

Bylaws¹ of
[Post-Transition IANA]
A California Nonprofit Public Benefit Corporation

¹ **Note to Draft:** These Bylaws remain subject to review and comments by CWG.

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ARTICLE 1 NAME

The name of this corporation is [Post-Transition IANA] (the “**Corporation**”).

ARTICLE 2 OFFICES

The principal office for the transaction of the business of the Corporation may be established at any place or places within or without the State of California by resolution of the Board. The Board may at any time establish branch or subordinate offices at any place or places where the Corporation is qualified to transact business.

ARTICLE 3 PURPOSES

The Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for public and charitable purposes.

The specific purpose of the Corporation is to operate exclusively for the benefit of, to perform the functions of and to carry out the purposes of the Internet Corporation for Assigned Names and Numbers (“**ICANN**”).

Commented [A1]: ICANN NOTE: If this is under discussion, further inputs on this are likely to be appropriately provided during public comment, particularly given the tie in with the Aol.

The Corporation shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

The Corporation shall treat the IANA functions with equal priority. The Corporation shall make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular customer for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different customers).

The Corporation shall respect the diversity of customers of the IANA functions and shall provide service to its customers in conformance with technical norms and in support of the global security, stability and resilience of the DNS.

ARTICLE 4 MEMBERSHIP

Section 4.1 Members

ICANN shall be the sole member of the Corporation within the meaning of section 5056 of the California Corporations Code (“**CCC**”) (the “**Member**”). No other person shall be admitted to membership of the Corporation without the approval of the Member.

² [Sidley Comment: Purpose here and in Articles is under review by CWG.]

³ Note to CWG: Language added to address Annex C.7

⁴ Note to CWG: Language to address C8.

⁵ Note to Draft: Annex C proposed insertions under discussion.

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Section 4.2 Rights of the Member

The Member shall have the right to vote, as set forth in these Bylaws, on the election of directors, on the sale, transfer or disposition of the Corporation's assets (other than in the ordinary course of the Corporation's business), on any merger and its principal terms and any amendment to those terms, on any election to dissolve the Corporation and on any amendment or repeal of these Bylaws. In addition, the Member shall have all rights afforded to the Member as set forth in the Articles of Incorporation of the Corporation (the "**Articles of Incorporation**") and to members under the CCC.

Section 4.3 Proof of Action of the Member

The vote, written assent, or other action of the Member shall be evidenced by, and the Corporation shall be entitled to rely upon, a certificate of the secretary or other officer of the Member stating (a) the actions taken by the Member, (b) that such actions were taken in accordance with the Member's bylaws (the "**ICANN Bylaws**") and (c) the authorization of the Member for such certification.

Section 4.4 Annual Meeting of the Member

An annual meeting of the Member of the Corporation shall be held on a date specified by the Board or the Member pursuant to Section 4.7 of these Bylaws. At the annual meeting, Directors shall be elected and other proper business may be transacted to fulfill the Member's obligations.⁶

Consistent with ICANN's Bylaws, meetings of the Member shall be held at any place within or outside California designated by the Board or by the written consent of the Member entitled to vote at such meeting given before or after the meeting. In the absence of any such designation, Member meetings shall be held at the Corporation's principal office.

Section 4.5 Special Meetings of the Member

Special meetings of the Member for any lawful purpose or purposes may be called at any time by the Board or the Member.

Section 4.6 Action by Written Consent

Any action required or permitted to be taken by the Member hereunder may be taken without a meeting, if the Member consents in writing to the action. The written consent shall be filed with the minutes of the meeting. The action by written consent shall have the same force and effect as a unanimous vote of the Member.

⁶ Note to Draft: Added phrase to reduce possibility of confusion that Member meetings would be ICANN meetings; specify that meetings of the Member are for the purpose of fulfilling the obligations of the Member.

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Section 4.7 Manner of Giving Notice

Notice of any meeting of the Member shall be given pursuant to section 5511 of the CCC.

Section 4.8 Liabilities of the Member

There shall be no membership fees, dues, or assessments. The Member shall not be personally liable to the Corporation's creditors for any indebtedness or liability, and any and all creditors of the Corporation shall look only to the assets of the Corporation for payment.

ARTICLE 5 DIRECTORS

Section 5.1 Corporate Powers Exercised by Board

Subject to the provisions of the Articles of Incorporation, these Bylaws, the CCC and any other applicable laws, and those powers expressly reserved to the Member, 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 of directors of the Corporation (the "**Board**"). The Board may delegate the management of the activities of the Corporation to any person or persons, management company or committee however composed, provided that the activities and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

Section 5.2 Number, Composition and Qualifications

5.2.1 Number

The authorized number of directors of the Corporation ("**Directors**") shall be five.

