

**BYLAWS
OF
CODEPLEX FOUNDATION**

**ARTICLE 1
OFFICES**

The principal office of the Foundation shall be located at its principal place of business or such other place as the Board of Directors may designate. The Foundation may have such other offices, either within or outside the State of Washington, as the Board of Directors may designate or as the business of the Foundation may require from time to time.

**ARTICLE 2
MEMBERSHIP**

As set forth in the Articles of Incorporation, the Foundation shall have no members.

**ARTICLE 3
BOARD OF DIRECTORS**

3.1 General Powers. The business and affairs of the Foundation shall be conducted under the direction of, and the control and disposal of the Foundation's properties and funds shall be vested in, its Board of Directors, except as otherwise provided in the Washington Nonprofit Corporation Act (Chapter 24.03 of the Revised Code of Washington) (the "Act") or the Foundation's Articles of Incorporation.

3.2 Qualifications. Directors shall be individuals who: (a) have reached the age of majority, (b) are not paid employees of the Foundation, and (c) have such other qualifications as the Board of Directors may prescribe by resolution or amendment to these Bylaws.

3.3 Duties of Directors. Each director shall perform the duties of a director, including the duties as a member of any committee of the Board of Directors upon which the director may serve, in good faith, in a manner that such director believes to be in the best interests of the Foundation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

3.4 Number of Directors. The initial Board of Directors of the Foundation consists of six (6) directors. When the initial Board of Directors elects its successor Board of Directors at the first annual election of directors, the number of directors shall be reduced to five (5). Thereafter, the Board of Directors shall consist of a minimum of three (3) and not more than five (5) directors. The number of directors shall be set from time to time, or may be increased or decreased (within the stated limits), by the affirmative vote of two-thirds (2/3) of the directors then in office at any meeting of the Board of Directors at which a quorum is present or by amendment to these Bylaws, provided that no decrease in the number of directors shall have the effect of shortening the term of any incumbent director.

3.5 Election. Unless the Board of Directors is reducing the number of directors as provided in these Bylaws, the Board of Directors shall appoint a successor director to replace each director whose term is ending. The Board of Directors may make any such appointment at the annual meeting at which the director's term is scheduled to end or at any other meeting not earlier than six (6) months prior to such annual meeting.

3.6 Classification and Term. The initial directors shall serve until the first annual election of directors. When their replacement directors are elected at the first annual election of directors, they shall be divided into three (3) term classes known as Class A, Class B and Class C. Class A will consist of one (1) director. Classes B and C will consist of two (2) directors each. The initial Class A directors shall hold office until the second annual election of directors, the initial Class B directors shall hold office until the third annual election of directors, and the initial Class C directors shall hold office until the fourth annual election of directors. Thereafter, directors of each class shall serve for a term of three (3) years, commencing on the date of election and each director shall hold office until his or her successor is elected and qualified, or until his or her death, resignation or removal. At each subsequent annual meeting of directors, the successors of those directors whose terms then expire shall be elected to serve for a term of three (3) years and until their successors are elected and qualified, or until their death, resignation or removal. Any director, including the initial directors, may serve an unlimited number of terms, including successive terms, and shall not be disqualified by reason of having served previously as a director.

3.7 Increase in Number. If the Board of Directors increases the number of directors as provided in these Bylaws, such position shall be filled by the affirmative vote of a majority of the remaining Board of Directors even though less than a quorum of the Board of Directors may be present at the meeting. The Board of Directors may make any such appointment at any of its meetings.

3.8 Vacancies. The Board of Directors may appoint an individual to fill any vacancy in the position of director. The Board of Directors may do so at any meeting of the Board of Directors by the affirmative vote of a majority of the remaining directors even if less than a quorum of the Board of Directors is present at the meeting. A director who fills a vacancy shall serve for the unexpired term of his or her predecessor in office.

3.9 Resignation. Any director may resign at any time by delivering notice in the form of a record to the president or the secretary at the principal office of the Foundation, or by giving such notice at any meeting of the Board of Directors. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon delivery thereof and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective; provided however, that if the resignation would result in the Foundation having no director or no director capable of serving as such, the resigning director shall continue to serve as a director until a successor director is appointed and qualified as provided in these Bylaws or by resolution of the Board of Directors.

