

DARIN DONOVAN, Esq.  
Internet: [ddonovan@wsgr.com](mailto:ddonovan@wsgr.com)

May 12, 2006

Mr. Luis Villa  
Gnome Foundation, Inc.  
c/o Berkman Center for Internet and Society Harvard Law School  
1587 Massachusetts Avenue  
Cambridge, MA 02138

**Re: Gnome Foundation, Inc.**

Dear Mr. Villa:

I am writing in response to a request made to my colleague, Aaron Hendelman, who is located in our Seattle office. Enclosed is a binder containing the application materials for 501(c)(3) status for the Gnome Foundation, Inc. I have also included a copy of the IRS correspondence granting tax exempt status. Please let me know if you need the California application materials or exemption letter as well and I would be happy to oblige.

Please note that the attorney that assisted with the preparation of this application, Samir Bukhari, is no longer associated with Wilson Sonsini Goodrich & Rosati, P.C. However, you should feel free to communicate with me regarding Gnome Foundation, Inc. As I understand it, you are taking over for Tim Ney in leading the organization. Given this situation, it might be a good idea to review the status of the corporate documents and government filings to ensure that the Foundation's paperwork is up to date. I would be happy to assist you with this process, if you like.

Mr. Luis Villa  
Gnome Foundation, Inc.  
May 12, 2006  
Page 2

I look forward to hearing from you and assisting in any way that I can.

Sincerely,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation



Darin Donovan

DHD:be  
Enclosure

cc: Aaron Hendelman, Esq. (w/o encl.)  
Jane Wilson (w/o encl.)

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any enclosures or attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under federal, state or local tax law or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

# GNOME FOUNDATION

APPLICATION FOR RECOGNITION  
OF EXEMPTION ON FORM 1023



STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
PO BOX 1286  
RANCHO CORDOVA CA 95741-1286

In reply refer to  
755:G :JN

June 24, 2002

GNOME FOUNDATION  
TIM NEY  
THE LANDMARK CENTER  
401 PARK DRIVE  
BOSTON MA 02215-3325

Purpose : CHARITABLE  
Code Section : 23701d  
Form of Organization : Corporation  
Accounting Period Ending: September 30  
Organization Number : 2335864

You are exempt from state franchise or income tax under the section of the Revenue and Taxation Code indicated above.

This decision is based on information you submitted and assumes that your present operations continue unchanged or conform to those proposed in your application. Any change in operation, character, or purpose of the organization must be reported immediately to this office so that we may determine the effect on your exempt status. Any change of name or address must also be reported.

In the event of a change in relevant statutory, administrative, judicial case law, a change in federal interpretation of federal law in cases where our opinion is based upon such an interpretation, or a change in the material facts or circumstances relating to your application upon which this opinion is based, this opinion may no longer be applicable. It is your responsibility to be aware of these changes should they occur. This paragraph constitutes written advice, other than a chief counsel ruling, within the meaning of Revenue and Taxation Code Section 21012(a)(2).

You may be required to file Form 199 (Exempt Organization Annual Information Return) on or before the 15th day of the 5th month (4 1/2 months) after the close of your accounting period. Please see annual instructions with forms for requirements.

June 24, 2002  
GNOME FOUNDATION  
ENTITY ID : 2335864  
Page 2

You are not required to file state franchise or income tax returns unless you have income subject to the unrelated business income tax under Section 23731 of the Code. In this event, you are required to file Form 109 (Exempt Organization Business Income Tax Return) by the 15th day of the 5th month (4 1/2 months) after the close of your annual accounting period.

Please note that an exemption from federal income or other taxes and other state taxes requires separate applications.

THIS EXEMPTION IS GRANTED ON THE EXPRESS CONDITION THAT THE ORGANIZATION WILL SECURE FEDERAL EXEMPT STATUS WITH THE INTERNAL REVENUE SERVICE. THE ORGANIZATION IS REQUIRED TO FURNISH A COPY OF THE FINAL DETERMINATION LETTER TO THE FRANCHISE TAX BOARD WITHIN 9 MONTHS FROM THE DATE OF THIS LETTER.

A copy of this letter has been sent to the Registry of Charitable Trusts.

J NAILON  
EXEMPT ORGANIZATIONS  
BUSINESS ENTITIES SECTION  
TELEPHONE (916) 845-5007

EO :



May 15, 2002

Internal Revenue Service  
P.O. Box 192  
Covington, KY 41012-0192

**Re: Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code for Gnome Foundation**

To Whom It May Concern:

On behalf of Gnome Foundation, enclosed please find a completed application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code, along with attachments related thereto. The Gnome Foundation was incorporated in the State of California as a California Nonprofit Public Benefit Corporation on March 16, 2001.

We hereby submit the items listed below and request that a 501(c)(3) determination letter be granted in the name of Gnome Foundation, a California Nonprofit Public Benefit Corporation.

Enclosed for your reference as Exhibit A is a completed and signed Form 1023 - Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, and attachments related thereto.

Enclosed for your reference as Exhibit B is a completed Form 8718 - User Fee for Exempt Organization / Determination Letter Request, with a check attached payable to the United States Treasury in the amount of \$500.00.

Pursuant to question 10 under Part I of the Form 1023 application, enclosed for your reference as Exhibit C is a copy of Gnome Foundation's Articles of Incorporation showing approval by the appropriate state official.

Pursuant to question 10 under Part I of the Form 1023 application, enclosed for your reference as Exhibit D is a copy of the Gnome Foundation's Bylaws.

Pursuant to question 3 under Part II of the Form 1023 application, enclosed for your reference as Exhibit E are representative copies of solicitations for financial support under Gnome Foundation's program called "Friends of Gnome," which is found on its website.

Pursuant to question 10 under Part III of Form 1023, enclosed for your reference as Exhibit F are two completed and signed Forms 872-C (request for an advance ruling).

Wilson Sonsini Goodrich & Rosati  
PROFESSIONAL CORPORATION

Department of the Treasury - Internal Revenue Service  
May 15, 2002  
Page 2

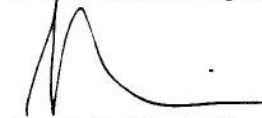
Enclosed for your reference as Exhibit G is an executed original Form 2848 - Power of Attorney and Declaration of Representative, in which Gnome Foundation grants the undersigned the authority to represent it in its request for a 501(c)(3) determination letter.

Finally, enclosed for your reference as Exhibit H descriptive and promotional literature describing the organization's efforts including hard copies of pages posted on Gnome Foundation's website, located at <http://foundation.gnome.org>.

You may contact me directly at 650-849-3098 should you have any questions or concerns related to this application.

Sincerely,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation



Samir Bukhari, Esq.

SB0

Enclosures

## Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code

Read the instructions for each Part carefully.  
**A User Fee must be attached to this application.**  
If the required information and appropriate documents are not submitted along with Form 8718 (with payment of the appropriate user fee), the application may be returned to you.  
**Complete the Procedural Checklist on page 8 of the instructions.**

**Part I Identification of Applicant**

<b>1a</b> Full name of organization (as shown in organizing document)  <p style="text-align: center;">Gnome Foundation</p>		<b>2</b> Employer identification number (EIN) (If none, see page 3 of the <b>Specific Instructions</b> .)  <p style="text-align: center;">04 : 3572618</p>
<b>1b</b> c/o Name (if applicable)		<b>3</b> Name and telephone number of person to be contacted if additional information is needed  <p style="text-align: center;">Samir Bukhari ( 650 ) 849-3098</p>
<b>1c</b> Address (number and street)  <p style="text-align: center;">The Landmark Center, 401 Park Drive, 3rd West</p>	Room/Suite	
<b>1d</b> City, town, or post office, state, and ZIP + 4. If you have a foreign address, see <b>Specific Instructions</b> for Part I, page 3.  <p style="text-align: center;">Boston, Massachusetts 02115</p>		<b>4</b> Month the annual accounting period ends  <p style="text-align: center;">September</p>
<b>1e</b> Web site address  <p style="text-align: center;">http://foundation.gnome.org</p>		<b>5</b> Date incorporated or formed  <p style="text-align: center;">March 16, 2001</p>
<b>6</b> Check here if applying under section: a <input type="checkbox"/> 501(e) b <input type="checkbox"/> 501(f) c <input type="checkbox"/> 501(k) d <input type="checkbox"/> 501(n)		
<b>7</b> Did the organization previously apply for recognition of exemption under this Code section or under any other section of the Code? . . . . . <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes," attach an explanation.		
<b>8</b> Is the organization required to file Form 990 (or Form 990-EZ)? . . . . . <input type="checkbox"/> N/A <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If "No," attach an explanation (see page 3 of the <b>Specific Instructions</b> ).		
<b>9</b> Has the organization filed Federal income tax returns or exempt organization information returns? . . . <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes," state the form numbers, years filed, and Internal Revenue office where filed.		

**10** Check the box for the type of organization. **ATTACH A CONFORMED COPY OF THE CORRESPONDING ORGANIZING DOCUMENTS TO THE APPLICATION BEFORE MAILING.** (See **Specific Instructions** for Part I, Line 10, on page 3.) See also Pub. 557 for examples of organizational documents.)

a  **Corporation**—Attach a copy of the Articles of Incorporation (including amendments and restatements) showing approval by the appropriate state official; also include a copy of the bylaws.

b  **Trust**— Attach a copy of the Trust Indenture or Agreement, including all appropriate signatures and dates.

c  **Association**— Attach a copy of the Articles of Association, Constitution, or other creating document, with a declaration (see instructions) or other evidence the organization was formed by adoption of the document by more than one person; also include a copy of the bylaws.

If the organization is a corporation or an unincorporated association that has not yet adopted bylaws, check here

I declare under the penalties of perjury that I am authorized to sign this application on behalf of the above organization and that I have examined this application, including the accompanying schedules and attachments, and to the best of my knowledge it is true, correct, and complete.

Please Sign Here Timothy Ney 5/14/02  
(Signature) (Type or print name and title or authority of signer) (Date)



**Part II** Activities and Operational Information

- 1 Provide a detailed narrative description of all the activities of the organization—past, present, and planned. **Do not merely refer to or repeat the language in the organizational document.** List each activity separately in the order of importance based on the relative time and other resources devoted to the activity. Indicate the percentage of time for each activity. Each description should include, as a minimum, the following: **(a)** a detailed description of the activity including its purpose and how each activity furthers your exempt purpose; **(b)** when the activity was or will be initiated; and **(c)** where and by whom the activity will be conducted.

Please see Attachment 1, attached hereto.

- 
- 2 What are or will be the organization's sources of financial support? List in order of size.

Please see Attachment 1, attached hereto.

- 
- 3 Describe the organization's fundraising program, both actual and planned, and explain to what extent it has been put into effect. Include details of fundraising activities such as selective mailings, formation of fundraising committees, use of volunteers or professional fundraisers, etc. Attach representative copies of solicitations for financial support.

Please see Attachment 1 and Exhibit E, attached hereto.

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**Part II** Activities and Operational Information (Continued)

4 Give the following information about the organization's governing body:

a Names, addresses, and titles of officers, directors, trustees, etc.

Please see Attachment 1, attached hereto.

b Annual compensation

Please see Attachment 1, attached hereto.

c Do any of the above persons serve as members of the governing body by reason of being public officials or being appointed by public officials? . . . . .  Yes  No  
If "Yes," name those persons and explain the basis of their selection or appointment.

d Are any members of the organization's governing body "disqualified persons" with respect to the organization (other than by reason of being a member of the governing body) or do any of the members have either a business or family relationship with "disqualified persons"? (See **Specific Instructions** for Part II, Line 4d, on page 3.) . . . . .  Yes  No  
If "Yes," explain.

5 Does the organization control or is it controlled by any other organization? . . . . .  Yes  No  
Is the organization the outgrowth of (or successor to) another organization, or does it have a special relationship with another organization by reason of interlocking directorates or other factors? . . . . .  Yes  No  
If either of these questions is answered "Yes," explain.

6 Does or will the organization directly or indirectly engage in any of the following transactions with any political organization or other exempt organization (other than a 501(c)(3) organization): (a) grants; (b) purchases or sales of assets; (c) rental of facilities or equipment; (d) loans or loan guarantees; (e) reimbursement arrangements; (f) performance of services, membership, or fundraising solicitations; or (g) sharing of facilities, equipment, mailing lists or other assets, or paid employees? . . . . .  Yes  No  
If "Yes," explain fully and identify the other organizations involved.

7 Is the organization financially accountable to any other organization? . . . . .  Yes  No  
If "Yes," explain and identify the other organization. Include details concerning accountability or attach copies of reports if any have been submitted.

**Part II** Activities and Operational Information (Continued)

8 What assets does the organization have that are used in the performance of its exempt function? (Do not include property producing investment income.) If any assets are not fully operational, explain their status, what additional steps remain to be completed, and when such final steps will be taken. If none, indicate "N/A."  
Please see Attachment 1, attached hereto.

9 Will the organization be the beneficiary of tax-exempt bond financing within the next 2 years? . . . .  Yes  No

10a Will any of the organization's facilities or operations be managed by another organization or individual under a contractual agreement? . . . . .  Yes  No

b Is the organization a party to any leases? . . . . .  Yes  No  
If either of these questions is answered "Yes," attach a copy of the contracts and explain the relationship between the applicant and the other parties.

11 Is the organization a membership organization? . . . . .  Yes  No  
If "Yes," complete the following:

a Describe the organization's membership requirements and attach a schedule of membership fees and dues.  
Please see Attachment 1, attached hereto.

b Describe the organization's present and proposed efforts to attract members and attach a copy of any descriptive literature or promotional material used for this purpose.  
Please see Attachment 1 and Exhibit I, attached hereto.

c What benefits do (or will) the members receive in exchange for their payment of dues?  
Please see Attachment 1, attached hereto.

12a If the organization provides benefits, services, or products, are the recipients required, or will they be required, to pay for them? . . . . .  N/A  Yes  No  
If "Yes," explain how the charges are determined and attach a copy of the current fee schedule.  
Please see Attachment 1, attached hereto.

b Does or will the organization limit its benefits, services, or products to specific individuals or classes of individuals? . . . . .  N/A  Yes  No  
If "Yes," explain how the recipients or beneficiaries are or will be selected.

13 Does or will the organization attempt to influence legislation? . . . . .  Yes  No  
If "Yes," explain. Also, give an estimate of the percentage of the organization's time and funds that it devotes or plans to devote to this activity.

14 Does or will the organization intervene in any way in political campaigns, including the publication or distribution of statements? . . . . .  Yes  No  
If "Yes," explain fully.

**Part III** Technical Requirements

1 Are you filing Form 1023 within 15 months from the end of the month in which your organization was created or formed?  Yes  No  
If you answer "Yes," do not answer questions on lines 2 through 6 below.