5.2.2 Composition

5.2.2.1 The Directors shall consist of (a) three persons employed by ICANN or the Corporation who shall be nominated by the Member, which shall include the President ("**ICANN Directors**"), and (b) two persons not employed by either ICANN or the Corporation who shall be nominated by ICANN's Nominating Committee (as used in ICANN's Bylaws, the "**Nominating Committee**") pursuant to and in accordance with section 8.1 of the ICANN Bylaws ("**Nominating Committee Directors**").

5.2.2.2 Notwithstanding Section 5.2.2.1, (a) all Nominating Committee Directors and (b) at least one ICANN Director must not be "interested persons." An "interested person" is (i) any person compensated by the Corporation for services rendered to the Corporation within the previous 12 months (other than any reasonable compensation paid to a Director as a Director), whether as a full- or part-time employee, independent contractor, or

otherwise or (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 such person.

5.2.2.3 ICANN, as the Member, shall elect all ICANN Directors and Nominating Committee Directors in accordance with this Article 5.

5.2.2.4 Other than ICANN, no person or entity shall have the right to elect or designate a Director.

5.2.3 Qualifications

The Directors shall be:

5.2.3.1 Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making;

5.2.3.2 Persons with an understanding of the Corporation's purposes and the potential impact of the Corporation's decisions on the global Internet community, and committed to the success of the Corporation;

5.2.3.3 Persons who, collectively, have executive management, operational, technical, financial and corporate governance experience;

5.2.3.4 Persons who, in the aggregate, have personal familiarity with the operation of generic top-level domain registries and registrars; with country code top-level domain name registries; with IP address registries; with Internet technical standards and protocols; and with policy-implementation procedures; and

5.2.3.5 Persons who are able to work and communicate in written and spoken English.

Section 5.3 Additional Qualifications

5.3.1 Notwithstanding anything herein to the contrary, no official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director. As used herein, the term "official" means a person who (a) holds an elective governmental office or (b) is employed by such government or multinational entity and whose primary function with such government or entity is to develop or influence governmental or public policies.

5.3.2 No person who serves in any capacity (including as a liaison) on any Supporting Organization Council (as used in the ICANN Bylaws) or Advisory Committee (as used in the ICANN Bylaws) shall simultaneously serve as a Director of the Corporation.

- 5.3.3 No person who serves on the Nominating Committee in any capacity shall be eligible for nomination by any means to any position on the Board.
- 5.3.4 No person who serves on the EC Administration (as used in the ICANN Bylaws) while serving in that capacity shall be considered for nomination or election to the Board, nor serve simultaneously on the EC Administration and as a Director.
- 5.3.5 The Nominating Committee Directors must not be, and for at least the previous three years, must not have been, (a) an employee of ICANN or the Corporation, (b) a director of ICANN, or (c) an external consultant or advisor retained by ICANN (either directly in his or her individual capacity or indirectly as an employee of an organization retained by ICANN).
- 5.3.6 In carrying out its responsibility to nominate the Nominating Committee Directors for election by the Member, the Nominating Committee shall seek to ensure that the Board is composed of Directors who, in the aggregate, display diversity in geography, culture, skills, experience and perspective, by applying the criteria set forth in Section 5.2 and Section 5.3.⁷

Section 5.4 Election of Chairperson

A chairperson of the Board (the “**Chairperson**”) shall be elected annually and should be selected from among the Nominating Committee Directors by a majority of the Directors then in office. The President shall not be the Chairperson. The Chairperson shall preside at meetings of the Board and exercise and perform such other powers and duties as may from time to time be assigned to him or her by the Board or prescribed by these Bylaws.

Commented [A2]: ICANN NOTE: These two items are flagged in the Governance Item Chart provided to Sidley along with this version.

Section 5.5 Terms; Election of Successors

- 5.5.1 Other than Directors initially appointed by the incorporator of the Corporation (which Directors shall hold office until the first election of Directors) and the President of the Corporation, the Directors shall be elected by the Member at the annual meeting of the Corporation for two-year terms as follows:
 - 5.5.1.1 One Nominating Committee Director shall sit in Seat 1. The first term shall begin upon the first election of Directors and shall end at the end of the annual meeting of the Member held in 2018, and subsequent terms shall begin upon the conclusion of each annual meeting of the Member held in 2018 and every second year thereafter.
 - 5.5.1.2 One Nominating Committee Director shall sit in Seat 2. The first term shall begin upon the first election of Directors and shall end at the end of

Commented [A3]: ICANN NOTE: The term length is flagged in the Governance Item Chart provided to Sidley along with this version.

⁷ **Note to CWG:** Suggest providing that Nominating Committee consider diversity when nominating the two director seats in light of the overall composition of the PTI Board rather than having a separate review of the Nominating Committee Directors and the ICANN Directors.

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the annual meeting of the Member held in 2017, and subsequent terms shall begin upon the conclusion of each annual meeting of the Member held in 2017 and every second year thereafter.

