

07-14-2004

Form PTO-1594 (Rev. 06/04)
OMB Collection 0651-0027 (exp. 6/30/200)

U.S. DEPARTMENT OF COMMERCE
United States Patent and Trademark Office



RI
102790500

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

Open Source Development Labs, Inc.

- Individual(s)
- General Partnership
- Corporation-State
- Association
- Limited Partnership

Other non-profit mutual benefit corporation
Citizenship (see guidelines) California

Execution Date(s) 04/01/2003

Additional names of conveying parties attached? Yes No

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: Open Source Development Labs, Inc.

Internal

Address: _____

Street Address: 12725 SW Millikan Way, Suite 400

City: Beaverton

State: OR

Country: USA Zip: 97005

Association Citizenship _____

General Partnership Citizenship _____

Limited Partnership Citizenship _____

Corporation Citizenship _____

Other non-profit mutual benefit corporation
Citizenship Oregon

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other _____
- Merger
- Change of Name

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2698472 and 2743186

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

OSDL and OSDL AND DESIGN

5. Name & address of party to whom correspondence concerning document should be mailed:

Name: Natella V. Svistunova

Internal Address: Ater Wynne LLP

Street Address: 222 SW Columbia, Suite 1800

City: Portland

State: OR Zip: 97201

Phone Number: 503-226-8438

Fax Number: 503-226-0079

Email Address: nvs@aterwynne.com

6. Total number of applications and registrations involved:

2

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 65.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number 01-270
Authorized User Name Cheryl Landis

9. Signature: Natella Svistunova

Natella V. Svistunova

Signature

July 9, 2004
Date

Total number of pages including cover sheet, attachments, and document: 38

Name of Person Signing

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

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Phone: (503) 986-2200
 Fax: (503) 378-4381

Articles of Merger

Secretary of State
 Corporation Division
 255 Capitol St. NE, Suite 151
 Salem, OR 97310-1327
 FilingInOregon.com

- Check the appropriate box below:
- MULTI ENTITY MERGER
(Complete only 1, 2, 3, 4, 10, 11)
 - FOR PARENT AND 90% OWNED SUBSIDIARY
WITHOUT SHAREHOLDER APPROVAL
(Complete only 5, 6, 7, 8, 9, 10, 11)

FILED
MAR 21 2003
 OREGON
 SECRETARY OF STATE

SURVIVOR
 REGISTRY NUMBER: 106070-91

In keeping with Oregon Statute 192.410-192.595, the information on the application is public record. We must release this information to all parties upon request and it may be posted on our website. For office use only

Please Type or Print Legibly in Black Ink. Attach Additional Sheet if Necessary.

1) NAMES AND TYPES OF THE ENTITIES PROPOSING TO MERGE

NAME	TYPE	REGISTRY NUMBER
OSDL Oregon, Inc.	mutual benefit	106070-91 (OR)
Open Source Development Labs, Inc. <i>Reg # 285794-80</i>	mutual benefit	2257504 (CA)

2) NAME AND TYPE OF THE SURVIVING ENTITY OSDL Oregon, Inc.

Check here if there is a name change in this plan of merger.

3) A COPY OF THE MERGER PLAN IS ATTACHED. The effective date of the merger shall be 4/1/03.

4) THE PLAN OF MERGER WAS DULY AUTHORIZED AND APPROVED BY EACH ENTITY THAT IS A PARTY TO THE MERGER.

A copy of the vote required by each entity is attached.

FOR PARENT AND 90% OWNED SUBSIDIARY WITHOUT SHAREHOLDER APPROVAL

5) NAME OF PARENT CORPORATION _____

Oregon Registry Number _____

6) NAME OF SUBSIDIARY CORPORATION _____

Oregon Registry Number _____

7) NAME OF SURVIVING CORPORATION _____

8) COPY OF PLAN

A copy of the plan of merger setting forth the manner and basis of converting shares of the subsidiary into shares, obligations, or other securities of the parent corporation or any other corporation or into cash or other property is attached.

9) CHECK THE APPROPRIATE BOX

A copy of the plan of merger or summary was mailed to each shareholder of record of the subsidiary corporation on or before _____ Date

The mailing of a copy of the plan or summary was waived by all outstanding shares.

10) EXECUTION

Printed Name

Signature

Title

Timothy D. Witham

[Signature]

President

11) CONTACT NAME (To resolve questions with this filing.)

Kerry Jantzi, Paralegal

DAYTIME PHONE NUMBER (Include area code.)

(503) 226-1191

FEES

Required Processing Fee - \$20 - Processing Fees are nonrefundable. Please make check payable to "Corporation Division."

NOTE:

Fees may be paid with VISA or MasterCard. The card number and expiration date should be submitted on a separate sheet for your protection.

Attachment to Articles of Merger

Open Source Development Labs, Inc.
(a California mutual benefit corporation)

There are three classes of membership in Open Source Development Labs, Inc.: Founding Members, Sponsoring Members and Contributing Members. All 21 members voted on the merger plan as a single class. One-third (1/3) of the members of each membership class were required to vote in order to constitute a quorum; therefore, the number of votes from each membership class that were required to constitute a quorum were as follows:

Founding Members:	1 (there being 3 members of this class)
Sponsoring Members:	2 (there being 4 members of this class)
Contributing Members:	5 (there being 14 members of this class)

The votes of each membership class of the Company were as follows:

Founding Members:	1 approved; 1 disapproved; 1 did not vote
Sponsoring Members:	4 approved
Contributing Members:	5 approved; 4 disapproved; 5 did not vote

The vote required for approval of the merger plan was a majority of the total votes cast by all members voting as a single class. A quorum having been properly obtained, the merger plan was duly approved by the members of the Company by a vote of 10 members approving and 5 members disapproving, with 6 members not voting.

OSDL Oregon, Inc.
(an Oregon mutual benefit corporation)

There are currently no members of OSDL Oregon, Inc. The sole member of the Board of Directors of OSDL Oregon, Inc. approved the merger plan by written consent.

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger, dated as of November 7, 2002 (this "Agreement"), is by and between Open Source Development Labs, Inc., a California nonprofit mutual benefit corporation (hereinafter called "OSDL California"), and OSDL Oregon, Inc., an Oregon nonprofit mutual benefit corporation (hereinafter called "OSDL Oregon").

WHEREAS:

A. The Boards of Directors of OSDL California and OSDL Oregon have resolved that OSDL California and OSDL Oregon be merged pursuant to the California Corporations Code (the "CCC") and the Oregon Nonprofit Corporation Act (the "ONCA") into a single nonprofit mutual benefit corporation existing under the laws of the State of Oregon, to wit, OSDL Oregon, which shall be the surviving corporation.

B. OSDL California has twenty-one (21) total members in three membership classes, as follows: three (3) Founding Members (the "Founding Members"); four (4) Sponsoring Members (the "Sponsoring Members"); and fourteen (14) Contributing Members (the "Contributing Members" and, collectively with the Founding Members and the Sponsoring Members, the "Current Members"). The Current Members are the only "members" (as such term is defined in Section 5056 of the CCC) of OSDL California as of the date hereof.

C. No membership units of OSDL Oregon have been issued or are outstanding as of the date hereof.

D. The Boards of Directors of OSDL California and OSDL Oregon have approved the merger upon the terms and conditions hereinafter set forth and have approved this Agreement.

E. The Board of Directors of OSDL California has resolved to recommend to the Current Members the approval and adoption of this Agreement and the merger.

NOW, THEREFORE, in consideration of the premises and the mutual agreements, provisions, and covenants herein contained, the parties agree that OSDL California and OSDL Oregon shall, at the Effective Time (as hereinafter defined), be merged into a single nonprofit mutual benefit corporation existing under the laws of the State of Oregon, to wit, OSDL Oregon, which shall be the surviving corporation, and the parties hereto adopt and agree to the following agreements, terms, and conditions relating to the merger and the mode of carrying the same into effect.

ARTICLE I THE MERGER

1.1 The Merger. At the Effective Time, upon the terms and subject to the conditions of this Agreement and in accordance with the applicable provisions of the CCC and the ONCA, OSDL California will be merged with and into OSDL Oregon (the "Merger"). Following the

Merger, OSDL Oregon shall continue as the surviving corporation (the "Surviving Corporation") and the separate corporate existence of OSDL California shall cease.