2 If one of the exceptions to the 15-month filing requirement shown below applies, check the appropriate box and proceed to question 7.

**Exceptions**—You are not required to file an exemption application within 15 months if the organization:

- a Is a church, interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church. See **Specific Instructions**, Line 2a, on page 4;
- b Is not a private foundation and normally has gross receipts of not more than \$5,000 in each tax year; or
- c Is a subordinate organization covered by a group exemption letter, but only if the parent or supervisory organization timely submitted a notice covering the subordinate.

3 If the organization does not meet any of the exceptions on line 2 above, are you filing Form 1023 within 27 months from the end of the month in which the organization was created or formed?  Yes  No

If "Yes," your organization qualifies under Regulation section 301.9100-2, for an automatic 12-month extension of the 15-month filing requirement. Do not answer questions 4 through 6.

If "No," answer question 4.

4 If you answer "No" to question 3, does the organization wish to request an extension of time to apply under the "reasonable action and good faith" and the "no prejudice to the interest of the government" requirements of Regulations section 301.9100-3?  Yes  No

If "Yes," give the reasons for not filing this application within the 27-month period described in question 3. See **Specific Instructions**, Part III, Line 4, before completing this item. Do not answer questions 5 and 6.

If "No," answer questions 5 and 6.

5 If you answer "No" to question 4, your organization's qualification as a section 501(c)(3) organization can be recognized only from the date this application is filed. Therefore, do you want us to consider the application as a request for recognition of exemption as a section 501(c)(3) organization from the date the application is received and not retroactively to the date the organization was created or formed?  Yes  No

6 If you answer "Yes" to question 5 above and wish to request recognition of section 501(c)(4) status for the period beginning with the date the organization was formed and ending with the date the Form 1023 application was received (the effective date of the organization's section 501(c)(3) status), check here  and attach a completed page 1 of Form 1024 to this application.

**Part III** Technical Requirements (Continued)

7 Is the organization a private foundation?

- Yes (Answer question 8.)  
 No (Answer question 9 and proceed as instructed.)

8 If you answer "Yes" to question 7, does the organization claim to be a private operating foundation?

- Yes (Complete Schedule E.)  
 No

After answering question 8 on this line, go to line 14 on page 7.

9 If you answer "No" to question 7, indicate the public charity classification the organization is requesting by checking the box below that most appropriately applies:

**THE ORGANIZATION IS NOT A PRIVATE FOUNDATION BECAUSE IT QUALIFIES:**

- |   |   |  |
|---|---|--|
| a | <input type="checkbox"/> As a church or a convention or association of churches<br>(CHURCHES MUST COMPLETE SCHEDULE A.)   | Sections 509(a)(1)<br>and 170(b)(1)(A)(i)                          |
| b | <input type="checkbox"/> As a school (MUST COMPLETE SCHEDULE B.)  | Sections 509(a)(1)<br>and 170(b)(1)(A)(ii)                         |
| c | <input type="checkbox"/> As a hospital or a cooperative hospital service organization, or a<br>medical research organization operated in conjunction with a<br>hospital (These organizations, except for hospital service<br>organizations, MUST COMPLETE SCHEDULE C.)                                      | Sections 509(a)(1)<br>and 170(b)(1)(A)(iii)                        |
| d | <input type="checkbox"/> As a governmental unit described in section 170(c)(1).   | Sections 509(a)(1)<br>and 170(b)(1)(A)(v)                          |
| e | <input type="checkbox"/> As being operated solely for the benefit of, or in connection with,<br>one or more of the organizations described in a through d, g, h, or i<br>(MUST COMPLETE SCHEDULE D.)  | Section 509(a)(3)  |
| f | <input type="checkbox"/> As being organized and operated exclusively for testing for public<br>safety.  | Section 509(a)(4)  |
| g | <input type="checkbox"/> As being operated for the benefit of a college or university that is<br>owned or operated by a governmental unit.  | Sections 509(a)(1)<br>and 170(b)(1)(A)(iv)                         |
| h | <input type="checkbox"/> As receiving a substantial part of its support in the form of<br>contributions from publicly supported organizations, from a<br>governmental unit, or from the general public.   | Sections 509(a)(1)<br>and 170(b)(1)(A)(vi)                         |
| i | <input type="checkbox"/> As normally receiving not more than one-third of its support from<br>gross investment income and more than one-third of its support from<br>contributions, membership fees, and gross receipts from activities<br>related to its exempt functions (subject to certain exceptions). | Section 509(a)(2)  |
| j | <input checked="" type="checkbox"/> The organization is a publicly supported organization but is not sure<br>whether it meets the public support test of h or i. The organization<br>would like the IRS to decide the proper classification.  | Sections 509(a)(1)<br>and 170(b)(1)(A)(vi)<br>or Section 509(a)(2) |

If you checked one of the boxes a through f in question 9, go to question  
 14. If you checked box g in question 9, go to questions 11 and 12.  
 If you checked box h, i, or j, in question 9, go to question 10.

**Part III** Technical Requirements (Continued)

- 10 If you checked box **h**, **i**, or **j** in question 9, has the organization completed a tax year of at least 8 months?
- Yes**—Indicate whether you are requesting:
    - A definitive ruling. (Answer questions 11 through 14.)
    - An advance ruling. (Answer questions 11 and 14 and attach two Forms 872-C completed and signed.)
  - No**—You must request an advance ruling by completing and signing two Forms 872-C and attaching them to the Form 1023.

- 11 If the organization received any unusual grants during any of the tax years shown in Part IV-A, **Statement of Revenue and Expenses**, attach a list for each year showing the name of the contributor; the date and the amount of the grant; and a brief description of the nature of the grant.

- 12 If you are requesting a definitive ruling under section 170(b)(1)(A)(iv) or (vi), check here  and:
- a Enter 2% of line 8, column (e), Total, of Part IV-A . . . . . \_\_\_\_\_
  - b Attach a list showing the name and amount contributed by each person (other than a governmental unit or "publicly supported" organization) whose total gifts, grants, contributions, etc., were more than the amount entered on line 12a above.

- 13 If you are requesting a definitive ruling under section 509(a)(2), check here  and:
- a For each of the years included on lines 1, 2, and 9 of Part IV-A, attach a list showing the name of and amount received from each "disqualified person." (For a definition of "disqualified person," see **Specific Instructions**, Part II, Line 4d, on page 3.)
  - b For each of the years included on line 9 of Part IV-A, attach a list showing the name of and amount received from each payer (other than a "disqualified person") whose payments to the organization were more than \$5,000. For this purpose, "payer" includes, but is not limited to, any organization described in sections 170(b)(1)(A)(i) through (vi) and any governmental agency or bureau.

14 Indicate if your organization is one of the following. If so, complete the required schedule. (Submit only those schedules that apply to your organization. <b>Do not submit blank schedules.</b> )	Yes	No	If "Yes," complete Schedule:
Is the organization a church? . . . . .		✓	A
Is the organization, or any part of it, a school? . . . . .		✓	B
Is the organization, or any part of it, a hospital or medical research organization? . . . . .		✓	C
Is the organization a section 509(a)(3) supporting organization? . . . . .		✓	D
Is the organization a private operating foundation? . . . . .		✓	E
Is the organization, or any part of it, a home for the aged or handicapped? . . . . .		✓	F
Is the organization, or any part of it, a child care organization? . . . . .		✓	G
Does the organization provide or administer any scholarship benefits, student aid, etc.? . . . .		✓	H
Has the organization taken over, or will it take over, the facilities of a "for profit" institution? . . .		✓	I

**Part IV Financial Data** Please see Financial Data attached.

Complete the financial statements for the current year and for each of the 3 years immediately before it. If in existence less than 4 years, complete the statements for each year in existence. If in existence less than 1 year, also provide proposed budgets for the 2 years following the current year.

**A. Statement of Revenue and Expenses**

		Current tax year	3 prior tax years or proposed budget for 2 years			(e) TOTAL
		(a) From..... to	(b) .....	(c) .....	(d) .....	
<b>Revenue</b>	1 Gifts, grants, and contributions received (not including unusual grants—see page 6 of the instructions).					
	2 Membership fees received . . .					
	3 Gross investment income (see instructions for definition) . . .					
	4 Net income from organization's unrelated business activities not included on line 3 . . . . .					
	5 Tax revenues levied for and either paid to or spent on behalf of the organization . . . . .					
	6 Value of services or facilities furnished by a governmental unit to the organization without charge (not including the value of services or facilities generally furnished the public without charge) . . . . .					
	7 Other income (not including gain or loss from sale of capital assets) (attach schedule) . . .					
	8 <b>Total</b> (add lines 1 through 7)					
	9 Gross receipts from admissions, sales of merchandise or services, or furnishing of facilities in any activity that is not an unrelated business within the meaning of section 513. Include related cost of sales on line 22 . . . . .					
	10 <b>Total</b> (add lines 8 and 9) . . .					
	11 Gain or loss from sale of capital assets (attach schedule) . . .					
	12 Unusual grants . . . . .					
	13 <b>Total revenue</b> (add lines 10 through 12) . . . . .					
<b>Expenses</b>	14 Fundraising expenses . . . . .					
	15 Contributions, gifts, grants, and similar amounts paid (attach schedule) . . . . .					
	16 Disbursements to or for benefit of members (attach schedule) .					
	17 Compensation of officers, directors, and trustees (attach schedule) . . . . .					
	18 Other salaries and wages . . .					
	19 Interest . . . . .					
	20 Occupancy (rent, utilities, etc.) .					
	21 Depreciation and depletion . . .					
	22 Other (attach schedule) . . . . .					
	23 <b>Total expenses</b> (add lines 14 through 22) . . . . .					
	24 Excess of revenue over expenses (line 13 minus line 23)					

**Part IV** Financial Data (Continued)

B. Balance Sheet (at the end of the period shown)		Current tax year Date .....
<b>Assets</b>		
1	Cash . . . . .	1
2	Accounts receivable, net . . . . .	2
3	Inventories . . . . .	3
4	Bonds and notes receivable (attach schedule) . . . . .	4
5	Corporate stocks (attach schedule) . . . . .	5
6	Mortgage loans (attach schedule) . . . . .	6
7	Other investments (attach schedule) . . . . .	7
8	Depreciable and depletable assets (attach schedule) . . . . .	8
9	Land . . . . .	9
10	Other assets (attach schedule) . . . . .	10
11	<b>Total assets</b> (add lines 1 through 10) . . . . .	11
<b>Liabilities</b>		
12	Accounts payable . . . . .	12
13	Contributions, gifts, grants, etc., payable . . . . .	13
14	Mortgages and notes payable (attach schedule) . . . . .	14
15	Other liabilities (attach schedule) . . . . .	15
16	<b>Total liabilities</b> (add lines 12 through 15) . . . . .	16
<b>Fund Balances or Net Assets</b>		
17	Total fund balances or net assets . . . . .	17
18	<b>Total liabilities and fund balances or net assets</b> (add line 16 and line 17) . . . . .	18

If there has been any substantial change in any aspect of the organization's financial activities since the end of the period shown above, check the box and attach a detailed explanation . . . . .



## A. Gnome Statement of Revenue and Expenses

	10/01/01-09/30/02	10/01/02-9/30/03	10/01//03-09/30/04	TOTAL
Line 1 - GIFTS, GRANTS	\$ 5,500	\$ 15,000	\$ 35,000	\$ 55,500
line 2 - Membership Fees RECEIVED	63,085	85,000	110,000	258,085
Line 8 - SUBTOTAL	68,585	100,000	145,000	313,585
line 9 - Gross RECEIPTS (EARNED)	2,400	6,000	22,000	30,400
TOTAL REVENUE	70,985	106,000	167,000	343,985
line 17 - Compensation of Officers, etc.	30,000	60,000	60,000	150,000
line 20 - OCCUPANCY	0	0	15,000	15,000
Line 22 - OTHER: "CONFERENCE COSTS"	40,000	42,000	85,000	167,000
TOTAL EXPENSES	70,000	102,000	160,000	332,000
SURPLUS (Deficit)	\$ 985	\$ 4,000	\$ 7,000	\$ 11,985

## B. Gnome Balance Sheet

ACCOUNT NAME	9/30/2002	9/30/2003	9/30/2004
CASH	\$ 7,200	\$ 9,200	\$ 15,000
ACCOUNTS RECEIVABLE	10,000	12,000	10,000
OFFICE EQUIPMENT (Depreciable Assets)	0	4,000	5,000
TOTAL ASSETS	17,200	25,200	30,000
ACCOUNTS PAYABLE	16,215	20,215	18,015
Total LIABILITIES	16,215	20,215	18,015
FUND BALANCE (NET ASSETS)	985	4,985	11,985
TOTAL Liabilities and Fund Bal.	\$ 17,200	\$ 25,200	\$ 30,000

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## ATTACHMENT 1 TO FORM 1023

### Part II: Activities and Operational Information

1.

A. **Introduction.** The GNOME Foundation (the “**Foundation**”) was incorporated as a Nonprofit Public Benefit Corporation in the State of California on March 16, 2001. A true and correct copy of the Foundation’s Articles of Incorporation, certified by the California Secretary of State, and a copy of its Bylaws are attached to Form 1023 as Exhibit C and Exhibit D, respectively.

The Foundation coordinates the efforts of the GNOME Project, a worldwide volunteer project that is developing a free, open source, user-friendly graphical user interface (“**GUI**”) for the Linux, BSD, Solaris, HP-UX and a variety of other Unix or Unix-like operating systems. More than 700 developers volunteer their time and effort to the Project.

B. **Background.**

*Operating Systems.* The term “operating system” refers to the software that controls the allocation and usage by a computer of hardware resources such as memory and disk space. All task-specific software like word processing and e-mail (commonly referred to as “applications software”) depends upon a foundation of operating system software.

Both operating systems and applications software operate pursuant to instructions found in their respective underlying “source codes.” The source code contains the actual instructions written by the computer programmer or software engineer that causes a computer to perform its intended tasks.

*Proprietary Operating Systems.* Windows 98, Windows NT and Mac OS are all examples of proprietary operating systems. In such proprietary operating systems, customers do not have the right or the ability to look at the source code of the software and rely on the vendor to fix errors or add new features. Only the object code, which allows the software to perform its function without revealing the source code, is distributed.

*Open Source Software.* Unlike proprietary software, open source or “free software” is a method of software development in which source code is made freely available to users through no-cost software licenses. With access to source code, individual programmers can fix bugs or add features as they like. Accordingly, the efforts of a core group of programmers can be vastly amplified by the voluntary participation of many.

The great practical benefit to this approach is the rapid development of innovative, high quality software. For instance, an open source project called Apache Web Server is the underlying technology for more than 70% of the world’s web servers. An additional benefit of an

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open source project is that the detailed body of knowledge underlying open source software is universally available. Open source software is also affordable, a fact evidenced by the availability at low or no cost to the general public of many operating systems derived from the source codes of Linux and others.

