

B Y L A W S
o f
THE PERFORMANCE TESTING
COUNCIL, INCORPORATED

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ARTICLE I: NAME, ORGANIZATION, AND LOCATION

Section 1.1 - Name

The name of this non-profit corporation is The Performance Testing Council, Incorporated (hereinafter the "PTC").

Section 1.2 - Organization

The PTC is a not-for-profit corporation organized and operated under the laws of the State of Delaware, whose membership shall consist primarily of test delivery vendors, performance test providers, test development, psychometric, or similar consulting services related to testing/assessment, and/or organizations developing or administering tests for internal or external use as defined in Section 2.1.

Section 1.3 - Location

The PTC shall be incorporated and maintain a registered agent and office in the State of Delaware.

ARTICLE II: PURPOSES AND DEFINITIONS

Section 2.1 - Definitions

- (a) The term "performance test" is defined as a test or assessment in which the response modalities required to demonstrate competence are identical to or closely approximate the response modalities required to apply that competence in its target context.
- (b) PTC Members may include any individual, company, or organization that researches, uses, develops, validates, markets, sells, scores, delivers performance tests, or provides services related to performance testing and assessment for selection, certification, licensing, educational, industrial, clinical, or other similar uses.

Section 2.2 - Purposes

The purposes of the PTC shall be:

- (a) To develop standards, best practices, and guidelines for performance testing and to promote such standards to all industries and organizations that can benefit from them.
- (b) To increase the viability of performance test providers by offering education, training, and an opportunity to exchange ideas regarding implementation, operation, and evaluation of performance tests in a manner consistent with legal and professional requirements.

- (c) To promote fairness and equality in testing for industrial/organizational, educational, certification, licensure, clinical, and other forms of performance testing.
- (d) To unite performance test providers and related professional organizations in an organization that will foster and maintain open conversations among its members related to industry trends in performance testing.
- (e) To communicate with other organizations that may have an interest in performance testing and its uses.
- (f) To encourage a high level of professionalism in the development and use of performance testing.
- (g) To support response to regulation related to performance testing. This response may come directly from the PTC via sponsorship of other organizations or individuals engaged in legislative activities that support the goals and vision similar to that of the PTC.

ARTICLE III: MEMBERSHIP

Section 3.1 - Classes of Membership

There shall be four classes of membership - Cornerstone, Supporting, Standard Organization, and Standard Individual.

- (a) Cornerstone: unlimited named users, 1 free seat per workshop, and up to 8 free attendances to each Summit
- (b) Supporting: up to 5 named users with additional available for purchase, 1 free seat per workshop, and up to 5 free attendances to each Summit with additional available at member pricing
- (c) Standard Organization: up to 3 named users with additional available for purchase, standard fee to attend each workshop and Summit
- (d) Standard Individual: 1 named user, standard fee to attend each workshop and Summit

Section 3.2 - Member Eligibility and Admission to Membership

- (a) Any Member, whether individual or organization, must be willing and able to abide by all PTC Bylaws and applicable Codes of Conduct as expressly stated on the application form.
- (b) Any individual, partnership, or corporation that is a performance test provider, test publisher, or related professional organization may apply for membership in the PTC by filing an application, together with a payment for dues.

- (c) An application for membership shall be deemed valid and received for acceptance by the Board of Directors unless rejected by the PTC Executive Director (ED) as inconsistent with the membership requirements set forth herein, in which case the payment shall be refunded, and a letter of explanation sent to the applicant. When the ED ascertains that an application is valid and consistent with applicable membership requirements, they shall submit it to the Board of Directors for review and final acceptance. Upon acceptance by a simple majority vote of the Board of Directors, the applicant shall be duly admitted to membership.
- (d) The Board of Directors shall have the authority to clarify any questions concerning membership definitions or qualifications.
- (e) Following acceptance for membership as a Cornerstone, Supporting, or Standard Organization member, each such Member Organization shall appoint and certify to the ED of the PTC a person to act as its Authorized Representative in the general membership of the PTC. This representative shall participate in any regular or special meeting activity of the PTC general membership. If the Authorized Representative of a Member Organization is unable to participate, the Cornerstone, Supporting, or Standard Organization member shall be entitled to appoint and certify a replacement person to be its authorized representative. There is no limit to the number of individuals from any one organization participating in PTC affairs or participating in Committees provided all dues obligations are met. A Standard Individual member shall serve as the Authorized Representative and cannot transfer this responsibility nor designate a proxy.
- (f) An Authorized Representative no longer acting as a Cornerstone, Supporting, or Standard Organization member representative due to departure from the Member Organization may convert to a Standard Individual Membership. If such person is on the Board of Directors that person must convert to a Standard Individual member to retain their membership and serve the remainder of their Board of Directors term.