- 5.5.1.3 One ICANN Director (other than the President) shall sit in Seat 3. The first term shall begin upon the first election of Directors and shall end at the end of the annual meeting of the Member held in 2018, and subsequent terms shall begin upon the conclusion of each annual meeting of the Member held in 2018 and every second year thereafter.
- 5.5.1.4 One ICANN Director (other than the President) shall sit in Seat 4. The first term shall begin upon the first election of Directors and shall end at the end of the annual meeting of the Member held in 2017, and subsequent terms shall begin upon the conclusion of each annual meeting of the Member held in 2017 and every second year thereafter.
- 5.5.2 No Nominating Committee Director may serve more than **two consecutive terms.** For these purposes, a person elected to fill a vacancy in a term shall not be deemed to have served that term. There shall be no limit on the number of terms an ICANN Director (other than the President) may serve. The term as an ICANN Director of the person holding the office of President shall be for as long as, and only for as long as, such person holds the office of President.
- 5.5.3 ICANN shall seek to ensure that the ICANN Directors meet the qualifications and requirements established in Section 5.2 and Section 5.3. Each ICANN Director, including an ICANN Director (other than the person holding the office of President) elected to fill a vacancy, shall hold office until the expiration of the term for which he or she was elected and until the election and qualification of a successor, or until that ICANN Director's earlier resignation or removal in accordance with these Bylaws and the CCC.
- 5.5.4 At least two months before the date of any election of Directors (or promptly following the occurrence of any vacancy on the Board for a Nominating Committee Director), the Nominating Committee shall nominate qualified candidates for election as Nominating Committee Directors by the Member. If such nominees meet the qualifications and requirements of Section 5.2 and Section 5.3, the Member shall elect such nominees to the Board absent extraordinary circumstances. The Nominating Committee shall seek to ensure that the Nominating Committee Directors meet the qualifications and requirements established in Section 5.2 and Section 5.3. Each Nominating Committee Director, including a Nominating Committee Director elected to fill a vacancy, shall hold office until the expiration of the term for which he or she was elected and until the election and qualification of a successor, or until that Nominating Committee Director's earlier resignation or removal in accordance with these Bylaws and the CCC.

Commented [A4]: The term limit is flagged in the Governance Item Chart provided to Sidley along with this version.

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Section 5.6 Vacancies

5.6.1 Events Causing Vacancy

A vacancy or vacancies on the Board shall be deemed to exist on the occurrence of the following: (a) the death, resignation, or removal of any Director; (b) whenever the number of authorized Directors is increased; or (c) the failure of the Member, at any meeting at which any Director or Directors are to be elected, to elect the full authorized number of Directors.

5.6.2 Removal

A Director may be removed without cause by the Member at any time.

The Board may by resolution declare vacant the office of a Director who has been declared of unsound mind by an order of court, or convicted of a felony, or found by final order or judgment of any court to have breached a duty under the CCC.

The Board may by resolution declare vacant the office of a Director (other than the person holding the office of President) who fails to attend three regularly scheduled Board meetings in any 12-month period; provided, however, that such removal must be authorized by an affirmative vote of the Member.

The Board may, by a majority vote of the Directors who meet all of the required qualifications to be a Director set forth in these Bylaws, remove a Director (other than the person holding the office of President) who fails or ceases to meet any required qualification that was in effect at the beginning of that Director's current term of office; provided, however, that such removal must be authorized by an affirmative vote of the Member.

5.6.3 No Removal 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 unless the reduction also provides for the removal of that specified Director in accordance with these Bylaws and the CCC.

5.6.4 Resignations

Except as provided in this Section 5.6.4, any Director may resign by giving written notice to the Chairperson, the President, the Secretary, or the Board. Such a written resignation will be effective on the later of (a) the date it is delivered or (b) the time specified in the written notice that the resignation is to become effective. If the resignation is effective at a future time, a successor may be elected in accordance with these Bylaws to take office when the resignation becomes effective. No Director may resign if the Corporation would then be left without any duly elected Directors in charge of its affairs, except upon notice to the California Attorney General (the "**Attorney General**").

5.6.5 Election to Fill Vacancies

If there is a vacancy on the Board, including a vacancy created by the removal of a Director, and such vacancy is the result of an ICANN Director (other than the person holding the office of President) no longer being on the Board, the Member (and not the Board) may fill such vacancy by electing an ICANN Director as soon as practicable after the vacancy occurs. If such vacancy is the result of a Nominating Committee Director no longer being on the Board, the Member shall fill such vacancy by electing a Nominating Committee Director promptly following the receipt of a nomination by the Nominating Committee subject to and in accordance with [Section 5.5.4](#). A vacancy of the ICANN Director holding the office of President shall be filled by the person appointed to hold the office of President pursuant to [Section 7.2](#).

Section 5.7 Regular Meetings

Each year, the Board shall hold at least one meeting, at a time and place fixed by the Board, for the purposes of the appointment of Officers and the transaction of other business. Other regular meetings of the Board may be held at such time and place as the Board may fix from time to time by resolution.

