the Provider understands and will not knowingly fail to comply with the requirements of these regulations.

"CHEERS Inc. understands and will not knowingly fail to comply with the requirements of these regulations (Title 20, Sections 1670 through 1675)"



Jay Lenzmeier
Executive Director
CHEERS Inc.

1674(a)(10)

A statement under penalty of perjury that all statements in the application are true, provided in the form specified by Section 2015.5 of the Code of Civil Procedure.

"I certify under penalty of perjury that all statements in the application are true, provided in the form specified by Section 2015.5 of the Code of Civil Procedure."

6/7/17 Stockton, CA

Date & Place

M. G. Hodgson

Michael G. Hodgson
Principal
CHEERS Inc.

EXHIBITS

Exhibit	Description
A	CHEERS Articles of Incorporation
B	Certificate of Secretary
C	CHEERS QA Manager Resume (Alex Vantaggiato)
D	CHEERS QA Supervisor Resume (Rob Starr)
E	CHEERS QA Reviewer Resume (Andrew Negd)
F	CHEERS QA Reviewer Resume (Geoff Cox)
G	CHEERS Registry Agreement and Rater Agreement
H	CHEERS Quality Assurance Process
I	CHEERS Customer Service & Support Program (CONFIDENTIAL)
J	CHEERS Training and Certification Process (CONFIDENTIAL)
Attachment 4	Conditions of Certification

3464552

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

**ARTICLES OF INCORPORATION
OF
CONSOL HOME ENERGY EFFICIENCY RATING SERVICES, INC.**

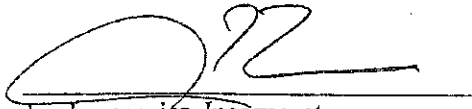
APR 26 2012

1. The name of this corporation is: ConSol Home Energy Efficiency Rating Services, Inc.
2. The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.
3. The name and address in the State of California of this corporation's initial agent for service of process is:

James K. Dyer, Jr.
3425 Brookside Road, Suite A
Stockton, CA 95219

4. This corporation is authorized to issue only one class of shares of stock, and the total number of shares which this corporation is authorized to issue is: one million (1,000,000) shares of common stock at no par value per share.
5. The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.
6. This corporation is authorized, whether by bylaw, agreement or otherwise, to indemnify directors, officers, employees and other agents of the corporation for breach of duty to the corporation and its shareholders, in excess of the limits expressly permitted by Section 317 of the Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the Corporations Code.
7. Any repeal or modification of the foregoing provisions of Articles 5 and 6 shall not adversely affect any right of indemnification of any agent or limitation of liability of any director of this corporation relating to acts or omissions occurring prior to such repeal or modification.

Dated: February 7, 2012


Jay Lenzmeier, Incorporator



I hereby certify that the foregoing
transcript of _____ page(s)
is a full, true and correct copy of the
original record in the custody of the
California Secretary of State's office.

APR 27 2012

Date: _____



DEBRA BOWEN, Secretary of State

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of ConSol Home Energy Efficiency Rating Services, Inc., a California corporation.
2. That the foregoing Bylaws constitute the Bylaws of the corporation as ratified by the directors of this corporation on May 16, 2012.

Dated: May 16, 2012.



Jay Lenzmeier, Secretary

BYLAWS
OF
CONSOL HOME ENERGY EFFICIENCY RATING SERVICES, INC.,
a California Corporation

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ARTICLE I CORPORATE OFFICES

Section 1. PRINCIPAL OFFICE. The board of directors shall fix the location of the principal executive office of the corporation at any place within or outside the State of California (the “**principal executive office**”). The board of directors may change the principle executive office from one location to another. If the principal executive office is located outside the State of California and the corporation has one or more business offices inside the State of California, then the board of directors shall fix and designate a principal business office in the State of California.

Section 2. OTHER OFFICES. The board of directors may at any time establish branch or subordinate offices at any place or places where the corporation is qualified to do business.

ARTICLE II MEETINGS OF SHAREHOLDERS

Section 1. PLACE OF MEETINGS. Meetings of shareholders shall be held at any place within or outside the State of California designated by the board of directors. In the absence of any such designation, shareholders’ meetings shall be held at the principal executive office.

Section 2. ANNUAL MEETING. The annual meeting of shareholders shall be held each year on a date and at a time designated by the board of directors. However, if this day falls on a legal holiday, then the meeting shall be held at the same time and place on the next succeeding full business day. At the meeting, directors shall be elected, and any other proper business may be transacted.

Section 3. SPECIAL MEETING. A special meeting of the shareholders may be called at any time by the board of directors, the chair of the board, the president, or by one or more shareholders holding shares in the aggregate entitled to cast not less than ten percent (10%) of the votes at that meeting.

If a special meeting is called by any person or persons other than the board of directors, the chair of the board or the president, then the request shall be in writing, specifying the time of the meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or electronic transmission to the corporation, attention of the chair of the board, the president, any vice president, or the secretary of the corporation. The officer receiving the request shall cause notice to be promptly given to the shareholders entitled to vote, in accordance with the provisions of Sections 5 and 6 of this Article II, that a meeting will be held at the time requested by the person or persons calling the meeting, so long as that time is not less than thirty-five (35) nor more than sixty (60) days after receipt of the request. If the notice is not given within twenty (20) days after receipt of the request, then the person or persons requesting the meeting may give the notice. Nothing contained in this paragraph shall be construed as limiting, fixing or affecting the time when a meeting of shareholders called by action of the board of directors may be held.

Section 4. MEETING BY ELECTRONIC TRANSMISSION. A meeting of the shareholders may be conducted, in whole or in part, by electronic transmission by and to the corporation or by electronic video screen communication provided: (1) the corporation implements reasonable measures to provide shareholders an opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings, and (2) if any shareholder votes or takes other action at the meeting by means of electronic transmission to the corporation or electronic video screen communication, a record of that vote or action is maintained by the corporation. If such electronic meetings are authorized, a shareholder that attends via electronic transmission by and to the corporation or electronic video screen communication shall be deemed present as if that shareholder had attended the meeting in person or by proxy. Unless all shareholders otherwise consent, any request by a corporation to a shareholder for consent to conduct a meeting of shareholders by electronic transmission by and to the corporation, shall include a notice that the meeting shall also be held at a physical location in accordance with Section 1 of this Article II. Nothing in this Article II, Section 4 shall limit or restrict a shareholder's right to notice of a meeting as provided in this Article II.

Section 5. NOTICE OF SHAREHOLDERS' MEETING. All notices of meetings of shareholders shall be sent or otherwise given in accordance with Section 6 of this Article II not less than ten (10) (or, if sent by third-class mail pursuant to Section 6 of this Article II, thirty (30)) nor more than sixty (60) days before the date of the meeting. The notice shall specify the place, date and hour of the meeting and either (i) in the case of a special meeting, the general nature of the business to be transacted (no business other than that specified in the notice may be transacted) or (ii) in the case of the annual meeting, those matters which the board of directors, at the time of giving the notice, intends to present for action by the shareholders (but, subject to the provisions of the next paragraph of this Section 5, any proper matter may be presented at the meeting for such action). The notice of any meeting at which one or more directors are to be elected shall include the name of the nominee or nominees whom, at the time of the notice, the board intends to present for election.

If action is proposed to be taken at any meeting for approval of (i) a contract or transaction in which a director has a direct or indirect financial interest, (ii) an amendment of the articles of incorporation, (iii) a reorganization of the corporation, (iv) a voluntary dissolution of the corporation, or (v) a distribution in dissolution other than in accordance with the rights of outstanding preferred shares, then the notice shall also state the general nature of that proposal.

Section 6. MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE. Written notice of any meeting of shareholders shall be given either (i) personally, (ii) by first-class mail, (iii) by electronic transmission by the corporation, (iv) by third-class mail but only if the corporation has outstanding shares held of record by five hundred (500) or more persons (determined as provided in section 605 of the Corporations Code of California (the "Code")) on the record date for the shareholders' meeting or (v) by telegraphic or other written communication. Notices not personally delivered shall be sent charges prepaid and shall be addressed to the shareholder at the address of that shareholder appearing on the books of the corporation or given by the shareholder to the corporation for the purpose of notice. If no such address appears on the corporation's books or is given, notice shall be deemed to have been given if sent to that shareholder by mail or telegraphic or other written communication to the

corporation's principal executive office, or if published at least once in a newspaper of general circulation in the county where that office is located. Notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by electronic transmission by the corporation or by other means of written communication.

If any notice not sent by electronic transmission by the corporation addressed to a shareholder at the address of that shareholder appearing on the books of the corporation is returned to the corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice to the shareholder at that address, then all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available to the shareholder on written demand of the shareholder at the principal executive office for a period of one (1) year from the date of the giving of the notice.

If the corporation is unable to deliver two consecutive notices to the shareholder by electronic transmission or the inability to so deliver a notice to the shareholder becomes known to the secretary, any assistant secretary, the transfer agent or any other person responsible for giving of the notice, then that shareholder shall be deemed to have revoked consent to the use of that means of transmission for communications.

An affidavit of the mailing or other means of giving any notice of any shareholders' meeting, executed by the secretary, assistant secretary or any transfer agent of the corporation giving the notice, shall be prima facie evidence of the giving of the notice.

Section 7. QUORUM. A majority of the shares entitled to vote, represented in person, by proxy or by authorized electronic transmission, shall constitute a quorum at a meeting of shareholders. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on any matter shall be the act of the shareholders.

The shareholders present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum, or if required by the Code or the articles of incorporation, the vote of a greater number or voting by classes.

Section 8. ADJOURNED MEETING; NOTICE. Any shareholders' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of the shares represented at that meeting, either in person or by proxy. In the absence of a quorum no other business may be transacted at that meeting, except as provided in Section 7 of this Article II.

When any meeting of shareholders, either annual or special, is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place are announced at the meeting at which the adjournment is taken. However, if a new record date for the adjourned meeting is fixed, or if the adjournment is for more than forty-five (45) days from the date set for the original meeting, then notice of the adjourned meeting shall be given. Notice of any such adjourned meeting shall be given to each shareholder of record entitled to vote at the adjourned meeting in accordance with the provisions of Sections 5 and 6 of this Article II. At

any adjourned meeting the corporation may transact any business which might have been transacted at the original meeting.

Section 9. VOTING. The shareholders entitled to vote at any meeting of shareholders shall be determined in accordance with the provisions of Section 12 of this Article II, subject to the provisions of sections 702 through 704 of the Code (relating to voting shares held by a fiduciary, in the name of a corporation or in joint ownership).

The shareholders' vote may be by voice or ballot; provided, however, that any election of directors must be by ballot if demanded by any shareholder at the meeting and before the voting has begun. Should a ballot vote be taken, an electronic transmission to the corporation may serve as the ballot of any shareholder participating by electronic transmission.

Except as provided in the last paragraph of this Section 9, or as may be otherwise provided in the corporation's articles of incorporation, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote of the shareholders. Any shareholder entitled to vote on any matter may vote part of its shares in favor of the proposal and refrain from voting the remaining shares or, except when the matter is the election of the directors, may vote such remaining shares against the proposal; but, if the shareholder fails to specify the number of shares which the shareholder is voting affirmatively, it will be conclusively presumed that the shareholder's approving vote is with respect to all shares which the shareholder is entitled to vote.

At a shareholders' meeting at which directors are to be elected, a shareholder shall be entitled to cumulate votes, in accordance with section 708 of the Code, if the candidates' names have been placed in nomination prior to commencement of the voting and the shareholder has given notice prior to commencement of the voting of the shareholder's intention to cumulate votes. If any shareholder has given this notice, then every shareholder entitled to vote may cumulate votes for candidates in nomination either (i) by giving one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which that shareholder's shares are normally entitled or (ii) by distributing the shareholder's votes on the same principle among any or all of the candidates, as the shareholder thinks fit. The candidates receiving the highest number of votes, up to the number of directors to be elected, shall be elected; votes against any candidate and votes withheld shall have no legal effect.

Section 10. VALIDATION OF MEETINGS; WAIVER OF NOTICE; CONSENT. The transactions of any meeting of shareholders, either annual or special, however called and noticed, and wherever held, shall be as valid as if they had been taken at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each person entitled to vote, who was not present in person or by proxy, signs a written waiver of notice or a consent to the holding of the meeting, or an approval of the minutes thereof. The consent, approval or waiver of notice need not specify either the business to be transacted or the purpose of any annual or special meeting of shareholders, except that if action is taken or proposed to be taken for approval of any of the matters specified in the second paragraph of Section 5 of this Article II, the waiver of notice or consent or approval shall state the general nature of the proposal. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Attendance by a person at a meeting shall also constitute a waiver of notice of that meeting, except when the person objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Attendance at a meeting is not a waiver of any right to object to the consideration of matters required by the Code to be included in the notice of the meeting, but not so included, if that objection is expressly made at the meeting.

Section 11. SHAREHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING. Any action which may be taken at any annual or special meeting of shareholders may be taken without a meeting and without prior notice if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all shares entitled to vote on that action were present and voted.

In the case of an election of directors, such a consent shall be effective only if signed by the holders of all outstanding shares entitled to vote for the election of directors. However, a director may be elected at any time to fill a vacancy on the board of directors, provided that it was not created by removal of a director and that it has not been filled by the directors, by the written consent of the holders of a majority of the outstanding shares entitled to vote for the election of directors.

All such consents shall be maintained in the corporate records. Any shareholder giving a written consent, any transferee of the shares, any personal representative of the shareholder or any of their respective proxy holders, may revoke the consent by a writing received by the secretary of the corporation before written consents of the number of shares required to authorize the proposed action have been filed with the secretary.

If the consents of all shareholders entitled to vote have not been solicited in writing and if the unanimous written consent of all such shareholders has not been received, then the secretary shall give prompt notice of the corporate action approved by the shareholders without a meeting. This notice shall be given in the manner specified in Section 6 of this Article II. In the case of approval of (i) a contract or transaction in which a director has a direct or indirect financial interest, (ii) indemnification of a corporate "agent," (iii) a reorganization of the corporation or (iv) a distribution in dissolution other than in accordance with the rights of outstanding preferred shares, the notice shall be given at least ten (10) days before the consummation of any action authorized by that approval.

Section 12. RECORD DATE FOR SHAREHOLDER NOTICE; VOTING; GIVING CONSENTS. For purposes of determining the shareholders entitled to notice of, or to vote at, any meeting or entitled to give consent to corporate action without a meeting, the board of directors may fix, in advance, a record date, which shall not be more than sixty (60) days nor less than ten (10) days before the date of any such meeting nor more than sixty (60) days before any such action without a meeting, and in this event only shareholders of record on the date so fixed are entitled to notice and to vote or to give consents, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date, except as otherwise provided in the Code, the articles of incorporation or by agreement.

If the board of directors does not so fix a record date:

(a) the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held; and

(b) the record date for determining shareholders entitled to give consent to corporate action in writing without a meeting, (i) shall be the day on which the first written consent is given when no prior action by the board has been taken, or (ii) shall be at the close of business on the day on which the board adopts the resolution relating to that action, or the sixtieth (60th) day before the date of such other action, whichever is later, when prior action by the board has been taken.

The record date for any other purpose shall be as provided in Article VIII of these bylaws.

Section 13. PROXIES. Every person entitled to vote for directors, or on any other matter, shall have the right to do so either in person or by one or more agents authorized by a written proxy signed by the person and filed with the secretary of the corporation. A proxy shall be deemed signed if the shareholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the shareholder or the shareholder's attorney-in-fact. A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless (i) the person who executed the proxy (1) revokes it prior to the time of voting by delivering a writing to the corporation stating that the proxy is revoked, (2) executes a subsequent proxy and presents it to the meeting or (3) votes in person at the meeting, or (ii) the corporation receives written notice of the death or incapacity of the maker of that proxy before the vote pursuant to that proxy is counted; provided, however, that no proxy shall be valid after the expiration of eleven (11) months from the date of the proxy, unless otherwise provided in the proxy. The dates contained on the forms of proxy presumptively determine the order of execution, regardless of the postmark dates on the envelopes in which they are mailed. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of sections 705(e) and (f) of the Code.

Every form of proxy or written consent which provides an opportunity to specify approval or disapproval with respect to any proposal shall also contain an appropriate space marked "abstain" whereby a shareholder may indicate a desire to abstain from voting his or her shares on the proposal. A proxy marked "abstain" by the shareholder with respect to a particular proposal shall not be voted either for or against such proposal. In any election of directors, any form of proxy in which the directors to be voted upon are named therein as candidates and which is marked by a shareholder "withhold" or otherwise marked in a manner indicating that the authority to vote for the election of directors is withheld shall not be voted either for or against the election of a director. Failure to comply with this paragraph shall not invalidate any corporate action taken, but may be the basis for challenging any proxy at a meeting.

Section 14. INSPECTORS OF ELECTION. Before any meeting of shareholders, the board of directors may appoint an inspector or inspectors of election to act at the meeting or

its adjournment. If no inspector of election is so appointed, then the chair of the meeting may, and on the request of any shareholder or a shareholder's proxy shall, appoint inspectors of election to act at the meeting. The number of inspectors shall be either one (1) or three (3). If inspectors are appointed at a meeting pursuant to the request of one or more shareholders or proxies, then the holders of a majority of shares or their proxies present at the meeting shall determine whether one (1) or three (3) inspectors are to be appointed. If there are three (3) inspectors of election the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. If any person appointed as an inspector fails to appear or fails or refuses to act, the chair of the meeting may, and upon the request of any shareholder or a shareholder's proxy shall, appoint a person to replace such inspector.

These inspectors shall:

- (a) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, and the authenticity, validity and effect of proxies;
- (b) receive votes, ballots or consents;
- (c) hear and determine all challenges and questions in any way arising in connection with the right to vote;
- (d) count and tabulate all votes or consents;
- (e) determine when the polls shall close;
- (f) determine the result; and
- (g) do any other acts that may be proper to conduct the election or vote with fairness to all shareholders.

ARTICLE III DIRECTORS

Section 1. POWERS. Subject to the provisions of the Code and any limitations in the articles of incorporation and these bylaws relating to action required to be approved by the shareholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors.

Without prejudice to these general powers, and subject to the same limitations, the directors shall have the power to:

- (a) Select and remove all officers, agents, and employees of the corporation; prescribe any powers and duties for them that are consistent with law, with the articles of incorporation, and with these bylaws; fix their compensation; and require from them security for faithful service;

(b) Change the principal executive office or the principal business office in the State of California from one location to another; cause the corporation to be qualified to do business in any other state, territory, dependency, or country and conduct business within or without the State of California; and designate any place within or without the State of California for the holding of any shareholders' meeting, or meetings, including annual meetings;

(c) Adopt, make, and use a corporate seal; prescribe the forms of certificates of stock; and alter the form of the seal and certificates;

(d) Authorize the issuance of shares of stock of the corporation on any lawful terms, in consideration of money paid, labor done, services actually rendered, debts or securities canceled, or tangible or intangible property actually received; provided, the board of directors shall state by resolution its determination of the fair value to the corporation in monetary terms of any consideration other than money for which shares are issued; and

(e) Borrow money and incur indebtedness on behalf of the corporation, and cause to be executed and delivered for the corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt and securities.

Section 2. NUMBER OF DIRECTORS. The authorized number of directors of the corporation shall be one (1) until changed by a resolution amending this Section 2 of Article III, duly adopted by the board of directors or by the shareholders. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

Notwithstanding the foregoing, if there is only one shareholder at any time, the number of directors may be one or two; and if there are only two shareholders at any time, the number of directors may be two.

Section 3. ELECTION AND TERM OF OFFICE OF DIRECTORS. Directors shall be elected at each annual meeting of the shareholders to hold office until the next annual meeting; however, if any annual meeting is not held or the directors are not elected at any annual meeting, they may be elected at any special shareholders' meeting held for that purpose. Each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.

Section 4. RESIGNATION AND VACANCIES. Any director may resign effective on giving written notice to the chair of the board, the president, the secretary or the board of directors, unless the notice specifies a later time for that resignation to become effective. If the resignation of a director is effective at a future time, the board of directors may elect a successor to take office when the resignation becomes effective.

Vacancies in the board of directors may be filled by a majority of the remaining directors, even if less than a quorum, or by a sole remaining director; however, a vacancy created by the removal of a director by the vote or written consent of the shareholders or by court order may be filled only by the affirmative vote of a majority of the shares represented and voting at a duly held meeting at which a quorum is present (which shares voting affirmatively also constitute a majority of the required quorum), or by the unanimous written consent of all shares entitled to vote thereon. Each director so elected shall hold office until the next annual meeting of the shareholders and until a successor has been elected and qualified.

A vacancy or vacancies in the board of directors shall be deemed to exist (i) in the event of death, resignation or removal of any director, (ii) if the board of directors by resolution declares vacant the office of a director who has been declared of unsound mind by an order of court or convicted of a felony, (iii) if the authorized number of directors is increased or (iv) if the shareholders fail, at any meeting of shareholders at which any director or directors are elected, to elect the number of directors to be voted for at that meeting.

If, after the filling of any vacancy by the directors, the directors then in office who have been elected by the shareholders shall constitute less than a majority of the directors then in office, any holder or holders of an aggregate of five percent (5%) or more of the total number of shares at the time outstanding having the right to vote for such directors may call a special meeting of shareholders to be held to elect the entire board of directors. The term of office of any director shall terminate upon such election of a successor.

