Section 3.6. NOTICE AND COMMENT ON POLICY ACTIONS

- (a) With respect to any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges, ICANN shall:
 - (i) provide public notice on the Website explaining what policies are being considered for adoption and why, at least twenty-one days (and if practical, earlier) prior to any action by the Board;
 - (ii) provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments (such comment period to be aligned with ICANN's public comment practices), prior to any action by the Board; and
 - (iii) in those cases where the policy action affects public policy concerns, to request the opinion of the Governmental Advisory Committee ("GAC" or "Government Advisory Committee") and take duly into account any advice timely presented by the Governmental Advisory Committee on its own initiative or at the Board's request.
- (b) Where both practically feasible and consistent with the relevant policy development process, an in-person public forum shall also be held for discussion of any proposed policies as described in Section 3.6(a)(ii), prior to any final Board action.
- (c) After taking action on any policy subject to this <u>Section 3.6</u>, the Board shall publish in the meeting minutes the rationale for any resolution adopted by the Board (including the possible material effects, if any, of its decision on the global public interest, including a discussion of the material impacts to the security, stability and resiliency of the DNS, financial impacts or other issues that were considered by the Board in approving such resolutions), the vote of each Director voting on the resolution, and the separate statement of any Director desiring publication of such a statement.
- (d) Where a <u>Board</u> decision is consistent with GAC Consensus Advice (as defined in <u>Section 12.2(a)(x)</u>), the Board shall make a determination whether the GAC Consensus Advice was a material factor in the Board's decision, in which case the Board shall so indicate in the resolution approving the decision (a "GAC Consensus Board Resolution") and shall cite the applicable GAC Consensus Advice. <u>The Board shall confine any GAC Consensus Board Resolution to the matters that were the subject of the GAC Consensus Advice, to the maximum extent practical.</u> For the avoidance of doubt: (i) a GAC Consensus Board Resolution shall not have the effect of making any other Board resolutions in the same set or series so designated, unless other resolutions are specifically identified as such by

- the Board; and (ii) a Board resolution approving an action consistent with GAC Consensus Advice received during a standard engagement process in which input from all Supporting Organizations and Advisory Committees has been requested shall not be considered a GAC Consensus Board Resolution based solely on that input, unless the GAC Consensus Advice was a material factor in the Board's decision.
- (e) Where a Board decision is consistent with GAC Consensus Advice (as defined in Section 12.2(a)(x)) and the Board has determined that the GAC Consensus Advice was a material factor in the Board's decision as described in the relevant GAC Consensus Board Resolution, the Governmental Advisory Committee shall not participate as a decision-maker in the EC's exercise of its right to challenge the Board's implementation of such GAC Consensus Advice. In such cases, the Governmental Advisory Committee may participate in the EC in an advisory capacity only with respect to the applicable processes described in Annex D, but its views will not count towards or against the thresholds needed to initiate a conference call, convene a community forum or exercise any right of the EC ("GAC Carve-out"). The GAC Carve-out shall apply only to Board decisions approved in GAC Consensus Board Resolutions; any petition alleging that the GAC Carve-out applies must be confined to challenges to GAC Consensus Board Resolutions, to the maximum extent practical. When the GAC Carve-out applies (i) any petition notice provided in accordance with Annex D shall include a statement that cites the specific GAC Consensus Board Resolution and the line item or provision that implements such specific GAC Consensus Board Resolution ("GAC Consensus Statement"). (ii) the Governmental Advisory Committee shall not be eligible to accept, support or object to any petition pursuant to Annex D, and (iii) any EC Decision that requires the support of four or more Decisional Participants pursuant to Annex D shall instead require the support of three or more Decisional Participants with no more than one Decisional Participant objecting. The GAC Carve-out shall not apply to the exercise of the EC's rights where a material factor in the Board's decision was advice of the Governmental Advisory Committee that was not GAC Consensus Advice.