1.2 Effective Time. Subject to the terms of this Agreement, including satisfaction of the conditions set forth in Article III, below, OSDL California and OSDL Oregon shall cause the Merger to be consummated by filing Articles of Merger with the Secretary of State of the State of Oregon and filing a Certificate of Approval of Agreement of Merger with the Secretary of State of the State of California, together with any such additional documents required by such secretaries of state and in such form as required by, and executed in accordance with, the applicable provisions of the ONCA and the CCC (collectively, the "Merger Filings"). The Merger shall become effective upon filing of the Merger Filings or at such time thereafter as is provided therein (the "Effective Time").

1.3 Effects of the Merger. The Merger shall have the effects set forth in this Agreement, the Merger Filings, and the applicable provisions of the ONCA. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all of the properties, rights, privileges, powers, and franchises of OSDL California shall vest in the Surviving Corporation, and all debts, liabilities, and duties of OSDL California shall become the debts, liabilities, and duties of the Surviving Corporation.

1.4 Articles of Incorporation and Bylaws. Effective immediately following the Effective Time, the articles of incorporation of OSDL Oregon, as amended, in the form attached hereto as Exhibit A, shall remain the articles of incorporation of the Surviving Corporation (the "Articles of Incorporation"). Effective immediately following the Effective Time, the bylaws of OSDL Oregon, in the form attached hereto as Exhibit B, shall remain the bylaws of the Surviving Corporation (the "Bylaws").

1.5 Directors and Officers. The sole director of OSDL Oregon and all of the directors of OSDL California at the Effective Time shall become directors of the Surviving Corporation and shall hold office, in accordance with Section 4.2 below, until their successors are duly elected or appointed and qualified or until their earlier resignation or removal. Specifically, the sole director of OSDL Oregon shall serve as an Additional At-Large Director (as defined in the Bylaws), the directors of OSDL California that were elected by the Founding Members shall serve as the Platinum Directors (as defined in the Bylaws), the directors of OSDL California that were elected by the Sponsoring Members shall serve as the Gold Directors (as defined in the Bylaws), the director elected by the Contributing Member of OSDL California shall serve as an Additional At-Large Director, and directors elected by the board of directors of OSDL California as at-large directors shall serve as At-Large Directors (as defined in the Bylaws). The officers of OSDL California at the Effective Time shall become the officers of the Surviving Corporation and shall hold office in accordance with Section 4.2, below, until their successors are duly elected or appointed and qualified or until their earlier resignation or removal.

1.6 Name of Surviving Corporation; Change of Corporate Name. The name of the Surviving Corporation as of the Effective Date shall be OSDL Oregon, Inc. Promptly after the completion of the Merger, OSDL Oregon shall take all actions necessary or advisable in order to

file Articles of Amendment with the Oregon Secretary of State changing the name of the Surviving Corporation to "Open Source Development Labs, Inc."

ARTICLE II CONVERSION OF MEMBERSHIPS

2.1 Conversion of Memberships. At the Effective Time:

(a) Each Founding Member of OSDL California shall, by virtue of the Merger and without any action on the part of such member, OSDL California, or OSDL Oregon, have its membership in OSDL California converted into a Platinum Sponsor membership in OSDL Oregon and shall become a member of the Platinum Sponsors class, as such class and membership interest are defined in, and with such rights, privileges, and obligations as are set forth in, the Bylaws;

(b) Each Sponsoring Member of OSDL California shall, by virtue of the Merger and without any action on the part of such member, OSDL California, or OSDL Oregon, have its membership in OSDL California converted into a Gold Sponsor membership in OSDL Oregon and shall become a member of the Gold Sponsors class, as such class and membership interest are defined in, and with such rights, privileges, and obligations as are set forth in, the Bylaws; and

(c) Each Contributing Member of OSDL California shall, by virtue of the Merger and without any action on the part of such member, OSDL California, or OSDL Oregon, have its membership in OSDL California converted into a Contributing Member membership in OSDL Oregon and shall become a member of the Contributing Members class, as such class and membership interest are defined in, and with such rights, privileges, and obligations as are set forth in, the Bylaws.

2.2 No Other Rights. At the Effective Time, the membership of each Current Member in OSDL California shall immediately terminate, and no Current Member shall thereafter have any rights in OSDL California or such membership.

ARTICLE III CONDITIONS TO CONSUMMATION OF THE MERGER

3.1 Conditions to Consummation of the Merger. Prior to filing the Merger Filings required by Section 1.2, above, each of the following conditions shall have been fulfilled, and each of OSDL California and OSDL Oregon agree to use their reasonable best efforts to satisfy such conditions as soon as practical following execution of this Agreement:

(a) This Agreement and the Merger shall have been approved and adopted by the Current Members as required by the CCC and OSDL California's articles of incorporation and bylaws, as then in effect.

(b) OSDL Oregon shall have adopted amended and restated bylaws in the form of the Bylaws attached hereto as Exhibit B.

(c) OSDL Oregon shall have received a favorable determination letter from the Internal Revenue Service regarding its tax exempt status under Section 501(c)(6) of the Internal Revenue Code of 1986, as amended.

(d) OSDL California shall have received a tax clearance certificate from the Franchise Tax Board of the State of California.

ARTICLE IV POST-MERGER ACTIONS

4.1 Notification of Current Members; Election to Change Class. Promptly following the Effective Time, the Surviving Corporation shall notify the Current Members of the effectiveness of the Merger (the "Merger Notice"). The Merger Notice shall state the effective date of the Merger and inform Current Members of their right to elect, within a period of ten (10) days following the date of the Merger Notice, to change their membership class and become a member of a class that is different (provided such Current Member is eligible for such class) from the membership class into which such Current Member's OSDL California membership automatically converted pursuant to Section 2.1 above. The Surviving Corporation shall require any Current Member electing to change membership classes to sign a new registration form and membership agreement.

4.2 Election of Directors; Appointment of Officers. Within 30 days following the Effective Time, the Surviving Corporation shall hold special elections to fill all seats on its board of directors in accordance with the Bylaws. Promptly thereafter, the board of directors of the Surviving Corporation shall appoint officers in accordance with the Bylaws.

ARTICLE V MISCELLANEOUS

5.1 Abandonment. This Agreement may be terminated, and the proposed Merger abandoned at any time before the Effective Time, and whether before or after approval of this Agreement by the members of OSDL California, if either the Board of Directors of OSDL California or the Board of Directors of OSDL Oregon duly adopt a resolution abandoning this Agreement and the proposed Merger.

5.2 Counterparts. For the convenience of the parties hereto and to facilitate the filing of this Agreement, any number of counterparts hereof may be executed, and each such counterpart shall be deemed to be an original instrument.

5.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to its conflict of law provisions.

5.4 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement

shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by OSDL California and OSDL Oregon effective as of the date first above written.

Open Source Development Labs, Inc.,
a California nonprofit mutual benefit corporation

By: *Larry Augustin*
Larry Augustin, Secretary (authorized signatory)

OSDL Oregon, Inc.,
an Oregon nonprofit mutual benefit corporation

By: *Timothy D. Witham*
Timothy D. Witham, President

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Exhibit A
to
Agreement and Plan of Merger

Articles of Incorporation of OSDL Oregon, Inc. (as amended)

See attached.

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REEL: 003006 FRAME: 0916

**ARTICLES OF INCORPORATION
OF
OSDL OREGON, INC.
(as amended)**

ARTICLE I

The name of the corporation is OSDL Oregon, Inc.

ARTICLE II

This corporation is a nonprofit mutual benefit corporation, as defined in the Act.

ARTICLE III

This corporation is organized and operated exclusively to engage in any lawful activities, none of which are for profit, within the meaning of Section 501(c)(6) of the Internal Revenue Code of 1986, as amended (the "Code"). The specific purpose of this corporation is to support the creation of a technical and business environment in the computer industry for Open Source software through sponsorship of technical programs. "Open Source" means licensed under a license designated by opensource.org (e.g., GPL, LGPL, BSD, or Artistic).

ARTICLE IV

The address of the initial registered office of the corporation is c/o Ater Wynne LLP, 222 SW Columbia, Suite 1800, Portland, Oregon 97201. The name of the initial registered agent at this address is AW Services, Inc.

ARTICLE V

The name and address of the incorporator are: Diane M. Peters, c/o Ater Wynne LLP, 222 SW Columbia, Suite 1800, Portland, Oregon 97201.

ARTICLE VI

The mailing address of the corporation for notices is c/o AW Services, 222 SW Columbia, Suite 1800, Portland, Oregon 97201.

ARTICLE VII

The corporation shall have members, as that term is defined in the Act.