The shareholders may elect a director or directors at any time to fill any vacancy or vacancies not filled by the directors. Any such election done by written consent, other than to fill a vacancy created by removal (which requires the unanimous consent of all shares entitled to vote for the election of directors), shall require the consent of the holders of a majority of the outstanding shares entitled to vote thereon.

Section 5. PLACE OF MEETINGS; MEETINGS BY TELEPHONE AND ELECTRONIC MEETINGS. Regular meetings of the board of directors may be held at any place within or outside the State of California that has been designated from time to time by resolution of the board. In the absence of such designation, regular meetings shall be held at the principal executive office. Special meetings of the board may be held at any place within or outside the State of California that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, at the principal executive office.

Any meeting, regular or special, may be held by conference telephone, electronic video screen communication, or electronic transmission by and to the corporation, and all directors shall be deemed to be present in person at the meeting so long as each director can hear each other in the case of meetings by conference telephone or electronic video screen

communication, or can communicate with all other members concurrently in the case of meetings by electronic transmission by and to the corporation.

Section 6. REGULAR MEETINGS. Regular meetings of the board of directors may be held without notice if the times of such meetings are fixed by the board of directors.

Section 7. SPECIAL MEETINGS; NOTICE. Special meetings of the board of directors for any purpose or purposes may be called at any time by the chair or co-chairs of the board, the president, any vice president, the chief financial officer, the secretary or any two directors.

Notice of the time and place of special meetings shall be delivered personally, by telephone, by electronic transmission by the corporation, or by first-class mail, charges prepaid, addressed to each director at that director's address as it is shown on the records of the corporation. If the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. If the notice is delivered personally, by telephone or by electronic transmission by the corporation, it shall be delivered at least forty-eight (48) hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose or the place of the meeting, if the meeting is to be held at the principal executive office.

Section 8. QUORUM. A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 10 of this Article III. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the board of directors, subject to the provisions of section 310 of the Code (as to approval of contracts or transactions in which a director has a direct or indirect material financial interest), section 311 of the Code (as to appointment of committees), section 317(e) of the Code (as to indemnification of directors), the articles of incorporation and other applicable law.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 9. WAIVER OF NOTICE. Notice of a meeting need not be given to any director (i) who provides a waiver of notice, a consent to holding the meeting or an approval of the minutes thereof or (ii) who attends the meeting without protesting, either prior thereto or at its commencement, the lack of notice to such directors. All such waivers, consents and approvals shall be filed with the corporate records or made part of the minutes of the meeting. A waiver of notice need not specify the purpose of any regular or special meeting of the board of directors.

Section 10. ADJOURNMENT. A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

Section 11. NOTICE OF ADJOURNMENT. Notice of the time and place of holding an adjourned meeting need not be given unless the meeting is adjourned for more than twenty-four (24) hours. If the meeting is adjourned for more than twenty-four (24) hours, then notice of the time and place of the adjourned meeting shall be given, before the adjourned meeting takes place, to the directors who were not present at the time of the adjournment.

Section 12. BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING. Any action required or permitted to be taken by the board of directors may be taken without a meeting, provided that all members of the board individually or collectively consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the board of directors. Such written consent and any counterparts thereof shall be filed with the minutes of the proceedings of the board.

Section 13. FEES AND COMPENSATION OF DIRECTORS. Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement of expenses as may be fixed or determined by resolution of the board of directors. This Section 13 shall not be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation for those services.

ARTICLE IV COMMITTEES

Section 1. COMMITTEES OF DIRECTORS. The board of directors may, by resolution adopted by a majority of the authorized number of directors, designate one (1) or more committees, each consisting of two or more directors, to serve at the pleasure of the board. The board may designate one (1) or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. Any committee, to the extent provided in the resolution of the board, shall have all the authority of the board, except with respect to:

- (a) the approval of any action which, under the Code, also requires shareholders' approval or approval of the outstanding shares;
- (b) the filling of vacancies on the board of directors or in any committee;
- (c) the fixing of compensation of the directors for serving on the board or on any committee;
- (d) the amendment or repeal of bylaws or the adoption of new bylaws;
- (e) the amendment or repeal of any resolution of the board of directors which by its express terms is not so amendable or repealable;
- (f) a distribution to the shareholders of the corporation, except at a rate or in a periodic amount or within a price range determined by the board of directors; or

(g) the appointment of any other committees of the board of directors or the members of these committees.

Section 2. MEETINGS AND ACTION OF COMMITTEES. Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Article III of these bylaws, Section 5 (place of meetings), 6 (regular meetings), 7 (special meetings and notice), 8 (quorum), 9 (waiver of notice), 10 (adjournment), 11 (notice of adjournment), and 12 (action without meeting), with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members; provided, however, that the time of regular meetings of committees may be determined either by resolution of the board of directors or by resolution of the committee, that special meetings of committees may also be called by resolution of the board of directors, and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the governance of any committee not inconsistent with the provisions of these bylaws.

ARTICLE V OFFICERS

Section 1. OFFICERS. The officers of the corporation shall be a president, a secretary, and a chief financial officer. The corporation may also have, at the discretion of the board of directors, a chair of the board, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article V. Any number of offices may be held by the same person.

Section 2. ELECTION OF OFFICERS. The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this Article V, shall be chosen by the board of directors and each shall serve at the pleasure of the board of directors, subject to the rights, if any, of an officer under any contract of employment.

Section 3. SUBORDINATE OFFICERS. The board of directors may appoint, or may authorize the president to appoint, such other officers as the business of the corporation may require, each of whom shall hold office for the period, have the authority, and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine.

Section 4. REMOVAL AND RESIGNATION OF OFFICERS. Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the board of directors, at any regular or special meeting of the board or, except in case of an officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the

resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

Section 5. VACANCIES IN OFFICES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these bylaws for regular appointments to that office.

Section 6. CHAIR OF THE BOARD. The chair of the board, if such an officer be elected, shall, if present, preside at meetings of the board of directors and exercise and perform such other powers and duties as may from time to time be assigned to the chair by the board of directors or as may be prescribed by these bylaws. If there is no president, the chair of the board shall in addition be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 7 of this Article V.

Section 7. PRESIDENT. Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board, if there be such an officer, the president shall, subject to the control of the board of directors, have general supervision, direction and control of the business and the officers of the corporation. The president shall preside at all meetings of the shareholders and, in the absence or nonexistence of the chair of the board, at all meetings of the board of directors. The president shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the board of directors or these bylaws.

Section 8. VICE PRESIDENTS. In the absence or disability of the president, the vice presidents, if any, in order of their rank as fixed by the board of directors or, if not ranked, a vice president designated by the board of directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the board of directors, these bylaws, the president, or the chair of the board.

Section 9. SECRETARY. The secretary shall keep or cause to be kept, at the principal executive office or such other place as the board of directors may direct, a book of minutes of all meetings and actions of directors, committees of directors and shareholders. The minutes shall show the time and place of each meeting, whether regular or special (and, if special, how authorized and the notice given), the names of those present at directors' meetings or committee meetings, the number of shares present or represented at shareholders' meetings and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office or at the office of the corporation's transfer agent or registrar, as determined by resolution of the board of directors, a share register, or a duplicate share register, showing the names of all shareholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the shareholders and of the board of directors required to be given by law or by these bylaws. The secretary shall keep the seal of the corporation if one be adopted, in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or these bylaws.

Section 10. CHIEF FINANCIAL OFFICER. The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the board of directors. The chief financial officer shall disburse the funds of the corporation as may be ordered by the board of directors, shall render to the president and directors, whenever they request it, an account of all of his or her transactions as chief financial officer and of the financial condition of the corporation, and shall have other powers and perform such other duties as may be prescribed by the board of directors or these bylaws.

ARTICLE VI INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

Section 1. INDEMNIFICATION OF DIRECTORS AND OFFICERS. For the purposes of this Article, "agent" means any person who is or was a director, officer, employee, or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative, or investigative; and "expenses" includes, without limitation, attorneys' fees and any expenses of establishing a right to indemnification under Section 6 or 7(d) of this Article VI.

Section 2. ACTIONS OTHER THAN BY THE CORPORATION. The corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding (other than an action by or in the right of the corporation to procure a judgment in its favor) by reason of the fact that such person is or was an agent of the corporation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if that person acted in good faith and in a manner that person reasonably believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of that person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests

of the corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

Section 3. ACTIONS BY THE CORPORATION. Subject to Section 4 below, the corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was an agent of the corporation, against expenses actually and reasonably incurred by that person in connection with the defense or settlement of that action if that person acted in good faith, in a manner that such person believed to be in the best interests of the corporation and its shareholders. No indemnification shall be made under this Section 3:

(a) In respect of any claim, issue or matter as to which that person shall have been adjudged to be liable to the corporation in the performance of that person's duty to the corporation and its shareholders, unless and only to the extent that the court in which the proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, that such person is fairly and reasonably entitled to indemnity for expenses, and then only to the extent that the court shall determine;

(b) of amounts paid in settling or otherwise disposing of a pending action without court approval; or

(c) of expenses incurred in defending a pending action of which is settled or otherwise disposed of without court approval.

Section 4. ACTIONS BY CORPORATION AGAINST DIRECTORS. The corporation shall indemnify any person who was or is a party to any threatened, pending or completed proceeding by or in the right of the corporation for breach of such person's duties as a director of the corporation against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding.

Notwithstanding the foregoing, no indemnification shall be made under this Section 4 for those circumstances set forth in paragraphs (a), (b) or (c) of Section 3 above, or in respect to any claim, issue or matter as to which that person shall have been adjudged liable to the corporation and its shareholders for:

(a) acts or omissions that involve intentional misconduct or a knowing and culpable violation of law;

(b) acts or omissions that such person believed to be contrary to the best interest of the corporation or its shareholders, or that involve the absence of good faith on the part of the person;

(c) any transaction from which that person derived an improper personal benefit;

(d) acts or omissions that show a reckless disregard for that person's duty to the corporation or its shareholders in circumstances in which that person was aware, or should have been aware, in the ordinary course of performing that person's duties to the corporation, of a risk of serious injury to the corporation or its shareholders;

(e) acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of that person's duty to the corporation or its shareholders;

(f) transactions affected by a conflict of interest such that liability is created under Section 310 of the California Corporations Code;

(g) corporate actions subjecting directors to joint and several liability under Section 316 of the California Corporations Code;

(h) acts or omissions occurring prior to the date this Section 4 becomes effective.

Section 5. FURTHER INDEMNIFICATION BY AGREEMENT. Notwithstanding the foregoing provisions of this Article VI, the corporation may provide for further indemnification of an agent of the corporation against liability for breach of duty to the corporation and its shareholders by:

- (a) agreement with such agent;
- (b) vote of the shareholders other than the proposed indemnitee, or
- (c) vote of the disinterested directors of the corporation.

Notwithstanding anything in this Section 5 to the contrary, no indemnification of such agent may be made (i) for any acts, omissions or transactions from which a director may not be relieved of liability as set forth in the exceptions to paragraph (a) (10) of Section 204 of the California Corporations Code, or (ii) as to circumstances in which indemnity is expressly prohibited by Section 317 of the California Corporations Code.

Section 6. SUCCESSFUL DEFENSE BY AGENT. To the extent that an agent of the corporation has been successful on the merits in defense of any proceeding referred to in Sections 2 or 3 of this Article VI, or in defense of any claim, issue or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

Section 7. AUTHORIZATION. Except as provided in Sections 4, 5 and 6 of this Article VI, any indemnification under this Article VI shall be made by the corporation only if authorized in the specific case on a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Sections 2 or 3 of this Article VI, by:

(a) a majority vote of a quorum consisting of directors who are not parties to the proceeding;

(b) if such a quorum of directors is not obtainable, by independent legal counsel in a written opinion;

(c) approval by the affirmative vote of a majority of the shares of the corporation entitled to vote represented at a duly held meeting at which a quorum is present or by the written consent of holders of a majority of the outstanding shares entitled to vote. For this purpose, the shares owned by the person to be indemnified shall not be considered outstanding or entitled to vote thereon; or

(d) the court in which the proceeding is or was pending, on application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by the corporation.

Section 8. ADVANCE OF EXPENSES. Expenses incurred in defending any proceeding may be advanced by the corporation before the final disposition of the proceeding on receipt of an undertaking by or on behalf of the agent to repay the amount of the advance if it shall be determined ultimately that the agent is not entitled to be indemnified as authorized in this Article.

Section 9. OTHER CONTRACTUAL RIGHTS. Nothing contained in this Article VI shall affect any right to indemnification to which persons other than directors and officers of the corporation or any subsidiary hereof may be entitled by contract or otherwise.

Section 10. LIMITATIONS. No indemnification or advance shall be made under this Article, except as provided in Sections 4, 5, 6 or 7(c), in any circumstance where it appears:

(a) that it would be inconsistent with a provision of the articles, a resolution of the shareholders, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) that it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Section 11. INSURANCE. Upon and in the event of a determination by the board of directors of the corporation to purchase such insurance, the corporation shall purchase and maintain insurance on behalf of any agent of the corporation against any liability 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 that liability under the provisions of this Article. If any portion of the shares of the company issuing such policies of insurance is owned by the corporation, the corporation will comply with the requirements of Section 317(i) of the California Corporations Code.

Section 12. CONTINUATION OF RIGHTS. The rights to indemnity under this Article shall continue as to a person who has ceased to be a director, officer or agent of the corporation and shall inure to the benefit of the heirs, executors and administrators of that person.

Section 13. FIDUCIARIES OF CORPORATE EMPLOYEE BENEFIT PLAN. This Article does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in that person's capacity as such, even though that person may also be an agent of the corporation as defined in Section 1 of this Article. Nothing contained in this Article shall limit any right to indemnification to which such a trustee, investment manager, or other fiduciary may be entitled by contract or otherwise, which shall be enforceable to the extent permitted by applicable law.

ARTICLE VII

RECORDS AND REPORTS

Section 1. MAINTENANCE AND INSPECTION OF SHARE REGISTER. The corporation shall keep at its principal executive office, or at the office of its transfer agent or registrar (if either be appointed by resolution of the board of directors), a record of its shareholders listing the names and addresses of all shareholders and the number and class of shares held by each shareholder.

A shareholder or shareholders of the corporation holding at least five percent (5%) in the aggregate of the outstanding voting shares of the corporation or who holds at least one percent (1%) of such voting shares and has filed a Schedule 14B with the United States Securities and Exchange Commission, may (i) inspect and copy the records of shareholders' names, addresses and shareholdings during usual business hours on five (5) days' prior written demand on the corporation and (ii) obtain from the transfer agent of the corporation, on written demand and on the tender of such transfer agent's usual charges for such list, a list of the names and addresses of the shareholders who are entitled to vote for the election of directors, and their shareholdings, as of the most recent record date for which that list has been compiled or as of a date specified by the shareholder after the date of demand. Such list shall be made available to any such shareholder by the transfer agent on or before the later of five (5) days after the demand is received or five (5) days after the date specified in the demand as the date as of which the list is to be compiled.

The record of shareholders shall also be open to inspection and copying on the written demand of any shareholder or holder of a voting trust certificate, at any time during usual business hours, for a purpose reasonably related to the holder's interests as a shareholder or as the holder of a voting trust certificate.

Any inspection and copying under this Section 1 of Article VII may be made in person or by an agent or attorney of the shareholder or holder of a voting trust certificate making the demand.

Section 2. MAINTENANCE AND INSPECTION OF BYLAWS. The corporation shall keep at its principal executive office or, if its principal executive office is not in

the State of California, at its principal business office in California the original or a copy of these bylaws as amended to date, which bylaws shall be open to inspection by the shareholders at all reasonable times during office hours. If the principal executive office is outside the State of California and the corporation has no principal business office in California, then the secretary shall, upon the written request of any shareholder, furnish to that shareholder a copy of these bylaws as amended to date.

Section 3. MAINTENANCE AND INSPECTION OF OTHER CORPORATE RECORDS. The accounting books and records and the minutes of proceedings of the shareholders, of the board of directors and of any committee or committees of the board of directors shall be kept at such place or places as are designated by the board of directors or, in the absence of such designation, at the principal executive office. The minutes and the accounting books and records shall be kept either in written form or in any other form capable of being converted into written form.

The minutes and accounting books and records shall be open to inspection upon the written demand of any shareholder or holder of a voting trust certificate, at any reasonable time during usual business hours, for a purpose reasonably related to the holder's interests as a shareholder or as the holder of a voting trust certificate. The inspection may be made in person or by an agent or attorney and shall include the right to copy and make extracts. Such rights of inspection shall extend to the records of each subsidiary corporation of the corporation.

Section 4. INSPECTION BY DIRECTORS. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of every kind, as well as the physical properties of the corporation and each of its subsidiary corporations. Such inspection by a director may be made in person or by an agent or attorney. The right of inspection includes the right to copy and make extracts of documents.

Section 5. ANNUAL REPORT TO SHAREHOLDERS; WAIVER. As long as there are fewer than 100 shareholders, the annual report to shareholders referred to in the Code is expressly dispensed with, but nothing herein shall be interpreted as prohibiting the board of directors from issuing annual or other periodic reports to the shareholders of the corporation as they consider appropriate.

Section 6. FINANCIAL STATEMENTS. If no annual report for the fiscal year has been sent to shareholders, then the corporation shall, upon the written request of any shareholder made more than one hundred twenty (120) days after the close of such fiscal year, deliver or mail to the person making the request, within thirty (30) days thereafter, a copy of a balance sheet as of the end of such fiscal year and an income statement and statement of changes in financial position for such fiscal year.

If a shareholder or shareholders holding at least five percent (5%) of the outstanding shares of any class of stock of the corporation makes a written request to the corporation for an income statement of the corporation for the three-month, six-month or nine-month period of the then current fiscal year ended more than thirty (30) days before the date of the request, and for a balance sheet of the corporation as of the end of that period, then the chief financial officer shall cause that statement to be prepared, if not already prepared, and shall

deliver personally or mail that statement or statements to the person making the request within thirty (30) days after the receipt of the request.

The quarterly income statements and balance sheets referred to in this section shall be accompanied by the report, if any, of any independent accountants engaged by the corporation or by the certificate of an authorized officer of the corporation that the financial statements were prepared without audit from the books and records of the corporation.

Section 7. STATEMENTS OF GENERAL INFORMATION. As and when required by the Code, the corporation shall file with the Secretary of State of the State of California, on the prescribed form, a statement setting forth the names and complete business or residence addresses of all incumbent directors, the number of vacancies on the board, if any, the names and complete business or residence addresses of the chief executive officer, secretary and chief financial officer, the street address of its principal executive office or principal business office in this state, and the general type of business constituting the principal business activity of the corporation, together with a designation of the agent of the corporation for the purpose of service of process.

Section 8. REPRESENTATION OF SHARES OF OTHER CORPORATIONS. All stock of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed by the person authorized so to do by resolution of the board of directors or in absence of such authorization, by the chair of the board, the president or any vice president.

ARTICLE VIII GENERAL MATTERS

Section 1. FISCAL YEAR. The fiscal year of the corporation shall be fixed by action of the board of directors.

Section 2. VOTING. For purposes of determining the shareholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the shareholders entitled to exercise any rights in respect of any other lawful action, the board of directors may fix, in advance, a record date, which shall not be more than sixty (60) days before any such action. In that case, only shareholders of record at the close of business on the date so fixed are entitled to receive the dividend, distribution or allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date so fixed, except as otherwise provided in the Code, the articles of incorporation or by agreement.

If the board of directors does not so fix a record date, then the record date for determining shareholders for any such purpose shall be at the close of business on the day on which the board adopts the applicable resolution or the sixtieth (60th) day before the date of that action, whichever is later.

Section 3. CHECKS, DRAFTS, EVIDENCES OF INDEBTEDNESS. From time to time, the board of directors shall determine by resolution which person or persons may sign or endorse all checks, drafts other orders for payment of money, notes or other evidences of

indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

Section 4. CORPORATE CONTRACTS AND INSTRUMENTS: HOW EXECUTED. The board of directors, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, 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 for any purpose or for any amount.

Section 5. CERTIFICATES FOR SHARES. A certificate or certificates for shares of the corporation shall be issued to each shareholder when any of such shares are fully paid. The board of directors may authorize the issuance of certificates for shares partly paid provided that these certificates shall state the total amount of the consideration to be paid for them and the amount actually paid. All certificates shall be signed in the name of the corporation by the chair of the board or the vice chair of the board or the president or a vice president and by the chief financial officer or an assistant treasurer or the secretary or an assistant secretary, certifying the number of shares and the class or series of shares owned by the shareholder. Any or all of the signatures on the certificate may be facsimile.

In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on a certificate ceases to be that officer, transfer agent or registrar before that certificate is issued, it may be issued by the corporation with the same effect as if that person were an officer, transfer agent or registrar at the date of issue.

If the shares of the corporation are classified or if any class of shares has two or more series, there shall appear on the certificate one of the following: (a) a statement of the rights, preferences, privileges and restrictions granted to or imposed upon each class or series of shares authorized to be issued and upon the holders thereof; (b) a summary of such rights, preferences, privileges and restrictions with reference to the provisions of the articles of incorporation and any certificate of determination establishing the same; (c) a statement setting forth the office or agency of the corporation from which shareholders may obtain, upon request and without charge, a copy of the statement referred to in (a) above.