Section 5.8 Special Meetings

Special meetings of the Board for any purpose may be called at any time by the Chairperson, the President, the Vice President (if any), the Secretary, or any two Directors.

Section 5.9 Notice of Meetings

5.9.1 Manner of Giving

Except when the time and place of a regular meeting is set by the Board by resolution in advance (as permitted by [Section 5.7](#)), notice of the time and place of all regular and special meetings shall be given to each Director by one of the following methods:

- (a) Personal delivery of oral or written notice;
- (b) First-class mail, postage prepaid;
- (c) Telephone, including a voice messaging system or other system or technology designed to record and communicate messages; or
- (d) Facsimile, e-mail or other means of electronic transmission, if the recipient has consented to accept notices in this manner.

All such notices shall be given or sent to the Director's address, phone number, facsimile number or e-mail address as shown on the records of the Corporation.

Any oral notice given personally or by telephone may be communicated directly to the Director or to a person who would reasonably be expected to promptly communicate such notice to the Director. Notice of regular meetings may be given in the form of a calendar or schedule that sets forth the date, time and place of more than one regular meeting.

5.9.2 Time Requirements

Notices sent by first-class mail shall be deposited into a United States mail box at least four days before the time set for the meeting. Notices given by personal delivery, telephone, voice messaging system or other system or technology designed to record and communicate messages, facsimile, e-mail or other electronic transmission shall be delivered at least 48 hours before the time set for the meeting.

5.9.3 Notice Contents

The notice shall state the time and place for the meeting, except that if the meeting is scheduled to be held at the principal office of the Corporation, the notice shall be valid even if no place is specified. The notice need not specify the purpose of the meeting unless required to elsewhere in these Bylaws.

Section 5.10 Place of Board Meetings

Regular and special meetings of the Board may be held at any place within or outside California that has been designated in the notice of the meeting, or, if not stated in the notice or, if there is no notice, designated by resolution of the Board. If the place of a regular or special meeting is not designated in the notice or fixed by a resolution of the Board, it shall be held at the principal office of the Corporation.

5.10.1 Meetings by Telephone or Similar Communication Equipment

Any meeting may be held by conference telephone or other communications equipment permitted by the CCC, as long as each Director participating in the meeting can communicate concurrently with the other Directors, and each Director is provided the means of participating in all matters before the Board, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the Corporation. All such Directors shall be deemed to be present in person at such meeting.

Section 5.11 Quorum and Action of the Board

5.11.1 Quorum

A majority of Directors then in office, provided at least one ICANN Director and at least one Nominating Committee Director is present, shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 5.13.

Commented [A5]: The quorum requirement is flagged in the Governance Item Chart provided to Sidley along with this version.

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5.11.2 Minimum Vote Requirements for Valid Board Action

Every act taken or decision made by a vote of the majority of the Directors present at a meeting duly held at which a quorum is present is the act of the Board, unless a greater number is expressly required by the CCC, the Articles of Incorporation or these Bylaws. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors from the meeting, if any action taken is approved by at least a majority of the required quorum for that meeting.

5.11.3 When a Greater Vote Is Required for Valid Board Action

The following actions shall require approval by four-fifths (4/5) of the Directors, ~~including at least two ICANN Directors and two Nominating Committee Directors~~ and the approval of the Member in order to be effective. ~~If there are not two Nominating Committee Directors in office and entitled to vote on the matter, four fifths of the Directors must still approve of the action in order for the Board approval to be effective.~~⁸

- (a) Approval of contracts or transactions in which a Director has a material financial interest (provided that the vote of any interested Director is not counted); provided, that, a Director shall not be deemed to have a financial interest if the source of such financial interest is solely based on such Director's employment with ICANN, service on ICANN's board of directors or any compensation related to such employment or service;
- (b) Creation of, and appointment to, Committees (but not advisory committees) as described in [Section 6.1](#)~~Section 6.1~~;
- (c) Indemnification of Directors as described in [Article 8](#)~~Article 8~~;
- (d) Any sale, transfer or other disposition of the Corporation's assets, other than (i) in the ordinary course of the Corporation's business, (ii) in connection with an IANA Naming Function Separation Process (as defined in the ICANN Bylaws) or (iii) the disposition of obsolete, damaged, redundant or unused assets;
- (e) Any merger, consolidation, sale or reorganization of the Corporation; and
- (f) Any dissolution, liquidation or winding-up of the business and affairs of the Corporation or the commencement of any other voluntary bankruptcy proceeding of the Corporation.

Commented [A6]: The threshold requirement is flagged in the Governance Item Chart provided to Sidley along with this version.

⁸ **Note to CWG:** Consider four-fifths (4/5) of the Board with at least one Nominating Committee Director and at least one ICANN Director.

