

THIRD AMENDED AND RESTATED BYLAWS OF

[PREBID.ORG](http://PREBID.ORG), INC.

A DELAWARE NON-STOCK ORGANIZATION

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## DEFINITIONS

- “Agent” – Section 9.1(a)
- “all members of the Board” – Section 5.14
- “annual meeting” – Section 5.5
- “Board” – Section 2.1
- “Board Observer” – Section 4.8
- “Buyer Director” – Section 4.9
- “Buyer Director Date” – Section 4.9
- “by or on behalf of the corporation” – Section 9.3
- “Cause” – Section 4.13(c)
- “Certificate of Incorporation” – Section 5.2
- “Chairperson” – Section 7.6(a)
- “Committees” – Section 6.1
- “correct books and records” – Section 10.2
- “Delaware General Corporation Law” – Section 3.1
- “Directors” – Section 5.1
- “Dues Delinquent” – Section 4.15
- “Dues Notice” – Section 4.15
- “Expenses” – Section 9.1(c)
- “For Cause” – Section 5.4(b)
- “Intellectual Property Policy” – Section 3.2
- “interested Director” – Section 5.14
- “interested persons” – Section 5.15
- “Leader Director” – Section 4.6
- “Majority Vote” means an affirmative vote of more than 50% of the total number of all votes of those who are entitled to vote on a particular matter (telephonically, electronically, or physically, as permitted by applicable law).
- “material financial interest” – Section 8.1(c)
- “Member” – Section 4.1
- “Member Meeting” – Section 4.18
- “Membership Agreement” – Section 4.5
- “Membership Classes” – Section 4.3
- “Membership Tiers” – Section 4.2
- “Officers” – Section 7.1
- “Organization” – Section 1.1
- “person” –ARTICLE 12
- “PMC” – Section 6.5
- “PMC Chair” – Section 6.5
- “PMC Member” – Section 6.5
- “President” – Section 7.6(b)
- “Proceeding” Section 9.1(b)
- “Publisher Director” – Section 4.8
- “Publisher Director Date” – Section 4.8



“Secretary” – Section 7.6(b)

“Super-majority” means at least two-thirds (2/3) of all Directors then in office.

“Technology Director” – Section 4.7

“Third Party proceedings” – Section 9.3 “Treasurer” – Section 7.6(d)

**ARTICLE 1  
NAME**

**1.1 Corporate Name**

The name of this corporation is [Prebid.org](http://Prebid.org), Inc. (the “Organization”).

**ARTICLE 2  
OFFICES**

**2.1 Principal Office**

The principal office for the transaction of the business of the Organization may be established at any place or places by resolution of the Board of Directors of the Organization (the “Board”).

**2.2 Other Offices**

The Board may at any time establish branch or subordinate offices at any place or places where the Organization is qualified to transact business.

**ARTICLE 3  
PURPOSES AND INTELLECTUAL PROPERTY**

**3.1 General Purpose**

The Organization intends to be a non-stock corporation organized under Delaware General Corporation Law (“Delaware General Corporation Law”) for the purpose of developing, maintaining and stewarding the responsible integration layer between publishers and the programmatic ecosystem, including without limitation prebid.js. To assist in accomplishing this purpose, the Organization maintains an affiliated for-profit subsidiary [For Profit Entity].

**3.2 Intellectual Property Policy**

The Organization’s intellectual property policy (“Intellectual Property Policy”) will be displayed on the Organization’s web site. The Intellectual Property Policy will be as determined from time to time by vote of the Board in accordance with Section 5.9(c) these Bylaws. The Organization may seek protection and registration of its trademarks and logos, and associated domain names, in a manner consistent with these Bylaws. The trademarks and logos associated with the Organization shall be used in a manner consistent with the purposes of the Organization stated herein.

**ARTICLE 4  
MEMBERSHIPS**

**4.1 Members**

(a) The Organization shall have members (each a “Member”), classes of membership (“Membership Classes”) and tiers of membership (“Membership Tiers”) as defined by these Bylaws and the Membership Agreement. Applicants for membership shall be admitted to membership upon the Organization’s acceptance of the applicant’s Membership Agreement (or, in the case of Fellowship Members, acceptance of the Fellowship Member’s Fellowship Application) and payment of any annual fees (or in-kind services) established by the Board for that applicant’s Membership Class and Membership Tier. Admission of a Member to the Leader Member Class shall require approval of the Board. Admission of a Member to any other Membership Class requires approval of the President of the Organization or his/her designees. A Member and its affiliates shall together hold no more than one membership in the Organization (and shall be deemed one Member regardless of Membership Class or Membership Tier). The Organization will determine eligibility for Membership and may deny Membership at its discretion. The Organization’s decision on acceptance or denial of an application is final and is not subject to appeal or other recourse. An entity denied Membership is free to re-apply at a later date if its circumstances have changed. Except as expressly provided in and authorized by the applicable Membership Agreement, the Certificate of Incorporation, these Bylaws, or other provisions of applicable law, all Members shall have the rights and privileges consistent with their Membership Class and Membership Tier and be subject to the restrictions and conditions established from time to time by resolution of the Board. Notwithstanding any other provision of Delaware General Corporation Law, Members shall have only those express rights (if any) to appoint Directors as set forth in Section 4.6, Section 4.7, Section 4.8, and Section 4.9 of these Bylaws (as applicable).

(b) The Organization shall keep a membership roll containing the name, address, email address, Membership Class, and Membership Tier of each Member, the date upon which the applicant became a Member and ceased to be a Member (if applicable), and the name of one individual from each Member who shall serve as that Member’s primary contact with the Organization, receive all correspondence and information, distribute this information within his or her organization, and vote on all issues submitted to a vote of the Members that such Members are entitled to vote on. A Member’s transition to a Membership Class or Membership Tier shall be recorded in the membership roll. The membership roll will not be sold or otherwise made available to third parties.

(c) Any Member that offers exchange solutions to publishers must begin to pass its bids transparently to the Organization within six (6) months of the date on which the Member is accepted as a Member of the Organization and maintain such functionality for so long as it remains a Member. Failure of a Member to comply with this obligation is grounds for termination of its Membership pursuant to Section 4.13(c).

## **4.2 Membership Tiers**

The Organization shall have three (3) tiers of membership (“Membership Tiers”) for Technology Members. Membership Tiers are based on the Member’s gross annual revenue for

the year prior to their admission as a Member and, for each subsequent year, gross annual revenue for the year preceding their Membership renewal. Members applying for Tier 2 Membership with revenues less than \$10 million but \$5 million or greater will determine and report to Prebid with each renewal their gross annual revenue. Members applying for Tier 3 Membership with revenues less than \$5 million will determine and report to Prebid with each renewal their gross annual revenue. For purposes of these Bylaws, “gross annual revenue” is defined as the aggregate global revenue of the Member and its controlled or wholly-owned subsidiaries, for the Member’s most recently ended fiscal year, determined consistent with GAAP. The revenue requirements for each Membership Tier and associated membership fees will be set by the Board. Technology Members eligible for Tier 2 Membership may elect Tier 1 Membership subject to the payment of the applicable Tier 1 Membership fees. Technology Members eligible for Tier 3 Membership may elect Tier 1 or Tier 2 Membership subject to the payment of the applicable Tier 1 or Tier 2 Membership fees. Tier 2 Members and Tier 3 Members are not eligible to have their employees, officers, directors, or consultants stand for election as Directors or selection as chairpersons of a PMC unless such candidacy is approved by a Majority Vote of the Board.

#### **4.3 Classes of Membership**

The Organization shall have five (5) classes of membership (each, a “Membership Class”): (i) Leader Members, (ii) Technology Members, (iii) Publisher Members, (iv) Buyer Members, and (v) Fellowship Members.

#### **4.4 Self-Reporting**

Members are required to self-report their Membership Tier and Membership Class each year. The Organization reserves the right to review the accuracy of each Member’s self-reported Membership Tier and Membership Class and any Member will, upon request, provide the Organization with any further information requested in connection with such a review. If the Organization determines that a Member has incorrectly reported its Membership Tier or selected an inappropriate Membership Class, the Organization will reclassify such Member accordingly in the Organization’s absolute discretion and the Member will be invoiced for any difference in membership fees plus, to the fullest extent of the law, a late fee equal to 2% of the outstanding payment, compounded monthly (i.e., every 30 days), until paid in full, from the start of the Membership Year until paid in full. A “Membership Year” is a calendar year (January 1 to December 31). In instances where payment is 60 days late, the Membership is automatically suspended without notice until paid in full.

