

**BYLAWS OF ECLIPSE FOUNDATION, INC.**

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## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	PURPOSES.....1
Section 1.1	Purposes.....1
ARTICLE II	OFFICES.....1
Section 2.1	Principal Office.....1
ARTICLE III	BOARD OF DIRECTORS .....1
Section 3.1	Powers and Duties.....1
Section 3.2	Number of Directors .....1
Section 3.3	Composition of Board of Directors.....1
Section 3.4	Good Standing .....3
Section 3.5	Terms and Election Dates .....3
Section 3.6	Place of Meetings.....4
Section 3.7	Regular Meetings .....4
Section 3.8	Special Meetings.....4
Section 3.9	Action by the Board .....4
Section 3.10	Telephonic Meetings.....5
Section 3.11	Quorum. ....6
Section 3.12	Voting; Electronic Voting.....6
Section 3.13	Reimbursement .....6
Section 3.14	Standard of Conduct .....6
Section 3.15	Resignation and Removal. ....7
Section 3.16	Vacancies .....7
ARTICLE IV	COMMITTEES OF THE BOARD.....8
Section 4.1	Standing Committees .....8
Section 4.2	Appointment of Committees.....8
Section 4.3	Powers and Authority of Committees.....9
ARTICLE V	OFFICERS.....9
Section 5.1	Initial Officers; Board Empowerment. ....9
Section 5.2	Nomination and Appointment.....9
Section 5.3	Management Officers and Duties .....9
Section 5.4	Standards of Conduct for Officers .....10
ARTICLE VI	MEMBERSHIP AT-LARGE.....11
Section 6.1	Classes of Membership .....11
Section 6.2	Membership Qualifications.....11

Section 6.3	Additional Rights of Membership At-Large.....	12
Section 6.4	Fees, Dues and Assessment.....	12
Section 6.5	Major Decisions.....	12
Section 6.6	Place of Meetings.....	13
Section 6.7	Meetings Generally.....	13
Section 6.8	Special Meetings.....	13
Section 6.9	Notice of Meetings.....	13
Section 6.10	Adjourned Meetings.....	13
Section 6.11	Quorum.....	13
Section 6.12	Voting; Electronic Voting.....	14
Section 6.13	Action without Meeting.....	14
Section 6.14	[RESERVED].....	<del>15</del> 14
Section 6.15	Conduct of Meetings.....	<del>15</del> 14
Section 6.16	Delinquency; Non-Payment of Dues.....	15
Section 6.17	Termination of Membership.....	15
Section 6.18	Reinstatement.....	16
Section 6.19	Nonliability.....	16
Section 6.20	Assignment.....	16
Section 6.21	Distribution of Assets Upon Dissolution.....	16
ARTICLE VII	ECLIPSE MANAGEMENT ORGANIZATION.....	16
Section 7.1	Overall Responsibilities.....	16
Section 7.2	Architecture Council.....	17
Section 7.3	Planning Council.....	17
Section 7.4	Requirements Council.....	18
ARTICLE VIII	COMMITTEES OF THE MEMBERSHIP AT-LARGE.....	18
ARTICLE IX	ADVISORY BOARD.....	18
ARTICLE X	INDEMNIFICATION OF DIRECTORS, OFFICERS AND AGENTS.....	18
Section 10.1	Indemnification of Directors, Officers and Agents.....	18
ARTICLE XI	MISCELLANEOUS.....	<del>20</del> 19
Section 11.1	Fiscal Year.....	<del>20</del> 19
Section 11.2	Disbursements.....	20
Section 11.3	Contributions.....	20
Section 11.4	Expenses.....	20
Section 11.5	Checks, Notes and Contracts.....	20
Section 11.6	Investments.....	20
Section 11.7	Posting of Minutes.....	20
Section 11.8	Books.....	20
Section 11.9	Seal.....	20
Section 11.10	Amendments.....	<del>21</del> 20

## **ARTICLE I PURPOSES**

**Section 1.1 Purposes.** The Eclipse technology is a vendor-neutral, open development platform supplying frameworks and exemplary, extensible tools (the “Eclipse Platform”). Eclipse Platform tools are exemplary in that they verify the utility of the Eclipse frameworks, illustrate the appropriate use of those frameworks, and support the development and maintenance of the Eclipse Platform itself; Eclipse Platform tools are extensible in that their functionality is accessible via documented programmatic interfaces. The purpose of Eclipse Foundation Inc., (the “Eclipse Foundation”), is to advance the creation, evolution, promotion, and support of the Eclipse Platform and to cultivate both an open source community and an ecosystem of complementary products, capabilities, and services. The Eclipse Foundation is formed exclusively as a non-profit trade association, as set out in section 501 (c) (6) of the Internal Revenue Code (the “Code”).

## **ARTICLE II OFFICES**

**Section 2.1 Principal Office.** The principal office for the Eclipse Foundation shall be located in the state selected by the Board of Directors of the Eclipse Foundation (the “Board”). The Board is granted full power and authority to change said principal office from one location to another.

## **ARTICLE III BOARD OF DIRECTORS**

**Section 3.1 Powers and Duties.** The business and technical affairs of the Eclipse Foundation shall be managed by or under the direction of the Board. The Board shall also be empowered to adopt rules and regulations governing the action of the Board and the Eclipse Foundation, generally, and to allocate, distribute and/or pay out the moneys received by the Eclipse Foundation from time-to-time, subject to section 501(c)(6) and other applicable provisions of the Code, the provisions of the General Corporation Law of the State of Delaware, and the approval of the Membership At-Large with respect to Section 6.5, as applicable.

**Section 3.2 Number of Directors.** The number of directors constituting the whole Board shall be subject to adjustment from time-to-time based upon the composition requirements set forth in Section 3.3 below with respect to Member representation on the Board, but shall in no event be less than one (1) director.

**Section 3.3 Composition of Board of Directors.** Members of the Board shall be appointed or elected, as applicable, in the following manner:

(a) **Strategic Developers.** Each Strategic Developer Member (as defined in Section 6.2(a) below) shall be entitled to appoint one (1) representative to the Board (a “Strategic Developer Director”), *provided, that*, such representative must be an employee, officer, director, or consultant of the nominating Strategic Developer Member in order to be eligible to serve as a Strategic Developer Director. Upon the termination of the membership of a Strategic Developer Member pursuant to Section 6.17, any Strategic Developer Director nominated by such Strategic

Developer Member shall be removed from the Board immediately therewith. The provisions of this Section 3.3(a) may not be amended without the unanimous consent of the Strategic Developer Members in addition to any and all other requirements including, but not limited to, the voting requirements of Sections 3.9 and 11.10, for amendment of these Bylaws set forth herein.

**(b) Strategic Consumers.** Each Strategic Consumer Member (as defined in Section 6.2(b) below) shall be entitled to appoint one (1) representative to the Board (a “Strategic Consumer Director”), *provided, that*, such representative must be an employee, officer, director, or consultant of the nominating Strategic Consumer Member in order to be eligible to serve as a Strategic Consumer Director. Upon the termination of the membership of a Strategic Consumer Member pursuant to Section 6.17, any Strategic Consumer Director nominated by such Strategic Consumer Member shall be removed from the Board immediately therewith. The provisions of this Section 3.3(b) may not be amended without the unanimous consent of the Strategic Consumer Members in addition to any and all other requirements including, but not limited to, the voting requirements of Sections 3.9 and 11.10, for amendment of these Bylaws set forth herein.