3.10 Removal. At any regular meeting, or at any special meeting called expressly for that purpose, the Board of Directors may remove from office, with or without cause, one or more directors as long as there is at least one director remaining after such removal.

3.11 Compensation. Directors shall not receive compensation for their services as such, although the reasonable expenses of directors for attendance at Board of Directors meetings or otherwise directly incident to their duties as directors may be paid or reimbursed by the Foundation. Directors shall not be disqualified from receiving reasonable compensation for services rendered to or for the benefit of the Foundation in any other capacity.

3.12 Standing or Temporary Committees. The Board of Directors, by resolution adopted by a majority of the directors in office, may designate and appoint from among its members one or more standing or temporary committees, each of which shall:

- (a) Consist of two (2) or more directors;
- (b) Be governed by the same rules regarding meetings, action without meetings, notice, and waiver of notice, and quorum and voting requirements as apply to the Board of Directors; and
- (c) To the extent provided in such resolution, have and may exercise the authority of the Board of Directors in the management of the Foundation; provided, however, that the Board of Directors may not delegate its authority to:
 - (i) amend, alter, or repeal these Bylaws;
 - (ii) elect, appoint, or remove any member of any such committee or any director or officer of the Foundation;
 - (iii) amend the Articles of Incorporation;
 - (iv) adopt a plan of merger or consolidation with another foundation or corporation;
 - (v) authorize the sale, lease, or exchange of all or substantially all of the property and assets of the Foundation, not in the ordinary course of business;
 - (vi) authorize the voluntary dissolution of the Foundation or revoke proceedings therefor;
 - (vii) modify or change the model form of Codeplex Foundation Assignment Agreement and model form of Codeplex Foundation Contribution Agreement;
 - (viii) adopt a plan for the distribution of the assets of the Foundation; or

- (viii) amend, alter, or repeal any resolution of the Board of Directors which by its terms provides that it shall not be amended, altered or repealed by such committee.

The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual director, of any responsibility imposed upon it by law. The Board of Directors shall have the power at any time to change the members of any such committee, to fill vacancies, and to discharge any such committee.

3.12.1 Resignation of Committee Member. Any member of any committee may resign at any time by delivering notice thereof, in the form of a record, to the president, the secretary or the chairperson of such committee, or by giving such notice at any meeting of such committee. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon delivery thereof and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

3.12.2 Removal of Committee Member. The Board of Directors, by resolution adopted by a majority of the directors in office, may remove from office any member of any committee elected or appointed by it.

ARTICLE 4 MEETINGS OF BOARD OF DIRECTORS

4.1 Annual Meeting. The annual meeting of the Board of Directors shall be held during the month of December on the date and at the time each year as determined by the Board of Directors, for the purpose of electing directors and officers and for transacting such other business as may properly come before the meeting. The failure to hold an annual meeting at the time stated in these Bylaws does not affect the validity of any corporate action.

4.2 Place of Meetings. All meetings shall be held at the principal office of the Foundation or at such other place within or without the State of Washington designated by the Board of Directors, by any persons entitled to call a meeting or by a waiver of notice executed by all directors.

4.3 Regular Meetings. By resolution, the Board of Directors may specify the date, time and place for the holding of regular meetings of the Board of Directors or any committee designated by the Board of Directors without any notice other than such resolution. If no such resolution is adopted, then the Board of Directors may call meetings pursuant to the notice provisions set forth in Sections 4.9 and 4.10.

4.4 Special Meetings. Special meetings of the Board of Directors or any committee designated by the Board of Directors may be called by or at the request of the president or any one or more of the directors in office, or in the case of a committee meeting, by the chair of the committee, by executing a record. The person or persons authorized to call special meetings

may fix the place, either within or without the State of Washington, and time for holding any special Board of Directors or committee meeting called by them. Notice of a special meeting shall be given as provided in Sections 4.9 and 4.10.