#### **4.5 Membership Agreement**

The Organization shall adopt and maintain one or more membership agreement(s) for the Membership Classes and Membership Tiers described above, (such agreement, a “Membership Agreement”). The Organization may modify the terms of the Membership Agreement(s) upon notice to Members of the affected Membership Tier and Membership Class and any such amendment will be effective (a) immediately for any new Members, and (b) at the next renewal for existing Members.

#### **4.6 Leader Members**

(a) Leader Members (i) shall have the right, as a membership group, to nominate nine (9) Directors to the Board as provided for in this Section 4.6 (each, a “Leader Director”), provided that each Leader Director must be an employee, officer, or director of a Leader Member, (ii) shall have (subject to the terms and conditions of the applicable Membership Agreement) a license to use a logo designated by the Organization to indicate its Leader Member status, (iii) shall have its name and logo appear prominently on the Organization’s web page as a Leader Member, and (iv) shall receive certain other promotional benefits as determined by the Board, which may include designation of keynote speakers or sponsorship opportunities at Organization-sponsored events. Unless otherwise required by Delaware General Corporation Law, the Leader Members shall not be entitled to vote, at Member Meetings or otherwise, except as expressly provided for in this Section 4.6, or share in the assets of the Organization in the event of its dissolution consistent with the Certificate of

Incorporation, provided that if a vote of the Members is required by Delaware General Corporation Law but not the Bylaws, only the Leader Members (and no other Members) shall be entitled to vote at the applicable meeting of the Members or otherwise.

(b) Each Leader Director shall be nominated by a Majority Vote of the Leader Members, shall require approval by a Majority Vote of the Board, and shall serve until resignation or removal in accordance with these Bylaws. No Leader Member shall have more than one representative serving as a Leader Director at any one time. If any Leader Director ceases to be an employee, officer, or director of the Leader Member that nominated such Leader Director, such Leader Director shall immediately resign and the applicable Leader Member shall nominate a replacement Leader Director who shall, by a Majority Vote of the Leader Members, be appointed as Leader Director.

#### **4.7 Technology Members**

(a) Technology Members (i) shall have the right, as a membership group, to nominate one (1) Director to serve on the Board as provided for in this Section 4.7 (the “Technology Director”), (ii) shall have (subject to the terms and conditions of the applicable Membership Agreement) a license to use a special logo designated by the Organization to indicate their Technology Member status, (iii) shall have their names and logos appear prominently on the Organization’s web page as Technology Members, and (iv) shall receive certain other promotional benefits as determined by the Board, which may include designation of keynote speakers or sponsorship opportunities at Organization-sponsored events.

(b) The Technology Members, by a Majority Vote of the Technology Members, shall be entitled to nominate a Technology Director, which Technology Director must be an employee, officer, or director of a Technology Member. The

Technology Director shall serve for a term of one (1) year and shall require approval by a Majority Vote of the Board. If any Member Meeting of Technology Members is delayed or not held in any year, the Technology Director then in office shall remain in office until a Member Meeting of the Technology Members is called for the purpose of nominating a replacement Technology Director. If the Technology Director ceases to be an employee, officer, or director of a Technology Member, such Technology Director shall immediately resign and the Technology Members shall, by a Majority Vote of the Technology Members, nominate a replacement Technology Director. Unless otherwise required by Delaware General Corporation Law, the Technology Members shall not be entitled to vote, at Member Meetings or otherwise, except as expressly provided for in this Section 4.7.

#### **4.8 Publisher Members**

(a) Publisher Members (i) shall have the right, as a membership group, to nominate one (1) Director to the Board as provided for in this Section 4.8 (a “Publisher Director”), (ii) shall have (subject to the terms and conditions of the applicable Membership Agreement) a license to use a special logo designated by the Organization to indicate their Publisher Member status, (iii) shall have their names and logos to appear prominently on the Organization’s web page as Publisher Members, and (iv) shall receive certain other promotion benefits as determined by the Board, which may include designation of keynote speakers or sponsorship opportunities at Organization-sponsored events.

(b) Commencing on the date on which the total number of Publisher Members is at least seven (7) (the “Publisher Director Date”), the Publisher Members, by a Majority Vote of the Publisher Members, shall be entitled to nominate a Publisher Director, which Publisher Director must be an employee, officer, or director of a Publisher Member. Each Publisher Director shall serve for a term of one (1) year and shall require approval of a Majority Vote of the Board. If any Member Meeting of Publisher Members is delayed or not held in any year, the Publisher Director then in office shall remain in office until a Member Meeting of the Publisher Members is called for the purpose of nominating a replacement Publisher Director. If the Publisher Director ceases to be an employee, officer, or director of a Publisher Member, such Publisher Director shall immediately resign and the Publisher Members shall, by a Majority Vote of the Publisher Members, nominate a replacement Publisher Director. Unless otherwise required by Delaware General Corporation Law, the Publisher Members shall not be entitled to vote, at Member Meetings or otherwise, except as expressly provided for in this Section 4.8, or share in the assets of the Organization in the event of its dissolution consistent with the Certificate of Incorporation.

#### **4.9 Buyer Members**

Buyer Members (i) shall have (subject to the terms and conditions of the applicable Membership Agreement) a license to use a special logo designated by the Organization to

indicate their Buyer Member status, (ii) shall have their names and logos to appear prominently on the Organization's web page as Buyer Members, and (iii) shall receive certain other promotion benefits as determined by the Board, which may include designation of keynote speakers or sponsorship opportunities at Organization-sponsored events.

#### **4.10 Fellowship Members**

Fellowship Members (i) shall have (subject to the terms and conditions of the applicable Membership Agreement) a license to use a special logo to indicate their Fellowship Member status and (ii) may have their names and logos appear on the Organization's web page as Fellowship Members. Fellowship Members are not eligible to have their employees, officers, directors, or consultants stand for election as Directors or selection as chairpersons of a PMC unless such candidacy is approved by a Majority Vote of the Board or based on Prebid approval. Fellowship Membership is only available for a non-renewable period. Thirty days before the expiration of the period, a Fellowship Member may apply at their respective Membership Class or notify Prebid they will not renew. Lack of notice within thirty days will be deemed notice of non-renewal. Fellowship Membership is offered at Prebid's sole discretion, will be reviewed periodically and may be revoked at any time.

#### **4.11 Membership Qualifications**

Any for-profit corporation, non-profit corporation, government organization, educational institution, or other entity or individual supportive of the Organization's purposes and not otherwise prohibited by treaty, law, or regulation from abiding by the terms of these Bylaws may apply to become a Member. All Members must enter into the Membership Agreement applicable to their Membership Class and Membership Tier (as described above).

#### **4.12 Term of Membership; Renewal of Membership**

The applicable Membership Agreement will set forth in detail the provisions with respect to the term, termination, and renewal of each Member's membership in the Organization. Except as may be otherwise set forth in the Membership Agreement(s), the initial term commitment of any Member shall be the remainder of the calendar year in which such Member was accepted as a Member. Provided the Member is in compliance with all membership obligations, membership will automatically renew annually upon payment of any annual fees (if any) established by the Board applicable to the Membership Class and Membership Tier.

#### **4.13 Withdrawal/Termination of Membership**

(a) Resignation and Withdrawal. Subject to the provisions of these Bylaws and Membership Agreement, including this Section 4.13, any Member may resign and withdraw from the Organization in a writing filed with the Secretary. The resignation of a Member shall not relieve the Member of any payment obligations the Member may have to the Organization as a result of obligations incurred or commitments made prior to resignation. A resigning Member shall not be entitled to receive any refund, pro rata or otherwise, of any membership fee, dues or assessments for the balance of the calendar year in which the resignation is effective. A Member who withdraws from the Organization as provided above shall no longer have the right to participate in any of the activities of the Organization or receive regular Organization communications.

(b) Acquisition, Merger, Agreement, or Reorganization. In the event of any acquisition, merger, agreement, reorganization or other similar event that results in any two (2) or more Members becoming Affiliates, (i) in the case of two or more Members of different Membership Tiers or Membership Classes all but the highest Membership Tier and Membership Class shall be deemed terminated, and (ii) in the case of two or more Members of the same Membership Tier and Membership Class, those Members may choose which Member(s) shall be terminated.