**(c) ~~Add-In Provider~~Sustaining Members.** ~~—Add-In ProviderEnterprise~~ Members ~~(as defined in Section 6.2(c) below); and Solutions Members collectively~~ “Sustaining Members”, as a class, shall be entitled to at least one (1) seat on the Board (and such representative or representatives shall represent the entire class). An additional seat on the Board shall be allocated to the Add-In ProviderSustaining Members for every additional five (5) seats beyond one (1) allocated to Strategic Developer Members and Strategic Consumer Members in the aggregate as determined annually ~~at the time as of the annual meeting~~ February 1 of each calendar year; *provided, that*, such representative must be either an individual who is a Committer Member or an employee, officer, director, or consultant of a Member in order to be eligible to serve as an Add-In Provider-Sustaining Member Director. For example, if there are a total of sixteen (16) Strategic Developers and Strategic Consumers in the aggregate, there will be four (4) board seats allocated for Add-In ProviderSustaining Member Directors. If there are fifteen (15) Strategic Developers and Strategic Consumers in the aggregate, there will be three (3) board seats allocated for Add-In Provider-Sustaining Member Directors. Such Add-In Sustaining Member Director seats shall be filled via annual at-large elections by the Add-In ProviderSustaining Members using the Single Transferable Vote process. For purposes of this Section 3.3(c) and Section 3.3(d) below, “Single Transferable Vote” means a voting process under which each Add-InSustaining Member or Committer Member, as applicable, shall be entitled to cast numbered preference votes for as many candidates as there are open seats on the Board allocated to Add-In ProviderSustaining Members and Committer Members, as applicable. Votes that are not needed to elect a candidate and votes for candidates who do not receive enough votes to be elected are transferred in accordance with the preferences of each voter. The Executive Director (as described in Article V below) and the Eclipse Management Organization (as described in Article VII below) shall be responsible for establishing policies and procedures to implement the Single Transferable Vote process for the Eclipse Foundation.

**Comment [A1]:** This calendar approach makes it easier to manage the voting process. This way we can accurately determine the number of available board seats at a fixed point in time.

**(d) Committer Members.** Committer Members (as defined in Section 6.2(d) below), as a class, shall be entitled to at least one (1) seat on the Board (and such representative

or representatives shall represent the entire class). An additional seat on the Board shall be allocated to the Committer Members for every additional five (5) seats beyond one (1) allocated to Strategic Developer Members and Strategic Consumer Members in the aggregate as determined annually ~~at the time of the annual meetings as of February 1 of each calendar year;~~ *provided, that*, such representative must be either an individual who is a Committer Member or an employee, officer, director, or consultant of a Member in order to be eligible to serve as a Committer Director. Such Committer Director seats shall be filled via annual at-large elections by the Committer Members using the Single Transferable Vote process. Committer Members who are employed by the same organization (including Affiliates thereof as defined in Section 6.2) shall have only one (1) collective vote with respect to election of the Committer Directors ~~(in which case, such Committer Members will have one (1) collective vote determined pursuant to the Single Transferable Vote process)~~ as well as *with respect to* any and all *other* matters that come before the Membership At-Large, and such collective vote shall be determined by a simple majority of such Committer Members sharing the same employer as described above.

**Comment [A2]:** The previous wording was in error and could not work. If the matter for the vote requires STV-style ballots, having a simply majority vote cannot work.

(e) **Associate Members.** Associate Members (as defined in Section 6.2(e) below) shall not be represented on the Board and shall not be permitted to vote with the Membership At-Large.

**Section 3.4 Good Standing.** A director shall be deemed to be in Good Standing, and thus eligible to vote on issues coming before the Board, if the director has attended (in person or telephonically) a minimum of three (3) of the last four (4) Board meetings (if there have been at least four meetings), unless such absence has been approved by the Executive Director (as defined in Section 5.3(a)), in his or her reasonable discretion. Strategic Developer Members and Strategic Consumer Members may replace their representative on the Board at any time by providing written notice to the Secretary of the Eclipse Foundation, as defined in Section 5.3(b) (the “Secretary”). In the event a Board member is unavailable to attend or participate in a meeting of the Board, he or she may send a representative and may vote by proxy, which shall be included in determining whether the director is in Good Standing. A director shall be immediately removed from the Board upon the termination of the membership of such director’s Member organization in accordance with Section 6.17.

**Section 3.5 Terms and Election Dates.** All directors shall hold office until their respective successors are appointed or elected, as applicable. There shall be no prohibition on re-election or re-designation of any director following the completion of that director’s term of office.

(a) Strategic Developer; Consumer Directors. Strategic Developer Directors and Strategic Consumer Directors shall serve in such capacity until the earlier of their removal by their respective appointing Member organization or as otherwise provided for in these Bylaws.

(b) ~~Add-In~~Sustaining Member Directors; Committer Directors. ~~Add-In~~Sustaining Member Directors and Committer Directors shall each serve one-year terms and shall be elected to serve ~~until the next annual meeting and from April 1 to March 31 of each calendar year, or~~ until their respective successors are elected and qualified, or as otherwise provided for in these Bylaws. Procedures governing elections of ~~Add-In~~Sustaining Member

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Directors and Committer Directors may be established pursuant to resolutions of the Board *provided that* such resolutions are not inconsistent with any provision of these Bylaws or the Certificate of Incorporation of the Eclipse Foundation.

**Section 3.6 Place of Meetings.** All meetings of the Board may be held at any place within or without the State of Delaware that has been designated from time-to-time by resolution of the Board or by the written notice of the Executive Director, as defined in Section 5.3(a) (the “Executive Director”).

**Section 3.7 Regular Meetings.** The Executive Director will schedule regular and (as applicable) special meetings of the Board. The Board may hold its meetings at such place within or without the State of Delaware as the Board may from time-to-time determine. No Board meeting will be deemed to have been validly held unless the Executive Director provided notice of same to each of the directors in Good Standing at least thirty (30) calendar days prior to such meeting, which notice will identify all potential actions to be undertaken by the Board at the Board meeting. No director will be intentionally excluded from Board meetings and all directors shall receive notice of the meeting as specified above; however, Board meetings need not be delayed or rescheduled merely because one or more of the directors cannot attend or participate so long as at least a quorum of the Board (as defined in Section 3.11 below) is represented at the Board meeting. Electronic voting shall be permitted in conjunction with any and all meetings of the Board (including Special Meetings as set forth in Section 3.8 below) the subject matter of which requires a vote of the Board to be delayed until each such director in attendance thereat has conferred with his or her respective Member organization as set forth in Section 3.12(b)(i).

**Section 3.8 Special Meetings.** Special meetings of the Board for any purpose or purposes may be called at any time by the Executive Director or by fifty percent (50%) or more of the directors then in Good Standing and notice of such special meeting shall be given to all of the directors in accordance with Section 3.7 above.

