

ARTICLES OF INCORPORATION
OF
DIGITAL TRUST FOUNDATION

ARTICLE I

NAME

The name of the corporation is Digital Trust Foundation (hereinafter referred to as the “Corporation”).

ARTICLE II

ORGANIZATION

This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes.

ARTICLE III

PURPOSES AND POWERS

The purposes for which the Corporation is formed are as follows:

(a) The specific purposes and powers of the Corporation are as follows:

(1) The Corporation is organized and is to be operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the United States Internal Revenue Code of 1986 (hereinafter referred to as the “Code”), to fund and sponsor programs designed to educate users, regulators and enterprises regarding critical issues relating to protection of identity and personal information online through user control, and the protection of users from online threats. Notwithstanding the foregoing, the Corporation shall not sponsor any litigation or lobbying matters, except to defend its resources, including enforcement of its legal rights. All references to the Code contained herein are deemed to include corresponding provisions of any future United States Internal Revenue Law.

(2) In furtherance of the purposes set forth in this Article III, the Corporation may exercise all the rights and powers conferred on nonprofit public benefit corporations under the laws of the State of California.

(b) No substantial part of the activities of the Corporation shall consist, except as otherwise provided in section 501(h) of the Code, of carrying on propaganda, or otherwise attempting to influence legislation, nor shall the Corporation participate in, or intervene in

(including the publishing or distributing of statements or otherwise), any political campaign on behalf of or in opposition to any candidate for public office.

(c) Notwithstanding any of the above statements of purposes and powers, the Corporation shall not engage in any activities or exercise any powers, whether express or implied, so as to disqualify the Corporation from exemption from federal income tax under section 501(a) of the Code by reason of being an organization described in section 501(c)(3) of the Code and/or from exemption from California income tax under section 23701 of the Revenue and Taxation Code by reason of being an organization described in section 23701d of the Revenue and Taxation Code. All references to the Revenue and Taxation Code contained herein are deemed to include corresponding provisions of any future California Revenue and Taxation Law.

ARTICLE IV

INITIAL DIRECTORS

The names and addresses of the persons appointed to act as initial directors are as follows:

Tim Sparapani, [Address to be added]
Larry Magid, [Address to be added]
Chris Jay Hoofnagle, Berkeley Center for Law & Technology, Berkeley, CA 94720.

ARTICLE V

INITIAL AGENT FOR SERVICE OF PROCESS

The name in the State of California of the Corporation's initial agent for service of process is Corp2000.

ARTICLE VI

DEDICATION AND DISSOLUTION

(a) The property of the Corporation is irrevocably dedicated to charitable purposes and no part of the net earnings, net income, property or assets of the Corporation shall ever inure to the benefit of, or be distributed to, its members, directors, officers, or any private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article III hereof. No part of the net earnings or of the property or assets of the Corporation shall be used other than for the purposes of the Corporation as set forth in Article III hereof or as provided in this Article.

(b) In the event of liquidation, dissolution, termination, or winding up of the Corporation (whether voluntary, involuntary or by operation of law), the Board of Directors

shall, after paying or making adequate provisions for the payment of all of the liabilities of the Corporation, transfer all of the remaining property and assets of the Corporation to one or more Qualified Organizations, as defined below, as the Board of Directors shall determine. For purposes of this Article V, "Qualified Organization" shall mean a corporation or other organization organized and operated exclusively for charitable, educational or scientific purposes which corporation or other organization operates for purposes consistent with those programs this Corporation was created to fund and/or sponsor, and, at the time, either (1) qualifies as exempt from income tax under section 501(a) of the Code by reason of being an organization described in section 501(c)(3) of the Code or (2) qualifies as a corporation or other organization to which contributions are deductible under section 170(c)(1) of the Code.

IN WITNESS WHEREOF, the undersigned have executed these Articles of Incorporation as its incorporators and its initial directors on _____, 2010.

The undersigned further declare that such execution is their act and deed.

Tim Sparapani

Larry Magid

Chris Hoofnagle

**ACTION BY UNANIMOUS WRITTEN CONSENT
IN LIEU OF THE ORGANIZATIONAL MEETING
OF THE BOARD OF DIRECTORS
OF
DIGITAL TRUST FOUNDATION**

The undersigned, constituting all of the members of the Board of Directors of Digital Trust Foundation, a California nonprofit public benefit corporation (the “*Corporation*”), pursuant to Section 5211(b) of the California Nonprofit Corporation Law, hereby adopt the following resolutions by unanimous written consent:

ARTICLES OF INCORPORATION

RESOLVED, that the Articles of Incorporation of the Corporation filed with the California Secretary of State on [DATE], be, and they hereby are, ratified and affirmed.

ELECTION OF OFFICERS

RESOLVED, that the following persons be, and they hereby are, elected as officers of the Corporation, to serve at the pleasure of the Board of Directors (“*Board*”):

Co-President	Chris Jay Hoofnagle
Co-President	Tim Sparapani
Chief Financial Officer and Secretary	Larry Magid

ADOPTION OF BYLAWS

RESOLVED, that the Bylaws attached hereto as Exhibit A be, and they hereby are, adopted as the Bylaws of and for the Corporation; and

RESOLVED FURTHER, that the Secretary of the Corporation be, and hereby is, authorized and directed to execute a Certificate of Secretary regarding the adoption of the Bylaws, to insert the Bylaws in the Corporation’s Minute Book and to see that a copy of the Bylaws is kept at the Corporation’s principal office, as required by law.

EMPLOYER TAX IDENTIFICATION NUMBER

RESOLVED, that the appropriate officers of the Corporation be, and each of them hereby is, authorized and are directed to apply to the IRS District Director for an employer's identification number on Form SS-4.

EMPLOYMENT DEVELOPMENT DEPARTMENT IDENTIFICATION NUMBER

RESOLVED, that the appropriate officers of the Corporation be, and each of them hereby is, authorized and are directed to apply to the Employment Development Department for an identification number on Form DE-1.

WITHHOLDING TAXES

RESOLVED, that the Chief Financial Officer be, and hereby is, authorized and directed to consult with the bookkeeper, auditors and attorneys of the Corporation in order to be fully informed as to, and to collect and pay promptly when due, all withholding taxes which the Corporation may now be (or hereafter become) liable.

STATEMENT BY DOMESTIC NONPROFIT CORPORATION

RESOLVED, that the appropriate officers of the Corporation shall file with the Secretary of State of California pursuant to Section 6210 of the California Corporations Code a statement of the names and complete business or residence addresses of the President, the Chief Financial Officer, the Secretary and incumbent directors, together with a statement of the address of the principal office of the Corporation, and designating Corp2000 as agent for service of process.

DESIGNATION OF DEPOSITORY

RESOLVED, that any serving officer of the Corporation are, and each of them hereby is, authorized:

- (a) To designate one or more banks or similar financial institutions as depositories of the funds of the Corporation;
- (b) To open, maintain and close general and special accounts with any such depositories;
- (c) To cause to be deposited, from time to time, in such accounts with any such depository, such funds of the Corporation as such officers deem necessary or advisable, and to designate or change the designation of the officer or officers or agent or agents of the Corporation authorized to make such deposits and to endorse checks, drafts and other instruments for deposit;

- (d) To designate, change or revoke the designation, from time to time of the officer or officers or agent or agents of the Corporation authorized to sign or countersign checks, drafts or other orders for the payment of money issued in the name of the Corporation against any funds deposited in any of such accounts;
- (e) To authorize the use of facsimile signatures for the signing or countersigning of checks, drafts or other orders for the payment of money, and to enter into such agreements as banks and similar financial institutions customarily require as a condition for permitting the use of facsimile signatures; and
- (f) To make such general and special rules and regulations with respect to such accounts as they may deem necessary or advisable, and to complete, execute and certify any customary printed blank signature card forms in order to exercise conveniently the authority granted by this resolution and any resolutions printed on such cards are deemed adopted as a part of this resolution.

