

# FIRST AMENDED AND RESTATED BYLAWS OF .NET FOUNDATION

## ARTICLE 1 NAME AND PURPOSES

The Foundation is organized under the Washington Nonprofit Miscellaneous and Mutual Corporations Act (Chapter 24.06 of the Revised Code of Washington) (the “Act”). It was formed to advance the interests of the .NET programming community, including enterprises, partners, individual developers and open source communities, by fostering open development and collaboration of open source technologies for .NET programming and related technologies; and by serving as a forum for commercial and community developers to strengthen the future of the .NET ecosystem and wider developer community by promoting openness, community participation, and rapid innovation.

## ARTICLE 2 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 as the Board of Directors may designate.

## ARTICLE 3 MEMBERSHIP

**3.1 Rights and Responsibilities of Members.** As set forth in the Articles of Incorporation, the Foundation is authorized to have members. Members will have the voting rights specified in these Bylaws. All membership in the Foundation are collectively referred to in the Bylaws as “Memberships,” and an entity holding Membership is referred to in the Bylaws as a “Member.” Members will also have the rights to (i) attend all general and special meetings of the Membership, (ii) be featured as Members on the Foundation website, and (iii) display the Foundation’s logo or otherwise indicate Membership in the Foundation on such Member’s website and in its marketing collateral, in accordance with the logo usage guidelines to be established by the Foundation. Members will comply with the Membership Obligations in Section 3.3. Members will have all of the rights and responsibilities conferred upon “members” under the Act.

**3.2 Manner of Admission to Membership and Termination of Membership.** The initial member of the Corporation shall be Microsoft Corporation. Additional Members shall be admitted from time to time by unanimous consent of the then-current Members. Additional members may be any independent software vendor, platform provider, or other .NET community member with an interest in .NET development.

**3.3 General Conditions of Membership.** An entity who receives the approval of the Members for admission to Membership shall be admitted as a Member upon its acceptance of the terms of Membership as established by the Board of Directors, including the terms and conditions of the Foundation’s Articles of Incorporation, Bylaws, and such terms, rules and policies as the Board of Directors may adopt (“**Membership Obligations**”). The Membership Obligations may be memorialized in a separate Membership Agreement adopted by the Board of Directors, and will include both (a) a requirement that Members will publicly support the Foundation, its corporate

purpose stated above, and a thriving ecosystem of open source software projects (including those housed within the Foundation) taking advantage of the .NET programming model, and (b) ensuring the Foundation has Member's accurate and current contact information including email address and providing a record of its consent to the provision of all notices from the Foundation using such email address it provides or updates from time to time. A Member shall remain in good standing as a Member provided such Member is in compliance with Membership Obligations.

**3.4 Transfer of Memberships.** Memberships shall be non-transferable, non-salable and non-assignable, except that any Member may transfer its Membership for the then-current year to a successor to substantially all of its business and/or assets, whether by merger, sale or otherwise; provided that the transferee agrees to be bound by the Membership Obligations.

**3.5 Additional Classes of Members.** The conditions, privileges, powers, and voting rights (if any) of any class of Members may be changed, and one or more additional classes of Membership may be created, and the conditions, voting rights, powers and privileges of each such class may be prescribed, by adoption of an amendment to the Articles of Incorporation and these Bylaws pursuant to Section 10.4 hereof.

**3.6 Resignation by Member.** A Member may resign as a Member at any time. Any Financial Obligations already paid by such Member shall not be refundable in such event, and all such Financial Obligations of such Member which may be accrued and unpaid as of such date shall remain due and payable.

**3.7 Levy of Dues, Assessments or Fees.** The Foundation may levy dues, assessments or fees upon its Members in such amounts as may be approved from time to time by the Board of Directors ("**Financial Obligations**"), as provided in Section 3.3 above, but a Member upon learning of any new fees or increase in fees may avoid liability therefor by resigning from Membership prior to the date such fees are due and payable. In no event shall the failure of a Member to pay any fees give rise to any claim in favor of the Foundation for indirect or consequential damages.

**3.8 Use of Names.** Neither the Foundation nor any Member shall use the name of the other in any form of publicity without the permission of the other, provided that the Foundation and any Member may each disclose and publicize such Member's Membership in the Foundation.

## **ARTICLE 4 MEETINGS OF MEMBERS**

**4.1 Place of Meetings.** All meetings of the Members shall physically be held at such place within or without the State of Washington as designated pursuant to the notice of meeting, or if not so designated, at the registered office of the Foundation.

**4.2 Annual Meeting.** The Foundation shall hold an annual meeting of the Members at which the activities and future plans of the Foundation are reviewed on the second Tuesday of September. The failure to hold an annual meeting at the time stated in these Bylaws does not affect the validity of any corporate action.

**4.3 Special Meetings.** Special meetings of the Members may be called by the President, Executive Director, the Board of Directors, or 50% of the Members. Only business within the purposes described within the notice of meeting provided pursuant to Section 4.4 hereof may be conducted at a special meeting of the Members.

