

Limited Liability Company Agreement of IETF Administration LLC

This Limited Liability Company Agreement (“Agreement”) of IETF Administration LLC (the “Company”), effective as of [DATE] (the “Effective Date”) is entered into by and among the Company and the Internet Society, a Washington, D.C. non-profit corporation (the “Member”).

WHEREAS, the Company was formed as a limited liability company on [COMPANY FORMATION DATE] by the filing of a Certificate of Formation with the Secretary of State of the State of Delaware pursuant to and in accordance with the Delaware Limited Liability Company Act, as amended from time to time (the “LLC Act”); and

WHEREAS, the Member agrees that the membership in and management of the Company shall be governed by the terms set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. Name.

- a. The name of the Company is IETF Administration LLC.
- b. The Company may do business as “Internet Engineering Task Force” or “IETF” (or similar variations thereof), provided that it files an applicable Registration of Trade, Business & Fictitious Name Certificate (or similar document) with appropriate authorities, and provided that the Company obtains an appropriate trademark license from the owner of trademark rights in such names.

2. Principal Office; Registered Agent.

- a. The location of the principal office of the Company shall be at 1000 N. West St., Ste. 1200, Wilmington, DE 19801, or such other location as the Company may from time to time designate.
- b. The registered agent of the Company for service of process in the State of Delaware and the registered office of the Company in the State of Delaware shall be that person and location reflected in the Certificate of Formation. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Member shall promptly designate a replacement registered agent or file a notice of change of address, as the case may be, in the manner provided by law.

- 3. Membership Interest.** The Company shall have a single limited liability company membership interest, which is hereby issued to the Member. The Company will not issue any certificates to evidence ownership of the membership interest.
- 4. Purpose.**
 - a. General purpose; limitation.** Subject to the terms of this Agreement, the Company may engage in any lawful act or activity for which limited liability companies may be formed under the LLC Act and to engage in any and all activities necessary or incidental thereto, *provided, however*, that the purpose of the Company is limited exclusively to such charitable, educational literary or scientific purposes as would qualify it for exemption from federal income tax as an organization described by Section 501(c)(3) of the Internal Revenue Code of 1986 (the “Code”) or the corresponding provision of any future revision of the Code.
 - b. Specific purpose.** The purpose of the Company is to provide a corporate legal framework for facilitating current and future activities related to the Internet Engineering Task Force, the Internet Architecture Board (IAB), and the Internet Research Task Force (IRTF). The intent is that legal responsibility for all IETF-related activities under the corporate umbrella of the Member as of the Effective Date will transfer to the Company. Except as minimally necessary to provide appropriate administrative and legal support (consistent with that historically provided by the Member and the IETF Administrative Support Activity (IASA)), formation of the Company is not intended to change anything related to the oversight or steering of the standards process as currently conducted by the Internet Engineering Steering Group (IESG) and the IAB, the appeals chain, the process for making and organizations involved in confirming IETF and IAB appointments, the IETF Nominations Committee (NomCom), the IRTF, or Member's memberships in or support of other organizations.
- 5. Management.**
 - a. Management by Board.** The business and affairs of the Company shall be managed by a committee of individuals (each a “Director” and collectively the “Board”). Subject to the terms of this Agreement, the Board shall have full and complete discretion to manage and control the business and affairs of the Company, to make all decisions affecting the business and affairs of the Company and to take all such actions as it deems necessary or appropriate to accomplish the purposes of the Company. The actions of the Board or of parties expressly authorized by the Board in accordance with the provisions of this Agreement shall bind the Company. Neither the Member, any individual Director, any officer, any staff member, nor any other person shall have any authority or right to act on behalf of or bind the Company, except as specifically authorized by the Board or as otherwise provided herein. The Board is expected to delegate authority to Officers and staff as described below.