*The Need for a Graphical User Interface for Linux.* Linux is an example of a highly successful open source project. While Linux is very powerful, it is complicated and difficult to use. Because there is no GUI for Linux, a user must type obscure commands to activate programs. As a result, Linux is very popular as a backend computer to serve up web pages or store corporate data, for instance, but its potential as computer environment for the average computer user is largely untapped.

*The GNOME Project.* The GNOME Project was started in 1997 by a group of volunteers who set out to create a GUI for Linux. Its overarching purpose is to make the Linux operating system suitable for use by average computer users. Today, GNOME is used by 1.5 million users around the world.

The GNOME Project consists of three dimensions: (i) to create a user-friendly GUI for Linux; (ii) to create a set of building blocks (development libraries) and development tools that allow computer programmers to easily build and then seamlessly integrate applications for GNOME; and (iii) to create a suite of basic end-user applications that make GNOME a viable alternative to the Windows desktop. GNOME programmers, for example, are developing a completely free alternative to the Microsoft Office suite of productivity software.

The Gnome Project maintains a web site (<http://www.gnome.org>) at which software developers may freely access and copy the source code. Further, software developers may modify the source code or use components of it in new programs. Members of the general public, whether or not they are contributing software developers, are free to use, copy (in object code or executable form) and distribute the software and the source code

### **C. Exempt Purpose of the Foundation.**

*The GNOME Foundation.* In late 2000, the GNOME Project volunteer community agreed that an organizational structure in the form of a foundation should be implemented for the GNOME Project.

The Foundation's purpose is to (i) facilitate the creation of GNOME, a free, technologically innovative open source computing platform, (ii) make that platform available for the benefit of the general public, including underserved or disadvantaged groups, and (iii) disseminate research and knowledge of GNOME and provide individuals with educational forums to develop their software development capabilities.

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Boston, MA 02115  
EIN: 04 36572618

The Foundation advances scientific knowledge and research by providing the leadership and organizational structure that allows for the rapid, systematic development and wide distribution of free, sophisticated GNOME software.

The Foundation provides charitable community benefits by broadening access to technology through the development and distribution of a usable, free computer operating system and GUI to people in countries around the world, for whom operable computers would otherwise have been unavailable or prohibitively expensive.

The Foundation also provides training and educational opportunities in the development of software. The Foundation serves an important educational role by disseminating information about GNOME by organizing conferences, lectures, tutorials, working groups and posting information about GNOME on its web page, <http://foundation.gnome.org>.

We believe that the foregoing qualifies as an “exempt purpose” under Section 501(c)(3) of the Internal Revenue Code.

D. **Specific Activities.** The following are the specific activities that the Foundation plans to pursue in order to achieve its exempt purpose:

1. Coordinate the Development and Periodic Releases of GNOME Software.

*Description of Activity, Purpose of Activity, Manner in Which Activity Furthers Exempt Purpose.* The GNOME Foundation manages each subsequent release of GNOME. Each release involves: (i) determining the set of software modules that will be part of the release; (ii) defining the release schedule; and (iii) preparing marketing materials.

This project management function is critical because the GNOME Project consists of more than 100 different pieces of complex software, each of which is managed by a different group of volunteers. All of these pieces must be assembled, packaged and released in a convenient form so that end-users can easily download, install and upgrade their software. The Foundation’s goal of providing a completely free, technologically advanced end-user environment to individuals around the world will be furthered only if the Foundation is able to effectively produce, package, market and distribute software, while ensuring its quality.

*When Activity Has Been or Will be Initiated.* This activity was initiated in January 2001.

The following are specific examples of this management function:

- The Board of Directors of the Foundation (the “**Board**”) holds meetings to discuss the goals and priorities for the next version of GNOME (“**GNOME 2.0**”).

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Boston, MA 02115  
EIN: 04 36572618

- The Foundation posts the minutes from meetings on a public mailing list and hosts discussions about the goals for GNOME 2.0.
- At the Annual GNOME Developers Conference in April, the Foundation organized sessions to define the goals for GNOME 2.0.
- Following these meetings, the Board appointed a Release Coordination Committee (the “**Release Committee**”) for GNOME 2.0, which is responsible for coordinating the release of GNOME 2.0.

*Where and By Whom the Activity Will be Conducted.* This activity is conducted by the Board in conjunction with the Release Committee.

The Board, which is largely comprised of software engineers and technologists, is the primary decision-making body of the Foundation and is responsible for ratifying all decisions that the Foundation makes, although these decisions may be overturned by a membership referendum. The Board is made up of a limited number of people elected by the membership.

The Board is independent of influence by for-profit entities in its pursuit of the Foundation’s exempt purpose. No persons affiliated with a single organization or company will be allowed to control more than 40% of the Board seats, regardless of election results. Individuals affiliated with a company or organization are people who are employees, officers or members of the entity’s governing body; have a significant consulting relationship with the entity; or own at least 1% of the equity or debt, or derivatives thereof, of the entity.

While some of these discussions take place during telephone conference calls, the bulk of this work is done online, using mailing lists. The membership itself will be able to affect all these decisions primarily by participating in the discussions that lead up to them. In certain cases, a referendum of the membership may be used.

*Percentage Time to be Devoted to Activity: 20%*

## 2. Define and Execute GNOME Project Objectives.

*Description of Activity, Purpose of Activity, Manner in Which Activity Furthers Exempt Purpose.* One central organizational activity of the Foundation organizational. It is tasked with systematically: (i) formulating the goals and priorities of the GNOME Project; (ii) communicating these to GNOME Project volunteers; and (iii) providing assistance to further these goals and priorities.

The performance of this function is critical because of the decentralized nature of an open source project. The need is especially keen with respect to the GNOME Project. Based on the number of volunteer computer programmers involved, the number of lines of computer code contributed and the scope of the project, the GNOME Project can be characterized as the largest and

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Boston, MA 02115  
EIN: 04 36572618

most ambitious open source project in the world, exceeding both the Linux Project and the Apache Web Server Project. Accordingly, the ability to provide a high-end, viable open source alternative to proprietary operating systems will depend on the Foundation's efficiently organizing and deploying GNOME Project resources.

*When Activity Has Been or Will be Initiated.* Since November 2000, the Board has met every other week to set the goals for the GNOME Project and to take action in furtherance of those goals. The Board continued its operation following the Foundation's incorporation in California as a Nonprofit Public Benefit Corporation in March 2001.

Additional examples of organizational activity described above include the following:

- In January 2001, the Board coordinated with the volunteer organizers of the annual GNOME Developers Conference to ensure that the talks, sessions and workshops at the conference would be aligned with the development priorities for the GNOME Project for the next year.
- On April 6, 2001, the Board organized an all-day retreat to articulate goals for the GNOME Project for the year.
- On April 7, 8 and 9, 2001, the Board discussed these goals with the 300 volunteers to the GNOME Project during the GNOME Project's Annual Developers Conference.
- On April 5, 2002, the Board held the first annual members meeting at the annual GNOME Developers Conference in Seville, Spain.

*Where and By Whom the Activity Will be Conducted.* This activity is conducted by the Board and specialized volunteer committees appointed by the Board.

*Percentage Time to be Devoted to Activity: 20%*

3. Coordinate with Governmental Entities and NGOs to Bridge the Digital Divide in Underdeveloped Regions and Assist Underserved Communities.

*Description of Activity, Purpose of Activity, Manner in Which Activity Furthers Exempt Purpose.* The Foundation actively works with a variety of governmental and nongovernmental bodies in order to deliver free GNOME software to underprivileged or underserved communities.

The activity directly furthers the exempt purpose of the Foundation of reducing the barriers to accessing technology by providing a quality operating system in a cost-effective manner. Because the GNOME does not demand the same cutting-edge hardware requirements as Microsoft Windows and other commercial operating systems, the Foundation seeks to allow low-income people around the world to continue to operate older, cheaper computer hardware without continuously upgrading their computer equipment, thereby extending the lifetime of existing resources. The Foundation also

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EIN: 04 36572618

empowers communities with special interests by enabling them to utilize source code to customize their computer environments through assistive technology. For instance, voice recognition and other technologies that make computers accessible to people with disabilities can be much more easily deployed when the source code for an operating system is available to everyone.

*When Activity Has Been or Will be Initiated.* This activity was initiated in 2001.

Examples of this activity include the following:

- The Foundation recently announced the latest innovative assistive technology, namely the first full-featured GNOME screen magnifier, a screen reader, and a set of Braille drivers to meet the needs of vision-impaired users and a GNOME on-screen keyboard to support users with motor impairments.
- In April 2002, the President of the Foundation and the Executive Director of the Foundation made presentations to IT staff of members for the governments of three states in southern Spain. Following the GNOME users and developers conference (GUADEC 3) in Seville, the state government of Extremadura announced the release of their own localized version of Linux with GNOME, called LinEx, for use in the schools. In neighboring Andalucia, the state government is now preparing to do the same for the schools and health care system.
- GNOME Foundation is exploring potential model projects with UNESCO involving Latin American community telecenters and libraries.

*Where and By Whom the Activity Will be Conducted.* The activity will primarily be carried out by the Board and other representatives of the Foundation.

*Percentage Time to be Devoted to Activity: 20%*

#### 4. Organize Conferences, Speeches, Seminars and Tutorials.

*Description of Activity, Purpose of Activity, Manner in Which Activity Furthers Exempt Purpose.* The Foundation assists in organizing conferences where GNOME developers can attend technical lectures, tutorials, discuss recent advances in GNOME and meet face-to-face with others in the developer community. Currently, GNOME developers convene each year at the annual GNOME developers conference to plan for the next year. In 2000, the conference was held in Paris, France, and in 2001, the conference took place in Copenhagen, Denmark. Representatives of the Foundation also give lectures and seminars on GNOME to a wide variety of audiences.

These activities are crucial to the Foundation's ability to advance its goal of providing rich educational opportunities for GNOME developers. Since the project is comprised of hundreds of volunteers from four different continents, it is important to bring developers together to learn the latest development techniques, to share ideas and to discuss their goals for the GNOME Project. The



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EIN: 04 36572618

activity is also necessary in order to spread information about GNOME to a wide constituency of potential users and developers.

*When Activity Has Been or Will be Initiated.* This activity was initiated in January 2001, when the Foundation coordinated a group of volunteers in Denmark who offered to host the conference.

Other examples of this activity include the following:

- Over the following months, Board members had weekly conference calls with the organizers in Denmark to align the conference with the needs of the GNOME Project.
- The Foundation assisted the volunteers in Denmark with fundraising for the conference.
- At the Copenhagen conference in 2001, the Foundation organized an organizing session where a group of volunteers came forward to organize the next conference, which was held in Oakland, California.
- For the Third Annual GNOME Users and Developers European Conference, an international submissions committee reviewed abstracts for presentation and made selections. Fifty five presenters gave talks and tutorials to over four hundred participants in Seville from April 4-6, 2002.
- Representatives of the Foundation give keynote speeches, seminars and workshops for public officials and universities. The Foundation's President, Miguel de Icaza participated in the World Economic Forum in Davos and met with the Presidents of Mexico and Senegal to discuss the advantages of open source software. He has given speeches to the Spanish Senate and the Peruvian Camara de Diputados.
- Timothy Ney, the Foundation's Executive Director, has given seminars for governments in Brazil, South Korea, and Spain on the use, development and deployment of open source software.

*Where and By Whom the Activity Will be Conducted.* This activity is conducted by the Board in conjunction with committees comprised of Foundation members.

*Percentage Time to be Devoted to Activity: 20%*

5. Serve as Public Image and Voice for the GNOME Project.

*Description of Activity, Purpose of Activity, Manner in Which Activity Furthers Exempt Purpose.* The Foundation serves as the public image and voice for the GNOME Project. The press, GNOME developers and other open source projects utilize the Foundation to contact the GNOME Project and communicate with it. Regional groups, created to promote GNOME in specific areas,

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401 Park Drive, 3<sup>rd</sup> West  
Boston, MA 02115  
EIN: 04 36572618

may also use the Foundation to make announcements about their efforts. Finally, the Foundation is responsible for maintaining the GNOME brand and determining the appropriate uses of the associated trademarks.

The rapid development and wide dissemination of a usable open source operating system depends on the ability of the GNOME Project to communicate a consistent, compelling message to its existing and potential users. The Foundation performs this marketing and communication function because of the decentralized nature of open source projects, which lack a single, central voice or point of contact. Without such an institutional presence, the GNOME Project is unable to effectively communicate its message, either internally and externally.

*When Activity Has Been or Will be Initiated.* This activity was initiated on August 15, 2000, when a press release was issued announcing the creation of the Foundation.

Other examples of this activity include the following:

- In March 2000, the Foundation opened an extensive dialogue with several other open source projects to explore ways in which the projects can more closely work together to further the mutual goals of providing a complete free and open source computer operating system. As a result of these conversations, the Foundation invited representatives of these projects to speak at GNOME Foundation's annual Developers Conference and agreed to jointly organize a conference that brings together all of these projects.
- On April 4, 2000 the Foundation issued a press release announcing the release of Version 1.4 of the GNOME software.
- Trade show and conference participation. The Foundation distributes information and provides demonstrations of GNOME software at trade shows and representatives participate in seminars around the world.
- GNOME Foundation had an informational booth at LinuxWorld in New York, San Francisco, San Jose, Frankfurt and Paris.
- Board members and the Executive Director have given keynote speeches and spoken on panels in Belgium, Brazil, Canada, France, Germany, Japan, Mexico and South Korea.

*Where and By Whom the Activity Will be Conducted.* This activity is overseen by the Board, in coordination with the volunteer Marketing Committee.

*Percentage Time to be Devoted to Activity: 10%.*

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Boston, MA 02115  
EIN: 04 36572618

6. Act as Organizational Point of Contact.

*Description of Activity, Purpose of Activity, Manner in Which Activity Furthers Exempt Purpose.* The Board serves as a point of contact for companies and organizations that want to communicate with the GNOME Project. The Foundation, which is vested with the power to represent GNOME in these conversations, is responsible for helping these organizations understand and contribute to the GNOME Project. The Foundation acts as a forum for discussions between the organizations and companies that have an interest in GNOME. The Advisory Board of the Foundation includes members from these organizations to make these conversations possible and will meet annually or semi-annually.

The Foundation has implemented stringent conflict of interest mechanisms in its charter documents to ensure that its strategic relationships with for-profit entities do not inappropriately influence the direction of the Foundation. The Foundation has developed relationships with both for-profit and not-for-profit entities in order to supplement the Board's largely technical expertise with industry expertise, to gain visibility with a deep pool of developer talent, to receive feedback on the development of GNOME and to facilitate a wide dissemination of GNOME software.