4.5 Participation by Telephone. Members of the Board of Directors or any committee designated by the Board of Directors may participate in a meeting of such Board of Directors or committee by means of a conference telephone or similar communications equipment by which means all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

4.6 Presumption of Assent. A director present at a Board of Directors meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless:

(a) the director's dissent or abstention from the action taken is entered in the minutes of the meeting;

(b) the director delivers his or her dissent or abstention to such action to the person acting as the secretary of the meeting before the adjournment thereof; or

(c) the director delivers such dissent or abstention to the secretary of the Foundation immediately after the adjournment of the meeting.

Notwithstanding the foregoing, such right to dissent or abstain shall not apply to a director who voted in favor of such action.

4.7 Quorum. Unless a greater portion is required by these Bylaws, the Articles of Incorporation, or applicable Washington law, a majority of the directors then in office shall constitute a quorum for the transaction of business or any particular item of business at any Board of Directors meeting, but in no event shall a quorum consist of less than one-third of the number of directors then in office. If a quorum is not present at a meeting, a majority of the directors present may adjourn the meeting and set a date and time for the meeting to reconvene without further notice.

4.8 Manner of Acting. Each director shall be entitled to one (1) vote and the act of the majority of the directors present at a meeting at which there is a quorum shall be the act of the Board of Directors, unless the act of a greater number is required by these Bylaws, the Articles of Incorporation or applicable Washington law. A director may not vote or act by proxy at any meeting of directors.

4.9 Notice of Meetings. For any meeting of the Board of Directors or any committee designated by the Board of Directors for which notice is required by these Bylaws or by applicable Washington law, a notice stating the place, date, and hour of the meeting shall be delivered to each director at his or her address shown on the records of the Foundation prior thereto in a tangible medium (e.g., a letter or facsimile) or by an electronic transmission (e.g., email) (as provided in Section 4.10). The method of notice need not be the same to each

director. Such notice shall be delivered at least seven (7) days prior to the meeting. If notice is delivered in a tangible medium, it may be transmitted by: mail, private carrier, or personal delivery; telegraph or teletype; or telephone, wire, or wireless equipment that transmits a facsimile of the notice. If mailed, the notice shall be deemed delivered when deposited in the United States mail addressed to the director at his or her address as it appears on the records of the Foundation with postage thereon prepaid. Other forms of notice in a tangible medium described in this paragraph are effective when received. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors or any committee designated by the Board of Directors need be specified in the notice.

4.10 Notice by Electronic Transmission. If notice is provided in an electronic transmission, it must satisfy the following requirements:

(a) Notice to directors in an electronic transmission that otherwise complies with these Bylaws is effective only with respect to directors who have consented, in the form of a record, to receive notices by electronic transmission.

(i) Notice to directors includes material that these Bylaws require or permit to accompany the notice.

(ii) A director who provides consent, in the form of a record, to receipt of notices by electronic transmission shall designate in the consent the message format accessible to the recipient, and the address, location, or system to which these notices may be sent by electronic transmission.

(iii) A director who has consented to receipt of notices by electronic transmission may revoke the consent by delivering a revocation to the Foundation in the form of a record.

(iv) The consent of any director is revoked if the Foundation is unable to deliver notices of two consecutive meetings by electronic transmission in accordance with the consent, and this inability becomes known to the secretary of the Foundation or other person responsible for giving the notice. The inadvertent failure by the Foundation to treat this inability as a revocation does not invalidate any meeting or other action.

(b) Notice to directors who have consented to receipt of notices by electronic transmission may be provided by posting the notice on an electronic network and delivering to the director a separate record of the posting, together with instructions regarding how to obtain access to this posting on the electronic network.

(c) Notice provided in an electronic transmission is effective when it:

(i) Is given by electronic transmission to an address, location, or system designated by the recipient for that purpose, and is made pursuant to the consent provided by the recipient; or

(ii) Has been posted on an electronic network and a separate record of the posting has been delivered to the recipient together with instructions regarding how to obtain access to the posting on the electronic network.

4.11 Waiver of Notice

4.11.1 Waiver by Communication. Whenever any notice is required to be given to any director under the provisions of these Bylaws, the Articles of Incorporation or applicable Washington law, a waiver thereof in the form of a record executed by the director entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of any regular or special meeting of the Board of Directors need be specified in the waiver of notice of such meeting.

