

**CERTIFICATE OF INCORPORATION
OF
THE JABBER FOUNDATION**

The undersigned, a natural person, for the purpose of forming a non-stock corporation under the provisions and subject to the requirements of the laws of the State of Delaware (particularly Chapter 1, Title 8 of the Delaware Code and any future laws amendatory thereof and supplementary thereto, and known, identified, and referred to as the "General Corporation Law of the State of Delaware") hereby certifies that:

1. **Name.** The name of the corporation (hereinafter called the "Corporation") is: The Jabber Foundation.
2. **Registered Address and Agent.** The address of the registered office of the Corporation in the State of Delaware is 9 East Loockerman Street, Dover, DE 19901 the name of the registered agent of the Corporation at such address is National Registered Agents, Inc.
3. **Purposes.** The Corporation is organized and shall be operated exclusively for the promotion of common business interests within the meaning of Section 501(c)(6) of the Internal Revenue Code of 1986, as amended (the "Code"). Within the limitations established by the preceding sentence, the Corporation may engage in any lawful act or activity for which non-stock corporations may be organized under the General Corporation Law of the State of Delaware, including the support of the creation and maintenance of "open source" software projects. If the Board of Directors of the Corporation obtains an exemption for the Corporation from federal taxation pursuant to Code Section 501(a), and until such time, if ever, that such exemption is denied or lost, the Corporation shall not be empowered to engage directly or indirectly in any activity which the Corporation believes would be likely to invalidate its status as an organization exempt from federal taxation under Section 501(a) of the Code as an organization described in Code Section 501(c)(6).
4. **No Private Inurement.** No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, the Corporation's Members, Directors or officers, or any other private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered, to provide indemnification and pay premiums for insurance protection without reimbursement to the full extent permitted or required by applicable law and to make payments and distributions in furtherance of the purposes herein set forth.

5. **No Capital Stock.** The Corporation shall not have the authority to issue capital stock.

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

7. **Action by Members Without a Meeting.** Any action required to be taken or which may be taken at any annual or special meeting of Members of the Corporation, may be taken without a meeting, without prior notice and without a vote, if a written consent setting forth the action so taken shall be signed by Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted; provided, however, that no written consent shall be effective unless such consent (i) bears the date of signature by each Member signing such consent and (ii) is delivered to the Corporation within sixty (60) days of the date on which the earliest consent was delivered to the Corporation. A facsimile signature or signature by electronic transmission shall constitute a signature for these purposes, provided that the electronic transmission was transmitted by the Member or person authorized to act for the Member and the date of transmission is evident. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those Members who have not consented in writing. Delivery of a consent shall be to the principal place of business of the Corporation or to an officer or agent of the Corporation, and shall be personal, sent by facsimile, or mailed, first class, postage prepaid, or sent via electronic transmission bearing a date of transmission. The date of delivery for any consent delivered by facsimile or electronic transmission shall be determined by the method specified by resolution of the Board of Directors of the Corporation.

8. **Incorporator.** The name and mailing address of the incorporator is as follows:

Name: Michael Bauer
Address: 1899 Wynkoop Street
Denver, CO 80202

9. **Board of Directors.** The management and direction of the affairs of the Corporation shall be vested in a Board of Directors. The Board of Directors shall consist of one or more members. The Bylaws of the Corporation shall specify the number, term of office, method of selection, powers and duties of the directors of the Corporation, the time and place of their meetings, and such other regulations.

The names and addresses of the initial Board of Directors of the Corporation are as follows:

<u>Names:</u>	<u>Addresses:</u>
James Barry	2291 Winged Foot Road Half Moon Bay, CA 94019
Andre Durand	1899 Wynkoop Street Denver, CO 80202
Jeremie Miller	417 22 nd Avenue Cascade, IA 52033

The initial members of the Board of Directors shall serve until their successors are duly elected or their earlier death, resignation or removal.

10. Dissolution. In the event of the liquidation, dissolution, or winding up of the affairs of the Corporation (whether voluntary or by operation of law), the Board of Directors or officers acting under the direction of the Board, shall distribute the assets of the Corporation in the order of priority as is required by law. Any property remaining after the payment of its debts and contractual obligations shall be distributed as the Board of Directors sees fit. Notwithstanding the foregoing, if the Corporation is exempt from federal taxation pursuant to Section 501(a) of the Code at the time of any such liquidation, dissolution or winding up of the affairs of the Corporation, then the Board of Directors shall make such distribution(s) of any property remaining after the payment of its debts and contractual obligations in such manner as the Board of Directors may determine to be best suited to the accomplishment of the purposes of the Corporation as set forth in Articles 3 and 4 above and within the intent of Section 501(c)(6) of the Code.

11. Personal Liability. To the fullest extent permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, a Director of the Corporation shall not be personally liable to the Corporation or its Members for monetary damages for breach of fiduciary duty as a Director, provided, however, that Directors shall be liable for (a) any breach of the Director's duty of loyalty to the Corporation or its Members; (b) for acts or omissions not in good faith or which include intentional misconduct or a knowing violation of the law; or (c) for any transaction from which the Director derived an improper personal benefit.

12. Amendment, Alteration or Repeal. The provisions of this Certificate of Incorporation may be amended, altered or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, provided that the Members of the Corporation shall approve all such amendments, in the manner set forth in the Bylaws of the Corporation before the same shall become effective. Any number of amendments, or an entire revision or restatement of this Certificate of Incorporation, may be voted upon at a meeting of the Board of Directors where due notice of the proposed amendment has been given, and shall be adopted upon the affirmative vote of at least a majority of all Directors entitled to vote on the proposed amendment or revision, and upon the approval of a majority of the Members voting.

I, **The Undersigned**, for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate, and do certify that the facts herein stated are true, and I have accordingly set my hand this 17th day of AUGUST, A.D. 2001.



Michael Bauer, Incorporator

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