

9. BYLAWS [REVISED/APPROVED MAY 21, 2009]

BYLAWS

OF

NATIONAL ECOLOGICAL OBSERVATORY NETWORK, INC.

("the Corporation")

ARTICLE I

Offices

Section 1.01. The initial office of the Corporation shall be in the District of Columbia. The Corporation may have such other offices either within or without the District of Columbia as the Board of Directors may from time to time determine or as the business of the Corporation may require.

ARTICLE II

Members

Section 2.01. There shall be one class of voting members. Any scientific, educational and/or research institution that is interested in promoting the purposes and activities of the Corporation, that is elected by the Board as provided in Section 2.02 below and that pays the initiation fees, membership dues and special assessments specified from time to time by the Board of Directors shall be eligible for voting membership.

Section 2.02. Voting members of the Corporation shall be elected from time to time by majority vote of the Board of Directors.

Section 2.03. An elected institution shall become a voting member only if it pays the initiation fee, if any, established by the Board of Directors as described below. The elected institution shall from time to time appoint a designated representative to carry out its official duties as a voting member.

Section 2.04. The Corporation may have one or more classes of non-voting members, whose rights, privileges and duties shall be as determined from time to time by resolution of the Board of Directors.

ARTICLE III

Meetings of Voting Members

Section 3.01. Annual and special meetings of the voting members shall be held at such place within or without the District of Columbia as the Board of Directors shall from time to time determine. Special meetings of the voting members may be called by the Chair or the Secretary and shall be called by one of them upon the written request of (a) two-thirds or more of the representatives designated by the voting members pursuant to Section 2.03 above or (b)

Title: NEON, Inc. Board of Directors Manual	Author: Schimel, Beasley, Sheldon	Date: 5/20/10
NEON Doc. #:		Version: 1.4

three (3) or more directors, for the transaction of any other business to be presented to the voting members.

Section 3.02. Notice of each meeting of the voting members, whether annual or special, shall be given to each voting member by delivering personally, or by mail or facsimile, a written or printed notice of such meeting addressed to the voting member's designated representative at the voting member's address as it appears on the books of the Corporation from time to time.

Section 3.03. A meeting of the voting members shall not be organized for the transaction of business unless a quorum is present. The presence in person, or by proxy, of the designated representatives of at least one-half (1/2) of the voting members shall constitute a quorum. Except as otherwise provided in these Bylaws or the Corporation's Articles of Incorporation, no action shall be taken except by the affirmative vote of a majority of the votes entitled to be cast by the voting members present in person (through a designated representative) or by proxy at such a meeting.

Section 3.04. Around each annual meeting, each voting member, through the voting member's designated representative, shall be entitled to cast one vote for each vacancy among the Membership Group Directors. Voting for directors may, to the extent permitted from time to time by the District of Columbia Nonprofit Corporation Act, be conducted by mail, telephone or electronic mail.

Section 3.05 Any voting member who is delinquent in dues or special assessments at the time of any vote of the voting members shall not be entitled to vote on any matter.

Section 3.06. Any action required or permitted to be taken by the voting members at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the voting members. Such consent may be executed in one or more counterparts and, when aggregated, shall be considered one consent.

Section 3.07. A voting member of the Corporation may be removed, with or without cause, by affirmative vote of a majority of the directors then in office.

Section 3.08. A voting member may resign, with or without cause, by giving notice in writing of its intention to do so. Resignation shall become effective upon receipt by the Corporation unless another, later time is specified in such notice. A resignation shall relieve a voting member of its obligation to pay the dues or special assessments levied by the Board of Directors only if the notice is given within thirty (30) days after the Board's notice to the voting members prescribing such annual membership dues or special assessments.

ARTICLE IV

Fees, Dues and Assessments

Section 4.01. The Board of Directors shall from time to time prescribe the amount of initiation fees, annual membership dues and special assessments, if any, which shall be paid by the voting members.

Section 4.02. In prescribing the amount of such fees, dues and assessments, the Board of Directors may take into account the size of the institutions' annual operating budgets or other factors decided upon from time to time by the Board of Directors. Special assessments

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NEON Doc. #:		Version: 1.4

shall be levied by the Board of Directors in order to defray extraordinary or unusual costs or expenses incurred by or on behalf of the Corporation.

Section 4.03. The failure of any voting member to pay dues or assessments within the time prescribed by the Board of Directors shall result in such member's suspension from the Corporation (including, but not limited to, loss of voting rights) until payment is made or until the Board of Directors in its discretion reinstates such member.

