

# BYLAWS OF THE HILDON FOUNDATION

*(ADOPTED ON \_\_\_\_\_, 2012)*

## **I. NAME**

The name of the nonprofit corporation shall be the Hildon Foundation.

## **II. MISSION**

The mission of the Foundation is to promote and progress the future availability of maemo derived or inspired open source software, and related toolkits, for mobile devices. The Maemo® operating system and Hildon user interface (which includes several iterations) was originally developed by Nokia Corporation and used in several commercially available devices. Much of Maemo® and Hildon is currently open source software as defined by the Open Software Foundation and, as such, continues to be improved upon by a volunteer community for the general benefit of the public. The Foundation shall undertake such acts as it deems necessary to accomplish this mission. Further, the Foundation may promote and advocate for the availability of mobile devices which have open source software and/or open hardware architectures.

## **III. FUNCTIONS**

The Foundation shall have unlimited powers to engage in and do any lawful acts concerning any and all lawful activity for which non-profit corporations may be incorporated under the Nonprofit Corporation Law ("NPCL") of 1988, as amended. It may provide, but is not limited to, the following functions: to continue the community website of [www.maemo.org](http://www.maemo.org) at an appropriate new Internet domain, including through the ownership or leasing of servers and execution of hosting agreements; license the Maemo® trademark if appropriate and desirable; maintain software repositories and developer tools; enter into software licensing agreements as necessary; support developers and users throughout the world; and promote the free availability and use of maemo-derived and inspired software under open source licenses as defined by the Open Software Foundation.

## **IV. BOARD OF DIRECTORS**

The Foundation shall be governed and managed by a Board of Directors ("Board"), which shall have the powers and authorities expressly conferred upon them by these Bylaws as well as any other power or authority provided or permitted under the laws of the Commonwealth of Pennsylvania to Directors of Pennsylvania non-profit corporations acting as a Board. There shall be no less than three

(3), nor no more than seven (7), Directors, each of which shall be a natural person at least 21 years of age. Each Director shall serve for a term of one year, and shall not be replaced before the end of their term except if they vacate the position or are expelled from the position. Any Director may vacate their position by notifying the Board in writing of their intention to do so.

The Board of Directors may declare vacant the office of a Director if he or she is declared of unsound mind by a court of law, or is convicted of a felony crime by order of court, or fails to attend two consecutive meetings of the Board, unless their absence is approved in advance by a majority of the remaining Directors.

Any vacancy may be filled by a successor chosen by a majority of the remaining Directors, who shall hold office for the unexpired term in respect of which such vacancy occurred.

If a Director or Officer serving the Board is found to have misrepresented the Board or the Foundation, or to have spoken against or taken action against the Board, the Foundation or its Mission, the Board may expel said Director from office with a two thirds (2/3) majority vote. Expelled positions shall not be considered vacant for purposes of re-appointment by the Board.

In the event that any Director or Officer serving the Board faces bankruptcy proceedings or criminal prosecution, excepting petty traffic or misdemeanor charges, he/she must disclose this to the Board within seven (7) days of being informed of such proceedings. Failure to do so shall constitute a breach of conduct, requiring a two thirds (2/3) vote in the affirmative by the Board to prevent expulsion of the Director or Officer from their position.

If at any point more than one Director is expelled during a single term, or fewer than three (3) Director positions are occupied (not vacant or expelled), a new election cycle shall be required to be announced and will commence immediately upon the triggering vacancy or expulsion.

The Foundation shall keep an original or a duplicate Board register, giving the names of the Directors, showing their respective addresses, and their terms of service. A Director shall receive no compensation for their services as a Director, but they may receive reasonable compensation for other services rendered on behalf of the Foundation or for other expenses incurred as authorized by the Board or the Treasurer.

## **V. MEETINGS**

The Board shall conduct meetings at least as often as once every three months, including at least one Annual Meeting, at such times and places as the Board shall designate from time to time. The Chair may call for a special board meeting, and if seconded, such special meeting shall be conducted with four (4) weeks written notice of the place and time, unless a shorter notice period is previously unanimously agreed between the Directors. More than 50% of the Directors need to be present at a meeting for a quorum, and a majority of the Directors present need to vote in the affirmative, to constitute an action of the Board.

One or more Directors may remotely participate in a meeting through any combination of communications equipment or service, such that all Directors can hear and be heard by, all other Directors in real time. (E.g. The use of Internet Relay Chat, Web Meetings, Skype, Video Chat, or similar medium deemed conducive to such a meeting.) Such participation shall constitute presence in person at such meeting. All meetings shall be open to community members, except as

deemed prudent to address matters of a confidential or legal nature, and a record of the minutes shall be maintained and made available to members for review.

