

New Mexico Statutes Intervieved with our proposed bylaws.

53-8-1. Short title.

Chapter 53, Article 8 NMSA 1978 may be cited as the "Nonprofit Corporation Act".

53-8-2. Definitions.

As used in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], unless the context otherwise requires:

A. "corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of the Nonprofit Corporation Act, except a foreign corporation;

B. "foreign corporation" means a nonprofit corporation organized under laws other than the laws of New Mexico for a purpose for which a corporation may be organized under the Nonprofit Corporation Act;

C. "nonprofit corporation" means a corporation no part of the income or profit of which is distributable to its members, directors or officers;

D. "articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger;

E. "bylaws" means the code of rules adopted for the regulation or management of the affairs of the corporation, irrespective of the name by which such rules are designated;

F. "member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws;

G. "board of directors" means the group of persons vested with the management of the affairs of the corporation, irrespective of the name by which such group is designated;

H. "insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs;

I. "commission" or "corporation commission" means the public regulation commission or its

delegate;

J. "address" means:

- (1) the mailing address and the street address, if within a municipality; or
- (2) the mailing address and a rural route number and box number, if any, or the geographical location, using well-known landmarks, if outside a municipality;

K. "duplicate original" means a document that is signed or executed in duplicate;

L. "delivery" means:

- (1) if personally served, the date documentation is received by the corporations bureau of the commission; and
- (2) if mailed to the commission, the date of the postmark plus three days, upon proof thereof by the party delivering the documentation; and

M. "person" includes individuals, partnerships, corporations and other associations.

53-8-3. Applicability.

A. The provisions of the Nonprofit Corporation Act [[Chapter 53, Article 8](#) NMSA 1978] relating to domestic corporations apply to:

- (1) all corporations organized under that act; and
- (2) all nonprofit corporations organized under any acts repealed by the Nonprofit Corporation Act, for a purpose or purposes for which a corporation might be organized under that act.

B. The provisions of the Nonprofit Corporation Act relating to foreign corporations apply to all foreign nonprofit corporations conducting affairs in New Mexico for a purpose or purposes for which a corporation might be organized under that act.

53-8-4. Purposes.

Corporations may be organized under the Nonprofit Corporation Act [[Chapter 53, Article 8](#) NMSA 1978] for any lawful purpose or purposes, including, without being limited to, any one or more of the following purposes: charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial or trade association.

53-8-5. General powers.

Each corporation shall have power to:

- A. have perpetual succession by its corporate name unless a limited period of duration is stated in its article of incorporation;
- B. sue and be sued, complain and defend in its corporate name;
- C. have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in other manner reproduced, but failure to have or to affix a corporate seal does not affect the validity of any instrument or any action taken in pursuance thereof or in reliance thereon;
- D. purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated;
- E. sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;
- F. lend money to its directors, officers and employees and otherwise assist them;
- G. purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, limited partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof;

H. make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income;

I. lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

J. conduct its affairs, carry on its operations, and have offices and exercise the powers granted by the Nonprofit Corporation Act [[Chapter 53, Article 8](#) NMSA 1978] in any state, territory, district or possession of the United States, or in any foreign country;

K. elect or appoint directors and define their duties and fix their compensation, if any;

L. elect or appoint officers and agents of the corporation, who may be directors or members, and define their duties and fix their compensation;

M. make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of New Mexico, for the administration and regulation of the affairs of the corporation;

N. unless otherwise provided in the articles of incorporation, make donations for the public welfare or for charitable, scientific or educational purposes; and in time of war to make donations in aid of war activities;

O. pay pensions and establish pension plans, pension trusts, profit-sharing plans and other incentive plans for any or all of its directors, officers and employees;

P. cease its corporate activities and surrender its corporate franchise; and

Q. have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

53-8-6. Defense of ultra vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do the act or to make or receive the conveyance or transfer, but such lack of capacity or power may be asserted:

A. in a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts, or the transfer of real or personal property by or to the corporation.

If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of the contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained; or

B. in a proceeding by the corporation, whether acting directly or through a receiver, trustee or other legal representative, or through members in a representative [representative] suit, against the officers or directors of the corporation for exceeding their authority.

53-8-5. General powers.

Each corporation shall have power to:

A. have perpetual succession by its corporate name unless a limited period of duration is stated in its article of incorporation;

B. sue and be sued, complain and defend in its corporate name;

C. have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in other manner reproduced, but failure to have or to affix a corporate seal does not affect the validity of any instrument or any action taken in pursuance thereof or in reliance thereon;

D. purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated;

E. sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;

F. lend money to its directors, officers and employees and otherwise assist them;

G. purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, limited partnerships or individuals, or direct or indirect

obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof;

H. make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income;

I. lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

J. conduct its affairs, carry on its operations, and have offices and exercise the powers granted by the Nonprofit Corporation Act [[Chapter 53, Article 8](#) NMSA 1978] in any state, territory, district or possession of the United States, or in any foreign country;

K. elect or appoint directors and define their duties and fix their compensation, if any;

L. elect or appoint officers and agents of the corporation, who may be directors or members, and define their duties and fix their compensation;

M. make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of New Mexico, for the administration and regulation of the affairs of the corporation;

N. unless otherwise provided in the articles of incorporation, make donations for the public welfare or for charitable, scientific or educational purposes; and in time of war to make donations in aid of war activities;

O. pay pensions and establish pension plans, pension trusts, profit-sharing plans and other incentive plans for any or all of its directors, officers and employees;

P. cease its corporate activities and surrender its corporate franchise; and

Q. have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

53-8-7. Corporate name.