RESOLVED FURTHER, that all form resolutions required by any such depository be, and they hereby are, adopted in such form used by such depository, and that the Secretary be and he or she hereby is, (i) authorized to certify such resolutions as having been adopted by this Unanimous Written Consent and (ii) directed to insert a copy of any such form resolutions in the Minute Book immediately following this Unanimous Written Consent; and

RESOLVED FURTHER, that any such depository to which a certified copy of these resolutions has been delivered by the Secretary of the Corporation be, and it hereby is, authorized and entitled to rely upon such resolutions for all purposes until it shall have received written notice of the revocation or amendment of these resolutions adopted by the Board.

FISCAL YEAR

RESOLVED, that the fiscal year of the Corporation shall end on the 31st day of the month of December of each year.

PRINCIPAL OFFICE

RESOLVED, that the principal executive office of the Corporation shall initially be located at 2251 Yale Street, Palo Alto, California, 94306, or such other address as may be designated by the Board from time to time following its initial Board meeting.

MANAGEMENT POWERS

RESOLVED, that the officers of the Corporation be, and each of them

hereby is, authorized to sign and execute in the name and on behalf of the Corporation all applications, contracts, leases and other deeds and documents or instruments in writing of whatsoever nature that may be required in the ordinary course of the Corporation's business and that may be necessary to secure for operation of the corporate affairs, governmental permits and licenses for, and incidental to, the lawful operations of the Corporation's business, and to do such acts and things as such officers deem necessary or advisable to fulfill such legal requirements as are applicable to the Corporation and its business.

LEGAL ADVISORY BOARD

WHEREAS, pursuant to Article VII of the Bylaws of the Corporation, the Board believes it is in the best interest of the Corporation to appoint the initial members of the Legal Advisory Board;

NOW, THEREFORE, BE IT RESOLVED, that the following individuals shall be appointed to serve as the initial members of the Legal Advisory Board, to serve in accordance with the procedures set forth in the Bylaws:

Michael Rhodes
Scott A. Kamber

RESOLVED FURTHER, that the Legal Advisory Board shall offer nonbinding advice on any matter including compliance with the provisions of the Settlement Agreement dated September 17, 2009, and the members of the Legal Advisory Board shall be entitled to attend and be non-voting participants at all meetings of the Board, *provided however* that such members may be excluded from access to any material meeting or portion thereof if the Corporation believes, upon advice of counsel, that such exclusion is reasonably necessary to preserve the attorney-client privilege or for other similar reasons.

AUDIT COMMITTEE

WHEREAS, Section 4 of Article VI of the Bylaws of the Corporation contemplates the formation of an Audit Committee of the Board;

NOW, THEREFORE, BE IT RESOLVED, that the Audit Committee be, and it hereby is, constituted; and

RESOLVED FURTHER, that the following individuals shall be appointed to serve as the initial members of the Audit Committee, with such members to serve at the discretion of the Board:

Chris Jay Hoofnagle
Tim Sparapani
Larry Magid

RESOLVED FURTHER, that the charter of the Audit Committee of the Board attached hereto as Exhibit B, be, and it hereby is, adopted and approved.

INDEMNIFICATION OF DIRECTORS AND OFFICERS

WHEREAS, the Board believes that it is in the best interests of the Corporation and its shareholders to authorize the Corporation to enter into indemnity agreements with its directors and officers;

NOW, THEREFORE, BE IT RESOLVED, that the form of indemnity agreement in substantially the form attached hereto as Exhibit C be, and it hereby is, approved for use as an indemnity agreement between the Corporation and the directors and officers of the Corporation;

RESOLVED FURTHER, that the officers of the Corporation be, and each of them hereby is, authorized and directed, for and on behalf of the Corporation, to solicit, obtain and maintain director and officer liability insurance in scope and substance as such officers deem reasonably necessary or appropriate; and

RESOLVED FURTHER, that the officers of the Corporation be, and each of them hereby is, authorized and directed, for and on behalf of the Corporation, to enter into the indemnity agreement with each of the Corporation's current directors and officers, and such other directors and officers of the Corporation from time to time as such directors or officers are elected or appointed, and to execute any and all other agreements, certificates or documents required by the indemnity agreement or deemed necessary or appropriate in connection therewith, and to take all actions deemed necessary or appropriate to cause the Corporation's obligations thereunder to be performed.

ADDITIONAL FILINGS

RESOLVED, that the appropriate officers of the Corporation be, and each of them hereby is, authorized and directed, for and on behalf of the Corporation, to make such filings and applications, to execute and deliver such documents and instruments, and to do such acts and things as such officer deems necessary or advisable in order to obtain such licenses, authorizations and permits as are necessary or desirable for the Corporation's business, and to fulfill such legal requirements as are applicable to the Corporation and its business and to complete the organization of the Corporation.

RATIFICATION, ASSUMPTION AND ACKNOWLEDGEMENT

RESOLVED, that all prior acts done and obligations incurred on behalf of the Corporation by the sole incorporator or the sole incorporator's agents be, and the same hereby are, acknowledged, ratified and approved as acts of, and such obligations are assumed by, the Corporation.

This Action may be signed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one instrument. This Action shall be filed with the minutes of the proceedings of the Board of Directors of the Corporation.

IN WITNESS WHEREOF, the undersigned have executed this Action by Unanimous Written Consent as of the _____ day of _____, 2010.

Chris Jay Hoofnagle

Tim Sparapani

Larry Magid

EXHIBIT A

BYLAWS

BYLAWS
OF
DIGITAL TRUST FOUNDATION
(A NON-PROFIT PUBLIC BENEFIT CORPORATION)

TABLE OF CONTENTS

		Page
ARTICLE I	MISSION AND PURPOSE	1
ARTICLE II	LIMITATION ON ACTIVITIES	1
ARTICLE III	MEMBERS	1
ARTICLE IV	BOARD OF DIRECTORS	1
Section 1.	General Powers	1
Section 2.	Number of Directors	1
Section 3.	Qualification	2
Section 4.	Term	2
Section 5.	Selection	2
Section 6.	Regular Meetings	2
Section 7.	Regular Annual Meeting	2
Section 8.	Special Meetings	2
Section 9.	Notice	2
Section 10.	Quorum and Adjournment	2
Section 11.	Manner of Acting	3
Section 12.	Action Without a Meeting of the Board	3
Section 13.	Directors' Duty of Care	3
Section 14.	Directors' Duty of Loyalty	4
Section 15.	Removal and Filling Vacancies	5
Section 16.	Compensation	5
Section 17.	No Interest in Assets	5
Section 18.	Resignation	5
ARTICLE V	OFFICERS	5
Section 1.	Officers	5
Section 2.	Selection and Term of Office	6
Section 3.	Removal	6
Section 4.	Vacancies	6
Section 5.	Resignation	6
Section 6.	Chairman of the Board	6
Section 7.	President	6
Section 8.	Vice Presidents	6

TABLE OF CONTENTS
(Continued)