**Section 3.9 Action by the Board.** No action may be taken or approved by the Board that is outside the stated purpose of the Eclipse Foundation as set forth in Section 1.1. Except as provided herein, the Board may undertake an action only if it was identified by the Executive Director in a Board Meeting notice or otherwise identified in a notice of special meeting and approved by the requisite number of directors as described below:

(a) **Simple Majority Required.** For all other actions not specified by Sections 3.9 (b) or (c) below, and for which the Board has authority to take within the stated purpose of the Eclipse Foundation as set forth in Section 1.1, such actions must be approved by no less than a simple majority of those directors in Good Standing represented at a Board meeting at which a quorum is present. Such actions requiring a simple majority vote include, but are not limited to, (i) approving a release roadmap for the Eclipse Platform; (ii) approving the Executive Director’s compensation package; (iii) approving the Board’s regular meeting schedule; (iv) confirming Executive Director appointments to Standing Committees (as defined in Section 4.1); (v) appointing Board Committees (as defined in Section 4.2); (vi) adding or removing any type of qualifying entity for purposes of determining applicant eligibility for membership in the Associate Member class; (vii) approving promotion plans of the Eclipse Management Organization (specified in Article VII) or any Membership At-Large committee

(specified in Article VIII), ; and (viii) creating new Top Level Projects and Project Management Committees (as described in Section 7.1) that are consistent with the purposes of the Eclipse Foundation as set forth in Section 1.1.

**(b) Unanimous Consent Required.** For actions (i) amending the terms of the Eclipse Public License (the “EPL”), and/or (ii) regarding the use of a contribution or distribution license other than the EPL (subject to the exceptions set forth in the Eclipse Foundation Intellectual Property Policy (“IP Policy”) which cover contributions that may not be licensable under the terms of the EPL), any such actions must be approved by all directors in Good Standing represented at a Board meeting at which a quorum is present.

**(c) Super-majority Consent Required.** For actions, (i) approving or changing the name of the Eclipse Foundation or the Eclipse Platform; (ii) selecting standards organizations through which to standardize Eclipse APIs; (iii) amending the Membership Agreement; (iv) except for actions specified in Section 3.9(b) as they relate to amending the Bylaws, amending these Bylaws or the Certificate of Incorporation of the Eclipse Foundation, (v) terminating a Member’s Agreement in accordance with its terms; (vi) selecting and/or terminating the Executive Director; (vii) approving changes to the Eclipse Development Process as described in Section 7.1; (viii) approving the appointment of a Project Management Committee lead when, at the time of approval, the appointment of that lead would result in more than fifty percent (50%) of the Project Management Committee leads being employees, consultants, officers or directors of the same organization (including Affiliates as defined in Section 6.2); (ix) approving changes to annual Member contribution requirements (Membership Fees and development resources if applicable), (x) selecting outside legal counsel; (xi) approving changes to the Eclipse Foundation Antitrust Policy; (xii) entering into any formal affiliation with another organization; and (xiii) approving changes to the IP Policy; such actions must be approved by no less than two-thirds (2/3) of the directors in Good Standing represented at a Board meeting at which a quorum is present.

**(d) Action Without Meeting.** Any action required or permitted to be taken by the Board at a meeting may be taken without a meeting if all of the directors in Good Standing shall consent in writing to such action. The action shall be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken. Any action taken hereunder shall be effective upon the receipt of the written consent of all of the directors in Good Standing for approval of the action under consideration. Electronic voting shall be permitted in conjunction with the solicitation of written consents as set forth in Section 3.12(b)(ii).

**(e) Requisite Membership Approval.** To the extent required by Section 6.5 herein, certain actions approved by the Board in connection with Sections 3.9(a), (b) and (c) must thereafter be presented to, and approved by, the Membership At-Large prior to implementation by the Eclipse Foundation.

**Section 3.10 Telephonic Meetings.** The Board shall permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through, use of any means of communication by which all directors participating may simultaneously hear each other

during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

**Section 3.11 Quorum.**

(a) Unless otherwise provided herein, a simple majority of the directors in Good Standing shall be necessary to constitute a quorum for the transaction of business, except that when the number of directors constituting the Board shall be an even number, one-half of the directors in Good Standing shall constitute a quorum.

(b) A majority of the directors present; whether or not a quorum is present, may adjourn any meeting to another time and place.

**Section 3.12 Voting; Electronic Voting.**

(a) **General.** Each director in Good Standing shall be entitled to one (1) vote on each matter submitted to a vote of the Board.

(b) **Electronic Voting.** Electronic voting may be used in connection with both meetings of the Board and the solicitation of written consents as follows:

(i) **Meetings.** For purposes of soliciting electronic votes in connection with a meeting of the Board at which a quorum was present, the requisite number of votes that would have been required at such meeting to pass an action shall be required to pass an action via this electronic voting provision. Only those directors in attendance of the meeting shall be permitted to vote with respect to this Section 3.12(b)(i). The deadline for receipt of electronic votes with respect to any such vote shall be no sooner than two (2) weeks from the date of the meeting, as announced prior to adjournment of such meeting.

(ii) **Action Without Meeting.** For purposes of taking action without a meeting, solicitation via electronic balloting and voting shall be permitted hereunder. Such procedure shall be initiated by the electronic distribution of ballots and all related materials for consideration by the Board to all of the directors in Good Standing at the time of such distribution. Thereafter, such directors shall be permitted to cast their votes electronically in response to the distributed ballots. The deadline for receipt of such electronic votes cast by the directors shall be no less than two (2) weeks from the date of mailing of the balloting materials, as set forth therein.

**Section 3.13 Reimbursement.** Directors and members of Board Committees (as defined in Section 4.2) may receive such reimbursement for expenses as may be fixed or determined by resolution of the Board; *provided, that*, such reimbursement for expenses shall be reasonable and shall be comparable to reimbursements paid by unaffiliated entities for a like position.

**Section 3.14 Standard of Conduct.** A director shall discharge the duties of a director, including duties as a member of any Board Committee upon which the director may serve, in good faith, with the care an ordinarily prudent person in a like position would exercise under

similar circumstances. In discharging 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 if prepared or presented by: (a) one or more officers or employees of the Eclipse Foundation whom the director reasonably believes to be reliable and competent in the matters presented; (b) legal counsel, public accountants or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or (c) a Board Committee as to matters within the Board Committee's jurisdiction, if the director reasonably believes the Board Committee merits confidence. A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted in this Section 3.14 unwarranted.

### **Section 3.15 Resignation and Removal.**

(a) **Resignation.** Any director may resign at any time by giving written notice to the Board or the Executive Director. A resignation is effective upon the date provided for in the notice. Once delivered, a notice of resignation is irrevocable unless permitted to be withdrawn by the Board prior to its effectiveness.

(b) **Removal for Cause.** Any director may be removed "For Cause" at a meeting called for that purpose. For the purposes of this Section 3.15(b), "For Cause" shall mean when any director has been (i) declared of unsound mind by a final order of court, (ii) convicted of a felony, or (iii) found by the Board to have breached any duty arising under these Bylaws or the Certificate of Incorporation of the Eclipse Foundation. Such director may only be removed "For Cause" after the affirmative vote of a majority of the directors in Good Standing (exclusive of the director facing removal) represented at a Board meeting at which a quorum is present.