The corporate name:

A. shall not contain any word or phrase which indicates or implies that it is organized for any

purpose other than one or more of the purposes contained in its articles of incorporation; and

B. shall not be the same as, or confusingly similar to, the name of any corporation, whether for profit or not for profit, existing under the laws of New Mexico, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in New Mexico, or a corporate name reserved or registered as permitted by the laws of New Mexico.

53-8-12. Bylaws.

A. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

B. The initial bylaws and any subsequent bylaws whether by amendment, repeal or new adoption shall be executed by two authorized officers of the corporation. The bylaws in effect for the corporation shall be maintained at the corporation's principal office in New Mexico and shall be subject to inspection and copying by the public. If the most recently adopted bylaws are so maintained, they shall not be void, notwithstanding any requirements of prior law. The corporation may charge a reasonable fee for copying its bylaws, not to exceed one dollar (\$1.00) per page.

Proposed Bylaws of the Gentoo Foundation, Inc
Revised: 2007-01-22

1. Article I

Business offices

The foundation shall have such offices either within or outside the State of ~~New Mexico~~New Mexico and within or outside the United States, as the Board of Trustees may from time to time determine or as the business of the foundation may require.

2. Article II

Registered offices and registered agents

53-8-8. Registered office and registered agent.

Each corporation shall have and continuously maintain in New Mexico:

- A. a registered office which may be, but need not be, the same as its principal office; and
- B. a registered agent, which agent may be either an individual resident in New Mexico whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in New Mexico, having an office identical with such registered office.

53-8-9. Change of registered office or registered agent.

A. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the public regulation commission a statement setting forth:

- (1) the name of the corporation;
- (2) the address of its then registered office;
- (3) if the address of its registered office be changed, the address to which the registered office is to be changed;
- (4) the name of its then registered agent;

(5) if its registered agent be changed:

(a) the name of its successor registered agent; and

(b) a statement executed by the successor registered agent in which the agent acknowledges acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the successor registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation; and

(6) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

B. The statement pursuant to the provisions of Subsection A of this section shall be executed by the corporation by an authorized officer of the corporation and delivered to the public regulation commission. If the public regulation commission finds that the statement conforms to the provisions of the Nonprofit Corporation Act [[Chapter 53, Article 8 NMSA 1978](#)], it shall file the statement in the office of the public regulation commission, and upon such filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

C. A registered agent of a corporation may resign as agent upon filing a written notice of resignation, including the original and a copy, with the public regulation commission. The copy may be a photocopy of the original after it was signed or a photocopy that is conformed to the original. The commission shall mail an endorsed copy to the corporation in care of an officer, who is not the resigning registered agent, at the address of the officer as shown by the most recent annual report of the corporation. The appointment of the agent shall terminate upon the expiration of thirty days after receipt of the notice by the public regulation commission.

D. If the registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the public regulation commission for filing a statement that complies with the requirements of Subsection A of this section and recites that the corporation has been notified of the change.

53-8-10. Service of process on corporation.

The registered agent appointed by a corporation shall be an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served. Nothing in this section limits or affects the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter

permitted by law.

Section 2.1. ~~New Mexico~~New Mexico. The address of the initial registered office in the State of ~~New Mexico~~New Mexico and the name of the initial registered agent of the foundation at such address are set forth in the Certificate of Incorporation. The foundation may, from time to time, designate a different address as its registered office or a different person as its registered agent, or both; provided, however, that such designation shall become effective upon the filing of a statement of such change with the Secretary of State of the State of ~~New Mexico~~New Mexico as is required by law.

Section 2.2. Other States. In the event the foundation desires to qualify to do business in one or more states other than ~~New Mexico~~New Mexico, the foundation shall designate the location of the registered office in each such state and designate the registered agent for service of process at such address in the manner provided by the law of the state in which the foundation elects to be qualified.

3. Article III

Meetings of members

53-8-13. Meetings of members.

A. Meetings of members shall be held at such place, either within or without New Mexico as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in New Mexico.

B. An annual meeting of the members shall be held at such time as may be provided in the bylaws. If the annual meeting is not held within any thirteen-month period, the district court may, on the application of any member, order a meeting to be held. However, failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

C. Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

Section 3.1. Place of Meetings. Meetings of the members shall either be held electronically (in the manner specified by the Secretary), or held at the principal office of the foundation, or any other place (within or outside the State of ~~New Mexico~~New Mexico and within or outside the United States) as designated in the notice of the meeting.

Section 3.2. Annual Meeting. A meeting of the members shall be held annually at such time as the Board of Trustees may determine (which shall be, in the case of the first annual meeting, not more than thirteen (13) months after the organization of the foundation and, in the case of all other meetings, not more than thirteen (13) months after the date of the last annual meeting), at which annual meeting the members shall elect a Board of Trustees and transact other proper business.

Section 3.3. Special Meetings. Special meetings of the members shall be held when directed by the Chairman, President or the Board of Trustees, or when requested in writing by not less than ten percent (10%) of all members entitled to vote at the meeting. The call for the meeting shall be issued by the Secretary, unless the Chairman, President, Board of Trustees or members requesting the meeting shall designate another person to do so.

53-8-14. Notice of members' meetings; waiver.

A. Unless otherwise provided in the articles of incorporation or the bylaws, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at the meeting. If mailed, the notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

B. Attendance at any meeting by a member shall constitute a waiver of notice of the meeting, except where a member attends a meeting for the expressed purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 3.4. Notice. Written notice stating the place, date and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally, **electronically by electronic mail**, or by first class mail, by or at the direction of the Chairman, President, the Secretary, or the officer or persons calling the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his or her address as it appears in the membership records of the foundation, with postage thereon prepaid.

