

**CLOUDFOUNDRY.ORG
FOUNDATION, INC. AMENDED
AND RESTATED BYLAWS**

AS OF SEPTEMBER 26, 2019

ARTICLE I PURPOSES

Section 1.1 Purposes. The Foundation purposes are: to establish and sustain Cloud Foundry as the global industry standard Platform-as-a-Service (“PaaS”) open source technology with a thriving ecosystem; to deliver continuous quality, value and innovation to users, operators, and providers of Cloud Foundry technology and thereby promote the common business interests of such users, operators, and providers; to provide a vibrant agile experience for the community’s contributors that delivers the highest quality cloud-native applications and software at high velocity with global scale; and to engage in any lawful act or activity related to the foregoing for which corporations that are organized as not-for-profit may be organized under the General Corporation Law of Delaware. The Foundation is formed exclusively as a non-profit trade association, as set out in section 501(c)(6) of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”).

ARTICLE II OFFICES

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

**ARTICLE III BOARD OF
DIRECTORS**

Section 3.1 Powers and Duties. The Foundation’s business and technical affairs, property, and interests shall be managed by or under the direction of the Board. The Board shall have voting rights in the governance of the Foundation and in certain meetings as set forth herein. The Board shall also be empowered to adopt rules and regulations governing the action of the Board and the Foundation, generally, and to allocate, distribute and/or pay out the moneys received by the Foundation from time-to-time, subject to section 501(c)(6) and other applicable provisions of the Internal Revenue Code, the provisions of the General Corporation Law of the State of Delaware, the Certificate of Incorporation (“Certificate”), and these Bylaws as applicable.

Section 3.2 Activities and Duties. The Board shall have meetings no less than once per year in which it shall discuss and make decisions regarding Foundation activities. Any Board

decision will enter into force on the date specified in such decision or on the date when such decision is made if no effective date is specified in such decision. Board duties include, but are not limited to the following: performing all duties imposed by law, the Certificate, or these Bylaws; electing and managing all Officers, nominating Directors for newly created and vacant positions not filled in between annual meetings by the Members; establishing, chartering, and staffing Committees and Working Groups as necessary to conduct Foundation activities and objectives; establishing Foundation policies and procedures; approving all public disclosure of information by the Foundation; approving the Foundation annual budget; establishing annual membership fees; establishing or revising Member rights and obligations; and performing such other duties as are customary for Directors of a 501(c)(6) nonprofit corporation.

Section 3.3 Number of Directors. The number of Directors constituting the whole Board shall be subject to adjustment from time-to-time by the Board, but shall in no event be less than one (1) Director. The Board shall initially consist of nine (9) Directors, who shall be seven (7) Platinum Directors, and two (2) Gold Directors, with the number of Directors constituting the Board subject to change from time to time by (a) resolution of the Board in accordance with Section 3.10(b)(ii), or (b) in accordance with Sections 3.4 and 3.5. Directors shall serve without compensation by the Foundation. A Director who is appointed to the Board while employed, or engaged as a consultant, by a Member, if such Director's employment or consultancy with such Member is subsequently terminated, shall be deemed immediately removed from the Board effective upon such termination of employment or consultancy, and that Member shall select a new representative to the Board to serve as a Director on behalf of that Member in accordance with Section 3.4 of these Bylaws.

At no time may a Member and its Affiliates have more than one Director who is an employee, officer, director, or consultant of that Member, except that Pivotal, EMC, and VMware, though Affiliates, shall each have one (1) Director on the Board).

Section 3.4 Composition. Board Members shall be appointed or elected, as applicable, in the following manner:

(a) **Platinum Directors.** Each Platinum Member shall be entitled to appoint one (1) representative to the Board as a Platinum Director; *provided, that*, such representative must be an employee, officer, director, or consultant of the respective appointing Platinum Member ("Platinum Director"). If a Platinum Member ceases to be a Platinum Member (for example, by changing its membership category or terminating its membership), any Platinum Director nominated by such terminating Member shall be removed from the Board and the size of the Board shall be decreased accordingly. A Platinum Member may remove and replace the individual serving as its Platinum Director at any time with or without cause by providing notice to the Foundation, which replacement shall be effective immediately unless otherwise set forth in the notice.

(b) **Gold Directors.** Gold Members, by a Majority Vote of the Gold Members, shall be entitled to elect two (2) representatives of the Gold Members, each of which representative Gold Member

shall appoint one (1) representative to the Board as a Gold Director; *provided, that*, each such representative must be an employee, officer, director, or consultant of the appointing Gold Members (“Gold Director”). Elections of the Gold Member representatives may be held at the Foundation’s annual meeting by electronic ballot or otherwise. If any meeting is delayed or not held in any year, the Gold Directors then in office shall remain in office until the annual meeting or a special meeting called for the purpose of electing Gold Member representatives. If a Gold Member representative ceases to be a Gold Member (for example by changing its membership category or terminating its membership), any Director nominated by such terminating Member shall be removed from the Board, and the Gold Members shall elect an alternative Gold Member representative to appoint a replacement Gold Director at such time as determined by the Board. A Gold Member representative may remove and replace the individual it appointed as a Gold Director at any time with or without cause by providing notice to the Foundation, which replacement shall be effective immediately unless otherwise set forth in the notice.

Section 3.5 Removal.

A Director shall be removed from the Board upon the termination of the membership of such Director’s Member organization, termination of the Director’s employment by such Director’s Member organization, acquisition of the Director’s Member organization by another Member organization with a Director on the Board, or removal with or without cause by the Member that appointed such Director pursuant to Section 3.4.

Section 3.6 Terms and Election Dates. Unless earlier removed from office pursuant to these Bylaws, all Directors shall hold office until their respective successors are appointed, in the case of a Platinum Director by their Platinum Member pursuant to Section 3.4(a), or in the case of a Gold Director by the Gold Member elected to appoint a Director pursuant to Section 3.4(b). There shall be no prohibition on re-election or re-designation of any Director following the completion of that Director’s term of office. Each Director shall serve the term specified herein and until his or her successor is appointed, or until his or her earlier death, resignation, or removal, unless an elected Director is replacing an existing Director, where the newly elected Director shall serve out the remaining term of the Director being replaced.

Section 3.7 Place of Meetings. All Board meetings may be held at any place within or without the State of Delaware that has been proposed from time-to-time by any of the Directors and designated by Board resolution or by the written notice of the Executive Director in proper consultation with the Directors.

