

**BYLAWS OF
SAN FRANCISCO METROPOLITAN INTERNET EXCHANGE**

**ARTICLE 1.
NAME AND OPERATION**

1.1 Name. The name of this corporation is San Francisco Metropolitan Internet Exchange ("Corporation"). The Corporation may file for and do business under an assumed business name.

1.2 Operation. The Corporation shall be operated as a public benefit nonprofit corporation under the provisions of the California Nonprofit Public Benefit Corporation Law.

**ARTICLE 2.
OFFICES**

The principal office of the Corporation shall be located at its principal place of business or such other place as the Board of Directors of the Corporation ("Board") may designate. The Corporation may have such other offices, either within or without the State of California, as the Board may designate or as the business of the Corporation may require from time to time.

**ARTICLE 3.
MEMBERSHIP**

3.1 Members.

The Corporation shall initially have one class of members. Additional classes of members, the manner of selection or appointment of each class of members, and the qualifications and rights of each class of members may be established by amendment to these Bylaws.

3.2 Qualifications for Membership.

In order to qualify for membership, a member shall be an operator of an Internet protocol network which has one or more direct connections to the Corporation's switches. A member may be selected or appointed to membership by the Board. Membership may have such other qualifications as the Board may prescribe by amendment to these Bylaws.

3.3 Voting Rights.

3.3.1 Each member entitled to vote with respect to the subject matter of an issue submitted to the members shall be entitled to one (1) vote upon each such issue.

3.3.2 Each member entitled to one (1) vote at an election of Directors may cast one (1) vote for as many persons as there are Directors to be elected and for whose election such member has a right to vote. Cumulative voting will not be allowed.

3.4 Annual Meeting.

The annual meeting of the members shall be held on the second Thursday of May each year, at a time set by the Directors, for the purpose of electing Directors and transacting such other business as may properly come before the meeting. If the day fixed for the annual meeting is a legal holiday at the place of the meeting, the meeting shall be held on the next succeeding business day. If the annual meeting is not held on the date designated in these Bylaws, the Board shall cause the meeting to be held as soon thereafter or preceding as may be convenient.

3.5 Special Meetings.

The President, the Board, or not less than twenty-five (25%) of the members entitled to vote at such meeting, may call special meetings of the members for any purpose.

3.6 Place of Meetings.

All meetings of members shall be held at 365 Main Street, San Francisco, CA, 94105, or at such other place within or without the State of California designated by the President, the Board, by the members entitled to call a meeting of members.

3.7 Notice of Meetings.

The President, the Secretary, or the Board shall cause to be delivered to each member entitled to notice of or to vote at the meeting, either personally or by electronic or first class or registered mail, not less than seven nor more than sixty days before the meeting, written notice stating the place, date, and time of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Notice will be provided electronically if the member has provided a valid email address to the Corporation; if not, notice will be delivered personally or by mail. Upon the written request of the members entitled to call a special meeting (including electronic written request) it shall be the duty of the Secretary to give notice of a special meeting of members to be held at such date, time, and place as the Secretary may fix, and if the Secretary neglects or refuses to issue such notice within thirty days after written demand for the meeting is delivered to the Secretary, the member or members making the request may do so and may fix the date, time, and place for such meeting. If such notice is mailed, it shall be deemed delivered when deposited in the official government mail properly addressed to the member at his or her address as it appears on the records of the Corporation with postage thereon prepaid.

3.8 Waiver of Notice.

Whenever any notice is required to be given to any member under the provisions of these Bylaws, the Articles of Incorporation, or applicable California law, a waiver thereof in writing, signed by the member entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

3.9 Quorum.

Ten percent (10%) of the members of the Corporation entitled to vote, represented in person (or by proxy), shall constitute a quorum at a meeting of the members. If less than a quorum of the members entitled to vote is represented at a meeting, a majority of the members so represented may adjourn the meeting from time to time without further notice.

3.10 Manner of Acting.

The affirmative vote of a majority of the votes entitled to be cast by the members represented in person (or by proxy) at a meeting at which a quorum is present shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by applicable California law, the Articles of Incorporation, or these Bylaws.