Notwithstanding the above paragraph, the foundation shall not be required to give notice of a members' meeting to any member to whom notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such member during the period between such two consecutive annual meetings, have been mailed under the procedures outlined above and have been returned undeliverable. Any action or meeting which shall be taken or held without notice to such member shall have the same force and effect as if such notice had been duly given. If any such member delivers to the foundation a written notice setting forth his or her then current address, the requirement that notice be given to such member shall be reinstated.

Section 3.5. Notice of Adjourned Meetings. When a meeting is adjourned to another time or place, the foundation shall not be required to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken. At the adjourned meeting, any business may be transacted that might have been transacted at the original meeting. If, however, the adjournment is for more than thirty (30) days, or if after the adjournment the Board of Trustees fixes a new record date for the adjourned meeting, a notice of the adjourned meeting

shall be given as provided in Section 3.4 above, to each member of record on the new record date entitled to vote at such meeting.

Section 3.6. Waiver of Notice. Whenever notice is required to be given to any member, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be the equivalent to the giving of such notice. Attendance by a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of any regular or special meeting of the members need be specified in the written waiver of notice.

Section 3.7. Fixing Record Date.

(a) For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, the Board of Trustees may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Trustees, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Trustees, the record date for determining members entitled to notice of or to vote at a meeting of members shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of members of record entitled to notice of or to vote at a meeting of members shall apply to any adjournment of the meeting; provided, however, that the Board of Trustees may fix a new record date for the adjourned meeting.

(b) For purposes of determining the members entitled to consent to corporate action in writing without a meeting, the Board of Trustees may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Trustees, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Trustees. If no record date has been fixed by the Board of Trustees, the record date for determining members entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Trustees is required by the laws of the State of ~~New Mexico~~New Mexico, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the foundation by delivery to its registered office in the State of ~~New Mexico~~New Mexico, its principal place of business or an officer or agent of the foundation having custody of the books in which proceedings of meetings of members are recorded. Delivery made to a foundation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Trustees and prior action by the Board of Trustees is required by the law of the State of ~~New Mexico~~New Mexico, the record date for determining members entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Trustees adopts the resolution taking such prior action.

(c) For purposes of determining the members entitled to exercise any rights, or for the purpose of any other lawful action, the Board of Trustees may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining members for any such purpose shall be at the close of business on the day on which the Board of Trustees adopts the resolution relating thereto.

Section 3.8. Record of Members Having Voting Rights. The officer or agent having charge of the membership records of the foundation shall prepare and make, at least ten (10) days before each

meeting of members, a complete list of the members entitled to vote at such meeting, arranged in alphabetical order, and showing the name, address, telephone number, and electronic mail address of each member. For a period of ten (10) days prior to such meeting, the list shall be open to the examination of any member, for any purpose germane to the meeting. This list may be accessed ~~electronically~~electronically, or, in the case of a non-electronic meeting, it may be accessed during ordinary business hours, either at a place within the city where such meeting is to be held, which place shall be specified in the notice of the meeting, or if not so specified, at the place where such meeting is to be held. The list shall also be produced and kept open at the time and place of the meeting and shall be subject to inspection by any member at any time during the meeting. Upon the willful neglect or refusal of the Trustees to produce such a list at any meeting for the election of Trustees, such Trustees shall be ineligible for election to any office at such meeting.

53-8-16. Quorum.

The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast on the matter to be voted upon represented in person or by proxy shall constitute a quorum. A majority of the votes entitled to be cast on a matter to be voted upon by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption thereof unless a greater proportion is required by the Nonprofit Corporation Act [[Chapter 53, Article 8](#) NMSA 1978], the articles of incorporation or the bylaws.

Section 3.9. Member Quorum. Except as otherwise required by law, by the Certificate of Incorporation or by these Bylaws, one-third (1/3) of the members entitled to vote, represented in person or represented by proxy, shall constitute a quorum at a meeting of members. When a specified item of business is required to be voted on by a class of members (if the members are divided into classes), one third (1/3) of such class of members, represented in person or represented by proxy, shall constitute a quorum for the transaction of such item of business by that class of members. ~~the Certificate of Incorporation or these Bylaws. New Mexico or by the Certificate of Incorporation or by these Bylaws. The Trustees shall be elected by a plurality of the votes of the members present in person or represented by proxy at the meeting and entitled to vote on the election of Trustees. Where a separate vote by class of members is required, the affirmative vote of a plurality of members of such class represented at the meeting shall be the act of such class unless the vote of a greater number is required by the law of the State of New Mexico. If a quorum is present, the affirmative vote of a majority of the members represented at the meeting and entitled to vote on the subject matter shall be the act of the members, unless the vote of a greater number or voting by class is required by the law of the State of~~

After a quorum has been established at a members' meeting, the subsequent withdrawal of members, so as to reduce the number of members in person or represented by proxy entitled to vote at the meeting below the number required for a quorum, shall not affect the validity of any action taken at the meeting or any adjournment thereof.

After a quorum has been established at a members' meeting, the subsequent admission of new members, so as to increase the number of members required for a quorum above the number of members present in person or represented by proxy entitled to vote at the meeting, shall not affect the validity of any action taken at the meeting or any adjournment thereof.

53-8-15. Voting.

A. The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

B. A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

C. The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of candidates.

D. If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

Section 3.10. Voting. Each member (~~except emeritus members~~) shall be entitled to one vote on each matter submitted to a vote at a meeting of the members, except as may otherwise be provided in the law of the State of ~~New Mexico~~New Mexico.

A member may vote either in person or by proxy executed in writing by the member or his or her duly authorized attorney-in-fact.

At any regular or special meeting as provided in Section 3.3, any question may be voted upon in the manner and style deemed appropriate by the Secretary of the organization or chairman of the meeting.