4.11.2 Waiver by Attendance. Attendance of a director or a committee member at a meeting shall constitute a waiver of notice of such meeting, except where a director or a committee member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE 5 ACTIONS BY UNANIMOUS CONSENT IN LIEU OF MEETING

Any corporate action required or permitted by the Articles of Incorporation or Bylaws, or by the laws of the state of Washington, to be taken at a meeting of the directors of the Foundation or at a meeting of a committee of the Board of Directors may be taken without a meeting if a consent, in the form of a record setting forth the action so taken, shall be executed by all of the directors or all of the members of the committee, as the case may be, entitled to vote with respect to the subject matter thereof. Such consents may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same document. Such consent shall have the same force and effect as a unanimous vote, and may be described as such. Any such consent shall be inserted in the minutes book as if it were the minutes of a meeting of the Board of Directors.

ARTICLE 6 OFFICERS

6.1 Positions. The officers of the Foundation shall consist of a president, one or more vice presidents, a secretary, and a treasurer, each of whom shall be elected by the Board of Directors. Other officers and assistant officers may be elected or appointed by the Board of Directors, such officers and assistant officers to hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as may be provided by resolution of the Board of Directors. Any officer may be assigned by the Board of Directors any additional title that the Board of Directors deems appropriate. Any two or more offices may be held by the same person, except the offices of president and secretary.

The Board of Directors in its discretion may elect a chair from amongst its members to serve as chair of the Board of Directors, who, when present shall preside at all meetings of the Board of Directors, and who shall have such other powers as the Board may determine.

6.2 President. The president shall be the chief executive officer of the Foundation and, subject to the direction and control of the Board of Directors, shall have general supervision of the business and affairs of the Foundation. Unless a chair of the Board of Directors has been elected, the President shall preside at meetings of the Board of Directors. The president shall sign deeds, mortgages, bonds, contracts, or other instruments, except when the signing and execution thereof have been expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Foundation or are required by law to be otherwise signed or executed by some other officer or in some other manner. In general, the president shall perform all duties incident to the office of president and such other duties as are assigned to him or her by the Board of Directors from time to time.

6.3 Vice Presidents. The Board of Directors shall elect one or more vice presidents who shall assist the president in carrying out the programs of the Foundation. In the event of the death of the president or his or her inability to act, the vice president (or if there is more than one vice president, the vice presidents in the order designated by the Board of Directors) shall perform the duties of the president, except as may be limited by resolution of the Board of Directors, with all the powers of and subject to all the restrictions upon the president. Vice presidents shall have, to the extent authorized by the president or the Board of Directors, the same powers as the president to sign deeds, mortgages, bonds, contracts or other instruments. Vice presidents shall perform such other duties as from time to time may be assigned to them by the president or the Board of Directors.

6.4 Secretary. The secretary shall be responsible for ensuring that minutes of meetings of the Board of Directors are recorded and maintained, and to the extent minutes of meetings of committees of the Board of Directors are recorded, that such minutes are maintained; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of the corporate records of the Foundation or appoint such person or entity as is appropriate to act as such custodian; ensure that records are kept of the name and address of each director and each officer; sign with the president, or other officer authorized by the president or the Board of Directors, deeds, mortgages, bonds, contracts, or other instruments; and in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the president or the Board of Directors.

6.5 Treasurer. The treasurer shall have charge of and be responsible for all funds and securities of the Foundation; ensure that monies due and payable to the Foundation from any source whatsoever are properly received and that receipts are given for said monies; ensure that all such monies are deposited in the name of the Foundation in banks, trust companies or other depositories selected in accordance with the provisions of these Bylaws; and in general perform all of the duties incident to the office of treasurer and such other duties as may be assigned to him or her by the president or the Board of Directors. If requested by the Board of Directors, at

the Foundation's expense, the treasurer shall give a bond for the faithful discharge of his or her duties in such amount and with such surety or sureties as the Board of Directors may determine.

6.6 Election and Term of Office. The officers of the Foundation shall be elected each year by the Board of Directors at its annual meeting. Unless an officer dies, resigns, or is removed from office, he or she shall hold office until the next annual meeting of the Board of Directors or, if later, until his or her successor is elected.

6.7 Vacancies. A vacancy in any office created by the death, resignation, removal, disqualification, creation of a new office or any other cause may be filled by the Board of Directors for the unexpired portion of the term or for a new term established by the Board of Directors.

