

BYLAWS  
OF  
OPEN SOURCE DIGITAL VOTING  
FOUNDATION  
A CALIFORNIA PUBLIC BENEFIT FOUNDATION

VERSION 5.2  
MAY 2007

**Open Source Digital Voting Foundation**

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**ARTICLE 1  
OFFICES; CORPORATE SEAL**

**SECTION 1.1. PRINCIPAL OFFICE**

The principal office of the Open Source Digital Voting Foundation (the “Foundation”) shall be located at such place as the Board of Directors may, from time to time authorize. If the principal office is located outside the State of California, and the Foundation has one or more offices in the State of California, the Board of Directors shall fix and designate a principal office in the State of California.

**SECTION 1.2. OTHER OFFICES**

Additional offices of the Foundation shall be located at such place or places within or outside the State of California as the Board of Directors may from time to time authorize.

**SECTION 1.3. CORPORATE SEAL**

If the Board of Directors adopts a corporate seal, such seal shall have inscribed thereon the name of the Foundation and the state and date of its incorporation. If and when a seal is adopted by the Board of Directors, such seal may be engraved, lithographed, printed, stamped, impressed upon, or affixed to any contract, conveyance, or other instrument executed by the Foundation.

**ARTICLE 2  
PURPOSE AND OBJECTIVES**

**SECTION 2.1. PURPOSE**

1. The primary purpose of this Foundation shall be to promote the development of, public access to and adoption of open source, high assurance, transparent digital polling and voting technology, systems, and related services. The Foundation shall pursue this purpose guided by the over-riding principle that the most essential component of democracy is the freedom and right to vote and to have said vote reliably counted and verified in determination of elections and resolution of agendas, propositions, and measures.
2. In furtherance of the foregoing purpose, the Foundation shall address and work to resolve the following challenges of the current state of U.S. public election systems and services:

- 2.1. that catalyzed by **42 USC 15301** (“Help America Vote Act of 2002”) digital voting devices and services have become a requirement to avoid the historic and significant problems in conducting elections, including ambiguity as to ballot validity, reconciliation, and recount;
- 2.2. that current use of digital voting devices and services raises a number of concerns and questions related to the correctness in operation of related software, including, but not limited to: errors in capturing voter’s intent; assurance of software reliability and voracity; potential for vote tampering; and integrity of digital devices and services throughout the election process from certification through use in canvassing; and
- 2.3. that it is commonly held that none of these concerns can be adequately addressed without determining a ways and means to assure and ensure transparent operational integrity, verification, fault tolerance, and high confidence in the utilization of digital voting devices and services,

## SECTION 2.2. OBJECTIVES

1. The Foundation shall, except as limited by **Article IV** of its **Articles of Incorporation**, pursue the charitable and public purposes of:
  - 1.1. specifying the key elements of high assurance digital voting devices and services, which fosters high confidence usage of them, which in turn, yields high-confidence election processes and results;
  - 1.2. developing and publishing for public review and comment open specifications for the confident and transparent use of digital equipment and services deployed for voting, and demonstrating those specifications reduced to practice for use by federal, state, and local election officials who (i) procure digital voting devices & services, (ii) certify the same for use, and (iii) conduct elections using digital voting devices & services; as well as for such officials or third parties who audit elections and their results; and
  - 1.3. designing, developing, and deploying, ultimately on a nationwide basis, a freely accessible, fully functional, operating, and maintained demonstration test-bed for a high assurance, high veracity, highly distributed digital polling and voting service.
2. The Foundation shall operate for the benefit of all U.S. citizens eligible to vote as a whole, carrying out its activities in conformity with relevant principles of Federal and applicable State(s) laws, to the extent appropriate and consistent with these Bylaws, through open and transparent processes that foster the purposes of **Article 2**. To this effect, the Foundation shall cooperate and comply as appropriate with relevant Federal and State elections organizations, including, but not limited to the Federal Elections Assistance Commission ([www.eac.gov](http://www.eac.gov)).

## ARTICLE 3 MEMBERS

### SECTION 3.1. MEMBERS

This Operating Foundation shall have no members.

## ARTICLE 4 BOARD OF DIRECTORS

### SECTION 4.1. NUMBER

The Foundation shall have a maximum of seven (7) directors and collectively they shall be known as the Board of Directors. The number may be changed by amendment of this bylaw, or by repeal of this bylaw and adoption of a new bylaw, as provided in these bylaws.

### SECTION 4.2. POWERS

Subject to the provisions of the California Nonprofit Public Benefit Corporation law and any limitations in the Articles of Incorporation and Bylaws relating to action required or permitted to be taken or approved by the members, if any, of this Foundation, the activities and affairs of this Foundation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors.

### SECTION 4.3. DUTIES

It shall be the duty of the directors to:

- A. Perform any and all duties imposed on them collectively or individually by law, by the articles of incorporation of this Foundation, or by these bylaws;
- B. Appoint and remove, employ and discharge, and, except as otherwise provided in these bylaws, prescribe the duties and fix the compensation, if any, of all officers, agents, and employees of the Foundation;
- C. Supervise all officers, agents, and employees of the Foundation to assure that their duties are performed properly;
- D. Meet at such times and places as required by these bylaws;
- E. Register their addresses with the secretary of the Foundation and notices of meetings mailed or telegraphed to them at such addresses shall be valid notices thereof.