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ARTICLE VIII

A. **Indemnification.** The corporation shall indemnify to the fullest extent not prohibited by law any person who was or is a party or is threatened to be made a party to any Proceeding against all expenses (including attorney fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with such Proceeding.

B. **Advancement of Expenses.** Expenses incurred by a director or officer of the corporation in defending a Proceeding shall in all cases be paid by the corporation in advance of the final disposition of such Proceeding at the written request of such person, if the person:

1. furnishes the corporation a written affirmation of the person's good faith belief that such person has met the standard of conduct described in the Act or is entitled to be indemnified by the corporation under any other indemnification rights granted by the corporation to such person; and

2. furnishes the corporation a written undertaking to repay such advance to the extent it is ultimately determined by a court that such person is not entitled to be indemnified by the corporation under this Article VIII or under any other indemnification rights granted by the corporation to such person.

Such advances shall be made without regard to the person's ability to repay such advances and without regard to the person's ultimate entitlement to indemnification under this Article VIII or otherwise.

C. **Definition of Proceeding.** The term "Proceeding" shall include any threatened, pending, or completed action, suit, or proceeding, whether brought in the right of the corporation or otherwise and whether of a civil, criminal, administrative, or investigative nature, in which a person may be or may have been involved as a party or otherwise by reason of the fact that the person is or was a director or officer of the corporation or a fiduciary within the meaning of the Employee Retirement Income Security Act of 1974 with respect to any employee benefit plan of the corporation, or is or was serving at the request of the corporation as a director, officer, or fiduciary of an employee benefit plan of another corporation, partnership, joint venture, trust, or other enterprise, whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification or advancement of expenses can be provided under this Article VIII.

D. **Non-Exclusivity and Continuity of Rights.** This Article VIII: (i) shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, agreement, general or specific action of the board of directors, both as to action in the official capacity of the person indemnified and as to action in another capacity while holding office, (ii) shall continue as to a person who has ceased to be a director or officer, (iii) shall inure to the benefit of the heirs, executors, and

administrators of such person, and (iv) shall extend to all claims for indemnification or advancement of expenses made after the adoption of this Article VIII.

E. **Amendments.** Any repeal of this Article VIII shall only be prospective and no repeal or modification hereof shall adversely affect the rights under this Article VIII in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any Proceeding.

ARTICLE IX

No director or uncompensated officer of the corporation shall be personally liable to the corporation for monetary damages for conduct as a director or uncompensated officer; provided that this Article IX shall not eliminate the liability of a director or uncompensated officer for any act or omission for which such elimination of liability is not permitted under the Act. No amendment to the Act that further limits the acts or omissions for which elimination of liability is permitted shall affect the liability of a director or uncompensated officer for any act or omission that occurs prior to the effective date of such amendment.

ARTICLE X

The authority to make, alter, amend or repeal the Bylaws of the corporation is vested in the Board of Directors and may be exercised at any regular or special meeting of the Board of Directors.

ARTICLE XI

Upon the dissolution of the corporation, and after all of the known debts and liabilities of the corporation have been paid or adequately provided for, any remaining net assets of the corporation shall be distributed by the Board of Directors to one or more organizations selected by the Board of Directors that will help further the purposes of the corporation.

Exhibit B
to
Agreement and Plan of Merger

Bylaws of OSDL Oregon, Inc.

See attached.

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REEL: 003006 FRAME: 0920

First Amended and Restated Bylaws

of

OSDL Oregon, Inc.

(an Oregon nonprofit mutual benefit corporation)

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ARTICLE I
Offices

Section 1.1 Principal Office. The principal office for the transaction of the business of this corporation shall be located in the State of Oregon. The Board of Directors is hereby granted full power and authority to change said principal office from one location to another.

Section 1.2 Other Offices. Branch or subordinate offices may at any time be established by the Board of Directors at any place or places where this corporation is qualified to do business.

ARTICLE II
Purposes

Section 2.1 Purposes. This corporation is a nonprofit mutual benefit corporation. The specific purpose of this corporation is to support the creation of a technical and business environment in the computer industry for Open Source software through sponsorship of technical programs. "Open Source" means licensed under a license designated by opensource.org (e.g., GPL, LGPL, BSD or Artistic).

ARTICLE III
Membership

Section 3.1 Classes of Membership. There shall be five classes of membership in this corporation: (i) "Platinum Sponsors"; (ii) "Gold Sponsors"; (iii) "Silver Sponsors"; (iv) "Bronze Sponsors"; and (v) "Contributing Members". As used herein, the term "member" may be used to refer generically to a "Platinum Sponsor", "Gold Sponsor", "Silver Sponsor", "Bronze Sponsor", or "Contributing Member", the term "entity" shall be defined by the Membership Committee on a case-by-case basis, and the term "Linux" is used interchangeably for the Open Source kernel, kernel and GNU, and all Open Source work.

Except for amendments to the Membership Fee Schedule defined in Section 3.2(a), below (the amendment of which shall be in accordance with Section 3.5, below), the provisions of Section 3.2 may be amended only with the written consent of a majority of the members of each respective class.

Section 3.2 Membership Qualifications. The following shall be the requirements for membership in each given membership class:

(a) **Platinum Sponsors.** The Platinum Sponsors shall be individuals and entities engaged in the production, manufacturing, use, or sale of products that use Linux or other Open Source-based technologies or that have an interest in the purposes and activities of this corporation. A Platinum Sponsor shall pay the annual membership fee identified on Schedule A to these Bylaws (the "Membership Fee Schedule"). A Platinum Sponsor shall cease to be a member in the event of its resignation or expulsion from this corporation.

(b) **Gold Sponsors.** Gold Sponsors shall be individuals and entities engaged in the production, manufacturing, use, or sale of products that use Linux or other Open Source-

based technologies or that have an interest in the purposes and activities of this corporation. A Gold Sponsor shall pay the applicable annual membership fee identified on the Membership Fee Schedule. A Gold Sponsor shall cease to be a member in the event of its resignation or expulsion from this corporation.

(c) **Silver Sponsors.** Silver Sponsors shall be individuals and entities engaged in the production, manufacturing, use, or sale of products that use Linux or other Open Source-based technologies or that have an interest in the purposes and activities of this corporation. A Silver Sponsor shall pay the applicable annual membership fee identified on the Membership Fee Schedule. A Silver Sponsor shall cease to be a member in the event of its resignation or expulsion from this corporation.

(d) **Bronze Sponsors.** Bronze Sponsors shall be limited to individuals and entities with less than US\$1 billion in revenue for the previous fiscal year of such entity, and that are engaged in the production, manufacturing, use, or sale of products that use Linux or other Open Source-based technologies or that have an interest in the purposes and activities of this corporation. A Bronze Sponsor shall pay the applicable annual membership fee identified on the Membership Fee Schedule. A Bronze Sponsor shall cease to be a member in the event of its resignation or expulsion from this corporation. As used herein, the term "revenue" means gross revenue for any NAICS code listed in Schedule B.

(e) **Contributing Members.** Contributing Members shall be limited exclusively to those entities that are Contributing Members as of the effective date of the merger of Open Source Development Labs, Inc. with and into this corporation. No additional Contributing Members shall be admitted to this membership class. Notwithstanding anything to the contrary provided in these First Amended and Restated Bylaws (the "Bylaws"), this membership class shall be eliminated automatically in its entirety without any need for or right of action or approval by the Board of Directors or such Contributing Members, and all memberships of the Contributing Members automatically terminated on December 31, 2003 (the "Termination Date"). Thereupon, the rights and privileges of such Contributing Members as voting statutory members as defined in Section 65.227 of the Oregon Nonprofit Corporation Act (the "Act"), shall immediately terminate without the need for any action by the corporation, such members, or otherwise. The elimination of this class of members shall not be deemed an amendment or modification of these Bylaws, and no Contributing Member shall have any right to demand any return of membership fees, dues or assessments thereupon or otherwise.

Prior to the Termination Date, the Contributing Members shall have the same rights and privileges as Silver Sponsors under these Bylaws, and until the Termination Date all references in these Bylaws to "Silver Sponsors" shall be deemed to include "Contributing Members". For illustrative purposes only, prior to the Termination Date, the Contributing Members, together with the Silver Sponsors and the Bronze Sponsors, voting as a class, shall have the right to elect two (2) directors to the Board of Directors, and each Contributing Member shall have the same right as each Silver Sponsor to nominate a candidate in such election and, further, each Contributing Member shall have the same rights as each Silver Sponsor with respect to the nomination and election of officers.

Section 3.3 Affiliates; Additional Rights and Privileges of Members and Affiliates.