	Page
Section 9. Chief Financial Officer	6
Section 10. Secretary	7
ARTICLE VI COMMITTEES.....	7
Section 1. Committees of Directors	7
Section 2. Rules	8
Section 3. Ad-hoc, Advisory or Other Committees.....	8
Section 4. Audit Committee.....	8
ARTICLE VII LEGAL ADVISORY BOARD.....	8
Section 1. Legal Advisory Board.....	8
Section 2. Membership	8
Section 3. Compensation	8
Section 4. Selection.....	9
Section 5. Governance	9
ARTICLE VIII CONTRACTS.....	9
ARTICLE IX BOOKS AND RECORDS.....	9
ARTICLE X ANNUAL AND OTHER REPORTS	9
Section 1. Annual Statement of Certain Transactions	9
Section 2. Financial Information.....	10
Section 3. Biennial Statement	10
ARTICLE XI INDEMNIFICATION OF DIRECTORS AND OFFICERS.....	11
ARTICLE XII LIMITATION OF LIABILITY OF CERTAIN DIRECTORS AND OFFICERS.....	12
Section 1. Limitation of Liability of Volunteer Directors and Volunteer Executive Officers to Third Parties.....	12
Section 2. Limitation of Liability of Certain Directors.....	13
ARTICLE XIII CORPORATE LOANS, GUARANTEES AND ADVANCES	13
ARTICLE XIV AMENDMENTS TO BYLAWS	13

BYLAWS
OF
DIGITAL TRUST FOUNDATION
(A NON-PROFIT PUBLIC BENEFIT CORPORATION)

ARTICLE I

MISSION AND PURPOSE

Digital Trust Foundation (the “Corporation”) is a non-profit public benefit corporation established under the Internal Revenue Code for charitable purposes. The Corporation’s specific purpose is to fund and sponsor programs designed to educate users, regulators and enterprises regarding critical issues relating to protection of identity and personal information online through user control, and the protection of users from online threats.

ARTICLE II

LIMITATION ON ACTIVITIES

The Corporation shall engage in all lawful activity in furtherance of the purpose and mission set forth in Article I; *provided however*, the Corporation shall not sponsor any litigation or lobbying matters, except to defend its resources, including enforcement of its legal rights.

ARTICLE III

MEMBERS

This Corporation shall have no members.

ARTICLE IV

BOARD OF DIRECTORS

Section 1. General Powers. Subject to the provisions of the Nonprofit Public Benefit Corporation Law (the “Law”), the activities and affairs of this Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors of the Corporation (the “Board”). The Board may delegate the management of the activities of this corporation to any person or persons, management company, or committee however composed, provided that the activities and affairs of this corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board.

Section 2. Number of Directors. The number of directors of this Corporation is three (3).

Section 3. Qualification. Not more than forty-nine percent (49%) of the persons serving on the Board of this Corporation may be “interested persons” as defined by Section 5227(b) of the Law.

Section 4. Term. Each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor is elected. The initial directors are elected to a term of two (2) years. During the first year of this Corporation’s existence the initial directors shall unanimously determine a plan of succession for the Corporation’s directors, including terms and nomination procedures. Until such nomination procedures and plan of succession are established, any subsequent director shall be nominated by the directors then in office, and elected by the directors of the Corporation pursuant to Sections 5, 7 and 15 below.

Section 5. Selection. Successors to the initial directors shall be elected as set forth herein and otherwise, in any manner authorized by law. In any election of directors the candidates receiving the highest number of votes are elected. Each director shall cast one vote for each office of director to be filled without the right to cumulate votes.

Section 6. Regular Meetings. The Board may fix by resolution the time, place, either within or without the State of California, and manner of calling and conducting of regular meetings of the board, including the regular annual meeting of the Board, without other notice than such resolution. Notice of any change in the time or place of regular meetings shall be given to all of the directors in the same manner as notice for special meetings of the Board.

Section 7. Regular Annual Meeting. The Board shall hold its first regular annual meeting no later than one business day prior to the expiration of the initial term of the initial directors, and all subsequent annual meetings at a time and place as determined by the Board, and shall elect directors at the regular annual meeting.

Section 8. Special Meetings. Special meetings of the Board for any purpose or purposes may be called by the chairman of the Board or the president (if the Board shall have created such office or offices) or by any two (2) directors.

Section 9. Notice. Notice of Special meetings of the Board shall be provided in a manner determined by the Board from time to time. Notice of a meeting need not be given to any director who signed a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings. The business to be transacted at any regular or special meeting need not be specified in the notice or waiver of notice of such meeting.

Section 10. Quorum and Adjournment. A majority of the number of directors authorized by these Bylaws shall constitute a quorum for the transaction of business at any meeting of the Board. A majority of the directors present, whether or not a quorum is present, may adjourn the meeting for twenty-four (24) hours or less without further notice. If the meeting is adjourned for more than twenty-four hours, notice of any adjournment to another time or place

shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 11. Manner of Acting. The act of a majority of the directors present at a meeting duly held at which a quorum is present shall be the act of the Board, unless the act of a different number is required by law, the Articles of Incorporation, or these Bylaws. The Articles of Incorporation or Bylaws shall not provide that a lesser vote than a majority of the directors present at a meeting is the act of the Board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least as many directors as is required to act on behalf of the Board.

Members of the Board may participate in a meeting through the use of conference telephone or electronic video screen communication, as long as all members participating in the meeting are able to hear one another. Members of the Board may participate in a meeting through the use of electronic transmission by and to the Corporation, as long as all members participating in such meeting via electronic transmission can communicate with one another concurrently and each Board member is provided the means of participating in all matters before the Board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the Corporation. Participation in a meeting in a manner pursuant to this Section constitutes presence in person at such meeting.

Any amendment of the By-Laws or the Articles of Incorporation shall require the unanimous consent of the Directors then in office. Any plan regarding the succession of the board shall require the unanimous consent of the Directors then in office.

Section 12. Action Without a Meeting of the Board. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board shall individually or collectively consent in writing (including consent by facsimile, telegraphic and other electronic communication, to the extent such is permissible pursuant to Section 5079 of the Law and Section 20 of the California Corporations Code) to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as a unanimous vote of such directors. For these purposes only, “all members of the Board” does not include an “interested director” as defined in Section 5233 of the Law or any successor section thereto.

Section 13. Directors’ Duty of Care. A director shall perform 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, in a manner such director believes to be in the best interests of the Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

In performing 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 prepared or presented by:

(a) One or more officers or employees of this Corporation whom the director believes to be reliable and competent in the matters presented;

(b) Counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence; or

(c) A committee of the Board upon which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence, so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

Section 14. Directors' Duty of Loyalty. Subject to being able to comply with subdivision (d) of Section 5233 of the Law or any successor section thereto, prior to consummating a "self-dealing transaction" or any part thereof, as defined by Section 5233 of the Law or any successor section thereto, either (A) the Board shall authorize or approve the transaction in good faith by a vote of a majority of the directors then in office without counting the vote of the interested director or directors and with knowledge of the material facts concerning the transaction and the director's interest in the transaction; and, further, prior to authorizing or approving a self-dealing transaction, shall consider and in good faith determine after reasonable investigation under the circumstances that this Corporation could not have obtained a more advantageous arrangement with reasonable effort under the circumstances; and, further, the Corporation enters into the transaction for its own benefit, and the transaction is fair and reasonable to the Corporation at the time the Corporation enters into the transaction; or (B) where it is not reasonably practical to obtain approval of the Board prior to entering into the transaction, a committee or person authorized by the Board shall approve the transaction in a manner consistent with the standards set forth in clause (A) of this section. In the event the procedure of clause (B) of this section is followed, the Board, after determining in good faith that the conditions of clause (B) of this section are satisfied, shall ratify the transaction at its next meeting by a vote of the majority of the directors then in office without counting the vote of the interested director or directors. The chairperson of the governing Board or committee may, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement. Interested directors may be counted in determining the presence of a quorum at a meeting of the Board which authorizes, approves or ratifies a self-dealing contract or transaction.