6.8 Resignation. Any officer may resign at any time by delivering notice to the Board of Directors in the form of a record. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon delivery thereof and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6.9 Removal. Any officer or agent elected or appointed by the Board of Directors may be removed from office, with or without cause, by the Board of Directors whenever in its judgment the best interests of the Foundation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

6.10 Compensation; Contract Rights. The salaries, if any, of the officers shall be limited to reasonable compensation for services, as fixed from time to time by the Board of Directors or by any person or persons to whom the Board of Directors has delegated such authority. No officer shall be prevented from receiving a salary by reason of the fact that he or she is a director of the Foundation. Officers may also receive reimbursement for reasonable expenditures incurred on behalf of the Foundation. Election or appointment of an officer shall not of itself create contract rights.

6.11 Executive Director. The Board of Directors may appoint an Executive Director who shall serve at the pleasure of the Board, and who shall be accountable to the Board of Directors. The Executive Director shall have general administrative and management responsibility for the operations of the Foundation. The Executive Director may hire or contract with such staff as is necessary to fulfill the purposes of the Foundation, and shall supervise such staff and perform such other duties as are assigned by the Board. The Executive Director may receive reasonable compensation for the performance of services, as determined by the Board.

ARTICLE 7 INDEMNIFICATION

7.1 Definitions. As used in this Article:

7.1.1 "Agent" means an individual who is, or was, an agent of the Foundation or an individual who, while an agent of the Foundation, is, or was, serving at the Foundation's

request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. “Agent” includes, unless the context requires otherwise, the estate or personal representative of an Agent.

7.1.2 “Foundation” means this Foundation, and any domestic or foreign successor entity.

7.1.3 “Director” means an individual who is, or was, a director of the Foundation or an individual who, while a director of the Foundation, is, or was, serving at the Foundation’s request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. “Director” includes, unless the context requires otherwise, the estate or personal representative of a Director.

7.1.4 “Employee” means an individual who is, or was, an employee of the Foundation or an individual who, while an employee of the Foundation, is, or was, serving at the Foundation’s request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. “Employee” includes, unless the context requires otherwise, the estate or personal representative of an Employee.

7.1.5 “Expenses” means all fees and expenses incurred in any Proceeding, including without limitation, the fees and expenses of counsel.

7.1.6 “Indemnitee” means an individual made a Party to a Proceeding because the individual is, or was, a Director, Officer, Employee, or Agent, and who possesses indemnification rights pursuant to the Articles of Incorporation, the Foundation’s Bylaws, or other corporate action. “Indemnitee” shall also include the heirs, executors, and other successors in interest of such individuals.

7.1.7 “Liability” means the obligation to pay a judgment, settlement, penalty, or fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable Expenses incurred with respect to a Proceeding.

7.1.8 “Officer” means an individual who is, or was, an officer of the Foundation or an individual who, while an officer of the Foundation, is, or was, serving at the Foundation’s request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. “Officer” includes, unless the context requires otherwise, the estate or personal representative of an Officer.

7.1.9 “Party” includes an individual who was, is, or is threatened to be, named a defendant or a respondent in a Proceeding.

7.1.10 “Proceeding” means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal.

7.2 Indemnification Rights of Directors, Officers, Employees and Agents.

7.2.1 The indemnification rights and the right to advancement of expenses of the Foundation’s Directors shall be as set forth in the Articles of Incorporation. The procedures of paragraph 7.3 shall apply to such indemnification rights and advancement of expenses unless the Board of Directors adopts or approves further indemnification and expense advancement arrangements as may be permitted by law.

7.2.2 The indemnification rights of the Foundation’s Officers, Employees and Agents shall be as set forth in these Bylaws. The Foundation shall indemnify its Officers, Employees and Agents to the full extent permitted by law, subject to RCW 23B.08.510 through RCW 23B.08.550, against Liability arising out of a Proceeding to which such individual was made a Party because the individual is or was an Officer, Employee or Agent of the Foundation. The Foundation shall advance Expenses incurred by such Officer, Employee or Agent who is a Party to a Proceeding in advance of final disposition of the Proceeding, as provided herein. Notwithstanding the foregoing, no indemnification shall be provided under this Article if payment of any such amount would result in an excess benefit transaction such that the Officer, Employee or Agent would be subject to the imposition of tax and any applicable correction procedures, including repayment of such amounts, under Section 4958 of the Internal Revenue Code of 1986 (the “Code”) or the corresponding provision of any future federal tax law.

