

# Delaware

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*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "X.ORG FOUNDATION", FILED IN THIS OFFICE ON THE FIFTEENTH DAY OF JANUARY, A.D. 2009, AT 5:08 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.

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You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 7085178

DATE: 01-15-09

CERTIFICATE OF INCORPORATION

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 05:08 PM 01/15/2009  
FILED 05:08 PM 01/15/2009  
SRV 090042448 - 4645698 FILE

ARTICLE 1 NAME

The name of this corporation is X.Org Foundation.

ARTICLE 2 REGISTERED OFFICE AND AGENT

The address of its registered office in the State of Delaware is:  
National Registered Agents, Inc.  
160 Greentree Drive, Suite 101  
Dover, DE 19904  
Kent County

ARTICLE 3 PURPOSES AND POWERS

The purpose of this Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "Delaware General Corporation Law"). The Corporation shall have all powers that may now or hereafter be lawful for a corporation to exercise under the Delaware General Corporation Law. This Corporation shall be a non-profit corporation. The purposes for which X.Org Foundation is organized are exclusively religious, charitable, scientific, literary, and educational within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States Internal Revenue law. Notwithstanding any other provisions of these articles, this organization shall not carry on any activities not permitted to be carried on by an organization exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States Internal Revenue law.

ARTICLE 4 CAPITAL STOCK

The Corporation shall not have any capital stock and the conditions of membership shall be stated in the Bylaws.

ARTICLE 5 MEMBERS

The Corporation shall be a membership corporation. The conditions of membership of the Corporation shall be as stated in the Bylaws of the Corporation.

ARTICLE 6 INCORPORATOR

The name and mailing address of the incorporator (the "Incorporator") is:

James McQuillan  
Avairis, Inc.  
7438 Gateway Park Dr.  
Suite B  
Clarkston, MI 48346

ARTICLE 7 DIRECTORS

The number of directors of the Corporation shall initially be fixed by the Incorporator and thereafter be fixed from time to time by a bylaw or amendment thereof duly adopted by the Board of Directors of the corporation. Election of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE 8 TAX-EXEMPT NONPROFIT CORPORATION

The Corporation shall be neither organized nor operated for pecuniary gain or profit.

(a) No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, any member, director, officer, or trustee of the Corporation, or any other private person; but the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes as set forth in Article 3 hereof.

(b) No substantial part of the activities of the Corporation shall be carrying on of propaganda, or otherwise attempting to influence legislation; and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

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(c) Notwithstanding any other provisions of this Certificate of Incorporation, the Corporation shall not carry on any other activities not permitted to be carried on:

(i) By a corporation exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; or

(ii) By a corporation, contributions to which are deductible for federal income tax purposes under Section 170(c)(2) of the Internal Revenue Code.

It is intended that the Corporation shall have, and continue to have, the status of an organization which is exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code. All terms and provisions of this Certificate of Incorporation, and the Bylaws of the Corporation, and all authority and operations of the Corporation, shall be construed, applied, and carried out in accordance with such intent.

#### ARTICLE 9 PRIVATE FOUNDATION RESTRICTIONS

In any year in which the Corporation shall be classified as a private foundation, the following shall apply:

(a) The Corporation shall distribute its income for each taxable year at such time and in such manner as to not become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code.

(b) The Corporation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code.

(c) The Corporation shall not retain any excess business holdings as defined in Section 4943 (c) of the Internal Revenue Code.

(d) The Corporation shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code.

(e) The Corporation shall not make any taxable expenditures as defined in Section 4945 (d) of the Internal Revenue Code.

#### ARTICLE 10 LIMITATION OF LIABILITY

No director of the Corporation shall be liable to the Corporation for monetary damages for breach of fiduciary duty as a director, provided that this provision shall not eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty to the Corporation; (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or (c) under section 174 of the Delaware General Corporation Law. For any action to authorize the further elimination or limitation of the liability of directors, the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended Delaware General Corporation Law.

Any repeal or modification of this Article 10 shall be prospective only and shall not adversely affect any right or protection of, or any limitation on the liability of a director of the Corporation existing at, or arising out of the facts or incidents occurring prior to, the effective date of such repeal or modification.

For purposes of this Article 10, "fiduciary duty as a director" also shall include any fiduciary duty arising out of serving at the Corporation's request as a director of another corporation, partnership, limited liability company, joint venture or other enterprise, and any liability to the Corporation in its capacity as a security holder, joint venturer, partner, member, beneficiary, creditor or investor of or in any such other corporation, partnership, limited liability company, joint venture, trust or other enterprise.

#### ARTICLE 11 RESERVATION OF RIGHT TO AMEND CERTIFICATE OF INCORPORATION

The Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and other provisions authorized by the law of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences, and privileges of any nature conferred upon members, directors, or any other persons by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this Article 11.

#### ARTICLE 12 DISSOLUTION

Upon the dissolution of the Corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the Corporation is then located exclusively for such purposes or to such organization or organizations, as said Court shall determine which are organized and operated exclusively for such purposes.

#### ARTICLE 13 SEVERABILITY

In the event that any provision of this Certificate of Incorporation (including any provision within a single Article, paragraph or sentence) is held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions are severable and shall remain enforceable to the full extent permitted by law.

IN WITNESS WHEREOF, the undersigned, being the Incorporator herein above named for the purpose of forming a corporation pursuant to the Delaware General Corporation Law, hereby certifies that the facts herein above stated are truly set forth, and accordingly executes this Certificate of Incorporation.

  
James McMillan, Incorporator

Dec 11, 2008  
Date