Section 3.3 - Membership Voting Privileges

- (a) Cornerstone, Supporting, Standard Organization, and Standard Individual members are voting members of the PTC through an Authorized Representative designated by the member organization.
- (b) Each Cornerstone, Supporting, and Standard Organization member shall be entitled to an unlimited number of individual participants in regular or special meetings of the PTC membership but shall be limited to two (2) votes in the affairs of the PTC governed by the PTC voting membership.
- (c) Each Standard Individual member shall be entitled to one participant in regular or special meetings of the PTC membership and shall be limited to one (1) vote in the affairs of the PTC governed by the PTC membership.

Section 3.4 - Dues

- (a) The annual dues of Cornerstone, Supporting, Standard Organization, or Standard Individual members shall be determined by the Board of Directors.

- (b) All members must pay annual dues. Standard Organization and Standard Individual member dues shall be invoiced at a minimum of one time per year. Cornerstone and Supporting member dues may be invoiced quarterly at the request of the member and upon presentation of a purchase order for the full dues amount.
- (c) Any member whose dues have not been paid within sixty (60) days after the applicable invoice date shall receive a reminder notice, and after dues remain unpaid for ninety (90) days, the member shall be notified in writing that their membership has been suspended for nonpayment. No member may register for or attend any function of the PTC at the member rate until all dues in arrears have been paid.

Section 3.5 - Suspension, Expulsion and Resignation

- (a) If a member violates these bylaws or engages in conduct deemed to be prejudicial to the interests of the PTC by a simple majority of the Board of Directors, the member may be suspended or expelled by a three-quarters (3/4) vote of the Board of Directors at a duly constituted meeting. A notice of this meeting, accompanied by a statement of the charges, shall be sent by certified mail, return receipt requested, to the member at the last known address at least ten (10) days before the Board of Directors meeting at which the charges are to be presented. The member shall notify the Board of Directors by certified mail, return receipt requested, if they desire to exercise their right to appear in person, and be represented by legal counsel, to present any defense to such charges before action by the Board of Directors. Such presentation shall be scheduled to occur within 30 days of receipt of said notice before a quorum of the Board of Directors and may be conducted virtually or in person. The Board of Directors shall have the right to determine the length of any suspension and the terms of any expulsion if deemed appropriate.
- (b) Any member may resign from the PTC by not paying their dues. While notice is appreciated, it is not required. Resignations shall be effective at the close of the current year and upon fulfillment of all obligations. Resignation will not result in a dues refund.

Section 3.6 - Limitations on Membership

- (a) No member shall use the full or abbreviated PTC name, the acronym PTC, the seal, or other intellectual property for any commercial use, or claim that the PTC has certified, endorsed, or approved their tests, products, or services without the prior written approval of the Board of Directors.
- (b) No member shall represent or claim to represent the PTC without the prior written approval of the Board of Directors.

ARTICLE IV: BOARD OF DIRECTORS

Section 4.1 – Powers

- (a) The governing authority of the PTC shall be vested in the Board of Directors, which shall have supervision, control, direction, and responsibility for the affairs of the PTC. The Board of Directors shall determine PTC policy, subject only to the limitations of these bylaws, and shall adopt such rules and regulations for its conduct as it deems advisable and shall collect and disburse PTC funds.
- (b) The Board of Directors, in the execution of its powers granted herein, may appoint such agents as it shall consider necessary, and delegate responsibility for carrying out its functions to such agents, but the Board of Directors shall always remain accountable to the voting members from whom its power is derived.

