

### EFFECTIVE AS OF: June 3, 2015

## ## ARTICLE I: INTENT

The name of this corporation is the JS Foundation, Inc. (the "Foundation"). The Foundation is organized and operated exclusively for charitable purposes under the laws of the State of Delaware.

## ## ARTICLE II: PURPOSE

The purpose of the Foundation is to promote the common business interest of its members by monitoring, fostering and developing the use of, and improvement to, open source software projects, and to engage in any other lawful, civic, educational, charitable or benevolent purpose. Upon incorporation, the Foundation shall seek recognition for exemption under Section 501(c)(6) of the Internal Revenue Code of 1986 (as amended from time to time, the "Internal Revenue Code"). The Board of Directors shall ensure that all of the activities of the Foundation follow all laws, regulations and rules to such end.

## ## ARTICLE III: OFFICES

**\*\*Section 3.1: Principal Office.\*\*** The principal office of the Foundation may be established at any place or places within or without the State of Delaware by resolution of the Board.

**\*\*Section 3.2: Other Offices.\*\*** The Foundation may also have offices at such other places, within or without the United States of America, where it is qualified to do business, as its business may require and as the Board of Directors may, from time to time, designate.

## ## ARTICLE IV: MEMBERS

**\*\*Section 4.1: Determination of Members.\*\*** The Foundation shall make no provisions for voting members, however, any action which would otherwise, under law or the provisions of the Articles of Incorporation or Bylaws of the Foundation, require approval by a majority of all members or approval by members, shall only require the approval of the Board of Directors. Furthermore, all rights, which would otherwise vest in the members under law, the Articles of Incorporation or the Bylaws of this corporation, shall vest in the Directors of the Foundation.

**\*\*Section 4.2: Non-Voting Memberships.\*\*** The Foundation shall have classes of membership as set forth in these Bylaws and as determined by the Board of Directors from time to time. The rights, privileges and obligations of all classes of individuals in those classes (collectively, "Members") will be published in the Foundation's membership prospectus. The Board of Directors may, in its discretion, grant as one of the rights, privileges, and obligations of one or more classes of Member, the right to appoint a representative to the Board of Directors, in accord with Section 5.16 below, either as a representative of a particular Member or class of Members (each a "Member Representative Director"). If granted, that right will be specifically noted these Bylaws and in the Foundation's membership prospectus.

**\*\*Section 4.3: Classes of Membership, Rights.\*\*** The Foundation will initially have three classes of membership. Those classes will be: i) Diamond; ii) Platinum; and iii) Gold. In addition to such other rights as may be conferred upon the Members of these classes by the Board of Directors in accord with Section 4.4 below, which rights will be memorialized in the Foundation's membership prospectus, the members of these classes will have the right to appoint Member Representative Directors as follow: a) each member of the Diamond class (each a "Diamond Member") will have the right to appoint one Member Representative Director (each a "Diamond Director"); b) the members of the Platinum class (each a "Platinum Member"), will, as a class, have the right to appoint a number of Member

Representative Directors equal to the quotient of the total number of Platinum Members divided by two, rounded up to the nearest whole number (each a "Platinum Director"); and c) the members of the Gold class (each a "Gold Member"), will, as a class, have the right to appoint a single Member Representative Director (the "Gold Director").

**\*\*Section 4.4: Other Classes of Membership.\*\*** The Board of Directors may, by appropriate resolution from time to time, establish another class or other classes of Members for the Foundation. No such class or classes of Members will have any voting rights or privileges under either these Bylaws or statute, and all voting rights will be governed by Section 4.1 herein. The privileges, rights and duties of such other class or classes of Members shall be as provided by the Board of Directors, subject to the terms of these Bylaws, as amended from time to time. The Board may determine from time to time an initial membership fee and, in its discretion, set fees, dues and assessments for membership in the Foundation. The Board of Directors may thereby confer specified rights on the Members in accord with the Foundation's Articles of Incorporation or these Bylaws.

**\*\*Section 4.5: Property Rights, Nonliability, Nontransferability.\*\*** No Member shall have any right or interest in any of the property or assets of the Foundation. No Member shall be personally liable for the debts, liabilities, or obligations of the Foundation. No Member may transfer for value or otherwise a membership or any right arising therefrom; and all rights of a Member shall cease upon the Member's death.