It is important to the continued development and wide distribution of the GNOME software that corporate and organizational partners have a reliable point of contact, which the Foundation will provide. It can be difficult for corporations and other institutional bodies to deal effectively with open source projects in the absence of an efficient institutional liaison. The need for a central corporate and organizational contact is especially pressing with the GNOME Project because of the variety of organizations that interact with it.

*When Activity Has Been or Will be Initiated.* This activity was initiated in August 2000.

The Foundation has effectively performed its liaison function on a number of occasions:

- In August 2000, Sun Microsystems approached the Foundation because they wanted to make GNOME available to all of their customers. The Foundation worked with Sun Microsystems and helped them put together the announcement that Sun will be using GNOME software.
- In January 2001, the Foundation worked with Red Flag Software in China, a company that is interested in making GNOME available to millions of users in China. The Foundation provided them with contact information and technical details necessary for them to ship GNOME to their customers. Moreover, the Foundation identified specific ways in which they could contribute to make GNOME more useful to users in China.
- In April 2001, at the Foundation's annual Developers Conference, the Foundation met with representatives from Red Hat, Sun, Hewlett Packard and several other leading companies for their insight into GNOME from an industry perspective, as well as for their thoughts on the general direction of the technology industry.

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Boston, MA 02115  
EIN: 04 36572618

*Where and By Whom the Activity Will be Conducted.* This activity is conducted by the Board via e-mail and during semi-annual meetings with the companies and organizations that are interested in GNOME.

*Percentage Time to be Devoted to Activity: 5%.*

7. Fund Receipt and Disbursement.

*Description of Activity, Purpose of Activity, Manner in Which Activity Furthers Exempt Purpose.* Individuals and organizations that want to make a monetary contribution to the GNOME Project will be able to do so by making a contribution to the Foundation. The Foundation will be in charge of disbursing these funds for the benefit of GNOME and in accordance, to the extent possible, with the wishes of the benefactor.

Currently, potential donors have no efficient way to donate money to the GNOME Project. Any monies that are received cannot be efficiently dispersed. While key aspects of the Foundation and GNOME Project are volunteer-based, many of the activities described above, all necessary to further the exempt purpose of the Foundation, require money. For instance, the Foundation will make funds available to help organize the Annual Developers Conference, which provides a forum for the volunteer programmers to work together.

*When Activity Has Been or Will be Initiated.* This activity has not been initiated yet, since we have determined not to receive donations until we have obtained our tax exempt status.

*Where and By Whom the Activity Will be Conducted.* Fund receipts and disbursements will be overseen by the Board and the Treasurer of the Foundation. Decisions as to expenditures will be made during meetings of the Board.

*Percentage Time to be Devoted to Activity: 5%.*

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EIN: 04 36572618

Part II: Activities and Operational Information

2.

As a result of our limited operating history, the sole source of funds to date has been the payment of annual Advisory Board membership dues by Compaq, HP and Ximian. Each paid a fee of \$10,000. In addition, we have a small number of gifts and grants.

Our office space and telephone is an in-kind contribution by Ximian. Equipment at trade show booths is used on loan from various companies such as Sun, ASLabs and IBM.

Because of our organizational structure, proposed programs and activities and intended method of operation, it is anticipated that the Foundation will receive broad based support in the form of grants from governmental agencies, foundations, and donations from members of the general public, businesses and trade associations.

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EIN: 04 36572618

Part II: Activities and Operational Information

3.

The Foundation has not developed a specific fundraising plan. There are no plans to hire outside professional fundraisers or to use volunteer fundraisers.

The organization's sources of financial support will be charitable contributions by a broad range of corporations, foundations and individuals. We have been contacted by a number of corporations and individuals who believe in our mission and are willing to make financial contributions to help us achieve the goals outlined above.

We plan to solicit funds from individuals through a "Friends of GNOME" program. For representative examples of solicitations, please see Exhibit E.

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Part II: Activities and Operational Information

4. (a).

**Names of Directors and Officers**

**Address**

Chairman

Havoc Pennington

203 Barskdale Drive, Apt. H  
Chapel Hill, NC 27516

Executive Director

Tim Ney

c/o GNOME Foundation  
The Landmark Center  
401 Park Drive, 3rd West  
Boston, MA 02115

President

Miguel de Icaza

401 Park Drive, 3rd West  
Boston, MA 02215

Secretary

Daniel Veillard

23 Boulevard du Marechal LECLERC  
38000 Grenoble  
FRANCE

Assistant Secretary

Telsa Gwyne

c/o I2IT  
Innovations Centre  
Singleton Park  
Swansea  
SA2 8PP UK

Treasurer

Bart Decrem

2065 Ralmar Avenue  
East Palo Alto, CA 94303

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Directors

Jonathan Blanford	106 Mary Street Carrboro, NC 27510
Telsa Gwynne	c/o I2IT Innovations Centre Singleton Park Swansea SA2 8PP UK
James Henstridge	38 Kanimbla Road Nedlands WA 6009 Australia
Jiri Lebl	6161 Arnoldson Ct. San Diego, CA 92122
Bart Decrem	2035 Ralmar Avenue East Palo Alto, CA 94303
Jim Gettys	484 Cross Street Carlisle, MA 01741
John Heard	901 San Antonio Road Palo Alto, CA 94303
Miguel de Icaza	401 Park Drive, 3rd West Boston, MA 02215
Havoc Pennington	203 Barksdale Drive, Apt. H Chapel Hill, NC 27516
Federico Mena-Quintero	Zaragoza #6 depto. 5 Mexico City 04000 Mexico
Daniel Veillard	23 Boulevard du Marechal LECLERC 38000 Grenoble FRANCE

Release Committee



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Daniel Veillard (Board liaison)	23 Boulevard du Marechal LECLERC 38000 Grenoble FRANCE
Jamin Gray	6132 Waterman, Apt. 2 St. Louis, MO 63112
Jody Goldberg	15 Maryvale Cres. Richmond Hill, ON Canada, L4C 6P6
Telsa Gwyne	c/o I2IT Innovations Centre Singleton Park Swansea SA2 8PP UK
Kjartan Maraas	Fredensborgveien 27C N-0177 Oslo Norway
Gregory Leblanc	7621 SW 51 <sup>st</sup> Ave Portland, OR 97219
John Fleck	1515 Aliso Dr. NE Albuquerque, NM 87110
Calum Benson	Sun Microsystems Ireland Limited East Point Business Park Dublin 3 Ireland
Karl Gaffney	Sun Microsystems Ireland Limited East Point Business Park Dublin 3 Ireland
Sander Vesik	Sun Microsystems Ireland Limited East Point Business Park Dublin 3 Ireland

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EIN: 04 36572618

Jeff Waugh (Chairperson)

19 Orchard Rd  
Chatswood, NSW 2067  
Australia

Luis Villa

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Boston, MA 02115

Steering Committee

To Be Determined

Marketing Working Group

Emily Forster Ball

1801 Varsity Drive  
Raleigh, NC 27606

Leila Chucuri

4150 Network Circle  
Santa Clara, CA 95054

Ken Godfrey

Rt 100  
Somers, NY 10589

Jon Perr

401 Park Drive  
Boston, MA 02115

Leslie Proctor

13397 Borden Avenue  
Sylmar, CA 91342

Jeff Stevenson

3404 East Harmony Road  
Ft. Collins, CO 80528

Standards Committee

To Be Determined

Advisory Board

Compaq

20555 SH 249 MS 100210  
Houston, TX 77070

Debian

c/o Software in the Public Interest, Inc.  
P.O. Box 502761  
Indianapolis, IN 46250-2761

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EIN: 04 36572618

Free Software Foundation	59 Temple Street Ft. Collins, Co 80528
Hewlett Packard Co.	3404 East Harmony Road Ft. Collins, CO 80528
IBM	Route 100 Somers, NY 10589
MandrakeSoft, S.A.	43, rue d'Aboukir 75002 Paris France
Open Source Development Network	VA Software 47071 Bayside Parkway Fremont, CA 94538
Redflag Software Co., Ltd.	6/F, Zijin Bldg., 68 Wanquanhe Rd., Haidian Dist., Beijing 100086, PRC
Red Hat Linux	P.O. Box 13588 RTP, NC 27709
Sun Microsystems, Inc.	4150 Network Circle Santa Clara, CA 95054
Ximian	401 Park Drive, 3 <sup>rd</sup> West Boston, MA 02115

*Executive Director.* The Executive Director is tasked with managing and growing the GNOME Foundation as an organization. These tasks include working with the Board, Advisory Board members, GNOME membership, and other GNOME supporters to improve GNOME, support the GNOME community and achieve the goals of the GNOME Foundation. The Executive Director also oversees the GNOME Foundation's legal, administrative and fundraising efforts. Tim Ney is the GNOME Foundation's executive director. Mr. Ney has a wealth of experience working for non-profit organizations from the fine arts to high tech. Previously at the Free Software Foundation, Mr. Ney is very familiar with the open source ideology and community and has already integrated into the GNOME community seamlessly. Joining the GNOME Foundation at less than one year from its inception, Mr. Ney is playing a crucial role in growing and developing the Foundation in its formative years.

*Board of Directors.* The directors have been invited to serve on the Board because of their contributions as the GNOME Project and because their experience and specialized expertise with

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Boston, MA 02115  
EIN: 04 36572618

respect to open source projects and Linux. The Board will provide the guidance and support required by the Foundation during its start-up phase and for its growth thereafter.

*Advisory Board.* In addition, the Board will be assisted by an Advisory Board. The Advisory Board is made up of companies and organizations which have a desire to participate in advising the foundation about releases and other decisions. The Advisory Board will have no decision making ability. The Advisory Board is a place for its members to have open discussions about their GNOME-related strategies. Membership in the forum is open to all companies and groups who are interested in contributing to the GNOME project, subject to the approval of the Board. Corporate members will pay a membership fee of \$10,000 to join the Advisory Board. There is no membership fee for non-profit organizations or companies with fewer than 10 employees. Additionally, membership dues may be waived upon request by the Board.

From time to time, ad hoc committees may be formed, formally or informally, either by the Board or the membership.

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Boston, MA 02115  
EIN: 04 36572618

Part II: Activities and Operational Information

4 (b).

None of the Foundation's directors or officers will be compensated for the services they render to the Foundation in their capacity as directors or officers.

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EIN: 04 36572618

Part II: Activities and Operational Information

8.

The initial assets to be used to fulfill the Foundation's exempt purpose consist of the following:

- office furniture, telephone system and photocopier;
- local area network within the office;
- personal computers and printers for employees;
- personal computers in computer lab for research and testing;
- high-speed access to the Internet through DSL and a router to control access to the Internet; and
- a server computer to host the Foundation's web site.

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The Landmark Center  
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Boston, MA 02115  
EIN: 04 36572618

Part II: Activities and Operational Information

11. (a).

There is one class of voting members of Foundation. Membership will be determined on a case-by-case basis, at the sole discretion of the Board and Membership Committee. Any contributor to GNOME shall be eligible for membership. A "contributor" shall be defined as any individual who has contributed to a non-trivial improvement of the GNOME Project, such as code, documentation, translations, maintenance of project-wide resources, or other non-trivial activities that benefit the GNOME Project. Large amounts of advocacy or bug reporting may qualify one as a contributor, provided that such contributions are significantly above the level expected of an ordinary user. Contributions made in the course of employment will be considered and will be ascribed to the individuals involved, rather than accruing to all employees of a "contributing" corporation.

There is no membership fee for members.

The Board may designate certain persons or groups of persons as sponsors, benefactors, contributors, advisors or friends of the Foundation or such other title as they deem appropriate. Such persons shall serve in an honorary capacity and, except as otherwise determined by the Board, shall in such capacity have no right to notice of or to vote at any meeting, shall not be considered for purposes of establishing a quorum, and shall have no other rights or responsibilities.

One such nonvoting body is the Advisory Board, which is comprised of leading high-technology companies and other organizations that will help advance GNOME as an industry-wide open user environment. As mentioned, the Advisory Board has no decision-making authority but provides a vehicle for industry developers to communicate with the Board.

Advisory Board members pay optional dues of \$10,000.00.

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Part II: Activities and Operational Information

11 (b).

In order to attract new members, the Foundation publicizes its activities not only to a specialized audience of software developers but also to a wider public audience. The Foundation operates a website that describes the mission and organizational structure of the Foundation and provides detailed information on membership. The Gnome Foundation also disseminates news of its activities to the general public via press release. With respect to the community of software developers, the Gnome Foundation attends conferences and trade shows to provide more information to attendees about the efforts of the Gnome Project.

Hard copy print outs of descriptive material from the Foundation's website is attached hereto as Exhibit H.



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Part II: Activities and Operational Information

11 (c).

As discussed, Foundation members do not pay dues. However, Foundation Advisory Board members are asked to contribute to the organization.

Advisory Board members are provided a variety of benefits in exchange for the payment of dues. Advisory Board members: (i) receive access to GNOME software; (ii) are able to communicate their views on the software directly to the developers; (iii) are given visibility within a community of software developers; and (iv) are provided a forum to discuss the open source related issues with peer companies.

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Part II: Activities and Operational Information

12. (a).

*Conferences.* The Foundation plans to produce and/or sponsor technical conferences relating to the GNOME Foundation. The Foundation intends to price the conferences by reference to comparable events offered by other nonprofit organizations of similar character. It is contemplated that some of the conferences will be offered at a profit, some at cost, and others free to the general public.

*Educational Tutorials.* Although not yet determined, the Foundation may charge a fee for tutorials offered as a part of technical conferences.

*Publications.* The Foundation may publish technical manuals and offer them for sale. More likely such publication will be done in cooperation with a commercial publisher and the Foundation would simply receive a royalty, except in cases where the documentation might be sold at trade show booths.

TIMOTHY E. NEY


53-7023/2113

0655

DATE 15 MAY 2002

PAY TO THE ORDER OF United States Treasury \$ 500<sup>00</sup>

Five hundred and <sup>00</sup>/<sub>100</sub> - DOLLARS

 Security features are included. Details on back.

**FIRSTFED**  
FIRST FEDERAL SAVINGS BANK OF AMERICA  
FALL RIVER, MA 02722

FOR \_\_\_\_\_

Timothy Ney

⑆21137023⑆ 0066024404⑈ 0655

**User Fee for Exempt Organization  
 Determination Letter Request**

▶ **Attach this form to determination letter application.  
 (Form 8718 is NOT a determination letter application.)**

For IRS Use Only

Control number \_\_\_\_\_  
 Amount paid \_\_\_\_\_  
 User fee screener \_\_\_\_\_

1 Name of organization <b>Gnome Foundation</b>	2 Employer Identification Number <b>04 : 3572618</b>
---	---

**Caution:** Do not attach Form 8718 to an application for a pension plan determination letter. Use Form 8717 instead.

3 Type of request	Fee
a <input type="checkbox"/> Initial request for a determination letter for: <ul style="list-style-type: none"> <li>• An exempt organization that has had annual gross receipts averaging not more than \$10,000 during the preceding 4 years, or</li> <li>• A new organization that anticipates gross receipts averaging not more than \$10,000 during its first 4 years ▶</li> </ul> <b>Note:</b> If you checked box 3a, you must complete the Certification below.	<b>\$150</b>

**Certification**

I certify that the annual gross receipts of \_\_\_\_\_  
name of organization  
 have averaged (or are expected to average) not more than \$10,000 during the preceding 4 (or the first 4) years of operation.