Any action that may be taken at a meeting of the Board may be taken without a meeting, if a writing setting forth the action is signed by at least a majority of all Directors in office and filed with the Secretary of the Foundation. Except where inconsistent with law or these bylaws, Board meetings shall be governed by the latest edition of Robert's Rules of Order. The Directors present at a meeting may unanimously elect two (2) Directors to sign the minutes on behalf of the entire Board. The Board shall keep an original or duplicate record of the Board meetings, and shall cause a report of the meetings and other activities of the Foundation to be prepared at least annually and sent to such persons as the Board shall determine.

## **VI. OFFICERS AND COMMITTEES**

The executive officers of the Foundation shall be natural persons of full age, and shall include the positions of Chair, Secretary, Treasurer, and such other officers and committees as the needs of the Foundation shall require. An individual Director may hold multiple officer positions at the same time. The Board may secure the fidelity of any or all such officers by bond or otherwise. There shall be no limit on the number of terms an officer can serve.

### *A. THE CHAIR*

The **Chair** shall be a Director selected by, and holding the office for the same term as, the Directors, subject to removal by the Board whenever in its judgment the best interests of the Foundation will be served thereby. The Chair shall preside at all meetings of the Directors; shall have the general powers and duties of supervision and management usually vested in the office of Chair; shall have general and active management of the affairs of the Foundation; and shall see that all orders and resolutions of the Board are carried into effect, subject, however, to the right of the Directors to delegate any specific powers, except as may be by statute exclusively conferred on the Chair, to any other officer or officers of the Foundation.

### *B. THE SECRETARY*

The **Secretary** shall be a Director selected by, and holding the office for the same term as, the Directors, subject to removal by the Board whenever in its judgment the best interests of the Foundation will be served thereby. The Secretary shall attend all meetings of the Board and act as clerk thereof, and record all the votes of the Board and the minutes of all its transactions; and shall perform like duties for all committees of the Board. He or she shall give, or cause to be given, notice of all meetings and elections of the Board, and shall perform such other duties as may be prescribed by the Board or Chair, under whose supervision he or she shall be.

### *C. THE TREASURER*

The **Treasurer** shall be a Director selected by, and holding the office for the same term as, the Directors, subject to removal by the Board whenever in its judgment the best interests of the Foundation will be served thereby. The Treasurer shall have custody of the Foundation funds and shall keep full and accurate accounts or receipts and disbursements in books belonging to the Foundation, and shall keep moneys of the Foundation in a separate account to the credit of the Foundation. He or she shall disburse the funds of the Foundation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the Chair and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all and the financial condition of the Foundation.

### *D. OTHER OFFICERS & COMMITTEES*

The Board may, by resolution adopted by a majority of the Directors in office, establish additional Officers, and/or one or more committees to consist of one or more Directors to report back to the Board on the matter(s) within the Officer's or committee's jurisdiction. A quorum for the purpose of holding and acting at any meeting of a committee shall be a simple majority of the members thereof. Each committee shall serve at the pleasure of the Board.

#### **VII. FOUNDATION COUNCIL**

The Foundation shall have a Foundation Council that shall organize and manage the membership of the Foundation; facilitate and assist the activities of the members; communicate the needs of the membership to the Board; and conduct the elections of the Foundation. There shall be either three or five persons on Council, each of which shall serve for a term of six (6) months and shall be determined by an election of the membership. The Foundation Council may create and maintain its own set of regulations.

#### **VIII. ELECTORATE AND NOMINATION REQUIREMENTS**

The Foundation Council shall include in its regulations an Electorate and Nomination Requirements document, detailing the requirements for members to vote and/or seek nomination for election to the Foundation Council and the Board of Directors. A two thirds (2/3) majority vote of the Foundation Council is required to instantiate the Electorate and Nomination Requirements, which shall include terms and requirements for its own amendment. The Foundation Council, in its sole discretion, shall specify statistical criteria used to quantify the contribution of members to the Foundation, including but not limited to the length of time one has been a member (which shall not be less than 3 months), contributions made to the community, and services performed for the community. The Foundation Council shall further specify the minimum set of statistical criteria required of members required to stand for nomination to the Board of Directors and to the Foundation Council and the minimum set of statistical criteria of members who are entitled to vote in the elections for the Board of Directors and Foundation Council. Any amendments to the Electorate and Nomination Requirements document within three (3) months of a Board and/or Council election must be approved as if it were an amendment to these bylaws, as declared in this document, in the section entitled "Amendments".

