

Transition and Shared Services Agreement

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

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, with the Member as the single member of the Company, and the Member and the Company have executed a Limited Liability Company Agreement dated [LLC AGREEMENT DATE] ~~(the “LLC Agreement”);~~ and

WHEREAS, the Member and the Company desire that the Company take responsibility for all IETF Business (as defined below), and the Member and the Company desire to cooperate as necessary to effect this result; and

WHEREAS, the Member may provide certain ongoing services for the Company;

NOW, THEREFORE, the parties agree as follows:

1. **IETF Business.** For the purposes of this Agreement, “IETF Business” means the business and operations directly associated with the Internet Engineering Task Force (IETF), the Internet Architecture Board (IAB) and the Internet Research Task Force (IRTF).
2. ~~**Responsibility for IETF Business. Rights and Liabilities; Property.**~~
 - a. **Assumption of liabilities.** Company hereby irrevocably assumes all liabilities and obligations directly arising from or related to IETF Business, including without limitation all claims and causes of action, whether accruing before, on, or after the Effective Date, and including all claims for damages, restitution, and injunctive and other legal and equitable relief for past, present, and future infringement, misappropriation, violation, breach, or default.
 - b. **Assignment of rights.** Member hereby irrevocably assigns, transfers and conveys to Company, and its successors and assigns, all rights, privileges, and protections of any kind whatsoever directly arising from or related to IETF Business, including without limitation all claims and causes of action, whether accruing before, on, or after the Effective Date, and including all claims for damages, restitution, and injunctive and other legal and equitable relief for past, present, and future infringement, misappropriation, violation, breach, or default.
 - c. **Property.** Member hereby conveys to Company the property associated with IETF Business identified in *Exhibit A*.

d. Indemnification. Without limiting Member's right to indemnification under the LLC Agreement, Company agrees to defend and indemnify Member from and against any claims, suits, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) brought by third parties directly arising from or related to IETF Business, subject to the condition that the Member give prompt written notice of any such claim, allow the Company to control the defense and settlement of the claim, and cooperate with the Company, at the Company's reasonable request and expense, in defending or settling the claim. The obligations in this subparagraph d shall remain in effect from the Effective Date until the fifth anniversary of the date on which the Member ceases to be a member of the Company.

d.e. Documentation. Each party will promptly take all steps and actions, and provide cooperation and assistance to the other party and its successors, assigns, and legal representatives, as may be reasonably necessary to carry out the provisions of this Section 2 and give effect to the transactions contemplated by this Agreement, including the execution and delivery of any affidavits, declarations, oaths, exhibits, assignments, powers of attorney, or other documents. In the event that the parties mutually agree that a particular transaction is impossible or undesirable (e.g. because of consent requirements, acceleration or termination rights, or fee modifications or other economic consequences), then the parties will work in good faith to adopt an alternative arrangement that embodies the intent of this Agreement.

- i. **Contracts.** Without limiting the scope of Section 2(~~ed~~) above, Member will promptly assign to Company its rights and obligations under the agreements listed in *Exhibit B*, and will promptly assign any other agreements that are subsequently identified by Company.
- ii. **Other documents and information.** Without limiting the scope of Section 2(~~ed~~) above, Member will promptly deliver ~~historical~~the information and documents to be identified in ~~writing by the Company~~*Exhibit C*, and will promptly respond to reasonable requests from Company for additional information or documents.
- iii. **Intent to maintain liaison relationships.** Member has established liaison relationships with various third parties intended to facilitate the Internet standards setting process. Member and Company presume that Member will continue to maintain these liaison relationships. Without limiting the scope of Section 2(~~ed~~) above, relevant liaison agreements and similar documents should be assigned to Company only if and when both Company and Member agree that such assignment is in the best interests of the standards setting process.

e.f. IETF Trademarks, etc. Member and Company acknowledge that various trademarks and other intellectual property related to IETF Business are owned by a third party, the IETF Trust. The parties anticipate that each party will enter into a separate agreement with

the IETF Trust concerning use of these marks and this intellectual property, and that such agreements will supersede any transfer of license rights effectuated by this Agreement.