(c) **Removal without Cause.** Any ~~Add-In-Sustaining Member~~ Director or Committer Director, as applicable, may be removed without cause at a special meeting called for that purpose by the members of the class that appointed such director. Such director(s) may be removed hereunder only by the affirmative vote of two-thirds (2/3) of the members of the class that appointed such director represented at a special meeting at which a quorum is present. Strategic Developer Directors and Strategic Consumer Directors may only be removed without cause by their respective appointer Member organizations.

(d) **Removal for Default; Dues Delinquent.** With respect to Strategic Developer Directors and Strategic Consumer Directors, in the event the Member appointing such director is in Default or Dues Delinquent (as set forth in Section 6.16 hereof), such director shall be removed from the Board, without further action by the Board or the Membership At-Large.

**Section 3.16 Vacancies.** A vacancy or vacancies shall be deemed to exist (i) in the case of the death or the resignation or removal of any director (ii) if the authorized number of directors is increased without election or appointment, as applicable, of the additional directors so provided for; or (iii) in the case of failure at any time to elect or appoint, as applicable, the full number of authorized directors. Any vacancy of a Board seat appointed by a Strategic Developer Member or Strategic Consumer Member shall be filled within three (3) weeks of the vacancy by the Member whose Board seat has been vacated. A vacancy of a Board seat held by an ~~Add-In~~

Sustaining Member Director or a Committer Director shall be filled by the Board appointing a director from nominees proffered by the members of such class until the next annual election as specified in Section 3.3(c) and (d). In no event shall the failure of any Member or class of members to elect or appoint, as applicable, a new director to such vacant Board seat prohibit the Board from meeting and conducting business.

#### **ARTICLE IV COMMITTEES OF THE BOARD**

**Section 4.1 Standing Committees.** The Board shall have three (3) standing committees (each, a “Standing Committee”). Each committee shall consist of two (2) or more directors nominated by the Executive Director, including the designation of one Standing Committee member as the Chairman, and confirmed by a simple majority of the directors in Good Standing represented at a Board meeting at which a quorum is present. Standing Committee directors may delegate their committee responsibilities to any individual that is an employee, officer, director, or consultant of an existing Member. Each Standing Committee may invite non-director advisors to participate in or attend certain committee meetings in order to assist the Standing Committee in the performance of its duties. The Board shall retain the right to limit the powers and duties of each Standing Committee.

(a) **Membership Committee.** As further set forth in a Membership Committee charter, the Membership Committee shall meet as necessary to review the membership policies of the Eclipse Foundation and to promote the growth of membership in the Eclipse Foundation. The Executive Director may, from time-to-time, appoint additional directors to this committee as he or she deems necessary or appropriate, subject to Board confirmation as set forth above.

(b) **Finance Committee.** As further set forth in a Finance Committee charter, the Finance Committee shall have overall responsibility for the oversight of all corporate funds, and shall perform, or cause to be performed, the following: (a) review of all financial records of the Eclipse Foundation, (b) authorization of the deposit of all monies and other valuable effects in the name and to the credit of the Eclipse Foundation in such depositories as may be designated by the Board; (c) authorization of disbursement of all funds when proper to do so; (d) review and/or making of financial reports as to the financial condition of the Eclipse Foundation to the Board; and (e) such other powers and duties as may be designated from time-to-time by the Board. The Executive Director may, from time-to-time, appoint additional directors to this committee as he or she deems necessary or appropriate, subject to Board confirmation as set forth above.

(c) **Compensation Committee.** As further set forth in a Compensation Committee charter, the Compensation Committee shall have overall responsibility for determining compensation for employees of the Eclipse Foundation. The Executive Director may, from time-to-time, appoint additional directors to this committee as he or she deems necessary or appropriate, subject to Board confirmation as set forth above.

**Section 4.2 Appointment of Committees.** The Board may appoint such committees as the Board from time-to-time deems necessary or appropriate to conduct the business and

further the objectives of the Eclipse Foundation (the “Board Committee”), including an Executive Committee. Any appointment by the Board of any other Board Committee having the authority of the Board, including the designation of one Board Committee member as the Chairman, must be by resolution adopted by a simple majority of the directors then in Good Standing represented at a Board meeting at which a quorum is present. Any committee having authority of the Board shall consist of two (2) or more directors. The Board shall retain the right to limit the powers and duties of any Board Committee that it has created and to disband any such Board Committee in its sole discretion. Board Committee directors may delegate their committee responsibilities to any individual that is an employee, officer, director, or consultant of an existing Member. Each Board Committee may invite non-director advisors to participate in or attend certain committee meetings in order to assist the Board Committee in the performance of its duties.

**Section 4.3 Powers and Authority of Committees.** The Board may delegate to any Board Committee having the authority of the Board, any of the powers and authority of the Board in the management of the business and affairs of the Eclipse Foundation; *provided, however,* that no Board Committee may: (a) authorize payment of a dividend or any part of the income or profit of the Eclipse Foundation to its directors or officers; (b) approve dissolution, merger, or the sale, pledge or transfer of all or substantially all of the Eclipse Foundation’s assets; (c) elect, appoint, or remove directors or fill vacancies on the Board or on any of its committees; (d) adopt, amend or repeal the Certificate of Incorporation of the Eclipse Foundation, Bylaws or any resolution by the Board; or (e) perform Board actions specified in Section 3.9(b) or (c) herein.

## **ARTICLE V OFFICERS**

**Section 5.1 Initial Officers; Board Empowerment.** The officers of the Eclipse Foundation initially shall be an Executive Director and Secretary. The Board shall have the power to create such other offices as it deems necessary in the best interest of the Eclipse Foundation. One person may hold two or more offices in the Eclipse Foundation, unless otherwise stated herein.

**Section 5.2 Nomination and Appointment.** The officers of the Eclipse Foundation shall be appointed annually by the Board in accordance with this Article V. Each officer shall, during his or her term in office, hold his or her office until he or she shall resign or shall be removed or his or her successor shall be appointed. Appointment of officers shall be held in December of each year. Each officer’s term of office shall be for one year, and shall run from January until December of the following year. There shall be no prohibition on re-appointment of an officer following the completion of that officer’s term of office. The Board may, by resolution, establish procedures governing nomination and appointment of officers that are not inconsistent with these Bylaws.

### **Section 5.3 Management Officers and Duties**

(a) **Executive Director.** The Board may appoint an Executive Director to manage the business affairs of the Eclipse Foundation on a day-to-day basis. The Executive

Director shall report to the Board and shall be subject to the oversight of the Board. The Executive Director may not be an employee, officer, director or consultant of any Member of the Eclipse Foundation. The Executive Director may execute on behalf of the Eclipse Foundation, and when required, upon approval and at the direction of the Board, all contracts, agreements, membership certificates and other instruments. The Executive Director shall from time-to-time report to the Board all matters within the Executive Director's knowledge affecting the Eclipse Foundation that should be brought to the attention of the Board. The Executive Director may hire other employees as deemed appropriate. The Executive Director shall perform other duties assigned from time-to-time by the Board.

