BYLAWS
of the
SAKAI FOUNDATION

ARTICLE I Name

1.1 The name of the Corporation is the Sakai Foundation.

ARTICLE II NonProfit Operation

2.1 The purpose for which the Sakai Foundation (Sakai) is formed is exclusively for educational, scientific, research and other similar nonprofit purposes, as contemplated by Section 501(c)(3) of the Internal Revenue Code of 1986 (any reference herein to any provision of such Code shall be deemed to mean provisions as now or hereafter existing, amended, supplemented, or superseded).

ARTICLE III Purposes and Mission

3.1 **Purpose**. The Sakai Foundation is dedicated to the design and development of collaborative, open source code, software efforts that are targeted at supporting education, research and related scholarly activities.

3.2 **Mission**. The mission of Sakai is:

a) To deliver an application framework and associated collaboration, research, and teaching and learning environment tools and components that are designed to work together for education course management, research support and various forms of collaboration;

b) To support research, collaboration and community building around the Sakai application framework and associated research and learning environment tools and components that are designed to work together for education course management, research support and various forms of collaboration;

c) To solicit grants and other funding to permit the development and refinement of the Sakai application framework and associated research and learning environment tools and components that are designed to work together for education course management, research support and various forms of collaboration;

d) To promote economic efficiencies for IT in education and research settings through cooperation, leverage of shared investments and innovation.

e) To engage in the development, adoption and propagation of open standards for IT, data and information in education and research settings through cooperation with similar efforts across the globe.

f) To engage in such activities permitted under the Michigan Nonprofit Corporation Act incident or beneficial to the foregoing purposes; g) To serve as an effective voice for open and community source software for research, collaboration, and teaching and learning environment efforts in education.

ARTICLE IV Qualification and Application for Membership

4.1 **Membership.** Membership in Sakai is open to academic and research organizations and commercial organizations and institutions with programs and missions consistent with the purposes of Sakai as set forth in Articles II and III and may include colleges and universities, research and development centers, membership organizations, and other nonprofit organizations, and for-profit organizations, provided that applications for membership must show that the organization:

(a) has goals and purposes consistent with the goals and purposes of the Sakai Foundation to the satisfaction of a majority of the Sakai Board members present at the meeting at which the applicant's membership is considered, based on the applicant's application, bylaws, mission statement, and similar evidence,

(b) agrees to pay membership fees and dues as specified by the Sakai Board, and

(c) designates an Organizational Representative to the Sakai Foundation

1. Organizational Representatives serve at the pleasure of their organizations, and may be changed by their organization at any time, with 30 days notice to the Sakai Board

4.2 **Applications**. Applications for membership shall be forwarded to the Executive Director under the signature of an appropriate administrative officer of the institution or organization seeking membership and shall include a description of the institution's or organization’s present programs and future plans in support of education and research related to open source code software development and efforts to support collaboration, education and research software. The application must describe how the institution will contribute to the objectives of Sakai and should include descriptions of any relevant programs, research, commercial offerings, community offerings and public service activities contributing to the advancement of open source code software for education and the broader Sakai Community. Members are subject to a review of these qualifications every year.

4.3 **Removal from Membership**

An institution or organization shall cease to be a voting member upon failure to pay dues and shall be dropped from the membership roster upon failure to pay dues by the end of the membership year. The membership of any member may also be terminated by the Board of Directors upon a two-thirds vote of the members of the board present at the meeting at which termination is considered, provided that at least sixty days' notice of the intent to consider such action at such meeting must be given. Additionally, all members are subject to review of their qualifications upon request from the board. Evidence that the institution or organization continues to meet the membership qualifications then must be presented to the Board of Directors or its delegate. If the member no longer meets the qualifications in the view of the Board of Directors, the member shall be given an opportunity to show that it continues to meet the membership qualifications. If it cannot do so, its membership shall be terminated at the end of the year. Any gap in membership status, whether for failure to pay dues, resignation, or otherwise, requires payment of the annual membership fee before reinstitution.

ARTICLE V MEMBERSHIP MEETINGS

5.1 Meetings of the Sakai Members shall be held annually, at least, with the dates and places selected by the Board of Directors, to coincide with the Sakai Conferences. Special meetings may be convened by the Board of Directors or at the written request of one-third of the member institutions to consider matters of extreme importance. A meeting agenda shall be distributed prior to meetings.