Signature ▶ \_\_\_\_\_ Title ▶ \_\_\_\_\_

b <input checked="" type="checkbox"/> Initial request for a determination letter for: <ul style="list-style-type: none"> <li>• An exempt organization that has had annual gross receipts averaging more than \$10,000 during the preceding 4 years, or</li> <li>• A new organization that anticipates gross receipts averaging more than \$10,000 during its first 4 years . ▶</li> </ul>	<b>\$500</b>
c <input type="checkbox"/> Group exemption letters	<b>\$500</b>

**Instructions**

The law requires payment of a user fee with each application for a determination letter. The user fees are listed on line 3 above. For more information, see Rev. Proc. 2000-8, 2000-1, I.R.B. 230.

Check the box or boxes on line 3 for the type of application you are submitting. If you check box 3a, you must complete and sign the certification statement that appears under line 3a.

Attach to Form 8718 a check or money order payable to the United States Treasury for the full amount of the user fee. If you do not include the full amount, your application will be returned. Attach Form 8718 to your determination letter application.

Send the determination letter application and Form 8718 to:  
 Internal Revenue Service  
 P.O. Box 192  
 Covington, KY 41012-0192

If you are using express mail or a delivery service, send the application and Form 8718 to:

Internal Revenue Service  
 201 West Rivercenter Blvd.  
 Attn: Extracting Stop 312  
 Covington, KY 41011

Attach Check or Money Order Here



2335864



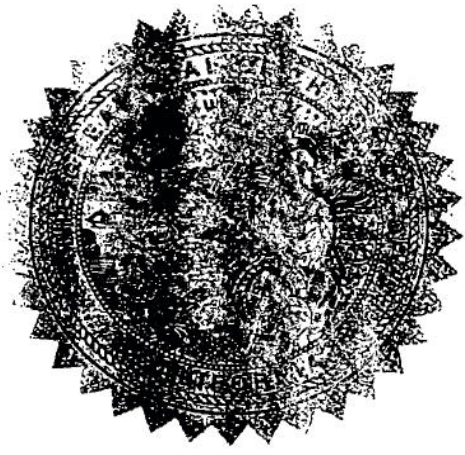
SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 2 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

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

MAR 16 2001



*Bill Jones*

Secretary of State

2335864

**ARTICLES OF INCORPORATION**

**GNOME FOUNDATION**  
a California nonprofit public benefit corporation

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

MAR 13 2001

BILL JONES, Secretary of State

**I**

The name of this corporation is GNOME FOUNDATION.

**II**

A. 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.

B. This corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as from time-to-time amended, or the corresponding provisions of any future United States internal revenue law ("Code"). Notwithstanding any other provision of these articles, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation, and this corporation shall not carry on any other activities not permitted to be carried on: (i) by a corporation exempt from federal income tax under Code Section 501(c)(3), or (ii) by a corporation, contributions to which are deductible under Code Section 170(c)(2).

**III**

The name and address in the State of California of this corporation's initial agent for service of process is:

Bart Decrem  
2189 Leghorn Street  
Mountain View, CA 94043

**IV**

A. No substantial part of the activities of this corporation shall consist of lobbying or propaganda, or otherwise attempting to influence legislation, except as provided in Code Section 501(h), and this corporation shall not participate in or intervene in (including publishing or distributing statements) any political campaign on behalf of or in opposition to any candidate for public office except as provided in Code Section 502(h).

B. All corporate property is irrevocably dedicated to the purposes set forth in Article II above. No part of the net earnings of this corporation shall inure to the

benefit of any of its directors, trustees, officers, private shareholders or members, or to individuals.

C. On the winding up and dissolution of this corporation, after paying or adequately providing for the debts, obligations and liabilities of this corporation, the remaining assets of this corporation shall be distributed to such organization or organizations organized and operated exclusively for charitable purposes, as determined in the discretion of the directors of this corporation, which have established their tax-exempt status under both Code Section 501(c)(3) and the corresponding section of any State tax law, if required.

Dated: March 5, 2001

  
Bart Decrem  
Incorporator



**BYLAWS  
OF  
GNOME FOUNDATION**

**Initially Adopted on March 16, 2001**

**As Amended on April 5, 2002**



## TABLE OF CONTENTS

	Page
ARTICLE I NAME.....	1
ARTICLE II OFFICES.....	1
Section 1. Principal Office.....	1
Section 2. Other Offices.....	1
ARTICLE III OBJECTIVES.....	1
ARTICLE IV NONPARTISAN ACTIVITIES.....	2
ARTICLE V DEDICATION OF ASSETS.....	2
ARTICLE VI MEMBERSHIP.....	2
Section 1. Voting Members and Qualification.....	2
Section 2. Other Classes of Membership.....	3
Section 3. Honorary Nonmember Affiliates.....	3
Section 4. Term.....	3
Section 5. Admission and Removal.....	3
Section 6. Fees, Dues and Assessments.....	3
Section 7. Termination of Membership.....	3
Section 8. Reinstatement.....	4
Section 9. Property Rights.....	4
Section 10. Nonliability.....	4
Section 11. Non-transferability.....	4
ARTICLE VII MEMBERSHIP MEETINGS.....	4
Section 1. Place of Meeting.....	4
Section 2. Annual Meetings and Election of Directors.....	5
Section 3. Special Meetings.....	5
Section 4. Notice of Meetings.....	5
Section 5. Adjourned Meetings.....	5
Section 6. Quorum.....	6
Section 7. Voting.....	6
Section 8. Action Without Meeting by Written Ballot.....	6
Section 9. Record Date.....	6
Section 10. Conduct of Meetings.....	7
ARTICLE VIII DIRECTORS.....	7
Section 1. Powers.....	7
Section 2. Number and Qualification of Directors.....	8
Section 3. Election and Term of Office of Directors.....	8
Section 4. Vacancy.....	8

Section 5. Place of Meeting; Meetings by Telephone .....	10
Section 6. Annual Meeting .....	10
Section 7. Other Regular Meetings .....	10
Section 8. Special Meetings .....	10
Section 9. Quorum .....	11
Section 10. Waiver of Notice .....	11
Section 11. Adjournment .....	11
Section 12. Notice of Adjournment .....	11
Section 13. Action Without Meeting .....	11
Section 14. Fees and Compensation .....	12
<b>ARTICLE IX COMMITTEES .....</b>	<b>12</b>
Section 1. Committees of the Board .....	12
Section 2. Meetings and Action of Committees .....	12
Section 3. Term of Office .....	12
Section 4. Vacancies .....	13
Section 5. Quorum .....	13
Section 6. Rules .....	13
Section 7. Limitations .....	13
<b>ARTICLE X OFFICERS .....</b>	<b>14</b>
Section 1. Officers .....	14
Section 2. Election and Term of Office .....	14
Section 3. Subordinate Officers .....	14
Section 4. Removal and Resignation .....	14
Section 5. Vacancies .....	15
Section 6. Chairman of the Board .....	15
Section 7. President .....	15
Section 8. Vice President .....	15
Section 9. Treasurer .....	15
Section 10. Secretary .....	16
Section 11. Assistant Treasurers and Assistant Secretaries .....	16
<b>ARTICLE XI INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS .....</b>	<b>16</b>
Section 1. Definitions .....	16
Section 2. Successful Defense by Agent .....	17
Section 3. Actions Brought by Persons Other than the Corporation .....	17
Section 4. Actions Brought by or on Behalf of the Corporation .....	17
Section 5. Determination of Agent's Good Faith Conduct .....	18
Section 6. Limitations .....	18
Section 7. Advance of Expenses .....	18
Section 8. Contractual Rights of Non-Directors and Non-Officers .....	19
Section 9. Insurance .....	19
Section 10. Fiduciaries of Corporate Employee Benefit Plan .....	19

ARTICLE XII RECORDS AND REPORTS ..... 19

    Section 1. Maintenance and Inspection of Articles and Bylaws..... 19

    Section 2. Maintenance and Inspection of Other Corporate Records..... 19

    Section 3. Inspection by Directors ..... 20

    Section 4. Annual Report..... 20

ARTICLE XIII CONTRACTS, CHECKS AND GIFTS ..... 20

    Section 1. Contracts ..... 20

    Section 2. Checks, Drafts, Etc ..... 21

    Section 3. Gifts..... 21

ARTICLE XIV FISCAL YEAR..... 21

ARTICLE XV CONSTRUCTION AND DEFINITION..... 21

ARTICLE XVI AMENDMENTS ..... 21

ARTICLE XVII MISCELLANEOUS PROVISIONS ..... 22

    Section 1. Representation of Shares of Other Corporations ..... 22

    Section 2. Inspection of Bylaws..... 22

BYLAWS  
OF  
GNOME FOUNDATION

ARTICLE I

NAME

The name of the Corporation shall be Gnome Foundation (the "**Corporation**"), a California Nonprofit Public Benefit Corporation.

ARTICLE II

OFFICES

Section 1. Principal Office

The principal office for the transaction of business of the Corporation shall be determined and may be changed from time to time by the Board of Directors (the "**Board**").

Section 2. Other Offices

The Board may at any time establish branch or subordinate offices at any place or places where the Corporation is qualified to do business.

ARTICLE III

OBJECTIVES

The objectives of the Corporation shall be as stated in the Articles of Incorporation. Specifically, the objectives shall include charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "**Internal Revenue Code**"), or the corresponding provision of any future United States internal revenue law.

## ARTICLE IV

### NONPARTISAN ACTIVITIES

The Corporation has been formed under the California Nonprofit Public Benefit Corporation Law (the "CNPBCL") for the purposes described above, and it shall be nonprofit and nonpartisan. No substantial part of the activities of the Corporation shall consist of lobbying or propaganda, or otherwise attempting to influence legislation, except as provided in Section 501(h) of the Internal Revenue Code, and the Corporation shall not participate or intervene in (including publishing or distributing statements) any political campaign on behalf of any candidate for public office except as provided in Section 501(h) of the Internal Revenue Code.

The Corporation shall not, except in an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes described above.

## ARTICLE V

### DEDICATION OF ASSETS

The properties and assets of the Corporation are irrevocably dedicated to charitable and educational purposes meeting the requirements for exemption provided by Section 214 of the California Revenue and Taxation Code. No part of the net income or assets of the Corporation, on dissolution or otherwise, shall inure to the benefit of any private person or individual, or any member or Director of the Corporation. On liquidation or dissolution of the Corporation, all properties and assets and obligations shall be distributed and paid over to a nonprofit fund, foundation or Corporation which is organized and operated exclusively for charitable and educational purposes meeting the requirements for exemption provided by Section 214 of the California Revenue and Taxation Code, and which has established its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

## ARTICLE VI

### MEMBERSHIP

Section 1. Voting Members and Qualification. Initially, there shall be one class of voting members of the Corporation. Membership will be determined on a case-by-case basis, at the sole discretion of the Board and Membership Committee. Any contributor to GNOME shall be eligible for membership. A "contributor" shall be defined as any individual who has contributed to a non-trivial improvement of the GNOME Project, such as code, documentation, translations, maintenance of project-wide resources, or other non-trivial activities which benefit the GNOME Project. Large amounts of advocacy or bug reporting may qualify one as a contributor, provided that such contributions are significantly above the level expected of an ordinary user. Contributions

made in the course of employment will be considered and will be ascribed to the individuals involved, rather than accruing to all employees of a "contributing" corporation.

Section 2. Other Classes of Membership. The Board may, from time to time, establish another class or classes of members, with or without voting rights. The privileges, rights and duties of such other class or classes of members shall be as provided by the Board, subject to the terms of the Bylaws, as amended from time to time. The Board may thereby confer some or all of the rights of the members upon any person or persons. If such person or persons do not have the right to vote for either: (i) the election of a Director or Directors, on a disposition of all or substantially all of the assets of this corporation, on a merger, on a dissolution or (ii) the selection of delegates who possess any such voting rights or (iii) changes to the corporation's Articles of Incorporation or Bylaws, such person shall not be a member within the meaning of Section 5056 of the Nonprofit Corporation Law of the State of California.

Section 3. Honorary Nonmember Affiliates. The Directors may designate certain persons or groups of persons as sponsors, benefactors, contributors, advisors or friends of the Corporation or such other title as they deem appropriate. Such persons shall serve in an honorary capacity and, except as otherwise determined by the Board, shall in such capacity have no right to notice of or to vote at any meeting, shall not be considered for purposes of establishing a quorum, and shall have no other rights or responsibilities.

Section 4. Term. The term of membership shall be two (2) years.

Section 5. Admission and Removal. Admission or removal from membership shall be by the vote of a majority of the number of Directors then in office.

Section 6. Fees, Dues and Assessments. The Board may determine from time to time an initial membership fee, and set such other fees, dues and assessments for membership in the corporation as the Board, in its discretion, from time to time determines.

Section 7. Termination of Membership. The membership of any member shall terminate upon the occurrence of any one or more of the following:

a. Resignation. Any member may resign from the Corporation in writing filed with the Secretary of the Corporation. Such resignation shall become effective upon receipt thereof.

b. Expiration and Disqualification. A membership issued for a period of time shall expire when such period of time has elapsed unless the membership is renewed. In the case of membership classifications for which qualification requirements are established, membership of a member shall terminate upon the determination of the Board or Membership Committee that the member no longer meets the qualification requirements for membership in the Corporation.

c. Removal or Suspension. Membership shall terminate upon the determination of the Board or Membership Committee after a hearing duly held in accordance with this Section 6(c), that the member has failed in a material respect to observe the rules of conduct promulgated from time to time by the Board and applicable to members, or otherwise has failed in

some material respect to merit continued membership privileges in the Corporation. In the event of a removal or suspension of a member, the following procedures shall be implemented:

(i) A notice shall be sent by prepaid, first-class, certified or registered mail to the most recent address of the member as shown on the Corporation's records, setting forth the removal or suspension and the reason therefore. Such notice shall be sent at least fifteen (15) days before the proposed effective date of the removal or suspension.