(c) Expulsion, Termination or Suspension. The membership of any Member may be terminated for "Cause" by a Majority Vote of the Board (excluding any Director that is a representative of the Member facing expulsion or suspension) after a hearing duly held in accordance with this Section 4.13. "Cause" by a Member means a material breach of such Member's Membership Agreement, the terms of these Bylaws, the 'Header Bidding Code of Conduct' and the 'Prebid.org Community Code Of Conduct' as published on the Organization website and as updated from time to time (together, the



“Codes of Conduct”), or any other publicly available policy or guidelines of the Organization adopted by the Board; provided, that such Member shall have an ability to cure such material breach within fourteen (14) days after written notice thereof to such Member, however, that no cure period shall be required for a breach which by its nature cannot be cured. A breach of the Codes of Conduct (“Code Violation”) is presumed to be a breach which by its nature cannot be cured and will not include the cure period unless expressly provided to the Member by the Board in writing. Any determination of a material breach, including a Code Violation, shall be made in the sole and absolute discretion of the Board (excluding any Director that is a representative of the Member facing expulsion or suspension). Following the determination by the Board that a Member should be terminated the following procedures shall apply:

- (i) A notice shall be sent by prepaid, first-class or certified mail to the most recent address of such Member as shown on the Organization’s records, setting forth the proposed termination and the reasons therefore. Such notice shall be sent at least fifteen (15) days before the proposed effective date of the termination.
- (ii) The Member being terminated shall be given an opportunity to be heard, either orally or in writing, at a hearing to be held no fewer than five (5) days before the effective date of the proposed termination. The hearing shall be held by the Board. The notice to the Member of its proposed termination shall state that such Member is entitled, upon request, to such hearing, shall state that a date, time and place of the hearing will be established upon receipt of request therefore, and shall state, in the absence of such request, the effective date of the proposed termination.
- (iii) In the event that a hearing is held, then following such hearing the Board (excluding any Director who is a representative of the Member facing expulsion or suspension) shall decide whether such Member should in fact be terminated, or sanctioned via written reprimand. The decision of the Board shall be final.
- (iv) Any action challenging a termination of membership of a Member, including any claim alleging defective notice, must be commenced within fifteen (15) days after the date of the termination.

(d) A Member whose membership is terminated as provided above shall no longer have the right to participate in any of the activities of the Organization or receive regular Organization communications. A Member terminated pursuant to Section 4.13(c)(c) may only be reinstated upon a Majority Vote of the Board and must wait at least 12 months from the effective date of their termination prior to re-applying to become a Member. Termination of the membership of any Member shall be recorded in the membership roll.

#### **4.14 Membership Expectations; Corporate Name and Logo**

(a) Members shall, and shall cause their respective affiliates to, support the standards and mission of the Organization. A detailed promotion plan will be agreed upon by the Board to cover each year of operation of the Organization. In general, Members and their respective affiliates are encouraged to express public support for the Organization. Promotional activities undertaken directly by the Organization will be funded by Member dues, but promotional activities undertaken directly by a Member will be funded solely by such Member. All Members shall, and shall cause their affiliates to,

comply at all times with applicable laws, regulations and policies relevant to the activities of the Organization.

(b) Each Member agrees and consents, subject to its internal approval process and its standard logo license terms, to the use of its corporate name and corporate logo in membership lists on the Organization website and membership lists in the Organization promotional materials, provided that each name listed shall be of equal prominence with all other names listed that are part of the same Membership Class and Membership Tier. The use of the corporate name or corporate logo of each Member will inure solely to the benefit of such Member. The Organization will use commercially reasonable efforts to adhere to any logo guidelines provided by a Member in writing.

(c) Each Member agrees and consents to adhere to the Codes of Conduct. Notice of revisions to either Code of Conduct will be provided to Members and noted on the Organization's website but regardless of notice, the published Codes of Conduct control.

#### **4.15 Fees, Dues and Assessment**

(a) All Leader Members, Technology Members, Publisher Members and Buyer Members shall pay a membership fee as set by the Board from time to time. There is no membership fee for Fellowship Members, but Fellowship Members must make a contribution to the Organization through in-kind services, determined on a case-by-case basis by the Organization. Membership fees and/or in-kind services shall be set forth in each Member's Membership Agreement (or, in the case of Fellowship Members, in their application to become a Fellowship Member), and may be modified by the Board in a reasonable and non-discriminatory manner at any time.

(b) If a Member transitions to a different Membership Class or Membership Tier that carries a higher fee than the Member's current Membership Class or Membership Tier, the Member shall pay the pro rata amount of the new fees, less any annual fees paid for the then current Membership Class and Membership Tier, as applicable. If the fee(s) for the new Membership Class or Membership Tier would be lower than the fee(s) already paid, there will be no refund of any amounts already paid.

(c) Each Member will be responsible for payment of annual dues, if any, as set by the Board, on at least a quarterly basis. The Secretary will send out invoices in compliance with reasonable invoicing requirements (e.g., receipt of invoices at least thirty (30) days prior to the due date). The Secretary will promptly send out a written notice ("Dues Notice") to any Member that has not paid its dues within ten (10) days after the date upon which such dues are required to be paid. Members may be removed for non-payment as set forth in this Section 4.15.

(d) The Board may levy assessments upon the Members; by providing written notice specifying the amount of the assessment, and the manner and period in which such assessment is to be paid, delivered thirty (30) days in advance of such assessment. A

Member may withdraw from the Organization in advance of the assessment date and not be obliged to pay the assessed amount to the Organization. Assessments may be levied differently upon different Membership Classes or Membership Tiers, and any Membership Class or Membership Tier may be exempted from assessments as the Board determines. Any assessments will be in addition to any dues established by the Board, unless the Board provides otherwise. The Board may terminate the membership of any Member not remitting the assessed amount within the period specified in the written assessment notice sent to the Members being assessed.

(e) In the event that a Member does not pay its membership dues and all compounded late fees within ninety (90) days of the invoice due date (“Dues Delinquent”), or does not provide its in-kind services (as applicable), the membership of such Member shall be subject to termination by the Board For Cause.

#### **4.16 Non-liability**

No Member shall be liable for the debts, liabilities, or obligations of the Organization merely by reason of being a Member.

#### **4.17 Assignment**

No Member may assign or otherwise transfer its membership to another party without the prior written consent of the Board pursuant to a Supermajority Vote of the Board. Any authorized assignment or transfer shall be effective only upon the agreement in writing by that Member’s intended assignee to (i) be bound by the terms and conditions of these Bylaws, the policies and guidelines of the Organization, the Membership Agreement and any other Organization agreements to which that Member is a party and (ii) assume all the obligations and liabilities of such Member under these Bylaws or such other agreements. Any attempted assignment or transfer contrary to the terms of this paragraph shall be null and void and have no effect. Upon the completion of any acquisition or merger involving a Member in which the Member is not the surviving entity, the Board, in its sole discretion and pursuant to a Supermajority Vote, may permit such Member’s membership to be transferred to the surviving entity.

#### **4.18 Member Meetings**

A meeting of the Members of a given Membership Class (“Member Meeting”) shall be held at a time and place fixed by the Members of such Membership Class for the purposes of, among other matters, if applicable, the nomination of the Director(s) for that Membership Class. A Member Meeting may be held by conference telephone or other communications equipment, as long as all Members participating in the meeting can communicate with one another and can be heard. A majority of the Members of the given Membership Class (but no fewer than two Members) shall constitute a quorum for the transaction of business. Decisions at a Member Meeting of a given Membership Class shall be made by a Majority Vote of Members of such Membership Class unless otherwise required by these Bylaws, the Certificate of Incorporation or the Delaware General Corporation Law. A majority of the Members present, whether or not constituting a quorum, may adjourn any Member Meeting to another time and place. Any action

taken by the Members of a given Membership Class during a Member Meeting, including the nomination of the Director(s), may be taken without holding a Member Meeting, and instead via unanimous written consent of such Members as set forth in these Bylaws.

## **ARTICLE 5 DIRECTORS**

### **5.1 Number and Appointment**

The authorized number of directors of the Organization (“Directors”) constituting the whole Board shall be the number of Directors as provided for in Article 4, which shall be not less three (3) or more than eighteen (18); the exact authorized number to be fixed, within these limits, by a Supermajority Vote of the Board. The power to nominate Directors will be exercised by Members as set forth in Article 4.