**\*\*Section 4.6 Meetings of Members.\*\*** The Board may provide for holding regular meetings of the Members whenever it may be considered necessary or desirable.

## **## ARTICLE V: BOARD OF DIRECTORS**

**\*\*Section 5.1: Powers.\*\*** Subject to the limitation of the Articles of Incorporation, of the Bylaws, and of the laws of the State of Delaware, and subject to the duties of Directors as prescribed by the Bylaws, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Foundation shall be controlled by, the Board of Directors. So long as the Board of Directors are the sole class of voting members of the Foundation, any action which requires approval of the members or approval of a majority of the members pursuant to the laws of the State of Delaware will require only the approval of the Board. Without limiting the foregoing, the Board of Directors shall have the power to levy dues and assessments, to select and remove all officers, agents, employees and contractors, and to fix reasonable compensation therefor, to authorize and empower officers or agents to enter into contracts and other commitments on behalf of the Foundation, and to appoint and delegate responsibilities and authority to committees, officers and agents. The Board of Directors may accept donations of real property; it may also decline to accept such property as it may deem inappropriate or potentially burdensome.

**\*\*Section 5.2: Title and Management of Property.\*\*** All of the property, funds, and assets received or acquired by the Foundation shall be taken, held, managed and expended in a manner as directed by the Board. Title to all property, funds, and assets of the Foundation shall at all times be and remain vested in said Board and their successors in office jointly.

**\*\*Section 5.3: Composition and Number.\*\*** The Board shall include representatives from the open source software community and qualified individuals with similar interests. The number of Directors of the Foundation shall be not less than seven and not more than twenty-five until changed by a duly adopted amendment to this Bylaw section. At no point may more than one individual working for a single organization as an officer, employee, agent, contractor, or otherwise, serve concurrently on the Board. One Board seat will be reserved for a representative of the Foundation projects, to be nominated

by majority vote of the project leads and accepted by the Nominating Committee (the "Project Representative Director"). Six Board seats will be reserved for Directors that are neither Member Representative Directors nor Project Representative Directors (the "At-Large Directors"). At all times, at least one-third of all Directors must be At-Large Directors. If at any point, the number of At-Large Directors represents less than one-third of all Directors due to an increase in the number of Member Representative Directors, then At-Large Directors shall be added in accord with Section 5.4 until At-Large Directors represent no less than one-third of all Directors. Each Director will have one vote on any matter that comes before the Board.

**\*\*Section 5.4: Member Representative Directors.\*\*** Member Representative Directors will be appointed by each Member or class of Members to whom a Member Representative Director position is granted in accord with these Bylaws or the Foundation's membership prospectus. Member Representative Directors will have the same powers and duties of other members of the Board of Directors under these Bylaws, and will be included in all calculations under Sections 5.3 and 5.11 above.

**\*\*Section 5.5: Board Appointment.\*\*** Candidates for appointment to the Board as At-Large Directors shall be selected by a Nominating Committee consisting of the President, and two or more members of the Board. New Directors must be approved by majority vote of the Board. The Project Representative Director will be nominated by majority vote of the project leads and accepted by the Nominating Committee without further approval of the Board. Each Diamond Director will be appointed by the Diamond Member within thirty (30) days of the effective date of membership. Each Platinum Director will be appointed by majority vote of the Platinum Members. Each Platinum Member will have a number of votes equal to the number of Platinum Director positions then up for election, and votes may be cast cumulatively. The Gold Director will be appointed by majority vote of the Gold Members, and each Gold Member will have a single vote. No Member Representative Director need be approved by the Board.

**\*\*Section 5.6: Term of Office.\*\*** Directors shall serve for a term of one year, earlier removed or resigned under Section 5.7, 5.8, or 5.15, or until their successors have duly taken office, but in no event may a Director serve more than seven consecutive terms. After completion of seven consecutive terms, a Director will be given emeritus status. After one year of emeritus status, a Director may be re-nominated and re-appointed to the Board. Length of terms and appointment dates may be staggered by decision of the Board to avoid all terms expiring at the same time. In the event the number of authorized Platinum Directors under Section 4.3 above decreases during the term of one or more Platinum Directors, and no Platinum Director is automatically removed under Section 5.9 below, then all then-serving Platinum Directors may conclude their full term and the decrease in the number of authorized Platinum Directors will take effect upon the next resignation, removal, or term expiration of a Platinum Director.