(ii) The member being expelled or suspended shall be given an opportunity to be heard, either orally or in writing, at a hearing to be held no fewer than five (5) days before the removal. The hearing shall be held by the Board or Membership Committee. Any such hearing may be held by conference telephone or similar communications equipment, so long as all participants in the hearing can hear one another. The notice to the member of his or her proposed removal or suspension shall state that such member is entitled, upon request, to such hearing, shall state that a date, time and place of hearing will be established upon receipt of request therefor, and shall state, that in the absence of such request, the effective date of the proposed suspension or removal.

(iii) Following the hearing, the Board, or Membership committee, as the case may be, shall decide whether the member should in fact be expelled, suspended, or sanctioned in some other way. The decision of the Board or Membership Committee, as the case may be, shall be final.

(iv) Any action challenging a removal or suspension of membership, including any claim alleging defective notice, must be commenced within one year after the date of the removal or suspension.

Section 8. Reinstatement. Suspended or expelled members may be reinstated at the discretion of the Board.

Section 9. Property Rights. No member shall have any right or interest in any of the property or assets of this Corporation.

Section 10. Nonliability. No member shall be personally liable for the debts, liabilities, or obligations of this Corporation.

Section 11. Non-transferability. No member may transfer for value or otherwise a membership or any right arising therefrom, and all rights of membership shall cease upon the member's death or dissolution of this Corporation.

## ARTICLE VII

### MEMBERSHIP MEETINGS

Section 1. Place of Meeting. All meetings of members shall be held either at the principal office of the Corporation or at any other place within or without the State of California,

which may be designated by the Board pursuant to the authority hereinafter granted to the said Board, or by the written consent of all members entitled to vote thereat, given either before or after the meeting and filed with the Secretary of the Corporation.

Section 2. Annual Meetings and Election of Directors. The annual meetings of members of the Corporation shall be held on the second Saturday in November of each year at 10:00 a.m., or at any other time and place determined by the resolution of the Board. Directors shall be elected and other proper business may be transacted at the annual meeting of members.

Section 3. Special Meetings. Special meetings of members, for any lawful purpose, may be called at any time by the President or by the Board. Furthermore, special meetings of the members for any lawful purpose may be called by, upon request in writing by at least ten percent of the membership, or at least five percent of the membership in accordance with Article XVI, stating the business to be transacted at the special meeting, mailed to the principal office of the Corporation, or delivered to the chairman of the Board, the President, the Vice President or Secretary. It shall be the duty of the President to cause notice to be given, within seven (7) days from receipt of such a request, to be held no more than twenty (20) days after the receipt of such a request.

Section 4. Notice of Meetings. A notice of each annual meeting, written ballot for election of Directors or otherwise, if any, and special meeting shall be given by the President or, in case of his or her failure or refusal, by any other officer or any Director; shall specify the place, time, day and hour of the meeting or the date on which the ballot shall be returned, if applicable; in the case of an annual meeting at which Directors shall be elected, shall specify the names of all those who are candidates for election of Directors at the time the notice is given, and in the case of special meetings, the nature of the business to be transacted thereat. Such notice shall be given in writing to every member of the Corporation who, on the record date for notice of the meeting, is entitled to vote thereat. Such notice shall be given either personally or by sending a copy thereof by first-class mail or by telephone communication, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means, either directly to the member or to a person at the member's office who would reasonably be expected to communicate such notice promptly to the member at least thirty (30) days prior to the date fixed for such meeting in the case of an annual meeting and at least ten (10) days in the case of all other meetings.

Section 5. Adjourned Meetings. Any members' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the members, but in the absence of a quorum no other business may be transacted at any such meeting. No meeting may be adjourned for more than forty-five (45) days. 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. Quorum. At any meeting of the members, those attending in person shall constitute a quorum, except when a larger quorum is required by law, by the Articles of Organization or by these Bylaws.

Section 7. Voting. Each voting member in good standing is entitled to one vote on each matter submitted to a vote of the members. Voting shall be by voice vote, unless the chairman of the meeting at which such vote takes place directs such voting to be by ballot. No single vote shall be split into fractional votes.

Section 8. Action Without Meeting by Written Ballot. Any action which may be taken at any regular or special meeting of members may be taken without a meeting if the Corporation distributes a written ballot to every member entitled to vote on the matter. Such ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the corporation. Approval by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds a quorum of the members, and the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

Section 9. Record Date. The Board may fix, in advance, a record date for the purpose of determining the members entitled to notice of and to vote at any meeting of members, give consent to corporate action in writing without a meeting, receive any report, receive any allotment of rights, or exercise rights in respect to any change in membership rights or liabilities. Only members of record on the record date are entitled to notice of and to vote at any such meeting, give consent without a meeting, receive any reports, receive allotment of rights, or exercise the rights, as the case may be, notwithstanding any transfer of memberships on the books of the corporation after the record date, except as otherwise provided in the Articles of Incorporation or these Bylaws. The Board shall fix, in advance, record dates as follows:

a. Notice. The record date for determination of the members entitled to notice of any meeting of members shall not be more than ninety (90) nor less than ten (10) days before the date of the meeting. If no record date is fixed, members at the close of business on the business day preceding the day on which notice is given or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held are entitled to notice of a meeting of members shall apply to any adjournment of the meeting unless the Board fixes a new record date for the adjourned meeting.

b. Vote. The record date for the purpose of determining the members entitled to vote at a meeting of members shall not be more than sixty (60) days before the date of the meeting. Such record date shall also apply in the case of an adjournment of the meeting unless the Board fixes a new record date for the adjourned meeting. If no record date is fixed, members on the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting of members or, in the case of an adjourned meeting, members on the day of the adjourned meeting who are otherwise eligible to vote are entitled to vote at the adjourned meeting of members.

c. Written Ballots. The record date for the purpose of determining members entitled to cast written ballots shall not be more than sixty (60) days before the day on which the first written ballot is mailed or solicited. If no record date is fixed, members on the day of the first written ballot is mailed or solicited who are otherwise eligible to vote are entitled to cast written ballots.

Section 10. Conduct of Meetings. Meetings of members shall be presided over by the President of the Corporation, or in his or her absence, by the Chairman of the Corporation, or in his or her absence, by a chairman chosen by a majority of the members present. The Secretary of the Corporation shall act as the secretary of all meetings of members, provided that in his or her absence the presiding officer shall appoint another member to act as Acting Secretary of the meeting.

## ARTICLE VIII

### DIRECTORS

#### Section 1. Powers

a. General corporate powers. Subject to the provisions of the CNPBCL and any other applicable laws, the business and affairs of the Corporation shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board.

b. Specific powers. Without prejudice to these general powers, and subject to the same limitations, the Board shall have power to:

(i) Select and remove all officers, agents and employees of the Corporation; prescribe any powers and duties for them that are consistent with law, with the Articles of Incorporation and with these bylaws; and fix their compensation.

(ii) Change the principal executive office or the principal business office from one location to another; cause the Corporation to be qualified to do business in any other state, territory, dependency or country and conduct business within or outside the State of California; and designate any place within or outside the State of California for the holding of any members' meeting or meetings, including annual meetings.

(iii) Adopt, make and use a corporate seal and alter the form of the seal.

(iv) Borrow money and incur indebtedness on behalf of the Corporation and cause to be executed and delivered for the Corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations and other evidences of debt and securities.

Section 2. Number and Qualification of Directors

a. The Directors shall fix their number at an annual meeting. At any special or regular meeting, the Directors then in office may increase the number of Directors and elect new Directors to complete the number so fixed; or they may decrease the number of Directors, but only to eliminate vacancies existing by reason of the death, resignation, removal or disqualification of one or more Directors.

b. A Director shall be a Member.

c. The initial number of Directors shall be eleven (11).

d. No organization, corporation or similar entity, or any affiliate thereof, shall hold, directly or indirectly, more than 40% of the Board seats, regardless of election results. In the event that any election of directors results in a single entity representing greater than 40% of the Board, than the nominee representing that entity receiving the least number of votes, shall be replaced by the nominee receiving the greatest number of votes who was not elected to the Board. In the event that the resignation or removal of a director results in a single entity representing greater than 40% of the Board, the Board shall as soon as practicable, appoint a new director not representing that entity to serve until the next election of directors. For the purposes of this section, "affiliate" shall mean representatives who are employees, officers, or members of the Board of Directors of an entity; who have a significant consulting relationship with an entity; or who own at least 1% of the equity or debt, or derivatives thereof, of an entity.

Section 3. Election and Term of Office of Directors

a. Each of the directors shall hold office for one (1) year.

b. Directors shall be elected by the membership in accordance with the rules set forth on <http://foundation.gnome.org/electionrules.html>.

c. Each Director shall serve until his successor is duly elected and qualified or until his earlier death, resignation or removal. No reduction of the authorized number of Directors shall have the effect of removing any Director before that Director's term of office expires.

Section 4. Vacancy

a. Events causing vacancy. A vacancy or vacancies in the Board shall be deemed to exist on the occurrence of the following:

(i) The death, resignation or removal of any Director.

(ii) The declaration by resolution of the Board of a vacancy of the office of a Director who has been declared of unsound mind by an order of court or convicted of a felony or has been found by final order or judgment of any court to have breached a duty under Article 3 of Chapter 2 of the CNPBCL.

(iii) The increase of the authorized number of Directors.

b. Resignations. Except as provided in this paragraph, any Director may resign, which resignation shall be effective on giving written notice to the chairman of the Board, the president, the secretary or the Board of Directors, unless the notice specifies a later time for the resignation to become effective. If the resignation of a Director is effective at a future time, the Board of Directors may elect a successor to take office when the resignation becomes effective. No Director may resign when the Corporation would then be left without a duly elected Director or Directors in charge of its affairs.

c. Removals. A Director may be removed for cause. In the event such removal, the following procedures shall be implemented:

(i) A notice shall be sent by mail by prepaid, first-class, certified or registered mail to the most recent address of the member as shown on the Corporation's records, setting forth the removal and the reason therefore. Such notice shall be sent at least seven (7) days before the proposed effective date of the removal.

(ii) The Director being removed 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 removal. The hearing shall be held by the Board. The notice to the Director of his or her proposed removal shall state that such member is entitled, upon request, to such hearing, shall state that a date, time and place of hearing will be established upon receipt of request therefor, and shall state, that in the absence of such request, the effective date of the proposed removal.

(iii) Following the hearing, the Board shall decide whether the Director should in fact be expelled, suspended, or sanctioned in some other way. The decision of the Board shall be final.

d. Filling vacancies. Vacancies on the Board may be filled by a majority of the Directors then in office, whether or not less than a quorum, or by a sole remaining Director.

e. No vacancy on reduction of number of Directors. No reduction of the authorized number of Directors shall have the effect of removing any Director before that Director's term of office expires.

f. Restriction on interested Directors. Not more than forty-nine percent (49%) of the persons serving on the Board at any time may be interested persons. An interested person is (i) any person being compensated by the Corporation for services rendered to it in the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor or otherwise, excluding any reasonable compensation paid to a Director as Director; and (ii) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law or father-in-law of any such person. However, any violation of the provisions of this paragraph shall not affect the validity or enforceability of any transaction entered into by the Corporation.

g. The Board shall have and may exercise all its powers notwithstanding the instance of one or more vacancies.

Section 5. Place of Meeting; Meetings by Telephone

Regular meetings of the Board may be held at any place within or outside the State of California that has been designated from time to time by resolution of the Board or in the notice of the meeting. In the absence of such designation, regular meetings shall be held at the principal executive office of the Corporation. Special meetings of the Board shall be held at any place within or outside the State of California that has been designated in the notice of the meeting or, if not stated in the notice, or if there is no notice, at the principal executive office of the Corporation. Notwithstanding the above provisions of this Section 5, a regular or special meeting of the Board may be held at any place consented to in writing by all the Board members, either before or after the meeting. If consents are given, they shall be filed with the minutes of the meeting. Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all Directors participating in the meeting can hear one another, and all such Directors shall be deemed to be present in person at such meeting.

Section 6. Annual Meeting

At such time and place fixed by the Board, the Board shall hold a regular annual meeting for the purpose of organization, election of officers and the transaction of other business.

Section 7. Other Regular Meetings

Regular meetings of the Board shall be held on a quarterly basis following the annual meeting of the Corporation. Such regular meetings may be held without notice.

Section 8. Special Meetings

a. Authority to call. Special meetings of the Board for any purpose may be called at any time by the chairman of the Board or any two (2) Directors.

b. Notice.

(i) Manner of giving. Notice of the time and place of special meetings shall be given to each Director by one of the following methods: (i) by personal delivery or written notice; (ii) by first-class mail, postage prepaid; (iii) by telephone communication, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means, either directly to the Director or to a person at the Director's office who would reasonably be expected to communicate such notice promptly to the Director. All such notices shall be given or sent to the Director's address or telephone number as shown on the records of the Corporation.

(ii) Time requirements. Notices sent by first-class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given

by personal delivery or by telephone shall be delivered at least forty-eight (48) hours before the time set for the meeting.

(iii) Notice contents. The notice shall state the time and place for the meeting. However, it need not specify the purpose of the meeting, or the place of the meeting if it is to be held at the principal executive office of the Corporation.

Section 9. Quorum.

A majority of the authorized number of Directors shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 11 of this Article VIII. Every action taken or decision made by a majority of the Directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board, subject to the provisions of the CNPBCL, especially those provisions relating to: (i) approval of contracts or transactions in which a Director has a direct or indirect material financial interest, (ii) creation of and appointment to committees of the Board and (iii) indemnification of Directors. 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 a majority of the required quorum for that meeting.

Section 10. Waiver of Notice

The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present and (ii) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. All waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 11. Adjournment

A majority of the Directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

Section 12. Notice of Adjournment

Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the Directors who were not present at the time of adjournment.

Section 13. Action Without Meeting

Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board, individually or collectively, consent in writing to the action; provided,

however, that the consent of any Director who has a material financial interest in a transaction to which the Corporation is a party and who is an "interested Director" as defined in Section 5233 of the California Corporations Code shall not be required for approval of that transaction. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 14. Fees and Compensation

Directors as such shall not receive any compensation for their services, but by resolution of the Board, expenses of attendance, if any, may be allowed for attendance at regular or special meetings of the Board; but nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

ARTICLE IX

COMMITTEES

Section 1. Committees of the Board

The Board, by resolution adopted by a majority of the Directors then in office, provided a quorum is present, may create one or more committees, to serve at the pleasure of the Board. Appointments to committees of the Board shall be by majority vote of the Directors then in office. The Board may appoint one or more alternate members of any such committee, who may replace any absent member at any meeting of the committee.

Section 2. Meetings and Action of Committees

Meetings and actions of committees of the Board shall be governed by, held and taken in accordance with the provisions of these bylaws concerning meetings and other Board actions, except that the time for regular meetings of such committees and the calling of special meetings of such committees may be determined either by Board resolution or, if there is none, by resolution of the committee of the Board. Minutes of each meeting of any committee of the Board shall be kept and shall be filed with the corporate records. The Board may adopt rules for the government of any committee, provided they are consistent with these bylaws, or in the absence of rules adopted by the Board, the committee may adopt such rules.