ARTICLE VI BOARD OF DIRECTORS

6.1 **Definition**

The Sakai Board, hereinafter referred to as the "Board," is the governing and administrative body of the Sakai Project.

6.2 **Purposes and Functions**

a) **Purposes**

1. To provide management and oversight of the business and affairs of the Sakai Foundation corporation in accordance with the bylaws and consistent with the mission. This includes management of the corporate assets (including funds, intellectual property, trademarks, support equipment) and allocation of corporate resources to projects.
2. To provide leadership for the overall project;
3. To represent the project;
4. To establish and maintain the processes of coordination determined to be necessary to support the development and release of the Sakai software;
5. To act as a 'court of final appeal' for Discussion and Work Groups of the Sakai Project.

b) **Functions**

The Board of Directors shall have the following functions and such other functions as it deems consistent with the Purposes stated in Article VI, Section 6.2(a) above.

1. To hire an Executive Director, and hire or appoint a Secretary and Treasurer and to determine the conditions of their appointments.
2. To approve the appointment of other committees or subcommittees formed by the Board of Directors. Such committees or subcommittees will have a life of one year which may be extended annually as needed.
3. To appoint the chair and vice-chair of standing committees of the Board.
4. To review standards and processes for admission to membership in conformance with the Bylaws and to review and approve applications for membership.
5. To report promptly to membership on important actions taken by the board, and to make all agendas and minutes (except for executive session minutes) to be available to all members of the larger community in a timely fashion.
6. To approve the employment of necessary staff, purchase of supplies and equipment, and publication of such materials as necessary.
7. To approve the receipt and disbursement of funds on behalf of the Foundation
8. To make interim appointments to vacancies on the Board of Directors if the By-Laws so allow.

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6.3 **Board Size, Member Term, Meetings**

a) The Board shall consist of not less than seven (7) and not more than eleven (11)

members. Up to two (2) members of the board may be appointed ("Appointed Board Members"). The remaining board members shall be elected ("Elected Board Members").

b) Elected Board members shall serve for a term of 3 years. Appointed Board Members shall serve for a term of 2 years.

c) Elected Board members may serve only 2 consecutive terms. Appointed Board Members may serve only 3 consecutive terms.

d) Meetings of the Board

1) The Board of Directors shall meet at least twice a year at such times and places as designated by the Chair. The Chair or any three members of the Board may call a meeting of the Board.

2) At least one of the Board meetings each year must be open to all members of the Sakai community. It should be held during or adjacent to one of the Sakai conferences. The board should present a status of the foundation, including status of projects, financial status, and vision for the coming year. There will also be an open floor for community members so the board can hear the concerns of the membership, and take questions.

6.4 **Nomination of Elected Board Members**

Anyone may be nominated to stand for election to the Board.

6.5 **Vacancies**

If an individual elected to the Board is incapacitated, or resigns, the Sakai Board may appoint an individual to the Board for the remainder of that person's term.

6.6 **Voting for Board Membership**

Each member organization's Representative shall have a vote in the elections for Board Members.

6.7 **Board Composition**

a) The Elected Board Members shall be determined by the Board Elections.

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b) The Elected Board Members shall, by two-thirds majority vote, determine the Appointed Board Members, if any.

6.8 **Quorum**

A majority of the entire membership of the Board of Directors as fixed in these Bylaws shall constitute a quorum for the transaction of any business. In the absence of a quorum, a majority of those members present may adjourn the meeting. When a quorum is once present to organize a meeting, it is not broken by the subsequent departure of one or more directors from the meeting, provided that at least one third of the board is present at all times. The affirmative vote of a majority of the members present at a Board meeting at which a quorum is present shall be necessary and

sufficient to the making of decisions by the Board, except as a larger vote may at any time be otherwise specifically required by Michigan Nonprofit Corporation Law, the Articles of Incorporation, or these Bylaws.

6.9 **Notice**

At least ten days' notice shall be given to each Director of a regular meeting of the Board of Directors. A special meeting of the Board of Directors may be held upon notice of five days. Notice of a meeting of the Board of Directors shall specify the date, time, and place of the meeting, but need not specify the purpose for the meeting or the business to be conducted. A Director may waive notice of any regular or special meeting of the Board of Directors by written statement filed with the Board of Directors, or by oral statement at any such meeting. Attendance at a meeting of the Board of Directors shall also constitute a waiver of notice, except where a Director states that he or she is attending for the purpose of objecting to the conduct of business on the ground that the meeting was not lawfully called or convened.