Section 12.2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following Advisory Committees:

- (a) Governmental Advisory Committee
 - (i) The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.
 - (ii) Membership in the Governmental Advisory Committee shall be open to all national governments. Membership shall also be open to Distinct Economies as recognized in international fora, and multinational governmental organizations and treaty organizations, on the invitation of the Governmental Advisory Committee through its Chair.
 - (iii) The Governmental Advisory Committee may adopt its own charter and internal operating principles or procedures to guide its operations, to be published on the Website.
 - (iv) The chair of the Governmental Advisory Committee shall be elected by the members of the Governmental Advisory Committee pursuant to procedures adopted by such members.
 - (v) Each member of the Governmental Advisory Committee shall appoint one accredited representative to the Governmental Advisory Committee. The accredited representative of a member must hold a formal official position with the member's public administration. The term "official" includes a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization and whose primary function with such government, public authority, or organization is to develop or influence governmental or public policies.
 - (vi) The Governmental Advisory Committee shall annually appoint one Liaison to the Board, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN Nominating Committee.
 - (vii) The Governmental Advisory Committee may designate a nonvoting liaison to each of the Supporting Organization Councils and

- Advisory Committees, to the extent the Governmental Advisory Committee deems it appropriate and useful to do so.
- (viii) The Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues on which it or any of ICANN's supporting organizations or advisory committees seeks public comment, and shall take duly into account any timely response to that notification prior to taking action.
- (ix) The Governmental Advisory Committee may put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.
- (x) The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the Board determines to take an action that is not consistent with Governmental Advisory Committee advice, it shall so inform the Governmental Advisory Committee and state the reasons why it decided not to follow that advice. Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection ("GAC Consensus Advice"), may only be rejected by a vote of 60% of the Board, and the Governmental Advisory Committee and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The Governmental Advisory Committee will state whether any advice it gives to the Board is GAC Consensus Advice.
- (xi)—If no such solution can be found, the Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.

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ANNEX D EC MECHANISM

ARTICLE 2 PROCEDURE FOR EXERCISE OF EC'S RIGHTS TO REJECT SPECIFIED ACTIONS

Section 2.1. REJECTION ACTIONS

The processes set forth in this <u>Article 2</u> shall govern the escalation procedures for the EC's exercise of its right to reject the following (each, a "**Rejection Action**") under the Bylaws:

- (a) PTI Governance Actions, as contemplated by Section 16.2(d) of the Bylaws;
- (b) IFR Recommendations, as contemplated by Section 18.6(b) of the Bylaws;
- (c) Special IFR Recommendations, as contemplated by <u>Section 18.12(c)</u> of the Bylaws;
- (d) SCWG Creation Approvals, as contemplated by <u>Section 19.1(c)</u> of the Bylaws;
- (e) SCWG Recommendations, as contemplated by <u>Section 19.4(c)</u> of the Bylaws;
- (f) ICANN Budgets, as contemplated by Section 22.4(a)(v) of the Bylaws;
- (g) IANA Budgets, as contemplated by Section 22.4(b)(v) of the Bylaws;
- (h) Operating Plans, as contemplated by Section 22.5(a)(v) of the Bylaws;
- (i) Strategic Plans, as contemplated by Section 22.5(b)(v) of the Bylaws; and
- (j) Standard Bylaw Amendments, as contemplated by <u>Section 25.1(e)</u> of the Bylaws.

Section 2.2. PETITION PROCESS FOR SPECIFIED ACTIONS

- (a) Following the delivery of a Board Notice for a Rejection Action ("Rejection Action Board Notice") by the Secretary to the EC Chairs Council and Decisional Participants (which date shall be referred to herein as the "Rejection Action Board Notification Date"), the Decisional Participants shall thereafter promptly inform their constituents of the delivery of the Rejection Action Board Notice. The process set forth in this Section 2.2 of this Annex D as it relates to a particular Rejection Action is referred to herein as the "Rejection Process."
- (b) During the period beginning on the Rejection Action Board Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the date that is the 21st day after the Rejection Action Board Notification Date (as it relates to a particular Rejection Action, the "**Rejection Action Petition Period**"), subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant, seeking to