All votes by the membership shall be cast in the manner specified by the Secretary.

Section 3.11. Proxies. Every member entitled to vote at a meeting of members or to express consent or dissent to corporate action in writing without a meeting, or a member's duly authorized attorney-in-fact, may authorize another person or persons to act for him/her by proxy.

Every proxy must be signed by the member or his or her attorney-in-fact. No proxy shall be valid after three (3) years from its date, unless otherwise provided in the proxy. All proxies shall be revocable.

Section 3.12. Action by Members Without a Meeting. Any action required to be taken or which may be taken at any annual or special meeting of members of the foundation, may be taken without a meeting, without prior notice and without a vote, if a written consent setting forth the action so taken shall be signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted; provided, however, that no written consent shall be effective unless such consent (i) bears

the date of signature by each member signing such consent and (ii) is delivered to the foundation within sixty (60) days of the date on which the earliest consent was delivered to the foundation. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those members who have not consented in writing.

4. Article IV

Members

53-8-11. Members.

A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein.

~~Section 4.1. Member Classes. There shall be one class of members, hereinafter referred to as full members. References in these Bylaws to a "member" or to the "members" of the foundation shall not include any emeritus member unless explicitly provided otherwise. There are two classes of members of the foundation, denoted as nominated members and emeritus members.~~

~~Section 4.2. Nominated Members. To be eligible for membership as a nominated member, a person or entity must be nominated by a current member of the foundation.~~

~~Section 4.2. Full Members. To be eligible for membership as a full member, a person must hold full developer privileges and remain in good standing with the project for a probationary period of no less than one calendar year. If, during the probationary period, the person resigns from the project or has his or her developer privileges revoked, the probationary period shall be suspended. If, after the revocation of developer privileges or resignation from the project, the person regains developer status, the probationary period shall resume, taking into account the time elapsed prior to the revocation or resignation.~~

~~This requirement shall not apply to full members who resign from the project or are subject to disciplinary action resulting in revocation of developer privileges, and subsequently regain developer status.~~

~~Section 4.3. Admission of Members. must be included in a notice to the members, if any, of the foundation at least ten (10) days prior to any vote on the applicant's admission, which notice may be by electronic means and the content of the membership application The nomination, if applicable, A member must complete a membership application in such form as shall be adopted by the Board of Trustees from time to time. The initial members of the foundation shall be admitted upon the affirmative vote of the Board of Trustees of the Foundation at the initial meeting of the Board of Trustees. Thereafter, members of the foundation shall be admitted as members of the foundation only by a majority vote of the existing members of the foundation. automatically provided that the requirements set forth in Section 4.2 are met. References in these Bylaws to a "member" or to the "members" of the foundation shall not include any emeritus member unless explicitly provided otherwise. Section 4.4. Emeritus Members. An emeritus member is a former member whose~~

~~membership has been suspended and converted to emeritus status, either voluntarily or by action of the members, such that all membership rights of the emeritus member, including the right to vote and be counted for purposes of quorum, are suspended and terminated until the emeritus member's membership is reinstated by subsequent action of the members.~~

~~Upon the effective date of conversion of the membership of any member to emeritus status, the membership, including all related voting rights, of such member shall be suspended, except that such emeritus member shall be entitled to attend (but not vote) at meetings of the members, and the officers of the foundation shall attempt, in good faith, to continue to deliver notices of meetings of the members of the foundation to such emeritus member.~~

~~Section 4.5. Voluntary Conversion of Membership to Emeritus Status. Members may convert their membership to emeritus status at any time upon ten (10) days' written, signed notice delivered to an officer of the foundation.~~

~~Section 4.6. Involuntary Conversion of Membership to Emeritus Status. Upon an affirmative vote of a two-thirds majority of the members of the foundation, the membership of a member shall be converted into an emeritus membership.~~

~~Section 4.7. Reinstatement of Membership of Emeritus Members. Upon receipt of a written request and a new membership application from an emeritus member and upon an affirmative vote of a majority of the members of the foundation approving such membership application, such emeritus member membership shall be reinstated as a full member of the foundation, and shall be entitled to exercise all rights as a member of the foundation, including all related voting rights.~~

Section 4.8. Voluntary Withdrawal from Membership. Members ~~(including emeritus members)~~ may withdraw from membership in the foundation at any time upon ten (10) days' written, signed notice delivered to an officer of the foundation, which notice may be by cryptographically signed electronic mail with a valid signature. ~~A valid, signed electronic mail will suffice.~~

Section 4.9. Termination from Membership. No current member of the foundation who is a developer in good standing may have his, ~~or~~ her ~~or its~~ membership terminated except by an affirmative vote of a two-thirds majority of the members of the foundation. Members of the foundation who resign from the project or are subject to disciplinary action resulting in revocation of developer privileges shall retain their membership status for an extension period of no longer than three months, at the end of which period their membership shall be terminated automatically, unless the Board of Trustees recommends that the membership be extended for such length of time as the Board deems fair and just.

Section 4.10. Effect of Withdrawal or Termination of Membership. Upon any withdrawal or termination of the membership of any member, the membership, including all related voting rights, of such member shall be terminated. After a withdrawal or termination of the membership of any member, ~~or a conversion of the membership of any member to emeritus status,~~ such member may reapply for membership in accordance with Section 4.1 of these Bylaws.

5. Article V

53-8-17. Board of directors.

The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of New Mexico or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

Trustees

Section 5.1. Powers. The business and affairs of the foundation shall be managed by or under the direction of the Board of Trustees, the "Trustees", which may exercise all such powers of the foundation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws specifically reserved to the members.