- b. *Officers.*** The Board may, from time to time, designate one or more officers with such titles as may be designated by the Board to act in the name of the Company with such authority as may be delegated to such officers by the Board (each such designated person, an “Officer”). Any such Officer shall act pursuant to such delegated authority until such Officer is removed by the Board. Any action taken by an Officer designated by the Board pursuant to authority delegated to such Officer shall constitute the act of and serve to bind the Company.
- c. *Executive Director; Staff.*** The Board will hire and supervise an Executive Director, who will be deemed an Officer of the Company. The Executive Director will be responsible for managing the day-to-day affairs of the Company, including hiring staff to perform various operational functions. The Executive Director and any other staff may be independent contractors or employees of the Company. For clarity: the Executive Director is not a Director as defined in Section 5(a).
- d. *Role of Board vs. role of staff.*** The Board will set broad strategic direction for the Company, and will be responsible for adopting an annual budget, hiring or terminating an Executive Director (or amending the terms of their engagement), adopting any employee benefit plans, consulting the relevant IETF communities on matters related to the Company as appropriate, approving any changes to the LLC governance structure, incurring any debt, and approving entering into agreements that that meet a significant materiality threshold to be determined by the Board. The Board is expected to delegate management of day-to-day activities and related decision-making to staff.
- e. *Board composition and governance.*** *Exhibit A* identifies the number of Directors, length of Director’s terms, the methods by which Directors are appointed and removed, quorum and voting thresholds, and potentially other Board governance-related terms.

6. Liability; Exculpation; Indemnification.

- a. *Limitation on Liability.*** Except as otherwise expressly provided by the LLC Act or applicable law, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Member nor any Director, Officer, employee or agent of the Company shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member or Director, Officer, employee or agent of the Company.
- b. *Exculpation.*** Any act or omission of the Member or of any Director, Officer, employee or agent of the Company, the effect of which may cause or result in loss or damage to the Company or the Member, if done in good faith to promote the best interests of the Company, shall not subject the Member or Director, Officer, employee or agent to any liability to the Company or the Member.

- c. *Indemnification.* The Company shall indemnify any person who was or is a party defendant or is threatened to be made a party defendant in any pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Company) by reason of the fact that he is or was a Member of the Company, Director, Officer, employee or agent of the Company, or is or was serving at the request of the Company, for instant expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if such person acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interest of the Company, and with respect to any criminal action proceeding, has no reasonable cause to believe his/her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of "nolo contendere" or its equivalent, shall not in itself create a presumption that the person did or did not act in good faith and in a manner which he/she reasonably believed to be in the best interest of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his/her conduct was lawful.
 - d. *Limitation to Company assets.* Any indemnification provided under Section 6(c) shall be provided out of and to the extent of Company assets and applicable Company insurance policies only, and neither the Member nor any other person shall have any personal liability on account thereof.
 - e. *Indemnification for breach of this Agreement.* Without limiting Section 6(c), the Company and the Member each agree to defend and indemnify the other party from and against any claims, suits, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) brought by third parties resulting from or related to any breach by the indemnifying party of its obligations, duties or responsibilities under this Agreement. The indemnifying party's obligations under this Section 6(e) are subject to the conditions that the indemnified party give prompt written notice of any such claim, allow the indemnifying party to control the defense and settlement of the claim, and cooperate with the indemnifying party, at the indemnifying party's reasonable request and expense, in defending or settling the claim.
7. **Term.** The term of the Company shall be perpetual unless the Company is dissolved and terminated in accordance with Section 13.
8. **Capital Contributions.** The Member hereby agrees to contribute such cash, property or services as set forth in *Exhibit B*.
9. **Tax Status; Income and Deductions.**
- a. *Tax status.* The Company and the Member intend that the Company be treated as a disregarded entity for all federal and relevant state tax purposes. Neither the Company nor~~t~~ the Member shall take any action or make any election which is inconsistent with

such tax treatment. All provisions of this Agreement are to be construed so as to preserve the Company's tax status as a disregarded entity.

- b. *Income and deductions.*** All items of income, gain, loss, deduction and credit of the Company (including, without limitation, items not subject to federal or state income tax) shall be treated for federal and all relevant state income tax purposes as items of income, gain, loss, deduction and credit of the Member.

10. Distributions. No distributions from the Company to the Member are anticipated. The Company and the Member may mutually agree on the time and the amount of a distribution from the Company to the Member if appropriate.