Section 4.04. The Board of Directors shall have the discretion to waive fees, dues and assessments.

ARTICLE V **Board of Directors**

Section 5.01. Except as otherwise provided by law or these Bylaws, the Board of Directors may exercise all the powers and authority granted to the Corporation by law.

Section 5.02. The Board of Directors shall consist of such number of persons, not less than the minimum specified from time to time in the District of Columbia Nonprofit Corporation Act, as may be fixed from time to time by the Board of Directors; provided that the number of directors shall not be reduced so as to shorten the term of any director at the time in office; and provided, further, that the number of initial directors shall be the number appointed in the Corporation's Articles of Incorporation. The individuals appointed in the Corporation's Articles of Incorporation to serve as the initial directors shall be referred to as the "Initial Directors" in this Article V.

Section 5.03. The Board of Directors shall consist of two Groups: the Membership Group and the At-large Group. A majority of the Board of Directors shall consist of At-large Group Directors. Approximately one-third (1/3) of the directors of each Group shall be elected or appointed each year. Directors in the Membership Group shall be elected or appointed by the voting members from the slate of nominees put forward each year by the Nominating and Governance Committee. Directors in the At-large Group shall be elected or appointed by the directors then in office (including directors in the Membership and At-large Groups whose terms are set to expire at the annual meeting) from the slate of nominees put forward each year by the Nominating and Governance Committee. Notwithstanding anything contained in these Bylaws to the contrary, each director shall hold office until a successor is elected and qualifies or until that director's earlier resignation, removal or death. If an annual election of directors is not held on the date designated therefore, the directors shall hold such election as soon thereafter as convenient.

Section 5.04. The Membership Group and the At-large Group of the Board of Directors of the Corporation shall each be divided into three sub-groups: Sub-group A, Sub-group B and Sub-group C. No one Sub-group shall have more than one director more than any other Sub-group. If a fraction is contained in the quotient arrived at by dividing the designated number of directors of a Group by three, then, if such fraction is one-third, the extra director shall be a member of Sub-group C, and if such fraction is two-thirds, one of the extra directors shall be a member of Sub-group C and the other extra member shall be a member of Sub-group B, unless otherwise provided from time to time by resolution adopted by the Board of Directors.

Title: NEON, Inc. Board of Directors Manual	Author: Schimel, Beasley, Sheldon	Date: 5/20/10
NEON Doc. #:		Version: 1.4

Section 5.05. Each director shall typically serve for a three-year term beginning on the first day of the calendar year in the year following his or her election and ending on the last day of the calendar year. In the event a director is elected to fill a vacancy mid-term, the beginning and end of the term may be specified at the time of election and the end of the term may correspond to that of the predecessor. No director may serve more than two (2) consecutive three-year terms. Partial terms do not count against the two-term limit.

Section 5.06. In the event of any increase or decrease in the authorized number of directors, (i) each director then serving as such shall nevertheless continue as a director of the Group and Sub-group of which he or she is a member and (ii) the newly created or eliminated directorships resulting from such increase or decrease shall be apportioned by the Board of Directors among the Groups and Sub-groups of directors so as to ensure that a majority of the Board of Directors is composed of At-large Directors and that no one Sub-group has more than one director more than any other Sub-group.

Section 5.07. To the maximum extent possible, the At-large Group of the Board of Directors shall be composed of individuals selected for possessing a broad array of skills, interests and resources that are from time to time desirable or needed on the Board of Directors. Individuals elected to serve as director of the At-large Group need not be affiliated with an institution that is a voting member of the Corporation.

Section 5.08. Whenever a vacancy exists on the Board of Directors, whether by death, resignation or otherwise, the vacancy shall be filled by a vote of a majority of the directors then in office, although less than a quorum, or, in the event there is only one remaining director, by the sole remaining director. A director elected to fill a vacancy shall hold office for the remainder of the unexpired term of his or her predecessor in office, subject to the power of removal stated in these Bylaws.

Section 5.09. Any director may resign from office at any time upon giving written notice to the Secretary of the Corporation. Any such resignation shall take effect at the time it specifies or, if the time be not specified, upon receipt, and the acceptance of such resignation, unless required by its terms, shall not be necessary to make such resignation effective.

Section 5.10. A director may be removed at any time, with or without cause, by the affirmative vote of a majority of the directors then in office.

Section 5.11. The Board of Directors shall have the authority to hire, and fire, the Chief Executive Officer of the Corporation (who shall have general and active management of the affairs and property of the Corporation, including the authority to hire and replace subordinate employees of the Corporation).