Section 5.2. Qualification. Trustees need not be residents of ~~New Mexico~~New Mexico or of the United States, but they must be members of the foundation.

Section 5.3. Compensation. The Board of Trustees shall have authority to fix the compensation of Trustees unless otherwise provided in the Certificate of Incorporation. The total amount used to compensate trustees shall be published each year.

53-8-18. Number and election of directors.

A. The number of directors of a corporation shall be not less than three. Subject to that limitation, the number of directors shall be fixed by, or determined in the manner provided in, the articles of incorporation or the bylaws. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. If the number of directors is not fixed by, or determined in a manner provided in, the articles of incorporation or the bylaws, the number shall be the same as that stated in the articles of incorporation.

B. The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

C. Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified.

D. A director may be removed from office pursuant to any procedure provided in the articles of

incorporation or the bylaws.

Section 5.4. Number. The foundation shall initially have ~~thirteen (13)~~five (5) Trustees. Thereafter, the number of Trustees shall be fixed by the members at each annual meeting of members. The initial Trustees who shall hold office until their successors shall take office, are as follows:

Michael Cummings <address>

Chris Gianelloni <address>

Grant Goodyear <address>

Renat Lumpau <address>

Paul de Vrieze <address>

Section 5.5. Election and Term. Each person named in the Certificate of Incorporation or elected by the incorporator(s) at the organization meeting, as the case may be, as a member of the initial Board of Trustees shall hold office until the first annual meeting of members and until his or her successor shall have been elected and qualified or until his or her earlier resignation, removal or death.

At the first annual meeting of members and at each annual meeting thereafter, the members shall elect Trustees to hold office until the next succeeding annual meeting. Each director shall hold office for the term for which he or she is elected and until his or her successor shall have been elected and qualified or until his or her earlier resignation, removal or death.

Section 5.6. Resignation and Removal of Trustees. A director may resign at any time upon written request to the foundation. Furthermore, any director or the entire Board of Trustees may be removed, with or without cause, by a vote of the majority of the members entitled to vote for the election of Trustees or as otherwise provided in the General Foundation Law of the State of ~~New Mexico~~New Mexico.

53-8-19. Vacancy.

A. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.

B. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

C. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors.

Section 5.7. Vacancies. Any vacancy occurring in the Board of Trustees, including any vacancy created by reason of an increase in the authorized number of Trustees, may be filled by the affirmative vote of a majority of the remaining Trustees though less than a quorum of the Board of Trustees or by a sole

remaining director. If there is more than one class of members, vacancies of trusteeships elected by such class may be filled by a majority of the Trustees elected by such class or by a sole remaining director. A director elected to fill a vacancy shall hold office only until the next election of Trustees by the members.

53-8-20. Quorum of directors.

A. A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the Nonprofit Corporation Act [[Chapter 53, Article 8](#) NMSA 1978], the articles of incorporation or the bylaws.

B. A quorum, once attained at a meeting, shall be deemed to continue until adjournment, notwithstanding the voluntary withdrawal of enough directors to leave less than a quorum

Section 5.8. Quorum and Voting. A majority of the number of Trustees fixed in accordance with these Bylaws shall constitute a quorum for the transaction of business. The vote of a majority of the Trustees present at a meeting at which a quorum is present shall be the act of the Board of Trustees.

Section 5.9. Executive and Other Committees. The Board of Trustees, by resolution adopted by a majority of the full Board of Trustees, may designate an Executive Committee from among its members and such other committees consisting of at least one director as determined by the Board of Trustees from time to time. Each committee, to the extent provided in such authorizing resolution, shall have and may exercise all the power and authority of the Board of Trustees in the management of the business and affairs of the foundation, as limited by the laws of the State of ~~New Mexieo~~New Mexico.

The Board of Trustees, by resolution adopted in accordance with this section, may designate one or more Trustees as alternate members of any such committee, who may act in the place and stead of any absent or disqualified member or members at any meeting of such committee. In the absence or disqualification of any member of any such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the Board of Trustees to act at the meeting in the place of any such absent or disqualified member.

53-8-22. Directors' meetings.

Meetings of the board of directors, regular or special, may be held either within or without New Mexico and upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of the meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of the meeting

unless required by the bylaws. Except as otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated thereby may participate in a meeting of the board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

Section 5.10. Place of Meetings. Regular and special meetings of the Board of Trustees may be held in person or electronically, within or outside the State of ~~New Mexico~~New Mexico and within or outside the United States.

Section 5.11. Time, Notice and Call of Meetings. Regular meetings of the Board of Trustees shall be held immediately following the annual meeting of members each year and at such times thereafter as the Board of Trustees may fix. No notice of regular Trustees' meetings shall be required.

Special meetings of the Board of Trustees shall be held at such times as called by the Chairman of the Board, the President of the foundation, or any two (2) Trustees. Written notice of the time and place of special meetings of the Board of Trustees shall be given to each director by either personal delivery, telegram, cablegram, ~~or~~ telefax, or electronic mail at least two (2) days before the meeting, or by notice mailed (~~electronically or otherwise~~) to each director at least five (5) days before the meeting.

Notice of a meeting of the Board of Trustees need not be given to any director who signs a waiver of notice, either before or after the meeting. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting and waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or conveyed, except when a director states, at the beginning of the meeting, any objection to the transaction of business because the meeting is not lawfully called or convened.

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

53-8-97. Action by members or directors without a meeting.

A. Any action required by the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the directors, as the case may be.

B. The consent as provided for in Subsection A of this section shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the corporation commission [public regulation commission] under the Nonprofit Corporation Act.