6.10 **Telephonic meetings**.

The Board of Directors may participate in a meeting by means of a conference telephone or similar communications equipment through which all members participating in the meeting can speak to and hear each other at the same time. Participation by such means shall constitute presence in person at the meeting. This includes online communication methods other than telephone at the board’s discretion.

6.11 **Unanimous Consent, in lieu of meeting**

Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting, provided all members consent in writing or electronically and set forth in the same message the action or decision taken or made. Consent in such fashion shall have the same force and effect as a meeting vote, and may be described as such in any document executed by or on behalf of the corporation.

6.12 **Compensation**

Members of the Board of Directors other than officers and employees shall receive no compensation for their services but, by resolution of the Board, may be reimbursed for expenses incurred while acting on behalf of the corporation.

6.13 **Executive Committee**

By a vote of the majority of all the Directors (Board Members) in office, the Board of Directors may designate an Executive Committee consisting of the Chair, Vice-Chair and one other board member which shall have authority to act for the Board of Directors in between meetings of the full Board; provided, however, that no such committee shall have the authority of the Board of Directors in reference to amending, altering or repealing the Bylaws; electing, appointing or removing any member of any such committee or any Director or officer of the Corporation; amending the Articles of Incorporation; adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the voluntary dissolution of the Corporation or revoking proceedings therefore; adopting a plan for the distribution of the assets of the Corporation; fixing the compensation of the Directors for serving on the Board or on a committee; or amending, altering or repealing any resolution of the Board of Directors which by its terms provides that it shall not be amended, altered or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed upon it or the director by law, The Board of Directors may designate one or more of the Directors as alternate members of

the Executive Committee, who may replace any absent or disqualified member at any meeting of the Committee upon the request of the Chair. Vacancies in the Executive Committee shall be filled by the Board of Directors at a regular or special meeting.

ARTICLE VII OFFICERS

7.1 **Number**

The officers of the corporation shall be a Chair, Vice-Chair, Executive Director, Secretary, and Treasurer. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. The duties of any such officers and assistant officers shall be fixed by the Board of Directors, or by the Chair if authorized to do so by the Board of Directors, but to the extent not so fixed, shall be those customarily exercised by corporate officers holding such offices.

7.2 **Chair and Vice-Chair**

The Chair, who shall serve as President, and Vice-Chair, who shall serve as VicePresident, shall be elected by the Board by majority vote. They shall normally serve one year. They may be re-elected. The term of office of either officer shall terminate upon the effective date of his or her resignation; upon his or her death; or upon a majority vote of the Board to remove him or her from office. Any vacancy created thereby shall be filled by the Board of Directors from among its members. The Vice-Chair shall serve as Chair whenever the Chair is unable to so serve.

7.3 **Executive Director**

The Executive Director position, when vacant, may be filled on an interim basis by appointment of the Chair to the position. A permanent Executive Director shall be selected by majority vote of the Board of Directors from among applicants for the position. Such applicants shall be solicited from the membership institutions, or elsewhere at least two months prior to filling of the vacancy. The Executive Director serves at the pleasure of the Board.

7.4 **Treasurer and Secretary**

The offices of Treasurer and Secretary shall be filled by appointment of the Board of Directors. The Treasurer and Secretary, who may but need not be members of the Board of Directors, shall serve one year terms. The term of office may be changed from time to time by the Board. An individual may serve as Treasurer or Secretary for succeeding terms without limitation. The term of office of Treasurer or Secretary shall terminate upon the effective date of his or her resignation submitted orally or in writing to the Board of Directors; upon his or her death; or upon a majority vote of the Board to remove him or her from office. Any vacancy created thereby shall be filled by the Board of Directors.

ARTICLE VIII OFFICES

8.1 The principal office and registered office of the Sakai Foundation shall be located in Ann Arbor, Michigan.

ARTICLE IX STANDING COMMITTEES

9.1 The standing committees are those committees that operate on a continuing basis. They may be created and disbanded at the desire of the Board. They will be reviewed on an annual basis.

ARTICLE X AMENDMENTS

10.1 The Bylaws or the Articles of Incorporation may be amended in whole or in part by a two-thirds majority vote of the Board of Directors except as otherwise specified for special circumstances in these Bylaws or provided by Michigan law. Amendments may be proposed by any Organizational Representative to the Board of Directors. The Board shall circulate the proposed amendment to all Organizational Representatives, and publish it to the public, for discussion, at least thirty days prior to vote. In addition, all amendments must be discussed at a Board meeting prior to the one at which they are voted on by the Board.