There shall also appear on the certificate the statements required by all of the following clauses to the extent applicable: (1) the fact that the shares are subject to restrictions upon transfer; (2) if the shares are assessable or are not fully paid, a statement that they are assessable or, on partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon; (3) the fact that the shares are subject to a close corporation voting agreement or an irrevocable proxy or restrictions upon voting rights contractually imposed by the corporation; (4) the fact that the shares are redeemable; and (5) the fact that the shares are convertible and the period for conversion, following the form of the legend set forth in the Code.

When the articles of incorporation are amended in any way affecting the statements contained in the certificates for outstanding shares, or it becomes desirable for any

reason, in the discretion of the board of directors, to cancel any outstanding certificate for shares and issue a new certificate therefor conforming to the rights of the holder, the board of directors may order any holders of outstanding certificates for shares to surrender and exchange them for new certificates within a reasonable time to be fixed by the board of directors.

Section 6. LOST CERTIFICATES. Except as provided in this Article VIII Section 6, no new certificates for shares shall be issued to replace a previously-issued certificate unless the latter is surrendered to the corporation and canceled at the same time. The board of directors may, in case any share certificate or certificate for any other security is lost, stolen or destroyed, authorize the issuance of a replacement certificate on such terms and conditions as the board may require, including provision for indemnification of the corporation secured by a bond or other adequate security sufficient to protect the corporation against any claim that may be made against it, including any expense or liability, on account of the alleged loss, theft or destruction of the certificate or the issuance of the replacement certificate.

Section 7. CONSTRUCTION; DEFINITIONS. Unless the context requires otherwise, the general provisions, rules of construction and definitions in the Code shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular and the term "person" includes both a corporation and a natural person.

"Approved by (or approval of) outstanding shares" shall mean approved by the affirmative vote of a majority of the outstanding shares entitled to vote. Such approval shall include the affirmative vote of a majority of the outstanding shares of each class or series entitled, by any provision of the articles or the Code, to vote as a class or series on the subject matter being voted upon and shall also include the affirmative vote of such greater proportion (including all) of the outstanding shares of any class or series if such greater proportion is required by the articles or the Code.

"Approved by (or approval of) the shareholders" shall mean approved or ratified by the affirmative vote of a majority of the shares entitled to vote represented and voting at a duly held meeting at which a quorum is present (which shares voted affirmatively also constitute at least a majority of the required quorum) or by the written consent of shareholders or by the affirmative vote or written consent of such greater proportion (including all) of the shares of any class or series as may be provided in the articles or the Code for all or any specified shareholder action.

"Electronic transmission by the corporation" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the corporation, (2) posted on an electronic message board or network which the corporation has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission for communications under or pursuant to the Code, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an

electronic transmission by a corporation to an individual shareholder or member under the Code is not authorized unless, in addition to satisfying the requirements of this section, the transmission satisfies the requirements applicable to consumer consent to electronic records as set forth in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

“Electronic transmission to the corporation” means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the corporation has provided from time to time to shareholders or members and directors for sending communications to the corporation, (2) posting on an electronic message board or network which the corporation has designated for those communications, and which transmission shall be validly delivered upon the posting, or (3) other means of electronic communication, (b) as to which the corporation has placed in effect reasonable measures to verify that the sender is the shareholder or member (in person or by proxy) or director purporting to send the transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

“Electronic transmission by and to the corporation” has the meanings set forth above under the definitions “electronic transmission by the corporation” and “electronic transmission to the corporation”.

ARTICLE IX AMENDMENTS

Section 1. AMENDMENT BY SHAREHOLDERS. New bylaws may be adopted or these bylaws may be amended or repealed by the vote or written consent of holders of a majority of the outstanding shares entitled to vote; provided, however, that if the articles of incorporation of the corporation set forth the number of authorized directors of the corporation, then the authorized number of directors may be changed only by an amendment of the articles of incorporation.

Section 2. AMENDMENT BY DIRECTORS. Subject to the rights of the shareholders provided in Article IX, Section 1, bylaws, other than a bylaw or an amendment of a bylaw changing the authorized number of directors (except to fix the authorized number of directors pursuant to a bylaw providing for a variable number of directors), may be adopted, amended or repealed by the board of directors.

ALEX VANTAGGIATO

DIRECTOR OF RESIDENTIAL SERVICES

Alex Vantaggiato has over a decade of experience in residential construction, energy efficiency, operations, and project management. With in-depth knowledge, Alex leads ConSol's Residential Services Department and he serves as lead project manager for several large contracts with utility, local, and state government agency clients. He also serves as the subject matter expert and lead trainer for ConSol's training program. Vantaggiato was the lead designer and implementer of ConSol's online learning management system, successfully transitioning from standard classroom to web learning delivery. He is valued for his strong ability to incorporate innovative management techniques that result in enhanced business practices and increased productivity for ConSol clients. Vantaggiato started his career in the U.S. Army prior to joining ConSol, where he has served over 13 years and is still serving today as an Officer in the U.S. Army Reserves. He graduated Cum Laude from ITT Tech with a Bachelor's Degree in Criminal Justice, and completed extensive coursework in the U.S. Military in leadership, team building, group dynamics, instructional methods, and operations management.

PROFESSIONAL EXPERIENCE

CHEERS/ConSol- 2004 to Present

■ Director, Residential Services

- P&L responsibility for all staffing, budgeting, forecasting, and successful and profitable implementation of ConSol/CHEERS field services
- Responsible for overseeing ConSol QA Inspections for the Department of Community Services and Development (CSD)
- In charge of the design & oversight of CHEERS QA inspections program.
- Responsible for the oversight of Home Energy Audits for key clients where ConSol acts as Program PM
- Accountable for data integrity of departmental IT systems

■ Field Operations Manager

- Manages day to day operations in regards to ConSol/CHEERS field services
- Responsible for overseeing field staff composed of up to 6 personnel and external contractors
- Reports to management in regards to progress on assigned projects and related issues
- Supervise CHEERS QA inspection program
- Supervise QA inspections for the Department of Community Services and Development (CSD)

U.S. Army- 2001 to Present

■ Company Commander, U.S. Army Reserves, Concord CA

- ▣ Serves as the Company Commander of a Seaport Operations Logistic Unit
- ▣ Drives the strategic planning of the unit's training and operational readiness in preparation for combat deployments and contingency operations
- ▣ Overall responsible for the health, welfare, morale and professional development of 155 assigned personnel
- ▣ Provides input to, and assists with, higher headquarters' planning
- ▣ Maintains accountability and operational readiness of property and equipment valued at \$18 million

EDUCATION

ITT Technical Institute, Rancho Cordova, CA

■ Bachelor of Science, Criminal Justice

- ▣ Inducted in the National Technical Honor Society (NTHS) for academic achievement

TRAINING AND CERTIFICATIONS

Credentials and Professional Licenses

■ CSD Training Certifications

- ▣ Online Pre-Requisite Weatherization Training
- ▣ Classroom Weatherization and Diagnostic Training
- ▣ Assessor Classroom and Field Training
- ▣ Inspector Classroom and Field Training
- ▣ Monitored Field Inspections and Evaluation

■ CHEERS HERS Rater, License # RCN10086

- ▣ New Construction
- ▣ Solar

■ CalCERTS HERS Rater, License # CC2004085

- ▣ New Construction & Alterations
- ▣ Whole House
- ▣ Solar

■ Building Performance Institute (BPI), License # 5015844

- ▣ Quality Assurance Inspector
- ▣ Building Analyst
- ▣ Envelope Professional
- ▣ BPI Proctor

■ Environmental Protection Agency (EPA)

-
- ▣ 608 Type 2 refrigerant technician, License #P335B51B716AD9BE0
 - ▣ Lead Renovator, License # R-1-18717-13-07826
 - ▣ Energy Star V3 Rater, License # 20110824-010

Certificates of Training

- **Organizational Leadership**
- **Lean Six Sigma**
- **Conflict Management & Resolution**
- **Negotiation**

ROB STARR

REGIONAL FIELD SUPERVISOR, SOUTHERN CALIFORNIA

Rob Starr has been a HERS Rater since 2004. He has since risen through the ranks to become the regional supervisor for home inspectors throughout Southern California and Nevada. As a BPI Building Analyst and Envelope Professional, he provided valuable contributions to the development of ConSol's BPI training protocols. In addition to his management role, he is a highly-regarded instructor for BECT, BPI and CHEERS training. His extensive field experience and training acuity make him one of the California's top journeyman experts in building science, design and operations, and advanced building methods. Prior to joining CHEERS, Rob worked as an HVAC installer where he learned advanced principles of heating and cooling system design and operations.

PROFESSIONAL EXPERIENCE

CHEERS/ConSol- 2004 to Present

■ Regional Field Supervisor, Southern California

- ▣ Ensure operational procedures are consistently implemented, and provide advice, support and guidance within the team and to higher management when enhancements are needed
- ▣ Manages and directs the use of resources effectively and efficiently to deliver team objectives while being conscious of the financial implications of these decisions
- ▣ Ensures that assigned staff demonstrate a high level of knowledge within their functional areas and ensure they consistently deliver a high standard of performance
- ▣ Assists with the planning and development of key objectives and improvement targets for the team through the operational planning process and monitor and review on a regular basis

Alliance Mechanical- 1997 to 2004

■ HVAC Installer

- ▣ Install HVAC related equipment according to manufacturer's specifications
- ▣ Wire both line and low voltage to heating and cooling equipment
- ▣ Install copper refrigerant lines to air conditioning units, including soldering and brazing
- ▣ Properly connect gas lines to heating equipment
- ▣ Install sheet metal and flex duct systems in residential and light commercial buildings

EDUCATION

San Bernardino Valley College

■ Inspection Technology

TRAINING AND CERTIFICATIONS

Credentials and Professional Licenses

■ CSD Training Certifications

- Online Pre-Requisite Weatherization Training
- Classroom Weatherization and Diagnostic Training
- Assessor Classroom and Field Training
- Inspector Classroom and Field Training
- Monitored Field Inspections and Evaluation

■ CHEERS HERS Rater, License # RCN10183

- New Construction
- Solar

■ CalCERTS HERS Rater , License #CC2004085

- New Construction & Alterations
- Whole House
- Solar
- Commercial

■ Building Performance Institute (BPI), License #5019960

- Quality Assurance Inspector
- Building Analyst
- Envelope Professional
- BPI Proctor

■ National Green Building Standards Rater, License #003390

■ Environmental Protection Agency (EPA)

- 608 Type 2 refrigerant technician, License #P5F8F22ED0E03B731
- Lead Renovator, License #R-1-18717-13-07825

Certificates of Training

- Infrared Imaging
- Jobsite Safety

ANDREW NEGD

REGIONAL FIELD SUPERVISOR, NORTHERN CALIFORNIA

Andrew started his residential construction career in 2003 as a HERS rater, providing inspection services throughout Northern California. The dedication and integrity he demonstrated in this position earned him a promotion to regional field supervisor for Northern California operations, where he became responsible of the training, safety and accountability of HERS raters located in the region. His knowledge base focuses on home performance and building technology, with emphasis on preventing and resolving problems related to building design, construction, and operation. Due to this vast skills and industry experience, he is also an acting lead in conducting field training for the CHEERS certification program.

PROFESSIONAL EXPERIENCE

CHEERS/ConSol- 2003 to Present

■ Regional Field Supervisor, Northern California

- Ensure operational procedures are consistently implemented, and provide advice, support and guidance within the team and to higher management when enhancements are needed
- Manages and directs the use of resources effectively and efficiently to deliver team objectives while being conscious of the financial implications of these decisions
- Ensures that assigned staff demonstrate a high level of knowledge within their functional areas and ensure they consistently deliver a high standard of performance
- Assists with the planning and development of key objectives and improvement targets for the team through the operational planning process and monitor and review on a regular basis

EDUCATION

University of California, Santa Barbara

■ Chemical Engineering

TRAINING AND CERTIFICATIONS

Certifications and Professional Licenses

■ CSD Training Certifications

- Online Pre-Requisite Weatherization Training
- Classroom Weatherization and Diagnostic Training
- Assessor Classroom and Field Training
- Inspector Classroom and Field Training

-
- ▣ Monitored Field Inspections and Evaluation
 - **CHEERS HERS Rater, License # RCN10182**
 - ▣ New Construction
 - ▣ Solar
 - **CalCERTS HERS Rater , License #CC2004014**
 - ▣ New Construction & Alterations
 - ▣ Whole House
 - ▣ Solar
 - **Building Performance Institute**
 - ▣ Quality Assurance Inspector
 - **Environmental Protection Agency (EPA)**
 - ▣ 608 Type 2 Refrigerant Technician, License # P11F414504BDD1B50
 - ▣ Lead Renovator, License #R-I-18717-13-07832
 - ▣ Energy Star V3 Rater, License # 20110824-009

Certificates of Training

- **Conflict Management and Resolution**

GEOFF COX

FIELD OPERATIONS SPECIALIST, SOUTHERN CALIFORNIA

Geoff Cox became a HERS Rater in 2005. Cox is responsible for providing support services related to field operations in Residential Services, in his assigned territory. Specifically, he conducts field visits to verify that energy efficiency features in new and existing homes are installed and performed as required, for both the CHEERS QA program and CSD. In addition, thanks to his knowledge and field experience, he provides guidance and training in regards to building science and diagnostic testing, to both internal and external customers, when necessary.

PROFESSIONAL EXPERIENCE

CHEERS/ConSol- 2005 to Present

■ HERS Rater

- Performs necessary inspections and diagnostic tests as required by relevant programs and follow approved protocols to perform each test for consistent results.
- Ensures operational procedures are consistently implemented, and provide advice to higher management when enhancements or new procedures are needed.
- Provide testing and diagnostic support for company's training programs.
- Acts as a subject matter expert on T24 regulations and company's operational protocols.

EDUCATION

Cypress Community College, CA

■ General Studies

University of Phoenix, CA

■ General Studies

TRAINING AND CERTIFICATIONS

Certifications and Professional Licenses

■ CSD Training Certifications

- Online Pre-Requisite Weatherization Training
- Classroom Weatherization and Diagnostic Training
- Assessor Classroom and Field Training
- Inspector Classroom and Field Training
- Monitored Field Inspections and Evaluation

■ CHEERS HERS Rater, License # RCN10181

-
- ▣ New Construction
 - ▣ Solar
 - **CalCERTS HERS Rater, License # CC2004078**
 - ▣ New Construction & Alterations
 - ▣ Solar
 - **Environmental Protection Agency (EPA)**
 - ▣ 608 Type 2 Refrigerant technician, License # P540609F61C67BBC1
 - ▣ Lead Renovator, License # R-I-18717-13-07818

CHEERS REGISTRY AGREEMENT GENERAL PROVISIONS

1. SERVICES

1.1 Registry User Subscriptions. The Services may be used by only Registry Users designated by Registry Client on Exhibit B, and as may be revised from time-to-time by Registry Client upon acceptance by CHEERS and the payment of any applicable subscription fees. The functionality of the CHEERS System may vary for each Subscription Category and is subject to change from time-to-time without notice. Unless otherwise specified, (i) Services are available only to Registry Users and may be accessed by no more than the specified number of Registry Users, if applicable, (ii) additional Registry User subscriptions may be added during the applicable subscription term at the same pricing as that for the pre-existing subscriptions thereunder, prorated for the remainder of the subscription term in effect at the time the additional Registry User subscriptions are added, and (iii) the added Registry User subscriptions shall terminate on the same date as the pre-existing Registry User subscriptions. Registry User subscriptions are designated for Registry Users only and cannot be shared or used by more than one Registry User, but may be reassigned to new Registry Users replacing former Registry Users who no longer require ongoing use of the Services.

1.2 Access Restrictions. The CHEERS System is restricted by authorization relative to each Subscription Category. Unique secure login and passwords are issued to each Registry User for the purpose of maintaining security, privacy, and integrity of the data and services provided. No Registry User may share his or her login or password with any other person under any circumstance. CHEERS may, in its sole discretion, rescind access rights to Registry Client and any of its Registry Users if Registry Client or any of its Registry Users share their login or password with another or use another's secure login.

1.3 CHEERS Responsibilities. CHEERS shall: (i) provide CHEERS basic support for the Services to Registry Client at no additional charge, and/or upgraded support if purchased, (ii) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which CHEERS shall give at least 8 hours notice via the Services and which CHEERS shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday Pacific time), or (b) any unavailability caused by circumstances beyond CHEERS's reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving CHEERS employees), Internet service provider failures or delays, or denial of service attacks, and (iii) provide the Services only in accordance with applicable laws and government regulations.

1.4 Registry Client Responsibilities. Registry Client shall (i) comply with all applicable federal, state and local laws, rules and regulations, (ii) be responsible for all Registry Users' compliance with all obligations of Registry Client under this Agreement, including, without limitation, those of HERS Raters under Section 4 of this Agreement, (iii) be liable for all actions taken by its Registry Users, (iv) be responsible for the accuracy, quality and legality of Registry Client data and of the means by which it acquired Registry Client data, (v) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify CHEERS promptly of any such unauthorized access or use, and (vi) use the Services only in accordance with the CHEERS Materials (as hereinafter defined) and applicable laws and government regulations. Registry Client shall not (a) make the Services available to anyone other than Registry Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit malicious code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks. Registry Client is solely responsible for all hardware, software and communications equipment necessary to access the CHEERS system.

2. FEES AND PAYMENT

2.1 Fees. Registry Client shall pay all fees in accordance with the Fee Schedule. Unless otherwise stated, (i) fees are based on services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of Registry User subscriptions purchased cannot be decreased during the relevant subscription term. Registry User subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for Registry User subscriptions added in

the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term.

2.2 Invoicing and Payment. Fees are generally to be paid in advance. In its sole discretion, however, CHEERS reserves the right to invoice certain Registry Clients in advance, at the time of service, or on a monthly schedule. If invoiced by CHEERS, fees are due net 30 days from the invoice date. Registry Client is responsible for providing complete and accurate billing and contact information to CHEERS and notifying CHEERS of any changes to such information.

2.3 Overdue Charges. If any amounts invoiced hereunder are not received by CHEERS by the due date, then at CHEERS's discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) CHEERS may condition future Services on payment terms shorter than those specified in the "Invoicing and Payment" section above.

2.4 Suspension of Service. If any charge owing by Registry Client is 30 days or more overdue, CHEERS may, without limiting its other rights and remedies, eliminate any discounts or suspend Services until such amounts are paid in full, provided CHEERS has given Registry Client 10 or more days' prior notice that its account is overdue in accordance with the "Notices" section below before suspending Services.

2.5 Payment Disputes. CHEERS shall not exercise its rights under the "Overdue Charges" or "Suspension of Service" section above if Registry Client is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

2.6 Taxes. Unless otherwise stated, CHEERS' fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales and use, or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). Registry Client is responsible for paying all Taxes associated with its purchases hereunder. If CHEERS has the legal obligation to pay or collect Taxes for which Registry Client is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Registry Client, unless Registry Client provides CHEERS with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, CHEERS is solely responsible for taxes assessable against it based on its income, property and employees.

3. PROPRIETARY RIGHTS

3.1 Reservation of Rights in Services. Subject to the limited rights expressly granted hereunder, CHEERS reserves all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to Registry Client hereunder other than as expressly set forth herein.

3.2 Proprietary Information. Registry Client and its Registry Users may use the CHEERS Training Manuals, User Guides, and other supplementary materials made available by CHEERS to Registry Clients (collectively "CHEERS Materials") and supporting Proprietary Information under the following terms and conditions:

- A. Registry Client agrees that the CHEERS Materials and Proprietary Information are owned exclusively by CHEERS, and are protected by the copyright laws of the United States. Registry Client agrees that Registry Client obtains no rights in the CHEERS Materials or Proprietary Information, except to use them specifically in accordance with this Agreement.

"Proprietary Information" shall mean CHEERS' confidential information, trade secrets and know-how embodied in the CHEERS Materials and not generally known or available to the public, including, but not limited to, data communication processes and systems design.

- B. The CHEERS Materials and Proprietary Information may only be used by the Registry Users who shall keep strictly confidential the CHEERS Materials and Proprietary Information, and acknowledge that the CHEERS Materials and Proprietary Information constitute valuable property and work

product of CHEERS, that any breach of the confidentiality obligations hereunder may cause CHEERS irreparable harm and damage, and that all confidentiality obligations hereunder shall survive any expiration or termination of this Agreement.

C. Registry Client and its Registry Users may not do the following:

1. Make copies of the CHEERS Materials.
2. Alter, remove or conceal any copyright or trademark notice on CHEERS Materials.
3. Assign or transfer any rights to use the CHEERS Materials or Proprietary Information except as set forth in this Agreement.

D. CHEERS shall have the right, without prior approval from or notice to Registry Client, to make changes, updates, modifications or enhancements to any of the CHEERS Materials or other work product or manuals, and such changes, updates, modifications and enhancements shall remain the property of CHEERS.

3.3 Restrictions. Registry Client shall not (i) permit any third party to access the Services except as contemplated by Section 3.4 below, (ii) create derivative works based on the Services except as permitted herein, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Registry Client's own intranets or otherwise for its own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

3.4 Third Party Representatives. The CHEERS system may permit Registry Client to specifically authorize others to act on Registry Client's behalf ("Third Party Representative"), such as giving others signature authority on certain governmental forms. Registry Client hereby authorizes CHEERS to accept and act upon all actions taken by any Third Party Representative for all intents and purposes. Registry Client represents and warrants to CHEERS that any such delegation of authority by Registry Client to a Third Party Representative (including delegation of signature authority) complies with all laws, rules and regulations. Registry Client acknowledges and agrees that Registry Client is solely responsible for all actions taken by Third Party Representatives.