(a) **Affiliates.** The Board of Directors may establish one or more classes of individuals or entities associated with this corporation. Such individuals or entities shall be referred to as "Advisors", "Affiliates", "Associates", "Contributors", or any other title as the Board of Directors deems appropriate (collectively, the "Affiliates"). Notwithstanding the foregoing, no class or classes of Affiliates shall have the right to vote for the election of directors, on a disposition of all or substantially all of the assets of this corporation, on a merger, on a dissolution or reorganization, or on changes to this corporation's Articles of Incorporation or Bylaws, or on any other action otherwise requiring the vote of members. Further, Affiliates shall not be or have any of the rights and privileges of voting statutory members as defined in Section 65.227 of the Act.

(b) **Additional Rights of Members and Affiliates.** The Board of Directors may by resolution establish such additional rights, privileges and duties corresponding to each class of members and Affiliates provided that such rights, privileges, or duties are not inconsistent with these Bylaws.

Section 3.4 Admission. Decisions to admit members may be made by a majority of the authorized number of directors then in office and such decisions, if any, shall be made at the sole discretion of the Board of Directors.

Section 3.5 Fees, Dues and Assessments. The Membership Fee Schedule may only be amended or revised by a two-thirds (2/3) majority vote of the Board of Directors; provided, however, that any such amendment or revision shall not operate retroactively, nor shall any increase take effect until such time as any then-current member becomes obligated to pay its next annual membership fee.

Section 3.6 Termination of Membership. The membership of any member shall terminate upon the occurrence of any one or more of the following:

(a) **Resignation.** Any member may resign from this corporation in writing filed with the Secretary of this corporation. The resignation of a member shall not relieve the member from any obligations the member may have to this corporation as a result of obligations incurred or commitments made prior to resignation, including without limitation, any membership fees, dues or assessments that are due and owing prior to the resignation. A resigning member shall not be entitled to receive any refund, pro rata or otherwise, of any membership fee, dues or assessments for the balance of the calendar year in which the resignation is effective.

(b) **Fees, Dues and Assessments.** A membership shall terminate upon the failure of the member to pay fees, dues or assessments within the time periods established by resolution of the Board of Directors.

(c) **Expulsion, Termination or Suspension.** Membership of any member shall terminate upon the affirmative vote of 2/3 of the members of the Board of Directors then in office (as used in this Section 3.6 and Section 3.7, 2/3 vote means 2/3 of the members of the

Board of Directors then in office exclusive of the member facing expulsion or suspension (any such director, the "Affected Director")) after a hearing duly held in accordance with this Section 3.6(c), that the member has failed in a material respect to observe the rules of conduct promulgated from time to time by the Board of Directors and applicable to members, or the member has otherwise failed in some material respect to merit continued membership privileges in this corporation. Such determination shall be made in the sole and absolute discretion of the Unaffected Directors. Following the determination by the Board of Directors that a member should be expelled, terminated or suspended, the following procedures shall apply:

(1) A notice shall be sent by mail by prepaid, first-class or certified mail to the most recent address of such member as shown on this corporation's records, setting forth the expulsion, termination or suspension and the reasons therefor. Such notice shall be sent at least fifteen (15) days before the proposed effective date of the expulsion, termination or suspension.

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

(3) In the event that a hearing is held, then following such hearing the Unaffected Directors shall decide whether such member should in fact be expelled, terminated, suspended, or sanctioned in some other way; provided that any such decision to expel, termination, suspend or sanction such member must be approved by a vote of 2/3 of the members of the Board of Directors then in office. The decision of the Board of Directors shall be final.

(4) Any action challenging an expulsion, termination or suspension of membership of a member, including any claim alleging defective notice, must be commenced within one (1) year after the date of the expulsion, termination or suspension.

Section 3.7 Reinstatement. Members suspended, terminated or expelled pursuant to Section 3.6(c) may be reinstated upon the affirmative vote of 2/3 of the members of the Board of Directors then in office.

Section 3.8 Property Rights. No member shall have any right or interest in any of the property or assets of this corporation.

Section 3.9 Nonliability. No member shall be liable for the debts, liabilities, or obligations of this corporation merely by reason of being a member.

Section 3.10 Nontransferability. No member may transfer for value or otherwise a membership or any right arising therefrom, and all rights of membership shall cease upon the member's death, resignation, expulsion, termination or dissolution. Notwithstanding the

foregoing, upon the completion of any acquisition or merger involving a member in which the member is not the surviving entity, the Board of Directors in its sole discretion may permit such member's membership to be transferred to the surviving entity.

Section 3.11 Distribution of Assets Upon Dissolution. Upon a dissolution of this corporation, and after all of the known debts and liabilities of this corporation have been paid or adequately provided for, any remaining net assets of this corporation shall be distributed by the Board of Directors to one or more organizations selected by the Board of Directors which will help to further the purposes of this corporation.

ARTICLE IV Membership Meetings

Section 4.1 Place of Meetings. All meetings of members shall be held either at the principal office of this corporation or at any other place within or without the State of Oregon, as determined by the Board of Directors pursuant to the authority hereinafter granted to the Board of Directors.

Section 4.2 Annual Meetings. The annual meetings of each class of members of this corporation shall be held in the first calendar quarter of each year, on such date and at such time and place as determined by resolution of the Board of Directors.

Section 4.3 Special Meetings. Special meetings of the members shall be held at the call of the Board of Directors, the President, or by one or more members holding five percent (5%) or more of the voting power of this corporation by a written demand signed, dated, and delivered to the Secretary. Notice of a special meeting shall be given within thirty days following the date the written demand is delivered to the Secretary, in accordance with Section 4.4 below.

Section 4.4 Notice of Meetings. Notice of each annual and special meeting of the members and written ballot for election of directors or otherwise, if any, shall be given to each member at the last address of record, by first class mail at least seven days before the meeting, or by means other than first class mail at least 30 days but not more than 60 days before the meeting. The notice shall include the date, time, and place of the meeting or the date on which the ballot shall be returned if applicable. Notice of each annual and special meeting shall include a description of any matter or matters that must be approved by the members pursuant to these Bylaws or applicable law. In the case of an annual meeting at which directors shall be elected, the notice shall specify the names of all those who are candidates for election of directors at the time the notice is given, and in the case of special meetings, the purpose or purposes for which the meeting is called. Such notice shall be given in writing to every member of this corporation who, on the record date for notice of the meeting, is entitled to vote thereat.

Section 4.5 Adjourned Meetings. Any members' meeting, annual or special, whether or not a quorum is present, may be adjourned by the vote of a majority of the members either present in person or represented by proxy. No meeting may be adjourned for more than 14 days, annual or special, to another time or place. It shall not be necessary to give any such notice of the time and place of the adjourned meeting or of the business to be transacted thereat, other than

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by an announcement at the meeting at which such adjournment is taken. If after the adjournment a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each member who, on the record date for notice of the meeting, is entitled to vote at the meeting.

Section 4.6 Quorum. Unless otherwise provided herein, the presence in person or by proxy of at least thirty percent (30%) of the members shall constitute a quorum for the transaction of business. Unless otherwise provided herein, any action approved by a majority of the members required to constitute a quorum shall be the act of the members.

Section 4.7 Voting. Each member is entitled to one vote on each matter submitted to a vote of the members of such membership class. Single memberships in which two (2) or more persons have an indivisible interest shall be treated as provided in Section 65.227(2) of the Act. Voting shall be by voice vote, unless the chair of the meeting at which such vote takes place directs such voting to be by ballot. Cumulative voting for the election of directors or otherwise shall not be authorized.

Section 4.8 Action by Written Ballot. Any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if this corporation delivers a written ballot to every member entitled to vote on the matter. Such written ballot shall (i) set forth the proposed action, (ii) provide an opportunity to specify approval or disapproval of each proposed action, and (iii) specify a reasonable time within which to return the ballot to this corporation. Approval by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds any quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the total number of votes cast by ballot. Ballots shall be distributed to members in accordance with Section 4.4 hereof. In any election of directors by written ballot, the ballot shall name the candidates for directors, and shall provide a space entitled "withhold" in which a member may indicate that the authority to vote for the election of directors is withheld. All ballots distributed in accordance with this Section 4.8 shall indicate the number of responses needed to meet any quorum requirement and, with respect to each matter other than the election of directors, state the percentage of approvals necessary to pass each matter. All written ballots distributed in accordance with this Section 4.8 shall specify a reasonable time by which the ballot must be received in order to be counted.