Section 4.2 - Board of Directors

- (a) The Board of Directors shall consist of seven elected voting members, who shall serve without pay, and the ED, who shall serve as a non-voting member.
- (b) The regular term of office for each member of the Board of Directors shall be two (2) years. Four seats on the Board of Directors shall have terms that begin in even-numbered years. The other three seats shall have terms that begin in odd-numbered years.
- (c) Each year, the Board of Directors will elect a Secretary, Treasurer, Vice President, and President from the current Board of Directors. This election will occur during the joint meeting between the previous and new Board of Directors as noted in 4.3 (d).
- (d) No Director shall serve more than six consecutive years. No person can serve as President for more than 2 consecutive years.

Section 4.3 - Election of the Board of Directors

- (a) Only voting members (see section 3.3) shall be eligible to serve as a Director. Member organizations may have no more than one representative elected or appointed to Director at one time.
- (b) A slate of candidates for the Board of Directors shall be selected by the Nominating Committee. Notice of the slate of candidates shall be given at least fourteen (14) days before the annual meeting or any meeting at which elections for Board of Directors vacancies are to be conducted. (The Annual Meeting is the last general meeting of the membership during the fiscal year.) Additional nominations may be made by any voting member in good standing, provided that such names are submitted to the Chair of the Nominating Committee at least seven (7) days before the Annual Meeting. Nominations from the floor may be solicited and added to the slate at the discretion of the Nominating Committee Chair and upon confirmation of nominee's willingness to serve. Ballots cast before the Annual Meeting will retain the option to be amended any time through the end of the Annual Meeting.
- (c) The Board of Directors shall be elected by the voting members of the PTC at the annual meeting. Each Cornerstone, Supporting, or Standard Organization member shall have two (2) votes and each Standard Individual member shall have one (1) vote for

each Director position that is up for election. The new Board of Directors member(s) shall assume responsibilities at the last official board meeting of the fiscal year.

- (d) The outgoing Board of Directors shall, at the end of its term, convene the newly constituted Board of Directors. The new Board of Directors shall elect, from among its members, a President, Vice President, Secretary, and Treasurer. The previous Board of Director's President will preside over this session until the new President is elected.

Section 4.4 – Removal, Resignation and Vacancies

- (a) A Director may be removed from the Board of Directors by a minimum of three-quarters (3/4) vote of the remaining Directors at a duly held meeting for cause only after charges have been presented to the Board of Directors and the Director in question has been given an opportunity to defend against the charges before the Board of Directors.
- (b) Any Director may resign at any time by giving written notice to the PTC Board of Directors and such resignation shall take effect at the time specified by the Director.
- (c) Upon the resignation of a Director, or if there is a vacancy for any other reason, including death or removal, the President of the Board of Directors may appoint another eligible member to complete the remaining term, or a special election may be held.

Section 4.5 - Board of Directors' Meetings

- (a) The Board of Directors shall meet at least two times each year, including the Annual Meeting. The President shall designate the time and place of these meetings, as well as other special meetings that may be called from time to time at the request of three (3) Directors. If necessary for the efficient operation of the Board of Directors, meetings may be held virtually, so long as notice is given to each Director at least seven (7) days in advance. Similarly, the Board of Directors may hold elections or vote by means of phone, email, or web-based balloting, so long as notice is given to each Director at least five (5) days in advance.
- (b) Each Director shall have one (1) vote at any meeting of the Board of Directors. No proxy voting shall be permitted.
- (c) A majority of the voting Directors shall constitute a quorum for the transaction of business. On all matters, except for the establishment of dues, suspensions, and expulsions of members, official adoption of new PTC standards and amendments to these Bylaws, a majority of Directors present and voting is required for affirmative action. On matters of dues, suspensions, and expulsions of members, official adoption of new PTC standards, and proposed amendments to the Bylaws, an affirmative vote of a minimum of three-quarters (3/4) of all Directors shall be required.