**\*\*Section 5.7: Removal of Directors.\*\*** A Director may be removed, with or without cause, if a majority of the Directors present at a duly constituted meeting vote for the removal. Removal is effective only if it occurs at a meeting called for that purpose. Notice must be sent to all directors that a purpose of the meeting is removal. In the event a Member terminates or fails to renew its membership, any agent or appointee of that Member serving as a Member Representative Director will be automatically removed without further action of the Board as of the effective date of the termination or non-renewal, and any vacancy caused, if any, will be filled in accord with Section 5.9 below.

**\*\*Section 5.8: Resignation.\*\*** Any Director may resign by giving written notice to the President, the Secretary, or the Board. Such a written resignation will be effective on the later of (i) the date it is

delivered or (ii) the time specified in the written notice that the resignation is to become effective. No Director may resign if the Foundation would then be left without a duly elected Director in charge of its affairs.

**\*\*Section 5.9: Vacancies.\*\*** Vacancies on the Board of Directors shall exist (i) whenever the number of authorized Directors is increased, including upon an increase in the number of authorized At-Large or Platinum Directors in accord with Sections 4.3 and 5.3, (ii) on the expiration of the term of any Director, or (iii) on the resignation, removal, or death of any Director. Vacancies on the Board will be filled in accord with the procedures set forth in Section 5.5 above.

The person so appointed shall hold office for the unexpired term of their predecessor; however when filling a newly opened position (due to Board expansion or expiration of a predecessor's term), the person shall serve the regular term of office.

**\*\*Section 5.10: Regular Meetings.\*\*** Each year the Board shall hold at least one meeting at a time and place fixed by the Board for the purposes of election of Directors, appointment of Officers, review and approval of the Foundation's budget and transaction of other business. Other regular meetings of the Board may be held at such time and place as the Board may fix from time to time by resolution. Such meetings may be held electronically. All votes will be conducted in accord with Section 5.12 below.

**\*\*Section 5.11: Special Meetings.\*\*** In addition, the President or a majority of the Board may call a special meeting of the Board by notice to all Directors at least forty-eight (48) hours in advance given personally, by mail with postage pre-paid, or by electronic means. Such meetings may be held electronically. All votes will be conducted in accord with Section 5.12 below.

**\*\*Section 5.12: Quorum.\*\*** At all meetings of the Board, one-third of the total current number of Directors, but never less than three if the number of current Directors drops below nine, shall constitute a quorum. In the event the number of Directors is less than three, all Directors must be present to constitute a quorum. No action may be taken at a regular or special meeting without a quorum.

**\*\*Section 5.13: Action Without Meeting By Electronic Vote.\*\*** Any action required or permitted to be taken by the Board may be accomplished by means of electronic voting without a meeting (hereafter "Electronic Votes"). Electronic Votes of the Board shall be facilitated by means of two forums accessible by all members of the Board (the "Discussion Forum" and the "Voting Forum").

All Electronic Votes shall follow either a Regular Voting procedure or an Expedited Voting procedure.

a. **\*Regular Voting.\***

- i. Any Director may make a motion to vote on any topic by posting such motion to the Discussion Forum.
- ii. In order to proceed to a vote, at least two additional Directors must second the motion by post to the Discussion Forum within forty-eight (48) hours (the "Second Period").
- iii. Upon expiration of the Second Period, a vote shall be called by post to the Voting Forum, along with a summary of any discussion.
- iv. Once a vote has been called, each Director has forty-eight (48) hours during which to register their vote (the "Voting Period"). Each vote shall be registered on the Voting Forum.

v. A vote is approved if a majority of the Directors then-in-office vote in the affirmative within the Voting Period.

b. **\*Expedited Voting.\***

- i. Any motion may include a request to expedite the voting process.
- ii. If such a request is made and at least one-third of the Directors then-in-office second the motion, the vote will be called by posting to the Voting Forum without further delay.
- iii. If such a request is made but less than one third of the Directors then-in-office second the motion, then the motion will proceed under the regular voting procedure hereunder.