### SECTION 4.4. TERMS OF OFFICE

Each director shall hold office until the next annual meeting for election of the board of directors as specified in these bylaws, and until his or her successor is elected and qualifies.

### SECTION 4.5. COMPENSATION

Directors shall serve without compensation except that they shall be allowed and paid for their actual and necessary expenses incurred in attending directors' meetings. In addition, they shall be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their regular duties as specified in [Section 3](#) of this Article. Directors may not be compensated for rendering services to the Foundation in any capacity other than director unless such other compensation is reasonable and is allowable under the provisions of [Section 6](#) of this Article.

Any payments to directors shall be approved in advance in accordance with this Foundation's conflict of interest policy, as set forth in **Article 10** of these bylaws.

#### **SECTION 4.6. RESTRICTIONS REGARDING INTERESTED DIRECTORS**

Notwithstanding any other provision of these bylaws, not more than forty-nine percent (49%) of the persons serving on the board may be interested persons. For purposes of this Section, "interested persons" means either:

- A.** Any person currently being compensated by the Foundation for services rendered it within the previous twelve (12) months, whether as a full- or part-time officer or other employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director as director; or
- B.** Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

#### **SECTION 4.7. PLACE OF MEETINGS**

Meetings shall be held at the principal office of the Foundation unless otherwise provided by the board or at such place within or without the State of California which has been designated from time to time by resolution of the board of directors. In the absence of such designation, any meeting not held at the principal office of the Foundation shall be valid only if held on the written consent of all directors given either before or after the meeting and filed with the secretary of the Foundation or after all board members have been given written notice of the meeting as hereinafter provided for special meetings of the board.

Any meeting, regular or special, may be held by conference telephone, electronic video screen communication, or other digital communications means. Participation in a meeting through use of conference telephone constitutes presence in person at that meeting so long as all directors participating in the meeting are able to hear one another. Participation in a meeting through use of electronic video screen communication or other communications means (other than conference telephone) constitutes presence in person at that meeting if all of the following apply:

- A.** Each director participating in the meeting can communicate with all of the other directors concurrently;
- B.** Each director is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the Foundation; and
- C.** The Foundation adopts and implements some means of verifying [1] that all persons participating in the meeting are directors of the Foundation or are otherwise entitled to participate in the meeting, and [2] that all actions of, or votes by, the board are taken and cast only by directors and not by persons who are not directors.

#### **SECTION 4.8. REGULAR ANNUAL MEETINGS**

Regular meetings of directors shall be held on the **last Thursday** in **May** at **5:00PM** Pacific Daylight Time, unless such day falls on a legal holiday, in which event the regular meeting shall be held at the same hour and place on the next business day.

If this Foundation makes no provision for members, then, at the annual meeting of directors held on the last Thursday in May, directors shall be elected by the board of directors in accordance with this section. Cumulative voting by directors for the election of directors shall not be permitted. The candidates receiving the highest number of votes up to the number of directors to be elected shall be elected. Each director shall cast one vote, with voting being by ballot only.

#### **SECTION 4.9. SPECIAL MEETINGS**

Special meetings of the board of directors may be called by the chairperson of the board, the president, the vice president, the secretary, or by any two directors, and such meetings shall be held at the place, within or without the State of California, designated by the person or persons calling the meeting, and in the absence of such designation, at the principal office of the Foundation.

#### **SECTION 4.10. NOTICE OF MEETINGS**

Regular meetings of the board may be held without notice. Special meetings of the board shall be held upon four (4) days' notice by first-class mail or forty-eight (48) hours' notice delivered personally or by telephone or electronic mail. If sent by mail or electronic mail, the notice shall be deemed to be delivered on its deposit in the mails or on its delivery to the Internet Service Provider. Such notices shall be addressed to each director at his or her address as shown on the books of the Foundation. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place of the adjourned meeting are fixed at the meeting adjourned and if such adjourned meeting is held no more than twenty-four (24) hours from the time of the original meeting. Notice shall be given of any adjourned regular or special meeting to directors absent from the original meeting if the adjourned meeting is held more than twenty-four (24) hours from the time of the original meeting.

#### **SECTION 4.11. CONTENTS OF NOTICE**

Notice of meetings not herein dispensed with shall specify the place, day, and hour of the meeting. The purpose of any board meeting need not be specified in the notice.

#### **SECTION 4.12. WAIVER OF NOTICE AND CONSENT TO HOLD MEETINGS**

The transactions of any meeting of the board, however called and noticed or wherever held, are as valid as though the meeting had been duly held after proper call and notice, provided a quorum, as hereinafter defined, is present and provided that either before or after the meeting each director not present signs a waiver of notice, a consent to holding the meeting, or an approval of the minutes thereof. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

#### **SECTION 4.13. QUORUM FOR MEETINGS**

A quorum shall consist of five (5) directors.

Except as otherwise provided in these bylaws or in the articles of incorporation of this Foundation, or by law, no business shall be considered by the board at any meeting at which a quorum, as hereinafter defined, is not present, and the only motion which the chair shall entertain at such

meeting is a motion to adjourn. However, a majority of the directors present at such meeting may adjourn from time to time until the time fixed for the next regular meeting of the board.

When a meeting is adjourned for lack of a quorum, it shall not be necessary to give any notice of the time and place of the adjourned meeting or of the business to be transacted at such meeting, other than by announcement at the meeting at which the adjournment is taken, except as provided in **Section 10** of this Article.

