RE: Request to change Article 10 and Annex B of the ICANN Bylaws
TO: Maarten Botterman, Chair of the ICANN Board of Directors
CC: Patricio Poblete, Nigel Roberts, Göran Marby
Annex: ccNSO proposed changes to Article 10 and Annex B of the ICANN Bylaws

Dear Maarten,

The ccNSO Council is now requesting the amendment of Article 10 and Annex B of the ICANN Bylaws to enable interested IDN ccTLD Managers to become members of the ccNSO. This change request is the result of an extensive consultation with the ccNSO members.

In February 2020, the ccNSO Council submitted a change request to the ICANN Board: https://ccnso.icann.org/sites/default/files/field-attached/sataki-to-botterman-07feb20-en.pdf Since then, the proposals for the Bylaw changes were further refined. The latest version is included in the Annex to this letter.

On behalf of the ccNSO Council.

Sincerely,

Alejandra Reynoso
Chair of the ccNSO Council

ANNEX

Article 10

Section 10.4. MEMBERSHIP

(a) The ccNSO shall have a membership consisting of ccTLD managers. Any ccTLD manager that meets the membership qualifications stated in Section 10.4(b) shall be entitled to be members of the ccNSO. For purposes of this Article 10, a "ccTLD manager" is the organization or entity responsible for managing a ccTLD according to and under the current heading "Delegation Record" in the Root Zone Database, or under any later modification, for that country-code top-level domain.

For purposes of this Article, and Annexes B and C of these Bylaws, "Territory" is defined to be the country, dependency or other area of particular geopolitical interest listed on the 'International Standard ISO 3166-1, Codes for the representation of names of countries and their subdivisions – Part 1: Country Codes', or, in some exceptional cases listed on the reserved ISO 3166-1 code elements.

(b) Any ccTLD manager may become a ccNSO member by submitting an application to a person designated by the ccNSO Council to receive applications. The application shall be in writing in a form designated by the ccNSO Council. The application shall include the ccTLD manager's recognition of the role of the ccNSO within the ICANN structure as well as the ccTLD manager's agreement, for the duration of its membership in the ccNSO, (i) to adhere to rules of the ccNSO, including membership rules, (ii) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by Section 10.4(j) and Section 10.4(k), and (ii) to pay ccNSO membership fees established by the ccNSO Council under Section 10.7(c). A ccNSO member may resign from membership at any time by giving written notice to a person designated by the ccNSO Council to receive notices of resignation. Upon resignation the ccTLD manager ceases to agree to (A) adhere to rules of the ccNSO, including membership rules, (B) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by Section 10.4(j) and Section 10.4(k), and (C) to pay ccNSO membership fees established by the ccNSO Council under Section 10.7(c). In the absence of designation by the ccNSO Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN Secretary, who shall notify the ccNSO Council of receipt of any such applications and notices.

(c) Neither membership in the ccNSO nor membership in any Regional Organization described in Section 10.5 shall be a condition for access to or registration in the IANA database. Any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services is not in any way contingent upon membership in the ccNSO.

(d) The Geographic Regions of ccTLDs shall be as described in Section 7.5. For purposes of this Article 10, managers of ccTLDs within a Geographic Region that are members of the ccNSO are referred to as ccNSO members "within" the Geographic Region, regardless of the physical location of the ccTLD manager. In cases where the Geographic Region of

a ccNSO member is unclear, the ccTLD member should self-select according to procedures adopted by the ccNSO Council.

(e) Designation of Representative

(i) Each ccTLD manager may designate in writing a person, organization, or entity to represent the ccTLD manager in matters relating to the ccNSO ("Representative"). In the absence of such a designation, the person, organization, or entity listed as the administrative contact in the IANA database shall be deemed to be the designate of the ccTLD manager by whom the ccNSO member shall be represented.

(ii) For any Territory for which there is a single ccTLD manager that is a ccNSO member, the Representative selected by that manager in accordance with Section 10.4(e) shall be the Territory's emissary ("Emissary") for the purpose of voting in the specific cases enumerated in this Article, Annex B, or Annex C of these Bylaws. In the event two or more ccTLD managers from the same Territory are ccNSO members, those ccTLD managers are to appoint one of the Representatives from among those ccNSO members to serve as the Emissary to vote on behalf of the ccNSO members from that Territory.

(iii) During any period in which an Emissary is not appointed, the ccTLD manager that has been the member of the ccNSO for the longest period is deemed to be the Emissary for that Territory.