- reject the Rejection Action and initiate the Rejection Process (a "Rejection Action Petition").
- (c) A Decisional Participant that has received a Rejection Action Petition shall either accept or reject such Rejection Action Petition; provided that a Decisional Participant may only accept such Rejection Action Petition if it was received by such Decisional Participant during the Rejection Action Petition Period.
 - (i) If, in accordance with the requirements of <u>Section 2.2(c)</u> of this <u>Annex D</u>, a Decisional Participant accepts a Rejection Action Petition during the Rejection Action Petition Period, the Decisional Participant shall promptly provide to the EC Chairs Council and the other Decisional Participants written notice ("Rejection Action Petition Notice") of such acceptance (such Decisional Participant, the "Rejection Action Petitioning Decisional Participant"). The Rejection Action Petition Notice shall also include:
 - (A) the rationale upon which rejection of the Rejection Action is sought. Where the Rejection Action Petition Notice relates to an ICANN Budget, an IANA Budget, an Operating Plan or a Strategic Plan, the Rejection Action Petition Notice shall not be valid and shall not be accepted by the EC Chairs Council unless the rationale set forth in the Rejection Action Petition Notice is based on a significant issue(s) that was specifically raised in the public comment period(s), as applicable, relating to perceived inconsistencies with the Mission, the global public interest, the needs of ICANN's stakeholders, financial stability, a related matter or other matter of concern to the community;
 - (B) where applicable, a statement that the Rejection Action Petition Notice is based solely [or almost solely] on ICANN's implementation of a GAC Consensus Board Resolution, citing the specific GAC Consensus Board Resolution and the line item or provision in the Rejection Action subject to the Board Notice that implements such specific GAC Consensus Board Resolution ("Rejection Action GAC Consensus Statement"); and
 - (C) where the Rejection Action Petition Notice relates to a Standard Bylaw Amendment, a statement as to whether that Standard Bylaw Amendment is based solely on the outcome of a PDP, citing the specific PDP and the provision in the Standard Bylaw Amendment subject to the Board Notice that implements such PDP ("PDP Standard Bylaw Statement") and, if so, the name of the Supporting Organization that is a Decisional Participant that undertook the PDP

relating to the Standard Bylaw Amendment ("PDP Decisional Participant").

The Rejection Process shall thereafter continue pursuant to <u>Section</u> 2.2(d) of this Annex D.

- (ii) If the EC Chairs Council has not received a Rejection Action Petition Notice pursuant to Section 2.2(c)(i) of this Annex D during the Rejection Action Petition Period, the Rejection Process shall automatically be terminated and the EC Chairs Council shall, within twenty-four (24) hours of the expiration of the Rejection Action Petition Period, deliver to the Secretary a notice certifying that the Rejection Process has been terminated with respect to the Rejection Action contained in the Approval Notice ("Rejection Process Termination Notice").
- (d) Following the delivery of a Rejection Action Petition Notice to the EC Chairs Council pursuant to <u>Section 2.2(c)(i)</u> of this <u>Annex D</u>, the Rejection Action Petitioning Decisional Participant shall contact the EC Chairs Council and the other Decisional Participants to determine whether any other Decisional Participants support the Rejection Action Petition.
 - (i) If the Rejection Action Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "Rejection Action Supporting Decisional Participant") during the period beginning upon the expiration of the Rejection Action Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 7th day after the expiration of the Rejection Action Petition Period (the "Rejection Action Petition Support Period"), the Rejection Action Petitioning Decisional Participant shall provide a written notice to the EC Chairs Council, the other Decisional Participants and the Secretary ("Rejection Action Supported Petition") within twenty-four (24) hours of receiving the support of at least one Rejection Action Supporting Decisional Participant. [Each Rejection Action Supporting Decisional Participant shall provide a written notice to the EC Chairs Council, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Rejection Action Petition.] Such Rejection Action Supported Petition shall include:
 - (A) a supporting rationale in reasonable detail;
 - (B) contact information for at least one representative who has been designated by the Rejection Action Petitioning Decisional Participant who shall act as a liaison with respect to the Rejection Action Supported Petition;

- (C) a statement as to whether or not the Rejection Action Petitioning Decisional Participant [and/or the Rejection Action Supporting Decisional Participant] requests that ICANN organize a publicly-available conference call prior to the Rejection Action Community Forum (as defined in Section 2.3 of this Annex D) for the community to discuss the Rejection Action Supported Petition;
- (D) a statement as to whether the Rejection Action Petitioning Decisional Participant and the Rejection Action Supporting Decisional Participant have determined to hold the Rejection Action Community Forum during the next scheduled ICANN public meeting, taking into account the limitation on holding such a Rejection Action Community Forum when the Rejection Action Supported Petition relates to an ICANN Budget or IANA Budget as described in Section 2.3(c) of this Annex D;
- (E) a Rejection Action GAC Consensus Statement, if applicable; and
- (F) a PDP Standard Bylaw Statement, if applicable.