3.11 Proxies.

A member may vote by proxy executed in writing by the member or by his or her attorney-in-fact. Such proxy shall be filed with the Secretary of the Corporation before or at the time of the meeting. A proxy shall become invalid eleven months after the date of its execution unless otherwise provided in the proxy. A proxy with respect to a specific meeting shall entitle the holder thereof to vote at any reconvened meeting following adjournment of such meeting but shall not be valid after the final adjournment thereof.

3.12 Action by Members Without a Meeting.

Any action that could be taken at a meeting of the members may be taken without a meeting if a written consent setting forth the action so taken is signed by a majority of all members entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the members entitled to vote on the action, and delivered to the Corporation for inclusion in the minutes or filing with the corporate records. Action taken under this section is effective when the last member signs the consent, unless the consent specifies an earlier or later effective date.

3.13 Meetings by Telephone.

Members of the Corporation may participate in a meeting of members by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

3.14 Action by Written Ballot.

Any action that may be taken at any annual or special meeting of the members may be taken without a meeting if the Corporation delivers a written ballot to every member entitled to vote on the matter, electronically or otherwise. A written ballot shall set forth each proposed action and provide an opportunity for the member to vote for or against each proposed action. Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds any quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements, state the percentage of approvals necessary to approve each matter other than election of Directors, and specify a reasonable time by which a ballot must be received by the Corporation in order to be counted.

ARTICLE 4.
BOARD OF DIRECTORS

4.1 General Powers.

The affairs of the Corporation shall be managed by a Board of Directors.

4.2 Number.

The Board shall consist of not less than three nor more than seven Directors, the specific number within such range to be set by resolution of the Board. The number of Directors may be changed from time to time by amendment to these Bylaws, provided that no decrease in the number shall have the effect of shortening the term of any incumbent Director.

4.3 Qualifications.

A Director must be elected by a majority vote of all members entitled to vote. Directors may have such other qualifications as the Board may prescribe by amendment to these Bylaws.

4.4 Election of Directors.

4.4.1 Initial Directors.

The initial Directors named in the Articles of Incorporation shall serve until the second annual meeting of members.

4.4.2 Successor Directors.

At the expiration of each of the directors' terms, directors other than the initial Directors shall be elected at the annual meeting of members, or by mail in such manner as the Board of Directors shall determine. Unless a director dies, resigns, or is removed, she or he shall serve a four-year term.

4.5 Annual Meeting.

The annual meeting of the Board shall be held within thirty days following the annual meeting of members for the purposes of electing officers and transacting such business as may properly come before the meeting.

4.6 Regular Meetings.

By resolution, the Board may specify the date, time, and place for the holding of regular meetings without other notice than such resolution.

4.7 Special Meetings.

Special meetings of the Board or any committee designated and appointed by the Board may be called by or at the written request of the President or any two Directors or, in the case of a committee meeting, by the chairman of the committee. The person or persons authorized to

call special meetings may fix any place either within or without the State of California as the place for holding any special Board or committee meeting called by them.

4.8 Electronic or Telephonic Participation at Meetings.

Directors may participate in an annual, regular, or special meeting by, or conduct the meeting through, use of any means of communication by which all Directors participating may either simultaneously hear or read each other's communications during the meeting, or all communications during the meeting are immediately transmitted to each participating Director, and each participating Director is able to immediately send messages to all other participating Directors. If a meeting is conducted through the use of any means described in this section, all participating Directors shall be informed that a meeting is taking place at which official business may be transacted, and a Director participating in the meeting by this means is deemed to be present at the meeting.

4.9 Place of Meetings.

All meetings shall be held at the principal office of the Corporation or at such other place within or without the State of California designated by the Board, by any persons entitled to call a meeting, or by a waiver of notice signed by all Directors.

4.10 Notice of Special Meetings.

Notice of a special Board meeting shall be given to a Director personally or in writing (including electronically) not less than two days before the meeting. Notices in writing may be delivered or mailed to the Director at his or her physical or email address shown on the records of the Corporation. Neither the business to be transacted at, nor the purpose of any special meeting, need be specified in the notice of such meeting. If notice is delivered by U.S. mail, the notice shall be deemed effective when deposited in the official government mail properly addressed with postage thereon prepaid. If notice is given electronically, the notice shall be deemed effective when sent.