Section 5.12 Waiver of Notice

The transactions of any meeting of the Board, 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 (a) a quorum is present, and (b) either before or after the meeting, each of the Directors who is not present at the meeting signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent does not need to 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. Also, notice of a meeting is not required to be given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice. Directors can protest the lack of notice only by presenting a written protest to the Secretary either in person, by first-class mail addressed to the Secretary at the principal office of the Corporation as contained on the records of the Corporation as of the date of the protest, or by facsimile addressed to the facsimile number of the Corporation as contained on the records of the Corporation as of the date of the protest.

Section 5.13 Adjournment

A majority of the Directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than 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 the adjournment.

Section 5.14 Conduct of Meetings

Meetings of the Board shall be presided over by the Chairperson, or, if the Chairperson is absent, the President or, if the President and Chairperson are both absent, by the Vice President (if any) or, in the absence of each of these persons, by a chairperson of the meeting, chosen by a majority of the Directors present at the meeting. The Secretary shall act as secretary of all meetings of the Board, provided that, if the Secretary is absent, the presiding officer shall appoint another person to act as secretary of the meeting. Meetings shall be governed by rules of procedure as may be determined by the Board from time to time, insofar as such rules are not inconsistent with or in conflict with these Bylaws, with the Articles of Incorporation, or with any provisions of law applicable to the Corporation.

Section 5.15 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. Such written consent shall have the same force and effect as

a unanimous vote of the Board taken at a meeting. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Written consent may be transmitted by first-class mail, messenger, courier, facsimile, e-mail or any other reasonable method satisfactory to the Chairperson or the President.

Section 5.16 Fees and Compensation of Directors

The Corporation shall not pay any compensation to Directors for services rendered to the Corporation as Directors,⁹ except that Directors shall be reimbursed for reasonable expenses (including travel) incurred solely in connection with their work on the Board.

Section 5.17 Non-Liability of Directors

The Directors shall not be personally liable for the debts, liabilities, or other obligations of the Corporation.

ARTICLE 6 COMMITTEES

Section 6.1 Committees of Directors

Subject to Section 5.11.3, the Board may, by resolution adopted by four-fifths (4/5) of the Directors, ~~including at least two ICANN Directors and two Nominating Committee Directors,~~ create one or more committees of the Board (“Committees”), each consisting of two or more Directors with at least one ICANN Director and one Nominating Committee Director, to serve at the discretion of the Board. ~~If there are not two Nominating Committee Directors in office and entitled to vote on the matter, four fifths of the Directors must still approve of the action in order for the Board approval to be effective.~~¹⁰ Any Committee, to the extent provided in the resolution of the Board and approved by the Member, may be given the authority of the Board, except that no Committee may:

- (a) approve any action for which the CCC also requires approval of the members or approval of a majority of all members;
- (b) fill vacancies on the Board or in any Committee which has the authority of the Board;

⁹ Note to CWG: Is reimbursement by PTI for expenses for ICANN-nominated Directors acceptable?

¹⁰ Note to CWG: Consider four-fifths (4/5) of the Board with at least one Nominating Committee Director and at least one ICANN Director.

¹¹ Note to CWG: Consider four-fifths (4/5) of the Board with at least one Nominating Committee Director and at least one ICANN Director.

Commented [A8]: Committee Composition and thresholds to form a committee are each flagged in the Governance Item Chart provided to Sidley along with this version.

Commented [A7]: Committee Composition and thresholds to form a committee are each flagged in the Governance Item Chart provided to Sidley along with this version.

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- (c) to the extent permitted under Section 5.16, fix compensation or expense reimbursement of the Directors for serving on the Board or on any Committee;
- (d) amend or repeal Bylaws or adopt new Bylaws;
- (e) amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- (f) appoint any other Committees or the members of these Committees;
- (g) expend corporate funds to support a nominee for Director after more persons have been nominated than can be elected; or
- (h) approve any transaction (i) between the Corporation and one or more of its Directors or (ii) between the Corporation and any entity in which one or more of its Directors have a material financial interest.

Section 6.2 Meetings and Action of Board Committees

Meetings and action of Committees shall be governed by, and held and taken in accordance with, the provisions of Article 5~~Article 5~~ concerning meetings of Directors, with such changes in the context of Article 5~~Article 5~~ as are necessary to substitute the Committee and its members for the Board and its members, except that the time for regular meetings of Committees may be determined by resolution of the Board, and special meetings of Committees may also be called by resolution of the Board. Minutes shall be kept of each meeting of any Committee and shall be filed with the corporate records. The Committee shall report to the Board from time to time as the Board may require. The Board may adopt rules for the governance of any Committee not inconsistent with the provisions of these Bylaws. In the absence of rules adopted by the Board, the Committee may adopt such rules.

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Section 6.3 Quorum Rules for Board Committees

A majority of the Committee members (provided that at least one ICANN Director Committee member and one Nominating Committee Director Committee member is present) shall constitute a quorum for the transaction of Committee business, except to adjourn. A majority of the Committee members present, whether or not constituting a quorum, may adjourn any meeting to another time and place. Every act taken or decision made by a majority of the Committee members present at a meeting duly held at which a quorum is present shall be regarded as an act of the Committee, subject to the provisions of the CCC relating to actions that require a majority vote of the entire Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Committee members, if any action taken is approved by at least a majority of the required quorum for that meeting.