ARTICLE V: PERFORMANCE TESTING COUNCIL OFFICERS

Section 5.1 - Officers

The officers of the PTC shall be the President, Vice President, Secretary, and Treasurer. The officers of the Board of Directors shall be elected in the manner called for in Section 4.3(d). All Board of Directors officer terms shall be for one year, and all elected board members are eligible for any officer position during their term(s) with the exception that a Director may not be elected to the role of President for more than two consecutive years.

Section 5.2 - President

The President of the Board of Directors shall preside over all meetings of the Board of Directors and shall be the "Chief Executive Officer" of the PTC, including for purposes of any required filings that must be made during the year. Actions taken by the President in the day-to-day operations of the PTC shall be subject to ratification by the Board of Directors at its next meeting. Expenditures outside the Board of Directors approved budget in excess of \$500, or changes in Board of Directors-approved policy requires pre-approval by a majority of the Board of Directors.

Section 5.3 – Vice President

The Vice President shall assume the duties of President of the Board of Directors in case of their absence. Should the President of the Board of Directors position become vacant for any reason, the Vice President shall become President of the PTC for the unexpired portion of the term.

Section 5.4 - Secretary

The Secretary of the PTC shall ensure that meeting minutes are captured and made available to the Board of Directors and membership, oversee membership applications and the preparation of ballots for the election of the next Board of Directors with the assistance of the ED, and shall perform such other duties as may be prescribed by the Board of Directors.

Section 5.5 - Treasurer

The Treasurer of the PTC shall oversee and have custody of all PTC funds and securities and shall supervise the keep full and accurate accounting of all receipts and disbursements and the depositing of all PTC funds in the name of PTC at such depositories as are approved by the Board of Directors. They shall supervise the ED in developing the annual proposed budget and interim budgets for PTC and, with the President, regularly present these to the Board of Directors for its approval.

ARTICLE VI: EXECUTIVE DIRECTOR

Section 6.1 – Executive Director (ED)

The ED is an ex officio non-voting member of the Board of Directors. The ED of the PTC shall serve at the pleasure of the Board of Directors for a term to be determined by the Board of Directors. The ED is responsible for auditing all expenditures and making sure expenditures are within the authorized budget and payable to legitimate recipients, collaborating with the President to prepare and communicate meeting agendas, evaluating membership applications, and presenting qualified applications to the Board of Directors for approval, ensuring membership dues are paid on time and taking appropriate action when not, and fulfilling any other duties as specified by the Board of Directors.

ARTICLE VII: GENERAL COUNSEL

Section 7.1 – General Counsel

The General Counsel (GC), when needed, is an ex-officio non-voting member of the Board of Directors. The GC of the PTC shall serve at the pleasure of the Board of Directors. The GC is responsible for monitoring the compliance of the PTC with all relevant laws and government regulations. The GC shall fulfill other duties as specified by the Board of Directors.

ARTICLE VIII: MEETINGS OF THE PTC

Section 8.1 - Annual Meeting

There shall be an Annual Meeting of the PTC at which the voting members of the PTC elect the Board of Directors, as prescribed under Section 4.3 (c).

Section 8.2 - Special Meeting

At the request of twenty-five percent (25%) of voting members, the PTC President shall convene a special meeting of the PTC with a minimum of 15 days' notice to all members. These special meetings may be held as part of a regular meeting or independently of it and shall address agenda items requested by the petitioners. The meetings may be held with physical, virtual, or electronic attendance. Such special meetings shall be held no later than the next regular meeting of the PTC which starts at least 15 days after receipt of the petition.

Section 8.3 - Summits and Conferences

- (a) Coextensive with the Annual Meeting or any called special meeting of the PTC, the PTC may provide up to four (4) meetings per year to allow Members to present and/or carry out: (1) theoretical and methodological issues in developing standards, best practices, and guidelines for performance testing; (2) scientific research and development relevant to performance testing; (3) legal, business, marketing, and

ethical issues related to performance testing; and (4) other matters deemed appropriate by the Board of Directors.