### **5.2 Corporate Powers Exercised by Board**

Subject to the provisions of the Certificate of Incorporation (as amended and/or restated from time to time, the “Certificate of Incorporation”), the Delaware General Corporation Law and any other applicable laws, the business and affairs of the Organization shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board. Without limiting the foregoing, the Board shall be empowered to adopt rules and regulations governing the action of the Board and the Organization generally, and to allocate, distribute and/or pay out the moneys received by the Organization from time-to-time. The Board may delegate the management of the activities of the Organization to any person or persons, management company or committee however composed, including, without limitation, to a Committee as provided for in Article 6 comprised of individuals elected by the Board, provided that the activities and affairs of the Organization shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board. No action may be taken by the Board that is outside the Organization’s stated purpose as set forth in Section 3.1.

### **5.3 Terms; Election of Successors**

Unless earlier removed from office pursuant to these Bylaws, all Directors shall hold office until their respective successors are appointed. There shall be no prohibition on re-election or re-designation of any Director following the completion of that Director’s term of office. Each Director shall serve the term specified herein and until his or her successor is appointed, or until his or her earlier death, resignation, or removal, unless an elected Director is replacing an existing Director, where the newly elected Director shall serve out the remaining term of the Director being replaced.

### **5.4 Vacancies**

(a) Events Causing Vacancy. A vacancy or vacancies on the Board shall be deemed to exist on the occurrence of the following: (i) the death, resignation, or removal of any Director; (ii) whenever the number of authorized Directors is increased pursuant to Section 5.1; or (iii) the failure of the Board, at any meeting at which any Director or Directors are to be appointed, to appoint the full authorized number of Directors.

(b) Removal. Any Director may be removed by a Super-Majority of the Board For Cause only at a meeting called for that purpose. “For Cause” means a Director has been declared of unsound mind by an order of court, or convicted of a felony, found by

final order or judgment of any court to have breached a duty under Delaware General Corporation Law, determined by the Board to have had failed to fulfill the duties of a member of the Board, or the Member that appointed the Director is Dues Delinquent in accordance with Section 4.15, at which time a replacement Director shall be elected in accordance with Article 4.

- (i) Any Leader Director may be removed other than For Cause by a Super-Majority Vote of the Leader Members.
- (ii) Any Technology Director may be removed other than For Cause by a Super-Majority Vote of the Technology Members.
- (iii) Any Publisher Director may be removed other than For Cause by a Super-Majority Vote of the Publisher Members.

(c) No Removal on Reduction of Number of Directors. Except as expressly set forth in these Bylaws, no reduction of the authorized number of Directors shall have the effect of removing any Director before that Director's term of office expires unless the reduction also provides for the removal of that specified Director in accordance with these Bylaws and Delaware General Corporation Law.

(d) Resignations. Except as provided in this Section 5.4(d), any Director may resign by giving written notice to the Chairperson, the Secretary, or the Board. Such a written resignation will be effective on the later of (i) the date it is delivered or (ii) the time specified in the written notice that the resignation is to become effective.

(e) Appointment to Fill Vacancies. If there is a vacancy on the Board, including a vacancy created by the removal or resignation of a Director, the Member for which the removed or resigning Director served an employee, officer, or director, or, if there is no such Member, the Member or Members entitled to nominate such Director, shall, in each case pursuant to ARTICLE 4, nominate a new Director for the President's approval (or, in the case of Leader Members, the Board's approval) as soon as practicable after the vacancy occurs (and in any event within three weeks). If such Member(s) do not nominate a new Director to fill such vacancy within such time period and the number of Directors then in office is less than a quorum, additional Directors may be elected to fill such vacancies by (i) the unanimous written consent of the Directors then in office, (ii) a Majority Vote of the Directors in office at a meeting held in accordance with Section 229 of Delaware General Corporation Law, or (iii) a sole remaining Director. If at any time the Organization should have no Directors in office, then any Chairperson of the Organization may appoint Directors in a manner consistent with these Bylaws and the Delaware General Corporation Law.

## **5.5 Regular Meetings**

Each calendar year, the Board shall hold at least one meeting, at a time and place fixed by the Board, for the purposes of, among other matters, making decisions regarding Organization



activities, appointing and managing Officers, reviewing and approving the annual corporate budget, establishing, chartering, and staffing Committees and Advisory Committees as necessary

to conduct Organization activities and objectives, establishing Organization policies and procedures, approving the promotional plan for the Organization for the calendar year, approving all public disclosure of information by the Organization, establishing annual membership fees, establishing or revising Member rights and obligations, transaction of other business and performing all other duties imposed by law. This meeting is sometimes referred to in these Bylaws as the “annual meeting.” Other regular meetings of the Board may be held at such time and place as the Board may fix from time to time by resolution.

## **5.6 Special Meetings**

Special meetings of the Board for any purpose may be called at any time by the Chairperson, or the Secretary, or any two Directors.

## **5.7 Notice of Meetings**

(a) Manner of Giving. Except when the time and place of a regular meeting is set by the Board by resolution in advance (as permitted by Section 5.5), notice of the time and place of all regular and special meetings shall be given to each Director by one of the following methods:

- (i) Personal delivery of written notice;
- (ii) First-class mail, postage paid;
- (iii) Email or other means of electronic transmission if the recipient has consented to accept notices in this manner.

All such notices shall be given or sent to the Director’s address or e-mail address as shown on the records of the Organization. Any written notice given personally may be communicated directly to the Director or to a person who would reasonably be expected to promptly provide such notice to the Director. Notice of regular meetings may be given in the form of a calendar or schedule that sets forth the date, time and place of more than one regular meeting.

(b) Time Requirements. Notices sent by first-class mail shall be deposited into a United States mail box at least four days before the time set for the meeting. Notices given by personal delivery or e-mail or other electronic transmission shall be delivered at least 48 hours before the time set for the meeting.

(c) Notice Contents. The notice shall state the time and place for the meeting, except that if the meeting is scheduled to be held at the principal office of the Organization, the notice shall be valid even if no place is specified. The notice need not specify the purpose of the meeting unless required to elsewhere in these Bylaws.

## **5.8 Place of Board Meetings**

(a) Regular and special meetings of the Board may be held at any place within or outside the state that has been designated in the notice of the meeting, or, if not stated

in the notice or, if there is no notice, designated by resolution of the Board. If the place of a regular or special meeting is not designated in the notice or fixed by a resolution of the Board, it shall be held at the principal office of the Organization.

(b) Any meeting may be held by conference telephone or other communications equipment permitted by Delaware General Corporation Law, as long as all Directors participating in the meeting can communicate with one another and all other requirements of Delaware General Corporation Law are satisfied. All such Directors shall be deemed to be present in person at such meeting.

## **5.9 Quorum and Action of the Board**

(a) Quorum. A majority of Directors then in office (but no fewer than 1/3 (one-third) of the authorized number in Section 5.1, whichever is greater) shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 5.11.

(b) Minimum Vote Requirements for Valid Board Action. Every act taken or decision made by a Majority Vote of the Directors then in office is the act of the Board, unless a greater number is expressly required by Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors from the meeting, if any action taken is approved by at least a Majority Vote of the Directors then in office.

(c) When a Greater Vote Is Required for Valid Board Action. Adopting or approving any change to the Intellectual Property Policy shall require a unanimous vote by the Board. The following actions shall require a vote by a Super-Majority of all Directors then in office in order to be effective:

- (i) Adopting, amending, or approving changes to these Bylaws, the Certificate of Incorporation, or name of the Organization;
- (ii) Expansion or reduction to the size of the Board or a change of voting rights to elect the Board;
- (iii) Removal of the Chairperson;
- (iv) Changes to the purpose of the Organization or taking actions (or omitting to take actions) that would be adverse to the purpose of the Organization;
- (v) Dissolution of the Organization;
- (vi) Voluntarily filing for bankruptcy or enter into an assignment for the benefit of creditors; and

- (vii) Entering into any merger, sale, pledge, exclusive license or other transfer of all or substantially all of the assets of the Organization or other similar transaction for the sale of the Organization;

## **5.10 Waiver of Notice**

The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (i) a quorum is present, and (ii) either before or after the meeting, each of the Directors who is not present at the meeting signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent does not need to specify the purpose of the meeting. All waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Also, notice of a meeting is not required to be given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

## **5.11 Adjournment**

A majority of the Directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

## **5.12 Notice of Adjournment**

Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than 24 hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

## **5.13 Conduct of Meetings**

Meetings of the Board shall be presided over by the Chairperson or President. The Secretary shall act as secretary of all meetings of the Board, provided that, if the Secretary is absent, the presiding officer shall appoint another person to act as secretary of the meeting. Meetings shall be governed by rules of procedure as may be determined by the Board from time to time, insofar as such rules are not inconsistent with or in conflict with these Bylaws, with the Certificate of Incorporation, or with any provisions of law applicable to the Organization.