Section 4.9 Proxies. Every member entitled to vote shall have the right to do so in person or by one or more agents authorized by a written proxy executed by such person or his duly authorized agent and filed with the Secretary of this corporation; but no such proxy shall be valid after the expiration of eleven (11) months from the date of its execution, unless the person executing it specifies therein the length of time for which such proxy is to continue in force. A proxy is effective when received by the Secretary or other officer or agent authorized to tabulate votes.

Section 4.10 Conduct of Meetings. Meetings of members shall be presided over by the President of this corporation, or in his absence, by the Vice-President, and in the absence of both of them, by the chair chosen by a majority of the members present. The Secretary of this

corporation shall act as the secretary of all meetings of members, provided that in his absence the presiding officer shall appoint another member to act as Acting Secretary of the meeting.

ARTICLE V Board of Directors

Section 5.1 Powers. Subject to the limitations of the Articles of Incorporation, the Bylaws, and the Act, and subject to the duties of directors as prescribed by the Bylaws, all corporate powers shall be exercised by or under the authority of, and the business and affairs of this corporation shall be controlled by, the Board of Directors. The Board of Directors shall have the power to select and remove all officers, agents, employees and contractors, and to fix reasonable compensation therefor, to authorize and empower officers or agents to enter into contracts and other commitments on behalf of this corporation, and to appoint and delegate responsibilities and authority to committees, officers and agents.

Section 5.2 Number of Directors. The authorized number of directors may vary between a minimum of nine (9) and a maximum of fourteen (14). Except as otherwise provided by these Bylaws, the number of directors may be set from time to time by resolution of a majority of directors then in office.

Section 5.3 Composition of Board of Directors; Terms. The directors serving on the Board of Directors shall be selected in the following manner:

(a) **Platinum Directors.** The Platinum Sponsors, voting as a class, shall elect five (5) directors or such fewer number as equals the total number of Platinum Sponsors. Such directors shall be known as "Platinum Directors". Each Platinum Sponsor shall be entitled to nominate a single individual in such election, provided that such nominee must be an employee, officer, director, or consultant of the nominating Platinum Sponsor in order to be eligible to serve as a Platinum Director. The Platinum Directors shall be elected at a meeting of the Platinum Sponsors, by written ballot delivered to the Platinum Sponsors, or in some other manner authorized by the Act. Upon the termination of the membership of a Platinum Sponsor pursuant to Section 3.6 for any reason, then any Platinum Director nominated by such Platinum Sponsor shall immediately resign. The provisions of this Section 5.3(a) may not be amended except upon the unanimous written consent of the Platinum Sponsors.

(b) **Gold Directors.** The Gold Sponsors, voting as a class, shall elect two (2) directors or such fewer number as equals the total number of Gold Sponsors. Such directors shall be known as "Gold Directors". Each Gold Sponsor shall be entitled to nominate a single individual in such election, provided that such nominee must be an employee, officer, director, or consultant of the nominating Gold Sponsor in order to be eligible to serve as a Gold Director. The Gold Directors shall be elected at a meeting of the Gold Sponsors, by written ballot delivered to the Gold Sponsors, or in some other manner authorized by the Act. Upon the termination of the membership of a Gold Sponsor pursuant to Section 3.6 for any reason, then any Gold Director nominated by such Gold Sponsor shall immediately resign. The provisions of this Section 5.3(b) may not be amended except upon the written consent of a majority of the Gold Sponsors.

(c) **Silver Directors.** The Silver Sponsors and Bronze Sponsors, voting together as a single class, shall elect two (2) directors or such fewer number as equals the total number of Silver Sponsors. Such directors shall be known as the "Silver Directors". Each Silver Sponsor shall be entitled to nominate a single individual in the election for the Silver Directors provided, however, that in each case such nominee must be an employee, officer, director, or consultant of the nominating member in order to be eligible to serve as a Silver Director. The Silver Directors shall be elected at a combined meeting of the Silver Sponsors and the Bronze Sponsors or by written ballot to their respective members, or in some other manner authorized by the Act. Upon the termination of the membership of a Silver Sponsor pursuant to Section 3.6 for any reason, then any Silver Director nominated by such Silver Sponsor shall immediately resign. The provisions of this Section 5.3(c) relating to the Silver Directors may not be amended except upon the written consent of a majority of the Silver Sponsors and the Bronze Sponsors.

(d) **At-Large Directors; Additional At-Large Directors.** The Board of Directors shall elect two (2) directors, and such directors shall be referred to as the "At-Large Directors" or the "Directors At-Large". The At-Large Directors shall have full and complete voting rights and privileges as a director. The At-Large Directors shall have the right to vote with the rest of the Board of Directors in the election of the future At-Large Directors. All other procedures and criteria pursuant to which the Board shall elect these directors will be established by resolutions of the Board. Subject to Section 5.2, the Board of Directors may elect additional directors as the Board may deem appropriate, and such directors shall be referred to as the "Additional At-Large Directors" or the "Additional Directors At-Large. Except as otherwise provided, references in these Bylaws to "At-Large Directors" or "Directors At-Large" shall be deemed to include any Additional At-Large Directors or Additional Directors At-Large then in office. The Additional At-Large Directors shall have full and complete voting rights and privileges as directors. The Additional At-Large Directors shall have the right to vote with the rest of the Board of Directors in the election of the future At-Large Directors and Additional At-Large Directors. All other procedures and criteria pursuant to which the Board shall elect these directors will be established by resolutions of the Board.

(e) **Observers.** In the event that a director is unable to attend a meeting of the Board of Directors, the director may have an observer attend that meeting, provided that the director provides prior notice to the President and the President approves the request, which decision shall be made in the sole discretion of the President. Any Platinum or Gold Sponsor who does not have a director from that Sponsor may have an observer attend a meeting, provided that the sponsor provides prior notice to the President and the President approves the request, which decision shall be made in the sole discretion of the President. An observer permitted to attend shall have the right to participate in the general session but may not put forth or vote on any motion. Observers shall in no event have the right to attend or participate in any executive session attended only by directors.

(f) **Terms and Election Dates.** All directors shall hold office until their respective successors are elected. Except for the initial adjustments of shorter terms needed in order to create staggered terms, the term of office for Platinum Directors, Gold Directors, Silver Directors and the At-Large Directors shall be two years; such term of office shall run from February 1 to January 31 of the second calendar year after election. The Board shall make provisions to stagger the terms of the Platinum Directors, Gold Directors, Silver Directors and

At-Large Directors so that each year the terms of as close as possible to one-half of such directors shall expire. The term of office for the Additional At-Large Directors shall not exceed one year; such term of office shall run from date of election to the last day of February of the following calendar year. There shall be no prohibition on re-election or re-designation of any director following the completion of that director's term of office. Elections of directors whose terms are expiring in any calendar year other than the Additional At-Large Directors shall be held in January of each year. Unless elected by written ballot pursuant to Section 4.8, the positions of directors then expiring shall be filled and elections held at the annual meeting of members called for such purpose. Procedures governing elections of directors may be established pursuant to resolutions of the Board of Directors provided that such resolutions are not inconsistent with any provision of these Bylaws or the Articles of Incorporation. The election by the Board of Directors of the At-Large Directors shall be held in the month of January each year. The election by the Board of Directors of the Additional At-Large Directors shall be held at such times as determined by the Board.

(g) **Restrictions on Eligibility to Serve as a Director; Control Groups.** No more than one (1) individual employed by or affiliated with a Control Group (as defined below) that is Controlled (as defined below) by a Platinum Sponsor, a Gold Sponsor, a Silver Sponsor, or a Bronze Sponsor; that Controls a Platinum Sponsor, a Gold Sponsor, a Silver Sponsor, or a Bronze Sponsor, or that is Controlled by a corporation or entity controlling a Platinum Sponsor, a Gold Sponsor, a Silver Sponsor, or a Bronze Sponsor shall be permitted to serve as a director of this corporation at one time. For purposes of this section, "Control" shall mean (i) the ownership of more than 50% of the total voting securities of another entity, or (ii) in the case of unincorporated entities "Control" shall mean the ownership of more than 50% of the ownership interest representing the right to make decisions for the entity; and "Control Group" shall include all corporations or other entities which are Controlled by a Platinum Sponsor, a Gold Sponsor, a Silver Sponsor, or a Bronze Sponsor, which Control a Platinum Sponsor, a Gold Sponsor, a Silver Sponsor, or a Bronze Sponsor, or which are also Controlled by this corporation or entity Controlling a Platinum Sponsor, a Gold Sponsor, a Silver Sponsor, or a Bronze Sponsor.