Section 3.8 Regular Meetings. The Board Chair or Executive Director will schedule regular Board meetings. No regular Board meeting will be deemed to have been validly held unless written notice is provided to each of the Directors at least fourteen (14) calendar days prior to such meeting, which notice will identify the time and place of the meeting and all potential actions to be undertaken by the Board at the Board meeting so that each Director can reasonably prepare for and attend such Board meeting. The written notice may be provided

personally, by mail, by fax, or by electronic message with return confirmation. Each Director has a right to attend and shall make a reasonable effort to attend each Board meeting, including by telephone as set forth in Section 3.11.

Section 3.9 Special Meetings. Special Board meetings for any purpose or purposes outside of the published agenda for regular meetings may be called at any time by the Board Chair or Executive Director or by fifty percent (50%) or more vote of the Directors. Written notice of the time and place of such special meeting shall be given to each Director at least five (5) days prior to the special meeting.

Section 3.10 Action by the Board. No action may be taken or approved by the Board that is outside the Foundation's stated purpose as set forth in Section 1.1. For the avoidance of doubt, for all voting purposes stated herein, and for any written consent of the Directors, any vote, or written consent, of Directors means a vote or consent on a voting power basis and not a vote or consent based on the number of Directors.

(a) **Simple Majority Required.** For all actions not specified by Section 3.10(b) or Section 3.10(c) below, and for which the Board has authority to take within the stated purpose of the Foundation as set forth in Section 1.1, such actions must be approved by no less than a simple majority (more than fifty percent (50%)) of the voting power represented at a Board meeting at which a quorum is present. Such actions requiring a Majority Vote include, but are not limited to:

- (i) altering the total number of Gold Members or qualifications therefor;
- (ii) approving an annual community report for the Foundation;
- (iii) approving the Executive Director's compensation package;
- (iv) approving the Board's regular meeting schedule;
- (v) establishing Board Committees and appointing Directors to such Committees;
- (vi) adding or removing any type of qualification for applicant eligibility for membership in the Gold, Silver and Individual Member classes;
- (vii) approving changes to any Membership At-Large committee (specified in Article VIII);
- (viii) electing Officers;
- (ix) approving an annual budget, any expenses above ten percent (10%) over such budget, and material contracts;

(x) approving changes to annual Member contribution requirements (membership fees and development resources, if applicable); and

(xi) approving nominees for the PMC Chairperson.

(b) **Supermajority Consent Required.** The following actions must be approved by no less than seventy percent (70%) of the voting power represented at a Board meeting at which a quorum is present, subject to the eligibility restrictions set forth in 6.16(c):

(i) altering the total number of Platinum Members or qualifications therefor;

(ii) altering the total number of Directors;

(iii) approving or changing the name of the Foundation;

(iv) selecting standards organizations through which to standardize Cloud Foundry APIs;

(v) amending the Membership Agreements;

(vi) amending these Bylaws or the Certificate;

(vii) terminating a Platinum, Gold or Silver Member's Agreement or reinstating a terminated Member's Agreement;

(viii) changing the Foundation's legal counsel;

(ix) approving changes to the Foundation's Antitrust Guidelines;

(x) approving changes to the Community Code of Conduct;

(xi) entering into any formal affiliation with another organization;

(xii) approving changes to the IP Policy;

(xiii) removal of a Director for cause;

(xiv) dissolution of the Foundation;

(xv) changing the contribution or distribution license;

(xvi) selecting and/or terminating the Executive Director; and

(xvii) using a contribution or distribution license other than Apache 2.0.

(c) **Special Supermajority Consent Required.** Approving changes to the Development Governance Policy must be approved by no less than eighty-five percent (85%) of the voting power represented at a Board meeting at which a quorum is present, subject to the eligibility restrictions set forth in 6.16(c).

(d) **Action Without Meeting.** Any action required or permitted to be taken by the Board at a meeting may be taken without a meeting if all of the Directors consent in writing to such action, by electronic ballot or otherwise. The action shall be evidenced by one or more written consents describing the action taken, signed by each Director, and included in the minutes or filed with the corporate records reflecting the action taken. Any action taken hereunder shall be effective upon the receipt of the written consent of all of the Directors for approval of the action under consideration.

Section 3.11 Telephonic Meetings. The Board shall permit any or all Directors to participate in a regular or special meeting by, or conduct the meeting through, use of any means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 3.12 Quorum

(a) Unless otherwise provided herein, a simple majority of the Directors then in office must be present (including via telephone or video conference, or other lawful means not prohibited by these Bylaws) shall constitute a quorum for the transaction of business. If such quorum is not established at any Board meeting, the Directors present in person or otherwise as provided above, and entitled to vote at such meeting, can recess the Board meeting from time to time, without notice other than announcement at the meeting, until such quorum is established.

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

Section 3.13 Voting

(a) **General.** Except as provided in Section 3.13(b), each Director shall be entitled to one (1) vote on each matter submitted to a vote of the Board. Abstentions shall be considered as a waiver of voting right and shall not be counted either for or against the proposal being voted on. Abstentions shall, however, count towards the applicable quorum.

For any meeting of the Board or any Board Committee for which notice is required by these Bylaws or by applicable law, a notice stating the place, date, and hour of the meeting shall be delivered to each director at his or her address shown on the records of the Foundation prior

thereto in a tangible medium (e.g., a letter or facsimile) or by an electronic transmission (e.g., email). The method of notice need not be the same to each Director. Such notice shall be delivered prior to the meeting as set forth above for regular meetings in Section 3.8 and for special meetings as set forth in Section 3.9. If notice is delivered in a tangible medium, it may be transmitted by: mail, private carrier, or personal delivery; telegraph or teletype; or telephone, wire, or wireless equipment that transmits a facsimile of the notice. If mailed, the notice shall be deemed delivered when deposited in the United States mail addressed to the director at his or her address as it appears on the records of the Foundation with postage thereon prepaid. Other forms of notice in a tangible medium described in this paragraph are effective when received. Other than as set forth above for regular meetings in Section 3.8, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board or any Board Committee need be specified in the notice. Whenever any notice is required to be given to any Director under the provisions of these Bylaws, the Certificate or applicable Delaware law, a waiver thereof in the form of a record executed by the Director entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of any regular or special meeting of the Board need be specified in the waiver of notice of such meeting.

In addition, attendance of a Director or a committee member at a meeting shall constitute a waiver of notice of such meeting, except where a Director or a committee member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 3.14 Reimbursement. Directors and members of Board Committees may receive such reimbursement for expenses as may be fixed or determined by resolution of the Board; *provided, that*, such reimbursement for expenses shall be reasonable, include evidence of the expense, and shall be comparable to reimbursements paid by unaffiliated entities for a like position.