Subject to being able to comply with Section 5234(a)(2) of the Law, no contract or other transaction between this Corporation and any domestic or foreign corporation, firm or association in which one or more of its directors are directors shall be authorized, approved or ratified by the Board or a committee of the Board unless the material facts as to the transaction and as to the director's or directors' common directorships are fully disclosed or known to the Board or committee of the Board, and the Board or a committee of the Board authorizes, approves or ratifies the transaction in good faith by a vote sufficient without counting the vote of the common director or directors.

If the Board has reasonable cause to believe a director has failed to disclose actual or possible conflicts of interest, it shall inform the director of the basis for such belief and afford the director an opportunity to explain the alleged failure to disclose. If, after hearing the director's response and after making further investigation as warranted by the circumstances, the Board

determines the director has failed to disclose an actual or possible conflict of interest, it shall take appropriate corrective action.

Section 15. Removal and Filling Vacancies. The Board may declare vacant the office of a director who has been declared of unsound mind by a final order of a court, or convicted of a felony, or who has been found by a final order or judgment of any court to have breached any duty under Article 3 of Chapter 2 of the Law or any successor article thereto. Any vacancy occurring on the Board as well as any directorship to be filled by reason of an increase in the number of directors shall be filled (a) by approval of the Board or, if the number of directors then in office is less than a quorum, by (1) the unanimous written consent of the directors then in office, (2) the affirmative vote of a majority of the directors then in office at a meeting held pursuant to notice or waivers of notice complying with Section 5211 of the Law, or (3) a sole remaining director, and (b) in accordance with any contract or written agreement entered into by the Corporation or in connection with the formation of the Corporation. A director elected to fill a vacancy shall hold office during the unexpired term of his predecessor in office and until his successor is elected.

Section 16. Compensation. Directors as such shall not receive any stated salaries for their services, but by resolution of the Board a just and reasonable fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board or any committee of the Board; but, subject to the restrictions of Section 3 of Article IV of these Bylaws, nothing contained in this section shall be construed to preclude any director from serving this Corporation in any other capacity and receiving just and reasonable compensation therefore.

Section 17. No Interest in Assets. No director shall possess any property right in or to the property of this Corporation. In the event this Corporation owns or holds any property upon its dissolution and winding up, after paying or adequately providing for its debts and obligations, the directors shall dispose of the remaining property in accordance with the articles of incorporation.

Section 18. Resignation. Any director may resign effective upon giving written notice to the chairman of the Board, the president, the secretary or the Board of this Corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective. However, except upon notice to the Attorney General, no director may resign if this Corporation would then be left without a duly elected director in charge of its affairs.

ARTICLE V

OFFICERS

Section 1. Officers. The officers of this Corporation shall be a Chairman of the Board or a President or both (the determination of which is to be made by the Board), a Secretary, a Chief Financial Officer, and such other officers with such titles and duties as shall be determined by the Board. Any number of offices may be held by the same person, except that

neither the Secretary nor the Chief Financial Officer may serve concurrently as the President or Chairman of the Board.

Section 2. Selection and Term of Office. The officers of this Corporation shall be chosen by the Board, shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.

Section 3. Removal. Any officer selected by the Board may be removed at any time by the Board whenever, in its judgment, the best interests of this Corporation would be served thereby.

Section 4. Vacancies. A vacancy in any office because of death, resignation, or removal may only be filled by the Board.

Section 5. Resignation. Any officer may resign at any time upon written notice to this Corporation without prejudice to the rights, if any, of this Corporation under any contract to which the officer is a party.

Section 6. Chairman of the Board. The chairman of the Board, if there be such officer, shall, if present, preside at all meetings of the Board and exercise and perform such powers and duties as from time to time may be assigned to him by the Board or prescribed by these Bylaws. If there is no president, the chairman of the Board shall, in addition, be the general manager and chief executive officer of the Corporation and shall have the powers and duties prescribed in Section 7 of this Article V.

Section 7. President. Subject to such powers and duties, if any, as may be prescribed by these Bylaws or the Board for the chairman of the Board, if there be such officer, the president shall be the general manager and chief executive officer of this Corporation and shall, subject to the control of the Board, have general supervision, direction and control of the business and affairs of this Corporation. He shall preside in the absence of the chairman of the Board or, if there be none, at all meetings of the Board. He shall have all of the powers and shall perform all of the duties which are ordinarily inherent in the office of the president, and he shall have such further powers and shall perform such further duties as may be prescribed for him by the Board.

Section 8. Vice Presidents. In the absence or disability or refusal to act of the president, the vice presidents in order of their rank as fixed by the Board or, if not ranked, the vice president designated by the president or the Board, shall perform all of the duties of the president and when so acting shall have all the powers of and be subject to all the restrictions upon the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them, respectively, by the Board or these Bylaws.

Section 9. Chief Financial Officer. The Chief Financial Officer shall be the treasurer of this Corporation and shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of account of this Corporation. He shall receive and deposit all moneys and other valuables belonging to this Corporation in the name and to the credit of this Corporation and shall disburse the same only in such manner as the Board or the

appropriate officers of this Corporation may from time to time determine and shall render to the chief executive officer and the Board, whenever they request it, an account of all his transactions as treasurer and of the financial condition of this Corporation. He shall have all of the powers and perform all of the duties incident to the office of treasurer, and he shall have such further powers and shall perform such further duties as may be prescribed for him by the Board.

Section 10. Secretary. The secretary shall keep or cause to be kept at the principal executive office of this Corporation or such other place as the Board may order a book of minutes of all proceedings of the Board, with the time and place of each meeting, whether regular or special, and, if special, how authorized, the notice thereof given, and the names of those present. The secretary or, if he is absent or unable or refuses to act, any other officer of this Corporation shall give or cause to be given notice of all the meetings of the Board required by these Bylaws or by statute to be given, and he shall keep the seal of this Corporation, if any, in safe custody. He shall have all of the powers and perform all of the duties incident to the office of secretary, and he shall have such further powers and shall perform such further duties as may be prescribed for him by the Board.

ARTICLE VI

COMMITTEES

Section 1. Committees of Directors. The Board may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more committees, each consisting of two (2) or more directors, to serve at the pleasure of the Board. Appointments to such committees shall be by a majority vote of the directors then in office. The Board may appoint one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. And such committee, to the extent provided in the resolution of the Board, shall have all the authority of the Board, except with respect to:

- (a) The filling of vacancies on the Board or on any committee which has the authority of the Board;
- (b) The fixing of compensation of the directors for serving on the Board or on any committee;
- (c) The amendment to or restatement of the Corporation's Articles of Incorporation;
- (d) The amendment or repeal of bylaws or the adoption of new bylaws;
- (e) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
- (f) The appointment of committees of the Board or the members thereof;
- (g) The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected; or

(h) The approval of any self-dealing transaction as defined by Section 5233 of the Law or any successor section thereto, except as provided by law.

Section 2. Rules. Sections 6 to 17 of Article IV of these Bylaws shall also apply, with necessary changes in point of detail, to committees exercising the authority of the Board, if any, and to actions by such committees, except that (a) the first sentence of Section 10 of Article IV shall not apply and a quorum of the committee shall be a majority of the authorized number of members of the committee and except that (b) special meetings of a committee may be called by any two members of the committee, unless otherwise provided by these Bylaws or by the resolution of the Board designating such committees. For such purpose, references to “the Board” shall be deemed to refer to each such committee and references to “directors” or “members of the Board” shall be deemed to refer to members of the committee.

Section 3. Ad-hoc, Advisory or Other Committees. Other committees not having or exercising the authority of the Board in the management of this Corporation may be designated by a resolution adopted by a majority of the directors then in office. Each such committee may adopt rules for its own governance not inconsistent with the rules set forth by the Board in the resolution designating the committee.