4.11 Waiver of Notice.

4.11.1 In Writing.

Whenever any notice is required to be given to any Director under the provisions of these Bylaws, the Articles of Incorporation, or applicable California law, a Director may at any time waive notice of a meeting. Except as provided in subsection 4.12.2, the waiver must be in writing, must be signed by the Director entitled to the notice, must specify the meeting for which notice is waived, and must be filed with the minutes or the corporate records.

4.11.2 By Attendance.

The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

4.12 Quorum.

A majority of the number of Directors in office shall constitute a quorum for the transaction of business at any Board meeting. If a quorum is not present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

4.13 Manner of Acting.

Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board of directors, unless the articles of incorporation or bylaws of this corporation, or provisions of the California Nonprofit Public Benefit Corporation Law, particularly those provisions relating to appointment of committees (Section 5212), approval of contracts or transactions in which a director has a material financial interest (Section 5233), and indemnification of directors (Section 5238e), require a greater percentage or different voting rules for approval of a matter by the board.

4.14 Presumption of Assent.

A Director of the Corporation present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless at the beginning of the meeting or promptly on the Director's arrival, the Director objects to holding the meeting or transacting the business at the meeting and the Director's dissent or abstention from the action taken is entered in the minutes of the meeting, or the Director delivers written notice of dissent or abstention to the presiding officer of the meeting before its adjournment or to the Corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a Director who votes in favor of the action taken.

4.15 Action by Board Without a Meeting.

Any action required or permitted to be taken at a meeting of the Board of Directors may be accomplished without a meeting or a vote if one or more written consents setting forth the action to be taken shall be signed by all the Directors and delivered to the Corporation for inclusion in the Corporation's records as if it were the minutes of a meeting of the Board of Directors. Action taken by the unanimous written consent is effective when the last Director signs the consent, unless the consent specifies a later effective date. A Director may sign such action electronically.

4.16 Resignation.

A Director may resign at any time by delivering written notice to the Board, its presiding officer, the President, or the Secretary. Once delivered, a notice of resignation is irrevocable unless revocation is permitted by the Board.

4.17 Removal.

At a meeting of members called expressly for that purpose, one or more Directors (including the entire Board) may be removed from office, with or without cause, if the number of votes cast to remove a Director would be sufficient to elect the Director at a meeting held to elect Directors.

4.18 Vacancies.

A vacancy on the Board may be filled by the affirmative vote of either a majority of the members at a meeting called for that purpose or by the remaining Directors though less than a quorum of the Board. A Director elected to fill a vacancy shall serve for the unexpired term of his or her predecessor in office.

4.19 Compensation and Restriction on Interested Directors.

The Directors shall receive no compensation for their service as Directors but may receive reimbursement for expenditures incurred on behalf of the Corporation. Directors may be compensated for rendering services to the corporation in a capacity other than Director as long as such other compensation is reasonable, not above fair market value, and is allowable under the Corporation's conflict of interest policy.

Notwithstanding any other provision of these bylaws, not more than forty-nine percent (49%) of the persons serving on the board may be interested persons. For purposes of this Section, "interested persons" means either:

(a) Any person currently being compensated by the corporation for services rendered it within the previous twelve (12) months, whether as a full- or part-time officer or other employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director as director; or

(b) 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 any such person.

4.20 Board Committees.

The Board may create one or more committees of the Board, which may exercise the authority of the Board. The Board shall appoint members of the Board to serve on such committees or designate the method of selecting committee members. Each such committee shall consist of two or more Directors, who serve at the pleasure of the Board. Each committee of the Board may exercise the authority of the Board, except that a committee of the Board may not authorize distributions, approve or recommend to members dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the Corporation's assets, elect or remove Directors or fill vacancies on the Board or on any of its committees, or adopt, amend, or repeal the Articles of Incorporation or Bylaws. The creation of a Board committee and appointment of Directors to the committee or designation of a method of selecting committee members must be approved by the greater of a majority of all Directors in office when the action is taken, or the number of Directors required to take action under Section 4.13. The sections of these Bylaws governing meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the Board, apply to Board committees and their members as well.