Section 3. Term of Office

Each member of a committee shall continue as such until the next annual meeting of the Board of the Corporation and until his successor is appointed, unless the committee shall be sooner terminated, or unless such member be removed from such committee, or unless such member shall cease to qualify as a member thereof.

Section 4. Vacancies

Vacancies in the membership of any committee may be filled by appointments made in the manner as provided in the case of the original appointments.

Section 5. Quorum

Unless otherwise provided in the resolution of the Board designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 6. Rules

Each committee may adopt rules for its own government not inconsistent with these bylaws or with rules adopted by the Board.

Section 7. Limitations

No committee may:

- a. fill any vacancies on the Board or on any committee;
- b. fix compensation of the Directors for serving on the Board or on any committee;
- c. amend or repeal bylaws or adopt new bylaws;
- d. amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- e. appoint any committees of the Board or the members thereof;
- f. expend corporate funds to support a nominee for Director after there are more people nominated for Director than can be elected;
- g. approve any transaction: (i) to which the Corporation is a party and one or more Directors have a material financial interest; or (ii) between the Corporation and one or more of its Directors or between the Corporation or any person in which one or more of its Directors have a material financial interest.



## ARTICLE X

### OFFICERS

#### Section 1. Officers

The officers of the Corporation shall be a Chairman of the Board (if appointed by the Board), a President, one or more Vice Presidents (the number thereof to be determined by the Board), a Secretary, a Treasurer and such other officers as may be elected in accordance with the provisions of this Article X. Except insofar as their duties may conflict, any two or more offices may be held by the same person, except that neither the Secretary nor the Treasurer may serve concurrently as the President or Chairman of the Board.

#### Section 2. Election and Term of Office

The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this Article X, shall be chosen annually by the Board, and each shall hold his or her office until he or she shall resign or shall be removed or otherwise disqualified to serve, or his or her successor shall be elected and qualified, subject to the rights, if any, of an officer under any contract of employment. New offices may be created and filled at any meeting of the Board. Each officer shall hold office until that officer's successor shall have been duly elected and shall have qualified.

#### Section 3. Subordinate Officers

The Board may appoint such other officers, including one or more assistant secretaries and one or more assistant treasurers, as it shall deem desirable, each such officer to have the authority and perform the duties prescribed from time to time by the Board and to hold office until he or she shall resign or shall be removed or otherwise disqualified to serve.

#### Section 4. Removal and Resignation

a. Removal. Any officer, other than the President, may be removed with or without cause. In the event such removal, the following procedures shall be implemented:

(i) A notice shall be sent by mail by prepaid, first-class, certified or registered mail to the most recent address of the officer as shown on the Corporation's records, setting forth the removal and the reason therefore. Such notice shall be sent at least seven (7) days before the proposed effective date of the removal.

(ii) The officer being removed 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 removal. The hearing shall be held by the Board. The notice to the Officer of his or her proposed removal shall state that such member is entitled, upon request, to such hearing, shall state that a date, time and place of hearing will be established upon receipt of request therefor, and shall state, that in the absence of such request, the effective date of the proposed removal.

(iii) Following the hearing, the Board shall decide whether the Officer should in fact be expelled, suspended, or sanctioned in some other way. The decision of the Board shall be final.

b. Resignation. Any officer may resign at any time by giving written notice to the Board or to the president or to the secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

Section 5. Vacancies

A vacancy in any office, because of death, resignation, removal, disqualification or otherwise, may be filled by the Board for the unexpired portion of the term.

Section 6. Chairman of the Board

The Chairman of the Board, if there be such an officer, shall preside at all meetings of the Board of Directors and perform such other duties as the Directors may assign.

Section 7. President

The President shall be the chief executive officer of the Corporation and shall in general supervise and control all of the business and affairs of the Corporation. The President may sign, with the secretary or any other proper officer of the Corporation authorized by the Board, any deeds, mortgages, bonds, contracts or other instruments that the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be specially designated by the Board or by these bylaws or by statute to some other officer or agent of the Corporation; and in general he or she shall perform all duties incident to the office of president and such other duties as may be prescribed from time to time by the Board.

Section 8. Vice President

In the absence of the president, or in the event of his or her inability or refusal to act, the vice president (or, if there be more than one vice president, the first vice president) shall perform the duties of the president, and when so acting shall have all the powers and be subject to all the restrictions upon the president. The vice president shall have such other powers and perform such other duties as may be prescribed from time to time by the Board.

Section 9. Treasurer

The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the Corporation's properties and transactions. The Treasurer shall send or cause to be given to the Directors such financial statements and reports as are required to be given by law, by these bylaws or by the Board. The books of account shall be open to inspection by any Director at all reasonable times.

The Treasurer shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Corporation with such depositories as the Board may designate, shall disburse the Corporation's funds as the Board may order, shall render to the president, chairman of the Board and the Board, when requested, an account of all transactions as Treasurer and of the financial condition of the Corporation and shall have such other powers and perform such other duties as the Board or these bylaws may prescribe.

If required by the Board, the Treasurer shall give the Corporation a bond, in the amount and with the surety or sureties specified by the Board, for faithful performance of the duties of the office and for restoration to the Corporation of all of its books, papers, vouchers, money and other property of every kind in the possession or under the control of the Treasurer on his or her death, resignation, retirement or removal from office.

Section 10. Secretary

The Secretary shall keep or cause to be kept the minutes of the meetings of the Board of Directors in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of these bylaws or as required by law, be custodian of the corporate records and of the seal of the Corporation, see that the seal of the Corporation is affixed to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these bylaws, and in general perform all duties incident to the office of secretary and such other duties as pertain to the office or as prescribed from time to time by the Board of Directors.

Section 11. Assistant Treasurers and Assistant Secretaries

If required by the Board, the assistant treasurers shall give bonds for the faithful discharge of their duties, in such sums and with such sureties as the Board shall determine. The assistant treasurers and assistant secretaries, in general, shall perform such duties as shall be assigned to them by the treasurer or the secretary or by the president or the Board.

ARTICLE XI

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS

Section 1. Definitions

For the purpose of this Article I:

a. "agent" means any person who is or was a Director, officer, employee, committee member or other agent of the Corporation; or is or was serving at the request of the Corporation as a Director, officer, employee or other agent of another foreign or domestic Corporation, partnership, joint venture, trust or other enterprise; or was a Director, officer, employee or other agent of a foreign or domestic Corporation that was a predecessor Corporation of the Corporation or of another enterprise at the request of the predecessor Corporation.

b. "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and

c. "expenses" includes, without limitation, all attorneys' fees, costs and any other expenses incurred in the defense of any claims or proceedings against an agent by reason of his or her position or relationship as agent and all attorneys' fees, costs and other expenses incurred in establishing a right to indemnification under this Article XI.

## Section 2. Successful Defense by Agent

To the extent that an agent of the Corporation has been successful on the merits in the defense of any proceeding referred to in this Article XI, or in the defense of any claim, issue or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection with the claim. If an agent either settles any such claim or sustains a judgment rendered against him or her, then the provisions of Sections 3 through 5 below shall determine whether the agent is entitled to indemnification.

## Section 3. Actions Brought by Persons Other than the Corporation

Subject to the required findings to be made pursuant to Section 5 below, the Corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding, other than an action brought by, or on behalf of, the Corporation, or by an officer, Director or person granted related status by the Attorney General, or by the Attorney General on the ground that the defendant Director was or is engaging in self-dealing within the meaning of California Corporations Code Section 5233, or by the Attorney General or a person granted related status by the Attorney General for any breach of duty relating to assets held in charitable trust, by reason of the fact that such person is or was an agent of the Corporation, for all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the proceeding.

## Section 4. Actions Brought by or on Behalf of the Corporation

a. Claims settled out of court. If any agent settles or otherwise disposes of a threatened or pending action brought by or on behalf of the Corporation, with or without court approval, the agent shall receive no indemnification for either amounts paid pursuant to the terms of the settlement or other disposition or for any expenses incurred in defending against the proceeding.

b. Claims and suits awarded against agent. The Corporation 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 brought by or on behalf of the Corporation, by reason of the fact that the person is or was an agent of the Corporation, for all expenses actually and reasonably incurred in connection with the defense of that action, provided that both of the following are met:

(i) The determination of good faith conduct required by Section 5 below must be made in the manner provided for in that section; and

(ii) Upon application, the court in which the action was brought must determine that, in view of all of the circumstances of the case, the agent should be entitled to indemnity for the expenses incurred. If the agent is found to be so entitled, the court shall determine the appropriate amount of expenses to be reimbursed.

Section 5. Determination of Agent's Good Faith Conduct

The indemnification granted to an agent in Sections 3 and 4 above is conditioned on the following:

a. Required standard of conduct. The agent seeking reimbursement must be found, in the manner provided below, to have acted in good faith, in a manner he or she believed to be in the best interest of the Corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use in similar circumstances. The termination of any proceeding by judgment, order, settlement, conviction, or on a plea of nolo contendere or its equivalent, shall not, in itself, create a presumption that the person did not act in good faith or in a manner which he or she reasonably believed to be in the best interest of the Corporation or that he or she had reasonable cause to believe that his or her conduct was unlawful. In the case of a criminal proceeding, the person must have had no reasonable cause to believe that his or her conduct was unlawful.

b. Manner of determination of good faith conduct. The determination that the agent did act in a manner complying with paragraph a above shall be made by:

(i) the Board, by a majority vote of a quorum consisting of Directors who are not parties to the proceeding; or

(ii) the court in which the proceeding is or was pending. Such determination may be made on application brought by the Corporation or the agent or the attorney or other person rendering a defense to the agent, whether or not the application by the agent, attorney or other person is opposed by the Corporation.

Section 6. Limitations

No indemnification or advance shall be made under this Article XI, except as provided in Section 2 or 5(b) above, in any circumstance when it appears:

a. That the indemnification or advance would be inconsistent with a provision of the Articles of Incorporation, a resolution of the Board or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in connection with which the expenses were incurred, or other amounts were paid, which prohibits or otherwise limits indemnification; or

b. That the indemnification would be inconsistent with any condition expressly provided by a court in approving a settlement.

Section 7. Advance of Expenses

Expenses incurred in defending any proceeding may be advanced by the Corporation before the final disposition of the proceeding, on receipt of an undertaking by or on behalf of the agent to repay the amount of the advance unless it is determined ultimately that the agent is entitled to be indemnified as authorized in this Article XI.

Section 8. Contractual Rights of Non-Directors and Non-Officers

Nothing contained in this Article XI shall affect any right to indemnification to which persons other than Directors and officers of the Corporation, or any subsidiary hereof, may be entitled by contract or otherwise.

Section 9. Insurance

The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the Corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Corporation would have the power to indemnify the agent against that liability under the provisions of this Article XI; provided, however, that the Corporation shall not have the power to purchase and maintain such insurance to indemnify any agent of the Corporation for a violation of Section 5233 of the California Corporations Code.

Section 10. Fiduciaries of Corporate Employee Benefit Plan

This Article XI 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 an agent of the Corporation as defined in Section 1a of this Article XI. Nothing contained in this Article XI 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

### RECORDS AND REPORTS

Section 1. Maintenance and Inspection of Articles and Bylaws

The Corporation shall keep at its principal executive office, or if its principal executive office is not in the State of California, at its principal business office in such state, the original or a copy of the Articles of Incorporation and bylaws as amended to date.

Section 2. Maintenance and Inspection of Other Corporate Records

The accounting books, records and minutes of proceedings of the Board and any committee(s) of the Board shall be kept at such place or places designated by the Board, or, in the absence of such designation, at the principal executive office of the Corporation. The minutes shall

be kept in written or typed form, and the accounting books and records shall be kept either in written or typed form or in any other form capable of being converted into written, typed or printed form.

Section 3. Inspection by Directors

Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of every kind and the physical properties of the Corporation and each of its subsidiary Corporations. This inspection by a Director may be made in person or by an agent or attorney, and the right of inspection includes the right to copy and make extracts of documents.

Section 4. Annual Report

An annual report shall be sent to the Directors within one hundred twenty (120) days of the close of the Corporation's fiscal year, containing the following information in reasonable detail:

- (1) The assets and liabilities, including the trust funds, of the Corporation as of the end of the fiscal year.
- (2) The principal changes in assets and liabilities, including trust funds, during the fiscal year.
- (3) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the fiscal year.
- (4) The expenses or disbursements of the Corporation, for both general and restricted purposes, during the fiscal year.
- (5) Any information required by California Corporations Code Section 6322.

ARTICLE XIII

CONTRACTS, CHECKS AND GIFTS

Section 1. Contracts

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

Section 2. Checks, Drafts, Etc.

All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board. In the absence of such determination by the Board, such instruments shall be signed by the treasurer or an assistant treasurer and countersigned by the president or a vice president of the Corporation.

Section 3. Gifts

The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest or devise for the general purposes or for any specific purpose of the Corporation.

ARTICLE XIV

FISCAL YEAR

The fiscal year of the Corporation shall begin on the first day of October and end on the last day of September in each year.

ARTICLE XV

CONSTRUCTION AND DEFINITION

Unless the context requires otherwise, the general provisions, rules of construction and definitions in the CNPBCL shall govern the construction of these bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both the Corporation and a natural person.

ARTICLE XVI

AMENDMENTS

Bylaws may be adopted, amended or repealed by the membership. In the event of such adoption, amendment or repeal, the following procedures shall be implemented:

(i) Any proposal relating to the adoption, amendment or repeal of the Bylaws shall be posted on <http://foundation.gnome.org> by the Board for a period of twenty one (21) days;

(ii) The members shall be provided with the reasonable means to comment upon and/or object to any such proposal;



(iii) In the event that five percent or more of the members objects to the proposal, a special meeting of the members shall be convened in accordance with the provisions of Article VII, and the proposal shall be voted upon;

(iv) In the event that five percent or more of the members do not object to the proposal, then the proposal shall be adopted by the Board to the extent permitted by CNPBCL Section 5150(a).

## ARTICLE XVII

### MISCELLANEOUS PROVISIONS

#### Section 1. Representation of Shares of Other Corporations

The president, or such other officers as the Board may select for that purpose, are authorized to vote, represent and exercise on behalf of the Corporation all rights incident to any and all voting securities of any other Corporations standing in the name of the Corporation. The authority herein granted to said officers to vote or represent on behalf of the Corporation any and all voting securities held by the Corporation in any other Corporations may be exercised either by such officers in person or by any person authorized to do so by proxy or power of attorney duly executed by such officer.

#### Section 2. Inspection of Bylaws

These bylaws, as amended or otherwise altered to date, certified by the secretary shall be open to inspection by the Directors at all reasonable times during office hours.