Section 4. Audit Committee. The Corporation shall have an Audit Committee to oversee and interact with the Company’s independent auditors, oversee the annual audit of Company’s financial statements, and such other responsibilities as the Board may deem appropriate. The Audit Committee shall consist of three (3) persons, to serve at the discretion of the Board, provided however, that at no time shall any member of the Audit Committee also serve as the President, Chief Executive Officer or Chief Financial Officer of the Corporation. The Audit Committee may include persons who are not members of the Board.

ARTICLE VII

LEGAL ADVISORY BOARD

Section 1. Legal Advisory Board. The Corporation shall have a Legal Advisory Board, which shall function solely as an advisory body to the Board and shall not have any authority to act on behalf of the Corporation. The Board shall, by resolution adopted in conjunction with the initial adoption of these Bylaws and by unanimous consent of the directors then in office, determine the nature and scope of the advisory function of the Legal Advisory Board, which shall include: (i) the duties set forth in Section 4, below; and (ii) the provision of nonbinding advice to this Corporation.

Section 2. Membership. The Legal Advisory Board shall consist of two (2) members who shall not be directors or officers of the Corporation, and who shall serve an initial term of two (2) years. The Board shall, by resolution adopted by unanimous consent of the directors then in office, appoint the initial members of the Legal Advisory Board.

Section 3. Compensation. Members of the Legal Advisory Board members shall not be compensated by the Corporation for their service as members of the Legal Advisory

Board. This provision shall not prevent such member(s) from applying for and retaining any court approved fees separate from their service on the Legal Advisory Board.

Section 4. Selection. During the first year of this Corporation's existence, the initial members of the Legal Advisory Board shall, in consultation with the Corporation's directors and officers, determine a plan of succession for the members of the Legal Advisory Board, including nomination and selection procedures. Until such nomination procedures and plan of succession are established, any subsequent member shall be nominated by the incumbent members of the Legal Advisory Board in consultation with the officers and directors of the Corporation.

Section 5. Governance. The Legal Advisory Board may adopt rules for its own governance not inconsistent with the rules set forth in these Bylaws.

ARTICLE VIII

CONTRACTS

The Board may authorize any officer or officers to be agent or agents of this Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of this Corporation, to the extent authorized by the Board, and such authority may be general or confined to specific instances.

ARTICLE IX

BOOKS AND RECORDS

This Corporation shall keep at its principal office in California, if any, the original or a copy of its articles of incorporation and Bylaws as may be amended from time to time. Furthermore, this Corporation shall keep adequate and correct books and records of account and shall also keep minutes of the proceedings of its Board and committees of the Board. Minutes and other books and records shall be kept either in written form or in any other form capable of being converted into clearly legible tangible form or in any combination of the foregoing reasonably conducive to directors' ability to exercise their rights of inspection and copying set forth in this paragraph. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of this Corporation.

ARTICLE X

ANNUAL AND OTHER REPORTS

Section 1. Annual Statement of Certain Transactions. So long as required by the Law (presently Section 6322), this Corporation shall furnish annually to its directors a statement which briefly describes each of the following transactions, if any:

(a) Any "covered transaction" (as defined below) during the previous fiscal year involving more than fifty thousand dollars (\$50,000), or which was one of a number of

“covered transactions” in which the same “interested person” (as defined below) had a direct or indirect material financial interest, and which transactions in the aggregate involved more than fifty thousand dollars (\$50,000). The description of such “covered transactions” shall include the names of the “interested persons” involved in such transactions, stating such person’s relationship to this Corporation, the nature of such person’s interest in the transaction and, where practicable, the amount of such interest; provided, that in the case of a transaction with a partnership of which such person is a partner, only the interest of the partnership need be stated; and

(b) The amount and circumstances of any indemnifications or advances aggregating more than ten thousand dollars (\$10,000) paid during the fiscal year to any officer or director of this Corporation pursuant to the Law (presently Section 5238) providing for the indemnification of officers and directors.

Within the meaning of this section, a “covered transaction” with an “interested person” means a transaction in which this Corporation, its parent or its subsidiary was a party, and in which either of the following persons had a direct or indirect material financial interest: any director or officer of this Corporation, or its parent or subsidiary; or any holder of more than ten percent (10%) of the voting power of the Corporation, its parent or its subsidiary. A common directorship is not a material financial interest within the meaning of this section.

Section 2. Financial Information. So long as required by the Law (presently Section 6321(e)(1)), the Board shall cause to be prepared for their own use and for whatever further use the Board may duly authorize, a report containing in appropriate detail the following information:

(a) The assets and liabilities, including the trust funds, of this Corporation as of the end of the fiscal year;

(b) The principal changes in assets and liabilities, including trust funds, during the fiscal year;

(c) The revenue or receipts of this Corporation, both unrestricted and restricted to particular purposes, for the fiscal year;

(d) The expenses or disbursements of this Corporation, for both general and restricted purposes, during the fiscal year; and

(e) Any information required by this Section 2 of this Article.

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

Section 3. Biennial Statement. This Corporation shall, within 90 days after the filing of its original articles and biennially thereafter during the applicable filing period (as set forth in section 6210(c) of the Law), file, on a form prescribed by the Secretary of State, a

statement containing: (1) the names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer; (2) the street address of its principal office in this state, if any; and (3) the mailing address of the Corporation, if different from the street address of its principal executive office or if the Corporation has no principal office address in this state. The statement shall also designate an agent of the Corporation for the purpose of service of process as prescribed in Section 6210(b) of the Law. If its agent for service of process or the address of the agent is changed, or if designation of a new agent for service of process is required under Section 6212 of the Law, the Corporation shall file a current statement containing all the information required by this Section 3.

ARTICLE XI

INDEMNIFICATION OF DIRECTORS AND OFFICERS

This Corporation shall, to the maximum extent permitted by law, indemnify each of its present or former directors and officers against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding or any threatened proceeding (hereinafter “proceeding” includes any threatened proceeding) arising by reason of the fact that any such person is or was a director or officer of this Corporation; provided that such director or officer was acting in good faith and in a manner such person reasonably believed to be in the best interests of this Corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. Payments authorized hereunder include amounts paid and expenses incurred in settling any such proceeding. The foregoing does not apply to any proceeding specifically excluded by law, which includes actions brought by or in the right of this Corporation and certain actions alleging self-dealing or a breach of any duty relating to assets held in charitable trust.

If, because of the nature of the proceeding, this Corporation is prohibited by the Law from indemnifying its directors or officers against judgments, fines, settlements and other amounts, this Corporation shall nevertheless indemnify each of its directors and officers against expenses actually and reasonably incurred in connection with the defense or settlement of such proceeding arising by reason of the fact that any such person is or was a director or officer of the Corporation; provided that such director or officer was acting in good faith and in a manner such person believed to be in the best interests of this Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances; and further provided that, to the extent required by law, the authority specified by law shall also approve the indemnification provided for by this paragraph.

Expenses incurred in defending any proceeding may be advanced by this Corporation prior to the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay the amount of the advance unless it is determined ultimately that the director or officer is entitled to be indemnified as authorized in this article or by law. The provisions of Article X of these Bylaws shall not apply to advances made pursuant to this paragraph.

The Board may authorize this Corporation to purchase and maintain insurance on behalf of any director or officer against any liability asserted against or incurred by such person in such

capacity or arising out of the person's status as such, whether or not this Corporation would have the power to indemnify such person against such liability; provided, however, that this Corporation shall not purchase or maintain insurance to indemnify any director or officer of this Corporation for violating Section 5233 of the Law.