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Section 6.4 Revocation of Delegated Authority

Subject to Section 5.11.3 and Section 6.1, the Board may revoke or reduce any or all of the authority that the Board has delegated to a Committee, increase or decrease (but not below two) the number of members of a Committee, and fill vacancies in a Committee from the members of the Board.

Section 6.5 Audit Committee

The Corporation shall have an Audit Committee, which shall not include (i) paid or unpaid staff or employees of the Corporation, including, if staff members or employees, the President or the Treasurer, and (ii) any person with a material financial interest in any entity doing business with the Corporation; provided, that, a Director shall not be deemed to have a financial interest if the source of such financial interest is based solely on such Director's employment with ICANN, service on ICANN's board of directors or any compensation related to such employment or service. If there is a finance committee, members of the finance committee shall constitute less than 50% of the membership of the Audit Committee and the chairperson of the Audit Committee shall not be a member of the finance committee. Subject to the supervision of the Board, the Audit Committee shall:

- (a) make recommendations to the Board on the retention and termination of an independent certified public accountant ("CPA");
- (b) confer with the CPA to satisfy Audit Committee members that the financial affairs of the Corporation are in order;
- (c) review and determine whether to accept the annual audit;
- (d) approve non-audit services by the CPA and ensure such services conform to applicable standards; and
- (e) if requested by the Board, negotiate the CPA's compensation on behalf of the Board.

Section 6.6 Advisory Committees

The Board shall not create any advisory committees.

ARTICLE 7 OFFICERS

Section 7.1 Officers

The officers of the Corporation ("**Officers**") shall be a President, a Secretary and a Treasurer. These Officers may, but need not be, selected from among the ICANN Directors. Any number of offices may be held by the same person,

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except that the Secretary and the Treasurer may not serve concurrently as either the President or the Chairperson.

Section 7.2 Election of Officers

Except for the President, the Officers shall be elected annually by the Board at the annual meeting of the Board, and each shall serve at the discretion of the Board until his or her successor shall be elected, or his or her earlier resignation or removal.

The President shall be elected annually by the Member at the annual meeting of the Member, and shall serve at the discretion of the Member until his or her successor shall be elected, or his or her earlier resignation or removal.

Officers may be elected for an unlimited number of consecutive terms.

Section 7.3 Removal of Officers

Subject to the rights, if any, of an Officer under any contract of employment, the President may be removed, with or without cause, by the Member, and any other Officer may be removed, with or without cause, by the Board, at any regular or special meeting of the Board.¹²

Section 7.4 Resignation of Officers

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

Section 7.5 Vacancies in Offices

A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office, provided that such vacancies shall be filled as they occur and not on an annual basis. In the event of a vacancy in any office other than the President, such vacancy may be filled temporarily by appointment by the President, and the appointee shall remain in office for 60 days, or until the next regular meeting of the Board, whichever comes first. Thereafter, the position

Commented [A11]: Officer selection and approval rights issue flagged in Governance Item Chart provided to Sidley along with this version.

¹² **Note to CWG:** The President should be removed only by the Member. [**Sidley Comment:** Section 7.3 already provides that the Member must approve the removal of the President. Retaining the language proposed by ICANN would have the effect of requiring Member approval for the removal of all Officers (not just the President).] NOTE – See Governance Item Chart

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can be filled only by action of the Board, other than the position of President which shall be filled only by action of the Member.

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Section 7.6 Responsibilities of Officers

7.6.1 President

The president of the Corporation (the “**President**”) shall be selected by the Member. The President shall preside at all Member meetings, and in the Chairperson’s absence, the President shall preside at meetings of the Board and exercise and perform such other powers and duties as may from time to time be assigned to him or her by the Board or prescribed by these Bylaws. Subject to such supervisory powers as may be given by the Board to the Chairperson, the President shall be the general manager of the Corporation, and subject to the control of the Board, shall supervise, direct and control the Corporation’s day-to-day activities, business and affairs. The President may delegate his or her responsibilities and powers subject to the control of the Board. He or she shall have such other powers and duties as may be prescribed by the Board, with the approval of the Member, or these Bylaws.

7.6.2 Vice Presidents

In the absence or disability of the President, the vice presidents, if any, of the Corporation (each a “**Vice President**”) in order of their rank as fixed by the Board, or, if not ranked, a Vice President designated by the Board, shall perform all the duties of the President and, when so acting, have all the powers of and be subject to all the restrictions upon, the President. The Vice Presidents shall have such other powers and perform such other duties as may be prescribed by the Board.