**(b) Secretary.** The Secretary shall attend all meetings of the Board and all meetings of the Membership At-Large and record all the proceedings of the meetings of the Board and of the Membership At-Large in a book to be kept for that purpose and shall perform like duties for the Standing Committees when required. In the absence of the Secretary at a Board meeting, a majority of the Board may appoint a person to act as Secretary for any such meeting. He or she shall give, or cause to be given, notice of all meetings of the Board and special meetings of the Board, and shall perform such other duties as may be prescribed by the Board or the Executive Director, under whose supervision he or she shall be. He or she shall have custody of the seal of the Eclipse Foundation and he or she, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his or her signature. The Board may give general authority to any other officer to affix the seal of the Eclipse Foundation and to attest the affixing by his or her signature.

**(c) Reports to Membership At-Large.** The Executive Director, with the Secretary's assistance, shall be responsible for providing periodic written reports to the Membership At-Large with respect to any and all material developments within the Eclipse Foundation ("Update Reports"). In addition to any material development updates, the Executive Director shall issue general reports on the status of the Eclipse Foundation on a quarterly basis ("Quarterly Reports"). Such Quarterly Reports shall include: (i) status reports on development projects, (ii) financial information reports, (iii) membership information reports; and (iv) any other material information with respect to the Eclipse Foundation.

**Section 5.4 Standards of Conduct for Officers.** An officer shall discharge the officer's duties, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the officer reasonably believes to be in the best interests of the Eclipse Foundation. In discharging the duties of an officer, an officer shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case if prepared or presented by: (a) one or more officers or employees of the Eclipse Foundation whom the officer reasonably believes to be reliable and competent in the matters presented; or (b) legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence. An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted in this Section 5.4 unwarranted. An officer is not liable to the Eclipse Foundation, any Member or any other person for any action taken or not taken as an officer, if the officer acted in compliance with this Section 5.4.

## ARTICLE VI MEMBERSHIP AT-LARGE

**Section 6.1 Classes of Membership.** There shall be ~~five~~ ~~(5)~~ six (6) classes of membership in the Eclipse Foundation: (i) Strategic Developer Members; (ii) Strategic Consumer Members; (iii) ~~Add In Provider~~ Enterprise Members; (iv) Solutions Members; (v) Committer Members; and (vi) Associate Members. As used herein, the term “Member” shall be used to refer generically to a “Strategic Developer Member,” “Strategic Consumer Member,” ~~“Add In Provider~~ Enterprise Member,” ~~”~~, “Solutions Member”, “Committer Member” or an “Associate Member”. All ~~five~~ ~~six~~ classes of membership shall be collectively referred to as the “Membership At Large.”

**Section 6.2 Membership Qualifications.** In general, members are expected to adhere to the following criteria: (i) express public support for the Eclipse Foundation and the Eclipse Platform; (ii) except for Enterprise Members, Associate Members and Committer Members, make available a commercial Eclipse-based offering within twelve (12) months of joining the Eclipse Foundation or use the Eclipse Platform in the development of a commercial offering within twelve (12) months of joining the Eclipse Foundation; and (iii) sign the Eclipse Foundation Membership Agreement and abide by its terms. Multiple “Affiliates” of an entity shall constitute one (1) member only, regardless of membership class. For purposes of these Bylaws, “Affiliate” means any entity that is directly or indirectly controlled by, under common control with or that controls the subject party, and “control” means direct or indirect ownership of or the right to exercise (i) greater than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of the subject entity; or (ii) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity. The following shall be the requirements for membership in each given membership class:

**(a) Strategic Developer Members.** Strategic Developer Members shall be entities that meet the requirements of a Strategic Developer Member as set forth under the heading “Strategic Developer Members” in the Membership Agreement, as amended from time-to-time in accordance with any and all requirements of these Bylaws set forth herein. Each Strategic Developer Member shall be entitled to Board representation in accordance with Section 3.3(a). However, an entity may not join the Eclipse Foundation as a Strategic Developer Member if at the time it applies for such status, Strategic Developer Members in the aggregate hold more than two-thirds (2/3) of the seats on the Board or adding another Strategic Developer Member would result in Strategic Developer Members holding more than two-thirds (2/3) of the Board seats.

**(b) Strategic Consumer Members.** The Strategic Consumer Members shall be entities that meet the requirements of a Strategic Consumer Member as set forth under the heading “Strategic Consumer Members” in the Membership Agreement, as amended from time-to-time in accordance with any and all requirements of these Bylaws set forth herein. Each Strategic Consumer Member shall be entitled to Board representation in accordance with Section 3.3(b).

(c) ~~Add-In-Provider~~**Enterprise Members.** ~~—Add-In-Provider—Enterprise~~ Members shall be entities that meet the requirements of an ~~Add-In-Provider~~**Enterprise** Member as set forth under the heading “~~Add-In-Provider~~**Enterprise** Members” in the Membership Agreement, as amended from time-to-time in accordance with any and all requirements of these Bylaws set forth herein. ~~Add-In-Provider~~**Enterprise Members are Sustaining Members, and** shall be entitled to Board representation in accordance with Section 3.3(c).

(d) **Solutions Members.** Solutions Members shall be entities that meet the requirements of a Solutions Member as set forth under the heading “Solutions Members” in the Membership Agreement, as amended from time-to-time in accordance with any and all requirements of these Bylaws set forth herein. Solutions Members are Sustaining Members, and shall be entitled to Board representation in accordance with Section 3.3(c).

~~(d)~~(e) **Committer Members.** A Committer Member shall be an individual who meets the requirements of a Committer Member as set forth under the heading “Committer Members” in the Membership Agreement, as amended from time-to-time in accordance with any and all requirements of these Bylaws set forth herein. A Committer (as defined in Exhibit D of the Membership Agreement) who is employed by a Member company shall be deemed a Committer Member by virtue of the Member company's signed Membership Agreement. Committer Members shall be entitled to Board representation in accordance with Section 3.3(d).

~~(e)~~(f) **Associate Members.** Associate members shall be entities that meet the requirements of an Associate Member as set forth under the heading “Associate Members” in the Membership Agreement, as amended from time-to-time in accordance with any and all other requirements of these Bylaws set forth herein.

**Section 6.3 Additional Rights of Membership At-Large.** The Board may by resolution establish such additional rights, privileges and duties corresponding to any class of members; *provided, that*, such rights, privileges or duties are not inconsistent with the Bylaws.

#### **Section 6.4 Fees, Dues and Assessment.**

(a) **Funding.** Each Member will pay dues as set forth in the Membership Agreement, as amended from time-to-time by the Board.

(b) **Payment.** Each Member will be responsible for payment of annual dues as set by the Board, if any. The Secretary will send out invoices in compliance with reasonable invoicing requirements (*e.g.*, receipt of invoices at least forty-five (45) days prior to the due date). The Secretary will promptly send out a written notice (“Dues Notice”) to any Member that has not paid its dues within ten (10) days after the date upon which such dues are required to be paid.

**Section 6.5 Major Decisions.** For actions (i) approving or changing the name of the Eclipse Foundation or the Eclipse Platform; (ii) approving or amending the Membership Agreement, or (iii) amending these Bylaws or the Certificate of Incorporation of the Eclipse Foundation; such action must be approved by two-thirds (2/3) of the Membership At-Large represented at a meeting in which a quorum is present.