ARTICLE XI PUBLICATIONS

11.1 The Board of Directors shall prepare an annual report of activities and such special bulletins and reports as are deemed necessary.

Article XII CONTRACTS, CHECKS AND DEPOSITS

12.1 **Contracts.** The Board of Directors may authorize any officer or officers, agent or agents of the corporation who are not specifically so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances; provided that such authorization shall be confirmed by written resolution.

12.2 **Checks.** All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors. Those who have check signing ability for the corporation shall be bonded.

12.3 **Deposits.** All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select.

12.4 **Contributions and Gifts.** The Board of Directors may accept on behalf of the corporation any contribution, gift, bequest or devise for the general purpose or for any special purpose of the corporation.

Article XIII BOOKS AND RECORDS

13.1 **Books and Records.** The corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board of Directors and committees having any of the authority of the Board of Directors, and shall keep at the registered or principal office a record giving the names and addresses of the Board of Directors. All books and records of the corporation may be inspected by any director, or his or her agent or attorney for any proper purpose at any reasonable time.

ARTICLE XIV MISCELLANEOUS PROVISIONS

14.1 **Fiscal year.** The annual accounting period of the corporation shall be determined by the Board of Directors.

14.2 **Parliamentary Authority.** The rules of parliamentary procedure in "Robert's Rules of Order, Revised", shall govern the proceedings of the meetings of this corporation, subject to all other rules contained in the Articles of Incorporation and Bylaws and not including the rules against proxy voting.

14.3 **Severability.** Each of the sections, subsections and provisions hereof shall be deemed and considered separate and severable so that if any section, subsection or provision is deemed or declared to be invalid or unenforceable, this shall have no effect on the validity or enforceability of any of the other sections, subsections or provisions.

14.4 **Website.** Sakai shall maintain a publicly-accessible Internet World Wide Web site (the "Website"), which may include, among other things, (i) a calendar of scheduled meetings of the Board, Standing Committees and Discussion and Work Groups; (ii) a docket of all pending policy development matters, including their schedule and current status; (iii) specific meeting notices and agendas as described below; (iv) information on Sakai's budget, annual audit, financial contributors and the amount of their contributions, and related matters; (v) announcements about Sakai activities of interest to significant segments of the Sakai community; (vi) comments received from the community on policies being developed and other matters; (viii) information about Sakai's physical meetings and public forums; and
(ix) other information of interest to the Sakai community.

At the Board meeting of May 30, 2006, in Vancouver, British Columbia, the following Conflict of Interest Statement was incorporated and made a part of the Sakai Foundation By-Laws. With this inclusion, this version was incorporated as the official version 1.0 of the Sakai Foundation By-Laws

Sakai Foundation
Conflict of Interest Policy

Article I
Purpose

The purpose of the conflict of interest policy is to protect this tax-exempt organization's (Organization) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

Article II
Definitions

1 **Interested Person**

Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

2. **Financial Interest**

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

a. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement.

b. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or

c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

Article III
Procedures

1 **Duty to Disclose** In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

2 **Determining Whether a Conflict of Interest Exists**

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After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

1 **Procedures for Addressing the Conflict of Interest**

4. **Violations of the Conflicts of Interest Policy**

a. If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

a. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

b. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

c. After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to the conflict of interest.

d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its
decision as to whether to enter into the transaction or arrangement.

Article IV <u>Records of Proceedings</u>

The minutes of the governing board and all committees with board delegated powers shall contain:

a. The names of the person who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.

b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Article V <u>Compensation</u>

a. A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.

b. A voting member of any committee whose jurisdiction includes compensation matters and who received compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.

c. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

Article VI Annual Statements

Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

a. Has received a copy of the conflicts of interest policy,

b. Has read and understands the policy,

c. Has agreed to comply with the policy, and

d. Understands the Organization is charitable and in order to maintain its federal tax exemption it must engage
primarily in activities which accomplish one or more of its tax-exempt purposes.

Article VII Periodic Reviews

To ensure the Organization operates in a manner consistent with charitable purposes and does not

engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.

b. Whether partnerships, joint ventures, and arrangements with management organizations confirm to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction

Article VIII Use of Outside Experts

When conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.