ARTICLE VI

Meetings of the Board of Directors

Section 6.01. Meetings of the Board of Directors, regular or special, may be held within or without the District of Columbia upon not fewer than fourteen (14) days notice to each director, either personally or by mail, electronic mail, telephone or facsimile, subject to waiver of notice as provided in the District of Columbia Nonprofit Corporation Act. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting. Regular meetings

Title: NEON, Inc. Board of Directors Manual	Author: Schimel, Beasley, Sheldon	Date: 5/20/10
NEON Doc. #:		Version: 1.4

shall be held at least once each year or more often as established from time to time by resolution of the Board of Directors or as required by the business of the Corporation. Special meetings of the Board of Directors may be called by the Chair at any time and shall be called by the Chair upon the written request of a majority of the directors then in office.

Section 6.02. A majority of the number of directors then in office shall constitute a quorum for the transaction of business. Except as otherwise provided in these Bylaws or in the Corporation's Articles of Incorporation, the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 6.03. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the directors. Such consent may be executed in one or more counterparts and, when aggregated, shall be considered one consent.

Section 6.04. Any one or more members of the Board of Directors may participate in a meeting of such Board by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

Section 6.05. At least annually, the Treasurer shall present, on behalf of the Board of Directors, the Board's annual report setting forth (i) the assets and liabilities of the Corporation as of the end of its fiscal year, (ii) the principal changes in assets and liabilities during its fiscal year, (iii) the revenue or receipts of the Corporation during the fiscal year, (iv) the expenses or disbursements of the Corporation during the fiscal year, and (v) the findings and recommendations of the outside auditor.

ARTICLE VII **Committees**

Section 7.01. There shall be an Executive Committee, consisting of the Chair, the Secretary, the Treasurer and two other directors appointed annually by affirmative vote of a majority of the directors then in office, which shall have and may exercise the authority of the Board of Directors between meetings of the Board of Directors on such matters as stipulated from time to time by the Board of Directors.

Section 7.02. There shall be a Governance Committee consisting of three or more directors appointed annually by affirmative vote of a majority of the directors then in office. The Governance Committee's responsibilities shall include, but not be limited to: (a) assessing the Corporation's governance needs, (b) identifying, nominating, and orienting new Board members, (c) conducting periodic Board self-assessments as needed, (d) organizing Board retreats, and (e) other duties as assigned by the Board. The Governance Committee shall annually put together the slates of candidates for election to replace directors of the Membership and At-large Groups whose terms have expired and to fill any vacancy in the office of the Chair of the Corporation. In preparing the slate of candidates for the Membership Group, the Governance Committee shall select individuals from among the member-designated

Title: NEON, Inc. Board of Directors Manual	Author: Schimel, Beasley, Sheldon	Date: 5/20/10
NEON Doc. #:		Version: 1.4

representatives and may solicit suggestions from the voting members and directors. In addition, in preparing the slate for the Membership Group, the Governance Committee shall include on the slate for consideration any member-designated representative put forward by at least one-third of the voting members, provided that such individual's nomination by the voting members is presented to the Governance Committee at least 70 days before the annual meeting at which the election is to be held. In preparing the slate of candidates for the At-large Group, the Governance Committee shall select individuals on the basis of particular expertise, experience or perspective relevant to the Corporation and may solicit suggestions from the voting members, directors and other institutions that might have an interest in furthering the purposes of the Corporation. The slate prepared for the At-large Group may, but need not, contain individuals that serve as member-designated representatives. At least two candidates must be proposed for each vacancy of the Membership Group.

Section 7.03. There shall be a Finance and Audit Committee appointed annually by affirmative vote of a majority of the directors then in office. The Finance and Audit Committee shall include among its members two or more directors with the Board Treasurer serving as the Chair. The Finance and Audit Committee's responsibilities shall include, but not be limited to: (a) exercising financial oversight over the Corporation's fiscal health, (b) overseeing expenditures relating to the budget and future budget projections, (c) overseeing the safeguarding of the Corporation's assets, (d) recommending to the Board of Directors the retention and termination of an independent auditor, (e) reviewing the fees of the independent auditor on behalf of the Corporation, (f) overseeing the Corporation's financial reporting process, (g) overseeing the adequacy of the Corporation's internal controls, and (h) other duties as assigned by the Board.

Section 7.04. The Board of Directors, by resolution adopted by a majority of directors then in office, may designate or appoint one or more other committees, each of which shall consist of two or more directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the Board of Directors in the management of the Corporation.