- (b) Any of these Summits or Conferences may be coextensive with Board of Director's meetings and may include official communications from the Board and/or invitations by the Board of Directors to vote on PTC matters for which the Board of Directors seeks participation by the voting Members.

Section 8.4 - Notices

The ED shall give written notice of all PTC meetings to every member at least fifteen (15) days in advance, showing the date, time, and place for each such meeting. Where appropriate and available, an agenda or list of subjects for each meeting or conference shall also be provided.

ARTICLE IX: STRUCTURE AND AUTHORITY OF COMMITTEES

Section 9.1 - Committees

- (a) Committees serve as discussion forums for specific topics in performance testing. Committees gather input and data as well as perform basic groundwork, such as conducting surveys, on various key topics in performance testing. Committees may invite speakers, solicit research, and develop project proposals. Committees may also support the mission of the PTC (e.g., marketing).
- (b) Participation in Committees shall be open to every voting member in good standing who wishes its representative(s) to participate in the work of the various Committees. However, each representative may participate in a maximum of three (3) Committees at the same time and a voting Member may have only one representative holding the position of Committee Chair. Each Member shall be entitled to a maximum of one (1) vote on each Committee in which its representative(s) participate. Member representative vote(s) need not be cast by its Authorized Representative. In the case where there is more than one person from a Member organization, the acting Authorized Representative for that Member must be identified prior to voting. Committees shall have the discretion to limit all or a part of their meetings to only members or to invite non-members to speak or present at Committee meetings.
- (c) Each Committee shall be governed by a Chair appointed by the Board of Directors.
- (d) Each committee shall be entitled to hold meetings separately in addition to those held in conjunction with regular meetings of the PTC. Each committee shall have the authority to conduct its affairs in any manner is consistent with these Bylaws and the other policies.
- (e) All expenditure of funds must be approved by the Board of Directors. Specifications for all projects on which bids are required will be advertised to the entire voting membership at least 30 days prior to acceptance of formal bids.

- (f) Committees may be created, dissolved, or revised by the Board of Directors from time to time. They may be created, dissolved, or revised upon a two-thirds (2/3) vote of the participants in that Committee and application to the Board of Directors for approval of the change.

Section 9.2 - Nominating Committee for Directors

- (a) The Nominating Committee, including its Chair, shall be appointed by the PTC President and shall consist of between one (1) and six (6) members.
- (b) The Nominating Committee shall comply with the provisions of Section 4.3 (b) and shall be responsible for communicating the results of its deliberations to the President, who shall ensure that the ED in conjunction with the Secretary prepares proper ballots for the election of the next Board of Directors.

Section 9.3 - Other Committees

In addition to the Committees described above, the Board of Directors shall annually appoint such other committees as may be required by these Bylaws or as it may find are necessary to conduct the business of the PTC.

ARTICLE X: INTELLECTUAL PROPERTY

Section 10.1 - Intellectual Property (IP)

All IP interests in plans, research, methodologies, standards, best practices, or other publication created by the PTC or its committees shall accrue to PTC. IP interests in materials submitted by individual member(s) or organizations to the PTC or its committees shall be retained by such member(s) or organizations until such interests are transferred, in writing, to the PTC. The IP transfer may be restricted or limited in time, scope, purpose, or otherwise restricted as designated by the IP owner.

Section 10.2 – Trademarks

The term "Testing By Doing" is a registered trademark of The Performance Testing Council, Inc. in the United States and other countries. Approval from the Board of Directors of the PTC must be obtained in writing prior to using any PTC marks or trademarks.