The directors present at a duly called and held meeting at which a quorum is initially present may continue to do business notwithstanding the loss of a quorum at the meeting due to a withdrawal of directors from the meeting, provided that any action thereafter taken must be approved by at least a majority of the required quorum for such meeting or such greater percentage as may be required by law, or the articles of incorporation or bylaws of this Foundation.

#### **SECTION 4.14. MAJORITY ACTION AS BOARD ACTION**

Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board of directors, unless the articles of incorporation or bylaws of this Foundation, or provisions of the California Nonprofit Public Benefit Foundation Law, particularly those provisions relating to appointment of committees (**§ 5212**), approval of contracts or transactions in which a director has a material financial interest (**§ 5233**), and indemnification of directors (**§ 5238e**), require a greater percentage or different voting rules for approval of a matter by the board.

#### **SECTION 4.15. CONDUCT OF MEETINGS**

Meetings of the board of directors shall be presided over by the chairperson of the board, or, if no such person has been so designated or, in his or her absence, the president of the Foundation or, in his or her absence, by the vice president of the Foundation or, in the absence of each of these persons, by a chairperson chosen by a majority of the directors present at the meeting. The secretary of the Foundation shall act as secretary of all meetings of the board, provided that, in his or her absence, the presiding officer shall appoint another person to act as secretary of the meeting.

Meetings shall be governed by Robert's Rules of Order Newly Revised (RONR), as such rules may be revised from time to time, insofar as such rules are not inconsistent with or in conflict with these Bylaws, with the Articles of Incorporation of this Foundation, or with provisions of law.

#### **SECTION 4.16. ACTION BY UNANIMOUS WRITTEN CONSENT WITHOUT A MEETING**

Any action required or permitted to be taken by the board of directors under any provision of law may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to such action. For the purposes of this Section only, "*all members of the board*" shall not include any "interested director" as defined in **§ 5233** of the California Nonprofit Public Benefit Corporation Law. Such written consent or consents shall be filed with the minutes of the proceedings of the board. Such action by written consent shall have the same force and effect as the unanimous vote of the directors. Any certificate or other document filed under any provision of law which relates to action so taken shall state that the action was taken by unanimous written consent of the board of directors without a meeting and that the Bylaws of this Foundation authorize the directors to so act and such statement shall be prima facie evidence of such authority.

#### **SECTION 4.17. VACANCIES**

Vacancies on the board of directors shall exist (1) on the death, resignation, or removal of any director, and (2) whenever the number of authorized directors is increased.

The board of directors may declare vacant the office of a director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order or judgment of any court to have breached any duty under § 5230 and following of the California Nonprofit Public Benefit Foundation Law.

If this Foundation has any members, then, if the Foundation has fewer than fifty (50) members, directors may be removed without cause by a majority of all members, or, if the Foundation has fifty (50) or more members, by vote of a majority of the votes represented at a membership meeting at which a quorum is present.

If this Foundation has no members, directors may be removed without cause by a majority of the directors then in office.

Any director may resign effective upon giving written notice to the chairperson of the board, the president, the secretary, or the board of directors, unless the notice specifies a later time for the effectiveness of such resignation. No director may resign if the Foundation would then be left without a duly elected director or directors in charge of its affairs, except upon notice to the attorney general.

Vacancies on the board may be filled by approval of the board or, if the number of directors then in office is less than a quorum, by [1] the unanimous written consent of the directors then in office, [2] the affirmative vote of a majority of the directors then in office at a meeting held pursuant to notice or waivers of notice complying with this Article of these bylaws, or [3] a sole remaining director. If this Foundation has members, however, vacancies created by the removal of a director may be filled only by the approval of the members. The members, if any, of this Foundation may elect a director at any time to fill any vacancy not filled by the directors.

A person elected to fill a vacancy as provided by this Section shall hold office until the next annual election of the board of directors or until his or her death, resignation, or removal from office.

#### **SECTION 4.18. NON-LIABILITY OF DIRECTORS**

The directors shall not be personally liable for the debts, liabilities, or other obligations of the Foundation.

#### **SECTION 4.19. INDEMNIFICATION BY FOUNDATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS**

To the extent that a person who is, or was, a director, officer, employee, or other agent of this Foundation has been successful on the merits in defense of any civil, criminal, administrative, or investigative proceeding brought to procure a judgment against such person by reason of the fact that he or she is, or was, an agent of the Foundation, or has been successful in defense of any claim, issue, or matter, therein, such person shall be indemnified against expenses actually and reasonably incurred by the person in connection with such proceeding.

If such person either settles any such claim or sustains a judgment against him or her, then indemnification against expenses, judgments, fines, settlements, and other amounts reasonably incurred in connection with such proceedings shall be provided by this Foundation but only to the extent allowed by, and in accordance with the requirements of § 5238 of the California Nonprofit Public Benefit Foundation Law.

#### **SECTION 4.20. INSURANCE FOR CORPORATE AGENTS**

The board of directors may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the Foundation (including a director, officer, employee, or other agent of the Foundation) against any liability other than for violating provisions of law relating to self-dealing (§ 5233 of the California Nonprofit Public Benefit Foundation Law) asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Foundation would have the power to indemnify the agent against such liability under the provisions of § 5238 of the California Nonprofit Public Benefit Foundation Law.