3.5 Suggestions. CHEERS shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Registry Client, including Users, relating to the operation of the Services.

4. SPECIAL REQUIREMENTS FOR HERS RATERS

4.1 Representations of HERS Raters. Registry Client hereby represents and warrants to CHEERS that its Registry Users that are HERS Raters have completed all CHEERS required training courses and passed required certification courses, as recorded by training certificates posted on the System.

4.2 Obligations of HERS Raters. All Registry Users of Registry Client who are HERS Raters shall (i) comply with all CHEERS performance and quality assurance procedures which may be amended from time-to-time by CHEERS ("Procedures"), (ii) comply with all applicable federal, state and local laws, rules and regulations, including, without limitation, those specified at Section 1673(b) of the Regulations (as hereinafter defined), (iii) provide true, accurate and complete data collection, analysis, ratings, and field verification and diagnostic testing, (iv) not accept payment or consideration in exchange for reporting data gathered for a rating, analytical results used for a rating, or a rating result that was not in fact conducted and reported in compliance with the Regulations, (v) comply with the conflict of interest requirements specified in Section 1673(j) of the Regulations, (vi) personally complete all required field verification and diagnostic testing, (vii) transmit all data to the CHEERS System within forty-eight (48) hours of completing the field verification and diagnostic testing, (viii) shall be responsible for all data transmitted, (ix) shall keep as confidential all ratings, field verifications and diagnostic testing results and all information gathered from rating customers except for transmission to the CHEERS System, and (x) shall notify CHEERS within 5 business days of severing or changing your employment status with your existing Rating Company as listed in the CHEERS database. All confidentiality obligations of Registry User

and Registry Client shall survive termination of this Agreement. No Registry User (HERS Rater) may rate or perform a field verification or diagnostic test on any home in which the Registry User has any financial interest.

4.3 Rater Agreement. Each Registry User of Registry Client that is a HERS Rater shall sign an agreement to be bound by the provisions of this Agreement (“Rater Agreement”).

4.4 Acknowledgement. The failure of Registry Client or any of its Registry Users to abide by the terms and conditions of this Agreement may result in the rescission of access rights to the Services. Registry Client acknowledges that access to a data registry is a requirement of maintaining active status as a HERS Rater and if data registry access is denied or suspended, the HERS Rater may be decertified or suspended automatically.

5. WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

5.1 CHEERS Warranties. CHEERS warrants that (i) it has validly entered into this Agreement and has the legal power to do so, (ii) the Services shall perform materially in accordance with its specifications, and (iii) the functionality of the Services will not be materially decreased during a subscription term. For any breach of a warranty above, Registry Client’s exclusive remedy shall be as provided in the “Termination by Registry Client” and “Effect of Termination” sections below.

5.2 Modifications to Services and Materials. CHEERS reserves the right to make any and all changes at any time and from time-to-time to the CHEERS System, Services, and the CHEERS Materials without prior notice to Registry Client.

5.3 Registry Client’s Warranties. Registry Client warrants that it has validly entered into this Agreement and has the legal power to do so. Use of the Services is at Registry Client’s sole risk.

5.4 Disclaimer. The Services are provided on an “as is, as available” basis. EXCEPT AS EXPRESSLY PROVIDED HEREIN, CHEERS MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

6. INDEMNIFICATION AND LIMITATION OF LIABILITY

6.1 Indemnification by Registry Client. Registry Client shall indemnify, defend and hold CHEERS and its employees, officers, directors, shareholders, agents, representatives, and independent contractors harmless from and against any claim, demand, suit or proceeding arising from, relating to or in connection with this Agreement or the use of the Services except for claims finally adjudicated to be from the sole negligence or willful conduct of CHEERS.

6.2 Limitation of Liability. THE LIABILITY OF CHEERS WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE AMOUNT PAID BY REGISTRY CLIENT HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL THE AGGREGATE LIABILITY OF CHEERS ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY REGISTRY CLIENT HEREUNDER.

6.3 Exclusion of Consequential and Related Damages. IN NO EVENT SHALL CHEERS HAVE ANY LIABILITY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

7. TERM AND TERMINATION

7.1 Term of Agreement. This Agreement commences on the Effective Date and continues until terminated in accordance with this Agreement.

7.2 Termination by Registry Client. Registry Client may terminate this Agreement upon prior written notice to CHEERS at any time.

7.3 Termination by CHEERS. Upon written notice to Registry Client, CHEERS may terminate this Agreement upon the occurrence of any of the following events by any Registry User, employee, officer, or owner of the Registry Client:

- A. Failure to comply with any of the terms and conditions of this Agreement or any other agreement between Registry Client and CHEERS.
- B. Conviction of a felony.
- C. Disciplinary action by the Contractors State License Board or any like authority.
- D. Willful failure to provide a true, accurate and complete rating, field verification or diagnostic testing.
- E. Pattern of failure to provide a true, accurate and complete rating, field verification, diagnostic testing or data entry, whether willful or not.
- F. Two or more complaints from ratings customers or potential customers.
- G. Failure to pay any amounts due CHEERS as per the CHEERS Fee Schedule.
- H. Misrepresentation of Registry Client's relationship with CHEERS.
- I. Any act or failure to act which, in CHEERS' opinion, harms its name or reputation
- J. For any reason deemed reasonable by CHEERS unless prohibited by law.

7.4 Other Termination. This Agreement shall automatically terminate upon the occurrence of any of the following events: Registry Client is adjudged bankrupt, placed in the hands of a receiver, makes an assignment for the benefit of creditors, takes the benefit of any insolvency act, or is liquidated or dissolved.

7.5 Effect of Termination. Upon termination of this Agreement, Registry Client and its Registry Users shall have no further access to the System. Upon any termination for cause by Registry Client, CHEERS shall refund Registry Client any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by CHEERS, Registry Client shall pay any unpaid fees covering the remainder of the term after the effective date of termination. In no event shall any termination relieve Registry Client of the obligation to pay any fees payable to CHEERS for the period prior to the effective date of termination. Upon termination of this Agreement Registry Client shall immediately return to CHEERS any and all CHEERS Materials or other Proprietary Information in Registry Client's or any of its Registry Users' possession or control.

7.6 Surviving Provisions. The sections titled "Fees and Payment," "Proprietary Rights," "Warranties, Exclusive Remedies and Disclaimers," "Indemnification and Limitation of Liability," "Effect of Termination," "Surviving Provisions" and "General Provisions" shall survive any termination or expiration of this Agreement.

8. GENERAL PROVISIONS

8.1 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Neither Registry Client nor any of its Registry Users may represent itself to be an employee, agent or representative of CHEERS, provided, however, during the term of this Agreement, a Registry User who is a HERS Rater and complies with all applicable terms and conditions relative to HERS Raters under this Agreement may indicate that he or she is a CHEERS Certified Rater.

8.2 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

8.3 Notices. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) upon delivery if sent by Federal Express, UPS or similar service, or (iii) the second business day after mailing and sending by confirmed facsimile. Notices under this Agreement shall be addressed to the address for such party on the first page of this Agreement or as changed by a party from time-to-time by providing written notice thereof to the other party. Notwithstanding anything herein to the contrary, CHEERS may post any changes to the Services to the CHEERS System (including, without limitation, any changes to the Fee Schedule and Procedures), and such changes shall become effective upon reasonable notice to Registry Client (not to exceed thirty (30) days). Any use of the Services by Registry Client or any of its Registry Users after any such changes are posted to the CHEERS System shall be conclusively deemed Registry Client's consent to such changes.

8.4 Waiver. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

8.5 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

8.6 Assignment. Registry Client may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of CHEERS.

8.7 Governing Law and Dispute Resolution. This Agreement, and any disputes arising out of or related hereto, shall be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules. Any dispute arising from, relating to or in connection with this Agreement or the Services shall be finally resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules in the City of Stockton, California. The losing party shall pay the prevailing party's reasonable costs and expenses (including reasonable attorneys' fees) in connection with any arbitration under this Agreement.

8.8 Regulations. Registry Client acknowledges that Registry Client has read California Code of Regulations, Title 20, Chapter 4, Article 8, Sections 1670-1675 ("Regulations"), a copy of which is attached as Exhibit D and incorporated herein by reference, understands the Regulations and the HERS Technical Manual and, if applicable, agrees to provide home energy rating, field verification services and diagnostic testing services in compliance with the Regulations and HERS Technical Manual. Registry Client specifically agrees to comply with the conflict of interest requirements as specified in Section 1673(j) of the Regulations, and the following requirements as specified in Section 1673(b) of the Regulations: "Provide true, accurate, and complete data collection, analysis, ratings and field verification and diagnostic testing," and "Not accept payment of consideration in exchange for reporting data gathered for a rating, analytical results used for a rating, or a rating result that was not in fact conducted and reported in compliance with these regulations."

8.9 Entire Agreement. This Agreement, including all exhibits and addenda hereto, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the

modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in any Registry Client purchase order or other communication or documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

8.10 Counterparts. This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

Rater Agreement Terms and Conditions

The undersigned HERS Rater, hereby (i) represents and warrants that he or she (A) is affiliated (as an employee or otherwise) with a Registry Client of CHEERS, and (B) has received, read and understood the CHEERS Registry Agreement to which such Registry Client is a party ("Agreement"), and (ii) agrees to comply with all of the terms and conditions of the Agreement, including, without limitation, those applicable to HERS Raters under Section 4 of the Agreement.

Rater's Printed Name

Rater's Signature

Date

ATTACHMENT 4: REVISED CONDITIONS OF CERTIFICATION AND LIMITATIONS OF ACTIVITIES

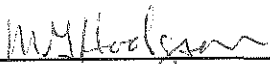
Conditions of Certification

In order to guard against conflicts of interest and comply with Section 1673(j) of the California Home Energy Rating System (HERS) Program regulations, ConSol Home Energy Efficiency Rating Services, Inc., (CHEERS) and ConSol, Inc. (ConSol) hereby agree to, in addition to generally applicable HERS requirements, the following Conditions of Certification as a HERS Provider for Field Verification and Diagnostic Testing on residential newly-constructed buildings and Prescriptive HVAC Alterations and Limitations of Activities:


1. ConSol and CHEERS will not perform HERS ratings. ConSol will not provide rating or compliance documentation services.
2. CHEERS will not accept into its registry any compliance documentation performed by a subcontractor or employee of ConSol or CHEERS, including rating data.
3. CHEERS will not accept into its registry any compliance documentation, including rating data, required for work performed at homes whose owners have subscribed to or are enrolled in a governmental home energy efficiency program for which ConSol is a program manager or administrator.
4. CHEERS will require raters, as conditions of entering a rating agreement, to refrain from recommending or advocating for the services of persons or entities that perform work subject to a home energy rating.
5. CHEERS will not enter into any HERS rating agreements with employees of ConSol or CHEERS. CHEERS will certify their quality assurance inspectors as CHEERS certified raters for the purpose of performing quality assurance.
6. ConSol and CHEERS will be independent entities from HERS raters on any projects.
7. ConSol, CHEERS, and CHEERS raters will be independent entities from the builder and from the subcontractor installer of energy efficiency improvements field verified or diagnostically tested on any projects.
8. ConSol, CHEERS, and CHEERS raters will be independent entities from any firm or person that performs work on the home either for a California Home Energy Audit or a California Whole-House Home Energy Rating on any projects.

CHEERS agrees that its failure to comply with any of these Conditions of Certification provide grounds for the Energy Commission to revoke all or part of this approval.

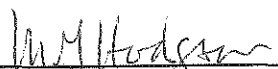
The foregoing Conditions of Certification on CHEERS are agreed to:



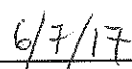
Michael G. Hodgson
President
ConSol, Inc.



Date



Michael G. Hodgson
Principal
ConSol Home Energy Efficiency Services, Inc.




Date

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of ConSol Home Energy Efficiency Rating Services, Inc., a California corporation.
2. That the foregoing Bylaws constitute the Bylaws of the corporation as ratified by the directors of this corporation on May 16, 2012.

Dated: May 16, 2012.



Jay Lenzmeier, Secretary

BYLAWS
OF
CONSOL HOME ENERGY EFFICIENCY RATING SERVICES, INC.,
a California Corporation

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ARTICLE I CORPORATE OFFICES

Section 1. PRINCIPAL OFFICE. The board of directors shall fix the location of the principal executive office of the corporation at any place within or outside the State of California (the "**principal executive office**"). The board of directors may change the principal executive office from one location to another. If the principal executive office is located outside the State of California and the corporation has one or more business offices inside the State of California, then the board of directors shall fix and designate a principal business office in the State of California.

Section 2. OTHER OFFICES. The board of directors may at any time establish branch or subordinate offices at any place or places where the corporation is qualified to do business.

ARTICLE II MEETINGS OF SHAREHOLDERS

Section 1. PLACE OF MEETINGS. Meetings of shareholders shall be held at any place within or outside the State of California designated by the board of directors. In the absence of any such designation, shareholders' meetings shall be held at the principal executive office.

Section 2. ANNUAL MEETING. The annual meeting of shareholders shall be held each year on a date and at a time designated by the board of directors. However, if this day falls on a legal holiday, then the meeting shall be held at the same time and place on the next succeeding full business day. At the meeting, directors shall be elected, and any other proper business may be transacted.

Section 3. SPECIAL MEETING. A special meeting of the shareholders may be called at any time by the board of directors, the chair of the board, the president, or by one or more shareholders holding shares in the aggregate entitled to cast not less than ten percent (10%) of the votes at that meeting.

If a special meeting is called by any person or persons other than the board of directors, the chair of the board or the president, then the request shall be in writing, specifying the time of the meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or electronic transmission to the corporation, attention of the chair of the board, the president, any vice president, or the secretary of the corporation. The officer receiving the request shall cause notice to be promptly given to the shareholders entitled to vote, in accordance with the provisions of Sections 5 and 6 of this Article II, that a meeting will be held at the time requested by the person or persons calling the meeting, so long as that time is not less than thirty-five (35) nor more than sixty (60) days after receipt of the request. If the notice is not given within twenty (20) days after receipt of the request, then the person or persons requesting the meeting may give the notice. Nothing contained in this paragraph shall be construed as limiting, fixing or affecting the time when a meeting of shareholders called by action of the board of directors may be held.

Section 4. MEETING BY ELECTRONIC TRANSMISSION. A meeting of the shareholders may be conducted, in whole or in part, by electronic transmission by and to the corporation or by electronic video screen communication provided: (1) the corporation implements reasonable measures to provide shareholders an opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings, and (2) if any shareholder votes or takes other action at the meeting by means of electronic transmission to the corporation or electronic video screen communication, a record of that vote or action is maintained by the corporation. If such electronic meetings are authorized, a shareholder that attends via electronic transmission by and to the corporation or electronic video screen communication shall be deemed present as if that shareholder had attended the meeting in person or by proxy. Unless all shareholders otherwise consent, any request by a corporation to a shareholder for consent to conduct a meeting of shareholders by electronic transmission by and to the corporation, shall include a notice that the meeting shall also be held at a physical location in accordance with Section 1 of this Article II. Nothing in this Article II, Section 4 shall limit or restrict a shareholder's right to notice of a meeting as provided in this Article II.

Section 5. NOTICE OF SHAREHOLDERS' MEETING. All notices of meetings of shareholders shall be sent or otherwise given in accordance with Section 6 of this Article II not less than ten (10) (or, if sent by third-class mail pursuant to Section 6 of this Article II, thirty (30)) nor more than sixty (60) days before the date of the meeting. The notice shall specify the place, date and hour of the meeting and either (i) in the case of a special meeting, the general nature of the business to be transacted (no business other than that specified in the notice may be transacted) or (ii) in the case of the annual meeting, those matters which the board of directors, at the time of giving the notice, intends to present for action by the shareholders (but, subject to the provisions of the next paragraph of this Section 5, any proper matter may be presented at the meeting for such action). The notice of any meeting at which one or more directors are to be elected shall include the name of the nominee or nominees whom, at the time of the notice, the board intends to present for election.

If action is proposed to be taken at any meeting for approval of (i) a contract or transaction in which a director has a direct or indirect financial interest, (ii) an amendment of the articles of incorporation, (iii) a reorganization of the corporation, (iv) a voluntary dissolution of the corporation, or (v) a distribution in dissolution other than in accordance with the rights of outstanding preferred shares, then the notice shall also state the general nature of that proposal.

Section 6. MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE. Written notice of any meeting of shareholders shall be given either (i) personally, (ii) by first-class mail, (iii) by electronic transmission by the corporation, (iv) by third-class mail but only if the corporation has outstanding shares held of record by five hundred (500) or more persons (determined as provided in section 605 of the Corporations Code of California (the "Code")) on the record date for the shareholders' meeting or (v) by telegraphic or other written communication. Notices not personally delivered shall be sent charges prepaid and shall be addressed to the shareholder at the address of that shareholder appearing on the books of the corporation or given by the shareholder to the corporation for the purpose of notice. If no such address appears on the corporation's books or is given, notice shall be deemed to have been given if sent to that shareholder by mail or telegraphic or other written communication to the

corporation's principal executive office, or if published at least once in a newspaper of general circulation in the county where that office is located. Notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by electronic transmission by the corporation or by other means of written communication.

If any notice not sent by electronic transmission by the corporation addressed to a shareholder at the address of that shareholder appearing on the books of the corporation is returned to the corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice to the shareholder at that address, then all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available to the shareholder on written demand of the shareholder at the principal executive office for a period of one (1) year from the date of the giving of the notice.

If the corporation is unable to deliver two consecutive notices to the shareholder by electronic transmission or the inability to so deliver a notice to the shareholder becomes known to the secretary, any assistant secretary, the transfer agent or any other person responsible for giving of the notice, then that shareholder shall be deemed to have revoked consent to the use of that means of transmission for communications.

An affidavit of the mailing or other means of giving any notice of any shareholders' meeting, executed by the secretary, assistant secretary or any transfer agent of the corporation giving the notice, shall be prima facie evidence of the giving of the notice.

Section 7. QUORUM. A majority of the shares entitled to vote, represented in person, by proxy or by authorized electronic transmission, shall constitute a quorum at a meeting of shareholders. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on any matter shall be the act of the shareholders.

The shareholders present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum, or if required by the Code or the articles of incorporation, the vote of a greater number or voting by classes.

Section 8. ADJOURNED MEETING; NOTICE. Any shareholders' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of the shares represented at that meeting, either in person or by proxy. In the absence of a quorum no other business may be transacted at that meeting, except as provided in Section 7 of this Article II.

When any meeting of shareholders, either annual or special, is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place are announced at the meeting at which the adjournment is taken. However, if a new record date for the adjourned meeting is fixed, or if the adjournment is for more than forty-five (45) days from the date set for the original meeting, then notice of the adjourned meeting shall be given. Notice of any such adjourned meeting shall be given to each shareholder of record entitled to vote at the adjourned meeting in accordance with the provisions of Sections 5 and 6 of this Article II. At

any adjourned meeting the corporation may transact any business which might have been transacted at the original meeting.

Section 9. VOTING. The shareholders entitled to vote at any meeting of shareholders shall be determined in accordance with the provisions of Section 12 of this Article II, subject to the provisions of sections 702 through 704 of the Code (relating to voting shares held by a fiduciary, in the name of a corporation or in joint ownership).

The shareholders' vote may be by voice or ballot; provided, however, that any election of directors must be by ballot if demanded by any shareholder at the meeting and before the voting has begun. Should a ballot vote be taken, an electronic transmission to the corporation may serve as the ballot of any shareholder participating by electronic transmission.

Except as provided in the last paragraph of this Section 9, or as may be otherwise provided in the corporation's articles of incorporation, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote of the shareholders. Any shareholder entitled to vote on any matter may vote part of its shares in favor of the proposal and refrain from voting the remaining shares or, except when the matter is the election of the directors, may vote such remaining shares against the proposal; but, if the shareholder fails to specify the number of shares which the shareholder is voting affirmatively, it will be conclusively presumed that the shareholder's approving vote is with respect to all shares which the shareholder is entitled to vote.

At a shareholders' meeting at which directors are to be elected, a shareholder shall be entitled to cumulate votes, in accordance with section 708 of the Code, if the candidates' names have been placed in nomination prior to commencement of the voting and the shareholder has given notice prior to commencement of the voting of the shareholder's intention to cumulate votes. If any shareholder has given this notice, then every shareholder entitled to vote may cumulate votes for candidates in nomination either (i) by giving one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which that shareholder's shares are normally entitled or (ii) by distributing the shareholder's votes on the same principle among any or all of the candidates, as the shareholder thinks fit. The candidates receiving the highest number of votes, up to the number of directors to be elected, shall be elected; votes against any candidate and votes withheld shall have no legal effect.

Section 10. VALIDATION OF MEETINGS; WAIVER OF NOTICE; CONSENT. The transactions of any meeting of shareholders, either annual or special, however called and noticed, and wherever held, shall be as valid as if they had been taken at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each person entitled to vote, who was not present in person or by proxy, signs a written waiver of notice or a consent to the holding of the meeting, or an approval of the minutes thereof. The consent, approval or waiver of notice need not specify either the business to be transacted or the purpose of any annual or special meeting of shareholders, except that if action is taken or proposed to be taken for approval of any of the matters specified in the second paragraph of Section 5 of this Article II, the waiver of notice or consent or approval shall state the general nature of the proposal. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Attendance by a person at a meeting shall also constitute a waiver of notice of that meeting, except when the person objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Attendance at a meeting is not a waiver of any right to object to the consideration of matters required by the Code to be included in the notice of the meeting, but not so included, if that objection is expressly made at the meeting.