Section 3.15 Standard of Conduct. A Director shall discharge the duties of a Director, including duties as a member of any Board Committee upon which the Director may serve, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances. In discharging the duties of a Director, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case if prepared or presented by: (a) one or more Officers or employees of the Foundation whom the Director reasonably believes to be reliable and competent in the matters presented; (b) legal counsel, public accountants or other persons as to matters the Director reasonably believes are within the person's professional or expert competence; or (c) a Board Committee as to matters within the Board Committee's jurisdiction, if the Director reasonably believes the Board Committee merits confidence. A Director is not acting in good faith if the Director has knowledge concerning the matter in question that makes reliance otherwise permitted in this Section 3.15 unwarranted.

Section 3.16 Resignation and Removal

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

(b) **Removal for Cause.** Any Director may be removed “For Cause” at a meeting called for that purpose. For the purposes of this Section 3.16(b), “**For Cause**” shall mean when any Director has been (i) declared of unsound mind by a final order of court, (ii) convicted of a felony (or international equivalent thereof), (iii) found by the Board to have breached any duty arising under the Bylaws or the Certificate, or (iv) the Member that appointed the Director is dues delinquent in accordance with Section 6.15. Such Director may only be removed “For Cause” after the affirmative Supermajority Vote of the Directors (exclusive of the Director facing removal) represented at a Board meeting at which a quorum is present.

(c) **Removal without Cause.** Any Director may be removed without cause by the Member that appointed the Director.

Section 3.17 Vacancies. A Board vacancy or vacancies shall be deemed to exist: (i) in the case of the death or the resignation or removal of any Director; (ii) if the authorized number of Directors is increased without appointment, as applicable, of the additional Directors so provided for; or (iii) in the case of failure at any time to appoint the full number of authorized Directors. A vacancy of a Board seat appointed by a Platinum Member shall be filled within three (3) weeks of the vacancy by the Platinum Member whose Board seat has been vacated. A vacancy of a Board seat appointed by a Gold Member shall be filled within six (6) weeks of the vacancy by the Gold Member whose Board seat has been vacated. If such Member fails to fill such position within six (6) weeks of the vacancy, then the Board may appoint a temporary Director to fill such vacancy, until such time as the Platinum Member, or Gold Member elected to fill the seat, appoints a Director.

ARTICLE IV

COMMITTEES OF THE BOARD, WORKING GROUPS

Section 4.1 Appointment of Committees and Working Groups. The Board may appoint such Board Committees as the Board from time-to-time deems necessary or appropriate to conduct the business and further the Foundation objectives. Subject to the provisions herein, the creation of Committees or Working Groups; the membership criteria for the same; the appointment of the Chair of such Committees or Working Groups; the procedures for meetings; and any other essential issues necessary for composition and management of a

Committee or Working Group shall be at the Board's sole discretion. Any appointment by the Board of any other Board Committee having the authority of the Board, including the designation of one Board Committee member as the Chairman, must be by resolution adopted by a simple majority of the Directors represented at a Board meeting at which a quorum is present. Any committee having authority of the Board shall consist of two (2) or more Directors. Any decision of Working Groups shall be subject to ratification by the Board or a committee having the authority of the Board to be effective with respect to the Foundation, the Board shall have the right to overturn or disregard any decision of any committee of the Foundation, and the Board shall retain the right to limit the powers and duties of any Board Committee that it has created and to disband any such Board Committee in its sole discretion. Board Committee Directors may delegate their committee responsibilities to any individual that is an employee, officer, director, or consultant of an existing Member. Each Board Committee may invite non-Director advisors to participate in or attend certain committee meetings in order to assist the Board Committee in the performance of its duties. Each appointed Committee or Working Group shall keep a record of its activities and regularly report them to the Board at every meeting thereof.

Section 4.2 Powers and Authority of Committees and Working Groups. The Board may delegate to any Board Committee having the authority of the Board, any of the powers and authority of the Board in the management of the business and affairs of the Foundation; *provided, however,* that no Board Committee may: (a) authorize payment of a dividend or any part of the income or profit of the Foundation to its Directors or Officers; (b) approve dissolution, merger, or the sale, pledge or transfer of all or substantially all of the Foundation's assets; (c) elect, appoint, or remove Directors or fill vacancies on the Board or on any of its committees; (d) adopt, amend or repeal the Certificate, Bylaws or any resolution by the Board; or (e) perform Board actions specified in Section 3.10 herein. Except as otherwise specified by the Board, no Committee or Working Group shall have legal authority to bind the Foundation or incur any liability related thereto.

Section 4.3 Organization; Quorum; Voting. Except as otherwise specified by the Board or required by law, the Certificate, or these Bylaws, a majority of the members of each Committee or Working Group entitled to vote (or such higher percentage as may be required by law, the Certificate, or these Bylaws to approve any action to be taken at such meeting) shall constitute a quorum for the transaction of business. If such quorum is not established at any meeting, the members of such Committee or Working Group present in person or as otherwise permitted herein, and entitled to vote at such meeting, can recess the meeting from time to time, without notice other than announcement at the meeting, until such quorum is established. Except as otherwise specified by the Board, any action or decision to be taken by a Committee or Working Group must be approved by a Majority Vote. Each Committee or Working Group may determine the time and place for its meetings, the notice necessary therefor, and its rules of procedure.

ARTICLE V OFFICERS

Section 5.1 Initial Officers; Board Empowerment. The Officers of the Foundation initially shall be a Chair, Vice Chair, Executive Director, Secretary, and Treasurer. The Board shall have the power to create such other offices as it deems necessary in the best interest of the Foundation. One (1) person may hold two (2) or more offices in the Foundation, unless otherwise stated herein; *provided that*, no instrument required to be signed by more than one (1) Officer may be signed by one (1) person in more than one (1) capacity. For the absence of doubt, the Executive Director shall not serve as Board Chair.

Section 5.2 Nomination and Appointment; Powers and Duties. Foundation Officers shall be appointed by the Board in accordance with this Article V. Each Officer shall, during his or her term in office, hold his or her office until he or she shall resign or shall be removed or his or her successor shall be appointed. The Board may, by resolution, establish procedures governing nomination and appointment of Officers that are not inconsistent with these Bylaws. The Officers shall have the powers and duties customarily associated with their respective offices except as the Board may otherwise determine.

Section 5.3 Management; Officers and Duties. (a) **Chair.** The Chair shall be the chief executive officer and lead the Board. The Chair shall, subject to Board control, supervise the affairs of the Foundation and the activities of the Officers, and preside over Board meetings. The Chair shall perform all duties incident to the office and such other duties as may be required by the Certificate, these Bylaws, or any other Foundation agreements or Board resolutions, including presiding over all Member meetings. Except as otherwise expressly provided by law, the Certificate, these Bylaws, or any Board resolutions, the Chair shall, in the name of the Foundation, execute any legal documents or instruments that the Board authorizes.