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**Section 6.6 Place of Meetings.** All meetings of the Membership At-Large shall be held either at the principal office of the Eclipse Foundation or at any other place within or without the State of Delaware, as determined by resolution of the Board.

**Section 6.7 Meetings Generally.** The annual meetings of the Membership At-Large shall be held in the first calendar quarter of each year, on such date and at such time and place as determined by resolution of the Board (“Annual Meetings”). Any Member shall be permitted to participate in any and all meetings of the Membership At-Large (including Special Meetings as set forth in Section 6.8 below) by, or conduct the meeting through, use of any means of communication (including telephonic communication) by which all members participating may simultaneously hear each other during the meeting. A Member participating in a meeting by this means is deemed to be present in person at the meeting. Electronic voting may be used in conjunction with any and all meetings of the members (including Special Meetings as set forth in Section 6.8 below) the subject matter of which requires a vote to be delayed until each such Member in attendance thereat has conferred with his or her respective Member organization as set forth in Section 6.12(b)(i) below.

**Section 6.8 Special Meetings.** Special meetings of the Membership At-Large shall be held at the call of the Executive Director or by a number of the members which in the aggregate represent at least twenty percent (20%) or more of the Membership At-Large of the Eclipse Foundation by a written demand signed, dated, and delivered to the Secretary. Notice of a special meeting shall be given within thirty (30) days following the date the written demand is delivered to the Secretary, in accordance with Section 6.9 below.

**Section 6.9 Notice of Meetings.** Notice of each annual and special meeting of the Membership At-Large shall be given to each Member at the last address of record, by first class mail at least thirty (30) days before the meeting, or by means other than first class mail at least forty-five (45) days but not more than sixty (60) days before the meeting. The notice shall include the date, time, and place of the meeting or the date on which any ballot enclosed therewith shall be required to be returned for inclusion in the Eclipse Foundation’s voting process. Notice of each annual and special meeting shall include a description of any matter or matters that must be approved by the Membership At-Large pursuant to these Bylaws or applicable law. In the case of special meetings, the notice shall specify the purpose or purposes for which the meeting is called. Such notice shall be given in writing to every Member who, on the record date for notice of the meeting, is entitled to vote thereat.

**Section 6.10 Adjourned Meetings.** Any Membership At-Large meeting, annual or special, whether or not a quorum is present, may be adjourned by the vote of a majority of the Membership At-Large either present in person or represented by proxy. It shall not be necessary to give any such notice of the time and place of the adjourned meeting or of the business to be transacted thereat, other than by an announcement at the meeting at which such adjournment is taken. If after the adjournment a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each Member who, on the record date for notice of the meeting, is entitled to vote at the meeting.

**Section 6.11 Quorum.** Unless otherwise provided herein, the presence in person or by proxy of at least a simple majority of the Membership At-Large shall constitute a quorum for the

transaction of business. For purposes of calculating the quorum requirements set forth in this Section 6.11, Committer Members who are employed by the same organization (including Affiliates) shall collectively be considered one (1) Member

### **Section 6.12 Voting; Electronic Voting.**

(a) **General.** Each Member is entitled to one (1) vote on each matter submitted to a vote of the Membership At-Large, except that Committer Members who are employed by the same organization (including Affiliates) shall have only one (1) collective vote with respect to any and all matters that come before the Membership At-Large and such collective vote shall be determined by a simple majority of such Committer Members employed by the same organization (including Affiliates).

(b) **Electronic Voting.** Electronic voting may be used in connection with both meetings of the Members and the solicitation of written consents as follows:

(i) **Meetings.** For purposes of electronic votes solicited in connection with a meeting of the Membership At-Large at which a quorum was present, the requisite number of votes that would have been required at such meeting to pass an action shall be required to pass an action via this electronic voting provision. Only those Members in attendance of the meeting shall be permitted to vote with respect to this Section 6.12(b)(i). The deadline for receipt of electronic votes with respect to any such vote shall be no sooner than two (2) weeks from the date of the meeting, as announced prior to adjournment of such meeting.

(ii) **Action Without Meeting.** For purposes of taking action without a meeting solicitation via electronic balloting and voting shall be permitted hereunder. Such procedure shall be initiated by the electronic distribution of ballots and all related materials for consideration by the Membership At-Large to all of the Members at the time of such distribution. Thereafter, the Members shall be permitted to cast their votes electronically in response to the distributed ballots. The deadline for receipt of such electronic votes cast by the Members shall be no less than ~~two (2) weeks~~ thirty (30) days from the date ~~of the meeting, as set forth in the distribution of such~~ balloting materials. The quorum requirements of Section 6.11 shall apply to any such action without a meeting and a vote cast shall be read to equate with presence in determining quorum for the purposes of this Section.

**Comment [A3]:** The previous wording was in error. Obviously, if the intent is to have an action without meeting, tying the deadline to a meeting makes no sense.

**Section 6.13 Action Without Meeting.** Any action required or permitted to be taken by the Membership At-Large at a meeting may be taken without a meeting if a majority of ~~all of the~~ those Members who participated in such a vote shall consent in writing to such action (subject to the super-majority provision set forth in Section 6.5, in which case a super-majority of ~~all of the~~ those Members who participated in such a vote shall be required). The action shall be evidenced by one or more written consents describing the action to be taken, signed by each Member, and included in the minutes or filed with the corporate records reflecting the action taken. Any action taken hereunder shall be effective upon the receipt of the written consent of the requisite number of Members for approval of the action under consideration. Electronic voting shall be permitted in conjunction with the solicitation of written consents as set forth in Section 6.12(b)(ii) above. The quorum requirements of section 6.11 shall apply to any such action without meeting.

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**Section 6.14** [RESERVED]

**Section 6.15 Conduct of Meetings.** Meetings of the Membership At-Large shall be presided over by the Executive Director, or in the absence of the Executive Director, by the chair appointed by the Executive Director. The Secretary shall act as the secretary of all meetings of the Membership At-Large, *provided, that*, in his or her absence the presiding officer shall appoint another Member to act as Acting Secretary of the meeting.

**Section 6.16 Delinquency; Non-Payment of Dues.** In the event that a Member does not pay its annual membership dues and all compounded late fees within ninety (90) days of the invoice due date (“Dues Delinquent”), the membership of such Member shall, without further action by the Board of Directors or the Membership At-Large, be terminated.

**Section 6.17 Termination of Membership.** The membership of any Member shall terminate upon the occurrence of any one or more of the following:

(a) **Resignation.** Any Member may resign from the Eclipse Foundation in writing filed with the Secretary. The resignation of a Member shall not relieve the Member from any payment obligations the Member may have to the Eclipse Foundation as a result of obligations incurred or commitments made prior to resignation. Except as otherwise set forth in these Bylaws, a resigning Member shall not be entitled to receive any refund, pro rata or otherwise, of any membership fee, dues or assessments for the balance of the calendar year in which the resignation is effective. Within ten (10) days of resigning from the Eclipse Foundation, a Member may appeal in writing to the Board for a pro rata refund of its annual membership dues. The appeal will specifically set forth any circumstances that the Member believes justify a refund in its case. The Board shall decide by simple majority upon the appeal in its sole discretion at its first meeting following the appeal scheduled under Section 3.7.