11. Company Obligations to Member; Rights Reserved by Member.

- a. *Obligations.*** The Company covenants to the Member that the Company will:
 - i.** Limit its activities to the purposes as set forth in Section 4, in a manner consistent with Member's charitable purposes.
 - ii.** Prepare accounting reports in accordance with generally accepted accounting principles, applicable IRS rules and regulations, and Member's reasonable accounting policies, and provide timely reports to Member, on a monthly, quarterly and annual basis, in a format reasonably acceptable to Member.
 - iii.** Establish a mechanism, reasonably acceptable to the Member's Chief Financial Officer (CFO) or the CFO's delegate, to meet its obligations to Member concerning the preparation of accounting reports, as specified in the preceding bullet point.
 - iv.** Establish an investment policy, reasonably acceptable to the Member's Chief Financial Officer (CFO) or the CFO's delegate, prior to the transfer of the one-time conveyances described in Exhibit B.
 - v.** Make its books and records available and open for inspection by the duly authorized representatives of Member during reasonable business hours.
 - vi.** Upon request by Member, promptly provide reasonable assistance on tax and audit related matters (such as filing Member's Form 990, responding to any IRS questions or audits, and cooperating with Member audit processes).
 - vii.** Use best efforts to conduct all of its activities in strict compliance with this Agreement and all applicable laws, rules and regulations.
 - viii.** Develop a compliance program, reasonably acceptable to Member's CFO or the CFO's delegate, with a goal of ensuring compliance with applicable laws, rules and regulations (including without limitation laws governing bribery, anti-terrorism sanctions, export controls, and data protection/privacy and other legal regimes applicable to United States entities with global operations) and report to Member annually on such program.
 - ix.** If and when the Company engages in fundraising it will substantiate charitable contributions on behalf of the Member. The Company will evaluate and facilitate the

Company's and Member's compliance with applicable law with respect to such fundraising activities.

- x. Adopt a Conflict of Interest Policy, a Whistleblower Policy, and a Document Retention Policy.
 - xi. Obtain Commercial General Liability and other appropriate insurance policies, with agreed-upon coverage limits.
- b. *Member remedy.* Member shall promptly discuss any perceived breach of these obligations with Company, and Company and Member will cooperate in good faith to resolve the issue. If, after written notice and a substantial opportunity to cure, the Company remains in material breach of its obligations under this Section 11, then Member shall have the right to unilaterally dismiss any or all of the individuals then serving as Directors of the Company and to replace them with individuals selected by Member in the Member's discretion. This right supersedes any contrary terms in this Agreement or in any applicable RFC or similar document. Member shall only take such action in good faith after notice to and consultation with the affected communities, including the IETF, IRTF, and IAB, and in the belief that the action is in or not opposed to the best interest of the Company.
- c. *Rights reserved by the Member.* The Member will have the right to approve: (a) any amendments to this Agreement, (b) admission of any new Members to the Company, (c) any merger, joint venture or similar combination of assets of the Company with another entity, (d) the sale or other disposition of substantially all of the Company assets, (e) any transaction resulting in the recognition of Unrelated Business Income Tax by the Member, (f) a fundamental and material change to the nature of Company's activities, (g) any material change in accounting or tax policies previously agreed-upon by Member and Company, (h) converting the Company to another form of legal entity, and (i) dissolution of the Company.

12. Transfer of Membership Interest.

- a. *Member request.* The Member may not transfer its membership interest in the Company without the consent of the Board. If the Member requests such consent, the Board will agree so long as the Board reasonably believes that the action is in or not opposed to the best interest of the Company.
- b. *Company request.* The Company may request that the Member transfer its membership interest to a third party (e.g. to a different non-profit corporation). If the Company requests such action, the Member will agree so long as the Member reasonably believes, in the Member's sole discretion, that the action is (a) in or not opposed to the best interest of the Company, and (b) consistent with Member's fiduciary and legal obligations and its obligations to its members and stakeholders.

- c. *Post-transfer obligations.* In the event of a transfer of Member's membership interest to a third party, Member will have no obligation to make any unpaid capital contributions.

13. Dissolution.

- a. The Company shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (i) the mutual agreement of the Company and the Member or (ii) any other event or circumstance giving rise to the dissolution of the Company under Section 18-801 of the LLC Act, unless the Company's existence is continued pursuant to the Act. The Member may not dissolve the Company without the consent of the Company.
- b. Upon dissolution of the Company, the Company shall immediately commence to wind up its affairs. During the period of the winding up of the affairs of the Company, the rights and obligations arising under this Agreement shall continue.
- c. In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs, and the assets of the Company shall be applied as follows: (i) first, to creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Company (whether by payment or the making of reasonable provision for payment thereof); and (ii) thereafter, to the Member.
- d. Upon the completion of the winding up of the Company, the Member shall file a Certificate of Cancellation in accordance with the LLC Act.