### **ARTICLE 5** **OFFICERS**

#### **SECTION 5.1. NUMBER OF OFFICERS**

The officers of the Foundation shall be two (2) Executive Directors working in a cooperative capacity and designated “Co-Executive Director,” and a Secretary/Treasurer who shall also be designated the Chief Financial Officer. The first Co-Executive Director shall be designated the Chief Technology Officer and the second Co-Executive Director shall be designated the Chief Development Officer. The Foundation may also have, as determined by the Board of Directors, a Chairperson of the Board, one or more Vice Directors as the Board deems necessary to carry out the charter and mission of the Foundation. Any number of offices may be held by the same person except that neither the secretary nor the treasurer may serve as the president or chairperson of the board.

#### **SECTION 5.2. QUALIFICATION, ELECTION, AND TERM OF OFFICE**

Any person may serve as an Officer of this Foundation. Officers shall be elected by the Board of Directors, at any time, and each officer shall hold office until he or she resigns, is removed, or is otherwise disqualified to serve, or until his or her successor shall be elected and qualified, whichever occurs first.

#### **SECTION 5.3. SUBORDINATE OFFICERS**

The Board of Directors may appoint such other officers or agents as it may deem desirable, and such officers shall serve such terms, have such authority, and perform such duties as may be prescribed from time to time by the Board of Directors in order to carry out the charter and mission of the Foundation.

#### **SECTION 5.4. REMOVAL AND RESIGNATION**

Any officer may be removed, either with or without cause, by the Board of Directors, at any time. Any officer may resign at any time by giving written notice to the Board or to the Co-Executive

Directors or Secretary–Treasurer of the Foundation. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The above provisions of this Section shall be superseded by any conflicting terms of a contract which has been approved or ratified by the board of directors relating to the employment of any officer of the Foundation.

#### **SECTION 5.5. VACANCIES**

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the board of directors. In the event of a vacancy in any office other than that of president, such vacancy may be filled temporarily by appointment by the president until such time as the board shall fill the vacancy. Vacancies occurring in offices of officers appointed at the discretion of the board may or may not be filled as the board shall determine.

#### **SECTION 5.6. DUTIES OF THE CO-EXECUTIVE DIRECTOR**

The co-executive director shall be the president and the chief executive officer of the Foundation and shall, subject to the control of the board of directors, supervise and control the affairs of the Foundation and the activities of the officers. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the articles of incorporation of this Foundation, or by these bylaws, or which may be prescribed from time to time by the board of directors. Unless another person is specifically appointed as chairperson of the board of directors, he or she shall preside at all meetings of the board of directors. If applicable, the president shall preside at all meetings of the members. Except as otherwise expressly provided by law, by the articles of incorporation, or by these bylaws, he or she shall, in the name of the Foundation, execute such deeds, mortgages, bonds, contracts, checks, or other instruments which may from time to time be authorized by the board of directors.

#### **SECTION 5.7. DUTIES OF VICE DIRECTOR**

In the absence of the president, or in the event of his or her inability or refusal to act, the vice president shall perform all the duties of the president, and when so acting shall have all the powers of, and be subject to all the restrictions on, the president. The vice president shall have other powers and perform such other duties as may be prescribed by law, by the articles of incorporation, or by these bylaws, or as may be prescribed by the board of directors.

#### **SECTION 5.8. DUTIES OF SECRETARY**

The secretary shall:

- A.** Certify and keep at the principal office of the Foundation the original, or a copy of these bylaws as amended or otherwise altered to date.
- B.** Keep at the principal office of the Foundation or at such other place as the board may determine, a book of minutes of all meetings of the directors, and if applicable, meetings of committees of directors and of members, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof.

- C. See that all notices are duly given in accordance with the provisions of these bylaws or as required by law.
- D. Be custodian of the records and of the seal of the Foundation and see that the seal is affixed to all duly executed documents, the execution of which on behalf of the Foundation under its seal is authorized by law or these bylaws.
- E. Keep at the principal office of the Foundation a membership book containing the name and address of each and any member, and, in the case where any membership has been terminated, the secretary shall record such fact in the membership book together with the date on which such membership ceased.
- F. Exhibit at all reasonable times to any director of the Foundation, or to his or her agent or attorney, on request therefor, the bylaws, the membership book, and the minutes of the proceedings of the directors of the Foundation.
- G. In general, perform all duties incident to the office of secretary and such other duties as may be required by law, by the articles of incorporation of this Foundation, or by these bylaws, or which may be assigned to him or her from time to time by the board of directors.

#### **SECTION 5.9. DUTIES OF TREASURER**

Subject to the provisions of these bylaws relating to the "Execution of Instruments, Deposits, and Funds," the treasurer shall:

- A. Have charge and custody of, and be responsible for, all funds and securities of the Foundation, and deposit all such funds in the name of the Foundation in such banks, trust companies, or other depositories as shall be selected by the board of directors.
- B. Receive, and give receipt for, monies due and payable to the Foundation from any source whatsoever.
- C. Disburse, or cause to be disbursed, the funds of the Foundation as may be directed by the board of directors, taking proper vouchers for such disbursements.
- D. Keep and maintain adequate and correct accounts of the Foundation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses.
- E. Exhibit at all reasonable times the books of account and financial records to any director of the Foundation, or to his or her agent or attorney, on request therefor.
- F. Render to the president and directors, whenever requested, an account of any or all of his or her transactions as treasurer and of the financial condition of the Foundation.
- G. Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.
- H. In general, perform all duties incident to the office of treasurer and such other duties as may be required by law, by the articles of incorporation of the Foundation, or by these

bylaws, or which may be assigned to him or her from time to time by the board of directors.