Section 11. SHAREHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING. Any action which may be taken at any annual or special meeting of shareholders may be taken without a meeting and without prior notice if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all shares entitled to vote on that action were present and voted.

In the case of an election of directors, such a consent shall be effective only if signed by the holders of all outstanding shares entitled to vote for the election of directors. However, a director may be elected at any time to fill a vacancy on the board of directors, provided that it was not created by removal of a director and that it has not been filled by the directors, by the written consent of the holders of a majority of the outstanding shares entitled to vote for the election of directors.

All such consents shall be maintained in the corporate records. Any shareholder giving a written consent, any transferee of the shares, any personal representative of the shareholder or any of their respective proxy holders, may revoke the consent by a writing received by the secretary of the corporation before written consents of the number of shares required to authorize the proposed action have been filed with the secretary.

If the consents of all shareholders entitled to vote have not been solicited in writing and if the unanimous written consent of all such shareholders has not been received, then the secretary shall give prompt notice of the corporate action approved by the shareholders without a meeting. This notice shall be given in the manner specified in Section 6 of this Article II. In the case of approval of (i) a contract or transaction in which a director has a direct or indirect financial interest, (ii) indemnification of a corporate "agent," (iii) a reorganization of the corporation or (iv) a distribution in dissolution other than in accordance with the rights of outstanding preferred shares, the notice shall be given at least ten (10) days before the consummation of any action authorized by that approval.

Section 12. RECORD DATE FOR SHAREHOLDER NOTICE; VOTING; GIVING CONSENTS. For purposes of determining the shareholders entitled to notice of, or to vote at, any meeting or entitled to give consent to corporate action without a meeting, the board of directors may fix, in advance, a record date, which shall not be more than sixty (60) days nor less than ten (10) days before the date of any such meeting nor more than sixty (60) days before any such action without a meeting, and in this event only shareholders of record on the date so fixed are entitled to notice and to vote or to give consents, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date, except as otherwise provided in the Code, the articles of incorporation or by agreement.

If the board of directors does not so fix a record date:

(a) the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held; and

(b) the record date for determining shareholders entitled to give consent to corporate action in writing without a meeting, (i) shall be the day on which the first written consent is given when no prior action by the board has been taken, or (ii) shall be at the close of business on the day on which the board adopts the resolution relating to that action, or the sixtieth (60th) day before the date of such other action, whichever is later, when prior action by the board has been taken.

The record date for any other purpose shall be as provided in Article VIII of these bylaws.

Section 13. PROXIES. Every person entitled to vote for directors, or on any other matter, shall have the right to do so either in person or by one or more agents authorized by a written proxy signed by the person and filed with the secretary of the corporation. A proxy shall be deemed signed if the shareholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the shareholder or the shareholder's attorney-in-fact. A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless (i) the person who executed the proxy (1) revokes it prior to the time of voting by delivering a writing to the corporation stating that the proxy is revoked, (2) executes a subsequent proxy and presents it to the meeting or (3) votes in person at the meeting, or (ii) the corporation receives written notice of the death or incapacity of the maker of that proxy before the vote pursuant to that proxy is counted; provided, however, that no proxy shall be valid after the expiration of eleven (11) months from the date of the proxy, unless otherwise provided in the proxy. The dates contained on the forms of proxy presumptively determine the order of execution, regardless of the postmark dates on the envelopes in which they are mailed. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of sections 705(e) and (f) of the Code.

Every form of proxy or written consent which provides an opportunity to specify approval or disapproval with respect to any proposal shall also contain an appropriate space marked "abstain" whereby a shareholder may indicate a desire to abstain from voting his or her shares on the proposal. A proxy marked "abstain" by the shareholder with respect to a particular proposal shall not be voted either for or against such proposal. In any election of directors, any form of proxy in which the directors to be voted upon are named therein as candidates and which is marked by a shareholder "withhold" or otherwise marked in a manner indicating that the authority to vote for the election of directors is withheld shall not be voted either for or against the election of a director. Failure to comply with this paragraph shall not invalidate any corporate action taken, but may be the basis for challenging any proxy at a meeting.

Section 14. INSPECTORS OF ELECTION. Before any meeting of shareholders, the board of directors may appoint an inspector or inspectors of election to act at the meeting or

its adjournment. If no inspector of election is so appointed, then the chair of the meeting may, and on the request of any shareholder or a shareholder's proxy shall, appoint inspectors of election to act at the meeting. The number of inspectors shall be either one (1) or three (3). If inspectors are appointed at a meeting pursuant to the request of one or more shareholders or proxies, then the holders of a majority of shares or their proxies present at the meeting shall determine whether one (1) or three (3) inspectors are to be appointed. If there are three (3) inspectors of election the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. If any person appointed as an inspector fails to appear or fails or refuses to act, the chair of the meeting may, and upon the request of any shareholder or a shareholder's proxy shall, appoint a person to replace such inspector.

These inspectors shall:

- (a) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, and the authenticity, validity and effect of proxies;
- (b) receive votes, ballots or consents;
- (c) hear and determine all challenges and questions in any way arising in connection with the right to vote;
- (d) count and tabulate all votes or consents;
- (e) determine when the polls shall close;
- (f) determine the result; and
- (g) do any other acts that may be proper to conduct the election or vote with fairness to all shareholders.

ARTICLE III DIRECTORS

Section 1. POWERS. Subject to the provisions of the Code and any limitations in the articles of incorporation and these bylaws relating to action required to be approved by the shareholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors.

Without prejudice to these general powers, and subject to the same limitations, the directors shall have the power to:

- (a) Select and remove all officers, agents, and employees of the corporation; prescribe any powers and duties for them that are consistent with law, with the articles of incorporation, and with these bylaws; fix their compensation; and require from them security for faithful service;

(b) Change the principal executive office or the principal business office in the State of California from one location to another; cause the corporation to be qualified to do business in any other state, territory, dependency, or country and conduct business within or without the State of California; and designate any place within or without the State of California for the holding of any shareholders' meeting, or meetings, including annual meetings;

(c) Adopt, make, and use a corporate seal; prescribe the forms of certificates of stock; and alter the form of the seal and certificates;

(d) Authorize the issuance of shares of stock of the corporation on any lawful terms, in consideration of money paid, labor done, services actually rendered, debts or securities canceled, or tangible or intangible property actually received; provided, the board of directors shall state by resolution its determination of the fair value to the corporation in monetary terms of any consideration other than money for which shares are issued; and

(e) Borrow money and incur indebtedness on behalf of the corporation, and cause to be executed and delivered for the corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt and securities.

Section 2. NUMBER OF DIRECTORS. The authorized number of directors of the corporation shall be one (1) until changed by a resolution amending this Section 2 of Article III, duly adopted by the board of directors or by the shareholders. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

Notwithstanding the foregoing, if there is only one shareholder at any time, the number of directors may be one or two; and if there are only two shareholders at any time, the number of directors may be two.

Section 3. ELECTION AND TERM OF OFFICE OF DIRECTORS. Directors shall be elected at each annual meeting of the shareholders to hold office until the next annual meeting; however, if any annual meeting is not held or the directors are not elected at any annual meeting, they may be elected at any special shareholders' meeting held for that purpose. Each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.

Section 4. RESIGNATION AND VACANCIES. Any director may resign effective on giving written notice to the chair of the board, the president, the secretary or the board of directors, unless the notice specifies a later time for that resignation to become effective. If the resignation of a director is effective at a future time, the board of directors may elect a successor to take office when the resignation becomes effective.

Vacancies in the board of directors may be filled by a majority of the remaining directors, even if less than a quorum, or by a sole remaining director; however, a vacancy created by the removal of a director by the vote or written consent of the shareholders or by court order may be filled only by the affirmative vote of a majority of the shares represented and voting at a duly held meeting at which a quorum is present (which shares voting affirmatively also constitute a majority of the required quorum), or by the unanimous written consent of all shares entitled to vote thereon. Each director so elected shall hold office until the next annual meeting of the shareholders and until a successor has been elected and qualified.

A vacancy or vacancies in the board of directors shall be deemed to exist (i) in the event of death, resignation or removal of any director, (ii) if the board of directors by resolution declares vacant the office of a director who has been declared of unsound mind by an order of court or convicted of a felony, (iii) if the authorized number of directors is increased or (iv) if the shareholders fail, at any meeting of shareholders at which any director or directors are elected, to elect the number of directors to be voted for at that meeting.

If, after the filling of any vacancy by the directors, the directors then in office who have been elected by the shareholders shall constitute less than a majority of the directors then in office, any holder or holders of an aggregate of five percent (5%) or more of the total number of shares at the time outstanding having the right to vote for such directors may call a special meeting of shareholders to be held to elect the entire board of directors. The term of office of any director shall terminate upon such election of a successor.

The shareholders may elect a director or directors at any time to fill any vacancy or vacancies not filled by the directors. Any such election done by written consent, other than to fill a vacancy created by removal (which requires the unanimous consent of all shares entitled to vote for the election of directors), shall require the consent of the holders of a majority of the outstanding shares entitled to vote thereon.

Section 5. PLACE OF MEETINGS; MEETINGS BY TELEPHONE AND ELECTRONIC MEETINGS. Regular meetings of the board of directors may be held at any place within or outside the State of California that has been designated from time to time by resolution of the board. In the absence of such designation, regular meetings shall be held at the principal executive office. Special meetings of the board may be held at any place within or outside the State of California that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, at the principal executive office.

Any meeting, regular or special, may be held by conference telephone, electronic video screen communication, or electronic transmission by and to the corporation, and all directors shall be deemed to be present in person at the meeting so long as each director can hear each other in the case of meetings by conference telephone or electronic video screen

communication, or can communicate with all other members concurrently in the case of meetings by electronic transmission by and to the corporation.

Section 6. REGULAR MEETINGS. Regular meetings of the board of directors may be held without notice if the times of such meetings are fixed by the board of directors.

Section 7. SPECIAL MEETINGS; NOTICE. Special meetings of the board of directors for any purpose or purposes may be called at any time by the chair or co-chairs of the board, the president, any vice president, the chief financial officer, the secretary or any two directors.

Notice of the time and place of special meetings shall be delivered personally, by telephone, by electronic transmission by the corporation, or by first-class mail, charges prepaid, addressed to each director at that director's address as it is shown on the records of the corporation. If the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. If the notice is delivered personally, by telephone or by electronic transmission by the corporation, it shall be delivered at least forty-eight (48) hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose or the place of the meeting, if the meeting is to be held at the principal executive office.

Section 8. QUORUM. A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 10 of this Article III. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the board of directors, subject to the provisions of section 310 of the Code (as to approval of contracts or transactions in which a director has a direct or indirect material financial interest), section 311 of the Code (as to appointment of committees), section 317(e) of the Code (as to indemnification of directors), the articles of incorporation and other applicable law.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 9. WAIVER OF NOTICE. Notice of a meeting need not be given to any director (i) who provides a waiver of notice, a consent to holding the meeting or an approval of the minutes thereof or (ii) who attends the meeting without protesting, either prior thereto or at its commencement, the lack of notice to such directors. All such waivers, consents and approvals shall be filed with the corporate records or made part of the minutes of the meeting. A waiver of notice need not specify the purpose of any regular or special meeting of the board of directors.

Section 10. ADJOURNMENT. A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

Section 11. NOTICE OF ADJOURNMENT. Notice of the time and place of holding an adjourned meeting need not be given unless the meeting is adjourned for more than twenty-four (24) hours. If the meeting is adjourned for more than twenty-four (24) hours, then notice of the time and place of the adjourned meeting shall be given, before the adjourned meeting takes place, to the directors who were not present at the time of the adjournment.

Section 12. BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING. Any action required or permitted to be taken by the board of directors may be taken without a meeting, provided that all members of the board individually or collectively consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the board of directors. Such written consent and any counterparts thereof shall be filed with the minutes of the proceedings of the board.

Section 13. FEES AND COMPENSATION OF DIRECTORS. Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement of expenses as may be fixed or determined by resolution of the board of directors. This Section 13 shall not be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation for those services.

ARTICLE IV COMMITTEES

Section 1. COMMITTEES OF DIRECTORS. The board of directors may, by resolution adopted by a majority of the authorized number of directors, designate one (1) or more committees, each consisting of two or more directors, to serve at the pleasure of the board. The board may designate one (1) or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. Any committee, to the extent provided in the resolution of the board, shall have all the authority of the board, except with respect to:

- (a) the approval of any action which, under the Code, also requires shareholders' approval or approval of the outstanding shares;
- (b) the filling of vacancies on the board of directors or in any committee;
- (c) the fixing of compensation of the directors for serving on the board or on any committee;
- (d) the amendment or repeal of bylaws or the adoption of new bylaws;
- (e) the amendment or repeal of any resolution of the board of directors which by its express terms is not so amendable or repealable;
- (f) a distribution to the shareholders of the corporation, except at a rate or in a periodic amount or within a price range determined by the board of directors; or

(g) the appointment of any other committees of the board of directors or the members of these committees.

Section 2. MEETINGS AND ACTION OF COMMITTEES. Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Article III of these bylaws, Section 5 (place of meetings), 6 (regular meetings), 7 (special meetings and notice), 8 (quorum), 9 (waiver of notice), 10 (adjournment), 11 (notice of adjournment), and 12 (action without meeting), with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members; provided, however, that the time of regular meetings of committees may be determined either by resolution of the board of directors or by resolution of the committee, that special meetings of committees may also be called by resolution of the board of directors, and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the governance of any committee not inconsistent with the provisions of these bylaws.

ARTICLE V OFFICERS

Section 1. OFFICERS. The officers of the corporation shall be a president, a secretary, and a chief financial officer. The corporation may also have, at the discretion of the board of directors, a chair of the board, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article V. Any number of offices may be held by the same person.

Section 2. ELECTION OF OFFICERS. The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this Article V, shall be chosen by the board of directors and each shall serve at the pleasure of the board of directors, subject to the rights, if any, of an officer under any contract of employment.

Section 3. SUBORDINATE OFFICERS. The board of directors may appoint, or may authorize the president to appoint, such other officers as the business of the corporation may require, each of whom shall hold office for the period, have the authority, and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine.

Section 4. REMOVAL AND RESIGNATION OF OFFICERS. Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the board of directors, at any regular or special meeting of the board or, except in case of an officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the

resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

Section 5. VACANCIES IN OFFICES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these bylaws for regular appointments to that office.

Section 6. CHAIR OF THE BOARD. The chair of the board, if such an officer be elected, shall, if present, preside at meetings of the board of directors and exercise and perform such other powers and duties as may from time to time be assigned to the chair by the board of directors or as may be prescribed by these bylaws. If there is no president, the chair of the board shall in addition be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 7 of this Article V.

Section 7. PRESIDENT. Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board, if there be such an officer, the president shall, subject to the control of the board of directors, have general supervision, direction and control of the business and the officers of the corporation. The president shall preside at all meetings of the shareholders and, in the absence or nonexistence of the chair of the board, at all meetings of the board of directors. The president shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the board of directors or these bylaws.

Section 8. VICE PRESIDENTS. In the absence or disability of the president, the vice presidents, if any, in order of their rank as fixed by the board of directors or, if not ranked, a vice president designated by the board of directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the board of directors, these bylaws, the president, or the chair of the board.

Section 9. SECRETARY. The secretary shall keep or cause to be kept, at the principal executive office or such other place as the board of directors may direct, a book of minutes of all meetings and actions of directors, committees of directors and shareholders. The minutes shall show the time and place of each meeting, whether regular or special (and, if special, how authorized and the notice given), the names of those present at directors' meetings or committee meetings, the number of shares present or represented at shareholders' meetings and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office or at the office of the corporation's transfer agent or registrar, as determined by resolution of the board of directors, a share register, or a duplicate share register, showing the names of all shareholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the shareholders and of the board of directors required to be given by law or by these bylaws. The secretary shall keep the seal of the corporation if one be adopted, in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or these bylaws.

Section 10. CHIEF FINANCIAL OFFICER. The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the board of directors. The chief financial officer shall disburse the funds of the corporation as may be ordered by the board of directors, shall render to the president and directors, whenever they request it, an account of all of his or her transactions as chief financial officer and of the financial condition of the corporation, and shall have other powers and perform such other duties as may be prescribed by the board of directors or these bylaws.

ARTICLE VI INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

Section 1. INDEMNIFICATION OF DIRECTORS AND OFFICERS. For the purposes of this Article, "agent" means any person who is or was a director, officer, employee, or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative, or investigative; and "expenses" includes, without limitation, attorneys' fees and any expenses of establishing a right to indemnification under Section 6 or 7(d) of this Article VI.

Section 2. ACTIONS OTHER THAN BY THE CORPORATION. The corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding (other than an action by or in the right of the corporation to procure a judgment in its favor) by reason of the fact that such person is or was an agent of the corporation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if that person acted in good faith and in a manner that person reasonably believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of that person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests

of the corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

Section 3. ACTIONS BY THE CORPORATION. Subject to Section 4 below, the corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was an agent of the corporation, against expenses actually and reasonably incurred by that person in connection with the defense or settlement of that action if that person acted in good faith, in a manner that such person believed to be in the best interests of the corporation and its shareholders. No indemnification shall be made under this Section 3:

(a) In respect of any claim, issue or matter as to which that person shall have been adjudged to be liable to the corporation in the performance of that person's duty to the corporation and its shareholders, unless and only to the extent that the court in which the proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, that such person is fairly and reasonably entitled to indemnity for expenses, and then only to the extent that the court shall determine;

(b) of amounts paid in settling or otherwise disposing of a pending action without court approval; or

(c) of expenses incurred in defending a pending action of which is settled or otherwise disposed of without court approval.

Section 4. ACTIONS BY CORPORATION AGAINST DIRECTORS. The corporation shall indemnify any person who was or is a party to any threatened, pending or completed proceeding by or in the right of the corporation for breach of such person's duties as a director of the corporation against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding.

Notwithstanding the foregoing, no indemnification shall be made under this Section 4 for those circumstances set forth in paragraphs (a), (b) or (c) of Section 3 above, or in respect to any claim, issue or matter as to which that person shall have been adjudged liable to the corporation and its shareholders for:

(a) acts or omissions that involve intentional misconduct or a knowing and culpable violation of law;

(b) acts or omissions that such person believed to be contrary to the best interest of the corporation or its shareholders, or that involve the absence of good faith on the part of the person;

(c) any transaction from which that person derived an improper personal benefit;

(d) acts or omissions that show a reckless disregard for that person's duty to the corporation or its shareholders in circumstances in which that person was aware, or should have been aware, in the ordinary course of performing that person's duties to the corporation, of a risk of serious injury to the corporation or its shareholders;

(e) acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of that person's duty to the corporation or its shareholders;

(f) transactions affected by a conflict of interest such that liability is created under Section 310 of the California Corporations Code;

(g) corporate actions subjecting directors to joint and several liability under Section 316 of the California Corporations Code;

(h) acts or omissions occurring prior to the date this Section 4 becomes effective.

Section 5. FURTHER INDEMNIFICATION BY AGREEMENT. Notwithstanding the foregoing provisions of this Article VI, the corporation may provide for further indemnification of an agent of the corporation against liability for breach of duty to the corporation and its shareholders by:

- (a) agreement with such agent;
- (b) vote of the shareholders other than the proposed indemnitee, or
- (c) vote of the disinterested directors of the corporation.

Notwithstanding anything in this Section 5 to the contrary, no indemnification of such agent may be made (i) for any acts, omissions or transactions from which a director may not be relieved of liability as set forth in the exceptions to paragraph (a) (10) of Section 204 of the California Corporations Code, or (ii) as to circumstances in which indemnity is expressly prohibited by Section 317 of the California Corporations Code.

Section 6. SUCCESSFUL DEFENSE BY AGENT. To the extent that an agent of the corporation has been successful on the merits in defense of any proceeding referred to in Sections 2 or 3 of this Article VI, or in defense of any claim, issue or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

Section 7. AUTHORIZATION. Except as provided in Sections 4, 5 and 6 of this Article VI, any indemnification under this Article VI shall be made by the corporation only if authorized in the specific case on a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Sections 2 or 3 of this Article VI, by:

(a) a majority vote of a quorum consisting of directors who are not parties to the proceeding;

(b) if such a quorum of directors is not obtainable, by independent legal counsel in a written opinion;

(c) approval by the affirmative vote of a majority of the shares of the corporation entitled to vote represented at a duly held meeting at which a quorum is present or by the written consent of holders of a majority of the outstanding shares entitled to vote. For this purpose, the shares owned by the person to be indemnified shall not be considered outstanding or entitled to vote thereon; or

(d) the court in which the proceeding is or was pending, on application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by the corporation.

Section 8. ADVANCE OF EXPENSES. Expenses incurred in defending any proceeding may be advanced by the corporation before the final disposition of the proceeding on receipt of an undertaking by or on behalf of the agent to repay the amount of the advance if it shall be determined ultimately that the agent is not entitled to be indemnified as authorized in this Article.

Section 9. OTHER CONTRACTUAL RIGHTS. Nothing contained in this Article VI shall affect any right to indemnification to which persons other than directors and officers of the corporation or any subsidiary hereof may be entitled by contract or otherwise.