(b) **Vice Chair.** In the absence of the Chair, or if he or she is unable or refuses to act, the Vice Chair shall perform all duties of the Chair and, when so acting, shall have all the powers of, and be subject to all the restrictions on, the Chair. The Vice Chair shall have other powers and perform other duties as authorized by the Certificate, these Bylaws, or the Board.

(c) **Executive Director.** The Board may appoint an Executive Director to manage the business affairs of the Foundation on a day-to-day basis. Any Executive Director elected by the Board would have such powers and duties of supervision and management as are usually vested in the chief administrative officer of a corporation and as may be otherwise prescribed by these Bylaws or the Board and would carry into effect all directions of the Board; direct the Foundation's day-to-day affairs; collect any charges or fees; prepare for the Treasurer an annual budget and all supplements thereto for each fiscal year; submit to the Board at least once annually a report summarizing the operations and affairs of the Foundation and its activities during the preceding year and setting forth all plans, programs, or projects for future development; report to the Board any material violation of rules and regulations; keep records in the form prescribed from time to time by the Board; and make such reports to the Board as may

be appropriate or required by these Bylaws or the Board. The Executive Director shall report to the Board and shall be subject to the oversight of the Board. The Executive Director may not be an employee, officer, director or consultant of any Member of the Foundation. The Executive Director may preside over all Member meetings and execute on behalf of the Foundation, and when required, upon approval and at the direction of the Board, all contracts, agreements, membership certificates and other instruments. The Executive Director shall from time- to-time report to the Board all matters within the Executive Director's knowledge affecting the Foundation that should be brought to the attention of the Board. The Executive Director may employ, remove, and suspend all agents and employees not elected or appointed by the Board as to matters the Executive Director reasonably believes are within the person's professional or expert competence, and determine the compensation, duties, responsibilities, and titles of such persons, as deemed appropriate. The Executive Director shall perform other duties assigned from time-to-time by the Board.

The Executive Director may be invited to participate in any meeting of the Board and any Committee, whether or not a member thereof; provided, however, that he or she would not be entitled to vote, and would not be counted for purposes of determining whether a quorum is present.

In the absence of an Executive Director or in the event of his or her disability or inability or refusal to act, the Board may designate another person to exercise, and, in the absence of such designation the Chair of the Board may exercise, all of the powers and perform all of the duties of the Executive Director.

(d) **Secretary; Assistant Secretaries.** The Secretary shall attend all meetings of the Board and all meetings of the Membership At-Large. The Secretary or Foundation staff acting at the Secretary's instruction must record all the proceedings of the meetings of the Board and of the Membership At-Large in a book to be kept for that purpose and maintain such corporate records, including minutes of all Board and Member meetings; provide notices and distribute information to Members as required by law, these Bylaws, or authorized by the Board; be custodian of records of the Foundation; maintain the membership roll; perform all other duties incident to the office of Secretary or assigned by the Board; and shall perform like duties for other Committees when required. In the absence of the Secretary at a Board meeting, or in the event of the Secretary's disability or inability or refusal to act, a majority of the Board may appoint an Assistant Secretary to act as Secretary for any such meeting or until the Board otherwise provides. The Secretary shall give, or cause to be given, notice of all meetings of the Board and special meetings of the Board, and shall perform such other duties as may be prescribed by the Board or the Executive Director, under whose supervision he or she shall be. The Secretary shall have custody of the seal of the Foundation (if one adopted by the Board) and shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the Secretary's signature. The Board may give general authority to any other Officer to affix the seal of the Foundation and to attest the affixing by his or her signature.

(e) **Treasurer; Assistant Treasurer.** The Treasurer shall have custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Foundation and shall deposit all moneys and other valuable effects in the name and to the credit of the Foundation in such depositories as may be designated by the Board. The Treasurer shall perform all duties incident to the office of Treasurer or assigned by the Board, including the submission of the annual budget to the Board for its approval and the implementation of appropriate financial policies and procedures. Assistant Treasurers may be elected by the Board. In the absence of the Treasurer or in the event of his or her disability or inability or refusal to act, any

Assistant Treasurer may perform the duties and exercise the powers of the Treasurer until the Board otherwise provides. Assistant Treasurers shall perform such other duties as the Board may from time to time prescribe.

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

Section 5.4 Standards of Conduct for Officers. An Officer shall discharge the Officer's duties, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Officer reasonably believes to be in the best interests of the Foundation. In discharging the duties of an Officer, an Officer shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case if prepared or presented by: (a) one or more Foundation Officers or employees 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 liable to the Foundation, any Member or any other person for any action taken or not taken as an Officer, if the Officer acted in compliance with this Section 5.4.

Section 5.5 Removal and Resignation. The Board may remove any Officer, with or without cause, at any time by vote as described in Section 3.10. Any Officer who is an employee of a Member shall automatically be removed from all of his or her Officer positions with the Foundation if that Member ceases to be a Member. Unless otherwise agreed to and modified by contract, any Officer may resign at any time by giving written notice to the Board.

ARTICLE VI MEMBERSHIP AT- LARGE

Section 6.1 Membership Generally. The Foundation shall have Members and classes of membership as defined by these Bylaws and the Board. No Member shall hold more than one membership in the Foundation. A Member and its Affiliates shall be deemed one Member regardless of membership class, except that Pivotal, EMC, and VMware will be deemed separate Members. Except as expressly provided in and authorized by the Membership Agreement, the Certificate, these Bylaws, or other provisions of law, all Members shall have the rights and privileges and be subject to the restrictions and conditions established from time to time by resolution of the Board. Applicants for membership shall be admitted to membership upon execution of the Membership Agreement, and payment of any annual fees established by the Board for that membership class. Notwithstanding any other provision in the General Corporate Law of the State of Delaware, Members shall have only those rights to appoint Directors as set forth in Section 3.4.

Section 6.2 Membership Qualifications and Expectations. Any for-profit corporation, non-profit corporation, government organization, educational institution, or other entity or individual supportive of the Foundation's purposes and not otherwise prohibited by treaty, law, or regulation from abiding by the terms of these Bylaws is qualified to become a Member. In general, Members are expected to express public support for the Foundation and Cloud Foundry. Other than Pivotal, EMC, and VMware, Affiliates shall constitute one (1) member only, regardless of membership class.