#### SECTION 5.10. COMPENSATION

The salaries of the officers, if any, shall be fixed from time to time by resolution of the board of directors, and no officer shall be prevented from receiving such salary by reason of the fact that he or she is also a director of the Foundation, provided, however, that such compensation paid a director for serving as an officer of this Foundation shall only be allowed if permitted under the provisions of [Article 4, Section 6](#), of these Bylaws. In all cases, any salaries received by officers of this Foundation shall be reasonable and given in return for services actually rendered for the Foundation which relate to the performance of the charitable or public purposes of this Foundation. All officer salaries shall be approved in advance in accordance with this Foundation's conflict of interest policy, as set forth in [Article 10](#) of these Bylaws.

### ARTICLE 6 COMMITTEES

#### SECTION 6.1. EXECUTIVE COMMITTEE OF THE BOARD

The board of directors may, by a majority vote of directors, designate two (2) or more of its members (*who may also be serving as officers of this Foundation*) to constitute an executive committee of the board and delegate to such committee any of the powers and authority of the board in the management of the business and affairs of the Foundation, except with respect to:

- A. The approval of any action which, under law or the provisions of these bylaws, requires the approval of the members or of a majority of all of the members.
- B. The filling of vacancies on the board or on any committee that has the authority of the board.
- C. The fixing of compensation of the directors for serving on the board or on any committee.
- D. The amendment or repeal of bylaws or the adoption of new bylaws.
- E. The amendment or repeal or any resolution of the board which by its express terms is not so amendable or repealable.
- F. The appointment of committees of the board or the members thereof.
- G. The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected.
- H. The approval of any transaction to which this Foundation is a party and in which one or more of the directors has a material financial interest, except as expressly provided in [§ 5233\(d\)\(3\)](#) of the California Nonprofit Public Benefit Foundation Law.

By a majority vote of its members then in office, the board may at any time revoke or modify any or all of the authority so delegated, increase or decrease but not below two (2) the number of its members, and fill vacancies therein from the members of the board. The committee shall keep

regular minutes of its proceedings, cause them to be filed with the corporate records, and report the same to the board from time to time as the board may require.

#### **SECTION 6.2. OTHER COMMITTEES**

The Foundation shall have such other committees as may from time to time be designated by resolution of the board of directors. Such other committees may consist of persons who are not also members of the board. These additional committees shall act in an advisory capacity only to the board and shall be clearly titled as "advisory" committees.

#### **SECTION 6.3. MEETINGS AND ACTIONS OF COMMITTEES**

Meetings and action of committees shall be governed by, noticed, held, and taken in accordance with the provisions of these bylaws concerning meetings of the board of directors, with such changes in the context of such bylaw provisions as are necessary to substitute the committee and its members for the board of directors and its members, except that the time for regular meetings of committees may be fixed by resolution of the board of directors or by the committee. The time for special meetings of committees may also be fixed by the board of directors. The board of directors may also adopt rules and regulations pertaining to the conduct of meetings of committees to the extent that such rules and regulations are not inconsistent with the provisions of these bylaws.

### **ARTICLE 7**

#### **EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS**

##### **SECTION 7.1. EXECUTION OF INSTRUMENTS**

The board of directors, except as otherwise provided in these bylaws, may by resolution authorize any officer or agent of the Foundation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Foundation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the Foundation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

##### **SECTION 7.2. CHECKS AND NOTES**

Except as otherwise specifically determined by resolution of the board of directors, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Foundation shall be signed by the Treasurer and countersigned by the President of the Foundation.

##### **SECTION 7.3. DEPOSITS**

All funds of the Foundation shall be deposited from time to time to the credit of the Foundation in such banks, trust companies, or other depositories as the board of directors may select.

#### **SECTION 7.4. GIFTS**

The board of directors may accept on behalf of the Foundation any contribution, gift, bequest, or devise for the charitable or public purposes of this Foundation.

### **ARTICLE 8**

#### **CORPORATE RECORDS AND REPORT**

##### **SECTION 8.1. MAINTENANCE OF CORPORATE RECORDS**

The Foundation shall keep at its principal office in the State of California:

- A.** Minutes of all meetings of directors, committees of the board and, if this Foundation has members, of all meetings of members, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof;
- B.** Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains, and losses;
- C.** A record of its members, if any, indicating their names and addresses and, if applicable, the class of membership held by each member and the termination date of any membership;
- D.** A copy of the Foundation's articles of incorporation and bylaws as amended to date, which shall be open to inspection by the members, if any, of the Foundation at all reasonable times during office hours.

##### **SECTION 8.2. DIRECTORS' INSPECTION RIGHTS**

Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the Foundation.