**\*\*Section 5.14: Majority Action As Board Action.\*\*** Every act or decision done or made by a majority of the Directors present at a meeting at which a quorum is present, or otherwise undertaken in accord with the Articles of Incorporation, these Bylaws, or statute, is the act of the Board of Directors.

**\*\*Section 5.15: Unexcused Absences.\*\*** Any Board member who, during a single term, having failed to attend two regular or special meetings, or having failed to vote in two Electronic Votes, or having failed to attend one regular or special meeting and vote in one Electronic Vote, without excuse, will be removed automatically from the Board upon notice from the President, without a removal vote in accord with Section 5.6. Validation of excused absences will be determined by the Board and incorporated into the minutes of the meetings or by documentation of an Electronic Vote within one week of the event.

**\*\*Section 5.16: Fees and Compensation.\*\*** Directors shall not be compensated for serving on the Board of Directors. Directors shall be entitled to reimbursement of expenses incurred on behalf of the Foundation if such reimbursement is approved in advance by vote of the Board. Members of Departments may receive such reimbursement for expenses as may be fixed or determined by resolution of the Board of Directors.

**\*\*Section 5.17: Member Representative Directors.\*\*** Member Representative Directors will be appointed by each Member to whom a Member Representative Director position is granted in accord with the Foundation's membership prospectus within thirty (30) days of the effective date of membership, and need not be approved by vote of the Board in accord with Section 5.4. The term of each Member Representative Director will last for one year, until their successor has duly taken office, or until the Member Representative Director is earlier removed or resigns in accord with Sections 5.6, 5.7, or 5.14 above. Successors will be appointed by the Member. A vacancy in any Member Representative Director position will likewise be filled by appointment of the Member, and will otherwise take effect in accord with Section 5.8 above. Member Representative Directors will have the same powers and duties of other members of the Board of Directors under these bylaws, and will be included in all calculations under Sections 5.3 and 5.11 above. In the event the Member terminates or fails to renew its membership, the Member Representative Director will be automatically removed without further action of the Board as of the effective date of the termination or non-renewal.

## ## ARTICLE VI: OFFICERS

**\*\*Section 6.1: Number of Officers.\*\*** The officers of the Foundation shall consist of a President, Secretary, and Treasurer. Officers may also be members of the Board, but need not be members of the Board in order to be elected to or hold an Officer position. Officers may serve with or without compensation, at the discretion of the Board.

**\*\*Section 6.2: Nomination.\*\*** A Nominating Committee consisting of the President and two or more members of the Board selected by the Board shall meet no less often than every two years to nominate a slate of officers.

**\*\*Section 6.3: Election.\*\*** The election of the officers shall occur at the first general board meeting following the meeting of the Nominating Committee.

**\*\*Section 6.4: Term.\*\*** The officers shall serve a term of two years and shall not serve more than three successive terms in the same office.

**\*\*Section 6.5: Removal of Officers.\*\*** Subject to the rights, if any, of an Officer under any contract of employment, any Officer may be removed, with or without cause, (i) by the Board, at any regular or special meeting of the Board, or at the annual meeting of the Foundation, or (ii) by an Officer on whom such power of removal may be conferred by the Board.

**\*\*Section 6.6: Resignation of Officers.\*\*** Any Officer may resign at any time by giving written notice to the Foundation. Any resignation shall take effect as of 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 Foundation under any contract to which the Officer is a party.

**\*\*Section 6.7: Vacancy.\*\*** A vacancy in any office shall be filled in the manner prescribed in the Bylaws for regular election to such office.

**\*\*Section 6.8: Responsibilities of Officers.\*\***

a. **\*President.\*** The President shall be the principal elected officer of the Foundation. They shall preside at all meetings of the Directors, shall serve as an ex-officio member of all committees, and shall have such other powers and duties as may be prescribed from time to time by the Board of Directors.

b. **\*Secretary.\*** The Secretary shall keep, or cause to be kept, a book of minutes at the principal office of all meetings of the Board and Members.

c. **\*Treasurer.\*** The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Foundation.