(iv) Each Emissary, regardless of the number of ccTLD managers within the relevant Territory, is entitled to cast a single vote in any round of any voting process defined within this Article, Annex B or Annex C that is reserved for Emissary voting. The ccTLD managers within each Territory may define the process to determine how their respective Emissary's vote is determined.

(f) There shall be an annual meeting of ccNSO members, which shall be coordinated by the ccNSO Council. Annual meetings should be open for all to attend, and a reasonable opportunity shall be provided for ccTLD managers that are not members of the ccNSO as well as other non-members of the ccNSO to address the meeting. To the extent practicable, annual meetings of the ccNSO members shall be held in person and should be held in conjunction with meetings of the Board, or of one or more of ICANN's other Supporting Organizations.

(g) The ccNSO Council members selected by the ccNSO members from each Geographic Region (see Section 10.3(a)(i)) shall be selected through nomination, and if necessary election, by the ccNSO members within that Geographic Region. At least 90 days before the end of the regular term of any ccNSO-member-selected member of the ccNSO Council, or upon the occurrence of a vacancy in the seat of such a ccNSO Council member, the ccNSO Council shall establish a nomination and election schedule, which shall be sent to all ccNSO members within the Geographic Region and posted on the Website.

(h) Any ccNSO member may nominate an individual to serve as a ccNSO Council member representing the ccNSO member's Geographic Region. Nominations must be seconded by another ccNSO member from a different Territory, from the same Geographic Region. By

accepting their nomination, individuals nominated to the ccNSO Council agree to support the policies committed to by ccNSO members.

(i) If at the close of nominations there are no more candidates nominated (with seconds and acceptances) in a particular Geographic Region than there are seats on the ccNSO Council available for that Geographic Region, then the nominated candidates shall be selected to serve on the ccNSO Council. Otherwise, an election by written ballot (which may be by electronic means) shall be held to select the ccNSO Council members from among those nominated (with seconds and acceptances), with ccNSO members from the Geographic Region being entitled to vote in the election through their Emissaries. In such an election, a majority of the Emissaries entitled to vote in the Geographic Region shall constitute a quorum, and the selected candidate must receive a plurality of the votes cast by the Emissaries within the Geographic Region. The ccNSO Council Chair shall provide the ICANN Secretary prompt written notice of the selection of ccNSO Council members under this paragraph.

(j) Subject to Section 10.4(k), ICANN policies shall apply to ccNSO members by virtue of their membership to the extent, and only to the extent, that the policies (i) only address issues that are within scope of the ccNSO according to Section 10.6(a) and Annex C; (ii) have been developed through the ccPDP as described in Section 10.6, and (iii) have been recommended as such by the ccNSO to the Board, and (iv) are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN in its activities concerning ccTLDs.

(k) A ccNSO member shall not be bound if it provides a declaration to the ccNSO Council stating that (i) implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in Section 10.4(j)), and (ii) failure to implement the policy would not impair DNS operations or interoperability, giving detailed reasons supporting its statements. After investigation, the ccNSO Council will provide a response to the ccNSO member's declaration. If there is a ccNSO Council consensus disagreeing with the declaration, which may be demonstrated by a vote of 14 or more members of the ccNSO Council, the response shall state the ccNSO Council's disagreement with the declaration and the reasons for disagreement. Otherwise, the response shall state the ccNSO Council's agreement with the declaration. If the ccNSO Council disagrees, the ccNSO Council shall review the situation after a six-month period. At the end of that period, the ccNSO Council shall make findings as to (A) whether the ccNSO members' implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in Section 10.4(j)) and (B) whether failure to implement the policy would impair DNS operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO Council.

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Annex B: ccNSO Policy-Development Process (ccPDP)

The following process shall govern the ccNSO policy-development process ("**PDP**").

1. Request for an Issue Report

An Issue Report may be requested by any of the following:

a. *Council.* The ccNSO Council (in this Annex B, the "**Council**") may call for the creation of an Issue Report by documentation of support from at least seven of the members of the Council present at any meeting or voting by electronic means.

b. *Board.* The Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process.

c. *Regional Organization.* One or more of the Regional Organizations representing ccTLDs in the ICANN recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process.

d. *ICANN Supporting Organization or Advisory Committee.* An ICANN Supporting Organization or an ICANN Advisory Committee may call for creation of an Issue Report by requesting the Council to begin the policy-development process.

e. *Members of the ccNSO.* At least ten members of the ccNSO from at least ten different Territories may call for the creation of an Issue Report at any meeting or by electronic means.