The Rejection Process shall thereafter continue for such Rejection Action Supported Petition pursuant to Section 2.3 of this Annex D. The foregoing process may result in more than one Rejection Action Supported Petition relating to the same Rejection Action. [In particular, if a Rejection Action Petition Notice includes a Rejection Action—GAC Consensus Statement or a PDP Standard Bylaw Statement and its focus is thus limited as provided in Section 2.2(c)(i)(B) or (C), above, it is understood that another Rejection Process may occur at the same time to cover issues outside of the scope of such limited process.]

- (ii) The Rejection Process shall automatically be terminated and the EC Chairs Council shall, within twenty-four (24) hours of the expiration of the Rejection Action Petition Support Period, deliver to the Secretary a Rejection Process Termination Notice if:
 - (A) no Rejection Action Petitioning Decisional Participant is able to obtain the support of at least one other Decisional Participant for its Rejection Action Petition during the Rejection Action Petition Support Period; or
 - (B) where the Rejection Action Supported Petition includes a PDP Standard Bylaw Statement, the PDP Decisional Participant is not (x) the Rejection Action Petitioning Decisional Participant or (y) one of the Rejection Action Supporting Decisional Participants.

Section 2.3. REJECTION ACTION COMMUNITY FORUM

- (a) If the EC Chairs Council receives a Rejection Action Supported Petition under <u>Section 2.2(d)</u> of this <u>Annex D</u> during the Rejection Action Petition Support Period, ICANN shall, at the direction of the EC Chairs Council, convene a forum at which the Decisional Participants and interested parties may discuss the Rejection Action Supported Petition ("**Rejection Action Community Forum**"). If the EC Chairs Council receives more than one Rejection Action Supported Petition relating to the same Rejection Action, all such Rejection Action Supported Petitions shall be discussed at the same Rejection Action Community Forum.
- (b) If a publicly-available conference call has been requested in a Rejection Action Supported Petition, ICANN shall, at the direction of the EC Chairs Council, schedule such call prior to any Rejection Action Community Forum relating to that Rejection Action Supported Petition, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website. If a conference call has been requested in relation to more than one Rejection Action Supported Petition relating to the same Rejection Action, all such Rejection Action Supported Petitions shall be discussed during the same conference call.
- (c) The Rejection Action Community Forum shall be convened and concluded during the period beginning upon the expiration of the Rejection Action Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Rejection Action Petition Support Period ("Rejection Action Community Forum Period") unless all Rejection Action Supported Petitions relating to the same Rejection Action requested that the Rejection Action Community Forum be held during the next scheduled ICANN public meeting, in which case the Rejection Action Community Forum shall be held during the next scheduled ICANN public meeting (except as otherwise provided below with respect to a Rejection Action Supported Petition relating to an ICANN Budget or IANA Budget) on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Rejection Action Petitioning Decisional Participant(s) and the Rejection Action Supporting Decisional Participant(s). If the Rejection Action Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Rejection Action Petition Support Period, the Rejection Action Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting. Notwithstanding the foregoing and notwithstanding any statement in the Rejection Action Supported Petition, a Rejection Action

- Community Forum to discuss a Rejection Action Supported Petition relating to an ICANN Budget or IANA Budget may only be held at a scheduled ICANN public meeting if such Rejection Action Community Forum Period, without any extension of such Rejection Action Community Forum Period.
- (d) The Rejection Action Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Chairs Council selects, and/or, only if the Rejection Action Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Rejection Action Community Forum will not be held during an ICANN public meeting, the EC Chairs Council shall promptly inform ICANN of the date, time and participation methods of such Rejection Action Community Forum, which ICANN shall post on the Website.
- (e) The EC Chairs Council shall manage and moderate the Rejection Action Community Forum in a fair and neutral manner.
- (f) ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Chairs Council in writing its views and questions on the Rejection Action Supported Petition prior to the convening of and during the Rejection Action Community Forum. Any written materials delivered to any EC Chairs Council shall also be delivered to the Secretary for posting on the Website in a manner deemed appropriate by ICANN.
- (g) ICANN staff (including the CFO when the Rejection Action Supported Petition relates to an ICANN Budget, IANA Budget or Operating Plan) and Directors representing the Board are expected to attend the Rejection Action Community Forum in order to address the concerns raised in the Rejection Action Supported Petition.
- (h) If the Rejection Action Petitioning Decisional Participant and each of the Rejection Action Supporting Decisional Participants for the applicable Rejection Action Supported Petition agree before, during or after the Rejection Action Community Forum that the issue raised in such Rejection Action Supported Petition has been resolved, such Rejection Action Supported Petition shall be deemed withdrawn and the Rejection Process with respect to such Rejection Action Supported Petition will be terminated. If all Rejection Action Supported Petitions relating to a Rejection Action are withdrawn, the Rejection Process will automatically be terminated. If a Rejection Process is terminated, the EC Chairs Council shall, within twentyfour (24) hours of the resolution of the issue raised in the Rejection Action Supported Petition, deliver to the Secretary a Rejection Process Termination Notice. For the avoidance of doubt, the Rejection Action Community Forum is not a decisional body and the foregoing resolution