**\*\*Section 6.9 Executive Director.\*\*** The Board of Directors shall employ a paid staff executive who shall have the title of Executive Director and whose terms and conditions of employment shall be specified by the Board. The Executive Director shall be the chief executive and operating officer of the Foundation. They shall be responsible for all the day-to-day management functions. They shall manage and direct all activities of the Foundation in accordance with policies established by the Board of Directors and shall be responsible to the Board. Within their authority, and in the course of their

duties they shall (i) employ and discharge all members of the staff necessary to carry on the work of the Foundation, and fix their compensation within the approved budget; and (ii) define the duties of the staff, supervise their performance, establish titles, and delegate those responsibilities of management as shall, in their best judgment, be in the best interest of the Foundation. They shall attend all meetings of the Board of Directors, the Executive Committee and all other committees, serving as an ex-officio member, without a vote. They may be excused at meetings called to review their performance and/or compensation.

## **## ARTICLE VII: TRANSACTIONS BETWEEN FOUNDATION AND DIRECTORS OR OFFICERS.**

### **\*\*Section 7.1: Transactions with Directors and Officers.\*\***

a. **\*Interested Party Transactions.\*** Except as described in Section 7.1 (b), the Foundation shall not be a party to any transaction:

- i. In which one or more of its Directors or Officers has a Material Financial Interest, as defined below; or
- ii. With any corporation, firm, association, or other entity in which one or more Directors or Officers has a material financial interest.

b. **\*Requirements to Authorize Interested Party Transactions.\*** The Foundation shall not be a party to any transaction described in Section 7.1 (a) unless:

- i. The Foundation enters into the transaction for its own benefit;
- ii. The transaction is fair and reasonable to the Foundation at the time the transaction is entered into;
- iii. Prior to consummating the transaction or any part thereof, the Board authorizes or approves the transaction in good faith, by a vote of a majority of Directors then in office (with interested Directors excused and without counting interested Directors in the calculation of a majority), and with knowledge of the material facts concerning the transaction and the interested Director's or Officer's financial interest in the transaction;
- iv. Prior to authorizing or approving the transaction, the Board considers and in good faith determines after reasonable investigation that the Foundation could not obtain a more advantageous arrangement with reasonable effort under the circumstances; and
- v. The minutes of the Board meeting at which such action was taken reflect that the Board considered and made the findings described in paragraphs (i) through (iv) of this Section 7.1 (b).

c. **\*Material Financial Interest.\*** Any Director with a material financial interest in a transaction is an Interested Director. A material financial interest in a transaction is a financial interest of any kind, direct or indirect, which in view of all the circumstances, is substantial enough that it reasonably would be expected to affect the Director or Officer's judgment with respect to the transaction with the Foundation. A Director or Officer shall not be deemed to have a material financial interest in a transaction:

- i. That fixes the compensation of a Director as a Director or Officer;
- ii. If the contract or transaction is part of a public or charitable program of the Foundation and it (i) is approved or authorized by the Foundation in good faith and without unjustified favoritism, and (ii) results in a benefit to one or more Directors or their families only because they are in the class of persons intended to be benefited by the program; or
- iii. Where the interested Director has no actual knowledge of the transaction and it does not exceed the lesser of one percent of the gross receipts of the Foundation for the preceding year or \$100,000.

**\*\*Section 7.2: Loans to Directors and Officers.\*\*** The Foundation shall not make any loan of money or property to or guarantee the obligation of any Director or Officer; except that, however, the Foundation may advance money to a Director or Officer for expenses reasonably anticipated to be incurred in the performance of duties of such Director or Officer, if in the absence of such advance, such Director or Officer would be entitled to be reimbursed for such expenses by the Foundation.

**\*\*Section 7.3: Interlocking Directorates.\*\*** No contract or other transaction between the Foundation and any corporation, firm or association of which one or more Directors are directors is either void or voidable because such Director(s) are present at the Board or Committee meeting that authorizes, approves or ratifies the contract or transaction, if (i) the material facts as to the transaction and as to such Director's other directorship are fully disclosed or known to the Board or Committee, and the Board or Committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the common Director(s) (subject to the quorum provisions of Article 5); or if (ii) the contract or transaction is just and reasonable as to the Foundation at the time it is authorized, approved or ratified.