Any request for an Issue Report must be in writing and must set out the issue upon which an Issue Report is requested in sufficient detail to enable the Issue Report to be prepared. It shall be open to the Council to request further information or undertake further research or investigation.

2. Creation of the Issue Report and Initiation Threshold

Within fourteen (14) days after the receipt of a request as outlined in Item 1 above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of ICANN (in which case the costs of the Issue Manager shall be borne by ICANN) or such other person or persons selected by the Council (in which case the ccNSO shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate), the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

a. The proposed issue raised for consideration;
b. The identity of the party submitting the issue;
c. How that party is affected by the issue;
d. Support for the issue to initiate the PDP;

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e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP for this issue (the "**Manager Recommendation**"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN General Counsel regarding whether the issue is properly within the scope of the ICANN policy process and within the scope of the ccNSO. In coming to his or her opinion, the General Counsel shall examine whether:

1) The issue is within the scope of the Mission;

2) Analysis of the relevant factors according to Section 10.6(b) and Annex C affirmatively demonstrates that the issue is within the scope of the ccNSO;

In the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

3) Implicates or affects an existing ICANN policy;

4) Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this Annex B) or to the scope of the ccNSO (Annex C) shall be within the scope of ICANN and the ccNSO.

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to Section 10.6 and Annex C a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO shall inform the Issue Manager accordingly. General Counsel and the ccNSO Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside Scope of the ccNSO then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO shall inform General Counsel and the Issue Manager accordingly. The Issue Manager shall then proceed with a recommendation whether or not the Council should move to initiate the PDP including both the opinion and analysis of General Counsel and Council in the Issues Report.

f. In the event that the Manager Recommendation is in favor of initiating the PDP, a proposed time line for conducting each of the stages of PDP outlined herein ("**PDP Time Line**").

g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP.

3. Initiation of PDP

The Council shall decide whether to initiate the PDP as follows:

    a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP. Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur by electronic means.

    b. A vote of ten or more Council members in favor of initiating the PDP shall be required to initiate the PDP provided that the Issue Report states that the issue is properly within the scope of the Mission and the ccNSO Scope.

4. Decision Whether to Appoint Task Force; Establishment of Time Line

At the meeting of the Council where the PDP has been initiated (or, where the Council employs a vote by electronic means, in that vote) pursuant to Item 3 above, the Council shall decide, by a majority vote of members present at the meeting (or voting by electronic means), whether or not to appoint a task force to address the issue. If the Council votes:

    a. In favor of convening a task force, it shall do so in accordance with Item 7 below.

    b. Against convening a task force, then it shall collect information on the policy issue in accordance with Item 8 below.

The Council shall also, by a majority vote of members present at the meeting or voting by electronic means, approve or amend and approve the PDP Time Line set out in the Issue Report.

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7. Task Forces

a. *Role of Task Force.* If a task force is created, its role shall be responsible for (i) gathering information documenting the positions of the ccNSO members within the Geographic Regions and other parties and groups; and (ii) otherwise obtaining relevant information that shall enable the Task Force Report to be as complete and informative as possible to facilitate the Council's meaningful and informed deliberation.

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that shall document the positions of various parties or groups as specifically and comprehensively as possible, thereby enabling the Council to have a meaningful and informed deliberation on the issue.

b. *Task Force Charter or Terms of Reference.* The Council, with the assistance of the Issue Manager, shall develop a charter or terms of reference for the task force (the "**Charter**") within the time designated in the PDP Time Line. Such Charter shall include:

    1. The issue to be addressed by the task force, as such issue was articulated for the vote before the Council that initiated the PDP;

2. The specific time line that the task force must adhere to, as set forth below, unless the Council determines that there is a compelling reason to extend the timeline; and

3. Any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice of outside advisors on the issue.

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of a majority of the Council members present at a meeting or voting by electronic means. The quorum requirements of Section 10.3(n) shall apply to Council actions under this Item 7(b).

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13. Members Vote

Following the submission of the Members Report and within the time designated by the PDP Time Line, the ccNSO members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and lodged through their designated Emissaries. The members' votes shall be lodged over such a period of time as designated in the PDP Time Line (at least 21 days long).

In the event that at least 50% of the Emissaries lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO members lodge votes in the first round of voting, the first round will not be employed and the results of a final, second round of voting, conducted after at least thirty-days notice to the ccNSO members, will be employed irrespective of whether at least 50% of the Emissaries lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favor of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO Recommendation.