#### **IX. MEMBERSHIP**

The Foundation Council shall specify the requirements for membership. Members of the Foundation shall not have a shareholder interest, or any other interest or right in the Foundation other than the right to participate in elections and nominations according to the criteria and procedures set forth by the Foundation Council in the Electorate and Nomination Requirements document. No member may be expelled from the Foundation except for misconduct detrimental to the Foundation. Expulsion shall be solely by way of review and vote of a majority of the Foundation Council, which review and vote must occur subsequent to prior written notice of at least fifteen days by the Foundation Council to the membership and provide an opportunity for member comments. The currently standing Foundation Council may review any case(s) of past expulsion and may uphold or overturn said expulsion(s), though at no time is it required to review such cases.

#### **X. NOMINATIONS AND ELECTIONS**

Every election, be it for Foundation Council, the Board of Directors, a referendum, or an amendment, must be announced at least thirty (30) days and no more than forty five (45) days in advance. The election announcement shall contain information on the nature of the election, the criteria needed to be considered an electorate member, the criteria needed to be nominated, and the process to be used for nomination in said election cycle. The election cycle shall consist of at least

fourteen (14) days for nominations, at least seven days (7) for nominee discussion and reflection, and at least seven (7) days for electorate members to vote, in that order.

Elections for the Foundation Council must be announced by that body no less than five (5) months from the start of the current term. Elections for the Board of Directors must be announced no less than eleven (11) months from the start of the current term. If either entity fails to announce and/or start the election cycle within the proper time frame, or upon unanimous agreement by all Directors of the Foundation Council or the Board of Directors, an election cycle may be forcibly started and announced for both entities in unison.

Foundation Council elections shall be for five (5) members, unless fewer than six (6) members are nominated for a Foundation Council election, in which case only three (3) members shall be chosen in that election. Board of Director elections shall be for seven (7) members, unless less than nine (9) members are nominated for the Board of Directors, in which case only five (5) members shall be in that election. If there are fewer than six (6) members are nominated for the Board of Directors, only three (3) members shall be chosen in that election. If at any time fewer than three (3) nominations are received during the nomination period for either the Foundation Council or the Board of Directors, the nomination period shall be extended to twenty one (21) days, and a second announcement of election shall be made, noting the extension of the nomination period.

Each member satisfying the criteria to vote in an election shall receive a single transferrable vote, via ballot or token, in such election and instructions on how to use said instrument. Delivery of such ballot or token may be done electronically and the election may be conducted electronically. Ballots or tokens shall be made available to electorate members no later than three (3) days before the start of the election. Availability of ballots or tokens to electorate members shall remain available through the end of the voting period.

## **XI. FINANCES**

The Board shall appoint a Treasurer, who shall be responsible for maintaining appropriate, complete and accurate books or records of the financial accounts of the Foundation in good order that shall be made available to review on an annual basis at its principal place of business wherever situated. The Treasurer may be appointed and removed at any time within the sole discretion of the Board. The fiscal year of the Foundation shall end on December 31.

## **XII. AMENDMENTS**

The Foundation shall keep the original or a copy of its Bylaws, including all amendments thereto to date, certified by the Secretary of the Foundation. The Bylaws of the Foundation may only be changed, altered, suspended or repealed with three fourths (3/4) majority of the Board and two thirds (2/3) majority of electorate members. Amendments must be announced at least one month (30 days) prior to any vote upon it, and shall follow the standard election process for polling electorate members. The bylaws may be amended in any way via this process, except that the requirement that software must be freely available under an open source license as defined by the Open Software Foundation may not be changed. An Amendment to the Bylaws shall not be valid if it is otherwise restricted by the Nonprofit Corporation Law of 1988, as amended.

## **XIII. LIMITED LIABILITY OF DIRECTORS**

A director shall not be personally liable for monetary damages as such for any action taken, or any failure to take any action, unless the director has breached or failed to perform the duties of his or her office under section 8363 of the Directors' Liability Act (relating to standard of care and justifiable

reliance); and the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness. The provision of this section shall not apply to the responsibility or liability of a Director pursuant to any criminal statute; or the liability of a director for the payment of taxes pursuant to local, State or Federal Law.

#### **XIV. APPLICABLE LAW**

The Foundation shall be governed by the laws of the Commonwealth of Pennsylvania. However, nothing shall preclude the Foundation from conducting meetings, maintaining its financial accounts, servers or other infrastructure in any other jurisdiction, or from conducting suitable promotional and distribution activities in any other jurisdiction.