Section 10. LIMITATIONS. No indemnification or advance shall be made under this Article, except as provided in Sections 4, 5, 6 or 7(c), in any circumstance where it appears:

(a) that it would be inconsistent with a provision of the articles, a resolution of the shareholders, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) that it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Section 11. INSURANCE. Upon and in the event of a determination by the board of directors of the corporation to purchase such insurance, the corporation shall purchase and maintain insurance on behalf of any agent of the corporation against any liability 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 that liability under the provisions of this Article. If any portion of the shares of the company issuing such policies of insurance is owned by the corporation, the corporation will comply with the requirements of Section 317(i) of the California Corporations Code.

Section 12. CONTINUATION OF RIGHTS. The rights to indemnity under this Article shall continue as to a person who has ceased to be a director, officer or agent of the corporation and shall inure to the benefit of the heirs, executors and administrators of that person.

Section 13. FIDUCIARIES OF CORPORATE EMPLOYEE BENEFIT PLAN. This Article does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in that person's capacity as such, even though that person may also be an agent of the corporation as defined in Section 1 of this Article. Nothing contained in this Article shall limit any right to indemnification to which such a trustee, investment manager, or other fiduciary may be entitled by contract or otherwise, which shall be enforceable to the extent permitted by applicable law.

ARTICLE VII

RECORDS AND REPORTS

Section 1. MAINTENANCE AND INSPECTION OF SHARE REGISTER. The corporation shall keep at its principal executive office, or at the office of its transfer agent or registrar (if either be appointed by resolution of the board of directors), a record of its shareholders listing the names and addresses of all shareholders and the number and class of shares held by each shareholder.

A shareholder or shareholders of the corporation holding at least five percent (5%) in the aggregate of the outstanding voting shares of the corporation or who holds at least one percent (1%) of such voting shares and has filed a Schedule 14B with the United States Securities and Exchange Commission, may (i) inspect and copy the records of shareholders' names, addresses and shareholdings during usual business hours on five (5) days' prior written demand on the corporation and (ii) obtain from the transfer agent of the corporation, on written demand and on the tender of such transfer agent's usual charges for such list, a list of the names and addresses of the shareholders who are entitled to vote for the election of directors, and their shareholdings, as of the most recent record date for which that list has been compiled or as of a date specified by the shareholder after the date of demand. Such list shall be made available to any such shareholder by the transfer agent on or before the later of five (5) days after the demand is received or five (5) days after the date specified in the demand as the date as of which the list is to be compiled.

The record of shareholders shall also be open to inspection and copying on the written demand of any shareholder or holder of a voting trust certificate, at any time during usual business hours, for a purpose reasonably related to the holder's interests as a shareholder or as the holder of a voting trust certificate.

Any inspection and copying under this Section 1 of Article VII may be made in person or by an agent or attorney of the shareholder or holder of a voting trust certificate making the demand.

Section 2. MAINTENANCE AND INSPECTION OF BYLAWS. The corporation shall keep at its principal executive office or, if its principal executive office is not in

the State of California, at its principal business office in California the original or a copy of these bylaws as amended to date, which bylaws shall be open to inspection by the shareholders at all reasonable times during office hours. If the principal executive office is outside the State of California and the corporation has no principal business office in California, then the secretary shall, upon the written request of any shareholder, furnish to that shareholder a copy of these bylaws as amended to date.

Section 3. MAINTENANCE AND INSPECTION OF OTHER CORPORATE RECORDS. The accounting books and records and the minutes of proceedings of the shareholders, of the board of directors and of any committee or committees of the board of directors shall be kept at such place or places as are designated by the board of directors or, in the absence of such designation, at the principal executive office. The minutes and the accounting books and records shall be kept either in written form or in any other form capable of being converted into written form.

The minutes and accounting books and records shall be open to inspection upon the written demand of any shareholder or holder of a voting trust certificate, at any reasonable time during usual business hours, for a purpose reasonably related to the holder's interests as a shareholder or as the holder of a voting trust certificate. The inspection may be made in person or by an agent or attorney and shall include the right to copy and make extracts. Such rights of inspection shall extend to the records of each subsidiary corporation of the corporation.

Section 4. INSPECTION BY DIRECTORS. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of every kind, as well as the physical properties of the corporation and each of its subsidiary corporations. Such inspection by a director may be made in person or by an agent or attorney. The right of inspection includes the right to copy and make extracts of documents.

Section 5. ANNUAL REPORT TO SHAREHOLDERS; WAIVER. As long as there are fewer than 100 shareholders, the annual report to shareholders referred to in the Code is expressly dispensed with, but nothing herein shall be interpreted as prohibiting the board of directors from issuing annual or other periodic reports to the shareholders of the corporation as they consider appropriate.

Section 6. FINANCIAL STATEMENTS. If no annual report for the fiscal year has been sent to shareholders, then the corporation shall, upon the written request of any shareholder made more than one hundred twenty (120) days after the close of such fiscal year, deliver or mail to the person making the request, within thirty (30) days thereafter, a copy of a balance sheet as of the end of such fiscal year and an income statement and statement of changes in financial position for such fiscal year.

If a shareholder or shareholders holding at least five percent (5%) of the outstanding shares of any class of stock of the corporation makes a written request to the corporation for an income statement of the corporation for the three-month, six-month or nine-month period of the then current fiscal year ended more than thirty (30) days before the date of the request, and for a balance sheet of the corporation as of the end of that period, then the chief financial officer shall cause that statement to be prepared, if not already prepared, and shall

deliver personally or mail that statement or statements to the person making the request within thirty (30) days after the receipt of the request.

The quarterly income statements and balance sheets referred to in this section shall be accompanied by the report, if any, of any independent accountants engaged by the corporation or by the certificate of an authorized officer of the corporation that the financial statements were prepared without audit from the books and records of the corporation.

Section 7. STATEMENTS OF GENERAL INFORMATION. As and when required by the Code, the corporation shall file with the Secretary of State of the State of California, on the prescribed form, a statement setting forth the names and complete business or residence addresses of all incumbent directors, the number of vacancies on the board, if any, the names and complete business or residence addresses of the chief executive officer, secretary and chief financial officer, the street address of its principal executive office or principal business office in this state, and the general type of business constituting the principal business activity of the corporation, together with a designation of the agent of the corporation for the purpose of service of process.

Section 8. REPRESENTATION OF SHARES OF OTHER CORPORATIONS. All stock of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed by the person authorized so to do by resolution of the board of directors or in absence of such authorization, by the chair of the board, the president or any vice president.

ARTICLE VIII GENERAL MATTERS

Section 1. FISCAL YEAR. The fiscal year of the corporation shall be fixed by action of the board of directors.

Section 2. VOTING. For purposes of determining the shareholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the shareholders entitled to exercise any rights in respect of any other lawful action, the board of directors may fix, in advance, a record date, which shall not be more than sixty (60) days before any such action. In that case, only shareholders of record at the close of business on the date so fixed are entitled to receive the dividend, distribution or allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date so fixed, except as otherwise provided in the Code, the articles of incorporation or by agreement.

If the board of directors does not so fix a record date, then the record date for determining shareholders for any such purpose shall be at the close of business on the day on which the board adopts the applicable resolution or the sixtieth (60th) day before the date of that action, whichever is later.

Section 3. CHECKS, DRAFTS, EVIDENCES OF INDEBTEDNESS. From time to time, the board of directors shall determine by resolution which person or persons may sign or endorse all checks, drafts other orders for payment of money, notes or other evidences of

indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

Section 4. CORPORATE CONTRACTS AND INSTRUMENTS: HOW EXECUTED. The board of directors, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, 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 for any purpose or for any amount.

Section 5. CERTIFICATES FOR SHARES. A certificate or certificates for shares of the corporation shall be issued to each shareholder when any of such shares are fully paid. The board of directors may authorize the issuance of certificates for shares partly paid provided that these certificates shall state the total amount of the consideration to be paid for them and the amount actually paid. All certificates shall be signed in the name of the corporation by the chair of the board or the vice chair of the board or the president or a vice president and by the chief financial officer or an assistant treasurer or the secretary or an assistant secretary, certifying the number of shares and the class or series of shares owned by the shareholder. Any or all of the signatures on the certificate may be facsimile.

In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on a certificate ceases to be that officer, transfer agent or registrar before that certificate is issued, it may be issued by the corporation with the same effect as if that person were an officer, transfer agent or registrar at the date of issue.

If the shares of the corporation are classified or if any class of shares has two or more series, there shall appear on the certificate one of the following: (a) a statement of the rights, preferences, privileges and restrictions granted to or imposed upon each class or series of shares authorized to be issued and upon the holders thereof; (b) a summary of such rights, preferences, privileges and restrictions with reference to the provisions of the articles of incorporation and any certificate of determination establishing the same; (c) a statement setting forth the office or agency of the corporation from which shareholders may obtain, upon request and without charge, a copy of the statement referred to in (a) above.

There shall also appear on the certificate the statements required by all of the following clauses to the extent applicable: (1) the fact that the shares are subject to restrictions upon transfer; (2) if the shares are assessable or are not fully paid, a statement that they are assessable or, on partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon; (3) the fact that the shares are subject to a close corporation voting agreement or an irrevocable proxy or restrictions upon voting rights contractually imposed by the corporation; (4) the fact that the shares are redeemable; and (5) the fact that the shares are convertible and the period for conversion, following the form of the legend set forth in the Code.

When the articles of incorporation are amended in any way affecting the statements contained in the certificates for outstanding shares, or it becomes desirable for any

reason, in the discretion of the board of directors, to cancel any outstanding certificate for shares and issue a new certificate therefor conforming to the rights of the holder, the board of directors may order any holders of outstanding certificates for shares to surrender and exchange them for new certificates within a reasonable time to be fixed by the board of directors.

Section 6. LOST CERTIFICATES. Except as provided in this Article VIII Section 6, no new certificates for shares shall be issued to replace a previously-issued certificate unless the latter is surrendered to the corporation and canceled at the same time. The board of directors may, in case any share certificate or certificate for any other security is lost, stolen or destroyed, authorize the issuance of a replacement certificate on such terms and conditions as the board may require, including provision for indemnification of the corporation secured by a bond or other adequate security sufficient to protect the corporation against any claim that may be made against it, including any expense or liability, on account of the alleged loss, theft or destruction of the certificate or the issuance of the replacement certificate.

Section 7. CONSTRUCTION; DEFINITIONS. Unless the context requires otherwise, the general provisions, rules of construction and definitions in the Code shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular and the term "person" includes both a corporation and a natural person.

"Approved by (or approval of) outstanding shares" shall mean approved by the affirmative vote of a majority of the outstanding shares entitled to vote. Such approval shall include the affirmative vote of a majority of the outstanding shares of each class or series entitled, by any provision of the articles or the Code, to vote as a class or series on the subject matter being voted upon and shall also include the affirmative vote of such greater proportion (including all) of the outstanding shares of any class or series if such greater proportion is required by the articles or the Code.

"Approved by (or approval of) the shareholders" shall mean approved or ratified by the affirmative vote of a majority of the shares entitled to vote represented and voting at a duly held meeting at which a quorum is present (which shares voted affirmatively also constitute at least a majority of the required quorum) or by the written consent of shareholders or by the affirmative vote or written consent of such greater proportion (including all) of the shares of any class or series as may be provided in the articles or the Code for all or any specified shareholder action.

"Electronic transmission by the corporation" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the corporation, (2) posted on an electronic message board or network which the corporation has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission for communications under or pursuant to the Code, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an

electronic transmission by a corporation to an individual shareholder or member under the Code is not authorized unless, in addition to satisfying the requirements of this section, the transmission satisfies the requirements applicable to consumer consent to electronic records as set forth in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

“Electronic transmission to the corporation” means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the corporation has provided from time to time to shareholders or members and directors for sending communications to the corporation, (2) posting on an electronic message board or network which the corporation has designated for those communications, and which transmission shall be validly delivered upon the posting, or (3) other means of electronic communication, (b) as to which the corporation has placed in effect reasonable measures to verify that the sender is the shareholder or member (in person or by proxy) or director purporting to send the transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

“Electronic transmission by and to the corporation” has the meanings set forth above under the definitions “electronic transmission by the corporation” and “electronic transmission to the corporation”.

ARTICLE IX AMENDMENTS

Section 1. AMENDMENT BY SHAREHOLDERS. New bylaws may be adopted or these bylaws may be amended or repealed by the vote or written consent of holders of a majority of the outstanding shares entitled to vote; provided, however, that if the articles of incorporation of the corporation set forth the number of authorized directors of the corporation, then the authorized number of directors may be changed only by an amendment of the articles of incorporation.

Section 2. AMENDMENT BY DIRECTORS. Subject to the rights of the shareholders provided in Article IX, Section 1, bylaws, other than a bylaw or an amendment of a bylaw changing the authorized number of directors (except to fix the authorized number of directors pursuant to a bylaw providing for a variable number of directors), may be adopted, amended or repealed by the board of directors.

ALEX VANTAGGIATO

DIRECTOR OF RESIDENTIAL SERVICES

Alex Vantaggiato has over a decade of experience in residential construction, energy efficiency, operations, and project management. With in-depth knowledge, Alex leads ConSol's Residential Services Department and he serves as lead project manager for several large contracts with utility, local, and state government agency clients. He also serves as the subject matter expert and lead trainer for ConSol's training program. Vantaggiato was the lead designer and implementer of ConSol's online learning management system, successfully transitioning from standard classroom to web learning delivery. He is valued for his strong ability to incorporate innovative management techniques that result in enhanced business practices and increased productivity for ConSol clients. Vantaggiato started his career in the U.S. Army prior to joining ConSol, where he has served over 13 years and is still serving today as an Officer in the U.S. Army Reserves. He graduated Cum Laude from ITT Tech with a Bachelor's Degree in Criminal Justice, and completed extensive coursework in the U.S. Military in leadership, team building, group dynamics, instructional methods, and operations management.

PROFESSIONAL EXPERIENCE

CHEERS/ConSol- 2004 to Present

■ Director, Residential Services

- P&L responsibility for all staffing, budgeting, forecasting, and successful and profitable implementation of ConSol/CHEERS field services
- Responsible for overseeing ConSol QA Inspections for the Department of Community Services and Development (CSD)
- In charge of the design & oversight of CHEERS QA inspections program.
- Responsible for the oversight of Home Energy Audits for key clients where ConSol acts as Program PM
- Accountable for data integrity of departmental IT systems

■ Field Operations Manager

- Manages day to day operations in regards to ConSol/CHEERS field services
- Responsible for overseeing field staff composed of up to 6 personnel and external contractors
- Reports to management in regards to progress on assigned projects and related issues
- Supervise CHEERS QA inspection program
- Supervise QA inspections for the Department of Community Services and Development (CSD)

U.S. Army- 2001 to Present

■ Company Commander, U.S. Army Reserves, Concord CA

- ▣ Serves as the Company Commander of a Seaport Operations Logistic Unit
- ▣ Drives the strategic planning of the unit's training and operational readiness in preparation for combat deployments and contingency operations
- ▣ Overall responsible for the health, welfare, morale and professional development of 155 assigned personnel
- ▣ Provides input to, and assists with, higher headquarters' planning
- ▣ Maintains accountability and operational readiness of property and equipment valued at \$18 million

EDUCATION

ITT Technical Institute, Rancho Cordova, CA

■ Bachelor of Science, Criminal Justice

- ▣ Inducted in the National Technical Honor Society (NTHS) for academic achievement

TRAINING AND CERTIFICATIONS

Credentials and Professional Licenses

■ CSD Training Certifications

- ▣ Online Pre-Requisite Weatherization Training
- ▣ Classroom Weatherization and Diagnostic Training
- ▣ Assessor Classroom and Field Training
- ▣ Inspector Classroom and Field Training
- ▣ Monitored Field Inspections and Evaluation

■ CHEERS HERS Rater, License # RCN10086

- ▣ New Construction
- ▣ Solar

■ CalCERTS HERS Rater, License # CC2004085

- ▣ New Construction & Alterations
- ▣ Whole House
- ▣ Solar

■ Building Performance Institute (BPI), License # 5015844

- ▣ Quality Assurance Inspector
- ▣ Building Analyst
- ▣ Envelope Professional
- ▣ BPI Proctor

■ Environmental Protection Agency (EPA)

-
- ▣ 608 Type 2 refrigerant technician, License #P335B51B716AD9BE0
 - ▣ Lead Renovator, License # R-1-18717-13-07826
 - ▣ Energy Star V3 Rater, License # 20110824-010

Certificates of Training

- **Organizational Leadership**
- **Lean Six Sigma**
- **Conflict Management & Resolution**
- **Negotiation**

ROB STARR

REGIONAL FIELD SUPERVISOR, SOUTHERN CALIFORNIA

Rob Starr has been a HERS Rater since 2004. He has since risen through the ranks to become the regional supervisor for home inspectors throughout Southern California and Nevada. As a BPI Building Analyst and Envelope Professional, he provided valuable contributions to the development of ConSol's BPI training protocols. In addition to his management role, he is a highly-regarded instructor for BECT, BPI and CHEERS training. His extensive field experience and training acuity make him one of the California's top journeyman experts in building science, design and operations, and advanced building methods. Prior to joining CHEERS, Rob worked as an HVAC installer where he learned advanced principles of heating and cooling system design and operations.

PROFESSIONAL EXPERIENCE

CHEERS/ConSol- 2004 to Present

■ Regional Field Supervisor, Southern California

- ▣ Ensure operational procedures are consistently implemented, and provide advice, support and guidance within the team and to higher management when enhancements are needed
- ▣ Manages and directs the use of resources effectively and efficiently to deliver team objectives while being conscious of the financial implications of these decisions
- ▣ Ensures that assigned staff demonstrate a high level of knowledge within their functional areas and ensure they consistently deliver a high standard of performance
- ▣ Assists with the planning and development of key objectives and improvement targets for the team through the operational planning process and monitor and review on a regular basis

Alliance Mechanical- 1997 to 2004

■ HVAC Installer

- ▣ Install HVAC related equipment according to manufacturer's specifications
- ▣ Wire both line and low voltage to heating and cooling equipment
- ▣ Install copper refrigerant lines to air conditioning units, including soldering and brazing
- ▣ Properly connect gas lines to heating equipment
- ▣ Install sheet metal and flex duct systems in residential and light commercial buildings

EDUCATION

San Bernardino Valley College

■ Inspection Technology

TRAINING AND CERTIFICATIONS

Credentials and Professional Licenses

■ CSD Training Certifications

- Online Pre-Requisite Weatherization Training
- Classroom Weatherization and Diagnostic Training
- Assessor Classroom and Field Training
- Inspector Classroom and Field Training
- Monitored Field Inspections and Evaluation

■ CHEERS HERS Rater, License # RCN10183

- New Construction
- Solar

■ CalCERTS HERS Rater , License #CC2004085

- New Construction & Alterations
- Whole House
- Solar
- Commercial

■ Building Performance Institute (BPI), License #5019960

- Quality Assurance Inspector
- Building Analyst
- Envelope Professional
- BPI Proctor

■ National Green Building Standards Rater, License #003390

■ Environmental Protection Agency (EPA)

- 608 Type 2 refrigerant technician, License #P5F8F22ED0E03B731
- Lead Renovator, License #R-1-18717-13-07825

Certificates of Training

- Infrared Imaging
- Jobsite Safety

ANDREW NEGD

REGIONAL FIELD SUPERVISOR, NORTHERN CALIFORNIA

Andrew started his residential construction career in 2003 as a HERS rater, providing inspection services throughout Northern California. The dedication and integrity he demonstrated in this position earned him a promotion to regional field supervisor for Northern California operations, where he became responsible of the training, safety and accountability of HERS raters located in the region. His knowledge base focuses on home performance and building technology, with emphasis on preventing and resolving problems related to building design, construction, and operation. Due to this vast skills and industry experience, he is also an acting lead in conducting field training for the CHEERS certification program.

PROFESSIONAL EXPERIENCE

CHEERS/ConSol- 2003 to Present

■ Regional Field Supervisor, Northern California

- Ensure operational procedures are consistently implemented, and provide advice, support and guidance within the team and to higher management when enhancements are needed
- Manages and directs the use of resources effectively and efficiently to deliver team objectives while being conscious of the financial implications of these decisions
- Ensures that assigned staff demonstrate a high level of knowledge within their functional areas and ensure they consistently deliver a high standard of performance
- Assists with the planning and development of key objectives and improvement targets for the team through the operational planning process and monitor and review on a regular basis

EDUCATION

University of California, Santa Barbara

■ Chemical Engineering

TRAINING AND CERTIFICATIONS

Certifications and Professional Licenses

■ CSD Training Certifications

- Online Pre-Requisite Weatherization Training
- Classroom Weatherization and Diagnostic Training
- Assessor Classroom and Field Training
- Inspector Classroom and Field Training

-
- ▣ Monitored Field Inspections and Evaluation
 - **CHEERS HERS Rater, License # RCN10182**
 - ▣ New Construction
 - ▣ Solar
 - **CalCERTS HERS Rater , License #CC2004014**
 - ▣ New Construction & Alterations
 - ▣ Whole House
 - ▣ Solar
 - **Building Performance Institute**
 - ▣ Quality Assurance Inspector
 - **Environmental Protection Agency (EPA)**
 - ▣ 608 Type 2 Refrigerant Technician, License # P11F414504BDD1B50
 - ▣ Lead Renovator, License #R-I-18717-13-07832
 - ▣ Energy Star V3 Rater, License # 20110824-009

Certificates of Training

- **Conflict Management and Resolution**

CHEERS REGISTRY AGREEMENT GENERAL PROVISIONS

1. SERVICES

1.1 Registry User Subscriptions. The Services may be used by only Registry Users designated by Registry Client on Exhibit B, and as may be revised from time-to-time by Registry Client upon acceptance by CHEERS and the payment of any applicable subscription fees. The functionality of the CHEERS System may vary for each Subscription Category and is subject to change from time-to-time without notice. Unless otherwise specified, (i) Services are available only to Registry Users and may be accessed by no more than the specified number of Registry Users, if applicable, (ii) additional Registry User subscriptions may be added during the applicable subscription term at the same pricing as that for the pre-existing subscriptions thereunder, prorated for the remainder of the subscription term in effect at the time the additional Registry User subscriptions are added, and (iii) the added Registry User subscriptions shall terminate on the same date as the pre-existing Registry User subscriptions. Registry User subscriptions are designated for Registry Users only and cannot be shared or used by more than one Registry User, but may be reassigned to new Registry Users replacing former Registry Users who no longer require ongoing use of the Services.