**4.4 Notice of Annual and Special Meetings.** Notice shall be provided to Members in writing (including writing by electronic transmission) stating the place, day and hour of any meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, not less than ten nor more than fifty days before the date of the meeting. Such notice shall be delivered either personally or by mail or electronic transmission, by or at the direction of the President, Executive Director, the Secretary, or the Members calling the meeting, to each Member. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at the address of record provided to the Foundation, with postage thereon prepaid. If sent by electronic transmission, the notice is deemed to be delivered when sent, addressed to the Member at the electronic transmission address of record provided to the Foundation.

**4.5 Quorum and Voting.** A majority of the Members shall constitute a quorum for the conduct of business at a regular or special meeting. Members may participate in a meeting and vote by (a) the physical presence of a designated representative at a meeting, (b) participation of a designated representative in the meeting through use of conference telephone or similar communications equipment, so long as all designated representatives participating in such meeting can hear one another, (c) by electronic transmission, or (d) by other means authorized by the Act.

## **ARTICLE 5 BOARD OF DIRECTORS**

**5.1 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 assets shall be vested in, its Board of Directors, except as provided in the Act, the Articles of Incorporation, or these Bylaws.

### **5.2 Specific Powers.**

(a) **Intellectual Property.** All intellectual property submitted to or owned, adopted or created by the Foundation ("**Intellectual Property**"), shall be subject to such license agreements, contribution agreements, policies and procedures as adopted by the Board of Directors. Among other things, the Board of Directors will adopt a form of Assignment Agreement (for contribution of open source software projects to the Foundation) and a form of the Contribution Agreement (for contributions to open source software projects within the Foundation). Once adopted, these agreements may only be changed or replaced by affirmative vote of two-thirds (2/3) of the directors then in office.

(b) **Project Governance.** Open source software projects within the Foundation will be subject to a governance process adopted by the Board of Directors. The governance process will specify (i) the rights of the original contributor of a project to the Foundation to manage the project as a "benevolent director," (ii) the rights of the Foundation as to the project and its name, and (iii) the rights of the broader community to use the project, including what open source licenses

may be used for projects and the policies for accurate and referential use of project names. Once adopted, the governance process may only be changed or replaced by the affirmative vote of two-thirds (2/3) of the directors then in office.

**5.3 Duties of Directors.** Each director shall perform the duties of a director 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.

**5.4 Number and Selection of Directors.** The number of directors will be 3. The specific number and identity of directors shall be determined as follows:

(a) The initial directors are those individuals named in the Articles of Incorporation, where Jay Schmelzer and Gianugo Rabellino shall represent the Member elected and appointed directors provided for under Section 5.4(b)(i) and Miguel de Icaza shall represent the community elected director provided for under Section 5.4(b)(ii).

(b) All subsequent directors shall be appointed as follows:

(i) two directors shall be appointed and elected by the Members as determined by a majority vote of the Members; and

(ii) one director shall be elected by a majority vote of the community, such community comprised of any person who is an active member of the .NET community, which may include adopting, contributing to, or supporting open source software projects within the Foundation.

Elections of directors will occur under a process approved by the then-current Board of Directors, and will be effective immediately upon completion of the election. Appointments of directors by Members will be made by written notice to the Foundation, and will be effective as of the specified future date in the appointment notice or, if no date is specified, the date of receipt by the Foundation.

**5.5 Term.** The initial directors shall serve until the Members appoint or elect directors pursuant to Section 5.4(b) above. All directors shall serve terms of one year, or until their earlier death, resignation or removal, except that directors will continue to serve in that capacity until the appointing Member replaces them or until an election for their seat is completed (as applicable). Any director, including the initial directors, may serve an unlimited number of terms.

**5.6 Vacancies.** Vacancies on the Board of Directors shall be filled in accordance with Section 5.4(b) hereof.

**5.7 Resignation.** Any director may resign at any time by written notice to the Foundation; provided, that if the resignation would result in the Foundation having no director, 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 action of the Members.

**5.8 Removal.** Any appointed director may be removed, with or without cause, at any time by the Member that appointed such director, by written notice to the Foundation. Elected directors may only be removed by election of a replacement director.

**5.9 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 by the Foundation.

## **ARTICLE 6 MEETINGS OF BOARD OF DIRECTORS**

**6.1 Annual Meeting.** The annual meeting of the Board of Directors shall be held during the month of September on the date and at the time determined by the Board of Directors, for the purpose of electing officers and for transacting such other business. The failure to hold an annual meeting does not affect the validity of any corporate action.

**6.2 Place of Meetings.** All meetings shall be held at the principal office of the Foundation or at such other place designated by the Board of Directors, by any persons entitled to call a meeting, or by a waiver of notice executed by all directors.

**6.3 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 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 6.9 and 6.10.

**6.4 Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the President, Executive Director, or any director. That person may fix the place and time for holding for the meeting. Notice of a special meeting shall be given as provided in Section 6.9.

**6.5 Remote Participation.** 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 one other at the same time.

**6.6 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.

**6.7 Quorum.** A majority of the directors then in office shall constitute a quorum for any Board of Directors meeting.

**6.8 Manner of Acting.** Each director is entitled to one vote. 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 a greater number is required by these Bylaws or applicable Washington law.