##### **SECTION 8.3. MEMBERS' INSPECTION RIGHTS**

If this Foundation has any members, then each and every member shall have the following inspection rights, for a purpose reasonably related to such person's interest as a member:

- A.** To inspect and copy the record of all members' names, addresses, and voting rights, at reasonable times, upon five (5) business days' prior written demand on the Foundation, which demand shall state the purpose for which the inspection rights are requested.
- B.** To obtain from the secretary of the Foundation, upon written demand and payment of a reasonable charge, an alphabetized list of the names, addresses, and voting rights of those members entitled to vote for the election of directors as of the most recent record date for which the list has been compiled or as of the date specified by the member subsequent to the date of demand. The demand shall state the purpose for which the list is requested. The membership list shall be made available on or before the later of ten

(10) business days after the demand is received or after the date specified therein as of which the list is to be compiled.

- C. To inspect at any reasonable time the books, records, or minutes of proceedings of the members or of the board or committees of the board, upon written demand on the Foundation by the member, for a purpose reasonably related to such person's interests as a member.

#### **SECTION 8.4. RIGHT TO COPY AND MAKE EXTRACTS**

Any inspection under the provisions of this Article may be made in person or by agent or attorney and the right to inspection includes the right to copy and make extracts.

#### **SECTION 8.5. ANNUAL REPORT**

The board shall cause an annual report to be furnished not later than one hundred and twenty (120) days after the close of the Foundation's fiscal year to all directors of the Foundation and, if this Foundation has members, to any member who requests it in writing, which report shall contain the following information in appropriate detail:

- A. The assets and liabilities, including the trust funds, of the Foundation as of the end of the fiscal year;
- B. The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- C. The revenue or receipts of the Foundation, both unrestricted and restricted to particular purposes, for the fiscal year;
- D. The expenses or disbursements of the Foundation, for both general and restricted purposes, during the fiscal year;
- E. Any information required by [Section 7](#) of this Article.

The annual report shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the Foundation that such statements were prepared without audit from the books and records of the Foundation.

If this Foundation has members, then, if this Foundation receives Twenty-Five Thousand Dollars (\$25,000), or more, in gross revenues or receipts during the fiscal year, this Foundation shall automatically send the above annual report to all members, in such manner, at such time, and with such contents, including an accompanying report from independent accountants or certification of a corporate officer, as specified by the above provisions of this Section relating to the annual report.

#### **SECTION 8.6. ANNUAL STATEMENT OF SPECIFIC TRANSACTIONS TO MEMBERS**

This Foundation shall mail or deliver to all directors and any and all members a statement within one hundred and twenty (120) days after the close of its fiscal year which briefly describes the amount and circumstances of any indemnification or transaction of the following kind:

Any transaction in which the Foundation, or its parent or its subsidiary, was a party, and in which either of the following had a direct or indirect material financial interest:

- A. Any director or officer of the Foundation, or its parent or its subsidiary (a mere common directorship shall not be considered a material financial interest); or
- B. Any holder of more than ten percent (10%) of the voting power of the Foundation, its parent, or its subsidiary.

The above statement need only be provided with respect to a transaction during the previous fiscal year involving more than Fifty Thousand Dollars (\$50,000) or which was one of a number of transactions with the same persons involving, in the aggregate, more than Fifty Thousand Dollars (\$50,000).

Similarly, the statement need only be provided with respect to indemnifications or advances aggregating more than Ten Thousand Dollars (\$10,000) paid during the previous fiscal year to any director or officer, except that no such statement need be made if such indemnification was approved by the members pursuant to [§ 5238\(e\)\(2\)](#) of the California Nonprofit Public Benefit Foundation Law.

Any statement required by this Section shall briefly describe the names of the interested persons involved in such transactions, stating each person's relationship to the Foundation, the nature of such person's interest in the transaction, and, where practical, the amount of such interest, provided that in the case of a transaction with a partnership of which such person is a partner, only the interest of the partnership need be stated.

If this Foundation has any members and provides all members with an annual report according to the provisions of [Section 6](#) of this Article, then such annual report shall include the information required by this Section.

## ARTICLE 9

### FISCAL YEAR AND FINANCIAL MATTERS

#### SECTION 9.1. FISCAL YEAR OF THE FOUNDATION

The fiscal year of the Foundation shall begin on the **1<sup>st</sup> January** and end on the **31<sup>st</sup> December** in each year.

#### SECTION 9.2. DISTRIBUTION OF INCOME AND PROHIBITED ACTIVITIES

In the event that the Foundation shall at any time be a private operating foundation within the meaning of [§ 509](#) of the **United States Internal Revenue Code of 1986** as amended (hereinafter referred to as the "Code"), the Foundation, so long as it shall be such a private operating foundation, shall distribute its income for each taxable year at such time and in such manner as not to subject it to the tax on undistributed income imposed by [§ 4942](#) of the Code, and the Foundation shall not **[i]** engage in any act of self-dealing as defined in [§ 4941\(d\)](#) of the Code; **[ii]** retain any excess business holdings as defined in [§ 4943\(c\)](#) of the Code; **[iii]** make any investments in such manner as to subject the Foundation to any tax under [§ 4944](#) of the Code; or **[iv]** make any taxable expenditures as defined in [§ 4945\(d\)](#) of the Code. (All references to the Code herein are deemed to include corresponding provisions of any future United States Internal Revenue Law.)

### SECTION 9.3. ANNUAL AUDIT

The Board of Directors shall cause an annual audit by an independent accountant to be prepared within and sent to the Directors and subsequently submitted to the State of California Attorney General as well as made available for public inspection.