(b) **Expulsion, Termination or Suspension.** The membership of any Member may be terminated “For Cause” upon the affirmative vote of two-thirds (2/3) of the members of the Board after a hearing duly held in accordance with this Section 6.17(b). As used in this Section 6.17(b), two-thirds (2/3) vote means two-thirds (2/3) of the members of the Board exclusive of such Member’s director on the Board for Strategic Developer or Strategic Consumer Members, and exclusive of an Add-in Provider Board director only if the director is also a representative of the Member facing expulsion or suspension (any such director, an “Affected Director”). For purposes of this Section 6.17(b) “For Cause” shall mean the Member has materially breached the Membership Agreement, Bylaws, IP Policy, Antitrust Policy, EPL and/or other related Eclipse Foundation agreements or policies, and has not cured such breach within thirty (30) days of receipt of written notice from the Eclipse Foundation.

Such determination shall be made in the sole and absolute discretion of the Board (excluding the Affected Director). Following the determination by the Board that a Member should be terminated the following procedures shall apply:

1. A notice shall be sent by mail by prepaid, first-class or certified mail to the most recent address of such Member as shown on the Eclipse Foundation’s records,

setting forth the termination and the reasons therefore. Such notice shall be sent at least fifteen (15) days before the proposed effective date of the termination.

2. The Member being terminated shall be given an opportunity to be heard, either orally or in writing, at a hearing to be held no fewer than five (5) days before the effective date of the proposed termination. The hearing shall be held by the Board. The notice to the Member of its proposed termination shall state that such Member is entitled, upon request, to such hearing, shall state that a date, time and place of the hearing will be established upon receipt of request therefore, and shall state, that in the absence of such request, the effective date of the proposed termination.

3. In the event that a hearing is held, then following such hearing the Board (excluding the Affected Director) shall decide whether such Member should in fact be terminated, or sanctioned via written reprimand as determined by the Board; *provided, that*, any such decision to terminate or sanction such Member must be approved by a vote of two-thirds (2/3) of the Board (excluding the Affected Director). The decision of the Board shall be final.

4. Any action challenging a termination of membership of a Member, including any claim alleging defective notice, must be commenced within fifteen (15) days after the date of the termination.

**Section 6.18 Reinstatement.** Members terminated pursuant to Section 6.17(b) may only be reinstated upon the affirmative vote of at least two-thirds (2/3) of the directors in Good Standing represented at a Board meeting at which a quorum is present.

**Section 6.19 Nonliability.** No Member shall be liable for the debts, liabilities, or obligations of the Eclipse Foundation merely by reason of being a Member.

**Section 6.20 Assignment.** Upon the completion of any acquisition or merger involving a Member in which the Member is not the surviving entity, the Board, in its sole discretion, may permit such Member's membership to be transferred to the surviving entity.

**Section 6.21 Distribution of Assets Upon Dissolution.** Upon a dissolution of the Eclipse Foundation, and after all of the known debts and liabilities of the Eclipse Foundation have been paid or adequately provided for, any remaining net assets of the Eclipse Foundation shall be distributed by the Board to one or more organizations selected by the Board which will help to further the purposes of the Eclipse Foundation as set forth in Section 1.1.

## ARTICLE VII ECLIPSE MANAGEMENT ORGANIZATION

**Section 7.1 Overall Responsibilities.** The Executive Director shall be responsible for forming the Eclipse Management Organization ("EMO"). Under the direction of the Executive Director, the EMO responsibilities shall include: (i) organizing and selecting the chair of the Architecture Council as described in Section 7.2; (ii) organizing and selecting the chair of the Planning Council as described in Section 7.3; (iii) organizing and selecting the chair of the Requirements Council as described in Section 7.4; (iv) leading the Eclipse Platform

development, including execution and maintenance of the then current Eclipse Development Process (as initially defined by the Eclipse Foundation operational policy and thereafter amended by the Board) for Top Level Projects, Projects and Subsystems (each as defined in the then current Eclipse Development Process), nominating Project Management Committees (“PMC”, as defined in the then current Eclipse Development Process) and their leaders, leading the Architecture Council and the Planning Council to produce a Roadmap (as defined in the then current Eclipse Development Process) that is consistent with the Purposes (as defined in Section 1.1 above), establishing working groups, resolving conflicts, interacting with standards organizations, ensuring the use of open source rules of engagement as defined in the project Charters (as defined in the then current Eclipse Development Process and the IP Policy), and providing development project infrastructure; (v) enforcing Eclipse Foundation policies and provisions as reflected in the Bylaws, Membership Agreement, IP Policy, and other policy documents approved in accordance with the Bylaws; (vi) interacting with the Membership At-Large by providing Eclipse Platform plans and status updates, and by soliciting requirements and feedback; (vii) conducting Eclipse Platform marketing, including evangelism, promotion, public relations, and industry events; (viii) conducting academic and research community outreach; and (ix) assuring the availability of enablement services, including education and training programs.

**Section 7.2 Architecture Council.** The Eclipse Management Organization shall establish an Architecture Council responsible for the development, articulation, and maintenance of the Eclipse Platform Architecture (as defined in the then current Eclipse Development Process). The Architecture Council shall be comprised of one (1) representative designated by each Project Management Committee and other individuals as described below or designated from time to time by the Executive Director, and shall be chaired by a person designated by the Executive Director. Strategic Consumer Members as a group are entitled to designate one (1) representative on the Architecture Council, to be selected by a vote of all Strategic Consumer Members. Any Strategic Consumer Member that is not leading a PMC, and has eight (8) or more developers assigned to work full-time on Eclipse Platform development projects is entitled to designate one (1) representative to the Architecture Council unless an employee, officer, director, or consultant of the Member has already been appointed to the Council. Any Strategic Developer Member that is not leading a PMC is entitled to designate one (1) representative to the Architecture Council unless an employee, officer, director, or consultant of the Member has already been appointed to the Council. The Architecture Council will accomplish its objectives by working closely with the development teams.

**Section 7.3 Planning Council.** The Eclipse Management Organization shall establish a Planning Council responsible for the development and maintenance of a Platform Release Plan (as defined in the then current Eclipse Development Process) consistent with the Architecture and supporting the Roadmap. The Planning Council shall be comprised of one (1) representative designated by each Project Management Committee and other individuals as described below or designated from time to time by the Executive Director, and shall be chaired by a person designated by the Executive Director. Strategic Consumer Members as a group are entitled to designate one (1) representative on the Planning Council, to be selected by a vote of all Strategic Consumer Members. Any Strategic Consumer Member that is not leading a PMC, and has eight (8) or more developers assigned to work full-time on Eclipse Platform development projects is entitled to designate one (1) representative to the Planning Council unless an employee, officer,

director, or consultant of the Member has already been appointed to the Council. Any Strategic Developer Member that is not leading a PMC is entitled to designate one (1) representative to the Planning Council unless an employee, officer, director, or consultant of the Member has already been appointed to the Council. The Planning Council will accomplish its objectives by working closely with the development teams.