4.21 Advisory Committees.

The Board of Directors may create an advisory committee or committees. Members of the advisory committee will be appointed by a majority vote of the Board and need not be members of the Board or an employee or designee of a member, but at least one Director must serve

on an advisory committee. Advisory committees will have no power to act on behalf of, or to exercise the authority of, the Board, but may make recommendations to the Board.

ARTICLE 5. OFFICERS

5.1 Officers.

The officers of the Corporation shall be a President, a Secretary, and a Treasurer, each of whom shall be appointed by the Board. Other officers and assistant officers may be appointed by the Board, such officers and assistant officers to hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as may be provided by resolution of the Board. Any officer may be assigned by the Board any additional title that the Board deems appropriate. Any number of offices may be held by the same person except that neither the secretary nor the treasurer may serve as the president.

5.2 Appointment and Term of Office.

The officers of the Corporation shall be appointed each year by the Board at the annual meeting of the Board. Unless an officer dies, resigns, or is removed from office, he or she shall hold office until the annual meeting the year his or her term expires, or until his or her successor is elected, whichever is later.

5.3 Resignation.

Any officer may resign at any time by delivering written notice to the President, the Secretary, or the Board. Once delivered, a notice of resignation is irrevocable unless revocation is permitted by the Board.

5.4 Removal.

Any officer or agent elected or appointed by the Board may be removed from office by a majority of the Board at any time with or without cause.

5.5 Vacancies.

A vacancy in any office created by the death, resignation, removal, disqualification, creation of a new office, or any other cause may be filled by the Board for the unexpired portion of the term or for a new term established by the Board.

5.6 President.

The President shall be the chief executive officer of the Corporation, and, subject to the Board's control, shall supervise and control all of the assets, business, and affairs of the Corporation. The President shall preside over meetings of the members and the Board. The President may sign deeds, mortgages, bonds, contracts, or other instruments, except when the signing and execution thereof have been expressly delegated by the Board or by these Bylaws to some other officer or agent of the Corporation or are required by law to be otherwise signed or executed by some other officer or in some other manner. In general, the President shall perform all

duties incident to the office of President and such other duties as are assigned to him or her by the Board from time to time.

5.7 Secretary.

The Secretary shall: (a) keep the minutes of meetings of the members and the Board, and minutes which may be maintained by committees of the Board; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records of the Corporation; (d) keep records of the post office and electronic mail address and class, if applicable, of each member and Director and of the name and post office and electronic mail address of each officer; (e) sign with the President, or other officer authorized by the President or the Board, deeds, mortgages, bonds, contracts, or other instruments; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or the Board.

5.8 Treasurer.

The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Corporation; (b) receive and give receipts for moneys due and payable to the Corporation from any source whatsoever, and deposit all such moneys in the name of the Corporation in banks, trust companies or other depositories selected in accordance with the provisions of these Bylaws; and (c) in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the President or the Board.

**ARTICLE 6.
LIABILITY AND INDEMNIFICATION**

6.1 Liability. The Directors shall not be personally liable for the debts, liabilities, or other obligations of the corporation. To the fullest extent not prohibited by applicable law, a qualified Director or uncompensated officer of the Corporation acting within the scope of his or her responsibilities shall not be liable to the Corporation for conduct as a Director or officer.

6.2 Indemnification. To the extent that a person who is, or was, a director, officer, employee, or other agent of this corporation has been successful on the merits in defense of any civil, criminal, administrative, or investigative proceeding brought to procure a judgment against such person by reason of the fact that he or she is, or was, an agent of the corporation, or has been successful in defense of any claim, issue, or matter, therein, such person shall be indemnified against expenses actually and reasonably incurred by the person in connection with such proceeding. If such person either settles any such claim or sustains a judgment against him or her, then indemnification against expenses, judgments, fines, settlements, and other amounts reasonably incurred in connection with such proceedings shall be provided by this Corporation but only to the extent allowed by, and in accordance with the requirements of, Section 5238 of the California Nonprofit Public Benefit Corporation Law.