Section 5.12. Action Without a Meeting. Any action required or permitted to be taken at a meeting of

the Board of Trustees or of any committee thereof may be taken without a meeting if all the members of the board or committee, as the case may be, consent thereto in writing, and such writing is filed with the minutes of the proceedings of the board or committee. Such consent shall have the same effect as a unanimous vote.

Section 5.13. Director Conflicts of Interest. No contract or other transaction between the foundation and one or more of its Trustees or between the foundation and any other foundation, partnership, association or other organization in which one or more of the Trustees of the foundation are Trustees or officers or are financially interested, shall be void or voidable solely because of such relationship or interest or solely because such director or Trustees are present at or participate in the meeting of the Board of Trustees or a committee thereof which authorizes, approves or ratifies such contract or transaction or solely because his or her or their votes are counted for such purpose, if:

A. The material facts as to the director's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Trustees or committee, and the Board of Trustees or committee in good faith authorizes, approves or ratifies the contract or transaction by the affirmative votes of a majority of the disinterested Trustees, even though the disinterested Trustees be less than a quorum; or

B. The material facts as to their relationship or interest and as to the contract or transaction are disclosed or known to the members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of such members; or

C. The contract or transaction is fair as to the foundation at the time it is authorized, approved or ratified by the Board of Trustees, a committee of the Board of Trustees or the members.

Common or interested Trustees may be counted in determining the presence of a quorum at a meeting of the Board of Trustees or a committee thereof which authorizes, approves or ratifies such contract or transaction.

6. Article VI

53-8-23. Officers.

A. Every corporation organized under the Nonprofit Corporation Act [[Chapter 53, Article 8](#) NMSA 1978] shall have officers, with titles and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws, and as many officers as may be necessary to enable the corporation to sign instruments required under the Nonprofit Corporation Act. One of the officers shall have the duty to record the proceedings of the meetings of the members and directors in a book to be kept for that purpose. In the absence of any provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person.

B. The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

C. The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws.

Officers

Section 6.1. Officers. The officers of the foundation shall consist of a President, a Secretary and a Treasurer, each of whom shall be elected by the Board of Trustees. A Chairman of the Board, one or more Vice Chairmen, one or more Vice Presidents, and such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the Board of Trustees from time to time. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 6.2. Duties. The officers of the foundation shall have the following duties:

53-8-25.1. Duties of directors.

A director shall perform his duties as a director including his duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director believes to be in or not opposed to the best interests of the corporation and with such care as an ordinarily prudent person would use under similar circumstances in a like position. In performing such duties, a director shall be entitled to rely on factual information, opinions, reports or statements including financial statements and other financial data in each case prepared or presented by:

- A. one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- B. counsel, public accountants or other persons as to matters which the director reasonably believes to be within such persons' professional or expert competence; or
- C. a committee of the board upon which the director does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws as to matters within its designated authority, which committee the director reasonably believes to merit confidence, but the director shall not be considered to be acting in good faith if the director has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

A. Chairman of the Board. The Chairman of the Board, if one is elected, shall preside at all meetings of the Board of Trustees and members and shall have such other duties and authority as may be conferred by the Board of Trustees.

B. Vice Chairman. The Vice Chairman, if one is elected, shall, in the absence or disability of the Chairman of the Board, perform the duties and exercise the powers of the Chairman of the Board. The Vice Chairman shall also perform whatever duties and have whatever powers the Board of Trustees may from time to time assign him/her. If more than one Vice Chairman is elected and the Chairman is absent or becomes disabled, the Board of Trustees shall choose one Vice Chairman to perform the duties and exercise the powers of the Chairman.

C. President. The President shall be the chief executive officer of the foundation and shall have general and active management of the business and affairs of the foundation (~~other than the management of~~

~~projects managed by a Project Management Committee),~~ subject to the direction of the Board of Trustees. If a Chairman of the Board is not elected, the President shall preside at all meetings of the Board of Trustees and members.

D. Vice President. The Vice President, if one is elected, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. He or she also shall perform whatever duties and have whatever powers the Board of Trustees may from time to time assign him or her. If more than one Vice President is elected, one thereof shall be designated as Executive Vice President and shall, in the absence or disability of the President, perform the duties and exercise the powers of the President and each other Vice President shall only perform whatever duties and have whatever powers the Board of Trustees may from time to time assign him or her.

E. Secretary and Assistant Secretary. The Secretary shall keep accurate records of the acts and proceedings of all meetings of the members and Trustees. The Secretary shall give all notices required by law and by these Bylaws. In addition, the Secretary shall have general charge of the corporate books and records and of the corporate seal, and he or she shall affix, or attest the affixing of, the corporate seal to any lawfully executed instrument requiring it. The Secretary shall have general charge of the membership records of the foundation and shall keep, at the registered or principal office of the foundation, a record of the members showing the name, address, telephone number, and electronic mail address of each member. The Secretary shall sign such instruments as may require his or her signature and, in general, shall perform all duties as may be assigned to him or her from time to time by the Chairman, the President or the Board of Trustees. The Assistant Secretary, if one is appointed, shall render assistance to the Secretary in all the responsibilities described above.

F. Treasurer and Assistant Treasurer. The Treasurer shall have custody of all corporate funds and financial records, shall keep full and accurate accounts of receipts and disbursements and render accounts thereof at the annual meetings of members, and shall perform such other duties as may be prescribed by the Chairman, the President or the Board of Trustees. The Assistant Treasurer, if one is appointed, shall render assistance to the Treasurer in all of the responsibilities described above.