## **5.14 Action Without Meeting**

Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to the action. For the purposes of this Section 5.14 only, "all members of the Board" shall not include any "interested Director" as defined in Section 144 of Delaware General Corporation Law. Such written consent shall have the same force and effect as a unanimous vote of the Board taken at a meeting. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Written consent may be transmitted by first-class mail, messenger, courier, facsimile, e-mail or any other reasonable method satisfactory to the Chairperson or the President.

## **5.15 Fees and Compensation of Directors**

- (a) The Organization shall not pay any compensation to Directors for services

rendered to the Organization as Directors, except that Directors may be reimbursed for

out-of-pocket expenses incurred in the performance of their duties to the Organization, in reasonable amounts subject to approval by the Organization based on guidelines adopted by the Board from time to time.

(b) Directors may not be compensated for rendering services to the Organization in a capacity other than as Directors, unless such compensation is reasonable and further provided that not more than 49% of the persons serving as Directors may be “interested persons” which, for purposes of this Section 5.15 only, means:

- (i) any person currently being compensated by the Organization for services rendered to it within the previous 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
- (ii) 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.

#### **5.16 Non-Liability of Directors**

The Directors shall not be personally liable for the debts, liabilities, or other obligations of the Organization.

#### **5.17 Standard of Conduct**

A Director shall discharge the duties of a Director, including duties as a member of any Committee upon which the Director may serve, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances. In discharging the duties of a Director, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case if prepared or presented by: (a) one or more Officers or employees of the Organization whom the Director reasonably believes to be reliable and competent in the matters presented; (b) legal counsel, public accountants or other persons as to matters the Director reasonably believes are within the person’s professional or expert competence; or (c) a Committee as to matters within the Committee’s jurisdiction, if the Director reasonably believes the Committee merits confidence. A Director is not acting in good faith if the Director has knowledge concerning the matter in question that makes reliance otherwise permitted in this Section 5.17 unwarranted.

### **ARTICLE 6 COMMITTEES**

#### **6.1 Committees of Directors**

The Board may, by resolution adopted by a Majority Vote of the Directors then in office, create one or more Board committees necessary or appropriate to conduct the business and



further the Organization's objectives ("Committees"), including an executive committee, each consisting of two or more Directors, to serve at the discretion of the Board. Any Committee, to

the extent provided in the resolution of the Board, may be given the authority of the Board except that no Committee may:

- (a) fill vacancies on the Board or in any Committee which has the authority of the Board;
- (b) fix compensation of the Directors for serving on the Board or on any Committee;
- (c) amend or repeal Bylaws or adopt new Bylaws;
- (d) amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- (e) appoint any other Committees or the members of these Committees;
- (f) perform any action, or approve any matter, that requires Super-Majority vote of the Board;
- (g) expend corporate funds to support a nominee for Director after more persons have been nominated than can be elected;
- (h) approve any transaction (i) between the Organization and one or more of its Directors or (ii) between the Organization and any entity in which one or more of its Directors have a material financial interest; or
- (i) elect a Chairperson of the Board.

## **6.2 Meetings and Action of Committees**

Meetings and action of Committees shall be governed by, and held and taken in accordance with, the provisions of Article 5 concerning meetings of Directors, with such changes in the context of Article 5 as are necessary to substitute the Committee and its members for the Board and its members, except that the time for regular meetings of Committees may be determined by resolution of the Board, and special meetings of Committees may also be called by resolution of the Board. Minutes shall be kept of each meeting of any Committee and shall be filed with the corporate records. The Committee shall report to the Board from time to time as the Board may require. The Board may adopt rules for the governance of any Committee not inconsistent with the provisions of these Bylaws. In the absence of rules adopted by the Board, the Committee may adopt such rules.

## **6.3 Quorum Rules for Committees**

A majority of the Committee members shall constitute a quorum for the transaction of Committee business, except to adjourn. A majority of the Committee members present, whether or not constituting a quorum, may adjourn any meeting to another time and place. Every act

taken or decision made by a Majority Vote of the Committee members, at a meeting duly held at which a quorum is present, shall be regarded as an act of the Committee, subject to the

provisions of Delaware General Corporation Law relating to actions that require a majority vote of the entire Board and Section 6.1. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Committee members, if any action taken is approved by at least a majority of the Committee members. If there fails to be quorum at a duly called Committee meeting, Prebid or the Chair may authorize the actions or decisions taken by the members attending such meeting provided that the meeting and outcome is duly recorded, disseminated, and made available to the Committee members promptly thereafter.

#### **6.4 Revocation of Delegated Authority**

The Board may, at any time, revoke or modify any or all of the authority that the Board has delegated to a Committee, increase or decrease (but not below two) the number of members of a Committee, and fill vacancies in a Committee from the members of the Board, subject to Section 6.1.

#### **6.5 PMCs**

The standing Project Management Committee (“PMC”) shall be for Prebid.js, Prebid Server, and Prebid SDK. The Board may create one or more PMCs in addition to the standing PMCs. Each PMC shall manage the ongoing development and maintenance of an open source project. Each PMC shall be led by two chairpersons that are members of such PMC (each, a “PMC Co-Chair”) who shall be elected by the Majority Vote of the PMC subject to confirmation by Majority Vote of the Board. In the event any PMC Co-Chair resigns or is removed, the Members of such PMC (“PMC Members”) will nominate a replacement PMC Co-Chair who will be subject to election by a Majority Vote of the Board. The PMC Co-Chairs for standing PMCs shall each serve as Co-Chairs for two-year periods, upon which such PMC Co-Chairs will be replaced or renominated pursuant to a Majority Vote of the PMC subject to confirmation by Majority Vote of the Board. All other PMC Co-Chairs shall serve for one-year periods, upon which such PMC Co-Chairs will be replaced or reappointed pursuant to a Majority Vote of the Board. Each PMC Co-Chair shall have the discretion and ability to populate the applicable PMC with Members, but will not unreasonably deny membership to any Member who is otherwise qualified. Every Member of the Organization is entitled to participate in each PMC for which such Member has at least one committer. Each PMC will be subject to its applicable PMC Governance Policy, which shall be created by the PMC and must be approved by a Super-Majority of the Board. For each PMC, the PMC Co-Chairs for that project will appoint and coordinate committers and contributors for the PMC and provide guidance for its development roadmap.

#### **6.6 Task Forces**

The Board may create one or more Task Forces, which Task Forces may (but are not required to) be sub-groups within a PMC. Task Forces will have defined tasks and defined life cycles, in each case as determined by either the Board or the PMC Co-Chairs, in the Board’s discretion. Each Task Force shall be led by up to two chairpersons who are members of such Task Force (each, a “Task Force Co-Chair”) who shall be elected by a Majority Vote of the Board. In the event any Task Force Co-Chair elected by the Board resigns or is removed, the

Members of such Task Force (“Task Force Members”) will elect a replacement Task Force Co-Chair who will be subject to election by a Majority Vote of the Board.

## **6.7 Advisory Committees**

The Board may create one or more advisory committees to serve at the pleasure of the Board if advisable to further the Organization’s objectives. Appointments to such advisory committees need not, but may, be Directors. The Board shall appoint and discharge advisory committee members. All actions and recommendations of an advisory committee shall require ratification by the Board before being given effect.

## **ARTICLE 7 OFFICERS**

### **7.1 Officers**

The officers of the Organization (“Officers”) shall be a Chairperson, a President, a Secretary, and a Treasurer. Other than the Chairperson, these persons may, but need not be, selected from among the Directors. The Board shall have the power to designate additional Officers, who also need not be Directors, with such duties, powers, titles and privileges as the Board may fix, including such Officers as may be appointed in accordance with Section 7.6. Any number of offices may be held by the same person, except that the Secretary and the Treasurer may not serve concurrently as either the President or the Chairperson. The Chairperson, President, Secretary, and Treasurer require a Majority Vote of the Board in accordance with Section 5.9(b).