Section 5.4 Vacancies. Vacancies in the Board of Directors shall be filled in an election by a majority of members in the class that elected such director and, in the case of an At-Large Director, by a majority of directors then in office. Each director elected shall hold office until his or her successor is elected. A vacancy or vacancies shall be deemed to exist (i) in the case of the death or the resignation or removal of any director pursuant to Section 5.18, or (ii) if the authorized number of directors is increased without election of the additional directors so provided for, (iii) in the case of failure at any time to elect the full number of authorized directors or (iv) automatically, upon the failure of a director to attend three (3) consecutive regularly scheduled Board meetings. If an At-Large Director tenders his or her resignation to the Board of Directors, then the Board shall have the power to elect a successor to take office at such time as the resignation shall become effective. No reduction in the number of directors shall have the effect of removing any director prior to the expiration of his term of office.

Section 5.5 Place of Meetings. All meetings of the Board of Directors may be held at any place within or without the State of Oregon, which has been designated from time to time by resolution of the Board or by the written notice of the President.

Section 5.6 Organization Meetings. Immediately following the annual or special meeting where directors have been elected, the directors shall hold a regular meeting for the purpose of organizing the Board, electing officers, and transacting such business as may come before the meeting. Pending such organization meeting, all officers and directors of this corporation shall hold over, except any director who ceases to qualify as a director. A director elected at such meeting of members, if any, shall forthwith become a member of the Board of Directors for purposes of such organization, in lieu of the predecessor member, even though the meeting is held prior to the commencement of the regular calendar year term for a new director. Unless otherwise decided by the Board of Directors, the annual organization meeting shall be held in the month of January each year.

Section 5.7 Other Regular Meetings. Other regular meetings of the Board of Directors will be held approximately monthly, except as may otherwise be specified and noticed by the Board of Directors or by the President of this corporation.

Section 5.8 Special Meetings. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the President or by twenty percent (20%) or more of the directors then in office.

Section 5.9 Notice of Meetings; Attendance. Regular scheduled meetings of the Board of Directors may be held without notice of the date, time or purpose of the meeting. Notice of the time and place of each meeting of the Board of Directors not fixed by an express provision of the Bylaws or by a standing resolution of the Board of Directors shall be given to each director not less than two (2) days before the date of the meeting. Such notice may be given personally or by telephone, telegraph, facsimile, electronic mail, or first-class mail.

Section 5.10 Consent to Meetings. The transactions of the Board of Directors at any meeting however called and noticed or wherever held, shall be as valid as though done at a meeting duly held after call and notice if a quorum be present and if either before or after the meeting each director not present (i) signs a written waiver of notice, or (ii) signs a consent to the holding of such meeting, or (iii) approves the minutes thereof. Each director who attends the meeting without protesting, prior thereto or at its commencement, shall be deemed conclusively to have consented to the holding of the meeting and to have waived the lack of notice to such director. All such waivers, consents or approvals shall be filed with the corporate records and made a part of the minutes of the meeting.

Section 5.11 Action Without Meeting. Any action required or permitted to be taken by the Board of Directors under any provision of the Act may be taken without a meeting if all members of the Board shall individually or collectively consent in writing to such action. The action shall be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken. Action taken hereunder is effective when the last director signs the consent, unless the consent specifies an earlier or later effective date. A consent signed hereunder has the effect of a meeting vote and may be described as such in any document.

Section 5.12 Telephonic Meetings. The Board of Directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through, use of

any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 5.13 Quorum. Unless otherwise provided herein, fifty-percent of the directors then in office (but in no case fewer than one-third of the fixed or prescribed number of directors provided for in these Bylaws) shall be necessary to constitute a quorum for the transaction of business except adjourn. 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 shall be regarded as the act of the Board of Directors unless a greater number be required by law, or by the Articles of Incorporation, or by these Bylaws.

Section 5.14 Fees and Compensation. Directors and members of committees may receive such compensation, if any, for their services and such reimbursement for expenses as may be fixed or determined by resolution of the Board of Directors; provided that such compensation shall be reasonable and shall be comparable to that compensation paid by unaffiliated entities for a like position. Nothing herein shall be considered to preclude any director from serving this corporation in any other capacity, including as an officer, agent, employee, consultant or otherwise, and receiving reasonable compensation therefor.

Section 5.15 Indemnity. The corporation shall indemnify its directors to the fullest extent allowed by Sections 65.391 through 65.397 of the Act.

Section 5.16 Standard of Conduct. Pursuant to Section 65.357 of the Act, a director shall discharge the duties of a director, including duties as a member of any committee of the Board upon which the director may serve, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the corporation. In discharging the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case if prepared or presented by: (a) one or more officers or employees of this corporation whom the director reasonably believes to be reliable and competent in the matters presented; (b) legal counsel, public accountants or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or (c) a committee of the Board of which the director is not a member, as to matters within the committee's jurisdiction, if the director reasonably believes the committee merits confidence. A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted in this Section 5.16 unwarranted. A director is not liable to the corporation, any member or any other person for any action taken or not taken as a director, if the director acted in compliance with this Section 5.16. The liability of a director for monetary damages to the corporation and its members shall be eliminated to the fullest extent provided by Section 65.047(2)(c) of the Act.

Section 5.17 Conflict of Interest Transactions.

(a) **Conflict of Interest.** As used in this section, a "conflict of interest transaction" is a transaction with the corporation in which a director of the corporation has a

direct or indirect interest. A director has an indirect interest in a transaction if another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction, or if another entity of which the director is a director, officer or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

(b) **Approval.** A conflict of interest transaction is not voidable on the basis for imposing liability on the director if the transaction is fair to the corporation at the time it was entered into or is approved either (I) in advance by the vote of the board of directors or a committee of the board of directors if the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors, or (II) if the material facts of the transactions and the director's interest were disclosed or known to the members and they authorized, approved or ratified the transaction. A conflict of interest transaction is so authorized, approved or ratified as follows:

(i) **By Directors.** By the directors, if it receives the affirmative vote of a majority of the directors on the board of directors or on the committee who have no direct or indirect interest in the transaction; provided that a transaction may not be so authorized, approved or ratified by a single director. If a majority of the directors who have no direct or indirect interest in the transaction votes to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking such action. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action so taken hereunder if the transaction is otherwise approved as permitted under Section 65.361 of the Act.

(ii) **By Members.** By the members, if it receives a majority of the votes entitled to be counted. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection (4) of Section 65.361 of the Act may be counted in a vote of members to determine whether to authorize, approve or ratify a conflict of interest transaction hereunder. A majority of the members, whether or not present, that are entitled to be counted in a vote on the transaction hereunder constitutes a quorum for the purpose of taking action hereunder.

Section 5.18 Resignation and Removal.

(a) **Resignation.** Any director may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary of this corporation. A resignation is effective when the notice is effective under Section 65.034 of the Act, unless the notice specifies a later effective date. Once delivered, a notice of resignation is irrevocable unless permitted to be withdrawn by the Board of Directors prior to its effectiveness.

(b) **Removal for Cause.** The members may remove for cause, at a meeting called for that purpose, any director elected by the members who has been declared of unsound mind by a final order of court, or convicted of a felony, or found by a final order or judgment to have breached any duty arising under these Bylaws, the Articles of Incorporation or Section 65.357 of the Act. Only the members of the class that elected such director may vote to remove

such director, and the director may be removed only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect such director.

(c) **Removal without Cause.** Any director except an At-Large Director may be removed without cause at a meeting called for that purpose by the members of the class that elected such director. Such director may be removed hereunder only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect such director. An At-Large Director may be removed without cause by 2/3 of the directors then in office.

Section 5.19 Advisory Board. The Board of Directors may, by resolution, establish a board of advisors (the "Advisory Board") to be comprised of one or more individuals chosen by the Board of Directors at its sole discretion. The Board of Directors shall not be bound by any advice or decision of the Advisory Board. The members of the Advisory Board shall not have the rights or privileges of directors or members as set forth in the Act and shall have no power or authority over the operation of this corporation. A member of the Advisory Board may be removed at any time by the Board of Directors with or without cause.

ARTICLE VI Officers

Section 6.1 Officers. The officers of this corporation shall be a President, Vice President, Treasurer, Secretary and such other officers as the Board of Directors may appoint. One person may hold two or more offices.