ARTICLE XI: INDEMNIFICATION AND INSURANCE

Section 11.1 - Indemnification

The PTC shall indemnify any Officer and Director against all expenses and liabilities, including counsel fees reasonably incurred in connection with any proceeding to which such person is a party, or in which such person may be involved by reason of such status, except in instances where the Officer or Director is found to have engaged in willful misfeasance or malfeasance in the performance of their duties of the office. This provision shall be deemed to cover former Officers and Directors to the extent that the claims against them arose pursuant to actions undertaken during their term in office, they were operating within the scope of their duties, and they are not found to have engaged in willful misfeasance or malfeasance in the performance of those duties. The PTC also may indemnify, at the discretion of the Board of Directors, any individual acting on behalf of the PTC, in accordance with the laws of the State of Delaware.

Section 11.2 - Insurance

The PTC may, at the discretion of the Board of Directors, purchase and maintain insurance on behalf of any person who is or was either a Director, Officer, employee, agent of the PTC, or serving in such capacity for another entity at the request of the PTC, against any liability asserted against them and incurred by them in any such capacity or arising out of such status, whether or not the PTC would have the power to indemnify an individual under Section 11.1.

ARTICLE XII: ADOPTION AND AMENDMENTS

Section 12.1 – Required Votes to Adopt Bylaws

These Bylaws shall be adopted upon an affirmative vote of three-quarters ($\frac{3}{4}$) of the voting members in attendance at a duly called meeting of the PTC and only after the Board of Directors has recommended such adoption by an affirmative vote of three-quarters ($\frac{3}{4}$) of a Board of Directors at a duly called meeting of the Board of Directors.

Section 12.2 – Required Votes to Amend Bylaws

- (a) These Bylaws shall be amended, repealed, or altered, in whole or in part, only upon an affirmative vote of three-quarters ($\frac{3}{4}$) of the voting members in attendance at a duly called meeting of the PTC, or three-quarters ($\frac{3}{4}$) of voting member respondents to email ballot, provided such amendment(s) have been sent to voting members at least fifteen (15) days before such vote is called, and only after the Board of Directors has recommended such amendment, repeal, or alteration by an affirmative vote of three-quarters ($\frac{3}{4}$) of the Board of Directors at a duly called meeting of the Board of Directors.
- (b) Any proposed amendment must be communicated in writing to all members of the Board of Directors for discussion at the next meeting of the Board of Directors, which shall deliberate and vote on whether to recommend such proposed amendment for consideration and vote by the Membership in accordance with 12.2 (a).

ARTICLE XIII: DISSOLUTION

Section 13.1 – Required Votes to Approve Dissolution

A vote to dissolve the PTC shall require unanimous approval of all voting members in attendance at a scheduled meeting of the PTC, and proper notice must have been given to each voting member of the proposed action. If the PTC votes to dissolve itself, the final action of the Board of Directors shall be to ensure the filing of all necessary papers with the State of Delaware.

Section 13.2 – Fund Distribution upon Dissolution

- (a) The PTC shall use its funds only to accomplish the purposes specified in these Bylaws, and no part of such funds shall inure or be distributed to the members of the PTC upon dissolution.
- (b) Upon the dissolution of the PTC, any funds remaining shall be distributed to one or more regularly organized and qualified charitable, educational, scientific, or philanthropic organizations which shall be selected by the Board of Directors.

ARTICLE XIV: GENERAL PROVISIONS

Section 14.1 - Seal

The official seal of the PTC shall set forth the name of the PTC and shall contain the words "seal" and "Incorporated".

Section 14.2 - Fiscal Year

The fiscal year for the PTC shall run from January 1 to December 31.

Section 14.3 – Rules

At all official meetings, conferences, or deliberations of the PTC, "Robert's Rules of Order - Revised" shall control all parliamentary procedures.

Section 14.4 – Interpretation

In case of a conflict between provisions of these Bylaws, the more specific provision shall prevail over the more general one.

Section 14.5 – Anti-Trust Guidelines

PTC will not engage in any activities that can reasonably be construed as violating Federal or State of Delaware Anti-Trust laws.

Section 14.6 Subsidiaries

The Board of Directors of the PTC may elect to create, fund, and administrate subsidiary organizations and corporations as may be needed to carry out and extend the mission of the PTC.