### **7.2 Election of Officers**

The Chairperson shall serve a term of three (3) years. The President, Secretary and Treasurer shall serve a term of one (1) year. The Chairperson, President, Secretary and Treasurer shall be elected by the Board at the annual meeting of the Organization, and each shall serve at the discretion of the Board until his or her successor shall be elected, or his or her earlier resignation or removal. The Officers can be re-elected for any number of terms (consecutive and non-consecutive).

### **7.3 Removal of Officers**

Subject to the rights, if any, of an Officer under any contract of employment, any Officer may be removed, with or without cause, by a Super-Majority Vote of the Board, at any regular or special meeting of the Board, or at the annual meeting of the Organization.

### **7.4 Resignation of Officers**

Any Officer may resign at any time by giving written notice to the Organization. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall

not be necessary to make it effective. Any resignation is without prejudice to the rights, if any of the Organization under any contract to which the Officer is a party.

## 7.5 Vacancies in Offices

A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office. In the event of a vacancy in any office other than the President or one appointed in accordance with Section 7.6, such vacancy shall be filled temporarily by appointment by the President, or if none, by the Chairperson, and the appointee shall remain in office for 60 days, or until the next regular meeting of the Board, whichever comes first. Thereafter, the position can be filled only by action of the Board.

## 7.6 Responsibilities of Officers

(a) Chairperson of the Board. The chairperson of the Board (the “Chairperson”), if any, shall be a Leader Director and shall preside at meetings of the Board and exercise and perform such other powers and duties as may from time to time be assigned to him by the Board or prescribed by these Bylaws. The Chairperson shall cast a tie-breaking vote in the event of a deadlocked vote of the Board. Only a Leader Director is eligible to serve as the Chairperson.

(b) President. Subject to such supervisory powers as may be given by the Board to the Chairperson, the Board may hire a president (the “President”) who shall be the general manager of the Organization, and subject to the control and supervision of the Board, shall supervise, direct and control the Organization's day-to-day activities, business and affairs consistent with any guidelines as the Board from time to time may determine and the annual corporate budget approved by the Board. The President shall be empowered to hire, supervise and fire all of the employees of the Organization, under such terms and having such job responsibilities as the President shall determine in his or her sole discretion, subject to the rights, if any, of the employee under any contract of employment, and further subject to any guidelines as the Board from time to time may determine and the annual corporate budget approved by the Board. The President may delegate his or her responsibilities and powers subject to the control of the Board. He or she shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

(c) Secretary. The secretary of the Organization (the “Secretary”) shall attend to the following:

- (i) Bylaws. The Secretary shall certify and keep or cause to be kept at the principal office of the Organization the original or a copy of these Bylaws as amended to date.
- (ii) Minute Book. The Secretary shall keep or cause to be kept a minute book as described in Section 10.1.
- (iii) Notices. The Secretary shall give, or cause to be given, notice of all meetings of the Board in accordance with these Bylaws.

- (iv) Corporate Records. Upon request, the Secretary shall exhibit or cause to be exhibited at all reasonable times to any Director, or to his or her agent or attorney, these Bylaws and the minute book.
- (v) Corporate Seal and Other Duties. The Secretary shall keep or cause to be kept the seal of the Organization, if any, in safe custody, and shall have such other powers and perform such other duties incident to the office of Secretary as may be prescribed by the Board or these Bylaws.

(d) Treasurer. The treasurer of the Organization (the “Treasurer”) shall attend to the following:

- (i) Books of Account. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and transactions of the Organization, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements. The books of account shall be open to inspection by any Director at all reasonable times.
- (ii) Financial Reports. The Treasurer shall prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.
- (iii) Deposit and Disbursement of Money and Valuables. The Treasurer shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Organization with such depositories as may be designated by the Board; shall disburse, or cause to be disbursed, the funds of the Organization as may be ordered by the Board; shall render, or cause to be rendered to the Chairperson and Directors, whenever they request it, an account of all of his or her transactions as Treasurer and of the financial condition of the Organization; and shall have other powers and perform such other duties incident to the office of Treasurer as may be prescribed by the Board or these Bylaws.
- (iv) Bond. If required by the Board, the Treasurer shall give the Organization a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of his office and for restoration to the Organization of all its books, papers, vouchers, money, and other property of every kind in his possession or under his control on his death, resignation, retirement, or removal from office.

(e) Additional Officers. The Board may empower the Chairperson or President, to appoint or remove such other Officers as the business of the Organization may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board from time to time may determine.



## 7.7 Compensation of Officers

(a) Salaries Fixed by Board. The salaries of Officers, if any, shall be fixed from time to time by resolution of the Board or by the person or Committee to whom the Board has delegated this function, and no Officer shall be prevented from receiving such salary by reason of the fact that he or she is also a Director, provided, however, that such compensation paid to a Director for serving as an Officer shall only be allowed if permitted under the provisions of Section 5.15. In all cases, any salaries received by Officers shall be reasonable and given in return for services actually rendered for the Organization which relate to the performance of the public benefit purposes of the Organization. No salaried Officer serving as a Director shall be permitted to vote on his or her own compensation as an Officer.

(b) Fairness of Compensation. The Board shall periodically review the fairness of compensation, including benefits, paid to every person, regardless of title, with powers, duties, or responsibilities comparable to the Chairperson, President, Treasurer or Secretary (i) once such person is hired, (ii) upon any extension or renewal of such person's term of employment, and (iii) when such person's compensation is modified (unless all employees are subject to the same general modification of compensation).

(c) Standards of Conduct for Officers. An Officer shall discharge the Officer's duties, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Officer reasonably believes to be in the best interests of the Organization. In discharging the duties of an Officer, an Officer shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case if prepared or presented by: (a) one or more Officers or employees whom the Officer reasonably believes to be reliable and competent in the matters presented; or (b) legal counsel, public accountants or other persons as to matters the Officer reasonably believes are within the person's professional or expert competence. An Officer is not liable to the Organization, any Member or any other person for any action taken or not taken as an Officer, if the Officer acted in compliance with this Section 7.7(c).

## ARTICLE 8

### TRANSACTIONS BETWEEN CORPORATION AND DIRECTORS OR OFFICERS

#### 8.1 Transactions with Directors and Officers

(a) Interested Party Transactions. Except as described in Section 8.1(b), the Organization shall not be a party to any transaction:

- (i) in which one or more of its Directors or Officers has a material financial interest, or
- (ii) with any corporation, firm, association, or other entity in which one or more Directors or Officers has a material financial interest.

(b) Requirements to Authorize Interested Party Transactions. The Organization shall not be a party to any transaction described in 8.1(a) unless:

- (i) the Organization enters into the transaction for its own benefit;
- (ii) the transaction is fair and reasonable to the Organization at the time the transaction is entered into;
- (iii) prior to consummating the transaction or any part thereof, the Board authorizes or approves the transaction in good faith, by a Majority Vote of Directors then in office (without counting the vote of the interested Directors), and with knowledge of the material facts concerning the transaction and the interested Director's or Officer's financial interest in the transaction;
- (iv) prior to authorizing or approving the transaction, the Board considers and in good faith determines after reasonable investigation that the Organization could not obtain a more advantageous arrangement with reasonable effort under the circumstances; and
- (v) the minutes of the Board meeting at which such action was taken reflect that the Board considered and made the findings described in paragraphs (a) through (d) of this Section 8.1(b).

(c) Material Financial Interest. A Director or Officer shall not be deemed to have a "material financial interest" in a transaction:

- (i) that fixes the compensation of a Director as a Director or Officer;
- (ii) if the contract or transaction is part of a public or charitable program of the Organization and it (1) is approved or authorized by a Majority Vote of the Board (with the impacted Director recused from voting) in good faith and without unjustified favoritism, and (2) results in a benefit to one or more Directors or their families only because they are in the class of persons intended to be benefited by the program; or
- (iii) where the interested Director has no actual knowledge of the transaction and it does not exceed the lesser of one percent of the gross receipts of the corporation for the preceding year or \$100,000.