Section 7.05. Advisory and honorary committees, including but not limited to ad hoc committees and science advisory committees, not having and exercising the authority of the Board of Directors in the management of the Corporation, may be designated and appointed by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. In its discretion, the Board of Directors may delegate the power described in this Section 7.05 to the Chief Executive Officer of the Corporation. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual director, of any responsibility imposed by law.

ARTICLE VIII **Officers**

Section 8.01. The officers of the Corporation shall be elected by the affirmative vote of a majority of the directors then in office and shall consist of a Chair, a Chief Executive Officer (whose duties, as described below, correspond generally to the duties assigned to a president

Title: NEON, Inc. Board of Directors Manual	Author: Schimel, Beasley, Sheldon	Date: 5/20/10
NEON Doc. #:		Version: 1.4

under the District of Columbia Nonprofit Corporation Act), a Secretary and a Treasurer, and may include such other officers and assistant officers as may from time to time be deemed necessary or desirable. The Chair, Secretary and Treasurer shall be chosen from the members of the Board of Directors. Any two or more offices may be held by the same person, except the offices of Chief Executive Officer and Secretary. Officers shall serve 1 year terms, except that the Chair shall serve a 3 year term, provided, however, that no individual shall continue to serve as Chair who is not contemporaneously a director of the Corporation.

Section 8.02. The Board of Directors may require any of the officers or employees of the Corporation to give bond to the Corporation with sufficient sureties, conditioned upon the faithful performance of the duties of their respective offices or employments.

Section 8.03. Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the affirmative vote of a majority of the directors then in office. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. An office may be held by the same individual for two or more consecutive terms.

The Chair

Section 8.04. The Chair shall preside at all meetings of the Board of Directors and shall have such other duties and responsibilities as may be assigned to him or her from time to time by the Board of Directors.

The Chief Executive Officer

Section 8.05. The Chief Executive Officer shall be the chief officer of the Corporation; he or she shall supervise and control the business and affairs of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. Except as otherwise expressly provided by law, by the Articles of Incorporation or by these Bylaws, he or she shall, in the name of the Corporation, execute such deeds, mortgages, bonds, contracts, checks or other instruments which may from time to time be authorized by the Board of Directors. The Chief Executive Officer shall not participate in any Board decision regarding compensation for that position.

The Secretary

Section 8.06. The Secretary shall keep the minutes of all meetings of the Board of Directors. He or she shall give, or cause to be given, such notice of all meetings of the Board of Directors as may be required by these Bylaws and shall perform such other duties as shall be assigned to him or her from time to time by the Board of Directors.

The Treasurer

Section 8.07. The Treasurer shall exercise general supervision over the Corporation's financial affairs, chair the Finance and Audit Committee, and shall perform such other duties as shall be assigned to him or her from time to time by the Board of Directors.

ARTICLE IX

Compensation of Directors

Section 9.01. The Board of Directors of the Corporation shall have the power and authority to determine, from time to time, the compensation of the directors of the Corporation, including whether any such individuals shall be entitled to reimbursement for out-

of-pocket expenses incurred in carrying out the Corporation's activities, provided that such compensation and reimbursement in no way adversely affects the Corporation's qualification (and continued qualification) under section 501(c)(3) of Code.

ARTICLE X **Administration**

Section 10.01. The fiscal year of the Corporation shall be October 1 to September 30, but may be changed from time to time by resolution of the Board of Directors.

Section 10.02. All checks, orders for payment of money, bills of lading, warehouse receipts, obligations, bills of exchange and insurance certificates shall be signed or endorsed by the Chief Executive Officer. The Board may also delegate such powers to any other officer or officers or agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors or of any committee to which such authority has been properly delegated by the Board.

Section 10.03. All funds of the Corporation, not otherwise employed, shall be deposited from time to time in general or special accounts in such banks, trust companies or other depositories as the Board of Directors or any committee to which such authority has been properly delegated by the Board may select. The Board may delegate to any officer or officers or agent or agents of the Corporation such authority with respect to disbursement of such funds as may from time to time be determined by resolution of the Board. For the purpose of deposit and for the purpose of collection for that account of the Corporation, checks, drafts and other orders of the Corporation may be endorsed, assigned and delivered on behalf of the Corporation by any officer or agent of the Corporation so designated by the Board.

Section 10.04. The funds of the Corporation may be retained in whole or in part in cash or be invested and reinvested on occasion in such property, real, personal or otherwise, or stock, bonds or other securities, as the Board of Directors or designee in their respective sole discretion may deem desirable, and which are permitted to organizations exempt from Federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

Section 10.05. Correct books of account of the activities and transactions of the Corporation shall be kept at the office of the Corporation. These shall include a minute book, which shall contain a copy of the articles of incorporation, a copy of these Bylaws and all minutes of meetings of the Board of Directors.