7.3 Procedure for Seeking Indemnification and/or Advancement of Expenses.

7.3.1 Notification and Defense of Claim. Indemnitee shall promptly notify the Foundation, in the form of a record, of any Proceeding for which indemnification could be sought under this Article or the Articles of Incorporation. In addition, Indemnitee shall give the Foundation such information and cooperation as it may reasonably require and as shall be within Indemnitee’s power. With respect to any such Proceeding as to which Indemnitee has notified the Foundation:

(a) The Foundation shall be entitled to participate therein at its own expense; or

(b) Except as otherwise provided below, to the extent that it may wish, the Foundation, jointly with any other indemnifying Party similarly notified, will be entitled to assume the defense thereof, with counsel satisfactory to Indemnitee. Indemnitee’s consent to such counsel may not be unreasonably withheld.

After notice from the Foundation to Indemnitee of its election to assume the defense, the Foundation will not be liable to Indemnitee under this Article for any Expenses subsequently incurred by Indemnitee in connection with such defense. Indemnitee shall, however, continue to have the right to employ its counsel in such Proceeding, at Indemnitee’s expense; and if:

(a) The employment of counsel by Indemnitee has been authorized by the Foundation;

(b) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Foundation and Indemnitee in the conduct of such defense; or

(c) The Foundation shall not, in fact, have employed counsel to assume the defense of such Proceeding;

then the fees and expenses of Indemnitee's counsel shall be at the expense of the Foundation.

The Foundation shall not be entitled to assume the defense of any Proceeding brought by, or on behalf of, the Foundation or as to which Indemnitee shall reasonably have made the conclusion that a conflict of interest may exist between the Foundation and the Indemnitee in the conduct of the defense.

7.3.2 Information to be Submitted and Method of Determination and Authorization of Indemnification. For the purpose of pursuing rights to indemnification under the Articles of Incorporation and/or this Article, Indemnitee shall submit to the Board or Directors a sworn statement requesting indemnification and reasonable evidence of all amounts for which such indemnification is requested (together, the sworn statement and the evidence constitute an "Indemnification Statement").

Submission of an Indemnification Statement to the Board of Directors shall create a presumption that the Indemnitee is entitled to indemnification hereunder, and the Foundation shall, within sixty (60) calendar days thereafter, make the payments requested in the Indemnification Statement to, or for the benefit of, the Indemnitee, unless: (a) within such sixty (60) calendar day period it shall be determined by the Foundation that the Indemnitee is not entitled to indemnification under the Articles of Incorporation; (b) such vote shall be based upon clear and convincing evidence (sufficient to rebut the foregoing presumption); and (c) the Indemnitee shall receive notice of such determination in the form of a record, which shall disclose with particularity the evidence upon which the determination is based.

The foregoing determination shall be made (a) by the Board of Directors by majority vote of a quorum consisting of Directors not at the time parties to the Proceeding; (b) if a quorum cannot be obtained under (a) in this paragraph, by majority vote of a committee duly designated by the Board of Directors, in which designation Directors who are Parties may participate, consisting solely of two or more Directors not at the time Parties to the Proceeding; or (c) by special legal counsel as provided by RCW 23B.08.550.

Any determination that the Indemnitee is not entitled to indemnification, and any failure to make the payments requested in the Indemnification Statement, shall be subject to judicial review by any court of competent jurisdiction.

7.3.3 Special Procedure Regarding Advance for Expenses. An Indemnitee seeking payment of Expenses in advance of a final disposition of the Proceeding must furnish the Foundation, as part of the Indemnification Statement:

(a) a written affirmation, given in the form of a record, of the Indemnitee's good faith belief that the Indemnitee has met the standard of conduct required to be eligible for indemnification; and

(b) a written undertaking, in the form of a record constituting an unlimited general obligation of the Indemnitee, to repay the advance if it is ultimately determined by the final disposition of a court of competent jurisdiction that the Indemnitee did not meet the required standard of conduct.