**\*\*Section 7.4: Standards of Conduct.\*\*** A Director shall perform the duties of a Director, including duties as a member of any committee of the Board upon which the Director may serve, in good faith, in a manner such Director believes to be in the best interests of the Foundation and with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances. In performing the duties of a Director, a Director shall be entitled to rely on information, opinions, reports or statements including financial statements and other financial data, in each case prepared or presented by:

- a. One or more officers or employees of the Foundation whom the Director believes to be reliable and competent in the matters presented;
- b. Counsel, independent accountants or other persons as to matters which the Director believes to be within such person(s) professional or expert competence; or
- c. A committee of the Board upon which the Director does not serve, so long as the matter is within the designated authority of the Committee, the Director believes that the Committee merits confidence, and the Director otherwise acts in good faith and engages in any further inquiry necessitated by the circumstances.

**\*\*Section 7.5: Duty of Loyalty.\*\*** Nothing in this Article 7 shall be construed to detract in any way from the absolute duty of loyalty that every Director and Officer owes to the Foundation. Furthermore, nothing in this Article 7 shall be construed to override or amend the provisions of Article



11. All conflicts between the two articles shall be resolved in favor of Article 11.

## ## ARTICLE VIII: PROJECTS

**\*\*Section 8.1: Project Purpose.\*\*** The Foundation's goal is to ensure that open source software projects have the financial, logistical, and administrative resources they need to ensure their success, whether as part of the Foundation or as an independent entity.

**\*\*Section 8.2: Project Designations.\*\*** The Board of Directors, by resolution adopted by a majority of the Directors presently serving, may designate one or more distinct open source software projects that the Foundation seeks to further in accord with Section 8.1 and Article II herein (each a "Project").

**\*\*Section 8.3: Project Operation.\*\*** Each Project will initially be led by an individual nominated by the contributors to the Project, if any, prior to the Project's incorporation into the Foundation, and approved by the Board (the "Project Lead"). The Project Lead will appoint a team of individuals to administer the Project under the supervision of the Project Lead (the "Project Team"), in such a way as to promote the Foundation's purpose under Article II. The Project Lead will be responsible for providing reports to the Board as required for proper administration of the Project.

**\*\*Section 8.4: Term of Office.\*\*** Each Project Lead shall continue as such until such time as they are replaced by vote of the Project Team, conducted in a manner determined by the Project Lead, and their replacement is approved by the Board.

**\*\*Section 8.5: Vacancies.\*\*** Vacancies in the Project Lead role of any Project will be filled by vote of the Project Team, conducted in a manner determined by the Project Lead, and approval by the Board.

**\*\*Section 8.6: Project Termination.\*\***

- a. **\*By Board.\*** The Board, upon a majority vote at a regular meeting, special meeting, or by way of Electronic Vote, may terminate a Project. Termination will be effective upon sixty (60) days notice, by any means suitable under these Bylaws, to the Project Lead.
- b. **\*By Project Team.\*** The Project Team, upon a majority vote of its members in a manner determined by the Project Lead, may terminate a Project. Termination will be effective upon sixty (60) days notice, by any means suitable under these Bylaws, to the Board.

**\*\*Section 8.7: Disposition of Intellectual Property.\*\*** Upon termination of a Project, whether by the Board or by the Project Team, the Project Team may request within sixty (60) days of the effective date of termination that all intellectual property of any kind owned by the Foundation, including copyrights, trademarks, patents, and trade secrets, created by and related to the Project ("Project IP"), be transferred and assigned to another entity for the purpose of continuation of the Project. The Foundation must make the transfer requested provided that:

- a. The request is timely made;
- b. The receiving entity is a non-profit corporation qualified under the United States Internal Revenue Code at the time the request is made; and
- c. To the extent any Project IP has been incorporated into other Projects, the Project Team grants a license, as necessary, to the Foundation to continue that use.

## **## ARTICLE IX: FISCAL POLICY**

**\*\*Section 9.1: Major Activities.\*\*** All new ventures undertaken by the Foundation, including major financial expenditures and obligations, must be approved by the Board and any expenditure in connection therewith shall be specifically authorized for such purposes by the Board before disbursement may be made for such purpose. The Executive Director, with the advice of the Project Leads, shall once per year prepare an annual budget for the Board's approval.