14. Miscellaneous.

- a. *Amendments.* Amendments to this Agreement require the written consent of both the Company and the Member except amendments to *Exhibit A* proposed by the Company will be deemed accepted by Member unless the Member objects in writing within 30 days of notice. The Member will not object to proposed amendments to *Exhibit A* so long as the Member reasonably believes that the proposed amendments are in or not opposed to the best interest of the Member.
- b. *Governing Law.* This Agreement shall be governed by the laws of the State of Delaware.
- c. *Severability.* In the event that any provision of this Agreement shall be declared to be invalid, illegal or unenforceable, such provision shall survive to the extent it is not so declared, and the validity, legality and enforceability of the other provisions hereof shall not in any way be affected or impaired thereby, unless such action would substantially impair the benefits to any party of the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the date first above written.

For Member:

For Company:

Signature

Signature

Printed name

Printed name

Title

Title

Date

Date

EXHIBIT A

[all provisions of Exhibit A remain under active discussion by the IASA 2.0 WG]

1. **Interim Board members.** The initial Board members shall be the individuals occupying each of the following positions as of the Effective Date:
 - The IETF Chair
 - The Chair of the Member, or a Trustee of the Member appointed by the Chair
 - The IAOC Chair
 - The IAB Chair
2. **Interim Board role.** The interim Board will take those limited actions necessary to launch operations of the Company and to establish the means necessary for it to accomplish its purpose.
3. **Interim Board governance.** Sections 9 and 10 of this Exhibit A will apply to the Interim Board.
4. **Interim Board term lengths.** The interim Directors will promptly take all steps necessary to seat Directors in accordance with Section 5 below. The term of all interim Directors will automatically end when the minimum number of Directors are seated.
5. **Permanent Board appointments.**
 - a. *Board composition.* The Board shall be composed of up to seven individuals appointed to the Board as follows:
 - i. One Director shall be appointed by the Member,
 - ii. One Director shall be the IETF Chair ex officio or other person designated by the Internet Engineering Steering Group (IESG),
 - iii. Three Directors shall be ~~selected~~~~appointed~~ by the IETF Nominating Committee ("NomCom") *and confirmed for appointment by the IESG,*¹ and
 - iv. Up to two additional Directors may be appointed by the Board itself.
 - b. *Confirmation.* The three Directors ~~selected~~~~appointed~~ by the IETF Nominating Committee will be confirmed by the IESG according to the confirmation process described in RFC 7437¹. Any Directors appointed by the Board itself will be

¹ Kucherawy, M. (ed.): IAB, IESG, and IAOC selection, confirmation, and recall process: operation of the nominating and recall committees. RFC 7437 (Best Current Practice), January 2015. For the purposes of this Exhibit A, any references to RFC 7437 and sections thereof will be deemed to be references to a successor document and the successor document's corresponding sections, if such a successor document is adopted.

confirmed by the Internet Architecture Board (IAB) according to the confirmation process described in RFC 7437.

- c. *Minimal Board.* A minimum of five Directors must be seated in order for the initial permanent Board to be constituted.

6. Permanent Board term lengths and term limits.

- a. Except for any Board-appointed Directors, the term length for a Director shall be three years. However, the appointing body may impose a shorter term as necessary to establish staggered terms in connection with the first full formation of the Board and for any appointments to fill a vacancy. Further, if a Director role is occupied by the IETF Chair, that person's term length is governed instead by the term lengths established in RFC 7437, Section 3.4. The initial Director appointed by the Member will be appointed for a full term.
- b. A Director may serve no more than two consecutive full terms, with at least one full term prior to the start of any additional terms, subject to the following exceptions:
 - i. If a Director role is occupied by the IETF Chair ex officio, that person's service is governed instead by the term lengths established in RFC 7437, Section 3.4.
 - ii. Board-appointed Directors may serve only one term via this appointment method, after which any subsequent terms must occur via other appointment processes (such as via the NomCom process).
- c. For any Board-appointed Directors, the term of each appointment shall be designated by the Board, with the maximum term being three years until the beginning of the second Annual General Meeting (AGM) after appointment.

- ## **7. Staggered terms.**
- The IESG, the Nominating Committee, and the Board are expected to coordinate with each other to ensure that collectively their appointment processes provide for no more than three Directors' terms concluding in the same year.

8. Mid-term vacancies.

- a. It shall be the responsibility of each respective body that appointed a Director who vacates the Board to promptly appoint a new Director to fill that vacancy. However this obligation will not apply to vacancies in Board-appointed positions.
- b. In the event that the number of Directors drops below five, the remaining Directors may continue to conduct the business of the Company, but will defer all decisions and actions that can be deferred (in their reasonable judgment) until at least five Directors are seated.