If the Foundation determines that indemnification is authorized, the Indemnitee's request for advance of Expenses shall be granted.

7.3.4 Settlement. The Foundation is not liable to indemnify Indemnitee for any amounts paid in settlement of any Proceeding without the Foundation's consent, given in the form of a record. The Foundation shall not settle any Proceeding in any manner that would impose any penalty or limitation on Indemnitee without Indemnitee's consent, given in the form of a record. Neither the Foundation nor Indemnitee may unreasonably withhold its consent to a proposed settlement.

7.4 Contract and Related Rights.

7.4.1 Contract Rights. The right of an Indemnitee to indemnification and advancement of Expenses is a contract right upon which the Indemnitee shall be presumed to have relied in determining to serve, or to continue to serve, in his or her capacity with the Foundation. Such right shall continue as long as the Indemnitee shall be subject to any possible Proceeding. Any amendment to, or repeal of, this Article shall not adversely affect any right or protection of an Indemnitee with respect to any acts or omissions of such Indemnitee occurring prior to such amendment or repeal.

7.4.2 Optional Insurance, Contracts, and Funding. The Foundation may:

(a) Maintain insurance, at its expense, to protect itself and any Indemnitee against any Liability;

(b) Enter into contracts with any Indemnitee in furtherance of this Article and consistent with the Act; and

(c) Create a trust fund, grant a security interest, or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect indemnification as provided in this Article.

7.4.3 Severability. If any provision or application of this Article shall be invalid or unenforceable, the remainder of this Article and its remaining applications shall not be affected thereby, and shall continue in full force and effect.

7.4.4 Right of Indemnitee to Bring Suit. If (a) a claim under the Articles of Incorporation and/or this Article for indemnification is not paid in full by the Foundation within sixty (60) days after notice of a claim has been received by the Foundation; or (b) a claim under this Article for advancement of Expenses is not paid in full by the Foundation within twenty (20) days after notice of a claim, then the Indemnitee may, but need not, at any time thereafter bring suit against the Foundation to recover the unpaid amount of the claim. To the extent successful in whole or in part, the Indemnitee shall be entitled to also be paid the expense (to be proportionately prorated if the Indemnitee is only partially successful) of prosecuting such claim.

Neither (a) the failure of the Foundation (including its Board of Directors or independent legal counsel) to have made a determination prior to the commencement of such Proceeding that indemnification or reimbursement or advancement of Expenses to the Indemnitee is proper in the circumstances, nor (b) an actual determination by the Foundation (including its Board of Directors or its independent legal counsel) that the Indemnitee is not entitled to indemnification or to the reimbursement or advancement of Expenses, shall be a defense to the Proceeding or create a presumption that the Indemnitee is not so entitled.

7.5 Exceptions. Notwithstanding any other provision herein or in the Foundation's Articles of Incorporation to the contrary, the Foundation shall not be obligated pursuant to the terms of this Article to indemnify or advance Expenses to Indemnitee with respect to any Proceeding:

(a) Initiated or brought voluntarily by Indemnitee and not by way of defense, except with respect to Proceedings brought to establish or enforce a right to indemnification under the Bylaws, or any other statute or law or as otherwise required under the statute; but such indemnification or advancement of Expenses may be provided by the Foundation in specific cases if the Board of Directors finds it to be appropriate.

(b) Instituted by Indemnitee to enforce or interpret rights under the Bylaws, if a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such Proceeding was not made in good faith or was frivolous.

(c) For which any of the Expenses or Liabilities for indemnification being sought have been paid directly to Indemnitee by an insurance carrier under an insurance policy maintained by the Foundation.

(d) If the Foundation is prohibited by its Articles of Incorporation, the Act or other applicable law as then in effect from paying such indemnification and/or advancement of Expenses.