**6.9 Notice of Meetings.** For any meeting of 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 prior thereto in a tangible medium (e.g., a letter or facsimile) or by an electronic transmission (e.g., email). Directors will be deemed to consent to email notice at such the most current email address they have provided to the Foundation. Such notice shall be delivered at least seven days prior to the meeting.

**6.10 Waiver of Notice.**

(a) **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.

(b) **Waiver by Attendance.** Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director 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 7  
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 Members or directors of the Foundation 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 Members or directors, as the case may be, entitled to vote.

**ARTICLE 8  
OFFICERS**

**8.1 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 may be elected or appointed by the Board of Directors, such 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 or Executive Director and Secretary.

**8.2 President.** The President shall serve as chair of the Board of Directors and when present 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.

**8.3 Executive Director.** The Board of Directors may appoint an Executive Director who 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. The Executive Director 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. The Executive Director may delegate general administrative and management responsibility for the operations of the Foundation to such staff, hired or contracted by the Executive Director, as is necessary to fulfill the purposes of the Foundation, and the Executive Director will supervise such staff and perform such other duties as are assigned by the Board of Directors. The Executive Director may receive reasonable compensation for the performance of services, as determined by the Board of Directors.

**8.4 Vice Presidents.** The Board of Directors may elect one or more Vice Presidents who, if so elected, shall assist the President and Executive Director in carrying out the programs of the Foundation. Vice Presidents shall have, to the extent authorized by the President, Executive Director, or the Board of Directors, the same powers as the President and Executive Director 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, Executive Director, or the Board of Directors.

**8.5 Secretary.** The Secretary shall be responsible for ensuring that minutes of meetings of the Members, Board of Directors and committees of the Board of Directors are recorded and 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 Member, director and officer; sign with the President, Executive Director, or other officer authorized by the President, Executive Director, 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, Executive Director, or the Board of Directors.

**8.6 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, Executive Director, 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.

**8.7 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.

**8.8 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.

**8.9 Resignation.** Officers may resign at any time by written notice to the Board of Directors.

**8.10 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.

**8.11 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 as an officer 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.

## **ARTICLE 9 INDEMNIFICATION**

**9.1 Definitions.** As used in this Article:

**9.1.1** "Foundation" means this Foundation, and any domestic or foreign successor entity.

**9.1.2** "Director" means an individual who is, or was, a director of the Foundation.

**9.1.3** "Employee" means an individual who is, or was, an employee of the Foundation.

**9.1.4** "Expenses" means all fees and expenses incurred in any Proceeding, including without limitation, the fees and expenses of counsel.

**9.1.5** “Indemnitee” means an individual made a Party to a Proceeding because the individual is, or was, a Director, Officer, or Employee, 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.

**9.1.6** “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.

**9.1.7** “Officer” means an individual who is, or was, an officer of the Foundation.

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

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

## **9.2 Indemnification Rights of Directors, Officers, Employees and Agents.**

**9.2.1** 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 9.3 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.

**9.2.2** The indemnification rights of the Foundation’s Officers, and Employees shall be as set forth in these Bylaws. The Foundation shall indemnify its Officers and Employees 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 or Employee of the Foundation. The Foundation shall advance Expenses incurred by such Officer or Employee who is a Party to a Proceeding in advance of final disposition of the Proceeding, as provided herein.

## **9.3 Procedure for Seeking Indemnification and/or Advancement of Expenses.**

**9.3.1 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.

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. In such case, the Foundation will be responsible for reimbursing Indemnitee for the fees and expenses of Indemnitee's counsel in defense of such Proceeding.

**9.3.2 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 of 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.

**9.3.3 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.

**9.3.4 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.

#### **9.4 Contract and Related Rights.**

**9.4.1 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.

**9.4.2 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.

**9.4.3 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.

**9.4.4 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.

**9.5 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 10 ADMINISTRATIVE PROVISIONS**

**10.1 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 Members' names and addresses;
- (d) A record of officers' and directors' names and addresses;
- (e) 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;

(f) Copies of its application for recognition of tax-exempt status on Form 1024 and copies of its Form 990; and

(g) 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. All books and records of the Foundation shall be open at any reasonable time to inspection by any director.

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

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

**10.4 Amendment of Articles of Incorporation and Bylaws.** Any amendment of the Articles of Incorporation or these Bylaws must be approved by vote of two-thirds (2/3) of the directors then in office.

## **ARTICLE 11 ADVISORS**

**11.1 Board of Advisors.** The Board of Directors may have a Board of Advisors. The members of 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.

**11.2 Technical Advisory Board.** The Board of Directors may have a Technical Advisory Board comprising managers of projects and committers to those projects. The members of the Technical Advisory Board 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.

**11.3 Consultation.** 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 and Technical Advisory Board at any time and from time to time; provided that (i) neither such body shall 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) neither such body shall be vested with authority to direct the actions of the Board of Directors regarding the business and affairs of the Foundation.