**Section 7.4 Requirements Council.** The Eclipse Management Organization shall establish a Requirements Council responsible for reviewing and categorizing incoming requirements, and proposing a coherent set of themes and priorities that will drive the Roadmap (as defined in the then current Eclipse Development Process). The Requirements Council shall be comprised of one (1) representative designated by each Strategic Developer Member and one (1) representative designated by each Strategic Consumer Member, and other individuals designated from time to time by the Executive Director, and shall be chaired by a person designated by the Executive Director. The Requirements Council will accomplish its objectives by working closely with the development teams.

## **ARTICLE VIII COMMITTEES OF THE MEMBERSHIP AT-LARGE**

The Membership At-Large may establish such committees as it deems necessary or appropriate to conduct the business and further the objectives of the Eclipse Foundation (each, a “Membership At-Large Committee”). The establishment by the Membership At-Large of any Membership At-Large Committee is subject to confirmation by a simple majority of the Membership At-Large represented at a meeting in which a quorum is present. The composition of any such committees and the powers, duties and responsibilities delegated thereto, on behalf of the Membership At-Large, shall be determined by the Executive Director subject to the foregoing Member approval.

## **ARTICLE IX ADVISORY BOARD**

The Board of Directors may, by resolution, establish a Board of Advisors (the “Advisory Board”) to be comprised of one or more individuals chosen by the Board at its sole discretion. The Board shall not be bound by any advice or decision of the Advisory Board. The members of the Advisory Board shall not have the rights or privileges of directors or the Membership At-Large of the Eclipse Foundation and shall have no power or authority over the operation of the Eclipse Foundation. A member of the Advisory Board may be removed at any time by the affirmative vote of a majority of the Board with or without cause.

## **ARTICLE X INDEMNIFICATION OF DIRECTORS, OFFICERS AND AGENTS**

**Section 10.1 Indemnification of Directors, Officers and Agents.** The Eclipse Foundation shall indemnify any person made or threatened to be made a party to an action by or in the right of the Eclipse Foundation to procure a judgment in its favor by reason of the fact that he, his testator or intestate is or was a director or officer of the Eclipse Foundation, against amounts paid in settlement and reasonable expenses, including attorneys’ fees actually and

necessarily incurred by him in connection with the defense or settlement of such action or in connection with an appeal therein, except in relation to matters as to which such person is adjudged to have breached his duty to the Eclipse Foundation. The Eclipse Foundation shall indemnify any person, made, or threatened to be made, a party to any action or proceeding other than as described in the preceding sentence (i.e., other than one by or in the right of the Eclipse Foundation to procure a judgment in its favor), whether civil or criminal, including an action by or in the right of any other organization of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any such person served in any capacity at the request of the Eclipse Foundation, by reason of the fact that he, his testator or intestate was a director or officer of the Eclipse Foundation, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such person acted, in good faith, for a purpose which he reasonably believed to be in the best interests of the Eclipse Foundation and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his conduct was unlawful. Notwithstanding the above, the Eclipse Foundation shall only be subject to these indemnification provisions if: (i) the party seeking the indemnity provides notice of the claim promptly to the Eclipse Foundation; (ii) the Eclipse Foundation is given sole control of the defense and settlement of the claim; (iii) the Eclipse Foundation receives from the party seeking the indemnity all available information, assistance and authority to defend such claim; and (iv) the party seeking the indemnity has not compromised or settled such proceeding without the Eclipse Foundation's prior written consent.

Expenses incurred by a person described in this section in defending a civil or criminal action or proceeding may be paid by the Eclipse Foundation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of such person to repay the amounts so advanced if it should be ultimately determined that such person is not entitled to be indemnified hereunder.

In no event shall individual Members of the Eclipse Foundation be subject to the indemnification and advancement of expenses obligations of the Eclipse Foundation under this section. The indemnification and advancement of expenses granted pursuant to, or provided by, this section shall not be deemed exclusive of any other rights to which a director, officer, employee or other agent of the Eclipse Foundation seeking indemnification of expenses may be entitled, whether contained in the certificate of incorporation or these Bylaws, or in a resolution of the Board, or an agreement providing for such indemnification or under law or otherwise; provided, that no indemnification may be made to or on behalf of any director or officer if a judgment or other final adjudication adverse to the director or officer establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

To the fullest extent permitted by applicable law, the Eclipse Foundation may purchase and maintain insurance on behalf of any person who is a director or officer, or was serving at the request of the Eclipse Foundation as a director or officer or in any other capacity against any liability asserted against him or her and incurred by him or her in any such capacity,

or arising out of his or her status as such, whether or not the Eclipse Foundation would have the power to indemnify him or her under this section.

## **ARTICLE XI MISCELLANEOUS**

**Section 11.1 Fiscal Year.** The fiscal year of the Eclipse Foundation shall begin on January 1 and end on December 31 of the same year.

**Section 11.2 Disbursements.** A process for approving expenditures (including documenting payments received and expenditures allocated, preventing commingling of funds, disposition of the funds upon bankruptcy of the Secretary, etc.) will be developed by the Board.

**Section 11.3 Contributions.** The Board is authorized to undertake actions to ensure that all code and materials contributed to the Eclipse Platform complies with the terms of the Eclipse Public License, the IP Policy, or other applicable guidelines and agreements as established or approved in accordance with these Bylaws.

**Section 11.4 Expenses.** Each Member will bear its own costs and expenses in connection with its performance of its rights and duties in respect of the Eclipse Foundation, including, without limitation, compensation of its employees, and all travel and living expenses associated with any Member's participation in any meetings and conferences called in connection with the activities of the Eclipse Foundation.

**Section 11.5 Checks, Notes and Contracts.** The Board is authorized to select such depositories as it shall deem proper for the funds of the Eclipse Foundation and shall determine who shall be authorized in the Eclipse Foundation's behalf to sign bills, notes, receipts, acceptances, endorsements, checks, releases, contracts and documents.

**Section 11.6 Investments.** The funds of the Eclipse Foundation may be retained in whole or in part in cash or be invested and reinvested from time to time in such property, real, personal or otherwise, or stocks, bonds or other securities, as the Board in its discretion may deem desirable.

**Section 11.7 Posting of Minutes.** The Eclipse Foundation shall post on its website abridged versions of any and all minutes from Board and Membership Meetings as well as any and all Update Reports and Quarterly Reports to the Membership At-Large as set forth in Section 5.3(c).

**Section 11.8 Books.** There shall be kept at the office of the Eclipse Foundation correct books of account of the activities and transactions of the Eclipse Foundation, including a minute book which shall contain a copy of the certificate of incorporation, a copy of these Bylaws, and all minutes of the meetings of the Board.

**Section 11.9 Seal.** The seal of the Eclipse Foundation shall be circular in form and shall bear the name of the Eclipse Foundation and words and figures showing that it was incorporated in the State of Delaware and the year of incorporation.

**Section 11.10 Amendments.** These Bylaws may not be amended without (i) the consent of at least two-thirds (2/3) of the Membership At-Large in accordance with Section 6.5; and (ii) any other consent requirements expressly set forth herein with respect to such amendment's proposed subject matter. Additionally, to the extent a proposed amendment would alter a provision that would require the unanimous consent of the Membership At-Large for certain actions, then such amendment must be unanimously approved in order to amend these Bylaws. The provisions of any such amended Bylaws will be binding upon all of the Membership At-Large.