**\*\*Section 9.2: Excess Funds.\*\*** Whenever the cash balances of the Foundation are deemed to be in excess of current needs, the Board may authorize the investment of any such funds for interest earning purposes in United States Government Bonds, federally insured savings accounts and/or other investment programs deemed appropriate by the Board. Such deposits shall be made in the name of the Foundation with the authority for making of deposits and withdrawals vested in such person or persons, as the Board shall from time to time provide by resolution. The Board is further empowered to authorize loans or donations for any purpose that, in the Board's discretion, furthers the best interest of the Foundation and its purpose as outlined in Article II.

**\*\*Section 9.3: Disbursements.\*\*** All checks, drafts or other payments of money, notes or other evidences of indebtedness issued in the name of or payable to the Foundation and requiring signature shall be signed or endorsed by such person or persons and in a manner as from time to time shall be determined by the Board of Directors.

**\*\*Section 9.4: Annual Audit.\*\*** The Foundation shall require an annual audit of its accounts by a certified public accountant.

**\*\*Section 9.5: Fiscal Year.\*\*** The fiscal year of the Foundation shall commence on the 1st day of January and end on the 31st day of December.

## **## ARTICLE X: AMENDMENTS TO BYLAWS**

Power to repeal or amend these Bylaws and adopt additional Bylaws is hereby delegated to the Board of Directors. Changes in these Bylaws or the adoption of additional Bylaws may be made at any meeting of the Board. However, before new bylaws or changes in existing Bylaws may be adopted, notice of same shall be first given by the Executive Director by mail to all Directors at least ten (10) days prior to such a meeting and same shall be adopted only by an affirmative vote of two-thirds of all current Directors. Amendment of the Bylaws may be made by Electronic Vote, in which event the Second Period will be extended to ten (10) days.

## **## ARTICLE XI: LIMITATION OF LIABILITIES**

**\*\*Section 11.1: Limitation.\*\*** Nothing herein shall be construed as to create a partnership or joint venture between the Directors and Officers of the Foundation for any purpose whatsoever. No Director, Officer, agent or employee of the Foundation shall be liable for their acts or failure to act to any other Director, Officer, agent or employee of the Foundation; nor shall any Director, Officer, agent or employee be liable for their acts or failure to act under these Bylaws, excepting only acts or omissions to act arising out of their willful malfeasance.

**\*\*Section 11.2: Directors and Officers.\*\*** There shall be no personal liability to a third-party of a Director or President, Secretary or Treasurer of the Foundation caused by the Director's or Officer's negligent act or omission in the performance of that person's duties as a Director or Officer, if all of the following conditions are met:

- a. The act or omission was within scope of the Director's or Officer's duties;

- b. The act or omission was performed in good faith; and
- c. The act or omission was not reckless, wanton, intentional, or grossly negligent.

This limitation on the personal liability of a Director or Officer does not limit the liability of the Foundation for any damages caused by acts or omissions of a Director or Officer, nor does it eliminate the liability of a Director or Officer provided by law in any action or proceeding brought by the Attorney General. It is the intent of the Foundation to eliminate the personal liability of each Director and Officer to the fullest extent allowed by law.

**\*\*Section 11.3: Liability Insurance.\*\*** In order to obtain the full benefit of the limitation of liability set forth in Section 12.2 above, the Foundation and the Directors shall make all reasonable efforts in good faith to maintain liability insurance in the form of a general liability policy for the Foundation and/or a director's and officer's liability policy.

**\*\*Section 11.4: Indemnity for Litigation.\*\*** The Foundation hereby agrees to exercise the power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding by reason of the fact that such person is or was a Director, Officer, employee or other agent (as defined by statute) of the Foundation, to the full extent allowed thereunder relating to the power of the Foundation to indemnify any such person. The amount of such indemnity shall be so much as the Board of Directors determines and finds to be reasonable, or, if required by statute, the amount of such indemnity shall be so much as the court determines to be reasonable.

#### **## Certificate**

This is to certify that the foregoing is a true and correct copy of the Bylaws of the corporation named in the title thereto and that such Bylaws were duly adopted by the Board of Directors of said Foundation on the date set forth above.

Dated:\_\_\_\_\_

Signed:\_\_\_\_\_

Secretary