Section 6.3 Classes of Membership. The Foundation shall initially have four (4) classes of membership: (i) Platinum membership (of which there were initially 7, subject to increase by Board resolution), (ii) Gold membership (of which there were initially 12, subject to increase by Board resolution), (iii) Silver membership (of which the number of members shall be unlimited), and (iv) Individual membership (of which the number of members shall be unlimited). Provided the Member is in compliance with all membership obligations, membership shall be automatically renewed annually upon payment of any annual fees established by the Board applicable to the class of membership (if any).

(a) **Rights of All Members.** Any Member in the Foundation shall have the following rights: to attend and participate in General Meetings of Members of the Foundation; upon approval by the Board, to attend and observe Committee meetings and Working Group meetings; guaranteed participation in each PMC for which it has at least one Dedicated Committer, in the case of Members that are entities, or is a Dedicated Committer, in the case of Members that are individuals, in that PMC's Project/s, as set forth in the IP Policy and/or the Development Governance Policy; and any other rights specified by the Board.

(b) **Platinum Membership.** In addition to the rights specified in Section 6.3(a), Platinum Members shall have the right to appoint a Director as provided in Section 3.4(a), and any rights and obligations set forth in the applicable Membership Agreement.

(c) **Gold Membership.** In addition to the rights specified in Section 6.3(a), Gold Members shall have the right to vote on the election of the Gold Members that are entitled to appoint Directors as provided in Section 3.4(b), and any rights and obligations set forth in the applicable Membership Agreement.

(d) **Individual Membership.** Individual Members cannot be employees of Member organizations. On no less than a quarterly basis, the Executive Director shall review Individual Member affiliation with organizations, and report to the Board whether there is any attempt by organizations to include a large number of affiliated Individual Members in the membership.

Section 6.4 Additional Rights of Membership At-Large. The Board may by resolution establish such additional rights, privileges and duties corresponding to any class of members; *provided, that*, such rights, privileges or duties are not inconsistent with the Bylaws.

Section 6.5 Fees, Dues and Assessment

(a) **Funding.** All Platinum, Gold, and Silver Members shall pay a membership fee as set by the Board from time to time. There is no membership fee for Individual Members. Membership fees shall be set forth in each Member's Membership Agreement, and may be modified by the Board in a reasonable and non-discriminatory manner at any time.

(b) **Payment.** Each Member will be responsible for payment of annual dues as set by the Board, if any, on at least a quarterly basis. The Secretary will send out invoices in compliance with reasonable invoicing requirements (e.g., receipt of invoices at least forty-five (45) days prior to the due date). The Secretary will promptly send out a written notice ("**Dues Notice**") to any Member that has not paid its dues within ten (10) days after the date upon which such dues are required to be paid. Members may be removed for non-payment as set forth in Section 6.15.

(c) **Assessment.** The Board may levy assessments upon the Platinum, Gold, or Silver Members, provided that such assessments are levied upon each Member of each class equally within such class, and provided further that written notice specifying the amount of the assessment, and the manner and period in which such assessment is to be paid, is delivered thirty (30) days in advance of any assessment to any Member that will be assessed. A Member may withdraw from the Foundation in advance of the assessment date and not be obliged to pay the assessed amount to the Foundation. Assessments may be levied differently upon different classes of Members, and any class or classes may be exempted from assessments as the Board determines. Any assessments will be in addition to any dues established by the Board, unless the Board provides otherwise. The Board may terminate the membership of any Member not

remitting the assessed amount within the period specified in the written assessment notice sent to the Members being assessed.

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

Section 6.7 Meetings Generally. The annual meetings of the Membership At-Large shall be held each year, on such date and at such time and place as determined by resolution of the Board (“**Annual Meetings**”). Other regular meetings of Members shall be held on dates and at times to be determined by the Board. At each Annual Meeting, the Board shall report a summary of the Foundation activities during the past year, as well as the plan for the next year’s activities. Any Member shall be permitted to participate in any and all meetings of the Membership At-Large (including Special Meetings as set forth in Section 6.8 below) by, or conduct the meeting through, use of any means of communication (including telephonic communication) by which all members participating may simultaneously hear each other during the meeting. A Member participating in a meeting by this means is deemed to be present in person at the meeting.

Section 6.8 Special Meetings. Special meetings of the Membership At-Large shall be held at the call of the Executive Director, the Board, or by a number of the members who in the aggregate represent at least seventy-five percent (75%) or more of the Membership At-Large by a written demand signed, dated, and delivered to the Secretary. Notice of a special meeting shall be given within thirty (30) days following the date the written demand is delivered to the Secretary, in accordance with Section 6.11 below.

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

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

voting, a notice of the adjourned meeting shall be given to each Member who, on the record date for notice of the meeting, is entitled to vote at the meeting.

Section 6.11 Quorum. Except as otherwise provided by law, the Certificate, or these Bylaws, more than fifty percent (50%) of the aggregate votes of the voting Membership At-Large (or such higher percentage as may be required by law, the Certificate, or these Bylaws to approve any action to be taken at such meeting) of the Members entitled to vote must be present in person (including via telephone or video conference) or represented by proxy, to constitute a quorum at any meeting of the Members for matters requiring a vote of the transaction of business. If such quorum is not established at any meeting of the Members requiring a vote of the Members, the Members present in person or by proxy and entitled to vote at such meeting can recess the meeting from time to time, without notice other than announcement at the meeting, until such quorum is established.

Each Member entitled to vote with respect to any election or corporate action at a meeting of Members may authorize another person or persons to act for that Member by proxy, but no such proxy shall be voted or acted upon after one year from its date, unless the proxy provides for a longer period. Without limiting the manner in which a Member may authorize a person or persons to act for such Member as proxy pursuant to this paragraph, a Member may execute a writing authorizing another person or persons to act for such Member as proxy. Execution may be accomplished by the Member or such Member's authorized officer, Director, employee, or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

Section 6.12 Voting. Each Member (collectively with any of its Affiliates) is entitled to one (1) vote on each matter submitted to a vote of the Membership At-Large. All member voting or member consents shall be effected on a voting power basis only and not based on the number of Members.

Section 6.13 Action Without Meeting. Any action required or permitted to be taken by the Membership At-Large at a meeting may be taken without a meeting if a majority of those Members eligible to participate in such a vote shall consent in writing to such action (subject to the super-majority provision set forth in these Bylaws, in which case a super-majority of those Members eligible to participate in such a vote shall be required). The action shall be evidenced by one or more written consents describing the action to be taken, signed by each Member, and included in the minutes or filed with the corporate records reflecting the action taken. Any action taken hereunder shall be effective upon the receipt of the written consent of the requisite number of Members for approval of the action under consideration. Electronic communications and electronic solicitation of Member consents is permitted.