1.2 Access Restrictions. The CHEERS System is restricted by authorization relative to each Subscription Category. Unique secure login and passwords are issued to each Registry User for the purpose of maintaining security, privacy, and integrity of the data and services provided. No Registry User may share his or her login or password with any other person under any circumstance. CHEERS may, in its sole discretion, rescind access rights to Registry Client and any of its Registry Users if Registry Client or any of its Registry Users share their login or password with another or use another's secure login.

1.3 CHEERS Responsibilities. CHEERS shall: (i) provide CHEERS basic support for the Services to Registry Client at no additional charge, and/or upgraded support if purchased, (ii) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which CHEERS shall give at least 8 hours notice via the Services and which CHEERS shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday Pacific time), or (b) any unavailability caused by circumstances beyond CHEERS's reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving CHEERS employees), Internet service provider failures or delays, or denial of service attacks, and (iii) provide the Services only in accordance with applicable laws and government regulations.

1.4 Registry Client Responsibilities. Registry Client shall (i) comply with all applicable federal, state and local laws, rules and regulations, (ii) be responsible for all Registry Users' compliance with all obligations of Registry Client under this Agreement, including, without limitation, those of HERS Raters under Section 4 of this Agreement, (iii) be liable for all actions taken by its Registry Users, (iv) be responsible for the accuracy, quality and legality of Registry Client data and of the means by which it acquired Registry Client data, (v) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify CHEERS promptly of any such unauthorized access or use, and (vi) use the Services only in accordance with the CHEERS Materials (as hereinafter defined) and applicable laws and government regulations. Registry Client shall not (a) make the Services available to anyone other than Registry Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit malicious code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks. Registry Client is solely responsible for all hardware, software and communications equipment necessary to access the CHEERS system.

2. FEES AND PAYMENT

2.1 Fees. Registry Client shall pay all fees in accordance with the Fee Schedule. Unless otherwise stated, (i) fees are based on services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of Registry User subscriptions purchased cannot be decreased during the relevant subscription term. Registry User subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for Registry User subscriptions added in

the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term.

2.2 Invoicing and Payment. Fees are generally to be paid in advance. In its sole discretion, however, CHEERS reserves the right to invoice certain Registry Clients in advance, at the time of service, or on a monthly schedule. If invoiced by CHEERS, fees are due net 30 days from the invoice date. Registry Client is responsible for providing complete and accurate billing and contact information to CHEERS and notifying CHEERS of any changes to such information.

2.3 Overdue Charges. If any amounts invoiced hereunder are not received by CHEERS by the due date, then at CHEERS's discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) CHEERS may condition future Services on payment terms shorter than those specified in the "Invoicing and Payment" section above.

2.4 Suspension of Service. If any charge owing by Registry Client is 30 days or more overdue, CHEERS may, without limiting its other rights and remedies, eliminate any discounts or suspend Services until such amounts are paid in full, provided CHEERS has given Registry Client 10 or more days' prior notice that its account is overdue in accordance with the "Notices" section below before suspending Services.

2.5 Payment Disputes. CHEERS shall not exercise its rights under the "Overdue Charges" or "Suspension of Service" section above if Registry Client is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

2.6 Taxes. Unless otherwise stated, CHEERS' fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales and use, or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). Registry Client is responsible for paying all Taxes associated with its purchases hereunder. If CHEERS has the legal obligation to pay or collect Taxes for which Registry Client is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Registry Client, unless Registry Client provides CHEERS with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, CHEERS is solely responsible for taxes assessable against it based on its income, property and employees.

3. PROPRIETARY RIGHTS

3.1 Reservation of Rights in Services. Subject to the limited rights expressly granted hereunder, CHEERS reserves all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to Registry Client hereunder other than as expressly set forth herein.

3.2 Proprietary Information. Registry Client and its Registry Users may use the CHEERS Training Manuals, User Guides, and other supplementary materials made available by CHEERS to Registry Clients (collectively "CHEERS Materials") and supporting Proprietary Information under the following terms and conditions:

- A. Registry Client agrees that the CHEERS Materials and Proprietary Information are owned exclusively by CHEERS, and are protected by the copyright laws of the United States. Registry Client agrees that Registry Client obtains no rights in the CHEERS Materials or Proprietary Information, except to use them specifically in accordance with this Agreement.

"Proprietary Information" shall mean CHEERS' confidential information, trade secrets and know-how embodied in the CHEERS Materials and not generally known or available to the public, including, but not limited to, data communication processes and systems design.

- B. The CHEERS Materials and Proprietary Information may only be used by the Registry Users who shall keep strictly confidential the CHEERS Materials and Proprietary Information, and acknowledge that the CHEERS Materials and Proprietary Information constitute valuable property and work

product of CHEERS, that any breach of the confidentiality obligations hereunder may cause CHEERS irreparable harm and damage, and that all confidentiality obligations hereunder shall survive any expiration or termination of this Agreement.

C. Registry Client and its Registry Users may not do the following:

1. Make copies of the CHEERS Materials.
2. Alter, remove or conceal any copyright or trademark notice on CHEERS Materials.
3. Assign or transfer any rights to use the CHEERS Materials or Proprietary Information except as set forth in this Agreement.

D. CHEERS shall have the right, without prior approval from or notice to Registry Client, to make changes, updates, modifications or enhancements to any of the CHEERS Materials or other work product or manuals, and such changes, updates, modifications and enhancements shall remain the property of CHEERS.

3.3 Restrictions. Registry Client shall not (i) permit any third party to access the Services except as contemplated by Section 3.4 below, (ii) create derivative works based on the Services except as permitted herein, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Registry Client's own intranets or otherwise for its own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

3.4 Third Party Representatives. The CHEERS system may permit Registry Client to specifically authorize others to act on Registry Client's behalf ("Third Party Representative"), such as giving others signature authority on certain governmental forms. Registry Client hereby authorizes CHEERS to accept and act upon all actions taken by any Third Party Representative for all intents and purposes. Registry Client represents and warrants to CHEERS that any such delegation of authority by Registry Client to a Third Party Representative (including delegation of signature authority) complies with all laws, rules and regulations. Registry Client acknowledges and agrees that Registry Client is solely responsible for all actions taken by Third Party Representatives.

3.5 Suggestions. CHEERS shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Registry Client, including Users, relating to the operation of the Services.

4. SPECIAL REQUIREMENTS FOR HERS RATERS

4.1 Representations of HERS Raters. Registry Client hereby represents and warrants to CHEERS that its Registry Users that are HERS Raters have completed all CHEERS required training courses and passed required certification courses, as recorded by training certificates posted on the System.

4.2 Obligations of HERS Raters. All Registry Users of Registry Client who are HERS Raters shall (i) comply with all CHEERS performance and quality assurance procedures which may be amended from time-to-time by CHEERS ("Procedures"), (ii) comply with all applicable federal, state and local laws, rules and regulations, including, without limitation, those specified at Section 1673(b) of the Regulations (as hereinafter defined), (iii) provide true, accurate and complete data collection, analysis, ratings, and field verification and diagnostic testing, (iv) not accept payment or consideration in exchange for reporting data gathered for a rating, analytical results used for a rating, or a rating result that was not in fact conducted and reported in compliance with the Regulations, (v) comply with the conflict of interest requirements specified in Section 1673(j) of the Regulations, (vi) personally complete all required field verification and diagnostic testing, (vii) transmit all data to the CHEERS System within forty-eight (48) hours of completing the field verification and diagnostic testing, (viii) shall be responsible for all data transmitted, (ix) shall keep as confidential all ratings, field verifications and diagnostic testing results and all information gathered from rating customers except for transmission to the CHEERS System, and (x) shall notify CHEERS within 5 business days of severing or changing your employment status with your existing Rating Company as listed in the CHEERS database. All confidentiality obligations of Registry User

and Registry Client shall survive termination of this Agreement. No Registry User (HERS Rater) may rate or perform a field verification or diagnostic test on any home in which the Registry User has any financial interest.

4.3 Rater Agreement. Each Registry User of Registry Client that is a HERS Rater shall sign an agreement to be bound by the provisions of this Agreement (“Rater Agreement”).

4.4 Acknowledgement. The failure of Registry Client or any of its Registry Users to abide by the terms and conditions of this Agreement may result in the rescission of access rights to the Services. Registry Client acknowledges that access to a data registry is a requirement of maintaining active status as a HERS Rater and if data registry access is denied or suspended, the HERS Rater may be decertified or suspended automatically.

5. WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

5.1 CHEERS Warranties. CHEERS warrants that (i) it has validly entered into this Agreement and has the legal power to do so, (ii) the Services shall perform materially in accordance with its specifications, and (iii) the functionality of the Services will not be materially decreased during a subscription term. For any breach of a warranty above, Registry Client’s exclusive remedy shall be as provided in the “Termination by Registry Client” and “Effect of Termination” sections below.

5.2 Modifications to Services and Materials. CHEERS reserves the right to make any and all changes at any time and from time-to-time to the CHEERS System, Services, and the CHEERS Materials without prior notice to Registry Client.

5.3 Registry Client’s Warranties. Registry Client warrants that it has validly entered into this Agreement and has the legal power to do so. Use of the Services is at Registry Client’s sole risk.

5.4 Disclaimer. The Services are provided on an “as is, as available” basis. EXCEPT AS EXPRESSLY PROVIDED HEREIN, CHEERS MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

6. INDEMNIFICATION AND LIMITATION OF LIABILITY

6.1 Indemnification by Registry Client. Registry Client shall indemnify, defend and hold CHEERS and its employees, officers, directors, shareholders, agents, representatives, and independent contractors harmless from and against any claim, demand, suit or proceeding arising from, relating to or in connection with this Agreement or the use of the Services except for claims finally adjudicated to be from the sole negligence or willful conduct of CHEERS.

6.2 Limitation of Liability. THE LIABILITY OF CHEERS WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE AMOUNT PAID BY REGISTRY CLIENT HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL THE AGGREGATE LIABILITY OF CHEERS ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY REGISTRY CLIENT HEREUNDER.

6.3 Exclusion of Consequential and Related Damages. IN NO EVENT SHALL CHEERS HAVE ANY LIABILITY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

7. TERM AND TERMINATION

7.1 Term of Agreement. This Agreement commences on the Effective Date and continues until terminated in accordance with this Agreement.

7.2 Termination by Registry Client. Registry Client may terminate this Agreement upon prior written notice to CHEERS at any time.

7.3 Termination by CHEERS. Upon written notice to Registry Client, CHEERS may terminate this Agreement upon the occurrence of any of the following events by any Registry User, employee, officer, or owner of the Registry Client:

- A. Failure to comply with any of the terms and conditions of this Agreement or any other agreement between Registry Client and CHEERS.
- B. Conviction of a felony.
- C. Disciplinary action by the Contractors State License Board or any like authority.
- D. Willful failure to provide a true, accurate and complete rating, field verification or diagnostic testing.
- E. Pattern of failure to provide a true, accurate and complete rating, field verification, diagnostic testing or data entry, whether willful or not.
- F. Two or more complaints from ratings customers or potential customers.
- G. Failure to pay any amounts due CHEERS as per the CHEERS Fee Schedule.
- H. Misrepresentation of Registry Client's relationship with CHEERS.
- I. Any act or failure to act which, in CHEERS' opinion, harms its name or reputation
- J. For any reason deemed reasonable by CHEERS unless prohibited by law.

7.4 Other Termination. This Agreement shall automatically terminate upon the occurrence of any of the following events: Registry Client is adjudged bankrupt, placed in the hands of a receiver, makes an assignment for the benefit of creditors, takes the benefit of any insolvency act, or is liquidated or dissolved.

7.5 Effect of Termination. Upon termination of this Agreement, Registry Client and its Registry Users shall have no further access to the System. Upon any termination for cause by Registry Client, CHEERS shall refund Registry Client any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by CHEERS, Registry Client shall pay any unpaid fees covering the remainder of the term after the effective date of termination. In no event shall any termination relieve Registry Client of the obligation to pay any fees payable to CHEERS for the period prior to the effective date of termination. Upon termination of this Agreement Registry Client shall immediately return to CHEERS any and all CHEERS Materials or other Proprietary Information in Registry Client's or any of its Registry Users' possession or control.

7.6 Surviving Provisions. The sections titled "Fees and Payment," "Proprietary Rights," "Warranties, Exclusive Remedies and Disclaimers," "Indemnification and Limitation of Liability," "Effect of Termination," "Surviving Provisions" and "General Provisions" shall survive any termination or expiration of this Agreement.

8. GENERAL PROVISIONS

8.1 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Neither Registry Client nor any of its Registry Users may represent itself to be an employee, agent or representative of CHEERS, provided, however, during the term of this Agreement, a Registry User who is a HERS Rater and complies with all applicable terms and conditions relative to HERS Raters under this Agreement may indicate that he or she is a CHEERS Certified Rater.

8.2 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

8.3 Notices. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) upon delivery if sent by Federal Express, UPS or similar service, or (iii) the second business day after mailing and sending by confirmed facsimile. Notices under this Agreement shall be addressed to the address for such party on the first page of this Agreement or as changed by a party from time-to-time by providing written notice thereof to the other party. Notwithstanding anything herein to the contrary, CHEERS may post any changes to the Services to the CHEERS System (including, without limitation, any changes to the Fee Schedule and Procedures), and such changes shall become effective upon reasonable notice to Registry Client (not to exceed thirty (30) days). Any use of the Services by Registry Client or any of its Registry Users after any such changes are posted to the CHEERS System shall be conclusively deemed Registry Client's consent to such changes.

8.4 Waiver. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

8.5 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

8.6 Assignment. Registry Client may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of CHEERS.

8.7 Governing Law and Dispute Resolution. This Agreement, and any disputes arising out of or related hereto, shall be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules. Any dispute arising from, relating to or in connection with this Agreement or the Services shall be finally resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules in the City of Stockton, California. The losing party shall pay the prevailing party's reasonable costs and expenses (including reasonable attorneys' fees) in connection with any arbitration under this Agreement.

8.8 Regulations. Registry Client acknowledges that Registry Client has read California Code of Regulations, Title 20, Chapter 4, Article 8, Sections 1670-1675 ("Regulations"), a copy of which is attached as Exhibit D and incorporated herein by reference, understands the Regulations and the HERS Technical Manual and, if applicable, agrees to provide home energy rating, field verification services and diagnostic testing services in compliance with the Regulations and HERS Technical Manual. Registry Client specifically agrees to comply with the conflict of interest requirements as specified in Section 1673(j) of the Regulations, and the following requirements as specified in Section 1673(b) of the Regulations: "Provide true, accurate, and complete data collection, analysis, ratings and field verification and diagnostic testing," and "Not accept payment of consideration in exchange for reporting data gathered for a rating, analytical results used for a rating, or a rating result that was not in fact conducted and reported in compliance with these regulations."

8.9 Entire Agreement. This Agreement, including all exhibits and addenda hereto, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the

modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in any Registry Client purchase order or other communication or documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

8.10 Counterparts. This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

Rater Agreement Terms and Conditions

The undersigned HERS Rater, hereby (i) represents and warrants that he or she (A) is affiliated (as an employee or otherwise) with a Registry Client of CHEERS, and (B) has received, read and understood the CHEERS Registry Agreement to which such Registry Client is a party ("Agreement"), and (ii) agrees to comply with all of the terms and conditions of the Agreement, including, without limitation, those applicable to HERS Raters under Section 4 of the Agreement.

Rater's Printed Name

Rater's Signature

Date



CHEERS

Quality Assurance Program for 2016 Providers

"What's measured improves." - Peter F. Drucker

Alex Vantaggiato

8/19/2016

DOCUMENT CHANGE LOG

Updated By	Date Updated	Version	Update Details
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Policies

Introduction

- a. This document outlines the CHEERS Quality Assurance Program (QAP) and what it entails. CHEERS QAP consists of the following elements:
 1. Quality Assurance Inspections (QAI)
 2. CHEERS Corrective Action Process (CAP)
 3. CHEERS Complaint Response System (CRS)
- b. The CHEERS QAI program provides details on how CHEERS manages its annual CEC mandated QA requirements for CHEERS certified Raters.
- c. The CHEERS CAP program provides further clarification on how Raters are evaluated when further review is required of a Rater's work.
- d. Finally, the CRS program summarizes how CHEERS effectively manages all inquiries and complaints that are conveyed to CHEERS.

Definitions

- a. **Annual QAI** means the 12-month calendar starting on January 1st and ending on December 31st. CHEERS will evaluate and conduct all QAI volume requirements based on the aforementioned 12-month calendar cycle.
- b. **CHEERS "Database"** is synonymous with the CHEERS "Registry."
- c. **Rater File** is an internal electronic file containing Rater records, kept by CHEERS for every certified Rater.
- d. **Rater Probationary Status** means a temporary period of time in which a rater will still be allowed to conduct ratings, but will be subject to stricter review and QA standards.
- e. **Rater Suspension** means a temporary period of time in which a rater will not be allowed to conduct ratings. Rater suspension may be followed by a period of probation.
- f. **Rater Decertification** means that the rater has had his/her certification revoked by CHEERS and will no longer be able to conduct or certify ratings under CHEERS. Decertification is permanent in nature.
- g. **QA** means Quality Assurance and refers to the overall Quality Assurance process.
- h. **QA Manager** is the responsible CHEERS designee overseeing the QA process.
- i. **"QA Program Statistics" Report** is the report pulled by the QA manager from the CHEERS registry to determine the QA that has to be conducted by the QA Reviewers.
- j. **QA Report** is the form used by CHEERS QA Reviewers during a Quality Assurance Inspection. A PDF copy of a QA report is uploaded to the CHEERS Registry within 2

business days following the completion of a Quality Assurance Inspection. The PDF copy of the QA Report is available to CEC staff for retrieval and review.

- k. **QA Reviewer** is the responsible CHEERS designee conducting the QAI and reporting it to the QA Manager.
- l. **“QA Site List” Report** is the report used by the CHEERS QA Reviewer and QA Manager to track and QA details at the lot (address) level. The QA Report used by CHEERS QA Reviewers during Quality Assurance Inspections is available as a PDF download directly from this “QA Site List” report.
- m. **QA Testing Results** are the findings (pass/fail) of conducted Quality Assurance Inspections.
- n. **QAI** means Quality Assurance Inspection and refers to the inspections conducted as part of the QA process.
- o. **QAI Class 1 Failure** means the Rater has failed some portion of the CHEERS QAI and that the QAI failure is due to *perceived* Rater misunderstanding, improper training, and/or human error.
- p. **QAI Class 2 Failure** means the Rater has failed some portion of the QAI and that the QAI failures is due to *perceived* Rater negligence, improprieties, or general lack of willingness to provide truthful and accurate ratings.

Background

CHEERS is certified by the California Energy Commission as a HERS provider for HERS verifications in the State of California. As a certified HERS provider, CHEERS must maintain a QAP that conforms to all state mandated requirements. These requirements are listed below. During HERS rater training, these requirements are reviewed and explained. Any CHEERS certified HERS rater that has any questions concerning any aspect of the QAP should contact CHEERS directly.

a. **Rater Conduct and Responsibility**

- 1. Raters shall not provide untrue, inaccurate, or incomplete rating information or report rating results that were not conducted in compliance with these regulations.
- 2. Raters shall not accept payment or other consideration in exchange for reporting a rating result that was not in fact conducted and reported in compliance with the CEC HERS Regulations.

b. **Conflict of Interest Guidelines**

1. CHEERS certified raters must be *independent entities*¹ per CEC Code of Regulations detailed in Title 20, Chapter 4, Article 8, section 1673(j).

c. **CHEERS QA Personnel**

CHEERS has a dedicated QA Manager and QA Reviewers reporting to the CHEERS Executive Director. The QA Manager and Reviewers are responsible to manage, administer, and track the performance of the CHEERS QA Program.

d. **General QA Program Guidelines**

The following guidelines apply to all homes evaluated under the CHEERS QA Program:

1. CHEERS randomly select homes chosen for CHEERS QA inspections.
2. At a minimum, QA percentage thresholds are met by rounding up to the nearest whole number for each measure tested by a Rater.
3. Raters are not informed that a building/installation will be field checked until they conducted their original rating(s), and they are not notified before the QA takes place.
4. All QA inspections conducted by CHEERS QA personnel are documented in the CHEERS database. The CEC will have on going access to the results of all QA inspections in the CHEERS database and associated summaries.
5. QA reports are placed in the Rater's file. Within 5 business days of receiving a request from a Rater, an electronic (PDF) copy of the completed QA report will be sent to the Rater.