9. **Director removal.** Directors may be removed with or without cause. A vote in favor of removal must be no fewer than the number of Directors less two. So for example, if there are seven directors, then five votes are required. Except for the Member-appointed Director, Directors may also be removed via the IETF recall process defined in RFC 7437, Section 7.

10. **Decisions of the Board.**

- a. Board decisions may be made either by vote communicated in a synchronous live (including telephonic and video) meeting, or via an asynchronous written (including electronic) process.
- b. At all synchronous live meetings of the Board, two thirds of the Directors then in office shall constitute a quorum for the transaction of business. Unless a greater affirmative vote is expressly required for an action under applicable law, the Agreement, or an applicable Board policy, the affirmative vote of two thirds of the Directors then in office shall be an act of the Board. Absentee voting and voting by proxy shall not be permitted. If a quorum is not present at any meeting of the Board, the Directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.
- c. If a vote of the Board is conducted via an asynchronous written process, unless a greater affirmative vote is expressly required for an action under applicable law, the Agreement, or an applicable Board policy, the affirmative vote of two thirds of the Directors then in office shall be an act of the Board.
- d. Voting thresholds for Director removal are described in Section 9.

11. **Board Chair.** Following the formation of the first permanent Board, and annually thereafter, the Directors shall elect a Director to serve as Board Chair. ~~The IETF, ISOC, IAB and IRTF chairs will be ineligible for this Board Chair role.~~

12. **Amendment of permanent Board appointment and governance processes.** The Board shall provide the IETF community with an opportunity to review and discuss any proposed amendments to this Exhibit A prior to their adoption.

13. **Transparency.** The Board is expected to operate in a publicly transparent fashion. The Board will operate in a “default open” manner: whatever doesn't have a specific justification for being kept confidential, should be made public. At a minimum, the annual budget, quarterly financial reports and a record of all decisions of the board must be made public in a timely manner, and the Board must publish a public list of confidential items, describing the nature of the information and the reason for confidentiality.

EXHIBIT B

1. **Annual contribution for operating expenses.** For the 2018 budget year, Member will convey to Company the existing IETF cash account containing the Company's allocated 2018 budget, funded on a quarterly basis by the Member. For future years Member will convey to Company the following amounts on the following schedule:
 - a. \$5,000,000 for the 2019 budget year, to be delivered prior to December 31, 2018.
 - b. \$5,000,000 for the 2020 budget year, to be delivered prior to December 31, 2019.
 - c. An amount determined via the process described in Section 3 of this Exhibit, to be delivered prior to December 31, 2020.
 - d. Additional amounts at particular times as and if mutually agreed by Member and Company.
2. **One-time conveyances.** In addition to the amounts described in Section 1 of this Exhibit, promptly after the Effective Date the Member will convey to the Company:
 - a. The full balance of funds that make up the IETF Endowment, expected to be approximately \$2,610,000, ~~contingent on-~~ Company and Member mutually agreeing will cooperate to ensure that such transfer is consistent with applicable law and with the document titled "The Endowment for the Sustainability of the Internet Engineering Task Force Endowment Policy," as amended April 20, 2015. If the parties are unable to so agree, they will use reasonable efforts to implement an alternative arrangement that reflects their intent that Company assume the role historically filled by Member in connection with the IETF Endowment.
 - b. An amount, intended to serve as an operational reserve for the Company, equal to the Company's budgeted Net Loss for 2019 multiplied times three. For purposes of this clause, "Net Loss" shall mean the difference between - (i) the total expenses for the Company, including meeting and operations expenses, and - (ii) the IETF annual meeting and in-kind revenue, in each case as contained in the Company's approved budget for calendar year 2019. For avoidance of doubt, the parties project that this amount will be in the \$9-10 million range.
3. **Funding re-assessment.** The CFO of the Member and the Chair of the Board of the Company will be jointly responsible for preparing for and coordinating a funding re-assessment effort, to be completed by September 1, 2020. An expected outcome of this effort is mutual agreement between Member and Company, ratified by the respective boards of each

organization, on the amount referenced in Section 1(d) of this Exhibit, and on funding amounts and schedule for at least two subsequent years. Member and Company each agree to use reasonable good faith efforts to achieve this outcome.