Section 6.14 Conduct of Meetings. Meetings of the Membership At-Large shall be presided over by the Executive Director, or in the absence of the Executive Director, by the chair appointed by the Executive Director. The Secretary shall act as the secretary of all meetings of

the Membership At- Large, *provided, that*, in his or her absence the presiding officer shall appoint another Member to act as Acting Secretary of the meeting.

Section 6.15 Delinquency; Non-Payment of Dues. In the event that a Member does not pay its membership dues and all compounded late fees within ninety (90) days of the invoice due date (“**Dues Delinquent**”), the membership of such Member shall be subject to termination by the Board for cause.

Section 6.16 Termination of Membership. A Member whose membership is terminated by the Board or who withdraws from the Foundation shall no longer have the right to participate in any of the activities of the Foundation or receive regular Foundation communications. The membership of any Member shall terminate upon the occurrence of any one or more of the following:

(a) **Resignation and Withdrawal.** Subject to the provisions of these Bylaws and Membership Agreement, any Member may resign and withdraw from the Foundation in a writing filed with the Secretary. The resignation of a Member shall not relieve the Member from any payment obligations the Member may have to the Foundation as a result of obligations incurred or commitments made prior to 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) **Acquisition, Merger, Agreement, or Reorganization.** In the event of any acquisition, merger, agreement, reorganization or other similar event that results in any two (2) or more members becoming Affiliates, (a) in the case of two or more Members of different Membership groups (e.g., Platinum, Gold, Silver) all but the highest class of membership shall be deemed terminated, and (b) in the case of two or more Members of the same Membership group, those Members may choose which Member/s shall be terminated in compliance with the Section 3.3 and Article VI herein.

(c) **Expulsion, Termination or Suspension.** The membership of any Member may be terminated “For Cause” by the Board after a hearing duly held in accordance with this Section 6.16(b). For purposes of this Section 6.16(b) “For Cause” shall mean the Member has materially breached the Membership Agreement, Bylaws, IP Policy, Antitrust Guidelines, and/or other related Foundation agreements or policies, and has not cured such breach within thirty (30) days of receipt of written notice from the Foundation.

Such determination shall be made in the sole and absolute discretion of the Board (excluding the Director who may be a representative of the Member facing expulsion or suspension). Following the determination by the Board that a Member should be terminated the following procedures shall apply:

(i) A notice shall be sent by mail by prepaid, first-class or certified mail to the most recent address of such Member as shown on the Foundation’s records, setting forth the termination

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

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

(iii) In the event that a hearing is held, then following such hearing the Board (excluding any Director who is a representative of the Member facing expulsion or suspension) shall decide whether such Member should in fact be terminated, or sanctioned via written reprimand, as determined by the Board. The decision of the Board shall be final.

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

Section 6.17 Reinstatement, Transition, Corporate Name/Logo, and Membership Roll

Members terminated pursuant to Section 6.16 may only be reinstated upon approval of the Board.

In the event of transition to a different level of membership, the Member shall have to pay the additional applicable membership fee; however, if the fee for the new level of membership would be lower than the fee already paid, there will be no refund of any amounts already paid.

Each Member agrees and consents, subject to its internal approval process and its standard logo license terms, to the use of its corporate name and corporate logo in membership lists on the Foundation website and membership lists in the Foundation promotional materials, provided that each name listed shall be of equal prominence with all other names listed that are part of the same membership level. Any other public use of a Member's name by the Foundation shall require that Member's prior written consent. The use of the corporate name or corporate logo of each Member will inure solely to the benefit of such Member, and be subject to that Member's usage guidelines, if any, as updated from time to time.

The Foundation shall keep a membership roll containing the name and address, including email addresses, of each Member, the date upon which the applicant became a Member, and the name of one individual from each Member who shall serve as that Member's primary contact with the Foundation, receive all correspondence and information, distribute this information within his or her organization, and vote on all issues submitted to a vote of the Members.

Termination of the membership of any Member shall be recorded in the roll. The membership roll will not be sold or otherwise be made available to third parties.

Section 6.18 Non-liability. No Member shall be liable for the debts, liabilities, or obligations of the Foundation merely by reason of being a Member.

Section 6.19 Assignment. No Member may assign or otherwise transfer its membership to another party without the prior written consent of the Board, except (1) upon a change of control or a sale of all or substantially all assets involving that Member, (2) an assignment or transfer to an affiliate of the Member, meaning the transferee party directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such Member, or (3) by operation of law. Any such assignment or transfer shall be effective only upon the agreement in writing by that Member's intended assignee to (i) be bound by the terms and conditions of these Bylaws and any other Foundation agreements to which that Member is a party and (ii) assume all the obligations and liabilities of such Member under these Bylaws or such other agreements. Any attempted assignment or transfer contrary to the terms of this paragraph shall be null and void and have no effect. Any Member acquiring or merging with another Member shall be entitled to only one vote after the consummation of such acquisition or merger. In the event of a termination due to the assignment or transfer hereunder, the assignor shall continue to be obligated with regards to license obligations under the Membership Agreement.

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

Section 6.20 Distribution of Assets Upon Dissolution. Upon a dissolution of the Foundation, and after all of the known debts and liabilities of the Foundation have been paid or adequately provided for, any remaining net assets of the Foundation shall be distributed as determined by the Board, in such proportion or amounts as determined by the Board, to the Members to the extent permitted under Section 501(c)(6) and applicable state law, and/or one or more organizations selected by the Board which will help to further the purposes of the Foundation as set forth in Section 1.1.

ARTICLE VII

STRATEGY COUNCIL AND USER ADVISORY BOARD

Section 7.1 Strategy Council

The Board of Directors may, by resolution, establish a strategy council (the "**Strategy Council**") overseen by the Executive Director, to be comprised of individuals chosen by the Board at its sole discretion from the Gold and Silver Members. The Board shall not be bound by any advice

or decision of the Strategy Council. The members of the Strategy Council shall not have the rights or privileges of Directors or the Membership At-Large of the Foundation and shall have no power or authority over the operation of the Foundation. A member of the Strategy Council may be removed at any time by the affirmative vote of a majority of the Board with or without cause. The Strategy Council (1) provides a mechanism for community members to voice any concerns, raise issues for discussion, and provide feedback to those setting the direction of the Foundation and the PMCs; (2) provides an additional channel to disseminate information to the vendor community and to solicit input on proposed plans; and (3) may provide input on issues as the Board from time-to-time deems necessary or appropriate to conduct the business and further Foundation objectives, for example, technical standards, system acceptance and performance standards, and Foundation event planning and messaging.