# Become a Friend of GNOME

**Love GNOME?** Want to give back to the community of mostly volunteer developers who have worked so hard to make GNOME the powerful, flexible, friendly, fun desktop that it is?

**Become a Friend of GNOME.** Your donation goes to the GNOME Foundation, helping provide direction and support for GNOME development worldwide.

You can choose from six contribution levels. Your generous donation goes beyond giving back to the community. To recognize the generosity of the gift, contributors will receive:

- ❖ **Friend: up to \$24.99**
  - Recognition of your contribution on the GNOME Foundation home page
- ❖ **Associate: \$25.00 - \$49.99**
  - Benefits of "Friend"
  - A GNOME mouse pad
- ❖ **Benefactor: \$50.00 - \$249.99**
  - Benefits of "Associate"
  - A GNOME coffee mug
- ❖ **Sponsor: \$250.00 - \$999.99**
  - Benefits of "Benefactor"
  - A GNOME t-shirt
- ❖ **Patron: \$1000.00 - \$4999.99**
  - Benefits of "Sponsor"
  - A GNOME polo shirt
- ❖ **Founder: \$5000.00 or more**
  - Benefits of "Patron"
  - A framed print of GNOME foot, signed by TigerT & Miguel de Icaza

- Your Friend of GNOME benefits will be effective for one year.

Don't miss out on this unique opportunity to be part of GNOME. Becoming a Friend of GNOME is easy. Simply send this flyer with your donation to:

GNOME Foundation, Inc.  
c/o Ximian, Inc.  
401 Park Drive, 3rd West  
Boston, MA 02215

*Attendees at conferences where GNOME has a presence can choose to drop their donations at the booth.*

## Become a Friend of GNOME today!

*To ensure that all our communications reach you promptly, please help us by providing the following information:*

Name: \_\_\_\_\_ e-mail: \_\_\_\_\_  
Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_  
Tel: \_\_\_\_\_

Amount: \$ \_\_\_\_\_

\_\_\_ Please do not list my/our name(s).

## Become a Friend of GNOME

Love GNOME? Want to give back to the community of mostly volunteer developers who have worked so hard to make GNOME the powerful, flexible, friendly, fun desktop that it is?

Become a Friend of GNOME. Your donation goes to the GNOME Foundation, helping provide direction and support for GNOME development worldwide.

You can choose from six contribution levels. Your generous donation goes beyond giving back to the community. To recognize the generosity of the gift, contributors will receive special Friends-only bonuses from the GNOME Foundation.

Your Friend of GNOME benefits will be effective for one year.

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- Friend: up to \$24.99**  
Recognition of your contribution on the GNOME Foundation home page
- Associate: \$25.00 - \$49.99**  
Benefits of "Friend"  
A GNOME mouse pad
- Benefactor: \$50.00 - \$249.99**  
Benefits of "Associate"  
A GNOME coffee mug
- Sponsor: \$250.00 - \$999.99**  
Benefits of "Benefactor"  
A GNOME t-shirt
- Patron: \$1000.00 - \$4999.99**  
Benefits of "Sponsor"  
A GNOME polo shirt
- Founder: \$5000.00 or more**  
Benefits of "Patron"  
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Name: \_\_\_\_\_  
Street: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Amount of Gift: \$ \_\_\_\_\_

Please do not list my/our name(s)

Form **872-C**

(Rev. September 1998)

Department of the Treasury  
Internal Revenue Service

**Consent Fixing Period of Limitation Upon  
Assessment of Tax Under Section 4940 of  
the Internal Revenue Code**

(See instruction on reverse side.)

OMB No. 1545-0056

To be used with  
Form 1023. Submit  
in duplicate.

Under section 6501(c)(4) of the Internal Revenue Code, and as part of a request filed with Form 1023 that the organization named below be treated as a publicly supported organization under section 170(b)(1)(A)(vi) or section 509(a)(2) during an advance ruling period,

**Gnome Foundation**

(Exact legal name of organization as shown in organizing document)

**The Landmark Center, 401 Park Drive, 3<sup>rd</sup> West, Boston,  
MA 02115**

(Number, street, city or town, state, and ZIP code)

} and the  
District Director of  
Internal Revenue, or  
Assistant  
Commissioner  
(Employee Plans and  
Exempt Organizations)

consent and agree that the period for assessing tax (imposed under section 4940 of the Code) for any of the 5 tax years in the advance ruling period will extend 8 years, 4 months, and 15 days beyond the end of the first tax year.

However, if a notice of deficiency in tax for any of these years is sent to the organization before the period expires, the time for making an assessment will be further extended by the number of days the assessment is prohibited, plus 60 days.

Ending date of first tax year      **September 30, 2001**  
(Month, day, and year)

Name of organization (as shown in organizing document) <b>Gnome Foundation</b>	Date <b>May 14, 2002</b>
Officer or trustee having authority to sign Signature ► <i>Timothy Ney</i>	Type or print name and title <b>Tim Ney, Executive Director</b>
<b>For IRS use only</b>	
District Director or Assistant Commissioner (Employee Plans and Exempt Organizations)	Date

By ►

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<b>For IRS use only</b>	
District Director or Assistant Commissioner (Employee Plans and Exempt Organizations)	Date

By ▶

**POWER OF ATTORNEY  
 AND DECLARATION OF REPRESENTATIVE**

OMB No. 1545-0150

▶ See the separate instructions

**For IRS Use Only**

Received by:  
 Name \_\_\_\_\_  
 Telephone \_\_\_\_\_  
 Function \_\_\_\_\_  
 Date     /     /

 **Power of Attorney** (Please type or print.)

**1. Taxpayer information** (Taxpayer(s) must sign and date this form on page 2, line 9.)

Taxpayer name(s) and address  Gnome Foundation The Landmark Center 401 Park Drive, 3 <sup>rd</sup> West Boston, MA 02115	Social security number(s)  _____	Employer Identification number 04   3572618
	Daytime telephone number (617) 375-3805	Plan number (if applicable)

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

**2. Representative(s)** (Representative(s) must sign and date this form on page 2, Part II.)

Name and address Samir Bukhari, Esq. c/o Wilson Sonsini Goodrich & Rosati 650 Page Mill Road Palo Alto, CA 94304	CAF No. <u>None</u> Telephone No. <u>(650) 493-9300</u> Fax No. <u>(650) 461-5375</u> Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/>
Name and address	CAF No. Telephone No. Fax No. Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/>
Name and address	CAF No. Telephone No. Fax No. Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/>

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:  
 Preparation and filing of Form 1023 and matters pertaining thereto.

**3. Tax matters**

Type of Tax (Income, Employment, Excise, etc.)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s)
Income	1023 Application for Recognition of Exemption	2002-2003

**4. Specific use not recorded on Centralized Authorization File (CAF).** If the power of attorney is for a specific use not recorded on CAF, check this box. (See instruction for Line 4—Specific uses not recorded on CAF.) .....

**5. Acts authorized.** The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative unless specifically added below, or the power to sign certain returns (see instruction for Line 5—Acts authorized).

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: None

*Note: In general, an unenrolled preparer of tax returns cannot sign any document for a taxpayer. See Revenue Procedure 81-38, printed as Pub. 470, for more information.*

*Note: The tax matters partner of a partnership is not permitted to authorize representatives to perform certain acts. See the instructions for more information.*

**6. Receipt of refund checks.** If you wish to authorize a representative named on line 2 to receive, **BUT NOT TO ENDORSE OR CASH**, refund checks, initial here \_\_\_\_\_ and list the name of that representative below.

Name of Representative to receive refund check(s) ▶





[Home](#) : [Press](#) : [Organization](#) : [Documentation](#) : [Membership](#) : [Elections](#) : [Directory](#)

[Index](#) : [Charter](#) : [FAQ](#)

## GNOME Foundation FAQ

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This is a list of the most frequently asked questions about the GNOME Foundation.

### 1. General

- 1.1. What is the GNOME Foundation?
- 1.2. Why does GNOME need the GNOME Foundation?
- 1.3. Is there a web page for the GNOME Foundation?
- 1.4. Where can I read the current draft of the GNOME Foundation charter?
- 1.5. Who are the members of the GNOME Foundation?
- 1.6. Is the GNOME Foundation an industry consortium?
- 1.7. Why did so many large companies join the GNOME Foundation?
- 1.8. Will GNOME continue to work with KDE to develop compatibility and desktop standards?
- 1.9. Who can I contact with questions about the GNOME Foundation?

### 2. GNOME Foundation Structure

- 2.1. What does the advisory board do and who is on it?
- 2.2. What is the board of directors and what does it do?
- 2.3. What is the membership and what does it do?

### 3. Joining the GNOME Foundation

- 3.1. Who can join the Membership?
- 3.2. How can I join the GNOME Foundation as a member?
- 3.3. Who can join the advisory board?
- 3.4. Should my company join the GNOME Foundation?
- 3.5. How can my company join the advisory board?



## 1. General

### 1.1. What is the GNOME Foundation?

The GNOME Foundation is a nonprofit organization dedicated to advancing the GNOME Project. The GNOME Project is a free software development effort, intended to create an open source platform for home, office, and appliance desktops.

### 1.2. Why does GNOME need the GNOME Foundation?

The GNOME Foundation serves several important roles:

1. GNOME has grown to a point where we have hundreds of developers as well as a fair number of companies working together to improve GNOME. GNOME's previous, completely informal method for making decisions does not scale well to its current size. The GNOME Foundation will provide a forum where all of the members of the GNOME community can have a voice and help decide the direction that GNOME moves in.
2. GNOME needs a voice. The GNOME Foundation will be responsible for communicating information about GNOME to the media and corporations.
3. The GNOME Foundation will make GNOME more open. All of the important "political" decisions which used to be made behind the scenes by the top GNOME hackers will now be made in public by the GNOME Foundation. Technical decisions will still be made by package maintainers.
4. The GNOME Foundation is a legal entity that can accept donations and make purchases to benefit GNOME.

### 1.3. Is there a web page for the GNOME Foundation?

For now, there is no dedicated GNOME Foundation page, only the GNOME Project page.

### 1.4. Where can I read the current draft of the GNOME Foundation charter?

The current draft of the charter is at <http://www.decrem.com/gnomefdn.html>. This is an informal document, which will guide the lawyers as they write the formal paperwork required for incorporation (such as the foundation bylaws).

### 1.5. Who are the members of the GNOME Foundation?

Anyone who has contributed to the GNOME Project may become a member of the GNOME Foundation. The primary benefit of membership is the ability to vote for the Foundation's board of directors. If you have CVS access, become a member by adding your information to `gnome-foundation/membership.txt` in CVS. Otherwise, mail your full real name, your email address, and a sentence or so describing your contribution to GNOME to `membership@gnome.org`, and they will add you. Contributions need not be

code - documentation, webmastering, etc. are also considered GNOME contributions.

#### 1.6. Is the GNOME Foundation an industry consortium?

No. In the current draft of the charter, corporations are represented on an advisory board, which has no decision-making power. Individuals working for a corporation may be elected to the board of directors by a popular vote of the GNOME Foundation membership (i.e. GNOME developers and contributors). Also, the GNOME Foundation charter specifies that the board of directors cannot have a majority of individuals affiliated with any single company.

#### 1.7. Why did so many large companies join the GNOME Foundation?

These companies wanted to see the Linux and UNIX desktop move forward decisively, so put their support behind GNOME.

#### 1.8. Will GNOME continue to work with KDE to develop compatibility and desktop standards?

Yes. The GNOME Foundation is simply a response to the increasingly difficult task of managing a project as large as the GNOME Project. It does not represent a significant change in technical direction or overall goals. It is not intended to be an attack on anyone else, simply a positive step for GNOME.

#### 1.9. Who can I contact with questions about the GNOME Foundation?

If you're a contributor or community member, you might mail [foundation-list@gnome.org](mailto:foundation-list@gnome.org), where discussion of the foundation is ongoing. It's probably a good idea to read the current draft of the charter first, to avoid repeating issues we've already covered. If you're a member of the press, you might mail [gnome-press-contact@gnome.org](mailto:gnome-press-contact@gnome.org).

## 2. GNOME Foundation Structure

#### 2.1. What does the advisory board do and who is on it?

The advisory board is comprised of companies and organizations which want to further the progress of GNOME. This is a forum for them to communicate with each other and the GNOME Foundation membership. They have no power to make decisions about GNOME. We've invited the Debian Project and the Free Software Foundation to join the advisory board in addition to the companies who announced their support at LinuxWorld this year.

#### 2.2. What is the board of directors and what does it do?

The board of directors is a group of GNOME contributors who are elected by the membership (i.e. every person who contributes to GNOME). This group oversees the GNOME Project and does its best to keep things running smoothly, making decisions that need to be made. Typical activities of the board might include approving the

purchase of a new server, talking to companies about getting involved with GNOME, making sure we have a release roadmap and release coordinators, and so on.

### 2.3. What is the membership and what does it do?

The GNOME Foundation membership is comprised of everybody who contributes to the GNOME project. Thus, it is primarily comprised of volunteer GNOME contributors (even with all the corporate contributions to GNOME, volunteers still make up the majority of contributors - GNOME is a huge project). The membership's primary role (aside from participation in the GNOME Project) is to elect the board of directors.

## 3. Joining the GNOME Foundation

### 3.1. Who can join the Membership?

Anybody who contributes to GNOME can become a member.

### 3.2. How can I join the GNOME Foundation as a member?

Send an email to [membership@gnome.org](mailto:membership@gnome.org) with your name, email address, and a description of how you have contributed to GNOME.

### 3.3. Who can join the advisory board?

Any company or organization with an interest in GNOME can join the advisory board.

### 3.4. Should my company join the GNOME Foundation?

The advisory board is a forum where your company can discuss GNOME with other companies and key figures from the GNOME community. Joining the advisory board also allows you to show your support for the GNOME Project.

### 3.5. How can my company join the advisory board?

In the current charter (which is not yet official, because we have not yet legally incorporated the foundation), there is an annual fee of \$10,000 to join the advisory board. This money is used to support the GNOME Project, by purchasing servers, attending conferences, etc. The companies that announced their participation at LinuxWorld were expressing their intent to join the foundation once it is formally incorporated. The primary benefit of joining the advisory board is the opportunity to discuss GNOME issues with the other companies on the board, and the opportunity to show your support for the GNOME Project.

If you're interested in discussing membership in the advisory board, mail Miguel de Icaza ([miguel@helixcode.com](mailto:miguel@helixcode.com)) and he'll put you in touch with the interim steering committee we've established to handle Foundation details until formal incorporation is complete.

This site is maintained by the [GNOME Foundation Membership and Elections Committee](#) and was designed by [JP Schnapper-Casteras](#) and [Bart Decrem](#).