7.6.3 Secretary

The secretary of the Corporation (the “**Secretary**”) shall certify and keep or cause to be kept at the principal office of the Corporation the original or a copy of the Articles of Incorporation and these Bylaws, as amended to date. The Secretary shall keep or cause to be kept at the principal office of the Corporation a record of the Corporation’s Member. The Secretary shall keep or cause to be kept a minute book as described in Section 9.4. The Secretary shall give, or cause to be given, notice of all meetings of the Member and the Board in accordance with these Bylaws. The Secretary shall keep or cause to be kept the seal of the Corporation, if any, in safe custody, and shall have such other powers and perform such other duties incident to the office of Secretary as may be prescribed by the Board or these Bylaws.

7.6.4 Treasurer

The treasurer of the Corporation (the “**Treasurer**”) shall (a) keep and maintain, or cause to be kept and maintained, adequate and correct books and records of

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accounts of the properties and transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements, (b) prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports, (c) 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 may be designated by the Board, (d) disburse, or cause to be disbursed, the funds of the Corporation as may be ordered by the Board, (e) render, or cause to be rendered to the President and Directors, whenever they request it, an account of all of his or her transactions as Treasurer and of the financial condition of the Corporation, and (f) have other powers and perform such other duties incident to the office of Treasurer as may be prescribed by the Board or these Bylaws.

Section 7.7 Compensation of Officers

7.7.1 Salaries Fixed by Board

The salaries of Officers paid by the Corporation, if any, shall be fixed from time to time by resolution of the Board or by the person or Committee to whom the Board has delegated this function. If any Officer also serves as a Director, the Officer shall not receive compensation for service as a Director, but shall not be prevented from receiving a salary fixed in accordance with this Section for service as an Officer. In all cases, any salaries received by Officers and paid by the Corporation shall be reasonable and given in return for services actually rendered for the Corporation which relate to the performance of the public benefit purposes of the Corporation. No salaried Officer serving as a Director shall be permitted to vote on his or her own compensation as an Officer.

7.7.2 Fairness of Compensation

The Board shall periodically review the fairness of compensation, in accordance with the requirements of California's Nonprofit Integrity Act of 2004, including benefits, paid to every person, regardless of title, with powers, duties, or responsibilities comparable to the president, chief executive officer, treasurer or chief financial officer (a) once such person is hired, (b) upon any extension or renewal of such person's term of employment, and (c) when such person's compensation is modified (unless all employees are subject to the same general modification of compensation).

ARTICLE 8 INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS

The Corporation shall, to the maximum extent permitted by the CCC, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of the

Corporation, provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in the Corporation's best interests and not criminal. For purposes of this Article 8, an "agent" of the Corporation includes any person who is or was a Director, Officer, employee, or any other agent of the Corporation acting within the scope of his or her responsibility; or is or was serving at the request of the Corporation as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. 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 8.

ARTICLE 9 CORPORATE RECORDS, REPORTS AND SEAL

Section 9.1 Accounting

The fiscal year of the Corporation shall be the same as the fiscal year of the Member. At the end of each fiscal year, the books of the Corporation shall be closed and audited by a CPA. The Corporation shall make the audit available to the Attorney General and to the public on the same basis that the Internal Revenue Service Form 990 is required to be made available.

Section 9.2 [Annual Budget]¹³

- (a) At least [270 days] prior to the commencement of each fiscal year, the Corporation shall submit to the Board a proposed annual operating plan and budget for the Corporation's next fiscal year ("**Annual Budget**").
- (b) During the Annual Budget development process, and prior to approval of the Annual Budget by the Board, the Corporation shall consult with the Supporting Organizations and Advisory Committees, as well as the Registries Stakeholder Group, IAB and RIRs (all as defined in the ICANN Bylaws).
- (c) Prior to approval of the Annual Budget by the Board, a draft of the Annual Budget shall be posted on the ICANN Website (as defined in the ICANN Bylaws) and shall be subject to public comment.

¹³ ~~Note to Draft: Annual Budget and Strategic Plan provisions under consideration. [Sidley Comment: Not reviewed. Will review when revised] NOTE – ICANN received confirmation that the Note to Draft: The members of the DT-O will provide further inputs during the comment period, therefore the language as presented in these sections should be reviewed. If no changes are recommended through the DT-O, there will need to be a small modification in the timing requirements to allow time for PTI Board action.~~

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- (d) After reviewing the comments submitted during the public comment period, the Board may direct the Corporation to post a revised draft of the Annual Budget on the Website and may direct the Corporation to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN’s public comment processes.
- (e) Promptly after the Board approves the Annual Budget, the Annual Budget shall be submitted to ICANN. The Annual Budget shall be submitted to ICANN at least nine months in advance of the next fiscal year.
- (f) On a monthly basis, the Corporation’s actual performance shall be measured against the Annual Budget and reported to the Board.