Section 7.2 User Advisory Board

The Board of Directors may, by resolution, establish a board of advisors of Cloud Foundry users (the “**User Advisory Board**”) overseen by the Executive Director, to be comprised of Cloud Foundry end users. The Board shall not be bound by any advice or decision of the User Advisory Board. The members of the User Advisory Board shall not have the rights or privileges of Directors or the Membership At-Large of the Foundation and shall have no power or authority over the operation of the Foundation. A member of the User Advisory Board may be removed at any time by the affirmative vote of a majority of the Board with or without cause. The User Advisory Board: (1) consists of Members overseen and selected by the Executive Director; (2) provides a mechanism for users to voice any concerns, raise issues for discussion, and provide feedback to those setting the direction of the Foundation and the PMCs; (3) provides a channel to disseminate information to the Cloud Foundry user community and to solicit input on proposed plans; and (4) may provide input on issues as the Board from time-to-time deems necessary or appropriate to conduct the business and further Foundation objectives.

ARTICLE VIII

INDEMNIFICATION OF DIRECTORS, OFFICERS AND AGENTS

Section 8.1 Actions other than by or in the Right of the Foundation. The Foundation shall indemnify any 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 Foundation Director or Officer, or is or was a Foundation Director or Officer serving at the Foundation’s request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys’ fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the Foundation’s best interests, and, with respect to any criminal

action or proceedings, had no reasonable cause to believe that this conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner that he or she reasonably believed to be in or not opposed to the Foundation's best interests, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 8.2 Actions by or in the Right of the Foundation. The Foundation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Foundation to procure a judgment in its favor by reason of the fact that he or she is or was a Foundation Director or Officer, or is or was a Director or Officer of the Foundation serving at the Foundation's request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the Foundation's best interests; provided, however, that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the Court of Chancery of the State of Delaware or such other court shall deem proper.

Section 8.3 Success on the Merits

To the extent that any person described in Section 8.1 or 8.2 has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in that Section, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 8.4 Specific Authorization; Indemnification of Others

Any indemnification under Section 8.1 or 8.2 (unless ordered by a court) shall be made by the Foundation only as authorized in the specific case upon a determination that indemnification of any person described in that Section is proper in the circumstances because he or she has met the applicable standard of conduct set forth in that Section. Such determination shall be made by a Majority Vote of (1) Directors who were not parties to such action, suit, or proceeding, even though less than a quorum, or (2) by the Members. Subject to the provisions of these Bylaws, the Foundation shall have the power to indemnify its employees and agents to the extent not prohibited by applicable law. The Board shall have the power to determine whether any employee or agent shall be indemnified.

Section 8.5 Advance Payment

Expenses incurred in defending a civil or criminal action, suit, or proceeding may 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 any person described in Section 8.1 or 8.2 to repay such amount if it shall ultimately be determined that he or she is not entitled to indemnification by the Foundation as authorized pursuant to these Bylaws.

Section 8.6 Non-Exclusivity

The indemnification and advancement of expenses provided by, or granted pursuant to, Sections 8.1 – 8.5 shall not be deemed exclusive of any other rights to which those provided indemnification or advancement of expenses may be entitled under these Bylaws, any agreement, any vote of Members or disinterested Directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

Section 8.7 Jurisdiction of Delaware Court of Chancery

The Delaware Court of Chancery is vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification. The Delaware Court of Chancery may summarily determine the Foundation's obligation to advance expenses (including attorney's fees).

Section 8.8 Insurance

The Board may authorize the Foundation to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, 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 corporation, 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 these Bylaws.

Section 8.9 Continuation of Indemnification and Advancement of Expenses

The indemnification and advancement of expenses provided by, or granted pursuant to, these Bylaws shall continue as to any person who has ceased to be a Director, Officer, employee or agent of the Foundation and shall inure to the benefit of the heirs, executors, and administrators of that person.

Section 8.10 Severability

If any word, clause, or provision of Sections 8.5 – 8.11 or any award made hereunder shall for any reason be determined to be invalid, the provisions hereof shall not otherwise be affected thereby but shall remain in full force and effect.

Section 8.11 Compliance with Laws and Foundation Policies

All Members shall comply at all times with applicable laws, regulations and policies relevant to the activities of the Foundation, including, without limitation, applicable competition laws. The Foundation's Antitrust Guidelines shall be made available on the Foundation's website. Detailed competition guidelines may be issued by the Foundation to Members from time to time and shall be observed by all then-current Members.

ARTICLE IX MISCELLANEOUS

Section 9.1 Fiscal Year; Accounting. The Foundation's fiscal year shall begin on January 1 and end on December 31 of the same year, unless otherwise determined by the Board. An auditor shall be appointed by the Board to audit the annual balance sheet and statement of accounts of the Foundation. The Treasurer shall prepare and submit to the Board an audited Foundation balance sheet as of the end of each fiscal year, such report to be produced within a timely manner, and when possible within forty-five days from the end of the fiscal year.

Section 9.2 Disbursements. A process for approving expenditures (including documenting payments received and expenditures allocated, preventing commingling of funds, disposition of the funds upon bankruptcy of the Secretary, etc.) will be developed by the Board.

Section 9.3 Contributions. The Board is authorized to undertake actions to ensure that all code and materials contributed to Cloud Foundry complies with the terms of the IP Policy, or other applicable guidelines and agreements as established or approved in accordance with these Bylaws.

Section 9.4 Expenses. Unless otherwise approved in accordance with policies established by the Board, each Member will bear its own costs and expenses in connection with its performance of its rights and duties in respect of the Foundation, including, without limitation, compensation of its employees, and all travel and living expenses associated with any Member's participation in any meetings and conferences called in connection with the activities of the Foundation.

Section 9.5 Checks, Notes and Contracts. The Board is authorized to select such depositories as it shall deem proper for the funds of the Foundation and shall determine who shall be authorized in the Foundation's behalf to sign bills, notes, receipts, acceptances, endorsements, checks, releases, contracts and documents.

Section 9.6 Investments. The Foundation funds may be retained in whole or in part in cash or be invested and reinvested from time to time in such property, real, personal or otherwise, or stocks, bonds or other securities, as the Board in its discretion may deem desirable.

Section 9.7 Books. There shall be kept at the Foundation's office correct books of account of Foundation activities and transactions, including a minute book that shall contain a copy of the Certificate, a copy of these Bylaws, and all minutes of Board meetings.

Section 9.8 No Agency or Partnership

These Bylaws shall not be construed to create an agency, joint venture, or partnership between or among the Members. No Member shall have the authority to conclude agreements or enter into any obligation on behalf of the Foundation without the prior written consent or authorization from the Board. No Member shall be liable for any loss or damages whatsoever resulting from any act performed by another Member(s) on behalf of the Foundation, for which act such Member had not obtained prior written consent or authorization from the Board.