- process shall be handled pursuant to the internal procedures of the Rejection Action Petitioning Decisional Participant and the Rejection Action Supporting Decisional Participant.
- (i) During the Rejection Action Community Forum Period, an additional one or two Rejection Action Community Forums may be held at the discretion of the Rejection Action Petitioning Decisional Participant and the Rejection Action Supporting Decisional Participant, or the EC Chairs Council.
- (j) ICANN will provide support services for the Rejection Action Community Forum and shall post on the Website a public record of the Rejection Action Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Rejection Action Community Forum.

Section 2.4. DECISION WHETHER TO REJECT A REJECTION ACTION

- (a) Following the expiration of the Rejection Action Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Rejection Action Community Forum Period (such period, the "Rejection Action Decision Period"), with respect to each Rejection Action Supported Petition, each Decisional Participant shall inform the EC Chairs Council in writing as to whether such Decisional Participant (A) supports such Rejection Action Supported Petition and has determined to reject the Rejection Action, (B) objects to such Rejection Action Supported Petition or (C) has determined to abstain from the matter (which shall not count as supporting or objecting to such Rejection Action Supported Petition). If a Decisional Participant does not inform the EC Chairs Council of any of the foregoing prior to expiration of the Rejection Action Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Chairs Council of its support or objection following the expiration of the Rejection Action Decision Period).
- (b) The EC Chairs Council, within twenty-four (24) hours of the expiration of the Rejection Action Decision Period, shall promptly deliver a written notice ("**EC Rejection Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this <u>Section 2.4(b)</u>, the EC has resolved to reject the Rejection Action if, taking into account any adjustments required by the GAC Carve-out where applicable:
 - (i) A Rejection Action Supported Petition relating to a Rejection Action other than a Standard Bylaw Amendment (A) does not include a Rejection Action GAC Consensus Statement, (B) is supported by four

- or more Decisional Participants, and (C) is objected to by no more than one Decisional Participant; or
- (ii) A Rejection Action Supported Petition relating to a Rejection Action other than a Standard Bylaw Amendment (A) includes a Rejection Action GAC Consensus Statement, (B) is supported by three or more Decisional Participants (excluding the GAC), and (C) is objected to by no more than one Decisional Participant (excluding the GAC); or
- (iii) that A Rejection Action Supported Petition relating to a Standard Bylaw Amendment that:
- (A) does not include a Rejection Action GAC Consensus Statement, is supported by three or more Decisional Participants (including the PDP Decisional Participant if the Rejection Action Supported Petition included a PDP Standard Bylaw Statement) and is objected to by no more than one Decisional Participant; or.
 - (B) includes a Rejection Action GAC Consensus Statement, is supported by three or more Decisional Participants (excluding the GAC but including the PDP Decisional Participant if the Rejection Action Supported Petition included a PDP Standard Bylaw Statement) and is objected to by no more than one Decisional Participant (excluding the GAC).
- (c) If no EC Rejection Action Supported Petition obtains the support required by Section 2.4(b)(i), (ii) or (iii) of this Annex D, as applicable, the Rejection Process will automatically be terminated and the EC Chairs Council shall, within twenty-four (24) hours of the expiration of the Rejection Action Decision Period, deliver to the Secretary a Rejection Process Termination Notice.
- (d) ICANN shall post to the Website (i) the EC Rejection Notice and the written explanation provided by the EC Chairs Council as to why the EC has chosen to reject the Rejection Action, or (ii) the Rejection Process Termination Notice, as applicable.

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| Delete | 28 |
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| Move To | 9 |
| <u>Table Insert</u> | 0 |
| Table Delete | 0 |
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