Section 6.2 Nomination and Election. The officers of this corporation, except such officers as may be appointed in accordance with the provisions of Section 6.3 or Section 6.4, shall be elected annually by the Board of Directors in accordance with this Article 6. Each officer shall hold his or her office until he or she shall resign or shall be removed or his or her successor shall be elected and qualified. Elections of officers shall be held in January of each year. Each officer's term of office shall be for one year, and shall run from February 1 to January 31 of the following year. Subject to the other limitations contained in this Section 6.2, there shall be no prohibition on re-election of an officer following the completion of that officer's term of office. The Board of Directors may, by resolution, establish procedures governing nomination and election of officers that are not inconsistent with these Bylaws.

(a) **President.** The president must be a Platinum Director or a Gold Director, and only Platinum Directors and Gold Directors may nominate and vote on candidates for the office of president. The office of president shall be filled in an election upon the vote of a majority of the Platinum Directors and Gold Directors then in office.

(b) **Other Officers.** All other officers must also be a Platinum Director, a Gold Director, a Silver Director, or an At-Large Director, and only Platinum Directors, Gold Directors and the Silver Director may nominate candidates for such offices. All directors then in office may vote on candidates for such offices. Such offices shall be filled in an election upon the vote of a majority of directors then in office.

Section 6.3 Removal and Resignation.

(a) **Removal.** Any officer may be removed, either with or without cause, by the Board of Directors at any regular or special meeting thereof.

(b) **Resignation.** Any officer may resign at any time by giving written notice to the Board of Directors, or to any officer of this corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Such resignation shall not prejudice the rights of this corporation under any contract to which the officer is a party. Once delivered, a notice of resignation is irrevocable unless otherwise permitted to be withdrawn by the Board of Directors prior to being effective.

Section 6.4 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in the Bylaws for regular appointments to such office.

Section 6.5 President. The President shall be the chief officer of the corporation and shall act as the Chair of the Board. Subject to the control of the Board of Directors, the President shall have general supervision, direction and control of the business and affairs of this corporation. The President shall serve as an ex-officio voting member of all committees, and shall have such other powers and duties as may be designated from time to time by the Board of Directors. The President shall have the authority to cast a tie-breaking vote in the election of any directors. A candidate for the office of the President must be a director of this corporation in order to be eligible to run for election. The President shall have such other duties and authority as may be designated from time to time by the Board of Directors.

Section 6.6 Vice President. The Vice President shall perform all of the duties of the President and in so acting shall have all of the powers of the President in the event of the death, removal, resignation or incapacity of the President. A candidate for the office of the Vice President must be a director of this corporation in order to be eligible to run for election. The Vice President shall have such other powers and duties as may be designated from time to time by the Board of Directors.

Section 6.7 Treasurer. The Treasurer shall have overall responsibility for all corporate funds, and shall perform, or cause to be performed, the following: (a) keeping of full and accurate accounts of all financial records of the corporation, (b) deposit of all monies and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the Board of Directors; (c) disbursement of all funds when proper to do so; (d) making financial reports as to the financial condition of the corporation to the Board of Directors; and (e) such other powers and duties as may be designated from time to time by the Board of Directors. A candidate for the office of the Treasurer must be a director of this corporation in order to be eligible to run for election.

Section 6.8 Secretary. The Secretary shall have overall responsibility for all recordkeeping. The Secretary shall perform, or cause to be performed, the following: (a) official recording of the minutes of all proceedings of the Board of Directors, including the committees

thereof, and members' meeting and actions; (b) provision for notice of all meetings of the Board of Directors and members; (c) authentication of the records of the corporation; (d) maintaining current and accurate membership lists; and (e) any such other powers and duties as may be designated from time to time by the Board of Directors. A candidate for the office of the Secretary must be a director of this corporation in order to be eligible to run for election.

Section 6.9. Standards of Conduct for Officers. Pursuant to Section 65.377 of the Act, an officer shall discharge the officer's duties, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the officer reasonably believes to be in the best interests of the corporation. In discharging the duties of an officer, an officer shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case if prepared or presented by: (a) one or more officers or employees of this corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or (b) legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence. An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted in this Section 6.9 unwarranted. An officer is not liable to the corporation, any member or any other person for any action taken or not taken as an officer, if the officer acted in compliance with this Section 6.9. The liability of an officer for monetary damages to the corporation and its members shall be eliminated to the fullest extent permitted by Section 65.047(2)(c) of the Act.

Section 6.10 Indemnity. The corporation shall indemnify its officers to the fullest extent allowed by Section 65.407 of the Act.

ARTICLE VII Committees

Section 7.1 Standing Committees. The Board of Directors shall have three (3) Standing Committees. Each committee shall consist of two (2) or more directors. The Board of Directors shall retain the right to limit the powers and duties of the Standing Committees.

(a) **Operations Committee.** The Operations Committee shall meet at least monthly to oversee the day-to-day operations of the corporation. The Operations Committee shall consist of the corporate officers, the Lab Director of the Corporation, the Business Manager of the Corporation and additional members as the Board of Directors may, from time to time, deem necessary or appropriate.

(b) **Finance Committee.** The Finance Committee shall meet as necessary to oversee the overall financial health and the investments of the corporation. The Finance Committee shall be chaired by the Treasurer and shall include additional members as the Board of Directors may, from time to time, deem necessary or appropriate.

(c) **Membership Committee.** The Membership Committee shall meet as necessary to review the membership policies of the corporation and to promote the growth of membership in the corporation. The Membership Committee shall be chaired by the Vice

President and shall include the Marketing Manager of the Corporation and additional members as the Board of Directors may, from time to time, deem necessary or appropriate.

Section 7.2 Appointment of Committees. The Board of Directors may appoint such committees as the Board from time to time deems necessary or appropriate to conduct the business and further the objectives of this corporation. The appointment by the Board of any other committee having the authority of the Board shall be by resolution adopted by a majority of directors then in office. Any committee having authority of the Board shall consist of two (2) or more directors. The Board of Directors shall retain the right to limit the powers and duties of any committee that it has created and to disband any such committees in its sole discretion.

Section 7.3 Powers and Authority of Committees. The Board of Directors may delegate to any committee having the authority of the Board, any of the powers and authority of the Board of Directors in the management of the business and affairs of this corporation; provided, however, that no committee may: (a) authorize payment of a dividend or any part of the income or profit of this corporation to its directors or officers; (b) approve dissolution, merger, or the sale, pledge or transfer of all or substantially all of this corporation's assets; (c) elect, appoint, or remove directors or fill vacancies on the board or on any of its committees; or (d) adopt, amend or repeal the Articles of Incorporation, Bylaws or any resolution by the Board of Directors.

ARTICLE VIII Miscellaneous

Section 8.1 Fiscal Year. The fiscal year of this corporation shall end on the last day of December of each year.

Section 8.2 Inspection of Corporate Records. A member's right to inspect and copy records of the corporation shall be as provided in and subject to the terms and conditions of Sections 65.774 and 65.777 of the Act.

Section 8.3 Representation of Shares of Other Corporations. Any officer of this corporation is authorized to vote, represent and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority herein granted to said officers may be exercised by such officers in person or by other persons authorized to do so by proxy duly executed by such officers.

Section 8.4 Checks, Drafts, Etc. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to this corporation and any and all securities owned by or held by this corporation requiring signature for transfer shall be signed or endorsed by such person or persons and in such manner as from time to time shall be determined by the Board of Directors.

Section 8.5 Execution of Contracts. The Board of Directors may authorize any officer, employee, or agent to enter into any contract or execute any contract or execute any instrument in the name of and on behalf of this corporation and such authority may be general or confirmed to specific instances. Unless so authorized by the Board of Directors, no officer, agent, or employee shall have any power or authority to bind this corporation by any contract or

engagement or to pledge its credit or to render it liable for any purpose or in any amount; provided, however, that any such contract or instrument between this corporation and any third person, when signed by (i) the President or Vice President, and (ii) the Secretary or Treasurer of this corporation, shall be valid and binding upon this corporation in the absence of actual knowledge on the part of said third person that the signing officers had no authority to execute the same.

Section 8.6 Corporate Loans, Guarantees and Advances. This corporation shall not make any advances or make any loan of money or property to or guarantee the obligation of any director or officer.

Section 8.7 Maintenance of Records. This corporation shall maintain corporate records as required by Sections 65.771 and 65.774 of the Act.

Section 8.8 Political Activities. This corporation shall not make any political expenditure or lobbying expenditure which will result in the loss of, or otherwise adversely affect, its status as a tax-exempt organization under the Internal Revenue Code of 1986, as amended.

Section 8.9 Form of Written Ballots. Ballots submitted in facsimile or electronic form shall be considered acceptable substitutes for printed ballots for all purposes.