CHEERS QA Inspections (QAI)

CHEERS QA Personnel will independently repeat the rating being evaluated to check whether the Rater accurately completed the rating and determine whether information was completely collected and reported, following the guidelines below:

a. **Initial Review**

1. CHEERS QA Personnel will conduct an initial review of rating documentation on **at least** the first 5 homes that are rated by a CHEERS Rater, in accordance with HERS Regulations, section 1673(i)(2).

Note: *A home rated under CHEERS direct supervision during a rater's certification process will not be counted in the 5-home requirement.*

¹ *Independent Entity* means having no financial interest in, and not advocating or recommending the use of any product or service as a means of gaining increased business with **Providers, builder, subcontractor installer** of energy efficiency improvements field verified or diagnostically tested, and any **firm** or **person** that performs work on the home for a California Home Energy Audit or a California Whole-House Home Energy Rating.

b. Tested Homes: Annual QAI Requirements (1%)

1. Annually evaluate the greater of 1 rating or 1% of the raters' past 12 months total number of ratings, rounded up, for each measure tested by the rater.
2. Raters shall not be informed that a building or installation will be field checked until after they conducted the original rating, nor before the QA takes place.

c. Sampled Homes: Annual QAI Requirements (1%)

1. For houses or installations passed as part of a sample group, but not field verified or rated by a Rater, CHEERS QA personnel will evaluate the greater of 1 house or 1% (rounded up) of a Rater's annual sampled houses or installations.
2. The QAI shall be blind, meaning CHEERS will not inform the installer or the Rater ahead of time of the QAI taking place.

d. Entire Pool: Annual QAI Requirements (1%)

1. Perform QAI on 1% of all annual ratings (tested homes only) conducted through CHEERS from the entire pool of ratings in the CHEERS database.

Procedures

QA Status Reporting

- a. All QA requirements will be tracked and generated in the Registry. There are two main report the registry generates from the data QA data inputted by the QA Manager:

1. QA Program Summary
2. QA Program Detail

Personnel with Administrative privileges will be able to log in and review both reports. In addition, the reports will be automatically sent to the CEC at predetermined intervals.

- b. The QA Program Summary report will track the following **for each Rater:**

1. Name of Rater
2. Rater Certification Number (*CHEERS assigned rater identification number*)
3. QA rate (1% or 2%) by Measure and by Tested or Sampled lot
4. Type of measures performed by HERS Rater
5. If the measure was Tested or Sampled by the HERS Rater
6. Total measures performed by the HERS Rater
7. Number of measures that have been QA'd by CHEERS
8. Current QA percentage completed by CHEERS for each measure
9. Last CHEERS QA Completion Date for each measure
10. QA remaining to be completed for each measure performed
11. Calculated Totals

- i. For 1% Rater Tested: Total Tests, Total QA Required, Total QA Completed, Total Percent QA.
 - ii. For 1% Rater Not Tested (sampled): Total Sampled, Total QA Required, Total QA completed, Total Percent QA.
 - iii. For 2% Rater Tested: Total Tests, Total QA Required, Total QA Completed, Total Percent QA.
 - iv. For 2% Rater Not Tested (sampled): Total Sampled, Total QA Required, Total QA completed, Total Percent QA.
- c. The QA Program Detail report will track the following for **each QA completed on a specific lot:**
 - 1. The QA form used by the QA Reviewer on the site will be available for download in pdf
 - 2. Rating Company who was QA'd
 - 3. Rater who was QA'd
 - 4. Specific Measure that was QA'd
 - 5. Date of the original rating
 - 6. Whether the lot was a tested or sampled lot
 - 7. The QA date
 - 8. QA pass or fail results
 - 9. Whether the QA conducted was counted for the Rater QA% or the overall database QA%
 - 10. The builder's name
 - 11. The project name
 - 12. The site address
 - 13. The site city
 - 14. The QA Reviewer's name
 - 15. The list of the forms associated with the measures that were inspected
- d. All of the above QA data can be retrieved from the secured side of the CHEERS registry on an ongoing basis by choosing the appropriate report, under the "Reports" tab, and "2013 Standards > CA Energy Commission" sub-tabs.
- e. The QA Reviewers are assigned a Rater based on their geographical location. It is the Reviewers responsibility to monitor the QA Program Statistic Report to ensure the proper amount of inspections are scheduled.

- f. Once identified, the QA will be directly handled by the QA Reviewer while progress is still monitored by the QA Manager.

Internal QA Workflow Tracker²

- a. The Internal QA Workflow Tracker can only be accessed by designated CHEERS personnel, and is found at the following link:
http://artemis/sites/consolinside/cheersinternal/_layouts/15/start.aspx#/Lists/Rater%20QA%20Tracker/By%20QA%20Reviewer.aspx
- b. The QA manager will assign Raters to the appropriate QA Reviewer via the tracker for scheduling. This custom made tracker will outline the following:
 - 1. QA status
 - 2. Rater Name
 - 3. Builder/ Project name (If applicable)
 - 4. Lot address
 - 5. Scheduling notes in regard to the lot
 - 6. Assigned QA Reviewer
 - 7. QA Date & Time
 - 8. QA Type (1%, 2%)
 - 9. Lot Tested or Sampled
 - 10. Measures inspected
 - 11. QA results
 - 12. Failure actions
 - 13. QA Reviewer comments
 - 14. QA form upload status
 - 15. Date of QA retests and associated measures
 - 16. Results of the QA retest
 - 17. Date of increase of QA %, if applicable
 - 18. Date of notification to other providers for QA % increase
 - 19. Notes about specific findings being reported from the field
- c. The QA manager will enter items 1, 2, 6 and 8, for the initial assignment. No lot specific information is entered as the lot is unknown at this time. The initial status will be “Scheduling required.” Once the basic information regarding the lot is entered, it will then be passed on to the QA reviewers.

² The Internal QA Workflow Tracker is an internal tool for CHEERS personnel to track progress of QA within the CHEERS QA inspection process and is not used for reporting purposes to any outside agency or organization.

- d. The QA reviewers will check the tracker daily, and assignments will be entered based on lots entered in the registry by Raters. Alerts can be setup in the tracker to notify the QA reviewers additional assignments were entered.

QA Scheduling

- a. The QA scheduling will be directly handled by the QA Reviewer. Calls will be placed to homeowner/builders in the effort to schedule the QA inspections appropriately.
- b. Contact will be initiated by all available means (i.e. Phone, email, etc).³
- c. Once scheduling is complete, lot specific information can be added to the QA tracker and the QA status will be changed to “Scheduled.”
- d. If scheduling is unsuccessful within 7 business days of initial contact attempt, the QA manager will be notified and a determination will be made as to whether additional attempts will need to be made, or the QA assignment will be dismissed. If QA is dismissed, the QA Manager/QA reviewers will work on making contact with additional builders in order conduct QA elsewhere.

QA Preparation

- a. Prior to going on site to conduct the QA inspection, QA Reviewers will need to verify the following:
 - 1. All required equipment is available
 - 2. The correct QA forms have been downloaded and printed out
 - 3. Original test results were reviewed
 - 4. Climate conditions are acceptable (i.e. Refrigerant charge)
 - 5. The homeowner is still available for the scheduled appointment

QA Process

All QA assignments will be handled using the same general procedural workflow (Appendix A, B, C) depending on the level of QA

- a. **QAI Failure protocols⁴**

- 1. If a Rater’s work does not pass the 1% QAI, 2 additional ratings of the failed measure(s) performed by the same rater within the last 12 months will be

³ If CHEERS is unable to contact a Rater because of incorrect or outdated contact information, then CHEERS personnel will make extended efforts to locate and track down the Rater (e.g. – contact builders, subcontractors, other raters, etc.). Depending on the circumstances, CHEERS has discretionary authority to categorize the receipt of incorrect contact information as a Class 1 QA Failure and resolve according to CHEERS documented Class 1 Failure protocols.

⁴ If another Provider reports their QA inspection failures to CHEERS, and those failures are by a Rater also certified by CHEERS, the aforementioned Rater will be subject to the CHEERS QAP guidelines contained within this document.

evaluated by CHEERS QA personnel. In addition, CHEERS will report the QA failure on its Rater Registry web site for a period of 6 months.

2. QAI failures during the 1% QAI stage will be classified as Class 1 Failures. A Class 1 Failure designates the need for the impacted Rater to receive additional QAI from CHEERS QA personnel. A QAI failure may be classified as a Class 2 during the 1% QAI stage, if it meets the definition found on page 5 (item m).
3. If a second deficiency is found in the 2 additional ratings evaluated, then the rater shall have 2%, rounded up, of his/her ratings of the failed measure(s) evaluated for the next 12 months by all providers.⁵ Depending upon the nature of the QAI failures, and at the discretion of CHEERS QA personnel, the rater may also be subject to being placed on probationary status and required to obtain additional training and recertification at his/her expense. The Rater may also be subject to immediate additional QAI and/or placed on a probation, suspension, or decertification status depending on the nature of the QAI failure(s).
4. Failure Notification:
 - i. For all failures discovered during the initial 1% QAI, or the QAI on the 2 additional houses, the CHEERS QA Manager and/or QA Reviewer will notify the Rater via email in order to:
 1. Specify time, date, and location of QA conducted.
 2. Specify findings and QAI failures.
 3. Inform the Rater that additional QAI will be conducted and if those were to fail, he/she will have 2%, rounded up, of his/her ratings of the failed measure evaluated for the next 12 months by all providers.
 4. The additional QA will be scheduled as soon as another lot from the Rater associated with the Failure becomes available.
 - ii. At its discretion, CHEERS may also choose to interview the rater in person or by teleconference to question him about the specific protocols of the tests that failed, and ask the Rater to articulate or physically demonstrate the proper way to conduct the tests.
 - iii. The QA Manager will inform other Providers and the CEC in writing or by electronic mail of the raters that need to have additional QAI as mentioned in a.1.i.3

⁵ CHEERS QA personnel will report the QA findings to the CEC and all other CEC certified California HERS Providers. CHEERS will ensure the applicable Rater has at least 2% of his/her ratings of the failed measure(s) evaluated for the next 12 months, but is not responsible for verifying other Providers perform the same increased level of QAI.

5. If additional deficiencies are found during the 2% QAI review, the CHEERS' Corrective Action Process will apply.
6. In addition, if CHEERS QA personnel discover a lack of truth, accuracy, and completeness, they will report such finding on the HERS for 6 months and the Rater will again be subject to the CHEERS Corrective Action Process at the discretion of CHEERS.

Special Note:

Every attempt will be made by CHEERS to communicate with Raters failing the QAI process in an effective, clear, and timely manner. Raters will be given ample opportunity to explain their results to CHEERS. In the event that a Rater disagrees with CHEERS final classification of a particular QAI failure, the Rater will be informed that, per the CHEERS Rater Agreement, CHEERS has final authority to make determinations on QA findings, additional Rater training/recertification, additional QAI requirements, and/or altering a Raters' certification status with CHEERS.

Table 1: Overview of CHEERS QA Inspections (QAI)

CHEERS Quality Assurance Program Summary					
Field Verification & Diagnostic Testing Rater	Initial Review of "Rating Documentation"	*Annual Doc & Field QA Requirement (Tested Units)	*Annual Doc & Field QA Requirement (Sampled Units)	*CHEERS Total Rating Database Annual QA Requirement	Failure Protocols
	At least the first 5 homes rated by the rater	The greater of 1 rating or 1 percent of the Rater's past 12 months' total number of ratings for each <u>measure</u> tested by the Rater	The greater of 1 rating or 1 percent of the Rater's past 12 months' total number of ratings for each <u>measure</u> tested by the Rater	1% of entire pool of all Ratings conducted (Tested Homes Only)	<p>1) Provider QA personnel shall evaluate 2 additional ratings of the failed measure(s) by the same rater performed in the past 12 months.</p> <p>2) If a 2nd deficiency is found, the rater shall have 2% of his/her ratings (tested homes only) of the failed measure(s) evaluated for the next 12 months by <u>all</u> providers. Depending upon the nature of the QAI failures, the rater may also be subject to being placed on probationary status and required to obtain additional training and recertification at his/her expense. The Rater may also be subject to suspension or decertification.</p> <p>3) If additional failures occur during the 2% QA review, the Rater will be subject to the CHEERS Corrective Action Process (CAP).</p>

* = CHEERS independently repeats the rating to check whether information was completely collected and reported.

Corrective Action Process (CAP)

CHEERS will adhere to the CAP guidelines outlined below when further evaluation and review is required of a Rater's work.

a. **QA Failures Discovered During 2% QAI Review (Appendix A)**

If a Rater's work fails any part of the QA inspections during CHEERS 2% QAI review, the following steps will be taken:

1. Depending upon the type of QAI failure, the CHEERS QA Manager and/or QA Reviewer will interview the Rater in question either in person or via a conference call. During this interview, CHEERS will:
 - i. Explain the specific findings and QAI failures to the Rater.
 - ii. Question the Rater about the specific protocols of the tests that failed, and ask the Rater to articulate or physically demonstrate the proper way to conduct the tests.
2. As a result of the initial CHEERS interview with the Rater, and based on the facts and information available, CHEERS will make an initial determination and classify the QAI failure into one of the following two categories:

b. **Class 1 QAI Failure (Appendix B)**

These are failures due to *perceived* Rater misunderstanding, improper training and/or human error. For example, the rater conducted the diagnostic testing improperly, or he/she made a mistake during the data entry process. CHEERS will take the action outlined below to address Class 1 QAI Failures:

1. Based on findings, the Rater will be placed on a probationary status or suspended.
2. The Rater will be required to attend an applicable refresher training course, and may have to retake and pass the HERS exam. All expenses related to the refresher course and exam will be incurred by the Rater.
3. Raters placed on temporary suspension will not be authorized to conduct testing on CHEERS' behalf and will be unable to register ratings in the CHEERS database until he/she is able to complete the above refresher training and pass the exam.
4. After successfully completing the refresher course and passing the exam, the next single rating completed by the Rater will be reviewed by CHEERS QA personnel. If the Rater passes this additional (single) QAI, his/her probationary or temporary suspension status will be removed.
5. Per CHEERS' standard reporting process, the CEC will be notified of the aforementioned actions and ensuing resolution.

c. Class 2 QAI Failures (Appendix C)

These are failures due to *perceived* Rater negligence, improprieties, or general lack of willingness to provide truthful and accurate ratings. For example, a rater certifies a rating that he/she never conducted, or certifies a rating knowing that it did not meet prescribed standards. In the event this initial determination is made by CHEERS, the QAI failure will be classified as a potential violation of the CHEERS Rater Agreement.

d. Potential Rater Violation of CHEERS Rater Agreement

Per the standard CHEERS Rater Agreement, CHEERS has the right, upon written notice, to decertify a rater for specified violations referenced in the aforementioned agreement. In the event that a violation is either reported to CHEERS or discovered by CHEERS through its QA Process, CHEERS will adhere to the following guidelines to investigate the matter:

1. Data Collection / Fact Finding

- i. Conduct an internal review with CHEERS QA Manager, QA Reviewer (if applicable) and any other applicable CHEERS staff to gather and validate all sources of information relating to the reported violation.
- ii. Contact any outside parties necessary to obtain or validate information pertaining to the reported violation.

2. Rater Notification

Provide written notification to the applicable rater(s) and include the following information:

- i. Date the violation was reported (or discovered) by CHEERS.
- ii. Details of the reported violation.
- iii. Request (within 5 business days) for the rater to provide his/her details, opinion, and any other information related to the reported violation⁶.
- iv. Confirmation that CHEERS will objectively review all of the information provided.
- v. If necessary, request a date for an in person meeting or conference call with CHEERS and the applicable rater(s).

⁶ If a Rater fails to respond to CHEERS within the desired due date, CHEERS will make another attempt to contact the Rater via email and phone within 3 business days after the Raters initial response due date. If the Rater does not respond to the 2nd communication from CHEERS, a final attempt will be made informing the Rater that he/she has 1 final opportunity to respond to CHEERS or be subject to further disciplinary action, up to and including decertification, from CHEERS.

3. **Rater Meeting / Conference Call (If Needed)**

5 business days prior to this meeting, CHEERS will provide a detailed agenda of what will be reviewed and what will be expected of the rater(s) in the meeting to allow the rater(s) to adequately prepare for the meeting.

Note: *the meeting/call can be scheduled sooner if mutually agreed upon by both CHEERS and the Rater.*

4. **Resolution Paths**

Based on the results of CHEERS' investigation of the matter, one or more of the following resolution paths could occur:

- i. Matter resolved – No further action required.
- ii. Further investigation required by CHEERS.
- iii. Rater is required to obtain additional training and/or recertification.
- iv. Rater placed on probationary status (up to 12 months) and subject to additional QA monitoring at the discretion of CHEERS QA personnel.
- v. Rater is temporarily suspended and precluded from conducting ratings and entering rating results in the CHEERS database.
- vi. Increase the QAI percentage on future rater work on both tested homes to 2% or greater. Percentage and duration are set at the discretion of CHEERS QA personnel.
- vii. Permanent Rater Decertification.

Note:

The CEC will be notified by CHEERS of all reported or discovered violations, the actions taken by CHEERS to address the violation, and the subsequent resolution to the matter.

QA Forms

QA Reviewers will use blank copies of 2016 CF3Rs as QA field documentation.

Completing QA Assignment

a. **QA form upload into Internal QA Workflow Tracker**

1. After QA reviewers complete assigned QA inspections, they will access the applicable QA Inspection entry in the Internal QA Workflow Tracker they had created during scheduling.
2. QA reviewers will update necessary fields and then attach the associated QA forms and results to the applicable QA inspection entry in the tracker.
3. Once the updates are complete, the forms are attached, and results entered, they will change the status of it to "Supervisor Review".

b. Manager Review

1. The QA Manager will review all applicable QA Inspection entries in the tracker in a “Supervisor Review” status every Monday.
2. The QA Manager will enter the QA results for each applicable entry into the secured side of the CHEERS registry using the “QA Maintenance” tool, under the “Administration” tab.
3. The CHEERS registry will automatically update its overall QA data.
4. Once all results are entered, the QA Manager will change the corresponding QA Inspection entry status in the tracker to “Complete”.

c. Notification to Raters

1. In the event of a QA failure, notification procedures will follow as described in the procedure section of the Corrective Action Process (CAP)
2. In the event of a QA pass, notification in writing will be provided to the raters informing them where and when the QA was conducted and the measures that were reviewed.
3. The rater notifications are designed to:
 - i. Inform Raters of their own QA results
 - ii. Congratulate them on a job well done or identify areas of improvement
 - iii. Provide them with an official record of QA being conducted
 - iv. Build pride and confidence in our organization
4. A rater will always have the right to inquire about QA results (pass or fail) regarding their own inspections to CHEERS.

APPENDIX A

QA Workflow

APPENDIX B

Corrective Action Process Level 1

APPENDIX C

Corrective Action Process Level 2

ATTACHMENT 4: REVISED CONDITIONS OF CERTIFICATION AND LIMITATIONS OF ACTIVITIES

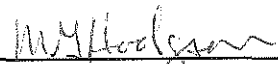
Conditions of Certification

In order to guard against conflicts of interest and comply with Section 1673(j) of the California Home Energy Rating System (HERS) Program regulations, ConSol Home Energy Efficiency Rating Services, Inc., (CHEERS) and ConSol, Inc. (ConSol) hereby agree to, in addition to generally applicable HERS requirements, the following Conditions of Certification as a HERS Provider for Field Verification and Diagnostic Testing on residential newly-constructed buildings and Prescriptive HVAC Alterations and Limitations of Activities:


1. ConSol and CHEERS will not perform HERS ratings. ConSol will not provide rating or compliance documentation services.
2. CHEERS will not accept into its registry any compliance documentation performed by a subcontractor or employee of ConSol or CHEERS, including rating data.
3. CHEERS will not accept into its registry any compliance documentation, including rating data, required for work performed at homes whose owners have subscribed to or are enrolled in a governmental home energy efficiency program for which ConSol is a program manager or administrator.
4. CHEERS will require raters, as conditions of entering a rating agreement, to refrain from recommending or advocating for the services of persons or entities that perform work subject to a home energy rating.
5. CHEERS will not enter into any HERS rating agreements with employees of ConSol or CHEERS. CHEERS will certify their quality assurance inspectors as CHEERS certified raters for the purpose of performing quality assurance.
6. ConSol and CHEERS will be independent entities from HERS raters on any projects.
7. ConSol, CHEERS, and CHEERS raters will be independent entities from the builder and from the subcontractor installer of energy efficiency improvements field verified or diagnostically tested on any projects.
8. ConSol, CHEERS, and CHEERS raters will be independent entities from any firm or person that performs work on the home either for a California Home Energy Audit or a California Whole-House Home Energy Rating on any projects.

CHEERS agrees that its failure to comply with any of these Conditions of Certification provide grounds for the Energy Commission to revoke all or part of this approval.


The foregoing Conditions of Certification on CHEERS are agreed to:




Michael G. Hodgson
President
ConSol, Inc.



Date 6/7/17



Michael G. Hodgson
Principal
ConSol Home Energy Efficiency Services, Inc.



Date 6/7/17