#### A. Audit Management.

The Board must appoint an audit committee that [1] helps hire and set the compensation of the auditor (CPA) that prepares the Foundation's financial statements, [2] reviews the Foundation's audited financial statements, and [3] reports to the Board its findings as to whether the Foundation's financial affairs and financial statements are in order.

#### B. Audit Committee.

The audit committee cannot include staff members, the co-executive directors or chief executive officer, the treasurer, or the chief financial officer of the Foundation. If the Board includes a finance committee, members of that committee may serve on the audit committee, but cannot make up 50 percent or more of the audit committee.

## ARTICLE 10

### CONFLICT OF INTEREST AND COMPENSATION APPROVAL POLICIES

#### SECTION 10.1. PURPOSE OF CONFLICT OF INTEREST POLICY

The purpose of this conflict of interest policy is to protect this tax-exempt Foundation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Foundation or any "disqualified person" as defined in § 4958(f)(1) of the Internal Revenue Code and as amplified by § 53.4958-3 of the IRS Regulations and which might result in a possible "excess benefit transaction" as defined in § 4958(c)(1)(A) of the Internal Revenue Code and as amplified by § 53.4958 of the IRS Regulations. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

#### SECTION 10.2. DEFINITIONS

##### A. Interested Person

Any director, principal officer, member of a committee with governing board delegated powers, or any other person who is a "disqualified person" as defined in § 4958(f)(1) of the Internal Revenue Code and as amplified by § 53.4958-3 of the IRS Regulations, who has a direct or indirect financial interest, as defined below, is an interested person.

##### B. Financial Interest

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

1. an ownership or investment interest in any entity with which the Foundation has a transaction or arrangement,
2. a compensation arrangement with the Foundation or with any entity or individual with which the Foundation has a transaction or arrangement, or
3. a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Foundation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under **§ 3 ¶ B**, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

### **SECTION 10.3. CONFLICT OF INTEREST AVOIDANCE PROCEDURES**

#### **A. Duty to Disclose.**

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

#### **B. Determining Whether a Conflict of Interest Exists.**

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

#### **C. Procedures for Addressing the Conflict of Interest.**

An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

After exercising due diligence, the governing board or committee shall determine whether the Foundation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Foundation's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.

#### **D. Violations of the Conflicts of Interest Policy.**

If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

#### SECTION 10.4. RECORDS OF BOARD AND BOARD COMMITTEE PROCEEDINGS

The minutes of meetings of the governing board and all committees with board delegated powers shall contain:

- A. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
- B. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

#### SECTION 10.5. COMPENSATION APPROVAL POLICIES

A voting member of the governing board who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to that member's compensation.

A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to that member's compensation.

No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

When approving compensation for directors, officers and employees, contractors, and any other compensation contract or arrangement, in addition to complying with the conflict of interest requirements and policies contained in the preceding and following sections of this article as well as the preceding paragraphs of this section of this article, the board or a duly constituted compensation committee of the board shall also comply with the following additional requirements and procedures:

1. the terms of compensation shall be approved by the board or compensation committee prior to the first payment of compensation.
2. all members of the board or compensation committee who approve compensation arrangements must not have a conflict of interest with respect to the compensation arrangement as specified in IRS Regulation [§ 53.4958-6\(c\)\(iii\)](#), which generally requires that each board member or committee member approving a compensation arrangement between this Foundation and a "disqualified person" (as defined in [§ 4958\(f\)\(1\)](#) of the Internal Revenue Code and as amplified by [§ 53.4958-3](#) of the IRS Regulations):
  - 2.1. is not the person who is the subject of compensation arrangement, or a family member of such person;
  - 2.2. is not in an employment relationship subject to the direction or control of the person who is the subject of compensation arrangement

- 2.3. does not receive compensation or other payments subject to approval by the person who is the subject of compensation arrangement
  - 2.4. has no material financial interest affected by the compensation arrangement; and does not approve a transaction providing economic benefits to the person who is the subject of the compensation arrangement, who in turn has approved or will approve a transaction providing benefits to the board or committee member.
3. the board or compensation committee shall obtain and rely upon appropriate data as to comparability prior to approving the terms of compensation. Appropriate data may include the following:
    - 3.1. compensation levels paid by similarly situated organizations, both taxable and tax-exempt, for functionally comparable positions. "Similarly situated" organizations are those of a similar size and purpose and with similar resources
    - 3.2. the availability of similar services in the geographic area of this organization
    - 3.3. current compensation surveys compiled by independent firms
    - 3.4. actual written offers from similar institutions competing for the services of the person who is the subject of the compensation arrangement.

As allowed by IRS Regulation [4958-6](#), if this organization has average annual gross receipts (including contributions) for its three prior tax years of less than \$1 million, the board or compensation committee will have obtained and relied upon appropriate data as to comparability if it obtains and relies upon data on compensation paid by three comparable organizations in the same or similar communities for similar services.