~~Section 6.3. Project Management Committees. In addition to the officers of the foundation, the Board of Trustees may, by resolution, establish one or more Project Management Committees consisting of at least one officer of the foundation, who shall be designated chairman of such committee, and may include one or more other members of the foundation. Unless elected or appointed as an officer in accordance with Sections 6.1 and 6.4 of these Bylaws, a member of a Project Management Committee shall not be deemed an officer of the foundation.~~

~~Each Project Management Committee shall be responsible for the active management of one or more projects identified by resolution of the Board of Trustees which may include, without limitation, the creation or maintenance of "open-source" software for distribution to the public at no charge. Subject to the direction of the Board of Trustees, the chairman of each Project Management Committee shall be primarily responsible for project(s) managed by such committee, and he or she shall establish rules and procedures for the day to day management of project(s) for which the committee is responsible. Note, however, that no committee of the Gentoo Foundation may govern the development of Gentoo (the operating system).~~

~~The Board of Trustees of the foundation may, by resolution, terminate a Project Management Committee at any time.~~

Section 6.4. Election and Term. The officers of the foundation and the members of each existing

Project Management Committee shall be appointed by the Board of Trustees or appointed by an officer empowered by the Board to make such appointment. Such appointment by the Board of Trustees may be made at any regular or special meeting of the Board. Each officer shall hold office ~~and each member of a Project Management Committee shall serve on such committee~~ for a period of one year or until his or her successor is elected and qualified or until his or her earlier resignation or removal.

53-8-24. Removal of officers.

Any officer elected or appointed may be removed by the persons authorized to elect or appoint the officer whenever, in their judgment, the best interest of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 6.5. Removal of Officers. Any officer or agent ~~and any member of a Project Management Committee~~ elected or appointed by the Board of Trustees may be removed by the Board whenever, in its judgment, the best interests of the foundation will be served thereby.

Section 6.6. Vacancies. Any vacancy, however occurring, in any office ~~or any Project Management Committee~~ may be filled by the Board of Trustees.

Section 6.7. Compensation. The compensation, if any, of all officers of the foundation ~~and of all members of each existing Project Management Committee~~ shall be fixed by the Board of Trustees and may be changed from time to time by a majority vote of the Board of Trustees. The fact that an officer is also a director shall not preclude such person from receiving compensation as either a director or officer, nor shall it affect the validity of any resolution by the Board of Trustees fixing such compensation. The President shall have authority to fix the salaries, if any, of all employees of the foundation, other than officers elected or appointed by the Board of Trustees ~~and members of Project Management Committees.~~

7. Article VII

53-8-27. Books and records.

Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors. Each corporation shall keep at its registered office or principal office in New Mexico a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.

Books and Records

Section 7.1. Books and Records. The foundation shall keep correct and complete books and records of accounts and shall keep minutes of the proceedings of its members, Board of Trustees and committees of Trustees.

The foundation shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, or in the custody of the Secretary -a record of the name, address, telephone number, and electronic mail address of each member, together with the date of any withdrawal or termination of such member's membership, ~~or any conversion of such member's membership to emeritus status.~~

Each member shall be responsible for notifying the foundation of changes to such member's address, telephone number, or electronic mail address.

Any books, records and minutes may be in written form or in any other form capable of being converted into clearly legible written form within a reasonable time.

Section 7.2. Members' Inspection Rights. Any person who is a member, upon written demand under oath stating the purpose thereof, shall have the right to examine, in person or by agent or attorney, at any time during the foundation's usual hours for business, for any proper purpose as determined under the law of the State of ~~New Mexico~~ New Mexico, the foundation's membership records and its other books and records and to make copies or extracts therefrom.

8. Article VIII

Nonprofit Status

The foundation is organized and shall be operated as a not-for-profit membership foundation organized under ~~New Mexico~~ New Mexico law. If the Board of Trustees of the foundation elects to seek and obtains an exemption for the foundation from federal taxation pursuant to Section 501(a) of the Internal Revenue Code, as amended (the "IRC"), and until such time, if ever, that such exemption is denied or lost, the foundation shall not be empowered to engage directly or indirectly in any activity which the foundation believes would be likely to invalidate its status as an organization exempt from federal taxation under Section 501(a) of the IRC as an organization described in Section 501(c) of the IRC.

9. Article IX

53-8-5. General powers.

C. have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in other manner reproduced, but failure to have or to affix a corporate seal does not affect the validity of any instrument or any action taken in pursuance thereof or in reliance thereon;

Corporate Seal

The Board of Trustees shall provide a corporate seal which shall have the name of the foundation inscribed thereon, and may be a facsimile, engraved, printed, or an impression seal.

10. Article X

Amendment

These Bylaws may be altered, amended or repealed by the Board of Trustees or by the members, and new Bylaws may be adopted by the Board of Trustees or by the members. No alteration, amendment or repeal of these Bylaws shall be effective unless and until the foundation attempts, in good faith, to give

notice to the members of the foundation of such alteration, amendment or repeal at least fifteen (15) days prior to the effective date of such alteration, amendment or repeal, which notice may be by electronic means.

11. Article XI

53-8-25.2. Liability of directors.

No director of the corporation shall be personally liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director unless:

- A. the director has breached or failed to perform the duties of the director's office in compliance with [Section 53-8-25.1](#) NMSA 1978; and
- B. the breach or failure to perform constitutes willful misconduct or recklessness.

The provisions of this section shall, however, only eliminate the liability of a director for action taken as a director or any failure to take action as a director at meetings of the board of directors or of a committee of the board of directors or by virtue of action of the directors without a meeting pursuant to [Section 53-8-97](#) NMSA 1978, on or after the date when the provisions of this section become effective.

Limits on liability of Trustees

To the fullest extent permitted by the law of the State of ~~New Mexico~~ New Mexico, as the same exists or may hereafter be amended, a director of the foundation shall not be personally liable to the foundation or its members for monetary damages for breach of fiduciary duty as a director.

12. Article XII

53-8-26. Indemnification of officers and directors.