ARTICLE XI **Amendments**

Section 11.01. These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the affirmative vote of at least two-thirds of the directors present at any regular or special meeting at which a quorum is present, provided that any such alteration, amendment, repeal or adoption shall be consistent with the requirements of section 501(c)(3) of the Code.

Title: NEON, Inc. Board of Directors Manual	Author: Schimel, Beasley, Sheldon	Date: 5/20/10
NEON Doc. #:		Version: 1.4

ARTICLE XII
Indemnification

Section 12.01. To the fullest extent permitted by law, every person who is or was a director, officer, employee or agent of the Corporation shall have a right to be indemnified by the Corporation against all reasonable expenses incurred by him or her in connection with or resulting from any claim, action, suit or proceeding in which he or she may become involved as a party or otherwise by reason of being or having been a director, officer, employee or agent of the Corporation; provided, however, that said claim, action, suit or proceeding shall be prosecuted to a final determination and he or she shall be vindicated on the merits or, in the absence of such a final determination vindicating him or her on the merits, as the Board of Directors shall determine, subject to the provisions of Section 12.02 hereof, that his or her conduct did not constitute negligence or misconduct in the performance of a duty and that he or she fully cooperated with the Corporation in the defense or disposition of any said claim, action, suit or proceeding, such determination to be made by the Board of Directors acting through a quorum of disinterested directors or, in the absence of such quorum, on the basis of an opinion of counsel.

Section 12.02. For purposes of Section 12.01 hereof, "reasonable expenses" shall be deemed to include but not be limited to reasonable counsel fees and disbursements, judgments, fines, penalties and reasonable amounts paid in settlement; and "claim, action, suit or proceeding" shall be deemed to include every claim, action, suit or proceeding, whether civil or criminal, derivative or otherwise, administrative, judicial or legislative, at the trial level or on review, and shall include any reasonable apprehension or threat of such a claim, action, suit or proceeding. A settlement plea of *nolo contendere*, consent judgment, adverse civil judgment or conviction shall not of itself create a presumption that the conduct of the person seeking indemnification constituted negligence or misconduct in the performance of a duty, but the Board of Directors shall be bound by a civil judgment or conviction adjudging the person liable for or guilty of such negligence or misconduct.

Section 12.03. The right of indemnification shall extend to any person otherwise entitled to it under this Article whether or not that person continues to be a director, officer, employee or agent of the Corporation at the time such liability or expense is incurred. The right of indemnification shall extend to the legal representatives and heirs of any person otherwise entitled to indemnification. If a person meets the requirements of this Article with respect to some matters in a claim, action, suit or proceeding, but not with respect to others, such person shall be entitled to indemnification as to the former. Advances against liability and expenses may be made by the Corporation on terms fixed by the Board of Directors subject to an obligation to repay if indemnification proves unwarranted.

Section 12.04. To the fullest extent permitted by law, the directors, officers, employees and agents of the Corporation shall in the performance of their duties be fully protected in relying in good faith upon the books of account or reports made to the Corporation by any of its officers or committees selected and supervised with reasonable care, by an independent certified public accountant, by an appraiser selected with reasonable care by the Board of

Title: NEON, Inc. Board of Directors Manual	Author: Schimel, Beasley, Sheldon	Date: 5/20/10
NEON Doc. #:		Version: 1.4

Directors or by any such committee, or in relying in good faith upon other records of the Corporation.

Section 12.05. The Corporation may purchase such liability insurance as may be deemed appropriate by the Board of Directors, provided, however, that if the Corporation has annual total functional expenses, exclusive of grants and allocations, of more than \$100,000, the Corporation shall purchase and maintain liability insurance with a limit of coverage of not less than that specified in Section 29-301.113(c) of the District of Columbia Nonprofit Corporation Act, as amended from time to time.

Section 12.06. This Article XII shall not exclude any other rights of indemnification or other rights to which any director, officer, employee or agent may be entitled by contract, by vote of the Board of Directors or as a matter of law. If any clause, provision or application of this Article shall be determined to be invalid, the other clauses, provisions or applications shall not be affected thereby and shall remain in full force and effect. The provisions of this Article XII shall be applicable to claims, actions, suits, or proceedings made or commenced after its adoption, whether arising from act or omissions occurring before or after its adoption.