## **8.2 Loans to Directors and Officers**

The Organization shall not make any loan of money or property to or guarantee the obligation of any Director or Officer, unless approved by the Super-Majority Vote of the Board (excluding such Director or Officer or any Director appointed by a Member affiliated with such Director or Officer); except that, however, the Organization may advance money to a Director or Officer for expenses reasonably anticipated to be incurred in the performance of duties of such

Director or Officer, if in the absence of such advance, such Director or Officer would be entitled to be reimbursed for such expenses by the Organization.

### **8.3 Interlocking Directorates**

No contract or other transaction between the Organization and any corporation, firm or association of which one or more Directors are directors is either void or voidable because such Director(s) are present at the Board or Committee meeting that authorizes, approves or ratifies the contract or transaction, if (i) the material facts as to the transaction and as to such Director's other directorship are fully disclosed or known to the Board or Committee, and the Board or Committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the common Director(s) (subject to the quorum provisions of Article 5); or if (ii) the contract or transaction is just and reasonable as to the Organization at the time it is authorized, approved or ratified.

### **8.4 Duty of Loyalty; Construction with Article 9**

Nothing in this Article 8 shall be construed to derogate in any way from the absolute duty of loyalty that every Director and Officer owes to the Organization. Furthermore, nothing in this Article 8 shall be construed to override or amend the provisions of Article 9. All conflicts between the two articles shall be resolved in favor of Article 9.

## **ARTICLE 9**

### **INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS**

#### **9.1 Definitions**

For purpose of this Article 9:

(a) "Agent" means any person who is or was a Director, Officer, employee, or other agent of the Organization, or is or was serving at the request of the Organization as a Director, Officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a Director, Officer, employee, or agent of a foreign or domestic corporation that was a predecessor corporation of the Organization or of another enterprise at the request of the predecessor corporation;

(b) "Proceeding" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and

(c) "Expenses" includes, without limitation, all attorneys' fees, costs, and any other expenses reasonably incurred in the defense of any claims or proceedings against an Agent by reason of his or her position or relationship as Agent and all attorneys' fees, costs, and other expenses reasonably incurred in establishing a right to indemnification under this Article 9.

#### **9.2 Applicability of Indemnification Provisions**

(a) Successful Defense by Agent. To the extent that an Agent has been successful on the merits in the defense of any proceeding referred to in this Article 9, or in the defense of any claim, issue, or matter therein, the Agent shall be indemnified

against expenses actually and reasonably incurred by the Agent in connection with the claim.

(b) Settlement or Unsuccessful Defense by Agent. If an Agent either settles any proceeding referred to in this Article 9, or any claim, issue, or matter therein, or sustains a judgment rendered against him, then the provisions of Section 9.3 through Section 9.6 shall determine whether the Agent is entitled to indemnification.

### **9.3 Actions Brought by Persons Other than the Organization**

This Section 9.3 applies to any proceeding other than an action “by or on behalf of the corporation” as defined in Section 9.4. Such proceedings that are not brought by or on behalf of the Organization are referred to in this Section 9.3 as “Third Party proceedings.”

(a) Scope of Indemnification in Third Party Proceedings. Subject to the required findings to be made pursuant to Section 9.3(b), the Organization may indemnify any person who was or is a party, or is threatened to be made a party, to any Third Party proceeding, by reason of the fact that such person is or was an Agent, for all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the proceeding.

(b) Required Standard of Conduct for Indemnification in Third Party Proceedings. Any indemnification granted to an Agent in Section 9.3(a) above is conditioned on the following. The Board must determine, in the manner provided in Section 9.5, that the Agent seeking reimbursement acted in good faith, in a manner he or she reasonably believed to be in the best interest of the Organization, and, in the case of a criminal proceeding, he or she must have had no reasonable cause to believe that his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or on a plea of *nobo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or in a manner he or she reasonably believed to be in the best interest of the Organization or that he or she had reasonable cause to believe that his or her conduct was unlawful.

### **9.4 Action Brought By or On Behalf Of the Organization**

This Section 9.4 applies to any proceeding brought (i) by or in the right of the Organization, or (ii) by an Officer, Director or person granted relator status by the Attorney General, or by the Attorney General, on the ground that the defendant Director was or is engaging in self-dealing, or (iii) by the Attorney General or person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust (any such proceeding is referred to in these Bylaws as a proceeding “by or on behalf of the Organization”).

(a) Scope of Indemnification in Proceeding By or On Behalf Of the Organization. Subject to the required findings to be made pursuant to Section 9.4(b), and except as provided in Sections 9.4(c) and 9.4(d), the Organization may indemnify any

person who was or is a party, or is threatened to be made a party, to any proceeding by or on behalf of the Organization, by reason of the fact that such person is or was an Agent,

for all expenses actually and reasonably incurred in connection with the defense or settlement of such action.

(b) Required Standard of Conduct for Indemnification in Proceeding By or On Behalf Of the Organization. Any indemnification granted to an Agent in Section 9.4(a) is conditioned on the following. The Board must determine, in the manner provided in Section 9.5, that the Agent seeking reimbursement acted in good faith, in a manner he or she believed to be in the best interest of the Organization and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(c) Claims Settled Out of Court. If any Agent settles or otherwise disposes of a threatened or pending action brought by or on behalf of the Organization, with or without court approval, the Agent shall receive no indemnification for amounts paid pursuant to the terms of the settlement or other disposition. Also, in cases settled or otherwise disposed of without court approval, the Agent shall receive no indemnification for expenses reasonably incurred in defending against the proceeding, unless the proceeding is settled with the approval of the Attorney General.

(d) Claims and Suits Awarded Against Agent. If any Agent is adjudged to be liable to the Organization in the performance of the Agent's duty to the Organization, the Agent shall receive no indemnification for amounts paid pursuant to the judgment, and any indemnification of such Agent under Section (9.4a) for expenses actually and reasonably incurred in connection with the defense of that action shall be made only if both of the following conditions are met:

- (i) The determination of good faith conduct required by Section 9.4(b) must be made in the manner provided for in Section 9.5; and
- (ii) Upon application, the court in which the action was brought must determine that, in view of all of the circumstances of the case, the Agent is fairly and reasonably entitled to indemnity for the expenses incurred. If the Agent is found to be so entitled, the court shall determine the appropriate amount of expenses to be reimbursed.

## **9.5 Determination of Agent's Good Faith Conduct**

The indemnification granted to an Agent in Section 9.3 and Section 9.4 is conditioned on the findings required by those Sections being made by:

- (i) the Board by a majority vote of a quorum consisting of Directors who are not parties to the proceeding; or
- (ii) the court in which the proceeding is or was pending. Such determination may be made on application brought by the Organization or the Agent or the attorney or

other person rendering a defense to the Agent, whether or not the application by the Agent, attorney, or other person is opposed by the Organization.



## **9.6 Limitations**

No indemnification or advance shall be made under this Article 9, except as provided in Section 9.2(a) or Section 9.5(ii), in any circumstances when it appears:

(a) that the indemnification or advance would be inconsistent with a provision of the Certificate of Incorporation, as amended, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) that the indemnification would be inconsistent with any condition expressly imposed by a court in approving a settlement.

## **9.7 Advance of Expenses**

Expenses incurred in defending any proceeding may be advanced by the Organization before the final disposition of the proceeding on receipt of an undertaking by or on behalf of the Agent to repay the amount of the advance unless it is determined ultimately that the Agent is entitled to be indemnified as authorized in this Article 9.

## **9.8 Contractual Rights of Non-Directors and Non-Officers**

Nothing contained in this Article 9 shall affect any right to indemnification to which persons other than Directors and Officers of the Organization, or any of its subsidiaries, may be entitled by contract or otherwise.

## **9.9 Insurance**

The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any Agent, as defined in this Article 9, against any liability asserted against or incurred by any Agent in such capacity or arising out of the Agent's status as such, whether or not the Organization would have the power to indemnify the Agent against the liability under the provisions of this Article 9.

## **9.10 Provisions Non-Exclusive**

The rights conferred on any person by this Article 9 shall not be exclusive of any other rights that such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, agreement or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office. To the extent that any provision of the Certificate of Incorporation or agreement is inconsistent with these Bylaws, the provision, agreement, or vote shall take precedence.