Each corporation shall have the power to indemnify any director or officer or former director or officer of the corporation against reasonable expenses, costs, and attorneys' fees actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been a director or officer. The indemnification may include any amounts paid to satisfy a judgment or to compromise or settle a claim. The director or officer shall not be indemnified if he shall be adjudged to be liable on the basis that he has breached or failed to perform the duties of his office and the breach or failure to perform constitutes willful misconduct or recklessness. Advance indemnification may be allowed of a director or officer for reasonable expenses to be incurred in connection with the defense of the action, suit or proceeding provided that the director or officer must reimburse the corporation if it is subsequently determined that the director or officer was not entitled to indemnification. Each corporation may make any other indemnification as authorized by the articles of incorporation or bylaws or by a resolution

adopted after notice by the members entitled to vote. As used in this section "director" means any person who is or was a director of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of any foreign or domestic corporation or nonprofit corporation, cooperative, partnership, joint venture, trust, other incorporated or unincorporated enterprise or employee benefit plan or trust.

53-8-25. Liability.

The directors, officers, employees and members of the corporation shall not be personally liable for the corporation's obligations.

Indemnification of officers and Trustees

Section 12.1. Right to Indemnification. Each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the foundation), by reason of the fact that he or she is or was a director, officer or member of the foundation, or is or was serving at the request of the foundation as a director, officer, employee, or agent of another foundation, partnership, joint venture, trust, or other enterprise, shall be entitled to indemnification against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement to the fullest extent now or hereafter permitted by applicable law as long as such person acted in good faith and in a manner that such person reasonably believed to be in or not be opposed to the best interests of the foundation; provided, however, that the foundation shall indemnify any such person seeking indemnity in connection with an action, suit or proceeding (or part thereof) initiated by such person only if such action, suit or proceeding (or part thereof) was authorized by the Board of Trustees.

Section 12.2. Advance Payment of Expenses. Expenses (including reasonable attorneys' fees) incurred by any person who is or was an officer, director or member of the foundation, or who is or was serving at the request of the foundation as an officer or director of another foundation, partnership, joint venture, trust or other enterprise, in defending any civil, criminal, administrative or investigative action, suit or proceeding, shall be paid by the foundation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it is ultimately determined that he or she is not entitled under applicable law to be indemnified by the foundation.

Section 12.3. Right of Claimant to Bring Suit. If a claim under this Article is not paid in full by the foundation within ninety (90) days after a written claim has been received by the foundation, the claimant may at any time thereafter bring suit against the foundation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any action or proceeding in advance of its final disposition where the required undertaking has been tendered to the foundation unless such action is based on the claimant having committed an act involving moral turpitude) that the claimant has not met the standards of conduct which make indemnification permissible under the General Foundation Law of the State of ~~New Mexieo~~New Mexico, but the burden of proving such defense shall be on the foundation. Neither the failure of the foundation (including its Board of Trustees, independent legal counsel, or its members) to have made a determination prior to the commencement of such action that

indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the law of the State of ~~New Mexieo~~New Mexico, nor an actual determination by the foundation (including its Board of Trustees, independent legal counsel, or its members) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

Section 12.4. Contract Rights. The provisions of this Article shall be a contract between the foundation and each director, officer or member to which this Article applies. No repeal or modification of these Bylaws shall invalidate or detract from any right or obligation with respect to any state of facts existing prior to the time of such repeal or modification.

Section 12.5. Rights Non-exclusive. The indemnification and advancement of expenses provided by or granted pursuant to this Article shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of members or disinterested Trustees or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

Section 12.6. Insurance. The foundation may purchase and maintain insurance on behalf of any person who is or was a director, officer, member, employee or agent of the foundation, or is or was serving at the request of the foundation as a director, officer, employee or agent of another foundation, partnership, joint venture, trust or other enterprise 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 foundation would have the power to indemnify him or her against such liability under the provisions of this Article or of applicable law.

Section 12.7. Definitions. For purposes of this Article, references to "the foundation" shall include, in addition to the resulting foundation, any constituent foundation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its Trustees, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent foundation, or is or was serving at the request of such constituent foundation as a director, officer, employee or agent of another foundation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article with respect to the resulting or surviving foundation as he or she would have with respect to such constituent foundation if its separate existence had continued, and references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the foundation" shall include any service as a director, officer, employee or agent of the foundation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the foundation" as referred to in this Article.

Section 12.8. Continued Coverage. The indemnification and advancement of expenses provided by, or granted pursuant to this Article shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer or member and shall inure to the benefit of the heirs, executors and administrators of such person.

13. Article XIII

General provisions

Section 13.1. Checks. All checks or demands for money and notes of the foundation shall be signed by such officer or officers or such other person or persons as the Board of Trustees may from time to time designate.

Section 13.2. Fiscal Year. The fiscal year of the foundation shall be fixed by resolution of the Board of Trustees.

Section 13.3. Loans. No loans shall be contracted on behalf of the foundation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Trustees. Such authority may be general or confined to specific instances.

Section 13.4. Deposits. All funds of the foundation not otherwise employed shall be deposited from time to time to the credit of the foundation in such depositories as the Board of Trustees shall direct.

Section 13.5. Contracts. The Board of Trustees may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument on behalf of the foundation, and such authority may be general or confined to specific instances.

Section 13.6. Counterpart Execution: Facsimile Execution. Any document requiring the signature of the Trustees and/or members may be executed in any number of counterparts with the same effect as if all of the required signatories had signed the same document. Such executions may be transmitted to the foundation and/or the other Trustees and/or members by facsimile and such facsimile execution shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile executions or a combination, shall be construed together and shall constitute one and the same agreement.