3. Transition Services.

- a. **Insurance.** Member will maintain insurance that covers the IETF Business in the same manner and to the same extent that Member has done so immediately prior to the Effective Date, unless and until the Company informs Member that it has procured replacement insurance coverage. Company will use reasonable efforts to promptly obtain such coverage.
 - b. **Professional services.**
 - i. **Tax and accounting.** In its discretion, Member will direct its tax and accounting advisors to provide advice to the Company unless and until Company directly engages its own advisors. Company will use reasonable efforts to promptly engage such advisors.
 - ii. **Legal.** Member (a) assigns all rights and obligations under existing engagement letters with Biddle Law PC and Thompson Hine LLP to the Company, (b) agrees that Biddle Law PC and Thompson Hine LLP will each have an attorney-client relationship only with the Company, and (c) waives any potential conflict of interest arising from this transition.
 - c. **Operational and administrative services.** Company will use reasonable efforts to promptly assume all operational and administrative functions associated with the IETF Business. Member will cooperate as reasonably requested by the Company to enable the transition of such functions from Member to Company. During the transition period, Member will promptly act on Company's reasonable requests that Member take certain administrative actions on behalf of Company.
 - d. **Cost.** Transition services provided by Member to Company as described in this Section 3 shall be at no cost to Company, except as otherwise mutually agreed.
 - e. **Timing.** The parties ~~will expect to~~ conclude the transition described in this Section 3 within a mutually agreed-upon period, not to exceed 12[6] months from~~of~~ the Effective Date. After this period, remaining services provided by Member to Company will be governed by Section 4, unless otherwise mutually agreed by the parties.
4. **Shared Services.** After the transition period described in Section 3, Company intends to operate fully independently from Member. However, in the event that this plan changes, Company may request that Member provide certain ongoing services to Company, and Member may agree, in its discretion. Any such services will be provided on a cost

reimbursement basis, *provided, however*, that such reimbursement will be capped at the market value of the services and facilities received by Company. Member shall not earn any profit or margin on services and facilities provided to the Company under this Agreement. Member and Company would mutually agree on a Statement of Work and other relevant details associated with any such services.

a. Service types. Shared services could include:

- i. Administrative services and facilities.** Member may provide administrative services and assistance to the Company, including, without limitation, finance, information technology, human resources, financial and personnel administration services, including accounting, bookkeeping, cash management, payroll, benefits and personnel administration, and other similar services, legal and general administrative services, secretarial assistance, office supplies, access to office equipment, and office space on an as needed basis.
- ii. Marketing services.** Member may provide marketing services for the Company and its programs on an as needed basis.
- iii. Programmatic services.** Member may provide the Company with administrative and monetary support related to the execution of the Company's programs, on an as needed basis.
- iv. Staff services.** Member may provide the Company with staff services in connection with the Company's operations on an as needed basis.
- v. Other support services.** Member may provide the Company such other support services as may be necessary from time to time in connection with the activities of the Company on an as needed basis.

b. Consideration and billing.

- i. Costs.** If Company engages Member to perform such services, Company agrees to reimburse Member for its allocable share of costs incurred by Member to provide services and support to the Company as described in Section 4 of this Agreement. Such costs shall be allocated based on a reasonable allocation methodology mutually agreed upon by Member and the Company and used consistently from year to year. Such methodology shall be modified and adjusted by mutual agreement where necessary or appropriate to reflect fairly and equitably the incidence of costs by Member.
- ii. Billing and payment.** If Company engages Member to perform such services, within a reasonable period of time after the close of each calendar quarter, Member shall deliver to the Company a statement setting forth the services rendered and the

facilities provided to Member pursuant to Section 4 of this Agreement during the immediately preceding calendar year and the allocable costs thereof. The Company shall remit payment to Member within 30 days of receipt of the statement. Member may, at its discretion, forego reimbursement of such expenses and contribute the services and facilities to the Company without charge to the extent such services and facilities are exclusively for purposes specified in 26 USC Section 501(c)(3) and in furtherance of both Member's and the Company's mission.

5. Miscellaneous.

- a. **Termination of shared services obligations.** Beginning one year after the Effective Date, Member may terminate its obligations under Section 4 of this Agreement upon 90 days written notice to the Company. In the event of such termination, Member shall submit a final statement to the Company within a reasonable period of time after the effective termination date, and the Company shall remit payment to Member within 30 days of receipt of such final statement. The Agreement shall otherwise survive such termination.
- b. **No assignment.** The rights and obligations described in Section 3 and Section 4 of this Agreement may not be assigned without the written consent of the other party.
- c. **Entire agreement; amendment.** This Agreement supersedes any and all oral or written agreements or understandings heretofore made and contains the entire agreement of the parties with respect to the subject matter hereof. No term or provision of this Agreement may be amended, waived, discharged or terminated orally, but only by an instrument in writing signed by both parties.
- d. **Independent contractor status.** Each party, including those it retains to perform the services under this Agreement, is an independent contractor in relation to the other party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties. Each party shall remain responsible, and shall indemnify and hold harmless the other party, for the withholding and payment of all applicable taxes, payroll levies or employee benefit requirements now existing or hereafter enacted and attributable to such party and its respective workers. Member represents that it retains wide discretion in the time, manner and details of performance of the services required hereunder, is not under the Company's direct supervision or control, has the skills and tools to perform the services required hereunder and holds itself out as an independent contractor.
- e. **Counterparts.** This Agreement may be executed in any number of counterparts, including counterparts transmitted by facsimile of this Agreement, each of which so executed is deemed to be an original, and such counterparts together, upon delivery, constitute one and the same instrument

- f. **Governing law.** This Agreement and all instruments delivered hereunder shall be governed by and construed in accordance with the laws of the state of Delaware.

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

PROPOSED FINAL 13-AUG-18~~DRAFT 26-JUNE-2018~~

[EXHIBITS OMITTED FROM REDLINE]