Section 9.3 **Strategic Plan**

- (a) The Corporation shall develop and annually update a four-year strategic plan that outlines the Corporation’s strategic priorities (the “**Strategic Plan**”). This Strategic Plan process may be run concurrently with the Annual Budget development process described at Section 9.2.
- (b) The Corporation shall consult with the Supporting Organizations and Advisory Committees, as well as the Registries Stakeholder Group, IAB and RIRs in the development and updating of the Strategic Plan.
- (c) Prior to approval of the Strategic Plan by the Board, a draft of the Strategic Plan shall be posted on the ICANN Website (as defined in ICANN’s Bylaws) and shall be subject to public comment.
- (d) After reviewing the comments submitted during the public comment period, the Board may direct the Corporation to post a revised draft of the Strategic Plan on the Website and may direct the Corporation to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN’s public comment processes.
- (e) Promptly after the Board approves the Strategic Plan, the Strategic Plan shall be submitted to ICANN.
- (f) On a yearly basis, the Corporation’s actual performance shall be measured against the Strategic Plan and reported to the Board.

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Section 9.4 **Minute Book**

The Corporation shall keep a minute book in written form which shall contain a record of all actions by the Member, the Board, the Audit Committee or any Board Committee including (a) the time, date and place of each meeting; (b) whether a meeting is regular or special and, if special, how called; (c) the manner of giving notice of each meeting and a copy thereof; (d) the names of those present at each meeting; (e) the minutes of all meetings; (f) any written waivers of

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notice, consents to the holding of a meeting or approvals of the minutes thereof; (g) all written consents for action without a meeting; (h) all protests concerning lack of notice; and (i) formal dissents from Board actions.

Section 9.5 Books and Records of Account

The Corporation shall keep adequate and correct books and records of account. “Correct books and records” includes, but is not necessarily limited to: accounts of properties and transactions, assets, liabilities, receipts, disbursements, gains, and losses.

Section 9.6 Articles of Incorporation and Bylaws

The Corporation shall keep at its principal office, the original or a copy of the Articles of Incorporation and Bylaws, as amended to date.

Section 9.7 Maintenance and Inspection of Federal Tax Exemption Application and Annual Information Returns

The Corporation shall at all times keep at its principal office a copy of its federal tax exemption application and, for three years from their date of filing, its annual information returns. These documents shall be open to public inspection and copying to the extent required by the Internal Revenue Code of 1986, as amended.

Section 9.8 Annual Report; Statement of Certain Transactions

9.8.1 Annual Report

No later than 120 days after the close of the Corporation’s fiscal year, the Corporation shall make available to the Member and each Director an annual report in accordance with section 6321 of the CCC, which shall be accompanied by the annual independent audit.

9.8.2 Statement of Certain Transactions

As part of the annual report described in Section 9.8.1, the Corporation shall include an annual statement of certain transactions, as required by section 6322 of the CCC.

Section 9.9 Rights of Inspection

Each Director shall have the absolute right at any reasonable time to inspect the books, records, documents of every kind, and physical properties of the Corporation. The inspection may be made in person or by the Director’s agent or attorney. The right of inspection includes the right to copy and make extracts of documents. The Member shall have all rights of inspection granted to members under the CCC.

Section 9.10 Corporate Seal

The corporate seal, if any, shall be in such form as may be approved from time to time by the Board. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

ARTICLE 10 EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS

Section 10.1 Execution of Instruments

The Board, except as otherwise provided in these Bylaws, may by resolution authorize any Officer or agent of the Corporation 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. Unless so authorized, 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 monetarily for any purpose or in any amount.

Section 10.2 Checks and Notes

All checks, drafts, or other 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.

Section 10.3 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 may select.

ARTICLE 11 CONSTRUCTION AND DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions of the CCC 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. All references to statutes, regulations and laws shall include any future statutes, regulations and laws that replace those referenced.

ARTICLE 12 AMENDMENTS

These Bylaws may only be adopted, amended, or repealed in whole or in part with the approval of (a) four-fifths (4/5) of the Directors then in office, ~~including (i) at~~

~~least two ICANN Directors and (ii) two Nominating Committee Directors~~ and (b) the Member.]¹⁴ If there are not two Nominating Committee Directors in office and entitled to vote on the matter, four-fifths of the Directors must still approve of the action in order for the Board approval to be effective. If any provision of these Bylaws requires the vote of a larger proportion of the Board than is otherwise required by law, that provision may not be altered, amended or repealed, except by that greater vote. Any amendment to these Bylaws shall also be subject to the procedures and limitations on amending these Bylaws that are set forth within the ICANN Bylaws.¹⁵

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¹⁴ **Note to CWG:** Consider four-fifths (4/5) of the Board with at least one Nominating Committee Director and at least one ICANN Director.

¹⁵ ICANN NOTE – Suggest inclusion of language to confirm dependencies on ICANN Bylaws.

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CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting Secretary of [Post-Transition IANA], a California nonprofit public benefit corporation; that these Bylaws, consisting of [##] pages, are the Bylaws of this Corporation as adopted by the Board of Directors and the Member on []; and that these Bylaws have not been amended or modified since that date.

Executed on _____ at _____, California.

[NAME]
Secretary