4. the terms of compensation and the basis for approving them shall be recorded in written minutes of the meeting of the board or compensation committee that approved the compensation. Such documentation shall include:
  - 4.1. the terms of the compensation arrangement and the date it was approved
  - 4.2. the members of the board or compensation committee who were present during debate on the transaction, those who voted on it, and the votes cast by each board or committee member
  - 4.3. the comparability data obtained and relied upon and how the data was obtained.
  - 4.4. If the board or compensation committee determines that reasonable compensation for a specific position in this organization or for providing services under any other compensation arrangement with this organization is higher or lower than the range of comparability data obtained, the board or committee shall record in the minutes of the meeting the basis for its determination.
  - 4.5. If the board or committee makes adjustments to comparability data due to geographic area or other specific conditions, these adjustments and the reasons for them shall be recorded in the minutes of the board or committee meeting.
  - 4.6. any actions taken with respect to determining if a board or committee member had a conflict of interest with respect to the compensation arrangement, and if so, actions taken to make sure the member with the conflict of interest did not affect or participate in the approval of the transaction (for example, a notation in the records that after a finding of conflict of interest by a member, the member with the conflict of interest was asked to, and did, leave the meeting prior to a discussion of the compensation arrangement and a taking of the votes to approve the arrangement).

- 4.7. The minutes of board or committee meetings at which compensation arrangements are approved must be prepared before the later of the date of the next board or committee meeting or 60 days after the final actions of the board or committee are taken with respect to the approval of the compensation arrangements. The minutes must be reviewed and approved by the board and committee as reasonable, accurate, and complete within a reasonable period thereafter, normally prior to or at the next board or committee meeting following final action on the arrangement by the board or committee.

#### **SECTION 10.6. ANNUAL STATEMENTS**

Each director, principal officer, and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

- A.** has received a copy of the conflicts of interest policy,
- B.** has read and understands the policy,
- C.** has agreed to comply with the policy, and
- D.** understands the Foundation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

#### **SECTION 10.7. PERIODIC REVIEWS**

To ensure the Foundation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- A.** Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's-length bargaining.
- B.** Whether partnerships, joint ventures, and arrangements with management organizations conform to the Foundation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes, and do not result in inurement, impermissible private benefit, or in an excess benefit transaction.

#### **SECTION 10.8. USE OF OUTSIDE EXPERTS**

When conducting the periodic reviews as provided for in [Section 7](#), the Foundation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

### **ARTICLE 11**

#### **AMENDMENT OF BYLAWS**

##### **SECTION 11.1. AMENDMENT**

Subject to any provision of law applicable to the amendment of bylaws of public benefit nonprofit Foundations, these bylaws, or any of them, may be altered, amended, or repealed and new bylaws adopted as follows:

- A. Subject to the power of members, if any, to change or repeal these bylaws under [§ 5150](#) of the Foundations Code, by approval of the board of directors unless the bylaw amendment would materially and adversely affect the rights of members, if any, as to voting or transfer, provided, however, if this Foundation has admitted any members, then a bylaw specifying or changing the fixed number of directors of the Foundation, the maximum or minimum number of directors, or changing from a fixed to variable board or vice versa, may not be adopted, amended, or repealed except as provided in subparagraph (B) of this Section; or
- B. By approval of the members, if any, of this Foundation.

## **ARTICLE 12**

### AMENDMENT OF ARTICLES

#### **SECTION 12.1. AMENDMENTS**

This Foundation shall not amend its articles of incorporation to alter any statement which appears in the original articles of incorporation of the names and addresses of the first directors of this Foundation, nor the name and address of its initial agent, except to correct an error in such statement or to delete such statement after the Foundation has filed a "Statement by a Domestic Nonprofit Foundation" pursuant to [§ 6210](#) of the California Nonprofit Foundation Law.

## **ARTICLE 13**

### PROHIBITION AGAINST SHARING CORPORATE PROFITS AND ASSETS

#### **SECTION 13.1. PROHIBITION AGAINST SHARING CORPORATE PROFITS AND ASSETS**

No member, director, officer, employee, or other person connected with this Foundation, or any private individual, shall receive at any time any of the net earnings or pecuniary profit from the operations of the Foundation, provided, however, that this provision shall not prevent payment to any such person of reasonable compensation for services performed for the Foundation in effecting any of its public or charitable purposes, provided that such compensation is otherwise permitted by these bylaws and is fixed by resolution of the board of directors; and no such person or persons shall be entitled to share in the distribution of, and shall not receive, any of the corporate assets on dissolution of the Foundation. All members, if any, of the Foundation shall be deemed to have expressly consented and agreed that on such dissolution or winding up of the affairs of the Foundation, whether voluntarily or involuntarily, the assets of the Foundation, after all debts have been satisfied, shall be distributed as required by the articles of incorporation of this Foundation and not otherwise.

## WRITTEN CONSENT OF DIRECTORS ADOPTING BYLAWS

We, the undersigned, are all of the persons named as the initial directors in the articles of incorporation of **The Open Source Digital Voting Foundation**, a California nonprofit operating Foundation, and pursuant to the authority granted to the directors by these Bylaws to take action by unanimous written consent without a meeting, consent to, and hereby do, adopt the foregoing bylaws, consisting of 25 pages, as the Bylaws of this Foundation.

**Dated: 31.May, 2007**

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**Peter F. Harter J.D., Director**

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**Dr. Michael Henry, Director**

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**Fran Maier, Director**

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**Gregory A. Miller J.D., Director**

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**Stacey Paynter, Director**

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**Dr. Edgard J. Quiroz, Director**

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**E. John Sebes, Director**

## CERTIFICATE

This is to certify that the foregoing is a true and correct copy of the Bylaws of the Foundation named in the title thereto and that such bylaws were duly adopted by the board of directors of said Foundation on the date set forth below.

**Dated: 31.May, 2007**

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\_\_\_\_\_, **Secretary**