Section 9.9 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 in adopting the amendments provides that they are to become effective at a different date.

Section 9.10 Settlement of Disputes

In the event of any dispute between or among Members, former Members, or one or more third parties arising from or related to these Bylaws or the activities of the Foundation, the Members and former Members concerned shall make reasonable effort to amicably settle such disputes. Notwithstanding the foregoing, nothing in these Bylaws shall preclude any Member at any time from seeking an injunction, damages, or any other legal relief available under applicable laws against any other Member, former Member, or third party for intellectual property infringement.

Section 9.11 Execution of Instruments

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

Section 9.12 Deposits

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

Section 9.13 Tax Exempt Status

Notwithstanding any other provisions of these Bylaws, the Foundation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under

Section 501(c)(6) of the United States Tax Code. Without limitation of the foregoing, the Foundation shall not “engage in a regular business of any kind ordinarily carried on for profit” within the meaning of Treasury Regulation Section 1.501(c)(6)-1 promulgated under Section 501(c)(6) of the United States Tax Code. The Board and Officers shall have broad discretion to curtail activities of Members with respect to the Foundation that conflict with the tax exempt status of the Foundation, and the Board may expel a Member if necessary to protect that tax exempt status.

Other than distributions to Members in dissolution as permitted by Section 501(c)(6) of the Internal Revenue Code, no part of the net earnings of the Foundation shall inure to the benefit of, or be distributable to, its Members or other private persons, except that the Foundation shall be authorized to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of the Foundation as approved by the Board.

Section 9.14 Enforceability

If any provision or portion of these Bylaws is held unenforceable or invalid for any reason, the remaining provisions and portions of these Bylaws shall be unaffected by such holding.

Section 9.15 Governing Law

These Bylaws shall be governed by, and construed in accordance with, the laws of the State of Delaware without regard to the conflict of laws provisions of any state or jurisdiction.

Section 9.16 Amendments. These Bylaws may not be amended except as set forth in Section 3.10. The provisions of any such amended Bylaws will be binding upon all of the Membership At-Large.

Definitions

“**Active Project**” means a Project that is undergoing active development and is included in the release train process, as set forth in the Development Policy.

“**Affiliate**” means any legal entity that directly or indirectly controls another entity via beneficial ownership of more than 50% of voting power or equity (“**Control**”), or is under the Control of another entity, for so long as such Control exists. For purposes of this definition, Pivotal, EMC and VMware shall not be deemed “Affiliates.”

“**Archived Projects**” means a Project that reaches the end of its useful life, is retained for prosperity, but is no longer actively developed or eligible for release train inclusion.

“**Backlog**” means a prioritized list of Stories/Epics that serve as the shared work queue for a Project team.

“Board Committee” means such Committees comprised of Directors as the Board from time-to-time deems necessary or appropriate to conduct the business and further the Foundation objectives, including an Executive Committee.

“Dedicated Committer” means a developer or Project Lead who (1) performs development work for no less than 75% of FTE on Projects and no less than 50% of FTE on an Active Project as measured by the Board, and (2) works on Stories in the Backlog, or some other definition set forth by the Project Management Committee.

“Committee” means any advisory group created and designated by the Board as a Committee, which shall have such authority to take action on the Foundation’s behalf as the Board authorizes from time to time.

“Contribution” means any information or materials, including software source code, documentation, or related materials, provided to the Foundation by a Member or other party and which is, or is proposed to be, included in a Project.

“Development Governance Policy” means the development governance policy under which the Foundation will function.

“Director” means any individual appointed or elected to serve on the Board.

“EMC” shall mean the EMC Corporation, a corporation formed under the laws of the Commonwealth of Massachusetts.

“Epic” means a brief description of big picture themes or large software features that consist of multiple Stories.

“Executive Director” means the Foundation Officer appointed by the Board to manage the Foundation’s business affairs on a day-to-day basis, as further defined in Section 5.3(a).

“Foundation” shall mean CloudFoundry.org Foundation, a nonprofit nonstock corporation formed under the laws of the State of Delaware, which shall seek recognition of status as an organization described in section 501(c)(6) of the Internal Revenue Code.

“Full Time Equivalent” or “FTE” means, in the United States, the equivalent of one (1) person working full time: eight (8) hours/day, five (5) days/week, fifty-two (52) weeks/year, for two thousand eighty (2,080) hours/year, or the legal definition in the applicable jurisdiction.

“Incubation Project” means a Project that is proposed for inclusion in the Foundation, undergoing active development, but is not included in the release train process.

“Individual Member” means an individual unaffiliated with a Member that meets the requirements of an Individual Member as set forth in the Membership Agreement, as amended from time-to-time in accordance with any and all other requirements of these Bylaws.

“IP Policy” means the Intellectual Property Rights Policy.

“Majority Vote” means an affirmative vote of more than 50% of the total number of all votes of those who are entitled to vote on a particular matter (telephonically, electronically, or physically, as permitted by applicable law).

“Member” means a person or entity that is a member of the Foundation in accordance with the Bylaws and any related Membership Agreement.

“Membership At Large” means all Members as referred to collectively.

“Pivotal” means Pivotal Software, Inc., a corporation formed under the laws of the State of Delaware.

“PMC” means Project Management Committee.

“Project” means one or more of the Foundation’s Cloud Foundry open source projects that have been duly approved as set forth in the IP Policy, including Active Projects, Incubation Projects, and Archived Projects. **“Secretary”** means the Foundation Officer appointed by the Board, as defined in Section 5.3(b).

“Story” or “Stories” means a brief description of a requirement for a software.

“Supermajority Vote” means an affirmative vote of no less than seventy percent (70%) of the voting power represented at a meeting at which a quorum is present (telephonically, electronically, or physically, as permitted by applicable law).

“VMware” shall mean VMware, Inc., a corporation formed under the laws of the State of Delaware.

“Working Group” means any advisory board created by the Board or designated by the Board as a Working Group, which shall have the authority to advise the Board or one or more Committees of the Board. For the avoidance of doubt, no Working Group will be a Committee.

**CERTIFICATE OF ADOPTION
OF BYLAWS OF
CLOUDFOUNDRY.ORG FOUNDATION**

The undersigned certifies that he is the duly elected, qualified and acting Secretary of CloudFoundry.org Foundation, a Delaware not-for-profit corporation (the "**Foundation**"), and that the foregoing amended and restated bylaws were adopted as the Foundation's amended and restated bylaws on September 26, 2019 by the Board of Directors of the Foundation.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of _____,

Name:
Title: Secretary