**ARTICLE 7.
ADMINISTRATIVE PROVISIONS**

7.1 Books and Records.

A. The Corporation shall keep as permanent records minutes of all meetings of its members and Board of Directors, a record of all corporate action taken by the members or Directors without a meeting, and a record of all actions taken by committees of the Board of Directors in place of the Board of Directors on behalf of the Corporation.

B. The Corporation shall maintain appropriate accounting records.

C. The Corporation shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to vote.

D. The Corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

E. The Corporation shall keep a copy of the following records for inspection: (i) Articles of Incorporation or Restated Articles of Incorporation and all amendments to them currently in effect; (ii) Bylaws or Restated Bylaws and all amendments to them currently in effect; (iii) resolutions adopted by its Board of Directors relating to the characteristics, qualifications, rights, limitations and obligations of members of any class or category of members; (iv) the minutes of all meetings of members and records of all actions approved by the members for the past three years; (v) written communications regarding general membership matters made to members within the past three years; (vi) a list of the names and business or home addresses of its current Directors and officers; (vii) the last three annual financial statements, if any; (viii) the last three accountant's reports if annual financial statements are reported upon by a public accountant; and (ix) the most recent annual report delivered to the Secretary of State.

7.2 Accounting Year.

The accounting year of the Corporation shall be the twelve months ending December 31.

**ARTICLE 8.
FINANCIAL AND OPERATIONAL MATTERS**

8.1 Powers of the Board of Directors.

The Board shall have the authority to incur and pay financial obligations on behalf of the Corporation for the following matters without the vote of the members: insurance, rent, utilities, equipment acquisitions, cabling, maintenance and repair, accounting and legal services, and corporate governance matters; and for the Corporation's indemnification and expense reimbursement obligations as stated in the Articles of Incorporation. The Board shall have the authority to adopt rules and regulations concerning the use of the Corporation's services and facilities by the members.

8.2 Dues.

Dues, if any, must be approved by a majority vote of the Board of Directors.

8.3 Termination of Membership.

A member's membership in the Corporation and connections to the Corporation's facilities may be terminated by the Board if the member fails to cure minor infractions of the Corporation's rules and regulations (as defined therein) within ten days' written notice to the member, and upon a unanimous vote of the Board. A member's membership in the Corporation and connections to the Corporation's facilities may be terminated immediately upon a unanimous vote of the Board for major infractions of the Corporation's rules and regulations (as defined therein), or pursuant to any lawful order of any court or governmental agency. If a Director is affiliated with a member whose membership is under consideration by the Board, then the Director shall abstain from voting and the number of votes required to terminate such membership shall be reduced accordingly.

8.4 Privacy.

The Board may gather statistics or conduct any other analysis of the Corporation's facilities for planning purposes, but the Board may only publish an aggregate graph of all traffic over the Corporation's facilities. The Board shall keep confidential all per-port (per-member) usage statistics. Members may gather statistics from their router's interface, but will not have access to the Corporation's switch or interfaces. The Board may conduct packet sniffing or monitoring activities only for maintenance or security matters, or in response to any lawful order or request from any court or governmental agency.

ARTICLE 9. AMENDMENTS

Subject to any provision of law applicable to the amendment of bylaws of public benefit nonprofit corporations, these bylaws, or any of them, may be altered, amended, or repealed and new bylaws adopted as follows:

(a) Subject to the power of members, if any, to change or repeal these bylaws under Section 5150 of the Corporations Code, by approval of the board of directors unless the bylaw amendment would materially and adversely affect the rights of members, if any, as to voting or transfer, provided, however, if this corporation has admitted any members, then a bylaw specifying or changing the fixed number of directors of the corporation, the maximum or minimum number of directors, or changing from a fixed to variable board or vice versa, may not be adopted, amended, or repealed except as provided in subparagraph (b) of this Section; or

(b) By approval of the members, if any, of this corporation.

These Bylaws were adopted by the Board of Directors on

Secretary