This article does not apply to any proceeding against any trustee, investment manager or other fiduciary of an employee benefit plan in that person's capacity as such, even though that person may also be a director or officer of this Corporation. Nothing contained in this Article shall limit any right to indemnification to which such a trustee, investment manager or other fiduciary may be entitled by contract or otherwise, which shall be enforceable to the extent permitted by applicable law.

ARTICLE XII

LIMITATION OF LIABILITY OF CERTAIN DIRECTORS AND OFFICERS

Section 1. Limitation of Liability of Volunteer Directors and Volunteer Executive Officers to Third Parties. There shall be no personal liability for monetary damages to a third party on the part of a volunteer director or volunteer executive officer caused by the director's or officer's negligent act or omission in the performance of that person's duties as a director or officer, if all of the following conditions are met:

(a) The act or omission was within the scope of the director's or executive officer's duties;

(b) The act or omission was performed in good faith;

(c) The act or omission was not reckless, wanton, intentional, or grossly negligent; and

(d) Damages caused by the act or omission are covered pursuant to a liability insurance policy issued to the Corporation, either in the form of a general liability policy or a director's and officer's liability policy, or personally to the director or executive officer. In the event that the damages are not covered by a liability insurance policy, the volunteer director or volunteer executive officer shall not be personally liable for the damages if the Board and the person had made all reasonable efforts in good faith to obtain available liability insurance.

"Volunteer" means the rendering of services without compensation. "Compensation" means remuneration whether by way of salary, fee, or other consideration for services rendered. However, the payment of per diem, mileage, or other reimbursement expenses to a director or executive officer does not affect that person's status as a volunteer with the meaning of this Section 1 of this Article.

"Executive officer" means the president, vice president, secretary, or treasurer of a Corporation, or such other person who serves in like capacity, who assists in establishing the policy of the Corporation.

Nothing in this Section 1 of this Article shall limit the liability of the Corporation for any damages caused by acts or omissions of the volunteer director or volunteer executive officer.

This Section 1 of this Article does not eliminate or limit the liability of a director or officer for any of the following:

- (e) As provided in Section 5233 or 5237 of the Law; or
- (f) In any action or proceeding brought by the Attorney General of the State of California.

Nothing in this Section 1 of this Article creates a duty of care or basis of liability for damage or injury caused by the acts or omissions of a director or officer.

Section 2. Limitation of Liability of Certain Directors. Except as provided in Section 5233 of the Law, there is no liability based upon any alleged failure to discharge a person's obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which a Corporation, or assets held by it, are dedicated, if the director's duties are performed in a manner that meets all of the following criteria:

- (a) The duties are performed in good faith;
- (b) The duties are performed in a manner such director believes to be in the best interests of the Corporation; and
- (c) The duties are performed with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

ARTICLE XIII

CORPORATE LOANS, GUARANTEES AND ADVANCES

Except as provided by the Law (presently Section 5236), this Corporation shall not make any loan of money or property to or guarantee the obligation of any director or officer.

ARTICLE XIV

AMENDMENTS TO BYLAWS

New bylaws may be adopted or these Bylaws may be amended or repealed by unanimous consent of the directors then in office, except Article I may not be amended within the first ten (10) years of the Corporation's existence.

CERTIFICATE OF SECRETARY

I HEREBY CERTIFY THAT:

1. I am the duly elected and acting Secretary of Digital Trust Foundation, a California nonprofit corporation (the "*Corporation*"); and

2. Above is a complete and accurate copy of the Bylaws of such Corporation as duly adopted by Action by Unanimous Written Consent on this _____ day of _____, 2010.

IN WITNESS WHEREOF, I have hereunto ascribed my name this _____ day of _____,
2010.

LARRY MAGID, SECRETARY

EXHIBIT B
AUDIT COMMITTEE CHARTER

DIGITAL TRUST FOUNDATION

CHARTER OF THE AUDIT COMMITTEE

PURPOSE AND POLICY

The primary purpose of the Audit Committee (the “*Committee*”) shall be to act on behalf of the Board of Directors (the “*Board*”) of the Digital Trust Foundation (the “*Organization*”) in fulfilling the Board’s oversight responsibilities with respect to the Organization’s audits of financial statements, as well as the quality and integrity of the Organization’s financial statements and reports and the qualifications, independence and performance of the registered public accounting firm or firms engaged as the Organization’s independent outside auditors for the purpose of preparing or issuing an audit report or performing audit services (the “*Auditors*”).

The policy of the Committee, in discharging these obligations, shall be to maintain and foster an open avenue of communication among the Committee and the Auditors, the Organization’s financial management.

AUTHORITY AND RESPONSIBILITIES

Subject to the supervision of the Board, the Committee shall:

1. be responsible for recommending to the Board the retention and termination of the Auditors based on the Committee’s assessment of the Auditors’ qualifications and performance;
2. confer with the Auditors to the satisfaction of the Committee that the financial affairs of the Organization are in order;
3. review with management and the Auditors, the results of the annual audit, including the Auditors’ assessment of the quality, not just acceptability, of the Organization’s accounting principles and practices, the Auditors’ views about qualitative aspects of the Organization’s significant accounting practices, and the reasonableness of significant judgments and estimates (including material changes in estimates), and determine whether to accept the audit report(s) prepared by the Auditors;
4. assure that any nonaudit services performed by the Auditors conform with standards for auditor independence set forth in the latest revision of the Government auditing standards issued by the Comptroller General of the United States (the Yellow Book) or such other auditor independence standards as may be set forth by regulation by the California Attorney General;
5. approve performance of any nonaudit services by the Auditors, including the scope of the service and the compensation to be paid therefor;
6. review and assess the adequacy of this charter periodically and recommend any proposed changes to the Board for approval, and
7. perform such other functions and to have such powers as may be necessary or appropriate in the efficient and lawful discharge of the foregoing.

In connection with the responsibilities set forth herein, the Committee may negotiate the Auditor's compensation, on behalf of the Board.

Each member of the Committee shall have full access to all books, records, facilities and personnel of the Organization as deemed necessary or appropriate by any member of the Committee to discharge his or her responsibilities hereunder. The Committee shall have authority to require that any of the Organization's personnel, counsel, accountants (including the Auditors), or any other consultant or advisor to the Organization attend any meeting of the Committee or meet with any member of the Committee or any of its special, outside legal, accounting or other, advisors or consultants. The approval of this Charter by the Board shall be construed as a delegation of authority to the Committee with respect to the responsibilities set forth herein.

EXHIBIT C
FORM OF INDEMNITY AGREEMENT

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (this “**Agreement**”) dated as of _____, 2010, is made by and between Digital Trust Foundation, a California nonprofit corporation (the “**Organization**”), and _____ (the “**Indemnitee**”).

RECITALS

A. The Organization desires to attract and retain the services of highly qualified individuals as directors and officers.

B. The Organization’s bylaws (the “**Bylaws**”) require that the Organization indemnify its agents, as authorized by the California Corporations Code, as amended (the “**Code**”), under which the Organization is organized.

C. Indemnitee does not regard the protection currently provided by applicable law, the Organization’s governing documents and available insurance as adequate under the present circumstances, and the Organization has determined that Indemnitee and other directors and officers of the Organization may not be willing to serve or continue to serve in such capacity without additional protection.

D. The Organization desires and has requested Indemnitee to serve or continue to serve as a director and/or officer of the Organization, as the case may be, and has proffered this Agreement to Indemnitee as an additional inducement to serve in such capacity.

E. Indemnitee is willing to serve, or to continue to serve, as a director and/or officer of the Organization, as the case may be, if Indemnitee is furnished the indemnity provided for herein by the Organization.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions.