ARTICLE IX Effective Date, Amendments and Dissolution

Section 9.1 Effective Date. These Bylaws shall become effective immediately upon their adoption. Amendments to these Bylaws shall become effective immediately upon their adoption unless the Board of Directors of this corporation in adopting them provide that they are to become effective at a later date.

Section 9.2 Bylaw Amendments. Except to the extent otherwise provided in these Bylaws, these Bylaws may be amended or repealed, and new Bylaws adopted, by the Board of Directors by 2/3 vote of the directors present if a quorum is present. Prior to the adoption of the amendment, each director shall be given at least two days notice of the date, time, and place of the meeting at which the proposed amendment is to be considered, and the notice shall state that one of the purposes of the meeting is to consider a proposed amendment to the Bylaws and shall contain a copy of the proposed amendment.

Section 9.3 Dissolution. This corporation may be dissolved upon the vote of a two-thirds (2/3) majority of the Board members then in office.

_____, Secretary

ADOPTED: _____, 2002.

Schedule A
Membership Fee Schedule

<u>Members</u>	<u>Annual Membership Fee</u>
Platinum Sponsors	US\$1,000,000
Gold Sponsors	US\$ 500,000
Silver Sponsors	US\$ 100,000
Bronze Sponsors	US\$ 10,000
Contributing Members	US\$ 10,000

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Schedule B
NAICS Codes

Index entry	NAICS Code	U.S. NAICS Title
Computer servers manufacturing	334111	Electronic Computer Manufacturing
Computers manufacturing	334111	Electronic Computer Manufacturing
Computer terminals manufacturing	334113	Computer Terminal Manufacturing
Hybrid integrated circuits manufacturing	334413	Semiconductor and Other Electronic Component Manufacturing
Integrated microcircuits manufacturing	334413	Semiconductor and Other Electronic Component Manufacturing
Metal oxide silicon (MOS) devices manufacturing	334413	Semiconductor and Other Electronic Component Manufacturing
Microcontroller chip manufacturing	334413	Semiconductor and Other Electronic Component Manufacturing
Microprocessor chip manufacturing	334413	Semiconductor and Other Electronic Component Manufacturing
Monolithic integrated circuits (solid-state) manufacturing	334413	Semiconductor and Other Electronic Component Manufacturing
MOS (metal oxide silicon) devices manufacturing	334413	Semiconductor and Other Electronic Component Manufacturing
Semiconductor circuit networks (i.e., solid-state integrated circuits) manufacturing	334413	Semiconductor and Other Electronic Component Manufacturing
Semiconductor memory chips manufacturing	334413	Semiconductor and Other Electronic Component Manufacturing
Thin film integrated circuits manufacturing	334413	Semiconductor and Other Electronic Component Manufacturing
Computer input/output equipment (except terminals) manufacturing	334119	Other Computer Peripheral Equipment Manufacturing
Computerized environmental control systems for buildings manufacturing	334512	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use
Software, packaged, mass reproducing	334611	Software Reproducing
Computer software tapes and disks, blank, rigid and floppy, manufacturing	334613	Magnetic and Optical Recording Media Manufacturing
Software, computer, packaged, wholesaling	421430	Computer and Computer Peripheral Equipment and Software Wholesalers
Computer boards, loaded, wholesaling	421430	Computer and Computer Peripheral Equipment and Software Wholesalers
Computer peripheral equipment wholesaling	421430	Computer and Computer Peripheral Equipment and Software Wholesalers
Computer printers wholesaling	421430	Computer and Computer Peripheral Equipment and Software Wholesalers
Computer software, packaged, wholesaling	421430	Computer and Computer Peripheral Equipment and Software Wholesalers
Computers wholesaling	421430	Computer and Computer Peripheral Equipment and Software Wholesalers
Computer boards, unloaded, wholesaling	421690	Other Electronic Parts and Equipment Wholesalers
Computer chips wholesaling	421690	Other Electronic Parts and Equipment Wholesalers
Software stores, computer	443120	Computer and Software Stores
Computer equipment stores	443120	Computer and Software Stores
Computer stores	443120	Computer and Software Stores

Reg # 106078-91

Index entry	NAICS Code	U.S. NAICS Title
Computer software, mail-order houses	454110	Electronic Shopping and Mail-Order Houses
Software computer, packaged, publishers	511210	Software Publishers
Software publishers	511210	Software Publishers
Software publishers, packaged	511210	Software Publishers
Computer software publishers, packaged	511210	Software Publishers
Computer software publishing and reproduction	511210	Software Publishers
Computer software publishing including design and development, packaged (i.e., establishments known as publishers)	511210	Software Publishers
Computer input preparation services	514210	Data Processing Services
Computer service bureaus	514210	Data Processing Services
Computer time leasing	514210	Data Processing Services
Computer time rental	514210	Data Processing Services
Computer time sharing services	514210	Data Processing Services
Computer peripheral equipment rental or leasing	532420	Office Machinery and Equipment Rental and Leasing
Computer rental or leasing	532420	Office Machinery and Equipment Rental and Leasing
Computer Systems Design and Related Services	5415	Computer Systems Design and Related Services
Software analysis and design services, custom computer	541511	Custom Computer Programming Services
Software programming services, custom computer	541511	Custom Computer Programming Services
Computer program or software development, custom	541511	Custom Computer Programming Services
Computer programming services, custom	541511	Custom Computer Programming Services
Computer software analysis and design services, custom	541511	Custom Computer Programming Services
Computer software programming services, custom	541511	Custom Computer Programming Services
Computer software support services, custom	541511	Custom Computer Programming Services
Computer systems integration analysis and design services	541512	Computer Systems Design Services
Computer systems integration design consulting services	541512	Computer Systems Design Services
Computer systems integrator services	541512	Computer Systems Design Services
Computer-aided design (CAD) systems integration design services	541512	Computer Systems Design Services
Computer-aided engineering (CAE) systems integration design services	541512	Computer Systems Design Services
Computer-aided manufacturing (CAM) systems integration design services	541512	Computer Systems Design Services
Information management computer systems integration design services	541512	Computer Systems Design Services
Software installation services, computer	541519	Other Computer Related Services
Computer disaster recovery services	541519	Other Computer Related Services
Computer and related hardware research and development laboratories or services	541710	Research and Development in the Physical, Engineering, and Life Sciences
Software application training	611420	Computer Training
Computer operator training	611420	Computer Training
Computer programming schools	611420	Computer Training
Computer software training	611420	Computer Training
Computer training (except repair)	611420	Computer Training
Computer repair training	611519	Other Technical and Trade Schools
Computer equipment repair and maintenance services without retailing new computers	811212	Computer and Office Machine Repair and Maintenance

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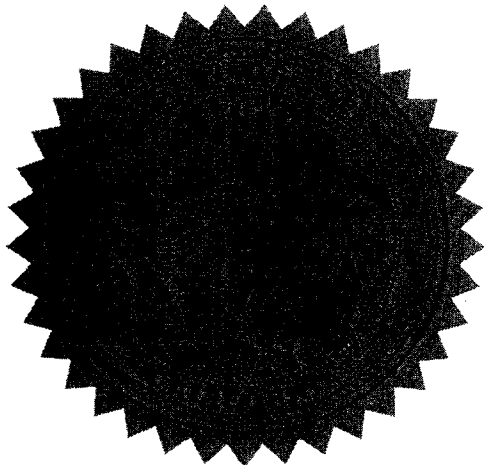
SECRETARY OF STATE

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 37 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

APR - 8 2003



Kevin Shelley
Secretary of State

CERTIFICATE

State of Oregon

ENDORSED - FILED
 In the office of the Secretary of State
 of the State of California

OFFICE OF THE SECRETARY OF STATE
 Corporation Division

APR - 1 2003

KEVIN SHELLEY
 Secretary of State

I, **BILL BRADBURY**, Secretary of State of Oregon, and Custodian of the Seal
 of said State, do hereby certify:

That the attached copy of the

Articles of Merger
 filed on

March 21, 2003

with a stated effective date of
April 1, 2003
 merging

OPEN SOURCE DEVELOPMENT LABS, INC.

with and into
OSDL OREGON, INC.

changing it's name to

OPEN SOURCE DEVELOPMENT LABS, INC.

is a true copy of the original document
 that has been filed with this office.

In Testimony Whereof, I have hereunto set
 my hand and affixed hereto the Seal of the
 State of Oregon.

BILL BRADBURY, Secretary of State



By

Debra L. Virag

Debra L. Virag

April 4, 2003