ARTICLE 8 ADMINISTRATIVE PROVISIONS

8.1 Books and Records. The Foundation shall keep the following records at its registered office or its principal office in the State of Washington:

- (a) Current copies of its Articles of Incorporation and Bylaws, as amended;
- (b) Correct and adequate records of accounts and finances;
- (c) A record of officers' and directors' names and addresses;
- (d) Minutes of the proceedings of the Board of Directors, and any minutes that may be maintained by committees having any of the authority of the Board of Directors;
- (e) Copies of such documents as may be required to be made publicly available under the Code, including copies of its application for recognition of tax-exempt status on Form 1023 and copies of its Form 990; and
- (f) Such other records as may be necessary or advisable.

Such records may be made available in any manner and by any means permitted under the Act and the Code, as applicable. All books and records of the Foundation shall be open at any reasonable time to inspection by any director.

8.2 Fiscal Year. The accounting year of the Foundation shall be the twelve months ending June 30.

8.3 Loans to Directors and Officers Prohibited. No loans or advances shall be made by the Foundation to any of its directors or officers.

8.4 Rules of Order. The rules contained in the most recent edition of Robert's Rules of Order, newly revised, shall govern all meetings of directors where those rules are not inconsistent with the Articles of Incorporation, Bylaws, or other rules of order of this Foundation.

8.5 Amendment of Articles of Incorporation and Bylaws. The Foundation's Articles of Incorporation and Bylaws may be amended or repealed only by the affirmative vote of two-thirds (2/3) of the directors then in office at any meeting of the Board of Directors at which a quorum is present. For this purpose, a quorum will be the lesser of four (4) directors or all of the directors then in office.

8.6 Amendment of Model Agreements. The Foundation's model form of Codeplex Foundation Assignment Agreement and model form of Codeplex Foundation Contribution Agreement, as adopted by the Foundation's Board of Directors, may be amended or repealed only by the affirmative vote of two-thirds (2/3) of the directors then in office at any meeting of

the Board of Directors at which a quorum is present. For this purpose, a quorum will be the lesser of four (4) directors or all of the directors then in office.

ARTICLE 9 DEFINITIONS

Except as otherwise provided herein, as used in these Bylaws:

9.1. “Foundation” means CodePlex Foundation.

9.2. “Deliver” means:

(a) Mail; or

(b) Transmit by facsimile equipment, for purposes of delivering a demand consent, notice, or waiver to the Foundation or one of its officers or directors; or

(c) Make an electronic transmission, in accordance with the officer’s or director’s consent and Section 4.10 of these Bylaws, for purposes of delivering a demand, consent, notice, or waiver to the Foundation or one of its officers or directors.

9.3 “Electronic transmission” means an electronic communication:

(a) Not directly involving the physical transfer of a record in a tangible medium; and

(b) That may be retained, retrieved, and reviewed by the sender and the recipient thereof, and that may be directly reproduced in a tangible medium by a sender and recipient.

9.4 “Execute” means:

(a) Sign, with respect to a written record; or

(b) Electronically transmit along with sufficient information to determine the sender’s identity; or

(c) File in compliance with the standards for filing with the office of the secretary of state as prescribed by the secretary of state, with respect to a record to be filed with the secretary of state.

9.5 “Record” means information inscribed on a tangible medium or contained in an electronic transmission.

9.6 “Tangible medium” means a writing, copy of a writing, facsimile, or a physical reproduction, each on paper or other tangible material.

9.7 “Writing” does not include an electronic transmission.

ARTICLE 10
BOARD OF ADVISORS

The Board of Directors may have a Board of Advisors. The Board of Advisors shall have such qualifications, serve for such terms and be elected or appointed in such manner as the Board of Directors may prescribe by resolution or amendment to these Bylaws. The Board of Directors may, in carrying out its duties and exercising the powers vested in it by these Bylaws, consult the Board of Advisors at any time and from time to time; provided that, the Board of Advisors (i) shall not possess the rights, powers or duties conferred on directors of the Foundation under the provisions of the Foundation’s Articles of Incorporation, these Bylaws, or the Act; and (ii) shall not be vested with authority to direct the actions of the Board of Directors regarding the business and affairs of the Foundation.

CERTIFICATE OF ADOPTION

The undersigned Secretary of CodePlex Foundation does hereby certify that the above and foregoing Bylaws of said Foundation were adopted by the Board of Directors as the Bylaws of said Foundation and that the same do now constitute the Bylaws of this Foundation.

DATED this _____ day of _____, 2009.

_____, Secretary