(a) Agent. For purposes of this Agreement, the term “agent” of the Organization means any person who: (i) is or was a director and/or officer or other fiduciary of the Organization or a subsidiary of the Organization or (ii) is or was serving at the request or for the convenience of, or representing the interests of, the Organization or a subsidiary of the Organization, as a director, officer or other fiduciary of a foreign or domestic corporation, partnership, joint venture, trust or other enterprise.

(b) Expenses. For purposes of this Agreement, the term “expenses” shall be broadly construed and shall include, without limitation, all direct and indirect costs of any type or nature whatsoever (including, without limitation, all attorneys’, witness, or other professional fees and related disbursements, and other out-of-pocket costs of whatever nature), actually and reasonably incurred by Indemnitee in connection with the investigation, defense or appeal of a proceeding or establishing or enforcing a right to indemnification under this Agreement, the Code or otherwise, and amounts paid in settlement by or on behalf of Indemnitee, but shall not include any judgments, fines or penalties actually levied against Indemnitee for such individual’s violations of law. The term “expenses” shall also include reasonable compensation for time spent by Indemnitee for which he is not compensated by the

Organization or any subsidiary or third party: (i) for any period during which Indemnitee is not an agent, in the employment of, or providing services for compensation to, the Organization or any subsidiary and (ii) if the rate of compensation and estimated time involved is approved by the directors of the Organization who are not parties to any action with respect to which expenses are incurred, for Indemnitee while an agent of, employed by, or providing services for compensation to, the Organization or any subsidiary.

(c) **Proceedings.** For purposes of this Agreement, the term “proceeding” shall be broadly construed and shall include, without limitation, any threatened, pending, or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Organization or otherwise and whether of a civil, criminal, administrative or investigative nature, and whether formal or informal in any case, in which Indemnitee was, is or will be involved as a party or otherwise by reason of: (i) the fact that Indemnitee is or was a director or officer of the Organization; (ii) the fact that any action taken by Indemnitee or of any action on Indemnitee’s part while acting as director or officer of the Organization or (iii) the fact that Indemnitee is or was serving at the request of the Organization as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, and in any such case described above, whether or not serving in any such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses may be provided under this Agreement.

(d) **Subsidiary.** For purposes of this Agreement, the term “subsidiary” means any corporation or limited liability company of which more than 50% of the outstanding voting securities or equity interests are owned, directly or indirectly, by the Organization and one or more of its subsidiaries, and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Organization as a director, officer, employee, agent or fiduciary.

(e) **Independent Counsel.** For purposes of this Agreement, the term “independent counsel” means a law firm, or a partner (or, if applicable, member) of such a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Organization or Indemnitee in any matter material to either such party or (ii) any other party to the proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “independent counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Organization or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

2. **Indemnification.**

(a) **Indemnification in Third Party Proceedings.** Subject to Section 9 below, the Organization shall indemnify Indemnitee to the fullest extent permitted by the Code, as the same may be amended from time to time (but, only to the extent that such amendment permits Indemnitee to broader indemnification rights than the Code permitted prior to adoption of such amendment), if Indemnitee is a party to or threatened to be made a party to or otherwise involved in any proceeding, for any and all expenses, actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of such proceeding.

(b) **Indemnification in Derivative Actions and Direct Actions by the Organization.** Subject to Section 9 below, the Organization shall indemnify Indemnitee to the fullest extent permitted by the Code, as the same may be amended from time to time (but, only to the extent that such amendment permits Indemnitee to broader indemnification rights than the Code permitted prior to

adoption of such amendment), if Indemnitee is a party to or threatened to be made a party to or otherwise involved in any proceeding by or in the right of the Organization to procure a judgment in its favor, against any and all expenses actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement, or appeal of such proceedings or the satisfaction of a judgment.

3. Indemnification of Expenses of Successful Party. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any proceeding or in defense of any claim, issue or matter therein, including the dismissal of any action without prejudice, the Organization shall indemnify Indemnitee against all expenses actually and reasonably incurred in connection with the investigation, defense or appeal of such proceeding.

4. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Organization for some or a portion of any expenses actually and reasonably incurred by Indemnitee in the investigation, defense, settlement or appeal of a proceeding or the satisfaction of a judgment, but is precluded by applicable law or the specific terms of this Agreement to indemnification for the total amount thereof, the Organization shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

5. Advancement of Expenses. To the extent not prohibited by law, the Organization shall advance the expenses incurred by Indemnitee in connection with any proceeding, and such advancement shall be made within twenty (20) days after the receipt by the Organization of a statement or statements requesting such advances (which shall include invoices received by Indemnitee in connection with such expenses but, in the case of invoices in connection with legal services, any references to legal work performed or to expenditures made that would cause Indemnitee to waive any privilege accorded by applicable law shall not be included with the invoice) and upon request of the Organization, an undertaking to repay the advancement of expenses if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Organization. Advances shall be unsecured, interest free and without regard to Indemnitee's ability to repay the expenses. Advances shall include any and all expenses actually and reasonably incurred by Indemnitee pursuing an action to enforce Indemnitee's right to indemnification under this Agreement, or otherwise and this right of advancement, including expenses incurred preparing and forwarding statements to the Organization to support the advances claimed. Indemnitee acknowledges that the execution and delivery of this Agreement shall constitute an undertaking providing that Indemnitee shall, to the fullest extent required by law, repay the advance if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Organization. The right to advances under this Section shall continue until final disposition of any proceeding, including any appeal therein. This Section 5 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 9(b).

6. Notice and Other Indemnification Procedures.

(a) Notification of Proceeding. Indemnitee will notify the Organization in writing promptly upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any proceeding or matter which may be subject to indemnification or advancement of expenses covered hereunder. The failure of Indemnitee to so notify the Organization shall not relieve the Organization of any obligation which it may have to Indemnitee under this Agreement or otherwise.

(b) Request for Indemnification and Indemnification Payments. Indemnitee shall notify the Organization promptly in writing upon receiving notice of any demand, judgment or other requirement for payment that Indemnitee reasonably believes to be subject to indemnification under the

terms of this Agreement, and shall request payment thereof by the Organization. Indemnification payments requested by Indemnitee under Section 2 hereof shall be made by the Organization no later than sixty (60) days after receipt of the written request of Indemnitee. Claims for advancement of expenses shall be made under the provisions of Section 5 herein.

(c) **Application for Enforcement.** In the event the Organization fails to make timely payments as set forth in Sections 5 or 6(b) above, Indemnitee shall have the right to apply to any court of competent jurisdiction for the purpose of enforcing Indemnitee's right to indemnification or advancement of expenses pursuant to this Agreement. In such an enforcement hearing or proceeding, the burden of proof shall be on the Organization to prove that indemnification or advancement of expenses to Indemnitee is not required under this Agreement or permitted by applicable law. Any determination by the Organization (including its Board of Directors or independent counsel) that Indemnitee is not entitled to indemnification hereunder, shall not be a defense by the Organization to the action nor create any presumption that Indemnitee is not entitled to indemnification or advancement of expenses hereunder.

(d) **Indemnification of Certain Expenses.** The Organization shall indemnify Indemnitee against all expenses incurred in connection with any hearing or proceeding under this Section 6 unless the Organization prevails in such hearing or proceeding on the merits in all material respects.

7. Assumption of Defense. In the event the Organization shall be requested by Indemnitee to pay the expenses of any proceeding, the Organization, if appropriate, shall be entitled to assume the defense of such proceeding, or to participate to the extent permissible in such proceeding, with counsel reasonably acceptable to Indemnitee. Upon assumption of the defense by the Organization and the retention of such counsel by the Organization, the Organization shall not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same proceeding, provided that Indemnitee shall have the right to employ separate counsel in such proceeding at Indemnitee's sole cost and expense. Notwithstanding the foregoing, if Indemnitee's counsel delivers a written notice to the Organization stating that such counsel has reasonably concluded that there may be a conflict of interest between the Organization and Indemnitee in the conduct of any such defense or the Organization shall not, in fact, have employed counsel or otherwise actively pursued the defense of such proceeding within a reasonable time, then in any such event the fees and expenses of Indemnitee's counsel to defend such proceeding shall be subject to the indemnification and advancement of expenses provisions of this Agreement.