**ARTICLE 10**  
**CORPORATE RECORDS, REPORTS AND SEAL**

**10.1 Minute Book**

The Organization shall keep a minute book in written form which shall contain a record of all actions by the Board or any committee including (i) the time, date and place of each meeting; (ii) whether a meeting is regular or special and, if special, how called; (iii) the manner of giving notice of each meeting and a copy thereof; (iv) the names of those present at each meeting of the Board or any Committee thereof; (v) the minutes of all meetings; (vi) any written waivers of notice, consents to the holding of a meeting or approvals of the minutes thereof; (vii) all written consents for action without a meeting; (viii) all protests concerning lack of notice; and (ix) formal dissents from Board actions.

**10.2 Books and Records of Account**

The Organization shall keep adequate and correct books and records of account. "Correct books and records" includes, but is not necessarily limited to: accounts of properties and transactions, its assets, liabilities, receipts, disbursements, gains, and losses.

**10.3 Certificate of Incorporation and Bylaws**

The Organization shall keep at its principal office, the original or a copy of the Certificate of Incorporation and Bylaws as amended to date.

**10.4 Maintenance and Inspection of Federal Tax Exemption Application and Annual Information Returns**

If the Organization has applied or been granted tax exempt status, the Organization shall at all times keep at its principal office a copy of its federal tax exemption application and, for three years from their date of filing, its annual information returns. These documents shall be open to public inspection and copying to the extent required by the Code.

**10.5 Annual Report; Statement of Certain Transactions**

If the Organization has applied or been granted tax exempt status, the Board shall cause an annual report to be sent to each Director within 120 days after the close of the Organization's fiscal year containing the following information:

- (a) The assets and liabilities of the Organization as of the end of the fiscal year;
- (b) The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- (c) The revenue or receipts of the Organization, both unrestricted and restricted to particular purposes, for this fiscal year;

(d) The expenses or disbursements of the Organization for both general and restricted purposes during the fiscal year;

(e) A statement of any transaction (i) to which the Organization, its parent, or its subsidiary was a party, (ii) which involved more than \$50,000 or which was one of a number of such transactions with the same person involving, in the aggregate, more than \$50,000, and (iii) in which either of the following interested persons had a direct or indirect material financial interest (a mere common directorship is not a financial interest):

- (i) Any Director or Officer of the Organization, its parent, or its subsidiary;
- (ii) Any holder of more than 10% of the voting power of the Organization, its parent, or its subsidiary.

The statement shall include: (i) a brief description of the transaction; (ii) the names of interested persons involved; (iii) their relationship to the Organization; (iv) the nature of their interest in the transaction, and; (v) when practicable, the amount of that interest, provided that, in the case of a partnership in which such person is a partner, only the interest of the partnership need be stated.

(f) A brief description of the amounts and circumstances of any loans, guaranties, indemnifications, or advances aggregating more than \$10,000 paid during the fiscal year to any Officer or Director under Article 8 or Article 9.

## **10.6 Directors' Rights of Inspection**

Every Director shall have the absolute right at any reasonable time to inspect the books, records, documents of every kind, and physical properties of the Organization and each of its subsidiaries. The inspection may be made in person or by the Director's agent or attorney. The right of inspection includes the right to copy and make extracts of documents.

## **10.7 Corporate Seal**

The corporate seal, if any, shall be in such form as may be approved from time to time by the Board. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

## **10.8 Fiscal Year**

The fiscal year of the Organization shall be (a) the period commencing on the date of incorporation of the Corporation and ending on December 31, 2017, or (b) any subsequent twelve-month period (or, as applicable, portion thereof) beginning on January 1 and ending on December 31.

**ARTICLE 11**  
**EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS**

**11.1 Execution of Instruments**

The Board, except as otherwise provided in these Bylaws, may by resolution authorize any Officer or agent of the Organization to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Organization, and such authority may be general or confined to specific instances. Unless so authorized, no Officer, agent, or employee shall have any power or authority to bind the Organization by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

**11.2 Checks and Notes**

Except as otherwise specifically determined by resolution of the Board, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Organization shall be signed by the Treasurer and countersigned by the President.

**11.3 Deposits**

All funds of the Organization shall be deposited from time to time to the credit of the Organization in such banks, trust companies, or other depositories as the Board may select.

**11.4 Gifts**

The Board may accept on behalf of the Organization any contribution, gift, bequest, or devise for the charitable or public purposes of the Organization.

**ARTICLE 12**  
**CONSTRUCTION AND DEFINITIONS; SETTLEMENT OF DISPUTES;**  
**CONFIDENTIAL AND MANDATORY BINDING ARBITRATION**

(a) Unless the context requires otherwise, the general provisions, rules of construction, and definitions of Delaware General Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular number includes the plural, the plural number includes the singular, and the term “person” includes both the Organization and a natural person. All references to statutes, regulations and laws shall include any future statutes, regulations and laws that replace those referenced. If any provision or portion of these Bylaws is held unenforceable or invalid for any reason, the remaining provisions and portions of these Bylaws shall be unaffected by such holding.

(b) In the event of any dispute between or among Members, former Members, or one or more third parties arising from or related to these Bylaws or the activities of the Organization, the Members and former Members concerned shall make reasonable effort to amicably settle such disputes. Notwithstanding the foregoing, any controversy or claim

arising out of or relating to the Bylaws, or the breach or construction thereof, shall be settled by a confidential and binding mandatory arbitration administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be held in New York State before an arbitrator selected under the rules of the AAA. All issues presented to the arbitrator including the enforceability of any provision of the Bylaws shall be governed by the laws of Delaware. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. Any award made by the arbitrator shall be a reasoned award and shall be final, binding and conclusive upon all parties. The arbitrator shall have no power to make any award inconsistent with or contrary to the terms and provisions of the Bylaws or Delaware law. The costs and expenses of any arbitration shall be borne and paid as the arbitrator shall, by their award, direct. It is agreed that any party to any award rendered hereunder may seek a judgment upon the award and that judgment may be entered thereon by any court having jurisdiction. In the event of an arbitration award, the arbitrator shall declare a prevailing party. In the event of an arbitration, the prevailing party shall be entitled to receive from the non-prevailing party and the non-prevailing party shall pay upon demand all reasonable fees and expenses of counsel for the prevailing party. To the fullest extent of the law, no action at law or in equity shall be brought in any court with respect to any controversy which relates to the Bylaws and all such controversies or disputes shall be the subject of confidential and mandatory binding arbitration only; each party hereto waiving all rights to institute any such action in court and any right to a jury.

(c) These Bylaws shall not be construed to create an agency, joint venture, or partnership between or among the Members. No Member shall have the authority to conclude agreements or enter into any obligation on behalf of the Organization. No Member shall be liable for any loss or damages whatsoever resulting from any act performed by another Member(s) on behalf of the Organization, for which act such Member had not obtained prior written consent or authorization from the Board.

## **ARTICLE 13 AMENDMENTS**

### **13.1 Amendment by Directors**

A Super-Majority of the Board may adopt, amend or repeal these Bylaws. Amendments to these Bylaws shall become effective immediately upon their adoption in accordance with the terms of these Bylaws unless the Board in adopting the amendments provides that they are to become effective at a different date. Such power is subject to the following limitations:

(a) Where any provision of these Bylaws requires the vote of a larger proportion of the Directors than otherwise is required by law, such provision may not be

altered, amended or repealed except by the vote of such greater number or a Super-majority of the Board, whichever is greater.

(b) No amendment may extend the term of a Director beyond that for which such Director was elected.

(c) If bylaws are adopted, amended or repealed at a meeting of the Board, such action is authorized only at a duly called and held meeting for which written notice of such meeting, setting forth the proposed bylaw revisions with explanations therefor, is given in accordance with these Bylaws, unless such notice is waived in accordance with these Bylaws.

(d) Where any provision of these Bylaws requires the approval or consent of a particular Membership Class, such provision may not be altered, amended or repealed except by the applicable approval of such Membership Class.

**[Remainder of page intentionally left blank.]**

**CERTIFICATE OF SECRETARY**

I certify that I am the duly elected and acting Secretary of [Prebid.org](http://Prebid.org), **Inc.**, a Delaware Non-Stock Organization; that these Third Amended and Restated Bylaws, consisting of [---] pages, are the Third Amended and Restated Bylaws of this Organization as adopted by the Board of Directors on [insert month, day and year]; and that these Third Amended and Restated Bylaws have not been amended or modified since that date.

Executed on [insert month, day and year] at Los Angeles, CA.

**NAME: [Insert Name of Secretary]**

**TITLE: Secretary**