8. Insurance. To the extent that the Organization maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Organization or of any subsidiary ("**D&O Insurance**"), Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Organization has D&O Insurance in effect, the Organization shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Organization shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies. Notwithstanding the foregoing, nothing in this Section 8 shall limit the Organization's obligation as the indemnitor of first resort pursuant to Section 10(c) below.

9. Exceptions.

(a) **Certain Matters.** Any provision herein to the contrary notwithstanding, the Organization shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee on

account of any proceeding with respect to: (i) remuneration paid to Indemnitee if it is determined by final judgment or other final adjudication that such remuneration was in violation of law; (ii) a final judgment rendered against Indemnitee for an accounting, disgorgement or repayment of profits made from the purchase or sale by Indemnitee of securities of the Organization against Indemnitee or in connection with a settlement by or on behalf of Indemnitee to the extent it is acknowledged by Indemnitee and the Organization that such amount paid in settlement resulted from Indemnitee's conduct from which Indemnitee received monetary personal profit, pursuant to provisions of any federal, state or local statute or rules and regulations thereunder; (iii) a final judgment or other final adjudication that Indemnitee's conduct was in bad faith, knowingly fraudulent or deliberately dishonest or constituted willful misconduct (but only to the extent of such specific determination); (iv) on account of conduct that is established by a final judgment as constituting a breach of Indemnitee's duty of loyalty to the Organization or resulting in any personal profit or advantage to which Indemnitee is not legally entitled; or (v) which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision. For purposes of the foregoing sentence, a final judgment or other adjudication may be reached in either the underlying proceeding or action in connection with which indemnification is sought or a separate proceeding or action to establish rights and liabilities under this Agreement.

(b) Claims Initiated by Indemnitee. Any provision herein to the contrary notwithstanding, the Organization shall not be obligated to indemnify or advance expenses to Indemnitee with respect to proceedings or claims initiated or brought by Indemnitee against the Organization or its directors, officers, employees or other agents and not by way of defense, except: (i) with respect to proceedings brought to establish or enforce a right to indemnification under this Agreement or under any other agreement, provision in the Bylaws or the Articles of Incorporation of the Organization, as amended from time to time (the "**Articles**") or applicable law or (ii) with respect to any other proceeding initiated by Indemnitee that is either approved by the Board of Directors or Indemnitee's participation is required by applicable law. However, indemnification or advancement of expenses may be provided by the Organization in specific cases if the Board of Directors determines it to be appropriate.

(c) Unauthorized Settlements. Any provision herein to the contrary notwithstanding, the Organization shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee under this Agreement for any amounts paid in settlement of a proceeding effected without the Organization's written consent. Neither the Organization nor Indemnitee shall unreasonably withhold consent to any proposed settlement; provided, however, that the Organization may in any event decline to consent to (or to otherwise admit or agree to any liability for indemnification hereunder in respect of) any proposed settlement if the Organization is also a party in such proceeding and determines in good faith that such settlement is not in the best interests of the Organization.

10. Nonexclusivity and Survival of Rights; Primacy of Indemnification.

(a) The provisions for indemnification and advancement of expenses set forth in this Agreement shall not be deemed exclusive of any other rights which Indemnitee may at any time be entitled under any provision of applicable law, the Articles, Bylaws or other agreements, both as to action in Indemnitee's official capacity and Indemnitee's action as an agent of the Organization, in any court in which a proceeding is brought, and Indemnitee's rights hereunder shall continue after Indemnitee has ceased acting as an agent of the Organization and shall inure to the benefit of the heirs, executors, administrators and assigns of Indemnitee. The obligations and duties of the Organization to Indemnitee under this Agreement shall be binding on the Organization and its successors and assigns until terminated in accordance with its terms. The Organization shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the

Organization, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Organization would be required to perform if no such succession had taken place.

(b) No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her corporate status prior to such amendment, alteration or repeal. To the extent that a change in the Code, whether by statute or judicial decision, permits greater indemnification or advancement of expenses than would be afforded currently under the Articles, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, by Indemnitee shall not prevent the concurrent assertion or employment of any other right or remedy by Indemnitee.

(c) The Organization hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of expenses and/or insurance provided by certain of its affiliates and that Indemnitee may have other sources of indemnification or insurance, whether currently in force or established in the future (collectively, the “*Outside Indemnitors*”). The Organization hereby agrees: (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Outside Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary); (ii) that it shall be required to advance the full amount of expenses incurred by Indemnitee and shall be liable for the full amount of all expenses to the extent legally permitted and as required by the Articles or Bylaws of the Organization (or any agreement between the Organization and Indemnitee), without regard to any rights Indemnitee may have against the Outside Indemnitors and (iii) that it irrevocably waives, relinquishes and releases the Outside Indemnitors from any and all claims against the Outside Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Organization further agrees that no advancement or payment by the Outside Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Organization shall affect the foregoing and the Outside Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Organization. The Organization and Indemnitee agree that the Outside Indemnitors are express third party beneficiaries of the terms hereof.

11. Term. All agreements and obligations of the Organization contained herein shall continue during the period Indemnitee is an officer or director of the Organization and shall continue thereafter so long as Indemnitee shall be subject to any proceeding by reason of his status as a director or officer of the Organization, whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Organization), assigns, spouses, heirs, executors and personal and legal representatives.

12. Subrogation. In the event of payment under this Agreement, the Organization shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee.

13. Interpretation of Agreement. It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification to Indemnitee to the fullest extent now or hereafter permitted by law.

14. Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (a) the validity, legality and enforceability of the remaining provisions of the Agreement (including without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable and to give effect to Section 13 hereof.

15. Amendment and Waiver. No supplement, modification, amendment, or cancellation of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. Notice. Except as otherwise provided herein, any notice or demand which, by the provisions hereof, is required or which may be given to or served upon the parties hereto shall be in writing and, if by telegram, telecopy or telefacsimile, shall be deemed to have been validly served, given or delivered when sent, if by overnight delivery, courier or personal delivery, shall be deemed to have been validly served, given or delivered upon actual delivery and, if mailed, shall be deemed to have been validly served, given or delivered three (3) business days after deposit in the United States mail, as registered or certified mail, with proper postage prepaid and addressed to the party or parties to be notified at the addresses set forth on the signature page of this Agreement (or such other address(es) as a party may designate for itself by like notice). If to the Organization, notices and demands shall be delivered to the attention of the Secretary of the Organization.

17. Governing Law. This Agreement shall be governed exclusively by and construed according to the laws of the State of California, as applied to contracts between California residents entered into and to be performed entirely within California.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute but one and the same Agreement. Only one such counterpart need be produced to evidence the existence of this Agreement.

19. Headings. The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

20. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, written and oral, between the parties with respect to the subject matter of this Agreement; provided, however, that this Agreement is a supplement to and in furtherance of the Articles, Bylaws, the Code and any other applicable law, and shall not be deemed a substitute therefor, and does not diminish or abrogate any rights of Indemnatee thereunder.

IN WITNESS WHEREOF, the parties hereto have entered into this Indemnity Agreement effective as of the date first above written.

ORGANIZATION:

DIGITAL TRUST FOUNDATION

By: _____
Name:
Title:

INDEMNITEE:
