

# RSSAC 003 Internal Evaluation

17 July 2016

## Summary

RSSAC 003 recommends that ICANN and Verisign update their technical systems to alter a parameter (signature validity period) used in the Root Zone KSK and ZSK respectively.

## Evaluation

### Feasibility

Is this feasible to implement?

Yes, this request is feasible. It is a relatively minor modification for both ICANN and Verisign. (See attached Implementation Plan.)

### Resource Estimate

Description of resources required

The internal resources required to implement the KSK component are estimated to be:

OCTO <sup>1</sup>	20h
IANA	60h
External Auditor (Kirei)	20h

Verisign has agreed to perform the ZSK component, ICANN does not know their resource estimates or implication, but they have undertaken they will be able to perform their work in the proposed timeline.

### Cost

What is the total estimated cost to implement?

The primary external cost is having a third party review the code for the purposes of meeting our audit controls. We estimate this cost to be no more than \$6,000<sup>2</sup>.

### Desirability

Does this request meet a need?

The recommendation fixes a minor edge case identified by RSSAC. It is considered low priority. It is desirable to implement but should not do so at the expense of other work. In particular, it is desirable to not do this work at the same time specific KSK rollover changes are taking place. This means the work should either be conducted in 2016, or delayed until after the bulk of the KSK rollover is complete.

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<sup>1</sup> The original author of ICANN's software used for this application is Richard Lamb from when he worked in the IANA department, and he has indicated he is able to make the necessary modifications to that code to satisfy the KSK component of project.

<sup>2</sup> A formal proposal has not been request from vendor. Similar, but more complex, work was recently performed by the same vendor and the estimate is derived from that.

**Appropriateness**  
Should ICANN do this?

Yes, it is appropriate due to ICANN and Verisign's unique position to fix the underlying technical issue.

## RSSAC 003 Implementation Plan

### Requirement

RSSAC analysed<sup>3</sup> the current timeout values used in various data fields used in the DNS Root Zone, and provided a recommendation that:

- a) The signature validity period for the Root Zone KSK be extended to at least 21 days;
- b) The signature validity period for the Root Zone ZSK be extended to at least 13 days.

RSSAC noted the issue is not urgent and should be “addressed within a reasonable amount of time following an update of the necessary procedures and documents and software testing.”

### Considerations

#### Impact on software

There will need to be alterations to ICANN's software used to sign key signing requests during Root DNSSEC key ceremonies. The actual software change is minor, but will require testing, third-party auditing and acceptance. ICANN just completed this process for an unrelated change (for a ZSK length change project) and therefore is comfortable it knows the process required to conduct this change, and considers it low risk.

#### Impact on DNSSEC Practice Statement

There will need to be a modification to the KSK DNSSEC Practice Statement (DPS) maintained by ICANN, as well as the ZSK DPS that is maintained by Verisign. The change to ICANN's DPS seems limited to a single number appearing in section 6.6. It is anticipated this change can be easily accomplished and ratified by ICANN's Policy Management Authority in a short period of time. Under the current IANA contract, NTIA has most recently advised ICANN that changes to the DPS are deemed as contractual amendments, and a recently approved change to the DPS for a less material change took several months to be approved by NTIA. Therefore there is a risk that this change will take some time to be accomplished and for it to be permitted for implementation into practice. Should the NTIA stewardship transition conclude by October, this approval may however be rendered moot.

#### Impact on Ceremony Procedures

There is no impact on ceremony procedures beyond the one-time introduction of the software update relating to this change.

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<sup>3</sup> <https://www.icann.org/en/system/files/files/rssac-003-root-zone-ttls-21aug15-en.pdf>

## Impact on KSK Rollover

Discussion between ICANN and Verisign agreed that this work did not need to be delayed until after the conclusion of the first KSK rollover. There are some natural synergies from doing this work at the same time as the KSK rollover, as the same pieces of software will need to be modified for KSK rollover related reasons. Rolling out the revised software with both KSK rollover related changes and changes relating to this implementation should result in some cost and time savings.

## Should the validity periods be longer?

The recommendations of the RSSAC propose the validity periods of “at least” 21 and 13 days. These periods are based on specific circumstances that result in the precise selection of these validity periods. Due to their selection for specific reasons, ICANN and Verisign see no reason to make them longer than these days at this time, and therefore propose to configure them at exactly these values. Verisign noted it had already changed the ZSK validity period from 7 to 10 days (the current value) in the past without any issue, and further changes should be easily executed should it need to be changed again.

## Recommendation

We do not see any issues that would suggest this recommendation is not implementable. It would seem reasonable that the preparatory work in the coming months, and target creation of new signatures with the new validity periods that would commence publication in the Root Zone on 1 January 2017.

## Proposed High-Level Timeline

July-October 2016	Develop software changes; Conduct third party audit of code changes and perform acceptance testing
July-September 2016	Revise KSK DPS; Obtain approval of DPS revision from ICANN PMA and NTIA; Coordinate with Verisign on parallel ZSK DPS amendments.
November 2016	Conduct key signing ceremony for 2017Q1 with new signature validity periods in the Verisign Key Signing Request. (Note: this is anticipated to be the key ceremony at which the new KSK is generated.)
1 January 2017	Signatures with new validity periods in both the KSK and ZSK will appear in the DNS root zone. (Note: the root zone is NOT signed with the new KSK at this time, it will only be generated in November but is not put in use until later in 2017.)

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## REFERENCE MATERIALS TO BOARD SUBMISSION No. 2016.09.15.1d

**TITLE: October 2018 ICANN Meeting Venue Contracting**

### DETAILED ANALYSIS:

#### 1. Background:

In March 2015, ICANN called for expressions of interest to assist as host of the October 2018 ICANN Public Meeting, which is to be held in the Europe region. The proposal that is recommended for approval, from Gema Maria Campillos Gonzalez, Deputy Director of Information Society Services, Secretary of State for Telecommunications and Information Society, Spanish Government (and Spain's representative to the GAC), is discussed below.

#### 2. Site Visit:

- Barcelona, Spain: A preliminary site visit was conducted in April 2016.

#### 3. Discussion of Issues:

Barcelona, Spain – Centre Convencions Internacional de Barcelona (CCIB)

- Meeting Rooms: The CCIB has excellent conference facilities for an ICANN Meeting.
- Host Hotel: The Barcelona Princess, adjacent to the convention center, will serve as the host hotel for the Meeting.
- Area Hotels: The Hotel SB Diagonal Zero, AC Hotel Barcelona and the Hilton Diagonal are also adjacent to the CCIB. Other nearby hotels offer a wide variety of guest room accommodations at varying price points. They are in walking distance, or easily accessible via the Metro or taxi.
- Food & Beverage Outlets: There are a large number of restaurants in close proximity to the CCIB. In addition, the CCIB will provide food for sale for Meeting delegates.
- Air Travel: Air access to Barcelona is very good, with direct flights from all major European cities, and good coverage from other geographies.
- Ground Transportation: Barcelona El Prat Airport is 18 kilometers/20 minutes from the meeting venue and area hotels. Taxi fare is approximately US\$35. Shuttle service is also available for approximately US\$12.
- Safety & Security: A preliminary risk assessment by ICANN security has not identified any areas of concern for Barcelona that would require other than standard security measures provided for an ICANN Meeting.
- Gala: The Government of Spain has not yet made a decision on providing a Gala.
- Bandwidth: The Government of Spain will provide internet bandwidth for the meeting.

Representatives from the Government of Spain are capable and anxious to host.

Staff recommends that the board approve Barcelona, Spain as the location of the October 2018 ICANN Meeting.

#### 4. Centre Convencions Internacional de Barcelona Costs – Board Approval Required

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**5. Hotel Guest Room Costs – Board Approval Not Required:**  
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**6. Hotel Courtesy Block**

- The following hotels have provided a courtesy block of rooms (315 total rooms)
  - Hotel Front Maritim
  - Hotel Vincci Maritimo
  - Hotel Vincci Bit
  - Hotel Attica 21 Mar
  - Hesperia Del Mar
  - Tryp Barcelona Condal Mar
  - Melia Sky Barcelona



Staff recommends that the board approve the expenditure (including contracting and disbursements) for the contract with the Centre Convencions Internacional de Barcelona.

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Submitted by:	Nick Tomasso
Position:	VP, Meetings
Date Noted:	23 August 2016
Email:	<a href="mailto:nick.tomasso@icann.org">nick.tomasso@icann.org</a>

## REFERENCE MATERIALS TO BOARD SUBMISSION No. 2016.09.15.1d

**TITLE: October 2018 ICANN Meeting Location and Venue Contracting**

### DETAILED ANALYSIS:

#### 1. Background:

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Confidential Negotiation Information

Submitted by:	Nick Tomasso
Position:	VP, Meetings
Date Noted:	24 August 2016
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## IANA NAMING FUNCTION CONTRACT

This IANA Naming Function Contract (this “**Contract**”) is dated as of [●] 2016 and is entered into by and between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“**ICANN**”) and Public Technical Identifiers, a California nonprofit public benefit corporation (the “**Contractor**”), and is effective as of the last date on which all of the conditions set out in ARTICLE II have been satisfied (the “**Effective Date**”). ICANN and Contractor may each be referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

WHEREAS, on 14 March 2014, the U.S. National Telecommunications and Information Administration (“**NTIA**”) announced the transition of NTIA’s stewardship role of key Internet domain name functions to the global multi-stakeholder community (the “**Transition**”);

WHEREAS, following the Transition, ICANN will continue to serve as the Internet Assigned Numbers Authority (“**IANA**”) functions operator; and

WHEREAS, ICANN and Contractor desire to enter into this Contract pursuant to which Contractor will serve as the operator for the IANA naming function after the Transition.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **ARTICLE I: DEFINITIONS AND CONSTRUCTION**

#### Section 1.1 Definitions.

- (a) “**Contract**” has the meaning set forth in the Preamble.
- (b) “**Approved IANA Budget**” has the meaning set forth in Section 10.2.
- (c) “**ccNSO**” has the meaning set forth in Section 4.7.
- (d) “**ccTLD**” has the meaning set forth in Section 4.4(c).
- (e) “**CCOP**” has the meaning set forth in Section 5.2(b).
- (f) “**Complainant**” has the meaning set forth in Section 8.1(a).
- (g) “**Complaint**” has the meaning set forth in Section 8.1(a).
- (h) “**Contractor**” has the meaning set forth in the Preamble.
- (i) “**CSC**” has the meaning set forth in Section 4.9(c).
- (j) “**CSS Report**” has the meaning set forth in Section 3.e of Annex A.

- (k) **“customer”** means a gTLD registry operator, a ccTLD manager or registry operator or other direct customer of Contractor (e.g., a root server operator or other non-root zone function).
- (l) **“Delegation”** refers to the process by which the operator of the IANA Naming Function initially assigns management responsibility or assigns previously assigned responsibility (after a revocation) for the management of a ccTLD, as further defined in the RFC 1591 as interpreted by the FOI.
- (m) **“DNS”** means domain name system.
- (n) **“DOC”** has the meaning set forth in Section 2.1.
- (o) **“DS”** has the meaning set forth in Section 1.d.i of Annex A.
- (p) **“Effective Date”** has the meaning set forth in the Preamble.
- (q) **“FOI”** has the meaning set forth in Section 4.7.
- (r) **“GAC 2005 ccTLD Principles”** has the meaning set forth in Section 4.7.
- (s) **“GNSO”** has the meaning set forth in Section 4.7.
- (t) **“gTLD”** has the meaning set forth in Section 4.4(c).
- (u) **“IANA”** has the meaning set forth in the Recitals.
- (v) **“IANA Function Review”** or **“IFR”** has the meaning set forth in Section 7.3(a).
- (w) **“IANA Intellectual Property”** has the meaning set forth in the License Agreement.
- (x) **“IANA Naming Function”** has the meaning set forth in Section 4.3.
- (y) **“IANA Website”** has the meaning set forth in Section 4.6.
- (z) **“ICANN”** has the meaning set forth in the Preamble.
- (aa) **“ICANN Board”** has the meaning set forth in Section 7.3(a).
- (bb) **“ICANN’s Bylaws”** means those certain Bylaws for Internet Corporation for Assigned Names and Numbers, a California Nonprofit Public-Benefit Corporation, adopted by the ICANN Board on 27 May 2016, as amended.
- (cc) **“IFRT”** has the meaning set forth in Section 4.9(c).
- (dd) **“Initial Term”** has the meaning set forth in Section 9.1.

- (ee) **“Interested and Affected Parties”** means all gTLD registry operators, ccTLD managers and registry operators, the Root Zone Evolution Review Committee, the CSC, and (if formed and while in existence) each IFRT.
- (ff) **“Key Personnel”** has the meaning set forth in Section 4.9(a).
- (gg) **“License Agreement”** means that certain IANA IPR License Agreement, dated as of [●], 2016, between the IETF Trust and ICANN.
- (hh) **“NS”** has the meaning set forth in Section 1.d.i of Annex A.
- (ii) **“NTIA”** has the meaning set forth in the Recitals.
- (jj) **“Party”** or **“Parties”** has the meaning set forth in the Preamble.
- (kk) **“Performance Issue”** has the meaning set forth in Section 8.1(b).
- (ll) **“PTI Board”** has the meaning set forth in Section 4.9(c)(ii).
- (mm) **“Renewal Term”** has the meaning set forth in Section 9.2(a).
- (nn) **“Revocation”** refers to the process by which the operator of the IANA Naming Function rescinds responsibility for management of a ccTLD from an incumbent manager, as further defined in the RFC 1591 as interpreted by the FOI.
- (oo) **“RFC 1591”** has the meaning set forth in [Section 4.7](#),
- (pp) **“Root Zone Management”** has the meaning set forth in Section 4.3(a).
- (qq) **“RR”** has the meaning set forth in Section 1.d.i of Annex A.
- (rr) **“RZMA”** means that certain Root Zone Services Maintainer Agreement, dated as of [●], 2016, between ICANN and VeriSign, Inc.
- (ss) **“Significantly Interested Parties”** has the meaning set forth in the RFC 1591 as interpreted by the FOI. For avoidance of doubt, under the RFC 1591 as interpreted by the FOI these parties include, but are not limited to: (i) the government or territorial authority for the country or territory associated with the ccTLD and (ii) any other individuals, organizations, companies, associations, educational institutions, or others that have a direct, material, substantial, legitimate and demonstrable interest in the operation of the ccTLD(s) including the incumbent manager. To be considered a Significantly Interested Party, any party other than the manager or the government or territorial authority for the country or territory associated with the ccTLD must demonstrate (and shall have the burden to demonstrate) that it is has a direct, material and legitimate interest in the operation of the ccTLD(s).

- (tt) “**SOW**” has the meaning set forth in Section 4.3(a).
- (uu) “**SP**” has the meaning set forth in Section 4.b.iii of Annex A.
- (vv) “**Transfer**” refers to the process by which the operator of the IANA Naming Function transfers responsibility for management of a ccTLD with the consent of the incumbent manager and the new manager, as further defined in the RFC 1591 as interpreted by the FOI.
- (ww) “**TLD**” has the meaning set forth in the definition of “Interested and Affected Parties.”
- (xx) “**Transition**” has the meaning set forth in the Recitals.

Section 1.2 Construction. Unless the context of this Contract otherwise requires: (a) words of any gender include each other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this entire Contract; (d) the terms “Article,” “Section,” or “Annex” refer to the specified Article, Section, or Exhibit of this Contract; (e) the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”; and (f) the term “including” or “includes” means “including without limitation” or “includes without limitation” so as to not limit the generality of the preceding term. Unless otherwise stated, references to days shall mean calendar days.

## **ARTICLE II: CONDITIONS PRECEDENT**

Section 2.1 Condition Precedent. This Contract shall be effective as of the last date on which the following conditions have been satisfied: (a) the agreement between ICANN and the United States Department of Commerce (“**DOC**”), effective as of 01 October 2012 (including any extension thereof) has terminated or expired and (b) ICANN has accepted the responsibility to coordinate and administer the services that were previously provided thereunder.

## **ARTICLE III: REPRESENTATIONS AND WARRANTIES**

Section 3.1 ICANN’s Warranties. ICANN represents and warrants that (a) it has all necessary rights and powers to enter into and perform its obligations under this Contract; (b) the execution, delivery and performance of this Contract by ICANN has been duly authorized by all necessary corporate action and does not violate any applicable law to which ICANN is subject; and (c) the execution, delivery and performance of this Contract by ICANN do not (i) require a consent or approval under, or (ii) conflict with, result in any violation or breach of, constitute a default under, or accelerate any rights in favor of a third party under, any agreement between ICANN and a third party.

Section 3.2 Contractor Warranties. Contractor represents and warrants that (a) it has all necessary rights and powers to enter into and perform its obligations under this Contract; (b) the execution, delivery and performance of this Contract by Contractor has been duly



authorized by all necessary corporate action and does not violate any applicable law to which Contractor is subject; and (c) the execution, delivery and performance of this Contract by Contractor do not (i) require a consent or approval under, or (ii) conflict with, result in any violation or breach of, constitute a default under, or accelerate of any rights in favor of a third party under, any agreement between Contractor and a third party.

#### **ARTICLE IV: SERVICES AND REQUIREMENTS**

Section 4.1 Designation. ICANN hereby designates Contractor as the operator of the IANA Naming Function, and authorizes Contractor to perform, the IANA Naming Function in accordance with the terms of this Contract (including the SOW). Without limiting the foregoing, ICANN hereby grants to Contractor, and Contractor hereby accepts, a worldwide, royalty-free, fully-paid right and license to the IANA Intellectual Property to the fullest extent permitted to be licensed to Contractor under the terms of the License Contract (including the right to further sublicense to the extent permitted in the License Contract). ICANN hereby authorizes Contractor to utilize any other rights and sublicensable licenses held by ICANN to the extent necessary or useful to perform the IANA Naming Function in accordance with the terms of this Contract (including the SOW). Contractor hereby accepts such designation, rights and licenses and agrees to perform the IANA Naming Function in accordance with the terms of this Contract (including the SOW).

Section 4.2 U.S. Presence.

(a) Contractor shall be a wholly U.S. owned and operated corporation operating in one of the 50 states of the United States or District of Columbia; (ii) incorporated within the state of California, United States of America; and (iii) organized under the nonprofit public benefit corporation laws of the state of California.

(b) Contractor shall perform the IANA Naming Function in the United States and possess and maintain, throughout the performance of this Contract, a physical address within the United States. Contractor must be able to demonstrate that all primary operations and systems will remain within the United States (including the District of Columbia). ICANN reserves the right to inspect the premises, systems, and processes of all security and operational components used for the performance of the IANA Naming Function.

Section 4.3 Scope of the IANA Naming Function. The **“IANA Naming Function”** is comprised of:

(a) Management of the DNS Root Zone (**“Root Zone Management”**) in accordance with the Statement of Work attached as Annex A to this Contract (**“SOW”**);

(b) Management of the .INT top-level domain;

- (c) Maintenance of a repository of internationalized domain name tables and label generation rulesets; and
- (d) Provision of other services and implementation of modifications in performance of the IANA Naming Function, in each case upon ICANN's request and in conformance with applicable policies and procedures.

Section 4.4 Performance of IANA Naming Function.

- (a) Contractor shall perform the IANA Naming Function in a stable and secure manner and in accordance with the SOW. The IANA Naming Function is administrative and technical in nature based on established policies that are developed through applicable ICANN policy development bodies and approved by ICANN, in each case in accordance with ICANN's Bylaws.
- (b) Contractor shall treat the IANA Naming Function with equal priority as the other IANA functions performed by Contractor, and process all requests promptly and efficiently.
- (c) Contractor shall make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular customer for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different customers) and in a manner that does not discriminate between types of customers (whether such customers are (i) country code top level domain ("ccTLD") or generic top level domain ("gTLD") registry operators, (ii) paying or non-paying, (iii) contracted or non-contracted, or (iv) associated with supporting organizations, advisory committees or other governing bodies of ICANN or otherwise).
- (d) Contractor shall respect the diversity of customers of the IANA Naming Function and shall provide service to its customers in conformance with prevailing technical norms, and in support of the global security, stability and resilience of the DNS. If a customer's receipt of services is based on a contract between such customer and ICANN, Contractor shall continue to provide services to such customer notwithstanding any on-going or anticipated contractual disputes between ICANN and such customer.

Section 4.5 Separation of Policy Development and Operational Roles. Contractor shall ensure that its staff performing the IANA Naming Function do not publicly initiate, advance or advocate any policy development related to the IANA Naming Function. Notwithstanding the foregoing, Contractor's staff may (i) respond to requests for information requested by Interested and Affected Parties, and, at Contractor's volition, provide objective information to such customers, in each case, to inform ongoing policy discussions, (ii) request guidance or clarification as necessary for the performance of the IANA Naming Function, and (iii) publish, contribute to or comment on any document related to ongoing policy discussions, provided that, in the case of clause (iii), the primary purpose of such publication, contribution or commentary is to supply relevant IANA Naming Function experience and insight.

Section 4.6 User Instructions. Contractor shall, in collaboration with all Interested and Affected Parties, maintain user instructions for the IANA Naming Function, including technical requirements. Contractor shall post such instructions at [iana.org](http://iana.org) ("**IANA Website**").

Section 4.7 Responsibility and Respect for Stakeholders. Contractor shall apply the policies for the Root Zone Management component of the IANA Naming Function that have been defined, or after the date of this Contract are further defined, by (a) the Generic Names Supporting Organization ("**GNSO**"), as appropriate under ICANN's Bylaws, (b) the Country Code Names Supporting Organization ("**ccNSO**"), as appropriate under ICANN's Bylaws, and (c) RFC 1591: /Domain Name System Structure and Delegation/ ("**RFC 1591**") as interpreted by the Framework of Interpretation of Current Policies and Guidelines Pertaining to the Delegation and Redellegation of Country-Code Top Level Domain Names, dated October 2014 ("**FOI**"). In addition to these policies, Contractor shall, where applicable, consult the 2005 Governmental Advisory Committee Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains ("**GAC 2005 ccTLD Principles**"). Contractor shall publish documentation pertaining to the implementation of these policies and principles on the IANA Website.

Section 4.8 Management of the .INT TLD.

- (a) Contractor shall operate the .INT TLD within the current registration policies for the .INT TLD.
- (b) Upon designation of a successor registry by ICANN, if any, Contractor shall cooperate with ICANN to facilitate the smooth transition of operation of the .INT TLD. Such cooperation shall, at a minimum, include timely transfer to the successor registry of the then-current top-level domain registration data.

Section 4.9 General Manager; Key Personnel.

- (a) Contractor shall provide trained, knowledgeable technical personnel according to the requirements of this Contract, including the following key personnel: a General Manager, a Director of Security and a Conflict of Interest Officer ("**Key Personnel**"). All Contractor personnel who interface with ICANN must have excellent oral and written communication skills. "Excellent oral and written communication skills" is defined as the capability to converse fluently, communicate effectively, and write intelligibly in the English language.
- (b) The Conflict of Interest Officer shall be responsible for ensuring the Contractor is in compliance with Contractor's internal and external conflict of interest rules and procedures.
- (c) The General Manager of Contractor shall organize, plan, direct, staff, and coordinate the overall performance of the IANA Naming Function; manage contract and subcontract activities as the authorized interface with ICANN and ensure compliance

with applicable rules and regulations. The General Manager of Contractor shall be responsible for the overall performance of Contractor under this Contract and shall meet and confer with ICANN (including the Customer Standing Committee (“**CSC**”) and IANA Function Review teams (“**IFRT**”), as such terms are used in ICANN’s Bylaws) regarding the status of specific Contractor activities and problems, issues, or conflicts requiring resolution. The General Manager of Contractor must possess the following skills:

- (i) demonstrated communication skills with all levels of management;
- (ii) capability to negotiate and make binding decisions for Contractor (subject to any requirements of Contractor’s Bylaws and the authority delegated to such person by the Contractor’s Board of Directors (“**PTI Board**”));
- (iii) extensive experience and proven expertise in managing similar multi-task agreements of this type and complexity;
- (iv) extensive experience supervising personnel; and
- (v) a thorough understanding and knowledge of the principles and methodologies associated with operations management and contract management.

(d) Contractor shall obtain the approval of ICANN, after consultation with the PTI Board, prior to making Key Personnel substitutions. Replacements for Key Personnel must possess qualifications reasonably equal to or exceeding the qualifications of the personnel being replaced, unless an exception is approved by ICANN.

#### Section 4.10 Inspection Of All Deliverables And Reports Before Publication.

(a) Prior to publication or posting of reports and other deliverables anticipated under this Contract on a template that has not been previously approved by ICANN, Contractor shall obtain approval from ICANN for such template, which will not be unreasonably withheld. Any deficiencies identified by ICANN shall be corrected by Contractor and resubmitted to ICANN within 10 business days after Contractor’s receipt of notice of such deficiency.

(b) ICANN reserves the right to inspect the premises, systems and processes of all security and operational components used for the performance of all the requirements and obligations set forth in this Contract.

### **ARTICLE V: PERFORMANCE**

Section 5.1 Constructive Working Relationship. Contractor shall use commercially reasonable efforts to maintain a constructive working relationship with ICANN, the root zone

maintainer and all Interested and Affected Parties to ensure quality and satisfactory performance of the IANA Naming Function.

Section 5.2 Continuity of Operations.

(a) Either ICANN or the Contractor shall provide, at a minimum, redundant sites in at least two geographically dispersed sites within the United States as well as multiple resilient communication paths to customers to ensure continuation of the IANA Naming Function in the event of cyber or physical attacks, emergencies, or natural disasters.

(b) Contractor shall collaborate with ICANN to develop and implement a Contingency and Continuity of Operations Plan (“**CCOP**”) for the IANA Naming Function. Contractor in collaboration with ICANN shall from time to time update and annually test the CCOP as necessary to maintain the security and stability of the IANA Naming Function. The CCOP shall include details on plans for continuation of the IANA Naming Function in the event of cyber or physical attacks, emergencies, or natural disasters. Contractor shall submit the CCOP to ICANN after each update and publish on the IANA Website a report documenting the outcomes of the CCOP tests within 90 calendar days of the annual test.

Section 5.3 Performance Exclusions

(a) Contractor is not authorized to perform the services performed by the root zone maintainer, as such services are contemplated by the RZMA, unless authorized by ICANN.

(b) Contractor shall not make changes in the policies and procedures developed by the relevant entities associated with the performance of the IANA Naming Function.

(c) The performance of the IANA Naming Function shall not be, in any manner, predicated upon or conditioned by Contractor on the existence or entry into any contract, agreement or negotiation between Contractor and any TLD registry operator or any other third party. Compliance with this Section must be consistent with the SOW.

**ARTICLE VI: TRANSPARENCY OF DECISION-MAKING**

Section 6.1 Transparency. To enhance consistency, predictability and integrity in Contractor’s decision-making related to the IANA Naming Function, Contractor shall:

(a) Publish reports pursuant to ARTICLE VII of this Contract and Section 3 of the SOW.

(b) Make public all decisions of the PTI Board relating to the IANA Naming Function, unless, upon the determination of the PTI Board, such decision (i) relates to confidential personnel matters, (ii) is covered by attorney-client privilege, work product doctrine or other recognized legal privilege, (iii) is subject to a legal obligation that Contractor

maintain its confidentiality or otherwise would result in the disclosure of confidential information of Contractor's customers, (iv) would disclose trade secrets, or (v) would present a material risk of negative impact to the security, stability or resiliency of the IANA Naming Function or the Internet.

(c) Agree not to redact any PTI Board minutes related to decisions concerning the IANA Naming Function, provided that the PTI Board may redact such minutes on the determination that such redacted information (i) relates to confidential personnel matters, (ii) is covered by attorney-client privilege, work product doctrine or other recognized legal privilege, (iii) is subject to a legal obligation that Contractor maintain its confidentiality or otherwise would result in the disclosure of confidential information of Contractor's customers, (iv) would disclose trade secrets, or (v) would present a material risk of negative impact to the security, stability or resiliency of the IANA Naming Function or the Internet.

(d) Have the General Manager of Contractor and chairperson of the PTI Board sign an annual attestation that Contractor has complied with the requirements of this Section 6.1.

(e) Subject to the terms of this Contract, PTI shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, in each case, as such concepts are contemplated by ICANN's Bylaws.

## **ARTICLE VII: AUDITS, MONITORING AND REVIEWS**

### **Section 7.1 Audits.**

(a) Contractor shall generate and publish via the IANA Website a monthly audit report identifying each root zone file and root zone "WHOIS" database change request and its status. The relevant policies under which the changes are made shall be noted within each monthly report. Such audit report shall be due to ICANN no later than 15 calendar days following the end of each month.

(b) Contractor shall annually perform a specialized compliance audit of Contractor's security provisions relating to the IANA Naming Function against existing best practices and ARTICLE XI. This specialized compliance audit shall be performed by an external, independent auditor.

### **Section 7.2 Performance Monitoring.**

(a) So long as the CSC exists pursuant to ICANN's Bylaws, Contractor acknowledges and agrees that the CSC is entitled to monitor Contractor's performance under this Contract (including the SOW) in accordance with ICANN's Bylaws.

(b) Contractor shall provide reports to the CSC as contemplated by the SOW.

- (c) Contractor shall act in good faith to resolve issues identified by the CSC.
- (d) Contractor acknowledges that the CSC shall be empowered to escalate identified areas of concern as set forth in ARTICLE VIII.

Section 7.3 IANA Naming Function Reviews.

- (a) Contractor acknowledges that ICANN's Board of Directors (the "**ICANN Board**") may cause a review by an IFRT, relating to the IANA Naming Function, this Contract and Contractor's performance under this Contract (including the SOW), in accordance with ICANN's Bylaws (an "**IANA Function Review**" or "**IFR**").
- (b) Contractor shall cooperate with the conduct of any IFRT, including any site visit conducted by an IFRT that has been previously approved by ICANN in accordance with ICANN's Bylaws.
- (c) Contractor agrees that ICANN may unilaterally amend or terminate this Contract (including the SOW) in accordance with an approved IFR Recommendation, an approved Special IFR Recommendation or an approved SCWG Recommendation (as such terms are defined in ICANN's Bylaws), subject to the limitations set forth in ICANN's Bylaws. Contractor agrees to abide by and implement any such amendments.

**ARTICLE VIII: ESCALATION MECHANISMS**

Section 8.1 Complaint Resolution Process.

- (a) If Contractor receives a customer service complaint from a customer (a "**Complaint**"), Contractor will review the Complaint and attempt to resolve it to the reasonable satisfaction of the person or entity who brought the Complaint (the "**Complainant**") as soon as reasonably practicable. If the Complaint is not so resolved, the Complainant may escalate the matter in writing to Contractor's management team, in which case Contractor shall notify the CSC. If the Complaint is still not resolved, the Complainant or the President of Contractor may escalate the matter in writing to ICANN's Ombudsman.
- (b) If (i) a Complainant is a customer and (ii) after completing the escalation process provided for in Section 8.1(a), the Complaint is still not resolved, then (A) the CSC may conduct a review to determine whether the Complaint is subject of a persistent performance issue of Contractor or an indication of a systemic problem with Contractor's performance of the IANA Naming Function pursuant to the terms of this Contract (a "**Performance Issue**") and (B) the Complainant may (x) request mediation, which shall be conducted in a manner consistent with the terms and process set forth below in Section 8.1(c) and (y) if the issue is not resolved following such mediation and the Complaint meets the requirements of the Independent Review Process, initiate an Independent Review Process (as defined in the ICANN's Bylaws). If the CSC determines

that a Performance Issue exists, the CSC may seek remediation of the Performance Issue through the IANA Problem Resolution Process described in Section 8.2.

(c) Customer Mediation Process.

(i) If a Complainant is a customer of Contractor, after completing the escalation process provided for in Section 8.1(a), the customer may initiate mediation by delivering a written notice to the President of Contractor and the Secretary of ICANN.

(ii) There shall be a single mediator who shall be selected by the agreement of the customer and ICANN. ICANN shall propose a slate of at least five potential mediators, and the customer shall select a mediator from the slate or request a new slate until a mutually agreed mediator is selected. The customer may recommend potential mediators for inclusion on the slates selected by ICANN. ICANN shall not unreasonably decline to include mediators recommended by the customer on proposed slates and the customer shall not unreasonably withhold consent to the selection of a mediator on slates proposed by ICANN.

(iii) The mediator shall be a licensed attorney with general knowledge of contract law and general knowledge of the DNS and ICANN. The mediator may not have any ongoing business relationship with ICANN, Contractor or the customer. The mediator must confirm in writing that he or she is not, directly or indirectly, and will not become during the term of the mediation, an employee, partner, executive officer, director, consultant or advisor of ICANN, Contractor or the customer.

(iv) The mediator shall conduct the mediation in accordance with this Section 8.1(c), the laws of California and the rules and procedures of a well-respected international dispute resolution provider.

(v) The mediation will be conducted in the English language and will occur in Los Angeles County, California, unless another location is mutually agreed between ICANN, Contractor and the customer.

(vi) ICANN, Contractor and the customer shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute.

(vii) ICANN shall bear all costs of the mediator.

(viii) If ICANN, Contractor and the customer have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, ICANN, Contractor and the customer may terminate the mediation at any time by declaring an impasse.



- (ix) If a resolution to the dispute is reached by ICANN, Contractor and the customer, ICANN, Contractor and the customer shall document such resolution.

Section 8.2 IANA Problem Resolution Process. Following the Effective Date, Contractor shall work cooperatively with the CSC to develop “Remedial Action Procedures” for the purpose of addressing Performance Issues. If the CSC determines that a Performance Issue exists, the CSC may seek resolution of the Performance Issue with Contractor, in which case Contractor shall comply with such Remedial Action Procedures if and to the extent the CSC also complies with such procedures.

Section 8.3 Notice and Mitigation Plan.

(a) Contractor shall promptly inform ICANN of any issue or dispute arising from its performance of the requirements and services contemplated by this Contract prior to the Complaint being escalated pursuant to Section 8.1(a), and shall agree with ICANN on a plan to resolve the Complaint.

(b) If, for any reason, Contractor fails to meet any of the requirements of this Contract, Contractor shall (i) conduct an analysis of its operations to determine the root cause of such failure, (ii) develop a mitigation plan to avoid the root cause of such failure from occurring in the future, and (iii) deliver the report to ICANN upon its completion. Contractor shall modify and update any mitigation plan as directed by ICANN.

#### **ARTICLE IX: TERM; RENEWAL; TRANSITION AND TERMINATION**

Section 9.1 Initial Term. The initial term of this Contract will be five years from the Effective Date (the “**Initial Term**”).

Section 9.2 Renewal; Termination.

(a) This Contract will be automatically renewed for successive periods of five years (each, a “**Renewal Term**”) upon the expiration of the Initial Term and each successive Renewal Term, unless (i) ICANN terminates this Contract pursuant to an SCWG Recommendation arising from an IANA Naming Function Separation Process (as such terms are defined in ICANN’s Bylaws) approved in accordance with ICANN’s Bylaws or (ii) ICANN elects not to renew the Initial Term or any Renewal Term thereafter pursuant to an IFR Recommendation, Special IFR Recommendation, or SCWG Recommendation (as such terms are defined in ICANN’s Bylaws) approved in accordance with ICANN’s Bylaws by providing Contractor with not less than twelve months prior written notice. Any termination or election by ICANN to not renew this Contract under this Section 9.2 must be approved by the ICANN Board to be effective hereunder.

(b) Subject to Section 9.2(a), the first Renewal Term shall commence immediately following the end of the Initial Term and each Renewal Term thereafter shall commence

immediately following the end of the preceding Renewal Term. Each Renewal Term shall end on the fifth anniversary of the commencement of the Renewal Term.

**Section 9.3** Transition.

- (a) Contractor shall develop and maintain, with ICANN input, a plan in place for transitioning the IANA Naming Function to a successor provider to ensure an orderly transition while maintaining continuity and security of operations, including in connection with the nonrenewal of this Contract and/or divestiture or other reorganization of PTI by ICANN as contemplated by ICANN's Bylaws. The transition plan shall be submitted to ICANN and posted to the IANA Website within 18 months after the Effective Date. The plan shall thereafter be reviewed annually and updated as appropriate.
- (b) Contractor shall provide support and cooperation to ICANN, and to any successor provider of the IANA Naming Function, in order to effect an orderly, stable, secure and efficient transition of the performance of the IANA Naming Function.
- (c) Contractor agrees to be engaged in the transition plan and to provide appropriate transition staff and expertise to facilitate a stable and secure transition of the IANA Naming Function to a successor provider.
- (d) ICANN, in conjunction with the CSC as necessary, shall review the transition plan at least every five years.

**Section 9.4** Survival of Terms. Upon the expiration or termination of this Contract under this ARTICLE IX, this Contract shall become wholly void and of no further force and effect, and following such expiration or termination no Party shall have any liability under this Contract to the other Party, except that each Party hereto shall remain liable for any breaches of this Contract that occurred prior to its expiration or termination; provided, however, that the following provisions shall survive the expiration or termination of this Contract: ARTICLE I, ARTICLE III, Section 9.3, ARTICLE XII, ARTICLE XIII, Section 14.1 (but only with respect to obligations accruing prior to the expiration or termination of this Contract), Section 14.2 through Section 14.15, and this Section 9.4,

**ARTICLE X: RESOURCES, FEES AND BUDGET**

**Section 10.1** Resources and Fees.

- (a) ICANN shall provide or make available to Contractor the necessary personnel (including seconded employees), material, equipment, services and other resources and facilities to perform Contractor's obligations under this Contract, including funding in accordance with the Approved IANA Budget.
- (b) Contractor may not charge or collect fees from third parties related to the performance of the IANA Naming Function without the prior written consent of ICANN.

(c) Any fees approved by ICANN and charged by Contractor relating to the IANA Naming Function will be based on the actual costs incurred by Contractor to perform the IANA Naming Function.

(d) ICANN acknowledges and agrees that the performance by Contractor of the IANA Naming Function is conditioned upon the full and complete performance of all of the services and obligations required of ICANN under the Services Contract between ICANN and Contractor.

Section 10.2 Budget. Contractor shall comply with the requirements set forth in its Bylaws relating to preparing, submitting and monitoring an annual budget. ICANN will meet annually with the General Manager of Contractor to review the annual budget for the IANA Naming Function, which shall be approved in accordance with Contractor's Bylaws and ICANN's Bylaws ("**Approved IANA Budget**").

## **ARTICLE XI: SECURITY REQUIREMENTS**

Section 11.1 Computing Systems. With respect to the performance of the IANA Naming Function, Contractor shall install and operate all computing and communications systems in accordance with best business and security practices. ICANN and Contractor shall implement a secure system for authenticated communications to Contractor's customers when carrying out the IANA Naming Function pursuant to the terms of this Contract. ICANN and Contractor shall document practices and configuration of all systems.

Section 11.2 Notification Systems. Contractor shall implement and thereafter operate and maintain a secure notification system at a minimum, capable of notifying TLD registry operators, of such events as outages, planned maintenance, and new developments. In all cases, Contractor shall notify ICANN of any outages.

Section 11.3 Data. Contractor shall ensure the authentication, integrity, and reliability of the service data in performing the IANA Naming Function.

Section 11.4 Security Plan. ICANN shall coordinate with Contractor to develop and execute a security plan that meets the requirements of this Contract and this ARTICLE XI. ICANN and Contractor shall document in the security plan the process used to ensure information systems including hardware, software, applications, and general support systems have effective security safeguards, which have been implemented, planned for, and documented. Contractor shall, in coordination with ICANN, perform periodic reviews of the security plan and update the plan as necessary.

Section 11.5 Director of Security. Contractor's Director of Security shall be responsible for ensuring Contractor's compliance with the technical and physical security measures and requirements of this Contract.

## ARTICLE XII: CONFIDENTIALITY

Section 12.1 Confidentiality. Each of ICANN and Contractor agrees, in the performance of this Contract, to keep the information furnished by the other Party or acquired or developed by ICANN or Contractor in performance of this Contract, in the strictest confidence. Each Party also agrees not to publish or otherwise divulge such information, in whole or in part, in any manner or form, nor to authorize or permit others to do so, and shall take reasonable measures to restrict access to such information while in such Party's possession, to those employees needing such information to perform the work described herein, i.e., on a "need to know" basis. Each of ICANN and Contractor agrees to immediately notify the other Party in writing in the event that ICANN or Contractor, as applicable, determines or has reason to suspect a breach of this requirement has occurred.

Section 12.2 Consent. Contractor agrees that it will not disclose any information described in Section 12.1 to any person unless prior written approval is obtained from ICANN. Contractor agrees to insert the substance of this clause in any consultant agreement or similar agreement.

Section 12.3 Cooperation. Contractor acknowledges that it is obligated to cooperate with the dispute resolution, IFRT review and related escalation procedures in ICANN's Bylaws and Contractor's Bylaws and to produce documents and information in accordance with, and subject to the limitations of, those procedures.

## ARTICLE XIII: INTELLECTUAL PROPERTY

Section 13.1 Ownership. As between ICANN and Contractor, ICANN shall own all intellectual property conceived, reduced to practice, created or otherwise developed by Contractor under this Contract (including the SOW).

Section 13.2 Assignment. Contractor shall assign, and shall cause all of its employees and contractors to assign, all rights in any patentable subject matter, patent applications, copyrights, trade secrets and all other intellectual property created by the Contractor, its employees or contractors pursuant to this Contract to ICANN.

Section 13.3 Work for Hire. With respect to copyright, all work performed by Contractor pursuant to this Contract (including the SOW) is a "work for hire" and ICANN shall be deemed the author and shall own all copyrightable works created by Contractor hereunder, and all copyright rights thereto. In the event this is not deemed a work for hire agreement, Contractor hereby assigns and agrees to assign ownership of the foregoing copyrightable works and copyrights to ICANN.

Section 13.4 License. ICANN shall license back any patents, patent applications, copyrights and trade secrets to Contractor for the duration of the Term solely to the extent necessary for Contractor to perform its obligations under this Contract. This license shall be non-exclusive, non-assignable, non-sublicensable, non-transferable and royalty-free.

## ARTICLE XIV: MISCELLANEOUS

Section 14.1 Indemnification. So long as Contractor is an affiliate of ICANN (i.e. ICANN is the sole member of Contractor, with the ability to elect at least a majority of the directors of the PTI Board), ICANN shall indemnify and hold harmless Contractor, its officers, agents, and employees from liability of any nature or kind, including costs and expenses to which they may be subject, for or on account of any or all third-party claims, suits or damages of any character whatsoever, (i) resulting from injuries or damages sustained by any person or persons or property by virtue of Contractor's performance of this Contract or failure to perform under this Contract, or (ii) arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of ICANN or any of its subcontractors (other than Contractor), or their respective employees or agents.

Section 14.2 Notices. All notices to be given under or in relation to this Contract will be given either (i) in writing at the address of the appropriate Party as set forth below or (ii) via electronic mail as provided below, unless that Party has given a notice of change of postal or email address, as provided in this Contract.

If to ICANN:

Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536  
Attn: President and Chief Executive Officer  
Phone: +1-310-301-5800  
Email: [●]

With a copy to (which shall not constitute notice):

Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536  
Attn: General Counsel  
Phone: +1-310-301-5800  
Email: [●]

With a copy to (which shall not constitute notice):

Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536  
Attn: President, Global Domains Division  
Phone: +1-310-301-5800  
Email: [●]

If to Contractor:

Public Technical Identifiers  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536  
Attn: [●]  
Phone: [●]  
Email: [●]

With a copy to (which shall not constitute notice):

Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536  
Attn: General Counsel  
Phone: +1-310-301-5800  
Email: [●]

Any notice required by this Contract will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if by electronic mail, upon confirmation of receipt by the recipient's email server, provided that such notice via electronic mail shall be followed by a copy sent by regular postal mail service within three calendar days. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Contract.

Section 14.3 Amendments. Except as provided in Section 7.3(c), any term or provision of this Contract may be amended, and the observance of any term of this Contract may be waived only by a physical writing referencing this Contract, and either (a) manually signed by the Parties to be bound or (b) digitally signed by the Parties to be bound. Nothing herein shall limit Section 7.3(c) above or ICANN's obligations under ICANN's Bylaws to the extent related to ICANN's commitments related to the amendment or modification of this Contract, including the ability to amend this Contract pursuant to an approved IFR Recommendation, an approved Special IFR Recommendation or an approved SCWG Recommendation, each as defined and set forth in ICANN's Bylaws.

Section 14.4 Waiver. Any term or provision of this Contract may be waived, or the time for its performance may be extended, by the Party or Parties entitled to the benefit thereof. Any such extension or waiver shall be validly and sufficiently authorized for the purposes of this Contract if, as to any Party, it is authorized in writing by an authorized representative of the Party entitled to the benefits of any such waived term or provision. The failure or delay of any Party to assert or enforce at any time any provision of, or any of its rights under, this Contract shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Contract or any part hereof or the right of any Party thereafter to enforce each and every such

provision. No waiver of any breach of this Contract shall be held to constitute a waiver of any other or subsequent breach.

Section 14.5 Severability. If any provision of this Contract should be found by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

Section 14.6 Assignment and Subcontracting.

(a) Neither Party may assign or transfer this Contract, or any obligation under this Contract (in whole or in part, and whether voluntarily, involuntarily, or by operation of Law) without the other Party's prior written consent.

(b) PTI shall not subcontract all or any portion of its rights or obligations under this Contract.

Section 14.7 Governing Law. The Parties agree that this Contract, and any and all disputes arising out of or related to this Contract, shall be governed by, construed, and enforced in all respects in accordance with the Laws of the State of California, United States of America, excluding its conflict of laws rules. Each Party expressly waives any claim that the jurisdiction of such court with respect to personal jurisdiction is improper or that the venue is inconvenient or improper.

Section 14.8 Third Party Beneficiaries. No provision of this Contract is intended to, nor shall be interpreted to, provide or create any rights, benefits or any other interest of any kind in any third party or create any obligations of ICANN or Contractor to any third party.

Section 14.9 English Version. If this Contract is translated into any language other than English, and if there is a conflict between the English version and the translated version, then the English version shall prevail in all respects.

Section 14.10 Savings Clause. Any delay, nonperformance or other breach by a Party of its obligations under this Contract and any liability therefor, shall be excused to the extent such failure is caused by the other Party's acts or omissions or the acts or omissions of such Party's employees or contractors, including such Party's failure to perform its obligations under this Contract.

Section 14.11 Cumulative Remedies. Except as otherwise expressly provided, all remedies provided for in this Contract shall be cumulative and in addition to, and not in lieu of, any other remedies available to either Party.

Section 14.12 Counterparts. This Contract may be executed in counterparts, all of which taken together shall constitute one single agreement between the Parties.

Section 14.13 Headings. The Parties agree that the headings used in this Contract are for ease of reference only and shall not be taken into account in interpreting the Contract.

Section 14.14 Further Assurances. Subject to the terms and conditions of this Contract, each of ICANN and Contractor agrees to use commercially reasonable best efforts to take, or cause to be taken, all appropriate action, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable laws to make effective the transactions contemplated by this Contract.

Section 14.15 Entire Contract. This Contract, including all statements of work, schedules, exhibits or other attachments hereto, constitutes the entire understanding and agreement between ICANN and Contractor with respect to the subject matter of this Contract, and supersedes any and all prior or contemporaneous oral or written representation, understanding, agreement or communication relating thereto.

*[Signature Page Follows]*



IN WITNESS WHEREOF, the Parties have caused this Contract to be duly executed as of the date set forth below.

**INTERNET CORPORATION FOR ASSIGNED  
NAMES AND NUMBERS**

**PUBLIC TECHNICAL IDENTIFIERS**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Title

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Title

## **ANNEX A: STATEMENT OF WORK FOR MANAGEMENT OF THE DNS ROOT ZONE**

### **1. ROOT ZONE MANAGEMENT**

- a. The Root Zone Management component of the IANA Naming Function is the administration of certain responsibilities associated with the Internet DNS root zone management.
- b. Contractor shall collaborate with Interested and Affected Parties to develop, maintain, enhance and post performance standards for Root Zone Management. Specifically, Contractor shall perform Root Zone Management in accordance with the service levels set forth in Section 2.
- c. Contractor shall also implement DNSSEC in all zones for which ICANN has technical administration authority.
- d. Contractor shall facilitate and coordinate the root zone of the domain name system, and maintain 24 hour-a-day/7 days-a-week operational coverage. Contractor shall work collaboratively with the Root Zone Maintainer, in the performance of this function.
  - i. Contractor shall receive and process root zone file change requests for TLDs. These change requests include addition of new or updates to existing TLD name servers (“**NS**”) and delegation signer (“**DS**”) resource record (“**RR**”) information along with associated “glue” (A and AAAA RRs). A change request may also include new TLD entries to the root zone file. Contractor shall process root zone file changes as specified in Section 2 of this Annex A.
  - ii. Contractor shall maintain, update, and make publicly accessible a Root Zone registration database with current and verified contact information for all TLD registry operators. The Root Zone registration database, at a minimum, shall consist of the following data fields: domain status and contact points for resolving issues relating to the operation of the domain (comprised of at least organizational name, postal address, email address and telephone number). Contractor shall receive and process root zone registration data change requests for TLDs.
  - iii. Contractor shall apply existing policies in processing requests related to the Delegation, Revocation and Transfer of ccTLDs, including RFC 1591 as interpreted by the FOI and any further clarification of these policies developed by the ccNSO, as appropriate under ICANN’s Bylaws, and approved by the ICANN Board. In addition to these policies, Contractor shall, where applicable, consult the GAC 2005 ccTLD Principles. If an existing policy framework does not cover a specific situation, Contractor

will use commercially reasonable efforts to consult with and provide opportunity for input from Significantly Interested Parties and, where necessary, may request the ccNSO to undertake policy development work to address such issues.

- iv. Contractor shall apply existing policy frameworks in processing requests related to retirement of a ccTLD, including RFC 1591 as interpreted by the FOI and any further clarification of these policies developed by the ccNSO, as appropriate under ICANN's Bylaws, and approved by the ICANN Board. If an existing policy does not cover a specific situation, Contractor will use commercially reasonable efforts to consult with and provide opportunity for input from Significantly Interested Parties and, where necessary, may request the ccNSO to undertake policy development work to address such issues.
- v. Contractor shall verify that all requests related to the delegation and redelegation of generic TLDs are consistent with the procedures developed by ICANN.
- vi. Contractor shall maintain an automated root zone management system that, at a minimum, includes (A) a secure (encrypted) system for customer communications; (B) an automated provisioning protocol allowing customers to manage their interactions with the root zone management system; (C) an online database of change requests and subsequent actions whereby each customer can see a record of their historic requests and maintain visibility into the progress of their current requests; (D) a test system, which customers can use to meet the technical requirements for a change request; and (E) an internal interface for secure communications between the Contractor and the Root Zone Maintainer.

## **2. SERVICE LEVELS**

- a. Contractor shall perform the Services in accordance with the following "Service Levels". The expectation is that Contractor will normally perform within the threshold. The thresholds will be modified over time as part of periodic reviews of the service level expectation. A subset of the following measures relate to measurement of non-routine changes where it is not applicable to set a specific threshold for performance. It is expected for measurements of non-routine process steps these will only be reported with no applicable service level expectation.
- b. Services Definitions

- i. Category I (Routine updates impacting Root Zone File). Routine change requests that alter the technical data published in the DNS root zone (e.g. changes to NS records, DS records and glue records). A third party may be engaged to compile, publish and distribute the root zone.
- ii. Category II (Routine updates not impacting Root Zone File). Routine change requests that do not alter the DNS root zone (e.g., contact data and metadata). These changes do not require changes to the root zone.
- iii. Category III (Creating or Transferring a gTLD). Requests to create (“delegate”) or transfer (“redelegate” or “assign”) a generic TLD. These changes require additional processing by Contractor to ensure policy and contractual requirements associated with a change of control for the TLD are met.
- iv. Category IV (Creating or Transferring a ccTLD). Requests to create or transfer a country-code TLD. These changes require additional processing by Contractor to ensure policy requirements are met. This processing includes additional analysis on the change request, production of a report, and review of the report (including verification that all existing registration data has been successfully transferred from the old to new registry operator).
- v. Category V (Other change requests). Other non-routine change requests. Contractor is required to process change requests that may have special handling requirements, or require additional documentary evidence or clarifications from the customer or third parties, that prevent automating the handling of the request. These requests include, but are not limited to:
  - 1. Customers that require requests to be handled outside the online self-service platform, such as those lodging change requests through the exchange of postal mail;
  - 2. Customers that have placed special handling instructions on file with Contractor, or have otherwise asked for special handling for a request that deviates from the normal process, resulting in the request being executed manually;
  - 3. Unique legal or regulatory encumbrances that must be satisfied that require additional processing;
  - 4. Removing a TLD from service (i.e. retirement or revocation); and

5. Changes that relate to the operation of the root zone itself, including changing the Root Key Signing Key, altering the set of authoritative name servers for the root zone (i.e. the “root servers”), and changes to the “root hints”.

c. Service Levels

i. The fields in the following tables are as follows:

1. Process. The business process that Contractor is requested to perform.
2. Metric. The individual metric that will be measured as part of the completion of the business process.
3. Threshold. The specified target for each individual change request.
4. Type. Whether the threshold specified is a minimum target (compliance must not be less than the target) or a maximum target (compliance must not be more than the target).
5. Compliance. The percentage that the target goal in aggregate must be met or exceeded within the specified time period for all requests in the specified category.
6. Period. The time over which compliance is measured. (The period of collecting measurements to meet the Service Level Agreement (SLA)).

- ii. Process Performance. Total Contractor transaction time for emergency changes should be completed within a target of 12 hours until reviewed by the CSC with Contractor.

Process Category	Metric	Threshold	Type	Compliance	Period
Category I – Routine updates impacting Root Zone File (NS, DS and glue records)	<b>Submission</b>				
	Time for ticket confirmation to be sent to requester following receipt of change request via automated submission interface	$\leq 60 \text{ secs}$	<i>Max</i>	<i>95%</i>	<i>Month</i>

Process Category	Metric	Threshold	Type	Compliance	Period
	Time for lodgment of change request into RZMS by Contractor on behalf of request sent by email	$\leq 3 \text{ days}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
<b>Technical Checks</b>					
	Time to return results for technical checks following submission of request via automated submission interface	$\leq 50 \text{ mins}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
	Time to return results for subsequent performance of technical checks during retesting due to earlier failed tests	$\leq 3 \text{ mins}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
<b>Contact Confirmation</b>					
	Time for authorization contacts to be asked to approve change request after completing previous process phase	$\leq 60 \text{ secs}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
	Time for response to be affirmed by Contractor	$\leq 60 \text{ secs}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
<b>Contractor Review and Processing</b>					
	Time to complete all other validations and reviews by Contractor and release request for	$\leq 5 \text{ days}$	<i>Max</i>	<i>90%</i>	<i>Month</i>

Process Category	Metric	Threshold	Type	Compliance	Period
	implementation				
	<b>Supplemental Technical Checks</b>				
	Time to return results for performance of technical checks during Supplemental Technical Check phase	$\leq 60 \text{ secs}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
	<b>Implementation of Changes</b>				
	Time for root zone changes to be published following completion of validations and reviews by Contractor	$\leq 72 \text{ hrs}$	<i>Max</i>	<i>99%</i>	<i>Month</i>
	Time to notify requester of change completion following publication of requested changes	$\leq 60 \text{ secs}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
<b>Category II — Routine updates not impacting Root Zone File (Contact details and metadata)</b>	<b>Submission</b>				
	Time for ticket confirmation to be sent to requester following receipt of change request via automated submission interface	$\leq 60 \text{ secs}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
	Time for lodgment of change request into RZMS by Contractor on behalf of request sent by email	$\leq 3 \text{ days}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
	<b>Technical Checks</b>				
	Time to return	<i>No</i>	<i>Not</i>	<i>Not</i>	<i>Not</i>

Process Category	Metric	Threshold	Type	Compliance	Period
	results for technical checks following submission of request via automated submission interface	<i>Technical Checks Undertaken</i>	<i>Applicable</i>	<i>Applicable</i>	<i>Applicable</i>
	Time to return results for subsequent performance of technical checks during retesting due to earlier failed tests	<i>No Technical Checks Undertaken</i>	<i>Not Applicable</i>	<i>Not Applicable</i>	<i>Not Applicable</i>
<b>Contact Confirmation</b>					
	Time for authorization contacts to be asked to approve change request after completing previous process phase	<i>≤ 60 secs</i>	<i>Max</i>	<i>95%</i>	<i>Month</i>
	Time for response to be affirmed by Contractor	<i>≤ 60 secs</i>	<i>Max</i>	<i>95%</i>	<i>Month</i>
<b>Contractor Review and Processing</b>					
	Time to complete all other validations and reviews by Contractor and release request for implementation	<i>≤ 5 days</i>	<i>Max</i>	<i>90%</i>	<i>Month</i>
<b>Supplemental Technical Checks</b>					
	Time to return results for performance of technical checks during Supplemental	<i>No Technical Checks Undertaken</i>	<i>Not Applicable</i>	<i>Not Applicable</i>	<i>Not Applicable</i>



Process Category	Metric	Threshold	Type	Compliance	Period
	Technical Check phase				
	<b>Implementation of Changes</b>				
	Time for root zone changes to be published following completion of validations and reviews by Contractor	<i>No Technical Checks Undertaken</i>	<i>Not Applicable</i>	<i>Not Applicable</i>	<i>Not Applicable</i>
	Time to notify requester of change completion following publication of requested changes	$\leq 60 \text{ secs}$	<i>Max</i>	95%	<i>Month</i>
<b>Category III — Creating or Transferring a gTLD</b>	<b>Submission</b>				
	Time for ticket confirmation to be sent to requester following receipt of change request via automated submission interface	$\leq 60 \text{ secs}$	<i>Max</i>	95%	<i>Month</i>
	Time for lodgment of change request into RZMS by Contractor on behalf of request sent by email	$\leq 3 \text{ days}$	<i>Max</i>	95%	<i>Month</i>
	<b>Technical Checks</b>				
	Time to return results for technical checks following submission of request via automated submission interface	$\leq 50 \text{ mins}$	<i>Max</i>	95%	<i>Month</i>
	Time to return	$\leq 3 \text{ mins}$	<i>Max</i>	95%	<i>Month</i>

Process Category	Metric	Threshold	Type	Compliance	Period
	results for subsequent performance of technical checks during retesting due to earlier failed tests				
<b>Contact Confirmation</b>					
	Time for authorization contacts to be asked to approve change request after completing previous process phase	$\leq 60 \text{ secs}$	<i>Max</i>	95%	<i>Month</i>
	Time for response to be affirmed by Contractor	$\leq 60 \text{ secs}$	<i>Max</i>	95%	<i>Month</i>
<b>Contractor Review and Processing</b>					
	Time to complete all other validations and reviews by Contractor and release request for implementation	$\leq 10 \text{ days}$	<i>Max</i>	90%	<i>Month</i>
<b>Supplemental Technical Checks</b>					
	Time to return results for performance of technical checks during Supplemental Technical Check phase	$\leq 5 \text{ mins}$	<i>Max</i>	95%	<i>Month</i>
<b>Implementation of Changes</b>					
	Time for root zone changes to be published following completion of validations and	$\leq 72 \text{ hrs}$	<i>Max</i>	99%	<i>Month</i>

Process Category	Metric	Threshold	Type	Compliance	Period
	reviews by Contractor				
	Time to notify requester of change completion following publication of requested changes	$\leq 60 \text{ secs}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
<b>Category IV – Creating or Transferring a ccTLD</b>	<b>Submission</b>				
	Time for ticket confirmation to be sent to requester following receipt of change request via automated submission interface	$\leq 60 \text{ secs}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
	Time for lodgment of change request into RZMS by Contractor on behalf of request sent by email	$\leq 3 \text{ days}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
	<b>Technical Checks</b>				
	Time to return results for technical checks following submission of request via automated submission interface	$\leq 50 \text{ mins}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
	Time to return results for subsequent performance of technical checks during retesting due	$\leq 3 \text{ mins}$	<i>Max</i>	<i>95%</i>	<i>Month</i>

Process Category	Metric	Threshold	Type	Compliance	Period
	to earlier failed tests				
<b>Contact Confirmation</b>					
	Time for authorization contacts to be asked to approve change request after completing previous process phase	$\leq 60 \text{ secs}$	<i>Max</i>	95%	<i>Month</i>
	Time for response to be affirmed by Contractor	$\leq 60 \text{ secs}$	<i>Max</i>	95%	<i>Month</i>
<b>Contractor Review and Processing</b>					
	Time to complete all other validations and reviews by Contractor and release request for implementation	$\leq 60 \text{ days}$	<i>Max</i>	100%	<i>Month</i>
	Time for third-party review of request (e.g. by ICANN Board of Directors, PTI Board or other relevant verification parties)	<i>(Where Applicable)</i> $\leq 60 \text{ days}$ <i>(subject to review)</i>	<i>Intentionally Left Blank</i>	<i>Intentionally Left Blank</i>	<i>Intentionally Left Blank</i>
<b>Supplemental Technical Checks</b>					
	Time to return results for performance of technical checks during Supplemental Technical Check phase	$\leq 5 \text{ mins}$	<i>Max</i>	95%	<i>Month</i>
<b>Implementation of Changes</b>					
	Time for root zone changes to be published following	$\leq 72 \text{ hrs}$	<i>Max</i>	99%	<i>Month</i>

Process Category	Metric	Threshold	Type	Compliance	Period
	completion of validations and reviews by Contractor				
	Time to notify requester of change completion following publication of requested changes	$\leq 60 \text{ secs}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
<b>Category V – Other change requests (i.e. non-routine change requests)</b>	<b>Submission</b>				
	Time for ticket confirmation to be sent to requester following receipt of change request via automated submission interface	$\leq 60 \text{ secs}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
	Time for lodgment of change request into RZMS by Contractor on behalf of request sent by email	$\leq 3 \text{ days}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
	<b>Technical Checks</b>				
	Time to return results for technical checks following submission of request via automated submission interface	$\leq 50 \text{ mins}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
	Time to return results for subsequent performance of technical checks during retesting due to earlier failed	$\leq 3 \text{ mins}$	<i>Max</i>	<i>95%</i>	<i>Month</i>

Process Category	Metric	Threshold	Type	Compliance	Period
	tests				
<b>Contact Confirmation</b>					
	Time for authorization contacts to be asked to approve change request after completing previous process phase	$\leq 60 \text{ secs}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
	Time for response to be affirmed by Contractor	$\leq 60 \text{ secs}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
<b>Contractor Review and Processing</b>					
	Time to complete all other validations and reviews by Contractor and release request for implementation	<i>No Validations Undertaken</i>	<i>Not Applicable</i>	<i>Not Applicable</i>	<i>Not Applicable</i>
<b>Supplemental Technical Checks</b>					
	Time to return results for performance of technical checks during Supplemental Technical Check phase	$\leq 5 \text{ mins}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
<b>Implementation of Changes</b>					
	Time for root zone changes to be published following completion of validations and reviews by Contractor	$\leq 72 \text{ hrs}$	<i>Max</i>	<i>99%</i>	<i>Month</i>
	Time to notify requester of change completion following	$\leq 60 \text{ secs}$	<i>Max</i>	<i>95%</i>	<i>Month</i>

Process Category	Metric	Threshold	Type	Compliance	Period
	publication of requested changes				

d. Accuracy

Metric	Measurement	Threshold	Type	Compliance	Period
Root zone file data published in the root zone matches that provided in the change request	<i>Accuracy</i>	<i>100%</i>	<i>Min</i>	<i>&lt;100%</i>	
Root zone database is correctly updated in accordance with change requests (does not include impact of normalization and other processing standardization - which in any event shall never detrimentally impact the update)	<i>Accuracy</i>	<i>100%</i>	<i>Min</i>	<i>&lt;100%</i>	

e. Online Services Availability and Enquiry Processing

Metric	Threshold	Type	Compliance	Period
<b>RZMS availability</b> — availability of an online interactive web service for credentialed customers to submit change requests to their root zone database entries.	<u>≥ 99.0%</u>	<u>Min</u>	<u>&lt; 99%</u>	<u>Month</u>
<b>Website availability</b> — availability of root zone management related documentation (i.e. on <a href="http://www.iana.org">http://www.iana.org</a> )	<u>≥ 99.0%</u>	<u>Min</u>	<u>&lt; 99%</u>	<u>Month</u>
<b>Directory service availability</b> — availability of the authoritative database of TLDs	<u>≥ 99.0%</u>	<u>Min</u>	<u>&lt; 99%</u>	<u>Month</u>
<b>Credential recovery</b> —	<u>≤ 60 secs</u>	<u>Max</u>	<u>95%</u>	<u>Month</u>

time to dispatch confirmation email of forgotten username or password				
<b>Credential change</b> — time to implement new password within the system	$\leq 5 \text{ min}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
<b>Dashboard update frequency</b> — average time to update the dashboard to ensure up-to-date reporting	$\leq 30 \text{ min}$	<i>Max</i>	<i>100%</i>	<i>Month</i>
<b>Dashboard accuracy</b> — the data presented on the dashboard is accurate	<i>100%</i>	<i>Min</i>	<i>&lt;100%</i>	<i>Month</i>
<b>Dashboard availability</b> — availability of the dashboard online	$\geq 99\%$	<i>Min</i>	<i>&lt;99%</i>	<i>Month</i>
<b>SLE report production</b> — time to produce reports following the conclusion of the reporting period	<i>Monthly</i>			
<b>SLE report availability</b> — availability of the SLE reports and associated data online	<i>&lt;10 days after month end</i>	<i>Max</i>	<i>&gt;10 days</i>	<i>Month</i>
<b>SLE report publication</b> — schedule of reporting periods	<i>Monthly</i>			
<b>Time to send acknowledge of enquiry</b> — time taken to send initial acknowledgement of receipt of a general enquiry pertaining to root zone management (but not pertaining to interactions in a change request context)	$\leq 60 \text{ secs}$	<i>Max</i>	<i>95%</i>	<i>Month</i>
<b>Time to send initial response to enquiry</b> —	$\leq 5 \text{ days}$	<i>Max</i>	<i>90%</i>	<i>Month</i>



time taken for staff to respond to enquiry, either in part or in whole				
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- f. These elements reflect activity areas that should be instrumented by Contractor, and reported pursuant to ARTICLE VII of the Contract and Section 3 of this SOW.
- g. Either Party may initiate a change to the services performed by Contractor hereunder by delivering to the other a change request, in a form mutually acceptable to the Parties. Thereafter, the Parties will discuss the requested change in good faith and upon the Parties' mutual written agreement that a change to the services performed by Contractor hereunder should be made, such change shall be evidenced in writing and deemed to be incorporated into this Contract, without any need to amend the terms of this Contract.

### 3. PERFORMANCE METRIC REQUIREMENTS

- a. Program Reviews and Site Visits
  - i. Contract acknowledges that the CSC is entitled to conduct reviews in accordance with ICANN's Bylaws and the CSC Charter.
  - ii. Contractor acknowledges that an IFRT is entitled to conduct site visits in accordance with ICANN's Bylaws.
- b. Monthly Performance Progress Report. Contractor shall prepare and submit reports as mutually agreed between Contractor and the CSC.
- c. Root Zone Management Dashboard. Contractor shall work collaboratively with ICANN and Interested and Affected Parties to produce the dashboard to report Service Level Expectations for Root Zone Management, which will be used for real-time reporting of Contractor's performance.
- d. Performance Standards Reports. Contractor shall develop and publish performance standard metric reports for the IANA Naming Function in consultation with the CSC. The performance standards metric reports will be published via a website every month (no later than 15 calendar days following the end of each month).
- e. Customer Service Survey. In accordance with ICANN's Bylaws, Contractor shall collaborate with the CSC and ICANN to maintain and enhance the annual customer service survey consistent with the performance standards for Root Zone Management. The survey shall, at a minimum, include a feedback section for the IANA Naming Function. No later than 60 calendar days after completing a customer service survey, Contractor shall prepare a report (the "**CSS Report**"),

submit the CSS Report to ICANN and publicly post the CSS Report to the IANA Website.

- f. Final Report. Contractor shall prepare and submit a final report on the performance of the IANA Naming Function that documents standard operating procedures, including a description of the techniques, methods, software, and tools employed in the performance of the IANA Naming Function. Contractor shall submit the report to the CSC and ICANN no later than 30 days after the expiration or termination of the Contract.
- g. Inspection and acceptance. ICANN will perform final inspection and acceptance of all deliverables and reports articulated in this Section 3, as set forth in Section 4.10(a) of the Contract. Any deficiencies identified by ICANN shall be corrected by Contractor and resubmitted to ICANN within 10 business days after Contractor's receipt of notice of such deficiency.

#### **4. BASELINE REQUIREMENTS FOR DNSSEC IN THE AUTHORITATIVE ROOT ZONE**

- a. DNSSEC at the authoritative Root Zone requires cooperation and collaboration between the Contractor and the Root Zone Maintainer. The baseline requirements encompass the responsibilities and requirements for Contractor and these responsibilities and requirements must be implemented in cooperation with similar responsibilities and requirements defined within ICANN's relationship with the Root Zone Maintainer.
- b. General Requirements
  - i. The Root Zone system needs an overall security lifecycle, such as that described in ISO 27001, NIST SP 800-53, etc., and any security policy for DNSSEC implementation must be validated against existing standards for security controls.
  - ii. The remainder of this section highlights security requirements that must be considered in developing any solution. ISO 27002:2005 (formerly ISO 17799:2005) and NIST SP 800-53 are recognized sources for specific controls. Note that reference to SP 800-53 is used as a convenient means of specifying a set of technical security requirements. The systems referenced in this document are assumed to meet all the SP 800-53 technical security controls or equivalent required by a HIGH IMPACT system.
  - iii. Whenever possible, references to NIST publications are given as a source for further information. These Special Publications ("SP") are not intended as auditing checklists, but as non-binding guidelines and recommendations to establish a viable IT security policy. Comparable

security standards can be substituted where available and appropriate. All of the NIST document references can be found on the NIST Computer Security Research Center webpage (<http://www.csrc.nist.gov/>).

c. Security Authorization and Management Policy

- i. Contractor shall have its own security policy in place; each security policy must be periodically reviewed and updated, as appropriate.
  - 1. Supplemental guidance on generating a Security Authorization Policy may be found in NIST SP 800-37.
- ii. The policy shall have a contingency plan component to account for disaster recovery (both man-made and natural disasters).
  - 1. Supplemental guidance on contingency planning may be found in SP 800-34
- iii. The policy shall address Incident Response detection, handling and reporting (see 4 below).
  - 1. Supplemental guidance on incident response handling may be found in NIST SP 800- 61.

d. IT Access Control

- i. There shall be an IT access control policy in place and enforced for the key management functions
  - 1. This includes both access to hardware/software components and storage media as well as ability to perform process operations.
  - 2. Supplemental guidance on access control policies may be found in NIST SP 800-12.
- ii. Users without authentication shall not perform any action in key management.
- iii. In the absence of a compelling operational requirement, remote access to any cryptographic component in the system (such as hardware security modules) is not permitted.

e. Security Training

- i. All personnel participating in the Root Zone Signing process shall have adequate IT security training.

- ii. Supplemental guidance on establishing a security awareness training program may be found in NIST SP 800-50.
- f. Audit and Accountability Procedures
  - i. Contractor shall periodically review/update: (1) its formal, documented, audit and accountability policy that addresses purpose, scope, roles, responsibilities, management commitment, coordination among organizational entities, and compliance; and (2) the formal, documented procedures to facilitate the implementation of the audit and accountability policy and associated audit and accountability controls.
    - 1. Supplemental guidance on auditing and accountability policies may be found in NIST SP 800-12.
    - 2. Specific auditing events include the following:
      - a. Generation of keys.
      - b. Generation of signatures
      - c. Exporting of public key material
      - d. Receipt and validation of public key material (i.e., from the ZSK holder or from TLDs)
      - e. System configuration changes
      - f. Maintenance and/or system updates
      - g. Incident response handling
      - h. Other events as appropriate
  - ii. Incident handling for physical and exceptional cyber-attacks shall include reporting to ICANN in a timeframe and format as mutually agreed by ICANN and Contractor.
  - iii. The auditing system shall be capable of producing reports on an ad-hoc basis for ICANN or the CSC.
  - iv. A version of the reports provided to ICANN or the CSC must be made publically available.
- g. Physical Protection Requirements

- i. There shall be physical access controls in place to only allow access to hardware components and media to authorized personnel.
    - 1. Supplemental guidance on token based access may be found in NIST SP 800-73.
    - 2. Supplemental guidance on token based access biometric controls may be found in NIST SP 800-76.
  - ii. Physical access shall be monitored, logged, and registered for all users and visitors.
  - iii. All hardware components used to store keying material or generate signatures shall have short-term backup emergency power connections in case of site power outage. (See NIST SP 800-53r3).
  - iv. Appropriate protection measures shall be in place to prevent physical damage to facilities as appropriate.
- h. All Components
- i. All hardware and software components must have an established maintenance and update procedure in place.
    - 1. Supplemental guidance on establishing an upgrading policy for an organization may be found in NIST SP 800-40
  - ii. All hardware and software components provide a means to detect and protect against unauthorized modifications/updates/patching.
- i. Interface Basic Functionality
- i. Contractor's interface shall have the ability to accept and process TLD DS records, including:
    - 1. Accept TLD DS RRs
      - a. Being able to retrieve TLD DNSKEY record from the TLD, and perform parameter checking for the TLD keys, including verifying that the DS RR has been correctly generated using the specified hash algorithm.
    - 2. Having procedures for:
      - a. Scheduled roll over for TLD key material;

- b. Supporting emergency key roll over for TLD key material;  
and
    - c. Moving TLD from signed to unsigned in the root zone.
  - ii. Ability to submit TLD DS record updates to the Root Zone Maintainer for inclusion into the root zone.
  - iii. Ability to submit RZ keyset to the Root Zone Maintainer for inclusion into the root zone.

# Staff Report of Public Comment Proceeding Template (v4.0)

## **Overview:**

*This template is being provided to assist staff in the preparation of a report that summarizes and, where appropriate, analyzes public comments. Please save the document in either \*.doc/\*.docx and submit to: [public-comment@icann.org](mailto:public-comment@icann.org).*

## **Instructions:**

- **Title:** Please enter the exact title that was used in the original Announcement.
- **Comment Period:** Enter the original Open, Close, and Staff Report Due Dates. (*Format: Day Month Year, e.g., 15 June 2016*). Please note if any extensions were approved.
- **Prepared By:** This field will accommodate a situation where an individual or group other than the principal staff contact, e.g., a Working Group, develops a report.
- **Important Information Links:** Do not enter any information in this section; the Public Comment Team will provide the appropriate links.
- **Section I: General Overview and Next Steps:** Please use this area to provide any general summary or highlights of the comments and indicate the next steps following publication of the report.
- **Section II: Contributors:** Please use the tables provided to identify those organizations/groups and individuals who provided comments. It is not necessary to identify “spammers” or other commenters who posted off-topic or irrelevant submissions. In addition, if there is a large number of submissions, it is acceptable to characterize the respondent communities rather than attempt to list them individually in tables.
- **Section III: Summary of Comments:** This section should provide an accurate, representative, and thorough review of the comments provided. As the disclaimer explains, this is a summary only of those contributions that the author determines to be appropriate to the topic’s purpose. Authors are cautioned to be conscious of bias and avoid characterizing or assessing the submitted public comments. If an analysis of the comments is intended, please use Section IV below.
- **Section IV: Analysis of Comments:** Please use this section for any assessments, evaluations, and judgments of the comments submitted and provide sufficient rationale for any positions that are advocated. If an analysis will not be undertaken or, if one will be published subsequently, please add a note to that effect in this section.

*Note: You may also utilize, for this section, the Public Comment Issue Tracking Checklist template, which is available at: <https://community.icann.org/x/d67hAg>.*

# Staff Report of Public Comment Proceeding

IANA Naming Function Agreement																			
<b>Publication Date:</b>	14 September 2016																		
<b>Prepared By:</b>	ICANN Staff																		
<table border="1"> <thead> <tr> <th colspan="2">Public Comment Proceeding</th> </tr> </thead> <tbody> <tr> <td>Open Date:</td> <td>10 August 2016</td> </tr> <tr> <td>Close Date:</td> <td>09 September 2016</td> </tr> <tr> <td>Staff Report Due Date:</td> <td>16 September 2016</td> </tr> </tbody> </table>		Public Comment Proceeding		Open Date:	10 August 2016	Close Date:	09 September 2016	Staff Report Due Date:	16 September 2016	<table border="1"> <thead> <tr> <th colspan="2">Important Information Links</th> </tr> </thead> <tbody> <tr> <td colspan="2"><a href="#">Announcement</a></td> </tr> <tr> <td colspan="2"><a href="#">Public Comment Proceeding</a></td> </tr> <tr> <td colspan="2"><a href="#">View Comments Submitted</a></td> </tr> </tbody> </table>		Important Information Links		<a href="#">Announcement</a>		<a href="#">Public Comment Proceeding</a>		<a href="#">View Comments Submitted</a>	
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<a href="#">View Comments Submitted</a>																			
<b>Staff Contact:</b>	Trang Nguyen	<b>Email:</b>	<a href="mailto:trang.nguyen@icann.org">trang.nguyen@icann.org</a>																
<b>Section I: General Overview and Next Steps</b>																			
<p>In the <a href="#">ICG proposal</a>, the naming community recommended that a new legal entity referred to as PTI be formed, and an agreement put in place between ICANN and PTI through which PTI will perform the IANA naming function. The ICG Proposal included a draft term sheet for that contract, provided by the CWG-Stewardship (the group providing a response on behalf of the domain names community), as well as a listing of all provisions it recommended be carried over from ICANN's IANA Functions Contract with NTIA. This term sheet and carry-over identification were used by ICANN as a base to draft the proposed Naming Function Agreement between ICANN and PTI.</p> <p>The proposed Naming Function Agreement was published for a 30-day public comment from 10 August – 09 September to allow any interested party to review and provide feedback. This report summarizes and analyzes the comments. ICANN thanks all of the commenters for their thoughtful comments and for participating in ICANN's processes. This report along with the final Agreement will be presented to the ICANN and PTI Boards for their approval.</p>																			
<b>Section II: Contributors</b>																			
<p><i>At the time this report was prepared, a total of seven (8) community submissions had been posted to the forum. The contributors are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.</i></p>																			
<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>																	
Business Constituency	Steve DelBianco	BC																	
Council of European National Top-Level Domain Registries	Peter Van Roste	CENTR																	
Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions	Jonathan Robinson	CWG-Stewardship																	
Asia Pacific Top Level Domain Association	Leonid Todorov	APTLD																	
Country Code Names Supporting Organization Council	Bart Boswinkel	ccNSO Council																	



Internet Services Providers & Connectivity Providers Constituency	Chantelle Doerksen	ISPCP
At-Large Advisory Committee	Alan Greenberg	ALAC
Centre for Communication Governance at National Law	Aarti Bhavana	CCG

### Section III: Summary of Comments

*General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).*

ICANN thanks the BC, CWG-Stewardship, APTLD, ccNSO, ISPCP, ALAC, and CCG for participating in the ICANN public comment process and for submitting comments on the Naming Function Agreement.

#### General Comments

CENTR expressed support for the comments made by Paul Kane, Becky Burr, and Stephen Deerhake in the CWG-Stewardship mail list, and ICANN's responses as it relates to section 1.1, 4.10.a, 5.3.a, 6.1.c, and 7.1 of the Agreement. CENTR further commented on a few specific issues including noting that the name of the Agreement does not match its reference in the revised ICANN Bylaws and suggested changing the name of the Agreement to "IANA Naming Function Contract" for consistency with the new ICANN Bylaws Section 16.3. Other comments from CENTR are reflected below.

The CWG-Stewardship prepared a redline of the Agreement based on a series of calls with its members, input from its external legal counsel, and discussion with ICANN. The CWG-Stewardship asked that the comments reflected in the redline be addressed. The CWG-Stewardship suggested edits to sections 1.1, 3.1, 3.2, 4.1, 4.4, 4.5, 4.6, 4.7, 4.10, 5.3, 6.1, 7.1, 7.2, 7.3, 8.1, 9.2, 9.4, 10.1, 11.4, 12.1, 12.3, 14.2, 14.3, 14.8, and Annex A of the Agreement. Please refer to the [redline](#) submitted by the CWG-Stewardship for the suggested edits.

The ccNSO Council acknowledged the participation and contributions of representatives of the ccTLD community in CWG-Stewardship discussions, and supported the comments made and language agreed to via these discussions, particularly as they relate to Sections 1.1 and 4.7 of the Agreement.

Several organizations expressed support for the Agreement, including the ALAC, BC, and ISPCP.

The CCG commented that the IANA Stewardship Transition Coordination Group (ICG) Proposal stated that there would be a standing committee that would advise the ICANN Board regarding operational and architectural changes to the root zone; however there is no mention of this committee in the Agreement.

#### **4.4 Performance of IANA Naming Function**

The CCG commented that the ICG proposal “takes into account the possibility that performance of the non-names IANA functions may be subcontracted to PTI” and that “[i]n this eventuality, it states that these new agreements cannot override Part 1 (Domain Names) of the ICG Proposal (and by extension, the Agreement).” The CCG further noted that this is not reflected in the Agreement.

#### **Section 4.5: Separation of Policy Development and Operational Roles**

The BC expressed concerns that “without clear and unequivocal language that limits the PTI to the operational aspects of the IANA functions, there is a risk that the PTI will become a venue to re-litigate upstream policy decisions.” The BC suggested at minimum deleting the language in section 4.5.iii, and preferred deleting language in 4.5.i, 4.5.ii, and 4.5.iii. Further, the BC recommended that the language of section 5.3.b is also reflected in section 4.5 to further emphasize separation of policy and operational roles.

#### **Section 4.6: User Instructions**

CENTR suggested that the Agreement should include an obligation for PTI to set up a coordination process with its customers to “define, review and change technical requirements.”

#### **Section 4.7: Responsibility and Respect for Stakeholders**

CENTR recommended adding to the Agreement a reference to RFC 1591 as it “is the basis for delegation and redelegation of ccTLDs” and supports the text agreed to with the CWG-Stewardship. CENTR further commented that it is important for the Agreement to make clear that PTI’s role “is limited to checking that due process has been followed and documented and that the action in PTI is within the relevant policy framework for the registry concerned.” CENTR also noted that “ccTLDs that are not member of the ccNSO cannot be bound by ccNSO agreed policies” and asked for clarification of this in the Agreement as well as a reference to it in the ICANN Bylaws.

The APTLD commented that the language in Section 4.7 elevates the GAC Principles to policy status when they have not gone through the policy development process.

#### **Section 4.9 General Manager; Key Personnel**

The ISPCP expressed concerns that “requiring specific staff with specific skills in specific titles seems to eliminate flexibility for the management of the naming function to meet future needs.”

The CCG commented that the CWG-Stewardship Proposal specified “Qualified Programme Manager, IANA Functions Programme Manager, and IANA Function Liaison for Root Zone Management” as key personnel and noted that the Agreement reflects “General Manager, Director of Security, and Conflict of Interest Officer” as key personnel. The CCG further commented that it is not clear how the roles recommended in the CWG-Stewardship Proposal are mapped to the roles in the Agreement. The CCG also commented that the Agreement is

silent about the procedure for appointment of key personnel and suggested that the qualifications listed in the PTI Bylaws for Directors be applied to “the appointment of key personnel as well to avoid conflicts of interest.”

### **Section 5.3: Performance Exclusions**

CENTR suggested that Section 5.3(a) be clarified to avoid confusion within the current wording, which can be read to suggest that ICANN is assuming the authorization role previously held by NTIA as it relates to root zone management.

APTLD commented that Section 5.3.a “effectively prohibits the Contractor to “...make modifications, additions or deletions to the root zone file or associated information”” and that “[t]he powers in question are justifiably assigned to registry managers.” APTLD further commented that “[a]n attempt to centralize this function would prove counterproductive to the well-established practice” and asked for an explanation “as to why it should not be revised to ensure a proper balance of duties and rights of Significantly Interested Parties.”

### **Section 6.1: Transparency of Decision-Making**

The BC supported the language of section 6.1 and agreed “that language in [the] draft agreement appropriately limits redactions [of Board minutes].”

### **7.2 Performance Monitoring**

The CCG commented that the ICANN Bylaws provides for the CSC to monitor PTI’s performance and noted that this is not reflected in the Agreement.

### **Article VIII: Escalation Mechanisms**

The BC commented that Article VIII “generally match the community’s proposal,” but noted that the Root Zone Emergency Process outlined in the community’s proposal is not reflected in this section of the Agreement. The BC suggested that if the Root Zone Emergency Process is part of the Root Zone Maintainer Services Agreement between ICANN and Verisign, that the Process be referenced in Article VIII of the Agreement. Further, the BC commented that given the importance of the escalation processes that the Agreement should “elaborate[s] on what would constitute Remedial Action Procedures.”

The CCG commented that the ICG Proposal stated: “the community should have the ability to require the selection of a new IFO as they relate to names, if necessary after attempting remediation,” but noted that there is no mention of this in the Agreement.

### **Article IX: Term, Renewal, Transition and Termination**

The BC suggested including language in the Agreement describing the impact of the potential Separation recommendations to give context to the terms “IFR Recommendation”, “Special IFR Recommendation”, and “SCWG Recommendation”, and to include “clear, substantive standards for determining if an when separation of the naming functions is appropriate.”

## **9.4 Survival of Terms**

The CCG commented that section 8.1 is not included in the survival of terms list, and noted: “it is important for this clause to survive termination, so that ongoing mediations do not get affected.”

### **Section 10.1: Resources and Fees**

CENTR commented that IANA naming services have always been provided without cost to ccTLDs, but the current wording of Section 10.1 (c) seems to suggest that ICANN can now impose mandatory fees. CENTR suggested a referencing the required ccNSO agreement for any changes to voluntary contributions.

APTLD commented that “fees for ccTLD registries should be defined in consultation with ccTLDs (ccNSO) with a due reference to, and in full consideration of, the outcomes of the discussions held in the course of development of the 2013 Guideline for Voluntary Contributions of ccTLDs to ICANN.”

### **10.2 Budget**

The CCG commented that the ICANN Bylaws “make[s] a reference to two kinds of budgets: an IANA Budget which is to be made by ICANN, and a PTI Budget, to be prepared by PTI” and suggested that the Agreement be amended to reflect these two budgets.

### **12.1 Confidentiality**

The CCG commented that the language in Section 12.1 “may create a conflict with the Transparency provisions in section 6.1” and recommended that “this clause be made subject to Article VI, to ensure that PTI functions in an open and transparent manner.”

### **14.6 Assignment and Subcontracting**

The ISPCP expressed concerns that the Agreement “has no provision for the naming function to contract with outside resources to meet strategic or occasional requirements for stakeholders in the naming community.”

### **Section 14.7 Governing Law**

APTLD commented that the Agreement specified that PTI will be domiciled in the California and that “any and all disputes arising out of or related to this Agreement, shall be governed by, construed, and enforced in all respects in accordance with the Laws of the State of California.” APTLD asked for clarification as to whether PTI may opt for a jurisdiction other than United States of America should “unfavorable circumstances” occur.

### **Annex A: Statement of Work for Management of the DNS Root Zone**

The BC “endorse[d] use of industry best practices and NIST guidelines to maintain and continually improve the stability and security and reliability of operations” and “support[ed] the frequent review of compliance thresholds to maintain appropriate measures as standards and technologies evolve.”

## Section IV: Analysis of Comments

*General Disclaimer:* This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

### General Comments

CENTR noted that the name of the Agreement does not match its reference in the revised ICANN Bylaws and suggested changing the name of the Agreement to “IANA Naming Function Contract” be consistent with the new ICANN Bylaws Section 16.3.

For consistency with the ICANN Bylaws, ICANN will change the name of the Agreement to IANA Naming Function Contract.

The CWG-Stewardship prepared a redline of the Agreement based on a series of calls with its members, input from its external legal counsel, and discussion with ICANN. ICANN thanks the CWG-Stewardship and its external legal counsel for the comments and inputs and as noted during the discussions, ICANN agrees with the edits as reflected in the redline submitted by the CWG-Stewardship and will incorporate them into the final draft of the Agreement.

The ccNSO Council acknowledged the participation and contributions of representatives of the ccTLD community in CWG-Stewardship discussions, and supported the comments made, in particular as it relates to Sections 1.1 and 4.7 of the Agreement.

ICANN confirms that the language of Sections 1.1 and 4.7, as agreed to with the CWG-Stewardship and the representatives of the ccTLD community that participated in CWG-Stewardship discussions, will be reflected in the final draft of the Agreement.

The CCG commented that the ICG Proposal stated that there would be a standing committee that would advise the ICANN Board regarding operational and architectural changes to the root zone; however there is no mention of this committee in the Agreement.

As CCG noted, the standing committee’s primary role is to advise the ICANN Board regarding architectural changes to the root zone. Because this standing committee’s (the Root Zone Evolution Review Committee (RZERC)) obligations are to ICANN, and not to PTI, the Agreement is not an appropriate place to identify the scope and responsibilities of the RZERC. The RZERC Charter, recently [approved](#) by the ICANN Board, reflects the full scope of responsibilities of the RZERC. The RZERC is, however, referenced in the Agreement within the definition of “Interested and Affected Parties,” and because of this inclusion, PTI is required by the Agreement to collaborate with the RZERC, particularly in the performance of the IANA naming services as reflected in Annex A of the Agreement.

### 4.4 Performance of IANA Naming Function

The CCG commented that the ICG Proposal “takes into account the possibility that performance of the non-names IANA functions may be subcontracted to PTI” and that “[i]n this eventuality, it states that these new agreements cannot override Part 1 (Domain Names) of the ICG Proposal (and by extension, the Agreement).” The CCG further noted that this is

not reflected in the Agreement.

ICANN notes that section 4.4.b of the Agreement states: “Contractor shall treat the IANA Naming Function with equal priority as the other IANA functions performed by Contractor, and process all requests promptly and efficiently.” This language assures that PTI will perform all IANA functions with equal priority.

#### **Section 4.5: Separation of Policy Development and Operational Roles**

The BC expressed concerns that “without clear and unequivocal language that limits the PTI to the operational aspects of the IANA functions, there is a risk that the PTI will become a venue to re-litigate upstream policy decisions.” The BC suggested at minimum deleting the language in section 4.5.iii, and preferred deleting language in 4.5.i, 4.5.ii, and 4.5.iii. Further, the BC recommended that the language of section 5.3.b is also reflected in section 4.5 to further emphasize separation of policy and operational roles.

ICANN acknowledges the BC’s concerns and notes that the preamble to the Section 4.5 makes clear that staff performing the IANA Naming Function do not publicly initiate, advance or advocate any policy development related to the IANA Naming Function. The exclusion provided for in Section 4.5.iii is meant to allow PTI staff, who possess specific operational knowledge, to provide insight to inform policy development. To make this clear, the language of 4.5.iii states: “the primary purpose of such publication, contribution or the primary purpose of such publication, contribution or commentary is to supply relevant IANA Naming Function experience and insight.” This language makes clear that PTI staff does not initiate, advance or advocate policy development, but can contribute valuable operational insight to help inform the policy development process. As for the BC’s request for deletion of the exclusions in 4.5.i and 4.5.ii, deletion is not appropriate as 4.5.i allows for PTI staff to respond to requests from Interested and Affected Parties, and 4.5.ii allows for PTI staff to seek guidance when needed in performing the IANA naming services. These are both necessary to the performance of the IANA naming function.

#### **Section 4.6: User Instructions**

CENTR suggested that the Agreement should include an obligation for PTI to set up a coordination process with its customers to “define, review and change technical requirements.”

As a result of ICANN’s discussions with the CWG-Stewardship and its external legal counsel during the public comment period, the language of this Section will be changed to: “Contractor shall, in collaboration with its all Interested and Affected Parties, maintain user instructions for the IANA Naming Function, including technical requirements.” This allows PTI to work with the CSC, which represents the customers of the IANA Naming Function, to coordinate the maintenance of the user instructions. The CSC is also included in the definition of “Interested and Affected Parties” that is set out in the Agreement.

#### **Section 4.7: Responsibility and Respect for Stakeholders**

CENTR recommended adding to the Agreement a reference to RFC 1591 to the Agreement as it “is the basis for delegation and redelegation of ccTLDs” and supports the text agreed to with the CWG-Stewardship. CENTR further commented that it is important for the Agreement



to make clear that PTI's role "is limited to checking that due process has been followed and documented and that the action in PTI is within the relevant policy framework for the registry concerned." CENTR also noted: "ccTLDs that are not member of the ccNSO cannot be bound by ccNSO agreed policies" and asked for clarification of this in the Agreement as well as a reference to it in the ICANN Bylaws.

APTLD commented that the language in Section 4.7 elevates the GAC Principles to policy status when they have not gone through the policy development process.

During discussions with the CWG-Stewardship and its external legal counsel that took place during the public comment period, ICANN agreed to revised the language in a manner which addresses CENTR's and APTLD's comments on this Section. The revised language agreed upon with the CWG-Stewardship is: "Contractor shall apply the policies for the Root Zone Management component of the IANA Naming Function that have been defined, or after the date of this Agreement are further defined, by (a) the Generic Names Supporting Organization ("GNSO"), as appropriate under ICANN's Bylaws, (b) the Country Code Names Supporting Organization ("ccNSO"), as appropriate under ICANN's Bylaws, and (c) RFC 1591: /Domain Name System Structure and Delegation/ ("RFC 1591") as interpreted by the Framework of Interpretation of Current Policies and Guidelines Pertaining to the Delegation and Redefinition of Country-Code Top Level Domain Names, dated October 2014 ("FOI"). In addition to these policies, Contractor shall, where applicable, consult the 2005 Governmental Advisory Committee Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains ("GAC 2005 ccTLD Principles"). Contractor shall publish documentation pertaining to the implementation of these policies and principles on the IANA Website."

#### **Section 4.9 General Manager; Key Personnel**

The ISPCP is concerned that "requiring specific staff with specific skills in specific titles seems to eliminate flexibility for the management of the naming function to meet future needs."

The CCG commented that the CWG-Stewardship Proposal specified "Qualified Programme Manager, IANA Functions Programme Manager, and IANA Function Liaison for Root Zone Management" as key personnel and noted that the Agreement reflects "General Manager, Director of Security, and Conflict of Interest Officer" as key personnel. The CCG further commented that it is not clear how the roles recommended in the CWG-Stewardship Proposal are mapped to the roles in the Agreement. The CCG also commented that the Agreement is silent about the procedure for appointment of key personnel and suggested that the qualifications listed in the PTI Bylaws for Directors be applied to "the appointment of key personnel as well to avoid conflicts of interest."

ICANN notes that this Section is a carry-over of an existing provision in the IANA Functions Contract. The carry-over of this provision is required by the CWG-Stewardship in its proposal. The provision was updated to reflect the current key roles that are in place within the IANA department today and reflective of the key roles called for in the IANA Functions Contract with NTIA. The key personnel as identified in the Agreement includes the appropriate scope of responsibilities. ICANN further notes that the qualifications for Directors specified in the PTI Bylaws are only applicable to Directors. In addition, PTI will have its own [Conflict of Interest policy](#) to which it will adhere.

### **Section 5.3: Performance Exclusions**

CENTR suggested that Section 5.3(a) be clarified to avoid confusion within the current wording, which can be read to suggest that ICANN is assuming the authorization role previously held by NTIA as it relates to root zone management.

APTLD commented that Section 5.3.a “effectively prohibits the Contractor to “...make modifications, additions or deletions to the root zone file or associated information”” and that “[t]he powers in question are justifiably assigned to registry managers.” APTLD further commented that “[a]n attempt to centralize this function would prove counterproductive to the well-established practice” and asked for an explanation “as to why it should not be revised to ensure a proper balance of duties and rights of Significantly Interested Parties.”

As a result of discussions with the CWG-Stewardship and its external legal counsel, which took place during the public comment period, ICANN and the CWG-Stewardship agreed to language that would better reflect the intent that PTI shall not perform the root zone maintainer role unless and until authorized by ICANN.

### **7.2 Performance Monitoring**

The CCG commented that the ICANN Bylaws provides for the CSC to monitor PTI’s performance and noted that this is not reflected in the Agreement.

ICANN notes that 7.2.a states: “So long as the CSC exists pursuant to ICANN’s Bylaws, Contractor acknowledges and agrees that the CSC is entitled to monitor Contractor’s performance under this Agreement (including the SOW) in accordance with ICANN’s Bylaws.”

### **Article VIII: Escalation Mechanisms**

The BC commented that Article VIII “generally match[es] the community’s proposal,” but noted that the Root Zone Emergency Process outlined in the community’s proposal is not reflected in this section of the Agreement. The BC suggested that if the Root Zone Emergency Process is part of the Root Zone Maintainer Services Agreement between ICANN and Verisign, that the Process be referenced in Article VIII of the Agreement. Further, the BC commented that given the importance of the escalation processes that the Agreement should “elaborate[s] on what would constitute Remedial Action Procedures.”

The CCG commented that the ICG proposal states: “the community should have the ability to require the selection of a new IFO as they relate to names, if necessary after attempting remediation,” but noted that there is no mention of this in the Agreement.

The Root Zone Emergency Process is reflected in the Root Zone Maintainer Services Agreement between ICANN and Verisign. Certain parts of ICANN’s obligations under the RZMA, including the Root Zone Emergency Process, will be subcontracted to PTI. Because there will be a separate subcontracting agreement between ICANN and PTI for this work, it is not necessary for any subcontracted process to be reflected in this Agreement.

With regards to the BC’s request for the Remedial Action Procedures to be elaborated, the CWG-Stewardship proposal provides a set of draft procedures, and states that the procedures shall be finalized between the CSC and PTI. As such, Section 8.2 of the



Agreement states: “Following the Effective Date, Contractor shall work cooperatively with the CSC to develop “Remedial Action Procedures” for the purpose of addressing Performance Issues.” With regards to CCG’s comment, the CWG-Stewardship proposal specified an escalation path that could lead to a Separation Community Working Group review and potential recommendation for separation. That process is appropriately reflected in the ICANN Bylaws. The Agreement requires that PTI abide by the decisions of the IFRT and SCWG.

## **Article IX: Term, Renewal, Transition and Termination**

The BC suggested including language in the Agreement describing the impact of the potential Separation recommendations to give context to the terms “IFR Recommendation”, “Special IFR Recommendation”, and “SCWG Recommendation”, and to include “clear, substantive standards for determining if an when separation of the naming functions is appropriate.”

ICANN notes that Section 9.2 refers to the ICANN Bylaws for the definition of these terms. As these are ICANN processes, the descriptions are appropriately reflected in the ICANN Bylaws and do not need to be restated in full in the Agreement. Describing the processes in multiple documents could lead to different interpretations.

### **9.4 Survival of Terms**

The CCG commented that section 8.1 is not included in the survival of terms list and noted: “it is important for this clause to survive termination, so that ongoing mediations do not get affected.”

As it is not possible to envision all of the different scenarios under which separation could occur and therefore what obligations ICANN would continue to bear at time of separation, Section 8.1 should not be included in the survival of terms, but instead be dealt with as part of the SCWG’s recommendations for separation. Further, if PTI is removed from performance of the IANA Naming Function (resulting in a termination of the Agreement) and a new operator is put in place, there would be no need to continue mediating how PTI’s customer service complaint should be remediated.

### **Section 10.1: Resources and Fees**

CENTR commented that IANA naming services have always been provided without cost to ccTLDs, but the current wording of Section 10.1 (c) seems to suggest that ICANN can now impose mandatory fees. CENTR suggested a referencing the required ccNSO agreement for any changes to voluntary contributions.

The APTLD commented that “fees for ccTLD registries should be defined in consultation with ccTLDs (ccNSO) with a due reference to, and in full consideration of, the outcomes of the discussions held in the course of development of the 2013 Guideline for Voluntary Contributions of ccTLDs to ICANN.”

ICANN notes that Section 10.1 continues the longstanding limitation from the IANA Functions Contract with NTIA that, in the event there is a determination that fees will be charged for the performance of the IANA functions, those fees must be based on the actual costs incurred. This concept is carried over from B.2 of the current IANA Functions Contract, and was contemplated in Annex S of the CWG Proposal. This limitation on fees is also included in the

ICANN Bylaws at 16.3(a)(vi), which identifies that the fee provision in the Agreement is material and cannot be modified if a majority of the ccNSO Council and GNSO Council reject such a modification.

## **10.2 Budget**

The CCG commented that the ICANN Bylaws “make[s] a reference to two kinds of budgets: an IANA Budget which is to be made by ICANN, and a PTI Budget, to be prepared by PTI” and suggested that the Agreement be amended to reflect these two budgets.

The ICANN Bylaws makes reference to an IANA and PTI budget because the ICANN budgeting and planning process includes two steps, budgeting for the IANA department within ICANN, which then informs the creation of the PTI Budget. The Agreement appropriately reflects the required element, the PTI Budget, and not the budgeting process that includes the creation of the IANA department budget.

## **12.1 Confidentiality**

The CCG commented that the language in Section 12.1 “may create a conflict with the Transparency provisions in section 6.1” and recommends that “this clause be made subject to Article VI, to ensure that PTI functions in an open and transparent manner.”

As ICANN worked through with the CWG-Stewardship and its external legal counsel, the Agreement now reflects that PTI assumes the same transparency obligations that are imposed on ICANN. As a result, neither ICANN nor PTI can use Section 12.1 to ignore any appropriate transparency requirements, including those set out at Section 6.1. The revisions to the Agreement create the appropriate balance of the concerns raised in the CCG comment.

## **14.6 Assignment and Subcontracting**

The ISPCP expressed concerns that the Agreement “has no provision for the naming function to contract with outside resources to meet strategic or occasional requirements for stakeholders in the naming community.”

Section 14.6 only prohibits subcontracting of PTI’s rights and obligations under the Agreement. It does not prohibit PTI from contracting as appropriate for professional services needed.

## **Section 14.7 Governing Law**

APTLD commented that the Agreement specifies that PTI will be domiciled in California and that “any and all disputes arising out of or related to this Agreement, shall be governed by, construed, and enforced in all respects in accordance with the Laws of the State of California.” APTLD asked for clarification as to whether PTI may opt for a jurisdiction other than United States of America should “unfavorable circumstances” occur.

As PTI is domiciled in California per the recommendations of the CWG-Stewardship proposal, and ICANN is domiciled in California per its Bylaws, the Agreement is governed by California law. As both parties to the Agreement are domiciled in California and a California court would be most knowledgeable about the laws governing the Agreement, it’s unlikely that a different

jurisdiction would be sought for legal matters relating to the Agreement.

**High-Level Summary of IANA Naming Function Contract**

Issue	Terms
Parties	<ul style="list-style-type: none"> <li>• ICANN and PTI</li> </ul>
Condition Precedent	<ul style="list-style-type: none"> <li>• The effectiveness of the Contract is conditioned on the NTIA Agreement being terminated or expired, and ICANN accepting the responsibility to coordinate and administer the services that were previously performed thereunder.</li> </ul>
IANA Naming Function	<ul style="list-style-type: none"> <li>• ICANN designates PTI to be the operator of the IANA Naming Function, which includes:               <ul style="list-style-type: none"> <li>○ Management of the DNS Root Zone;</li> <li>○ Management of the .INT top-level domain;</li> <li>○ Maintenance of a repository of internationalized domain name tables and label generation rulesets; and</li> <li>○ Provision of other services upon ICANN’s request and in conformance with applicable policies and procedures.</li> </ul> </li> <li>• PTI will perform the IANA Naming Function in a stable and secure manner.</li> <li>• PTI will treat the IANA Naming Function with equal priority as the other IANA functions performed by it, and process all requests promptly and efficiently.</li> <li>• PTI will make decisions by applying documented policies consistently, neutrally, objectively and fairly without discrimination.</li> <li>• PTI will provide service to its customers in conformance with prevailing technical norms.</li> <li>• PTI will, in collaboration with all Interested and Affected Parties (gTLD operators, ccTLD operators/managers, the RZERC, the CSC and IFR teams), maintain user instructions for the IANA Naming Function and post them at iana.org.</li> <li>• PTI will apply the policies for Root Zone Management that have been defined by the GNSO, as appropriate under ICANN’s Bylaws; ccNSO, as appropriate under ICANN’s Bylaws; RFC 1591 as interpreted by the FOI. In addition, PTI will consult the 2005 Governmental Advisory Committee Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains (“<b>GAC 2005 ccTLD Principles</b>”), where applicable.</li> <li>• Exclusions:               <ul style="list-style-type: none"> <li>○ PTI is not authorized to perform the services performed by the root zone maintainer, unless authorized by ICANN;</li> <li>○ PTI must not make changes in the policies or procedures developed by the relevant entities associated with the performance of the IANA Naming Function; and</li> <li>○ The performance of the IANA Naming Function shall not be predicated upon or condition by PTI on the existence or entry into any contract between PTI and any TLD registry operator or any other third party.</li> </ul> </li> </ul>
Transparency	<ul style="list-style-type: none"> <li>• PTI shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, in each case, as such concepts are contemplated by ICANN’s Bylaws.</li> </ul>
Personnel	<ul style="list-style-type: none"> <li>• PTI must provide trained, knowledgeable technical personnel, including a General Manager, a Director of Security and a Conflict of Interest Officer.</li> <li>• PTI must obtain ICANN’s approval prior to making key personnel substitutions.</li> </ul>
Reports	<ul style="list-style-type: none"> <li>• PTI must obtain ICANN’s approval of report templates.</li> </ul>
Continuity of	<ul style="list-style-type: none"> <li>• Either ICANN or PTI shall provide, at a minimum, redundant sites in at least two geographically dispersed sites with the U.S. as well as multiple resilient communication paths</li> </ul>

Issue	Terms
Operations	<p>to customers to ensure continuation of the IANA Naming Function in the event of cyber or physical attacks, emergencies or natural disasters.</p> <ul style="list-style-type: none"> <li>• PTI must collaborate with ICANN to develop and implement a Contingency and Continuity of Operations Plan for the IANA Naming Function and annually test such plan.</li> </ul>
CSC and IFR	<ul style="list-style-type: none"> <li>• PTI must act in good faith to resolve issues identified by the CSC.</li> <li>• PTI must cooperate with the conduct of any IFRT, including any site visit conducted by an IFRT that has been previously approved by ICANN in accordance with ICANN's Bylaws.</li> </ul>
Term and Transition	<ul style="list-style-type: none"> <li>• Contract automatically renews for five year successive terms unless (i) terminated by ICANN pursuant to an SCWG Recommendation arising from an IANA Naming Function Separation Process approved in accordance with ICANN's Bylaws or (ii) ICANN elects not to renew pursuant to an IFR Recommendation, Special IFR Recommendation or SCWG Recommendation approved in accordance with ICANN's Bylaws by providing PTI with not less than 12 months prior written notice.</li> <li>• PTI shall develop and maintain, with ICANN input, a plan in place for transitioning the IANA Naming Function to a successor provider to ensure an orderly transition while maintaining continuity and security of operations, including in connection with the nonrenewal of this Agreement and/or divestiture or other reorganization of PTI by ICANN as contemplated by ICANN's Bylaws. The transition plan shall be submitted to ICANN and posted to the IANA Website within 18 months after the Effective Date. The plan shall thereafter be reviewed annually and updated as appropriate.</li> <li>• PTI shall provide support and cooperation to ICANN, and to any successor provider of the IANA Naming Function, in order to effect an orderly, stable, secure and efficient transition of the performance of the IANA Naming Function.</li> <li>• PTI agrees to be engaged in the transition plan and to provide appropriate transition staff and expertise to facilitate a stable and secure transition of the IANA Naming Function to a successor provider.</li> <li>• ICANN, in conjunction with the CSC as necessary, shall review the transition plan at least every five years.</li> </ul>
Resources and Fees	<ul style="list-style-type: none"> <li>• ICANN shall provide or make available to PTI the necessary personnel, material, equipment, services and other resources and facilities to perform PTI's obligations under the Agreement.</li> <li>• PTI may not charge or collect fees from third parties related to the performance of the IANA Naming Function.</li> <li>• Any fees approved by ICANN and charged by PTI relating to the IANA Naming Function will be based on the actual costs incurred by PTI to perform the IANA Naming Function.</li> <li>• PTI's performance is conditioned upon the full and complete performance of ICANN under the Services Agreement.</li> <li>• PTI must comply with the requirements set forth in its Bylaws relating to preparing, submitting and monitoring an annual budget.</li> </ul>
Security Requirements	<ul style="list-style-type: none"> <li>• PTI shall install and operate all computing and communication systems in accordance with best business and security practices.</li> <li>• PTI shall maintain a secure notification system capable of notifying TLD registry operators of outages, planned maintenance and new developments.</li> <li>• PTI shall ensure the authentication, integrity and reliability of the service data in performing the IANA Naming Function.</li> </ul>
Intellectual	<ul style="list-style-type: none"> <li>• As between ICANN and PTI, ICANN shall own all intellectual property conceived, reduced to</li> </ul>

Issue	Terms
Property	<p>practice, created or developed by PTI under the Contract.</p> <ul style="list-style-type: none"> <li>• ICANN shall license back to PTI intellectual property solely to the extent necessary for PTI to perform its obligations under the Contract.</li> </ul>
Indemnification	<ul style="list-style-type: none"> <li>• So long as PTI is an affiliate of ICANN, ICANN shall indemnify PTI, its officers, agents, and employees from liability of any nature or kind resulting from injuries or damages sustained by any person or property by virtue of PTI's performance of the Contract or failure to perform the Contract or arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of ICANN.</li> </ul>
Assignment and Subcontracting	<ul style="list-style-type: none"> <li>• Neither Party may assign the Contract or its obligations under the Contract without the other Party's prior written consent.</li> <li>• PTI cannot subcontract all or any portion of its rights or obligations under the Contract.</li> </ul>
Third Party Beneficiaries	<ul style="list-style-type: none"> <li>• There are no third party beneficiaries to the Contract.</li> </ul>
Confidentiality	<ul style="list-style-type: none"> <li>• Each Party will keep the other's confidential information in the strictest confidence.</li> <li>• PTI is obligated to cooperate with the dispute resolution, IFRT review and related escalation procedures in ICANN's Bylaws and PTI's Bylaws and to produce documents and information in accordance with, and subject to the limitations of, those procedures.</li> </ul>

**High-Level Summary of IANA Naming Function [Contract](#)**

Issue	Terms
Parties	<ul style="list-style-type: none"> <li>• ICANN and PTI</li> </ul>
Condition Precedent	<ul style="list-style-type: none"> <li>• The effectiveness of the <a href="#">Contract</a> is conditioned on the NTIA Agreement being terminated or expired, and ICANN accepting the responsibility to coordinate and administer the <a href="#">services</a> that were previously performed thereunder.</li> </ul>
IANA Naming Function	<ul style="list-style-type: none"> <li>• ICANN designates PTI to be the operator of the IANA Naming Function, which includes:               <ul style="list-style-type: none"> <li>○ Management of the DNS Root Zone;</li> <li>○ Management of the .INT top-level domain;</li> <li>○ Maintenance of a repository of internationalized domain name tables and label generation rulesets; and</li> <li>○ Provision of other services upon ICANN's request and in conformance with applicable policies and procedures.</li> </ul> </li> <li>• PTI will perform the IANA Naming Function in a stable and secure manner.</li> <li>• PTI will treat the IANA Naming Function with equal priority as the other IANA functions performed by it, and process all requests promptly and efficiently.</li> <li>• PTI will make decisions by applying documented policies consistently, neutrally, objectively and fairly without discrimination.</li> <li>• PTI will provide service to its customers in conformance with prevailing technical norms.</li> <li>• PTI will, in collaboration with all Interested and Affected Parties (gTLD operators, ccTLD operators/managers, the RZERC, the CSC and IFR teams), maintain user instructions for the IANA Naming Function and post them at <a href="http://iana.org">iana.org</a>.</li> <li>• PTI will apply the policies for Root Zone Management that have been defined by the GNSO, <a href="#">as appropriate under ICANN's Bylaws</a>; ccNSO, <a href="#">as appropriate under ICANN's Bylaws</a>; RFC 1591 as interpreted by the FOI. In addition, PTI will consult the 2005 Governmental Advisory Committee Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains ("<b>GAC 2005 ccTLD Principles</b>"), where applicable.</li> <li>• Exclusions:               <ul style="list-style-type: none"> <li>○ PTI is not authorized to perform the services performed by the root zone maintainer, unless authorized by ICANN;</li> <li>○ PTI must not make changes in the policies or procedures developed by the relevant entities associated with the performance of the IANA Naming Function; and</li> <li>○ The performance of the IANA Naming Function shall not be predicated upon or condition by PTI on the existence or entry into any contract between PTI and any TLD registry operator or any other third party.</li> </ul> </li> </ul>
Transparency	<ul style="list-style-type: none"> <li>• PTI shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, in each case, as such concepts are contemplated by ICANN's Bylaws.</li> </ul>
Personnel	<ul style="list-style-type: none"> <li>• PTI must provide trained, knowledgeable technical personnel, including a General Manager, a Director of Security and a Conflict of Interest Officer.</li> <li>• PTI must obtain ICANN's approval prior to making key personnel substitutions.</li> </ul>
Reports	<ul style="list-style-type: none"> <li>• PTI must obtain ICANN's approval of report templates.</li> </ul>
Continuity of	<ul style="list-style-type: none"> <li>• Either ICANN or PTI shall provide, at a minimum, redundant sites in at least two geographically dispersed sites with the U.S. as well as multiple resilient communication paths</li> </ul>

Issue	Terms
Operations	<p>to customers to ensure continuation of the IANA Naming Function in the event of cyber or physical attacks, emergencies or natural disasters.</p> <ul style="list-style-type: none"> <li>PTI must collaborate with ICANN to develop and implement a Contingency and Continuity of Operations Plan for the IANA Naming Function and annually test such plan.</li> </ul>
CSC and IFR	<ul style="list-style-type: none"> <li>PTI must act in good faith to resolve issues identified by the CSC.</li> <li>PTI must cooperate with the conduct of any IFRT, including any site visit conducted by an IFRT that has been previously approved by ICANN in accordance with ICANN's Bylaws.</li> </ul>
Term and Transition	<ul style="list-style-type: none"> <li><u>Contract</u> automatically renews for five year successive terms unless (i) terminated by ICANN pursuant to an SCWG Recommendation arising from an IANA Naming Function Separation Process approved in accordance with ICANN's Bylaws or (ii) ICANN elects not to renew pursuant to an IFR Recommendation, Special IFR Recommendation or SCWG Recommendation approved in accordance with ICANN's Bylaws by providing PTI with not less than 12 months prior written notice.</li> <li>PTI shall develop and maintain, with ICANN input, a plan in place for transitioning the IANA Naming Function to a successor provider to ensure an orderly transition while maintaining continuity and security of operations, including in connection with the nonrenewal of this Agreement and/or divestiture or other reorganization of PTI by ICANN as contemplated by ICANN's Bylaws. The transition plan shall be submitted to ICANN and posted to the IANA Website within 18 months after the Effective Date. The plan shall thereafter be reviewed annually and updated as appropriate.</li> <li>PTI shall provide support and cooperation to ICANN, and to any successor provider of the IANA Naming Function, in order to effect an orderly, stable, secure and efficient transition of the performance of the IANA Naming Function.</li> <li>PTI agrees to be engaged in the transition plan and to provide appropriate transition staff and expertise to facilitate a stable and secure transition of the IANA Naming Function to a successor provider.</li> <li>ICANN, in conjunction with the CSC as necessary, shall review the transition plan at least every five years.</li> </ul>
Resources and Fees	<ul style="list-style-type: none"> <li>ICANN shall provide or make available to PTI the necessary personnel, material, equipment, services and other resources and facilities to perform PTI's obligations under the Agreement.</li> <li>PTI may not charge or collect fees from third parties related to the performance of the IANA Naming Function.</li> <li>Any fees approved by ICANN and charged by PTI relating to the IANA Naming Function will be based on the actual costs incurred by PTI to perform the IANA Naming Function.</li> <li>PTI's performance is conditioned upon the full and complete performance of ICANN under the Services Agreement.</li> <li>PTI must comply with the requirements set forth in its Bylaws relating to preparing, submitting and monitoring an annual budget.</li> </ul>
Security Requirements	<ul style="list-style-type: none"> <li>PTI shall install and operate all computing and communication systems in accordance with best business and security practices.</li> <li>PTI shall maintain a secure notification system capable of notifying TLD registry operators of outages, planned maintenance and new developments.</li> <li>PTI shall ensure the authentication, integrity and reliability of the service data in performing the IANA Naming Function.</li> </ul>
Intellectual	<ul style="list-style-type: none"> <li>As between ICANN and PTI, ICANN shall own all intellectual property conceived, reduced to</li> </ul>



Issue	Terms
Property	<p>practice, created or developed by PTI under the <a href="#">Contract</a>.</p> <ul style="list-style-type: none"> <li>ICANN shall license back to PTI intellectual property solely to the extent necessary for PTI to perform its obligations under the <a href="#">Contract</a>.</li> </ul>
Indemnification	<ul style="list-style-type: none"> <li>So long as PTI is an affiliate of ICANN, ICANN shall indemnify PTI, its officers, agents, and employees from liability of any nature or kind resulting from injuries or damages sustained by any person or property by virtue of PTI's performance of the <a href="#">Contract</a> or failure to perform the <a href="#">Contract</a> or arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of ICANN.</li> </ul>
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**High-Level Summary of IANA Naming Function Agreement**

Issue	Terms
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## **SERVICES AGREEMENT**

This Services Agreement (this “**Agreement**”) is dated as of [●] 2016 and is entered into by and between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“**ICANN**”), and Public Technical Identifiers, a California nonprofit public benefit corporation (“**PTI**”), and shall be effective as of the last date on which each of the conditions set forth in ARTICLE I: have been satisfied (the “**Effective Date**”). ICANN and PTI may each be referred to individually as a “**Party**” and collectively as the “**Parties.**”

WHEREAS, following the transition of the National Telecommunications and Information Administration’s stewardship role of the IANA Names Service, IANA Number Service and the IANA Protocol Parameter Service (as such terms are defined in Schedule B hereto, the “**IANA Services**”) to the global multi-stakeholder community, PTI will perform the IANA Services on behalf of ICANN; and

WHEREAS, ICANN and PTI desire to enter into this Agreement pursuant to which ICANN shall provide the services set forth herein to facilitate PTI’s performance of the IANA Services.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **ARTICLE I: CONDITION PRECEDENT**

#### **Section 1.1 Condition Precedent**

This Agreement shall be effective as of the last date on which the following conditions have been satisfied: (a) the agreement between ICANN and the United States Department of Commerce (“**DOC**”), effective as of 01 October 2012 (including any extension thereof) has terminated or expired and (b) ICANN has accepted the responsibility to coordinate and administer the services that were previously provided thereunder.

### **ARTICLE II: REPRESENTATIONS AND WARRANTIES**

**Section 2.1 ICANN’s Warranties.** ICANN represents and warrants that (a) it has all necessary rights and powers to enter into and perform its obligations under this Agreement; (b) the execution, delivery and performance of this Agreement by ICANN has been duly authorized by all necessary corporate action and does not violate any applicable law to which ICANN is subject; and (c) the execution, delivery and performance of this Agreement by ICANN do not (i) require a consent or approval under, or (ii) as of the Effective Date, conflict with, result in any violation or breach of, constitute a default under, or accelerate any rights in favor of a third party under, any agreement between ICANN and a third party.

**Section 2.2 PTI Warranties.** PTI represents and warrants that (a) it has all necessary rights and powers to enter into and perform its obligations under this Agreement; (b) the execution, delivery and performance of this Agreement by PTI has been duly authorized by all necessary

corporate action and does not violate any applicable law to which PTI is subject; and (c) the execution, delivery and performance of this Agreement by PTI do not (i) require a consent or approval under, or (ii) as of the Effective Date, conflict with, result in any violation or breach of, constitute a default under, or accelerate of any rights in favor of a third party under, any agreement between PTI and a third party.

### **ARTICLE III: SERVICES**

Section 3.1 Services. ICANN hereby agrees to provide, or cause its affiliates to provide, to PTI the services listed in Schedule A (together with the services and other obligations contemplated by Articles IV and VI and as modified pursuant to Section 3.2, the “**Services**”). ICANN’s obligation to provide the Services is subject to the terms, limitations and conditions set forth in this Agreement, including Schedule A.

Section 3.2 Review and Additional Services. The Parties agree that the scope, frequency and manner of delivery of the Services detailed herein are subject to periodic review by the Parties. Upon the mutual agreement of the Parties, (a) additional or new services which are not currently contemplated in this Agreement may be added to Schedule A from time to time, and (b) one or more Services may be modified, or terminated and deleted from Schedule A from time to time.

Section 3.3 Performance Standards.

(a) ICANN agrees to use commercially reasonable efforts to provide the Services in accordance with the standards, practices and procedures established by ICANN for its own operations, unless otherwise agreed by ICANN and PTI. ICANN shall comply with all laws, regulations, rules and orders applicable to (i) PTI with respect to the Services provided hereunder and (ii) ICANN with respect to its own operations.

(b) ICANN may make changes from time to time in the manner of performing the Services, and may suspend or terminate the provision of one or more of the Services, to the extent that ICANN is making similar changes in the manner of performing, or is similarly suspending or terminating, similar services for itself, provided in each case that any such suspension, termination, or change must not create any material risk to the security and stability of the domain name system.

Section 3.4 Confidentiality. Each Party agrees, in the performance of this Agreement, to keep the information furnished by the other Party or acquired or developed by the other Party in performance of this Agreement, in the strictest confidence. Each Party also agrees not to publish or otherwise divulge such information, in whole or in part, in any manner or form, nor to authorize or permit others to do so, and shall take reasonable measures to restrict access to such information while in such Party’s possession, to those employees needing such information to perform the work described herein, i.e., on a “need to know” basis. Each Party agrees to immediately notify the other Party in writing in the event that such Party determines or has reason to suspect a breach of this requirement has occurred. Nothing in this Section 3.4

shall prohibit (i) ICANN from complying with its obligations under the Service Level Agreement for the IANA Number Services, dated 29 June 2016, among ICANN and the Regional Internet Registries party thereto, and the IETF-ICANN Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority, ratified on March 10, 2000, in each case as supplemented and amended, or (ii) ICANN or PTI from complying with their disclosure obligations required by ICANN's Bylaws or PTI's Bylaws. Upon termination or expiration of this Agreement or upon request of the disclosing party of confidential information, the receiving party shall return to the disclosing party or confidentially destroy (and certify such confidential destruction in a form reasonably acceptable to the disclosing party) all confidential information of such disclosing party, all documents and media containing such confidential information and any and all copies or extracts thereof; provided, that the receiving party may retain one copy of any such tangible embodiments for archival purposes. Upon written request by the disclosing party, the receiving party shall promptly cease, and shall cause its recipients to cease, use of such confidential information as well as any information or materials that contain, incorporate or are derived from such confidential information.

Section 3.5 Disclaimer of Warranties. THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT ARE PROVIDED "AS IS". NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY EXPRESSED OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE CONCERNING ANY SERVICE. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL GUARANTIES, WARRANTIES, CONDITIONS AND REPRESENTATIONS WHATSOEVER, EITHER EXPRESS OR IMPLIED, WHETHER ARISING UNDER ANY STATUTE, LAW, COMMERCIAL USAGE OR OTHERWISE, ARE HEREBY EXPRESSLY REJECTED AND DISCLAIMED.

Section 3.6 Limitation of Liability. None of ICANN or any of its directors, officers, employees, contractors or agents shall be liable to PTI for any losses or damages arising out of or in connection with any act or omission of ICANN or any of its directors, officers, employees, contractors or agents pursuant to this Agreement or with respect to the Services. If ICANN fails to provide a Service hereunder or fails to provide a Service in accordance with the performance standard specified in Section 3.3(a), ICANN's sole liability, and PTI's sole remedy, shall be ICANN's performance of such Services in accordance with the terms of this Agreement.

#### **ARTICLE IV: FACILITIES**

Section 4.1 Facilities. ICANN shall provide adequate office space and related facilities to enable PTI to perform the IANA Services that PTI is performing on ICANN's behalf (the "**Facilities**"). The costs and expenses relating to PTI's use of the Facilities shall be allocated pursuant to Section 5.2.

Section 4.2 Vacating of Facilities. PTI agrees and covenants as follows: (a) to vacate the Facilities immediately upon termination or expiration of the applicable underlying lease; (b) not to make any alteration or addition to the Facilities without ICANN's consent (which shall not be unreasonably withheld or delayed); (c) to leave the Facilities in as good as condition as when first occupied by PTI (normal wear and tear excepted); and (d) to comply with the provisions of

any law and/or the underlying lease in respect to the Facilities. ICANN covenants to permit PTI to peaceably use the Facilities during the term of PTI's use thereof. ICANN shall provide PTI no less than 30 calendar days written notice prior to the termination or expiration of the underlying lease for the Facilities.

#### **ARTICLE V: COSTS AND EXPENSES**

Section 5.1 IANA Services. PTI will perform the IANA Services on behalf of ICANN, and the value for these services shall be invoiced quarterly by PTI to ICANN. The value of the services will be estimated by PTI at cost. Costs include all costs incurred for the purpose of rendering the IANA Services and all other corporate costs incurred to operate PTI.

Section 5.2 ICANN Services to PTI. ICANN allocates to PTI the actual costs of the Services that it renders under this Agreement. Such costs reflect the fully absorbed value of the expenses incurred to render the Services, inclusive of direct and incremental costs attributable to personnel (including personnel time), materials and supplies, and third-party services and programs, and any specifically-identifiable indirect costs (including Facilities costs) that relate to the aforesaid costs, in each case, inclusive of taxes. ICANN transfers to PTI all applicable costs that it incurs to render the Services as per ICANN's cost management approach, either specifically and exclusively for the IANA Services, or as part of a Service that it performs for itself. Actual costs are estimated when the specific portion of the costs incurred that should be transferred to PTI is not available. Costs are incurred by ICANN in accordance with its procurement policies and practices, and after defining the most appropriate resources to ensure the best value is obtained, resulting from the highest benefit for the lowest cost. ICANN's procurement policies and practices require that decisions are taken in a manner free of conflicts of interest. ICANN identifies resources under an assumption of continued operation. ICANN shall provide PTI with a quarterly invoice detailing the Services provided hereunder and the reimbursable amounts. Payment for the Services shall be due and payable on the 30<sup>th</sup> day following receipt of the invoice therefor. PTI's budget shall set forth estimated costs for the Services under this Agreement.

Section 5.3 Employee Expenses. ICANN shall allocate to PTI, with respect to the Services performed by ICANN hereunder, a pro-rata allocation of the total compensation (including benefits) of ICANN personnel (including PTI Personnel, as defined Section 6.2 below), based upon the evaluation of time worked in connection with the performance of the Services on behalf of PTI.

Section 5.4 No Profit or Loss. It is the intention of the Parties that no Party shall realize a profit nor incur a loss as a result of the Services provided and costs and expenses incurred hereunder and the allocation of all costs and expenses for such Services shall be made consistent with such intention.

Section 5.5 Maintenance of Books. ICANN and PTI each shall maintain its own books, accounts and records in such a way as to disclose clearly and accurately the nature and detail of the transactions between them (including the performance of the Services by ICANN



hereunder), including such accounting information as is necessary to support the allocation of costs and expenses under this Agreement, and such additional information as ICANN or PTI may reasonably request for purposes of its internal bookkeeping and accounting operations.

## ARTICLE VI: PERSONNEL MATTERS

### Section 6.1 Personnel.

(a) Services provided to PTI hereunder shall be performed by those employees and independent contractors of ICANN who perform equivalent services for ICANN in the normal course of their employment or engagement with ICANN (“**ICANN Personnel**”). Accordingly, ICANN shall not be obligated to make available any Services to the extent that doing so would unreasonably interfere with the performance by any ICANN Personnel of services similar to the Services for ICANN, or otherwise cause an unreasonable burden to ICANN, provided in each case that any such suspension, termination, or change must not create any material risk to the security and stability of the domain name system. ICANN shall give PTI notice as soon possible in the event of such an anticipated suspension, termination or change to a Service, but in no event is ICANN required to give more than 30 days prior notice.

(b) Subject to Section 6.3, notwithstanding anything herein to the contrary, whenever ICANN utilizes ICANN Personnel to perform the Services, such ICANN Personnel shall at all times remain employees or independent contractors, as applicable, of ICANN, subject solely to the direction or responsibility of ICANN. Except for the allocation of costs and expenses contemplated by Section 5.3, PTI shall have no liability to ICANN for such ICANN Personnel for their welfare, salaries, fringe benefits, legally required employer contributions and tax obligations. In no event will PTI have any liability to ICANN Personnel for their respective welfare, salaries, fringe benefits, legally required employer contributions and tax obligations. The independent contractor status of any independent contractor engaged by ICANN shall not be affected by this Agreement.

Section 6.2 Employee Benefit Plans. ICANN shall ensure that all employees of ICANN seconded to PTI (“**PTI Personnel**”) are eligible to participate in the employee benefit plans of ICANN on the same terms and conditions as similarly situated employees of ICANN. All employees of ICANN who are assigned to ICANN’s IANA department as of the date hereof and perform services related to the IANA Names Service shall, effective as of the Effective Date, be seconded to PTI hereunder and considered PTI Personnel (so long as such personnel are employed by ICANN as of the Effective Date and remain employed by ICANN thereafter). Nothing in this Agreement shall be deemed to prohibit ICANN from terminating, changing or altering its employee benefits plans in any manner at any time.

### Section 6.3 Employee Transition.

(a) Prior to the third anniversary of the Effective Date, ICANN shall assist PTI with (i) obtaining the same or comparable employee benefits plans to those administered by ICANN as of the Effective Date, and (ii) implementing the systems, processes, and policies necessary to enable PTI to maintain an employee workforce sufficient to perform the IANA Services that PTI is performing on ICANN's behalf. Following the date that PTI implements these benefits, systems and processes ("**Employee Transition Date**"), (y) ICANN shall permit PTI to, and PTI may in its discretion, offer all full-time PTI Personnel (determined at that time) employment with PTI on terms and conditions mutually agreed between ICANN and PTI, and (z) following receipt of written notice from PTI of PTI Personnel's acceptance of an offer of employment with PTI, ICANN shall terminate the employment of any such PTI Personnel. Following the Employee Transition Date, ICANN may modify the Services as appropriate to reflect the change in circumstances contemplated by this Section 6.3.

(b) Following the date hereof and prior to the Employee Transition Date, all new hire employees intended to be transitioned to PTI for employment shall be employed by ICANN and seconded to PTI. ICANN shall inform such new hires that the intent is to transition their employment to PTI following the Employee Transition Date. Following the Employee Transition Date, PTI shall employ its new hire employees.

#### **ARTICLE VII: RECORDS AND INFORMATION**

Section 7.1 Ownership and Custody of Records. All records, books and files established and maintained by ICANN by reason of its performance of Services under this Agreement, which, absent this Agreement, would have been held by PTI, shall be deemed the property of PTI and shall be maintained in accordance with applicable laws and regulations. All such records, books and files shall be promptly transferred to PTI by ICANN upon termination of this Agreement.

Section 7.2 Assistance. To the extent that a Party shall from time to time require information (including audited or unaudited financial statements) concerning the other Party in order to satisfy reporting or disclosure obligations pursuant to any rule, regulation or other requirement of any governmental entity, a Party shall furnish or cause to be furnished to other Party such information as may be required as promptly as may be practicable. ICANN shall also reasonably cooperate with PTI in connection with the audits contemplated by PTI's Bylaws and the applicable provision of the IANA Naming Function Contract between the Parties, dated as of [●] September 2016 (the "**IANA Naming Function Contract**").

#### **ARTICLE VIII: SECURITY AND DATA PROTECTION**

Section 8.1 Organizational Program for the Protection of Confidential Information. ICANN shall develop, implement and maintain a comprehensive written information security program that sets forth the Technical and Organizational Security Measures that reflect the identification and assessment of reasonably foreseeable internal and external risks to confidential information. "**Technical and Organizational Security Measures**" means reasonably appropriate administrative, technical and physical safeguards intended to protect against reasonably

anticipated threats or hazards to the security, integrity and confidentiality of confidential information (including any unauthorized access to or disclosure of confidential information), commensurate with the type of confidential information in ICANN's possession, custody or control including all such measures as are required by applicable laws. ICANN shall review such program at least annually or whenever there is a material change in operations or business practices that may reasonably implicate the security or integrity of confidential information. ICANN shall educate and train appropriate employees consistent with such program and have an appropriate disciplinary process for employees in the event of noncompliance with the requirements of such program.

Section 8.2 Business Continuity and Disaster Recovery. ICANN shall develop, implement and maintain a comprehensive written disaster recovery program that sets forth comprehensive disaster recovery, contingency and business continuity plans with respect to this Agreement, in order to best protect the confidential information and business-critical Services under this Agreement from all types of disasters and events. ICANN shall review such program at least annually or whenever there is a material change in operations, risks, business practices or industry standards that reasonably implicate the disaster recovery program. ICANN shall educate and train appropriate employees consistent with such program.

Section 8.3 Technical Measures for the Protection of Confidential Information. ICANN shall at all times protect the confidential information of PTI with at least the same Technical and Organizational Security Measures and level of care with which it protects its own confidential information of like kind.

## ARTICLE IX: INDEMNIFICATION

Section 9.1 Indemnification Obligations. Each Party shall, at its own cost, (a) defend (including paying attorneys' fees, expert witness fees, court reporters, paying court and administrative costs payable to the forum where a Claim is brought and other costs of defense), and indemnify and hold harmless the other Party and their officers, directors, members, shareholders, agents and employees (collectively, the "**Indemnified Parties**") from and against any and all claims, demands, actions, causes of action, suits or proceedings (each, a "**Claim**") brought against any Indemnified Parties by a third party to the extent arising out of, resulting from or related to:

- (i) any personal injury (including death) or property damage arising out of the indemnifying Party's negligence or willful misconduct;
- (ii) the indemnifying Party's violation of any law, rule or regulation; or
- (iii) the indemnifying Party's breach of this Agreement;

and (b) indemnify and hold the Indemnified Parties harmless from: (i) all awards, judgments, fines and penalties, and any other amounts regardless of how characterized by the court or

other forum hearing or adjudicating the Claim payable by the Indemnified Parties to the third parties bringing such Claims; (ii) any settlement amounts payable to the third parties bringing the Claims, in order to settle such Claims; and (iii) any other losses, damages, liabilities, costs and/or expenses (including court and/or administrative costs) arising from such third-party Claims, which, but for the Claims, would not have been suffered or incurred by the Indemnified Parties.

## **ARTICLE X: TERM; RENEWAL; TRANSITION AND TERMINATION**

Section 10.1 Term. This Agreement shall be for a term beginning on the Effective Date and shall remain in effect thereafter until terminated pursuant to Section 10.2.

Section 10.2 Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated at any time:

- (a) by the mutual written consent of ICANN and PTI;
- (b) by ICANN upon 30 calendar days written notice to PTI, if PTI ceases to be an affiliate of ICANN (i.e. ICANN is the sole member of PTI, with the ability to elect at least a majority of the directors of PTI's Board of Directors);
- (c) by ICANN upon 30 calendar days written notice to PTI, if (i) PTI has provided ICANN with written notice that PTI no longer requires ICANN to provide the Services contemplated by this Agreement, or (ii) the IANA Naming Function Contract and each of the Subcontract Agreements between ICANN and PTI relating to the IANA Number Services and the IANA Protocol Parameter Service, dated as of [●] September 2016 (the "**Subcontract Agreements**"), have each expired or terminated in accordance with their terms; or
- (d) by either ICANN or PTI (provided that the terminating Party is not then in material breach of any covenant or other agreement contained herein), by written notice to the other Party, if there shall have been a material breach of any of the provisions of this Agreement by the other Party; provided that (i) such breach has not been waived by the terminating Party; (ii) such breach has not been cured within 30 days following the terminating Party's written notice of such breach; (iii) if such breach cannot reasonably be cured within 30 days, the breaching Party is diligently proceeding to cure such breach; and (iv) in the case of a termination by ICANN, and if PTI is an affiliate of ICANN at the time of such breach, such breach of this Agreement by PTI is a breach other than failure to pay amounts due under this Agreement to ICANN.

Section 10.3 Survival. Upon the expiration or termination of this Agreement under this ARTICLE X, this Agreement shall become wholly void and of no further force and effect, and following such expiration or termination no Party shall have any liability under this Agreement to the other Party, except that each Party hereto shall remain liable for any breaches of this

Agreement that occurred prior to its expiration or termination; provided, however, that the following provisions shall survive the expiration or termination of this Agreement: ARTICLE II; Sections 3.4, Section 3.5, Section 3.6, ARTICLE VII; ARTICLE IX: (but only with respect to obligations accruing prior to the expiration or termination of this Agreement), Section 10.3, and ARTICLE XI:

#### **ARTICLE XI: MISCELLANEOUS**

Section 11.1 Notices. All notices to be given under or in relation to this Agreement shall be given either (a) in writing at the address of the appropriate Party as set forth below or (b) via electronic mail as provided below, unless that Party has given a notice of change of postal or email address, as provided in this Agreement.

If to ICANN:

Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536  
Attn: President and Chief Executive Officer  
Phone: +1-310-301-5800  
Email: [●]

With a copy to (which shall not constitute notice):

Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536  
Attn: General Counsel  
Phone: +1-310-301-5800  
Email: [●]

With a copy to (which shall not constitute notice):

Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536  
Attn: [Vice President, IANA Operations]  
Phone: +1-310-301-5800  
Email: [●]

If to PTI:

Public Technical Identifiers  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536

Attn: [●]  
Phone: [●]  
Email: [●]

Any notice required by this Agreement shall be deemed to have been properly given (a) if in paper form, when delivered in person or via courier service with confirmation of receipt or (b) if by electronic mail, upon confirmation of receipt by the recipient's email server, provided that such notice via electronic mail shall be followed by a copy sent by regular postal mail service within three calendar days. In the event other means of notice become practically achievable, such as notice via a secure website, the parties shall work together to implement such notice means under this Agreement.

Section 11.2 Amendments. Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived only by a physical writing referencing this Agreement, and either (a) manually signed by the Parties to be bound or (b) digitally signed by the Parties to be bound.

Section 11.3 Waiver. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the Party or Parties entitled to the benefit thereof. Any such extension or waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any Party, it is authorized in writing by an authorized representative of the Party entitled to the benefits of any such waived term or provision. The failure or delay of any Party to assert or enforce at any time any provision of, or any of its rights under, this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

Section 11.4 Severability. If any provision of this Agreement should be found by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

Section 11.5 Assignment and Subcontracting.

(a) Neither Party may assign or transfer this Agreement, or any obligation under this Agreement (in whole or in part, and whether voluntarily, involuntarily, or by operation of Law) without the other Party's prior written consent.

(b) PTI shall not subcontract all or any portion of its rights or obligations under this Agreement, provided that PTI shall be able to obtain the services of third-party consultants to facilitate PTI's performance of its obligations under the IANA Naming Function Contract and the Subcontract Agreements.

Section 11.6 Governing Law. The Parties agree that this Agreement, and any and all disputes arising out of or related to this Agreement shall be governed by, construed, and enforced in all

respects in accordance with the Laws of the State of California, United States of America, excluding its conflict of laws rules. Each Party expressly waives any claim that the jurisdiction of such court with respect to personal jurisdiction is improper or that the venue is inconvenient or improper. Notwithstanding the foregoing, the Parties agree that prior to pursuing any proceeding, action, lawsuit or other equitable or legal remedy in connection with disputes arising out of this Agreement, the Parties shall first negotiate in good faith with each other regarding such dispute. Unless otherwise stated, each of a Party's rights and remedies set out in this Agreement are cumulative and additional to remedies provided at law, in equity or under this Agreement.

Section 11.7 Third-Party Beneficiaries. No provision of this Agreement is intended to, nor shall be interpreted to, provide or create any rights, benefits or any other interest of any kind in any third party or create any obligations of ICANN or PTI to any third party, including any employee or independent contractor of ICANN or PTI.

Section 11.8 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, ICANN shall not be required to provide any Service, in whole or in part, to the extent the provision of such Service becomes impracticable as a result of a cause or causes outside the reasonable control of ICANN (including due to fire, flood, storm, earthquake or other acts of God, riot, war, terrorism, rebellion, or other acts of war or civil unrest, utility outages or interruptions, strike, lockout, any Law, demand or other requirement of any governmental entity, and all other causes outside of ICANN's reasonable control), including unfeasible technological requirements, or to the extent the performance of such Services would require the ICANN to violate any applicable laws, rules or regulations or would result in the breach of any agreement with any third party. When affected by any such event, ICANN shall: (a) promptly notify PTI of the occurrence of such an event and describe in reasonable detail the nature of the event, and (b) use commercially reasonable efforts to (i) resume performance of its obligations under this Agreement as soon as reasonably practical; and (ii) pending such resumption, to facilitate any commercially reasonable efforts that PTI may make to procure alternative services.

Section 11.9 English Version. If this Agreement is translated into any language other than English, and if there is a conflict between the English version and the translated version, then the English version shall prevail in all respects.

Section 11.10 Savings Clause. Any delay, nonperformance or other breach by a Party of its obligations under this Agreement and any liability therefor, shall be excused to the extent such failure is caused by the other Party's acts or omissions or the acts or omissions of such Party's affiliates, including such Party's failure to perform its obligations under this Agreement.

Section 11.11 Cumulative Remedies. Except as otherwise expressly provided, all remedies provided for in this Agreement shall be cumulative and in addition to, and not in lieu of, any other remedies available to either Party.

Section 11.12 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one single agreement between the Parties.

Section 11.13 Headings. The Parties agree that the headings used in this Agreement are for ease of reference only and shall not be taken into account in interpreting the Agreement.

Section 11.14 Further Assurances. Subject to the terms and conditions of this Agreement, each of ICANN and PTI agrees to use commercially reasonable best efforts to take, or cause to be taken, all appropriate action, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable laws to make effective the transactions contemplated by this Agreement.

Section 11.15 Entire Agreement. This Agreement, including all statements of work, schedules, exhibits or other attachments hereto, constitutes the entire understanding and agreement between ICANN and PTI with respect to the subject matter of this Agreement, and supersedes any and all prior or contemporaneous oral or written representation, understanding, agreement or communication relating thereto.

Section 11.16 Construction. Unless the context of this Agreement otherwise requires: (a) words of any gender include each other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this entire Agreement; (d) the terms “Article,” “Section,” or “Schedule” refer to the specified Article, Section, or Schedule of this Agreement; (e) the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”; and (f) the term “including” or “includes” means “including without limitation” or “includes without limitation” so as to not limit the generality of the preceding term. Unless otherwise stated, references to days shall mean calendar days.

[Signature Page Follows]



IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date set forth below.

**INTERNET CORPORATION FOR ASSIGNED  
NAMES AND NUMBERS**

**PUBLIC TECHNICAL IDENTIFIERS**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

## Schedule A

### Schedule of Services

Service	Description
Accounting	Accounting services as needed, including support for general accounting, expense Report processing, cash management, intercompany allocations, payroll banking/reconciliations, and accounts payable support.
Financial Audit	Management of the annual independent audit and internal audit services, including auditing, oversight, and special projects as needed.
Communications	Corporate communications services, including internal and external public affairs, public communications, and employee communications.
Compensation	Compensation services, including development and administration of employee compensation plans and programs, including long-term incentive plans, design and administration of compensation studies and surveys, and design of compensation related communications.
Executive and Administrative	ICANN shall assign a Treasurer and Secretary to PTI and shall provide PTI with reasonable administrative support, including as it relates to PTI's Board of Directors and PTI's interactions with the Customer Standing Committee (as such term is used in ICANN's Bylaws).
Facilities Support	Provide PTI with ancillary services related to its use and enjoyment of the Facilities, including facilities management, reception services, facility security, parking and common area usage.
Finance and Financial Administration	Financial reporting and budgeting and forecasting services, including support for internal and external financial reporting, annual operating plan and budget, strategic planning, and oversight of the finance functions.
Government Relations	Government relations services as needed, including advice on federal, state and local government issues affecting PTI's business and services.
Human Resources	Human resources services, including (a) payroll administration, (b) employee relations support (including coordinating employee communications), (c) employee training and development programs, (d) facilitation of employee performance management programs coordination of employee insurance plans, compensation plans, 401k plans and other employee benefits plans, and (e) administering compliance with statutory reporting obligations.

Service	Description
Information Systems, Development and Security	Support for servers, systems and business applications; resources for software development and maintenance; provisioning and support for end user systems; provision and maintenance of applicable hardware; and maintain necessary policies and software to facilitate the security of PTI's computer systems, including against cyber attack.
Insurance Administration	Administration and oversight of the procurement and maintenance of the company-placed insurance programs, including property, cargo, general liability, professional liability, vehicle insurance and workers' compensation, directors/officers, errors/omissions and cyber programs and other applicable business insurance programs.
Legal	Legal support as needed, including corporate governance, maintenance of books and records, contract management, coordination with outside counsel, and litigation management.
Meeting Facilities	Administrative support for logistics related to company-sponsored meeting facilities at PTI headquarters (including meeting rooms, A/V, and catering)
Regulatory	Such services as are necessary to assist PTI in meeting reporting requirements of applicable regulatory agencies.
Risk Management	Risk management services as needed, including management of claims activity.
Secondment	Secondment of PTI Personnel to perform the IANA Services, per Sections 5.1 and 6.2 of the Agreement.
Security	Security services, including cyber security, investigations, and facilities security infrastructure.
Supply Chain Services	Supply chain services as needed, including vendor management (contract negotiation and management), purchasing card administration, and energy management.
Tax Advice and Related Services	Tax services as needed, including handling the preparation and filing of federal, state, local and foreign tax returns, estimated tax payments, quarterly tax provisions and tax planning.
Telecommunications	Telecommunications support services as needed, including negotiation and administration of wireline, wireless telecom carrier contracts and support, and internal support of telecom infrastructure.

Service	Description
Travel Administration	Travel services as needed, including administration of internal travel reservation support, and pricing and service negotiations with travel-related vendors (e.g. airline, hotel, rental car).

## Schedule B

### **IANA Service Descriptions**

#### IANA NAMES SERVICE

The IANA Names Service consists of (a) management of the DNS Root Zone; (b) management of the .INT top-level domain; (c) maintenance of a repository of internationalized domain name tables and label generation rule sets; and (d) provision of other services related to the management of .INT top-level domains.

#### IANA NUMBERS SERVICE

The IANA Numbers Service consists of administration of the IANA Number Registries in accordance with Global Policies and any applicable and mutually acceptable and agreed upon guidelines and procedures, including allocation of Internet Number Resources to Regional Internet Registries, the management of returned Internet Number Resources, general IANA Number Registries maintenance, and the administration of the unicast portion of the special-purpose "INADDR. ARPA" and "IP6.ARPA" DNS zones, as extensively defined in the Service Level Agreement for the IANA Numbering Services.

#### IANA PROTOCOL PARAMETER SERVICE

The IANA Protocol Parameter Service consist of (i) assigning and registering Internet protocol parameters as directed by the criteria and procedures specified in RFCs, including Proposed, Draft and full Internet Standards and Best Current Practice documents, and any other RFC that calls for IANA assignment, as well as procedures and criteria directed by Supplemental Agreements agreed to between the IETF and the protocol service provider; (ii) registering protocol parameters of interest to the Internet community upon agreement with other parties, provided such protocol parameters do not conflict with those specified under the terms of clause (i), (iii) providing on-line facilities for the public to request Internet protocol parameter assignments; (iii) making available to the public, on-line and free of charge, information about each current assignment, including contact details for the assignee.

**High-Level Summary of Services Agreement**

Issue	Terms
Parties	<ul style="list-style-type: none"> <li>• ICANN and PTI</li> </ul>
Condition Precedent	<ul style="list-style-type: none"> <li>• The effectiveness of the Agreement is conditioned on the NTIA Agreement being terminated or expired, and ICANN accepting the responsibility to coordinate and administer the eservices that were previously performed thereunder.</li> </ul>
Services	<ul style="list-style-type: none"> <li>• ICANN to perform the following Services for PTI:               <ul style="list-style-type: none"> <li>○ Accounting and Financial Audits</li> <li>○ Communications</li> <li>○ Compensation</li> <li>○ Executive and Administrative</li> <li>○ Facilities Support</li> <li>○ Finance and Financial Administration</li> <li>○ Government Relations</li> <li>○ Human Resources</li> <li>○ Information Systems, Development and Security</li> <li>○ Insurance Administration</li> <li>○ Legal</li> <li>○ Meeting Facilities</li> <li>○ Regulatory</li> <li>○ Risk Management</li> <li>○ Secondment</li> <li>○ Security</li> <li>○ Supply Chain Services</li> <li>○ Tax Advice and Related Services</li> <li>○ Telecommunications</li> <li>○ Travel Administration</li> </ul> </li> <li>• Parties will periodically review the scope, frequency and manner of delivery of the Services.</li> <li>• Additional Services may be added or removed upon mutual agreement of the Parties.</li> </ul>
Performance Standards	<ul style="list-style-type: none"> <li>• ICANN to use commercially reasonable efforts to provide the Services in accordance with the standards, practices and procedures established by ICANN for its own operations.</li> <li>• ICANN may make changes in the manner of performing the Services, or temporarily suspend or terminate the provision of a Service, to the extent that ICANN is making similar changes in performing, or is similarly suspending or terminating, similar services for itself; provided that in each case, any suspension, termination or change must not create any material risk to the security and stability of the domain name system.</li> </ul>
Facilities	<ul style="list-style-type: none"> <li>• ICANN will provide PTI with adequate office space and related facilities to enable PTI to perform the IANA Services.</li> </ul>
Personnel	<ul style="list-style-type: none"> <li>• Services will be provided by employees and independent contractors of ICANN who perform equivalent services for ICANN in the normal course of their employment (“ICANN Personnel”).</li> <li>• ICANN Personnel will remain employees or independent contractors, as applicable, of ICANN.</li> <li>• All employees of ICANN who are assigned to ICANN’s IANA department as of the date of the agreement and perform services related to the IANA Naming Function will be seconded to</li> </ul>

Issue	Terms
	<p>PTI.</p> <ul style="list-style-type: none"> <li>ICANN will ensure that all employees of ICANN seconded to PTI are eligible to participate in the employee benefit plans of ICANN on the same terms and conditions as similarly situated employees of ICANN.</li> <li>Prior to the third anniversary, ICANN will assist PTI with (i) obtaining the same or comparable employee benefit plans and (ii) implementing systems, processes and policies necessary to enable PTI to maintain an employee workforce sufficient to perform the IANA Services. Following implementation of the foregoing, ICANN will permit PTI to, at PTI's discretion, offer all full-time PTI Personnel employment with PTI and, following receipt of notice of such employee accepting employment with PTI, ICANN will terminate the employment of such employee.</li> </ul>
Costs	<ul style="list-style-type: none"> <li>PTI will perform the IANA Services on behalf of ICANN; and the value for these services shall be invoiced quarterly by PTI to ICANN.</li> <li>ICANN allocates to PTI the actual costs of the Services that it renders under this Agreement. Such costs reflect the fully absorbed value of the expenses incurred to render the Services, inclusive of direct and incremental costs attributable to personnel (including personnel time), materials and supplies, and third-party services and programs, and any specifically-identifiable indirect costs (including Facilities costs) that relate to the aforesaid costs, in each case, inclusive of taxes.</li> <li>A pro-rata allocation of employee compensation will be allocated to PTI.</li> <li>ICANN will provide PTI with a quarterly invoice detailing the Services and the reimbursable amount.</li> <li>Intention of the Parties is that neither Party realizes a profit or incurs a loss as a result of the Services.</li> </ul>
Limitation on Liability	<ul style="list-style-type: none"> <li>None of ICANN or any of its directors, officers, employees, contractors or agents will be liable to PTI for any losses or damages arising out of the Services.</li> <li>PTI's sole remedy is for ICANN to perform the Services in accordance with the terms of the Agreement.</li> </ul>
Term	<p>Agreement remains in effect until the earlier termination by (i) the mutual written consent of ICANN and PTI, (ii) ICANN upon 30 days notice to PTI if PTI ceases to be an affiliate of ICANN, (iii) ICANN upon 30 days notice to PTI, if (A) PTI has provided ICANN with notice that PTI no longer requires ICANN to provide Services or (B) the IANA Naming Function Agreement and each of the Numbers Subcontract and Protocols Subcontract have expired or been terminated, or (iv) either Party if the other Party has materially breached the Agreement and such breach is not cured within 30 days; provided, that if such breach cannot reasonably be cured within 30 days, the Agreement cannot be terminated if the breaching party is diligently proceeding to cure such breach and in the case of a termination by ICANN, if PTI is an affiliate of ICANN at the time of such breach, such breach is a breach other than the failure to pay amounts due under the Agreement.</p>
Assignment and Subcontracting	<ul style="list-style-type: none"> <li>Neither Party may assign the Agreement or its obligations under the Agreement without the other Party's prior written consent.</li> <li>PTI cannot subcontract all or any portion of its rights or obligations under the Agreement but may obtain the services of third-party consultants to facilitate PTI's performance of its obligations under the IANA Naming Function Agreement and the Subcontracts.</li> </ul>
Third Party	<ul style="list-style-type: none"> <li>There are no third party beneficiaries to the Agreement, including employees and</li> </ul>

Issue	Terms
Beneficiaries	independent contractors of ICANN and PTI
Confidentiality	<ul style="list-style-type: none"><li>Each Party will keep the other's confidential information in the strictest confidence; provided that this shall not prohibit ICANN from complying with its obligations under the RIR Service Level Agreement or the IETF-ICANN MoU.</li></ul>



High-Level Summary of Services Agreement

Issue	Terms
Parties	<ul style="list-style-type: none"> <li>• ICANN and PTI</li> </ul>
Condition Precedent	<ul style="list-style-type: none"> <li>• The effectiveness of the Agreement is conditioned on the NTIA Agreement being terminated or expired, and ICANN accepting the responsibility to coordinate and administer the eservices that were previously performed thereunder.</li> </ul>
Services	<ul style="list-style-type: none"> <li>• ICANN to perform the following Services for PTI:               <ul style="list-style-type: none"> <li>○ Accounting and Financial Audits</li> <li>○ Communications</li> <li>○ Compensation</li> <li>○ Executive and Administrative</li> <li>○ Facilities Support</li> <li>○ Finance and Financial Administration</li> <li>○ Government Relations</li> <li>○ Human Resources</li> <li>○ Information Systems, Development and Security</li> <li>○ Insurance Administration</li> <li>○ Legal</li> <li>○ Meeting Facilities</li> <li>○ Regulatory</li> <li>○ Risk Management</li> <li>○ <u>Secondment</u></li> <li>○ Security</li> <li>○ Supply Chain Services</li> <li>○ Tax Advice and Related Services</li> <li>○ Telecommunications</li> <li>○ Travel Administration</li> </ul> </li> <li>• Parties will periodically review the scope, frequency and manner of delivery of the Services.</li> <li>• Additional Services may be added or removed upon mutual agreement of the Parties.</li> </ul>
Performance Standards	<ul style="list-style-type: none"> <li>• ICANN to use commercially reasonable efforts to provide the Services in accordance with the standards, practices and procedures established by ICANN for its own operations.</li> <li>• <u>ICANN may make changes in the manner of performing the Services, or temporarily suspend or terminate the provision of a Service, to the extent that ICANN is making similar changes in performing, or is similarly suspending or terminating, similar services for itself; provided that in each case, any suspension, termination or change must not create any material risk to the security and stability of the domain name system.</u></li> </ul>
Facilities	<ul style="list-style-type: none"> <li>• ICANN will provide PTI with adequate office space and related facilities to enable PTI to perform the IANA Services.</li> </ul>
Personnel	<ul style="list-style-type: none"> <li>• Services will be provided by employees and independent contractors of ICANN who perform equivalent services for ICANN in the normal course of their employment ("ICANN Personnel").</li> <li>• ICANN Personnel will remain employees or independent contractors, as applicable, of ICANN.</li> <li>• All employees of ICANN who are assigned to ICANN's IANA department as of the date of the agreement and perform services related to the IANA Naming Function will be seconded to</li> </ul>

Issue	Terms
	<p>PTI.</p> <ul style="list-style-type: none"> <li>• ICANN will ensure that all employees of ICANN seconded to PTI are eligible to participate in the employee benefit plans of ICANN on the same terms and conditions as similarly situated employees of ICANN.</li> <li>• Prior to the third anniversary, ICANN will assist PTI with (i) obtaining the same or comparable employee benefit plans and (ii) implementing systems, processes and policies necessary to enable PTI to maintain an employee workforce sufficient to perform the IANA Services. Following implementation of the foregoing, ICANN will permit PTI to, at PTI's discretion, offer all full-time PTI Personnel employment with PTI and, <u>following receipt of notice of such employee accepting employment with PTI, ICANN will terminate the employment of such employee.</u></li> </ul>
Costs	<ul style="list-style-type: none"> <li>• <u>PTI will perform the IANA Services on behalf of ICANN; and the value for these services shall be invoiced quarterly by PTI to ICANN.</u></li> <li>• <u>ICANN allocates to PTI the actual costs of the Services that it renders under this Agreement. Such costs reflect the fully absorbed value of the expenses incurred to render the Services, inclusive of direct and incremental costs attributable to personnel (including personnel time) materials and supplies and third-party services and programs and any specifically-identifiable indirect costs (including Facilities costs) that relate to the aforesaid costs, in each case, inclusive of taxes.</u></li> <li>• <u>A pro-rata allocation of employee compensation will be allocated to PTI.</u></li> <li>• ICANN will provide PTI with a quarterly invoice detailing the Services and the reimbursable amount.</li> <li>• Intention of the Parties is that neither Party realizes a profit or incurs a loss as a result of the Services.</li> </ul>
Limitation on Liability	<ul style="list-style-type: none"> <li>• None of ICANN or any of its directors, officers, employees, contractors or agents will be liable to PTI for any losses or damages arising out of the Services.</li> <li>• PTI's sole remedy is for ICANN to perform the Services in accordance with the terms of the Agreement.</li> </ul>
Term	<p>Agreement remains in effect until the earlier termination by (i) the mutual written consent of ICANN and PTI, (ii) ICANN upon 30 days notice to PTI if PTI ceases to be an affiliate of ICANN, (iii) ICANN upon 30 days notice to PTI, if (A) PTI has provided ICANN with notice that PTI no longer requires ICANN to provide Services or (B) the IANA Naming Function Agreement and each of the Numbers Subcontract and Protocols Subcontract have expired or been terminated, or (iv) either Party if the other Party has materially breached the Agreement and such breach is not cured within 30 days; provided, that if such breach cannot reasonably be cured within 30 days, the Agreement cannot be terminated if the breaching party is diligently proceeding to cure such breach and in the case of a termination by ICANN, if PTI is an affiliate of ICANN at the time of such breach, such breach is a breach other than the failure to pay amounts due under the Agreement.</p>
Assignment and Subcontracting	<ul style="list-style-type: none"> <li>• Neither Party may assign the Agreement or its obligations under the Agreement without the other Party's prior written consent.</li> <li>• PTI cannot subcontract all or any portion of its rights or obligations under the Agreement but may obtain the services of third-party consultants to facilitate PTI's performance of its obligations under the IANA Naming Function Agreement and the Subcontracts.</li> </ul>
Third Party	<ul style="list-style-type: none"> <li>• There are no third party beneficiaries to the Agreement, including employees and</li> </ul>

Issue	Terms
Beneficiaries	independent contractors of ICANN and PTI
Confidentiality	<ul style="list-style-type: none"><li data-bbox="316 262 1138 346">• Each Party will keep the other's confidential information in the strictest confidence; provided that this shall not prohibit ICANN from complying with its obligations under the RIR Service Level Agreement or the IETF-ICANN MoU.</li></ul>

### High-Level Summary of Services Agreement<sup>1</sup>

Issue	Terms
Parties	<ul style="list-style-type: none"> <li>• ICANN and PTI</li> </ul>
Condition Precedent	<ul style="list-style-type: none"> <li>• The effectiveness of the Agreement is conditioned on the NTIA Agreement being terminated or expired, and ICANN accepting the responsibility to coordinate and administer the eservices that were previously performed thereunder.</li> </ul>
Services	<ul style="list-style-type: none"> <li>• ICANN to perform the following Services for PTI:               <ul style="list-style-type: none"> <li>○ Accounting and Financial Audits</li> <li>○ Communications</li> <li>○ Compensation</li> <li>○ Executive and Administrative</li> <li>○ Facilities Support</li> <li>○ Finance and Financial Administration</li> <li>○ Government Relations</li> <li>○ Human Resources</li> <li>○ Information Systems, Development and Security</li> <li>○ Insurance Administration</li> <li>○ Legal</li> <li>○ Meeting Facilities</li> <li>○ Regulatory</li> <li>○ Risk Management</li> <li>○ Security</li> <li>○ Supply Chain Services</li> <li>○ Tax Advice and Related Services</li> <li>○ Telecommunications</li> <li>○ Travel Administration</li> </ul> </li> <li>• Parties will periodically review the scope, frequency and manner of delivery of the Services.</li> <li>• Additional Services may be added or removed upon mutual agreement of the Parties.</li> </ul>
Performance Standards	<ul style="list-style-type: none"> <li>• ICANN to use commercially reasonable efforts to provide the Services in accordance with the standards, practices and procedures established by ICANN for its own operations.</li> <li>• [ICANN may make changes in the manner of performing the Services, or temporarily suspend or terminate the provision of a Service, to the extent that ICANN is making similar changes in performing, or is similarly suspending or terminating, similar services for itself; provided that in each case, any suspension, termination or change must not create any material risk to the security and stability of the domain name system.]</li> </ul>
Facilities	<ul style="list-style-type: none"> <li>• ICANN will provide PTI with adequate office space and related facilities to enable PTI to perform the IANA Services.</li> </ul>
Personnel	<ul style="list-style-type: none"> <li>• Services will be provided by employees and independent contractors of ICANN who perform equivalent services for ICANN in the normal course of their employment (“ICANN Personnel”).</li> <li>• ICANN Personnel will remain employees or independent contractors, as applicable, of</li> </ul>

<sup>1</sup> Bracketed text represents items still under review with the CWG-Stewardship and its outside counsel.

Issue	Terms
	<p>ICANN.</p> <ul style="list-style-type: none"> <li>All employees of ICANN who are assigned to ICANN’s IANA department as of the date of the agreement and perform services related to the IANA Naming Function will be seconded to PTI.</li> <li>ICANN will ensure that all employees of ICANN seconded to PTI are eligible to participate in the employee benefit plans of ICANN on the same terms and conditions as similarly situated employees of ICANN.</li> <li>Prior to the third anniversary, ICANN will assist PTI with (i) obtaining the same or comparable employee benefit plans and (ii) implementing systems, processes and policies necessary to enable PTI to maintain an employee workforce sufficient to perform the IANA Services. Following implementation of the foregoing, ICANN will permit PTI to, at PTI’s discretion, offer all full-time PTI Personnel employment with PTI and, [following receipt of notice of such employee accepting employment with PTI, ICANN will terminate the employment of such employee].</li> </ul>
Costs	<ul style="list-style-type: none"> <li>The costs and expenses to be allocated to PTI for the Services will be the costs (on a fully allocated basis) incurred, and value of the resources utilized, by the provider of the applicable Service, including all direct and incremental costs attributable to personnel time, materials and supplies and third party services incurred in rendering the Services and any specifically-identifiable indirect costs that relate to the foregoing direct costs, in each case inclusive of taxes.</li> <li>A pro-rata allocation of employee compensation will be allocated to PTI.</li> <li>ICANN will provide PTI with a quarterly invoice detailing the Services and the reimbursable amount.</li> <li>Intention of the Parties is that neither Party realizes a profit or incurs a loss as a result of the Services.</li> </ul>
Limitation on Liability	<ul style="list-style-type: none"> <li>None of ICANN or any of its directors, officers, employees, contractors or agents will be liable to PTI for any losses or damages arising out of the Services.</li> <li>PTI’s sole remedy is for ICANN to perform the Services in accordance with the terms of the Agreement.</li> </ul>
Term	<p>Agreement remains in effect until the earlier termination by (i) the mutual written consent of ICANN and PTI, (ii) ICANN upon 30 days notice to PTI if PTI ceases to be an affiliate of ICANN, (iii) ICANN upon 30 days notice to PTI, if (A) PTI has provided ICANN with notice that PTI no longer requires ICANN to provide Services or (B) the IANA Naming Function Agreement and each of the Numbers Subcontract and Protocols Subcontract have expired or been terminated, or (iv) either Party if the other Party has materially breached the Agreement and such breach is not cured within 30 days; provided, that if such breach cannot reasonably be cured within 30 days, the Agreement cannot be terminated if the breaching party is diligently proceeding to cure such breach and in the case of a termination by ICANN, if PTI is an affiliate of ICANN at the time of such breach, such breach is a breach other than the failure to pay amounts due under the Agreement.</p>
Assignment and Subcontracting	<ul style="list-style-type: none"> <li>Neither Party may assign the Agreement or its obligations under the Agreement without the other Party’s prior written consent.</li> <li>PTI cannot subcontract all or any portion of its rights or obligations under the Agreement but may obtain the services of third-party consultants to facilitate PTI’s performance of its obligations under the IANA Naming Function Agreement and the Subcontracts.</li> </ul>

Issue	Terms
Third Party Beneficiaries	<ul style="list-style-type: none"><li>• There are no third party beneficiaries to the Agreement, including employees and independent contractors of ICANN and PTI</li></ul>
Confidentiality	<ul style="list-style-type: none"><li>• [Each Party will keep the other’s confidential information in the strictest confidence; provided that this shall not prohibit ICANN from complying with its obligations under the RIR Service Level Agreement or the IETF-ICANN MoU.]</li></ul>

## **FIRST AMENDMENT TO .COM REGISTRY AGREEMENT**

This **FIRST AMENDMENT TO .COM REGISTRY AGREEMENT** (this “Amendment”) is dated as of [\_\_\_], [2016] (the “Effective Date”) and is entered into by and between **INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**, a California nonprofit public benefit corporation (“ICANN”), and **VERISIGN, INC.**, a Delaware corporation (“Verisign”), and amends the parties’ executed .com Registry Agreement effective as of December 1, 2012 (the “Agreement”). Capitalized terms used herein shall have the meanings assigned to them in the Agreement.

**WHEREAS**, the parties believe that extending the Agreement will enhance the security and stability of the Internet and the TLD;

**WHEREAS**, the parties entered into the Agreement in order to set forth their understandings and agreements with respect to the .com TLD; and

**WHEREAS**, the parties are entering into this Amendment in order to effect certain modifications to the Agreement.

**NOW, THEREFORE**, in consideration of the promises, mutual covenants and agreements in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree, as follows:

1. **Amendments to Agreement.** Effective as of the Effective Date,

Section 4.1 of the Agreement is hereby deleted and replaced in its entirety by the following new Section 4.1:

“Section 4.1 Term. The term of this Agreement shall expire on November 30, 2024, as extended by any renewal terms.”

2. **Future Amendments.** The parties shall cooperate and negotiate in good faith to amend the terms of the Agreement (a) by the second anniversary of the Effective Date, to preserve and enhance the security and stability of the Internet or the TLD, and (b) as may be necessary for consistency with changes to, or the termination or expiration of, the Cooperative Agreement between Registry Operator and the Department of Commerce.

3. **Agreement; No Other Amendment; Reaffirmation.** Except as amended by this Amendment, the Agreement shall remain in full force and effect according to its terms and shall be read and construed as if the terms of this Amendment were included therein. The parties acknowledge and agree that each shall be bound and obligated to perform all of its respective obligations under the Agreement as amended by this Amendment, and that all references in such document to the Agreement shall mean and include the Agreement as amended hereby.

4. **Incorporation By Reference.** This Amendment incorporates by reference the provisions set forth in Section 8.6 (Amendments and Waivers), Section 8.7 (No Third Party Beneficiaries), Section 8.8 (Notices, Designations and Specifications), Section 8.9 (Language), Section 8.10 (Counterparts) and Section 8.11 (Entire Agreement) as if fully set forth herein.

**IN WITNESS WHEREOF**, ICANN and Verisign have caused this Amendment to be executed and delivered by their duly authorized officers as of the Effective Date.

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**VERISIGN, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



## Staff Report of Public Comment Proceeding Template (v4.0)

TITLE: Public Comment on Proposed Amendment to .COM Registry Agreement																			
<b>Publication Date:</b>	9 September 2016																		
<b>Prepared By:</b>	Krista Papac																		
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #f2f2f2;"> <th colspan="2" style="text-align: left; padding: 2px;">Public Comment Proceeding</th> </tr> </thead> <tbody> <tr> <td style="padding: 2px;">Open Date:</td> <td style="padding: 2px;">30 June 2016</td> </tr> <tr> <td style="padding: 2px;">Close Date:</td> <td style="padding: 2px;">12 August 2016</td> </tr> <tr> <td style="padding: 2px;">Staff Report Due Date:</td> <td style="padding: 2px;">15 September 2016</td> </tr> </tbody> </table>		Public Comment Proceeding		Open Date:	30 June 2016	Close Date:	12 August 2016	Staff Report Due Date:	15 September 2016	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #f2f2f2;"> <th colspan="2" style="text-align: center; padding: 2px;">Important Information Links</th> </tr> </thead> <tbody> <tr> <td colspan="2" style="text-align: center; padding: 2px;">Announcement</td> </tr> <tr> <td colspan="2" style="text-align: center; padding: 2px;">Public Comment Proceeding</td> </tr> <tr> <td colspan="2" style="text-align: center; padding: 2px;">View Comments Submitted</td> </tr> </tbody> </table>		Important Information Links		Announcement		Public Comment Proceeding		View Comments Submitted	
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View Comments Submitted																			
<b>Staff Contact:</b>	Krista Papac	<b>Email:</b>	krista.papac@icann.org																
<b>Section I: General Overview and Next Steps</b>																			
<p><b>General Overview:</b></p> <p>On 1 December 2012, ICANN and Verisign, Inc., entered into a Registry Agreement under which Verisign, Inc. operates the .COM top-level domain. The agreement is set to expire on 30 November 2018, and includes a presumptive renewal right provision. ICANN posted for public comment <a href="#">a proposed amendment to the .COM Registry Agreement</a>. The proposed amendment: (1) extends the term of the .COM Registry Agreement to coincide with the term of the <a href="#">Root Zone Maintainer Services Agreement</a> (RZMA) between ICANN and Verisign; (2) commits Verisign and ICANN to cooperate and negotiate in good faith to amend the .COM Registry Agreement by the second anniversary date of the proposed amendment in order to preserve and enhance the security of the Internet or the TLD; and (3) commits Verisign and ICANN to cooperate and negotiate in good faith to amend the .COM Registry Agreement as may be necessary for consistency with changes to the Cooperative Agreement between Verisign and the U.S. Department of Commerce. All other terms and conditions of the existing Registry Agreement remain unchanged.</p> <p>From 30 June 2016 through 12 August 2016, ICANN posted the proposed amendment to the .COM Registry Agreement for public comment. At the time this report was drafted, ninety-nine comments were added to the forum.</p> <p><b>Next Steps:</b></p> <p>After the public comment process is completed for the proposed .COM Registry Agreement amendment, the amendment will be considered by ICANN’s Board of Directors.</p>																			
<b>Section II: Contributors</b>																			

*At the time this report was prepared, a total of ninety-nine community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.*

Organizations and Groups:

<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>
International Trademark Association	Lori Schulman	INTA
Shai Media, LLC	NA	SML
European NGO Alliance for Child Safety Online	John Carr	eNACSO
Children's Charities' Coalition on Internet Safety	John Carr	CHIS
Centre for Internet & Society	Asvatha Babu	CIS
Anonymous Group	NA	AG
Internet Commerce Association	Philip S. Corwin	ICA
Intellectual Property Constituency	Steve Metalitz	IPC
XYZ.COM LLC	Daniel Negari	XYZ
Donuts Inc.	Mason Cole	DI
Redacted	NA	RD
Business Constituency	Steve DelBianco	BC

Individuals:

<b>Name</b>	<b>Affiliation (if provided)</b>	<b>Initials</b>
George Kirikos	Leap of Faith Financial Services Inc.	GK
Maxwell Pugh	NA	MP
Hennie Groot Lipman	NA	HGL
Donald Smith	NA	DS
Keven Dabney	NA	KD
TJ Scott Daniels	NA	TSD
Wang Wei	NA	WW
Sandeep G	NA	SG
Mary Smith	NA	MS
Steve 1	NA	S1
Thomas Russell	NA	TR
Colin Pape	ShopCity.com	CP
Tyson Waggener	NA	TW
Francois Carrillo	Cybertonic	FC
Wallace Rawson	NA	WR
Russ	NA	R
Andy Avots	NA	AA
Robert Borhi	NA	RB
Troy Hill	Live Domain Auctioneers LLC	TH
Suzanne Aubertin	NA	SA
Lance Zeidman	Guarantee Acceptance, LLC	LZ
Ricarda Koppel	NA	RK
Adam	NA	A
Clearance Crystals	NA	CC
Advik Patel	NA	AP
Lisa	NA	L

Ashok Mohanty	NA	AM
Maraca	NA	MA
Thomas B Rozof	Social Media Science, LLC	TBR
Taranjeet Singh	NA	TS
Pranit Pawar	NA	PP
Jay Lindfors	NA	JL
www.infodude.net	NA	IDN
Robert Redl	NA	RR
Brian Gupta	NA	BG
Lazo	NA	LA
J.C	NA	JC
Italo Barros	NA	IB
Gary Ameika	NA	GA
Louisa Lopez	NA	LL
Logan Gorgulu	NA	LG
Guy Biddlecombe	Luxac	GB
Roberta Meany	NA	RM
Jamie Wales	NA	JW
Naim Drid	NA	ND
Martin Senko	NA	MSE
Dominick Savillo	The Online Marketplace, LLC	DSA
MT	NA	MT
Praveen Ch	Domicious.com	PC
LaxmiNarsaiah Ch	NA	LC
Tim Koutroubas	NA	TK
Mike Solstice	Fedora Prime LLC	MSO
Johnny Freeman	NA	JF
Hugh W. Hedley	NA	HWH
Susan Macaulay	NA	SM
Allan Dow	NA	AD
Simon Polycarp	NA	SP
John Tindall	NA	JT
Joseph Raymond	Internet Ad Corp. Inc	JR
Nayeem Ashrafi	NA	NA
John Gleeson	HITNAMER.com	JG
Neil Jones	WHATDOMAINS.COM, LLC	NJ
Tony James	NA	TJ
Renshai	NA	RE
Chris B	NA	CB
Craig Douglas	NA	CD
Stefano Velez	NA	SV
Roy Lopez	Name Capital LLC	RL
Nick Di Gennaro	NA	NDG
Sean Kelly	NA	SK
Aaron Kuroiwa	Letutor.com	AK
Danny Loudon	NA	DL
Joe Alagna	101domain, Inc	JA
Chris Brennan	NA	CBR
Mgon	NA	MG

John Poole	DomainMondo.com	JP
Bronc Jordan	United We Internet	BJ
NA	NA	NP*
Michael D. Palage	NA	MDP
Vincent Willis	NA	VW
Dorith Candy	NA	DC
El Shuwix	NA	ES
Kurt	NA	K
George	NA	G

*\*Not provided*

## Section III: Summary of Comments

*General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).*

ICANN has received various comments from the community on the proposed amendment to the .COM Registry Agreement. The comments submitted generally fall into the following categories and themes, each of which is explained in more detail below:

1. General Support for the Proposed .COM Amendment
2. Suggested Changes to the Proposed .COM Amendment
3. Concerns about Pricing of .COM Domain Names
4. Objection to Presumptive Renewal of the .COM Registry Agreement and Request for Competitive Bidding Process
5. Conforming the Terms of the .COM Registry Agreement to the New gTLD Registry Agreement and Other Enhancements
6. Linking the Term of the .COM Registry Agreement to the Root Zone Maintainer Services Agreement
7. Relationship of the Proposed .COM Amendment to the Cooperative Agreement between Verisign and the U.S. Department of Commerce
8. Consistency of Proposed .COM Amendment with ICANN's Core Values

### **1. General Support for the Proposed .COM Amendment**

Some commenters were generally supportive of the amendment to the .COM Registry Agreement, and others expressed general support with certain caveats. Other comments expressed general support, but asked for ICANN and/or Verisign to clarify specific points related to implementation of consensus policy and the Cooperative Agreement with NTIA, among others. Some examples include the following:

- "The Business Constituency (BC) generally supports amendment of the .COM registry agreement to match its expiration date to the new Root Zone Maintenance Agreement, seeing this as an important way to assure security and stability of the root server system through the period of IANA transition. The BC notes that the proposed 2024 contract extension is the same result that would be obtained if the incumbent .COM operator were to extend its present agreement when it expires in 2018. Based on past and present performance, Verisign would likely meet the requirements to exercise its option for presumptive renewal in 2018. However, the BC has several questions and requests regarding the extension of the .COM contract at this time." (BC)
- "I have no objection to the proposed .COM Registry Agreement extension as it simply provides the same additional six year contract term that Verisign would be entitled to in 2018 under its contractual right of presumptive renewal." (JP)
- "Don't play with people's livelihood. Extend the contract for a much longer period of time and keep .com in capable hands." (JW)
- "ICA has no objection to the proposed .Com RA extension as it simply provides the same additional six year contract term that Verisign would be entitled to in 2018 under its contractual right of presumptive renewal. It will have the salutary effect of preventing GDD staff from attempting to impose the URS and other new gTLD RPMs on .Com during a time when an active ICANN Working Group is exploring the policy question of whether any of these RPMs should become Consensus Policy applicable to legacy gTLDs. Our non-objection is based on our understanding that the contract term extension will have no

impact on the pricing of .Com domains, as the current price freeze they are subject to is contained in the separate Cooperative Agreement between Verisign and the NTIA.” (ICA)

Other commenters who expressed a level of general support include AP, L and JA.

## **2. Suggested Changes to the Proposed .COM Amendment**

Some of the comments submitted suggested improvements to the language used in the proposed amendment to provide additional clarity. The suggestions included clarifying the relationship of the Cooperative Agreement to the proposed amendment, making the amendment subject to pricing constraints in the Cooperative Agreement, and specifying the provisions or topics that would be the subject of good faith negotiations by the second anniversary of the effective date of the amendment. Other comments suggested more extensive revisions to the .COM Registry Agreement to bring it in line with new safeguards and intellectual property protections found in the New gTLD Registry Agreement. (Comments regarding these suggested revisions are summarized in item 5 of this section.) Some examples of these comments with suggested improvements to the amendment are as follows:

- “The promise to renegotiate aspects of the current contract after it has been awarded seems too vague to be relied upon. It contains no unavoidable commitment to progressive change.” (eNACSO)
- “Should Verisign fail to maintain and/or renew the Cooperative Agreement, this extension should be made null and void immediately on the date that the Cooperative Agreement is no longer in force.... The proposed extension MUST NOT BE CONSIDERED If the contract extension does not either A.) address pricing of .com domain names directly or B.) require a valid Cooperative Agreement with the NTIA at all times during the period of this new contract.” (TSD)
- “We would gladly support the renewal of the .COM contract as is, but only if one of the following is addressed by ICANN with relation to the extension of this contract: 1.) ICANN makes an adjustment to this extension to prohibit VeriSign’s raising of prices and additionally seeks to lower .com domain prices over the period of the contract. 2.) ICANN makes this contract extension subject to pricing constraints of the NTIA and Cooperative Agreement, makes this extension null and void if the Cooperative Agreement is not consistently in place, along with any provisions that might be imposed in the future by the Department of Commerce and/or Department of Justice. 3.) ICANN works with VeriSign to negotiate a situation where the .COM contract is put out for a public bid, and Verisign is still the successful winner of such a public bid.” (RD)
- “[I] urge icann and verisign to have wording in any new agreement or extension of any existing agreement to limit the renewal and registration price of dot com domain names[.]” (CB)
- “[S]ection 2 of the proposed extension (entitled “Future Amendments”) opens a separate and potentially more productive window for updating and improving the agreement.... However, because the ‘future amendments’ provision speaks in such general terms about the subject matter of amendments to be negotiated, and in order to enhance the transparency of the process, we urge ICANN and Verisign to commit now to advancing this goal in negotiations during the 2-year window, and to providing a timely opportunity for public comment on proposed amendments.” (IPC)
- “Verisign must at a minimum be restricted to their current fee for .coms and the new agreement must expressly forbid any price increases...” (JL)
- “- Incorporate pricing provision & force a yearly reduction of .com prices into this new RA”, and “Remove presumptive right of renewal clause which will allow for this no-bid contract to be sent out for competitive bid and will benefit the entire Internet ecosystem”. (RK)

## **3. Concerns About Pricing of .COM Domain Names**

Without expressing any views on the proposed amendment to the .COM Registry Agreement, various commenters discussed the pricing of domain names in the .COM registry. Some commenters suggested that

the current price cap in the .COM Registry Agreement must remain in place, while others recommended that prices must be reduced. Examples of those commenting on pricing of .COM domain names include the following:

- "I demand that ICANN force the reduction of pricing in .COM domain names and do not proceed with this 'generic' and 'non-detailed' extension which seems to only benefit Verisign without any details as is." (BJ)
- "This proposed RA should NOT be extended, because it will lay for the foundation for no pricing oversight on .COM domain names in 2018. Once VeriSign has no pricing oversight, they will be able to charge whatever they want for .COM domain names." (RK)
- "Do not allow .com price increases!" (SML)
- "Can you please reduce the price of Dot-Com domains as the registration fees are killing at the moment and I would like to register many more. Can you reduce the price down by \$3 or \$4 USD? Or anything would help, as there are many people out there, who, like me, would like to register more Dot-Coms. I enjoy picking Dot-Com domains monthly but if they were cheaper, I could afford to buy weekly or even daily." (JG)
- "Please do not remove the price restrictions on .com via Verisign's amendment." (RL)
- "I urge you to keep VeriSign under control and not allow them free reign to raise .com prices. This would devastate and crush new startups who are looking for an affordable priced domain. The new GTLDS are a prime example of what can happen if Registries are given full reign. Outrageous pricing and even more outrageous renewals. That's the biggest appeal of .com - it's affordable and the most recognized extension in the world." (TH)
- "Please dont increase the .com domain price as its the lifeline of small businesses and small developers." (TS)
- "Please register my opposition to giving Verisign Carte Blanche control over .COM pricing via the current Proposed Amendment to .COM Registry Agreement[.]" (JC)
- "I would like to express my interest in having the wholesale price of the .COM to remain at the current \$7.85 renewal price (inclusive of costs) for the 2018 to 2024 contract extension for the Proposed Amendment to .COM Registry Agreement." (HWH)

Other comments who addressed the pricing of .COM domain names include: GK, TSD, MS, TR, CP, TW, FC, WR, AA, RB, SA, LZ, CC, AM, MA, TBR, PP, JL, IDN, RR, BG, LA, GA, LL, LG, GB, RM, ND, MSE, DSA, MT, PC, LC, TK, MSO, JF, AD, SP, JT, JR, NJ, RE, SV, SK, AK, DL, CBR, M, NP, RD, VW, ES, K and G

#### **4. Objection to Presumptive Renewal of the .COM Registry Agreement and Request for Competitive Bidding Process**

Some commenters expressed opposition to the presumptive renewal provision in the .COM Registry Agreement and suggested that the presumptive renewal right should be taken away if certain events occurred (such as an uncured material breach of the .COM Registry Agreement). Other commenters expressed concerns over the renewal of the .COM Registry Agreement taking place two years ahead of its current expiration date. Some of these commenters suggested that instead of extending the .COM Registry Agreement with Verisign, ICANN should put the .COM Registry Agreement out for a competitive public tender. Examples of these comments include the following:

- "We oppose this proposed contract extension. The .com registry agreement, like all other registry agreements, should be instead put out to a competitive public tender to ensure that registrants are obtaining the lowest possible price for a fixed set of registry services (with accompanying SLA) for a fixed term (no more than 5 years, after which it would be again subject to a new public tender process). If there was going to be an amendment, that competitive public tender term should be the amendment that the community should be considering." (GK)

- "...ICANN should act in the spirit of its Bylaws and work with the NTIA and United State Department of Commerce to put the rights to operate the .COM top-level domain to a competitive public auction among capable internet registry operators for the benefit of the public. .COM is a unique generic top-level domain and, as shows by its oversight by the NTIA and US Department of Commerce, exists to provide a public service. Accordingly, it should be awarded to the Internet Registry Operator willing to operate the top-level domain in a manner most beneficial to the public." (XYZ)
- "ICANN MUST allow bidding for the .COM contract with other companies. Verisign should not have a monopoly over the extension and many companies have the technical capabilities to handle the DNS requirements. How come each time the contract comes up for renewal the public asks for competitive bidding and ICANN never does it?" (A)
- "By continuing to grant Verisign the .com Registry Agreement, this stamps the impropriety of corruption by not offering this opportunity to other entities through a public tender/competitive bid process. Verisign is not the only company that has the ability to manage the .com Registry. Therefore, by ICANN assigning a six-year extension leaves to question why this is being pushed two years early with no explanation given other than through the "presumptive renewal", which does not grant Verisign an early automatic extension of renewal." (R)
- "ICA believes that the ICANN community should begin a discussion of whether and under what conditions, other than material uncured contract breach, a registry should lose its right of presumptive renewal and face competitive market testing of its pricing policy through a rebid process. Such a possibility should certainly exist if a registry has been found by a court, or has admitted in a judicial or regulatory proceeding, to abuse of pricing power in violation of antitrust or competition laws, as ICANN is pledged to operate in the global public interest and as registries should carry out that same obligation via their contracts with ICANN and refrain from illegal conduct in their pricing and competitive activities. There may also be other circumstances beyond a finding or admission of illegal conduct that would justify competitive rebid of a registry contract, and that should be considered as this subject is addressed." (ICA)

Other comments about presumptive renewal or competitive bidding of the .COM Registry Agreement include those from: GK, MP, HGL, DS, KD, R, RK, WW, eNACSO, S1, MSE, CIS, IB, SM, NA, TJ, CD, NDG and DC.

#### **5. Conforming the Terms of the .COM Registry Agreement to the New gTLD Registry Agreement and other Enhancements**

Various commenters recommended that the proposed amendment go beyond extending the term of the current .COM Registry Agreement to include additional protections and safeguards such as those required by the New gTLD Registry Agreement. Some of these commenters note that certain legacy gTLD Registry Operators have adopted the general form of the New gTLD Registry Agreement (e.g. .PRO, .CAT, .TRAVEL) including the additional enhancements and safeguards, and .COM should be required to do the same. Some commenters suggest that not requiring .COM to be subject to the new enhancements, safeguards, and intellectual property protections in the New gTLD Registry Agreement does not support the public interest and serves to create an unfair and anticompetitive environment. Another commenter asked for confirmation that Verisign will be required to implement future developed consensus policies that may provide for additional safeguards and enhancements. Examples of these comments include the following:

- "INTA does not favor the amendment in its current form because it does not incorporate the consumer protections that apply to the new gTLDs and does not level the playing field among top level domain providers....The fact that the new gTLD provisions do not apply to the .com registry creates a significant gap of protection for trademark owners and consumers.... We strongly encourage ICANN to ensure that protections negotiated by the multistakeholder community extend to all top level domains." (INTA)



- "...in respect of new gTLDs, the Registry Agreements increasingly contain quite detailed requirements, for example with regard to verifying the true identities and bona fides of registrants. The new .com agreement should mirror these. Failure to do so will mean there is no level playing field and no contract uniformity. Verisign will be allowed to escape a layer of costs and responsibilities others are obliged to carry." (eNACSO)
- "The .com agreement must be updated to incorporate the improved anti-abuse tools which are already part of the Base Registry Agreement.... all of the new registries have taken on greater responsibilities to prevent and remedy abuses involving their domain names. These responsibilities include, among others: A Thick Whois architecture, to ensure the accessibility of registration data across the registry, a key factor for the investigation of a wide range of abuse cases, and to enable quicker response and resolution when domain names are used for illegal, fraudulent or malicious purposes. Enhanced post-registration rights protection mechanisms for trademarks, notably the Uniform Rapid Suspension process, an important supplement to the UDRP for the most clear-cut cases of cybersquatting; Requiring registrars of domain names within the TLD to impose and enforce antiabuse obligations on their registrants; Technical analysis and reporting requirements for specified forms of abuse.... The outlier status of the .com agreement creates an unlevel playing field for gTLD registries." (IPC)
- "Donuts is opposed to the extension of ICANN's agreement with Verisign in its proposed form. By simply renewing the .COM agreement under its current terms, ICANN and Verisign will have missed a significant opportunity to fulfill ICANN's self-defined mandate to increase competition in the DNS marketplace and preserve the security, stability and resiliency of the DNS by bringing provisions of the .COM agreement more in harmony with the contracts governing new gTLDs and many other legacy gTLDs that recently have been renewed....ICANN and Verisign chose not to update the .COM agreement with these consumer safeguards. The ultimate outcome here will be harm to consumers and the disparate treatment of ICANN's other contracted parties to their detriment." (DI)
- "I recommend for the Board to decline extending the 2012 Registry Agreement until 2024 and to begin negotiations with Verisign to enter into a new contract mirroring the baseline template that every new gTLD applicant has signed and which a growing number of other legacy gTLD operators have signed." (MDP)
- "The BC encourages Verisign to voluntarily adopt in .COM relevant aspects of the standardized registry contract used in the recent expansion of gTLDs. The BC supports universal adoption of the new gTLD registry agreement, which includes RPMs, GAC Safeguards, and Public Interest Commitments (PICs), while noting that the new gTLD registry agreement does not regulate domain name prices and permits registry-registrar integration." (BC)
- "... the BC requests that Verisign be required to confirm that it will implement global consensus policy for Thick WHOIS within .COM, per the 2018 deadline published by the Implementation Review Team... As a condition of the proposed .COM amendment, the BC requests confirmation from ICANN and Verisign that the .COM Registry Agreement would require implementation of rights protection mechanisms (RPMs) that fit within the definition of current and future Consensus Policies and are properly approved by ICANN's board." (BC)

## **6. Linking the Term of the .COM Registry Agreement to the Root Zone Maintainer Services Agreement**

Some of the commenters indicated their opposition to the proposed amendment because it extends the term of the .COM Registry Agreement to coincide with the term of the Root Zone Maintainer Services Agreement (RZMA). Some of these commenters generally noted that the root zone infrastructure should never have become "inextricably intertwined" with Verisign's .COM operations, although others had no issue with this aspect. Other commenters questioned how linking the two agreements would enhance the security, stability and resiliency of root operations, and argued that the linkage represents a single source of failure. Some comments regarding the linkage of the .COM Registry Agreement to the RZMA are as follows:

- “We do not have anything against Verisign being awarded the RZMA for the time being. However, the .COM extension should in no way be linked to the RZMA. Even if it means ICANN (and eventually end users of the Internet) have to pay slightly more for the management of the RZMA, it is in the public’s best interest to try and keep RZMA functions completely separate and UNLINKED from management of the .COM namespace. The RZMA should be controlled independently of the .COM namespace. (AG)
- “The new Root Zone Maintainer Service Agreement is put into place between VeriSign and ICANN (which replaces most of the functions from the existing Cooperative Agreement.) The Cooperative Agreement (between VeriSign and NTIA) is allowed to naturally expire in 2018. The Cooperative Agreement contains the all-important pricing provision. This agreement will longer be necessary because almost all of the functions from the existing Cooperative Agreement have been moved to the new Root Zone Maintainer Service Agreement (besides pricing.) Thus, in 2018 when the Cooperative Agreement expires, VeriSign will no longer be subject to government-mandated price restraints.” (RK)
- “...ICANN since its very creation has been working to get out of bundled contracts with VeriSign (and its predecessor NSI), therefore it makes no sense that ICANN would agree to sync the .COM and RZMA agreements together even in just their terms. The comments provided by ICANN's Akram Atallah on the ‘inextricably intertwined’ nature of the .COM and RZM functions actually is support for why these functions should be separated as it represents a single point of failure.” (MDP)
- “Over the next two years, ICANN must work with Verisign to make sure that a ‘stable, secure and reliable’ internet does not hinge on a single player like the current situation with Verisign. Moreover, we would like ICANN to explain how exactly extending the agreement would enhance the security and stability of the internet and the TLD. In fact, this move only serves to compromise the future stability of the internet by further intertwining the TLD operations and the RZM responsibilities. Instead, Verisign needs to work on extricating its .COM operations from its RZM responsibilities.” (CIS)
- “The Business Constituency (BC) generally supports amendment of the .COM registry agreement to match its expiration date to the new Root Zone Maintenance Agreement, seeing this as an important way to assure security and stability of the root server system through the period of IANA transition.” (BC)

Additionally, ICA and JA recommended that ICANN technical staff begin exploring how some practical separation between root zone and .COM technical operations might be achieved, and to assure that such action does not pose a threat to the security and stability of the DNS. Other comments on this topic include those from IPC and JP.

Some other commenters requested specific changes to the RZMA, such as MDP’s comment that “[t]here should be a provision in the RZMA that prohibits either ICANN or Verisign from making any intellectual property claims to the processes involved in the signing/publishing of the root zone. If Verisign fails to waive any Intellectual Property Rights in connection with the RZM functions, ICANN should consider allocating financial resources to ensure that there are no proprietary rights associated with the RZM functions.”

#### **7. Relationship of the Proposed .COM Amendment to the Cooperative Agreement between Verisign and the U.S. Department of Commerce**

Some commenters requested additional clarification and explanation about the relationship of the proposed amendment to the .COM Registry Agreement and the Cooperative Agreement between Verisign and the U.S. Department of Commerce.

- “...the BC asks ICANN to clarify the status and renewal process for Verisign’s Cooperative Agreement with NTIA, which expires in 2018. We note that ICANN is not a party to the Cooperative Agreement, but we are keen to understand the factors and decisions that would determine whether the Agreement would be extended beyond 2018 and therefore encourage ICANN to engage in dialogue with NTIA and report back to the community on this matter.” (BC)

- “Had NTIA made clear what would happen to the Cooperative Agreement, particularly the price limitation on .COM domain names after November 30, 2018, in view of the IANA Stewardship Transition scheduled to occur upon lapse of the IANA functions contract on September 30, 2016, much of the fear, angst, frustration, hostility, and mistrust, as expressed in the many comments already submitted, could have been avoided. Likewise, had ICANN and Verisign made clear what would happen to the pricing of .COM domain names after November 30, 2018, should NTIA not extend the Cooperative Agreement including Amendment 32, many of the concerns already expressed in the comments could have been alleviated.” (JP)

Additional comments related to the Cooperative Agreement were also summarized above in the section titled “Suggested Improvements and Additions to the Proposed .COM Amendment”.

## 8. Consistency of Proposed .COM Amendment with ICANN’s Core Values

Some commenters expressed concern about whether the approval of the proposed amendment to the .COM Registry Agreement would be consistent with ICANN’s Bylaws and Core Values. In particular, these commenters noted that approval of the extension of the .COM Registry Agreement raises concerns about whether ICANN is adhering to its Core Values related to non-discriminatory or preferential treatment, serving the public interest, transparency, and competition. Some of these comments include the following:

- “ICANN's core values state that it should ‘[promote] competition in the registration of domain names where practicable and beneficial in the public interest.’ The mere consideration of an early contract extension on the .com contract with VeriSign at the current pricing is 100% against ICANN's core values. And a slap in the Internet Community's face. ICANN should not allow this early extension. Nor should ICANN even consider it. ICANN should encourage and promote competition. ICANN should work in the public's favor and do what is possible to force this contract to go to public tender, and/or to force VeriSign to change the gluttonous windfall rate that it has on the .com contract.” (KD)
- “If VeriSign is awarded this proposed contract extension through 2024, the amount of money is astronomical. Why is ICANN not doing anything about this???? How is this fair? Why is nobody looking out for the global stakeholder community and forcing an immediate price reduction for .com domains? Why is this sweetheart contract which benefits both ICANN and VeriSign not being put out to a competitive bid? Why is there any need to get this contract renewed today? The contract for .com should be put to a competitive bid, or VeriSign should be forced to adjust its prices to reflect what is reasonable.” (DS)
- “This is not about whether Verisign should continue to operate (and profit from) .com: it should. Nor is it about ICANN unilaterally imposing any new requirements on Verisign. Rather it is about [1] ICANN living up to its commitments to act in the public interest, by seeking to include in its contracts modern best practices for combating abusive domain name registrations; [2] ICANN living up to its commitment (in the Affirmation of Commitments) to address competitive issues by providing a level playing field among legacy and new gTLDs; [3] Verisign demonstrating its commitment to be an industry leader, not just in terms of its size and bulk in the market sector that it dominates, but also in terms of the practices and policies it follows to minimize the level of abuses occurring in that sector.” (IPC)
- “By not modifying the existing .COM registry agreement, ICANN cannot meet its obligations to enable competition or to avoid disparate treatment[.]” (DI)  
“It is unfortunate that discussions of the .COM contract renewal are done behind closed doors. Therefore, most people in the ICANN community, the Internet community and the general public do not know what exactly is in contract between the companies.” (BJ)

“Without having a simple summary of changes from the last ICANN and VeriSign contract, you both are doing a disservice to those users with or considering a .com. [...] Conspiring in a way that is covert and hidden from those without a legal background is like being the playground bully and simply is not acceptable any more.” (CB)

Some commenters also claimed that ICANN is not ready to be free from the control of the US government by referring to how ICANN and Verisign discussed and agreed on the proposed amendment (GK). While some commenters expressed their disappointment over amendment negotiations taking place between ICANN and Verisign without including the community (BJ), others urged ICANN to act according to its Bylaws (XYZ), to work for the public interest, to avoid preferential treatment (DI), and to take into account the comments added by the community (GK, MS, RR, BJ).

#### **Section IV: Analysis of Comments**

*General Disclaimer: This section is intended to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.*

ICANN appreciates all the comments and suggestions added to the public forum for the proposed amendment to the .COM Registry Agreement and also acknowledges the concerns expressed over the proposed amendment to .COM Registry Agreement.

#### **Suggested Changes to the Proposed .COM Amendment**

ICANN acknowledges the comments that recommend changes to the proposed amendment. With respect to being more specific about what provisions could be discussed by the two-year anniversary of the amendment, ICANN notes that the language as drafted balances providing a commitment to engage in negotiations, while providing leeway to consider future topics related to preserving and enhancing the security and stability of the Internet or the TLD in this changing landscape.

With respect to revising the proposed amendment to account for potential changes to or cancelation of the Cooperative Agreement between Verisign and the Department of Commerce, ICANN notes that the proposed amendment already takes into account the Cooperative Agreement. The amendment includes language requiring ICANN and Verisign to engage in good faith negotiations to make changes to the .COM Registry Agreement as may be necessary for consistency with changes to, or the termination or expiration of, the Cooperative Agreement.

#### **Concerns about Pricing of .COM Domain Names**

ICANN acknowledges all of the comments submitted addressing prices for .COM domains. The cost of .COM domains is capped at \$7.85 until 30 November 2018. The current pricing of the .COM registry is defined by two separate contracts (1) the .com Registry Agreement between Verisign and ICANN; and (2) the Cooperative Agreement between Verisign and the Department of Commerce. After 2018, Verisign and NTIA will have to negotiate to change the terms for the Cooperative Agreement or agree to end the Cooperative Agreement before discussing new pricing of the .COM domain with ICANN. The proposed amendment does not change these provisions. As discussed above, the proposed amendment: (1) extends the term of the .COM Registry Agreement to coincide with the term of the Root Zone Maintainer Services Agreement (RZMA) between ICANN and Verisign; (2) commits Verisign and ICANN to cooperate and negotiate in good faith to amend the .COM Registry Agreement by the second anniversary date of the proposed amendment in order to preserve and enhance the security of the Internet or the TLD; and (3) commits Verisign and ICANN to cooperate and negotiate in good faith to amend the .COM Registry Agreement as may be necessary for consistency with changes to the Cooperative Agreement between Verisign and the U.S. Department of Commerce. All other terms and conditions of the existing Registry Agreement remain unchanged.

## **Objection to Presumptive Renewal of the .COM Registry Agreement and Request for Competitive Bidding Process**

ICANN notes that Section 4.2 of the .COM Registry Agreement includes a presumptive right of renewal, as do all of ICANN's registry agreements. [The presumptive renewal clause is a provision within registry agreements that allows a registry operator the right to renew the agreement at its expiration, subject to the terms of their presumptive renewal clauses. These renewal provisions address stability and security concerns, i.e., to encourage long-term investment in robust TLD operations. This has benefitted the community in the form of reliable operation of registry infrastructure. ICANN has previously described the rationale for presumptive renewal for registries: "Absent countervailing reasons, there is little public benefit, and some significant potential for disruption, in regular changes of a registry operator. In addition, a significant chance of losing the right to operate the registry after a short period creates adverse incentives to favor short term gain over long term investment. On the other hand, the community, acting through ICANN, must have the ability to replace a registry operator that is not adequately serving the community in the operation of a registry."

## **Conforming the Terms of the .COM Registry Agreement to the New gTLD Registry Agreement and Other Enhancements**

ICANN takes note of the comments suggesting that Verisign transition to the form of the New gTLD Registry Agreement or adopt some of the new safeguards, enhancements and other protections found in the New gTLD Registry Agreement. ICANN notes that the proposed amendment posted for public comment is a simple extension of the current term of the .COM Registry Agreement, and that moving to the form of the New gTLD Registry Agreement would require longer discussion and community consultation. Proposing a simple amendment at this time to extend the term of the .COM Registry Agreement is intended to ensure the continued stable, secure, and reliable operation of the .COM TLD.

ICANN notes, however, that the proposed amendment includes a provision that commits ICANN and Verisign to cooperate and negotiate in good faith to amend the .COM Registry Agreement by the second anniversary date of the proposed amendment in order to preserve and enhance the security of the Internet or the TLD. This language was negotiated to provide an opportunity for longer term discussions and additional community input that may be needed to discuss potential changes to preserve and enhance the security of the Internet or the .COM TLD.

With respect to comments asking for confirmation that Verisign will be required to implement future developed consensus policies that may provide for additional safeguards and enhancements, ICANN notes that Section 3.1 (b) of the .COM Registry Agreement states that, "At all times during the term of this Agreement and subject to the terms hereof, Registry Operator will fully comply with and implement all Consensus Policies found at <http://www.icann.org/en/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with ICANN's Bylaws and as set forth below."

## **Linking the Term of the .COM Registry Agreement to the Root Zone Maintainer Services Agreement**

ICANN notes that proposed amendment to .COM Registry Agreement aims at extending the term of the .COM Registry Agreement to coincide with the term of the Root Zone Maintainer Services Agreement [approved](#) by the ICANN Board on 9 August 2016.

Verisign has been providing "registration services" under its Cooperative Agreement with the U.S. Department of Commerce, which was broadly defined to include root zone maintainer functions and Top Level Domain (TLD) registry services. Given the historically unified nature of the root zone maintainer function and TLD registry services under the Cooperative Agreement, much of Verisign's TLD operations for .COM are "intertwined" with the root zone maintainer operations. A key component of ensuring security of the root

operations was making sure that those operations continued to benefit from its historic association with .COM operations. This was achieved by the proposed simple extension of the .COM Registry Agreement to coincide with the term of the new RZMA.

While the terms of the agreements are linked together in the sense that they would expire at the same time, the agreements do not contain any provisions linking the performance of the obligations under the .COM Registry Agreement with the obligations under the RZMA. In fact, the RZMA includes provisions that provide the community the ability through a consensus-based, community-driven process to enable ICANN to transition the root zone maintenance function to another service provider after the third anniversary of the RZMA.

With regards to intellectual property issues and the RZMA, although not directly related to the proposed .COM amendment which is the subject of this public comment period, it should be noted that Section 4(d)(ii) of the RZMA provides that "ICANN and Verisign each acknowledge and agree that it does not possess any rights in the Root Zone File or Service Data." Also under the RZMA Verisign grants ICANN a license to use the root zone management interface, and must cooperate with a transition to a successor operator.

### **Relationship of the Proposed .COM Amendment to the Cooperative Agreement between Verisign and the U.S. Department of Commerce**

ICANN acknowledges comments asking for clarification regarding the next steps for the Cooperative Agreement between Verisign and the Department of Commerce. As noted by some commenters, ICANN is not a party to the Cooperative Agreement.

Currently, Verisign performs the root zone maintainer function pursuant to the Cooperative Agreement with the Department of Commerce. As stated in the FAQ provided in the ["Root Zone Administrator Proposal Related to the IANA Functions Stewardship Transition"](#), "Once the parallel testing for root zone management has proven capable of performance in the absence of the RZA / NTIA role and the IANA Stewardship transition implemented, NTIA and Verisign will amend the Cooperative Agreement as appropriate."

ICANN also notes that the proposed amendment to the .COM Registry Agreement includes a provision requiring ICANN and Verisign to cooperate and negotiate in good faith to amend the terms of the .COM Registry Agreement as may be necessary for consistency with changes to, or the termination or expiration of, the Cooperative Agreement. Proposed changes that may result from such good faith negotiations would be published by ICANN for comment by the ICANN community.

### **Consistency of Proposed .COM Amendment with ICANN's Core Values**

ICANN acknowledges the comments concerning adherence to ICANN's Bylaws including the Core Values specified in Article I, Section 2. The Bylaws enumerate core values that should guide the decisions and actions of ICANN in performing its mission, and ICANN takes seriously its commitment to those values. ICANN believes that executing registry agreements and amendments thereto are consistent with the Core Values in ICANN's Bylaws.

ICANN further acknowledges comments concerning competitive issues and providing a level playing field. Article II, Section 3 of ICANN's Bylaws state, "ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition." ICANN notes the .COM Registry Agreement contains many different terms that are not present in other registry agreements. These unique terms might be considered either favorable or unfavorable depending on one's point of view. For example, the

price control provision in Section 7.3 of the .COM Registry Agreement tightly controls the ability of the .COM registry operator to raise prices in a manner that is not present in any other registry agreements.

Finally, as per the comments relating to how ICANN processes the comments added to the public comment forum, it should be noted the public comment process provides a mechanism for ICANN's decision-making whereby the community is given an opportunity to comment upon proposals for at least 40 days. Comments are summarized, analyzed and discussed in the Board's deliberation process. Any Board action will be documented in posted minutes accompanied by detailed rationale for the decision.

**Next Steps:** Following the completion of the public comment process, the proposed amendment to the .COM Registry Agreement will be considered by ICANN's Board of Directors.

PROPOSED Bylaws of

**Public Technical Identifiers**

A California Nonprofit Public Benefit Corporation



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## **ARTICLE 1 NAME**

The name of this corporation is Public Technical Identifiers (the “**Corporation**”).

## **ARTICLE 2 OFFICES**

The principal office for the transaction of the business of the Corporation shall be in the County of Los Angeles, State of California, United States of America. The Corporation may also have an additional office or offices within or outside the United States of America as it may from time to time establish.

## **ARTICLE 3 PURPOSES**

The Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for public and charitable purposes.

The specific purpose of the Corporation is to operate exclusively to carry out the purposes of the Internet Corporation for Assigned Names and Numbers (“**ICANN**”) by performing the IANA functions on behalf of ICANN.

The Corporation shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

The Corporation shall treat the IANA functions with equal priority. The Corporation shall make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular customer for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different customers).

The Corporation shall respect the diversity of customers of the IANA functions and shall provide service to its customers in conformance with technical norms and in support of the global security, stability and resilience of the DNS.

## **ARTICLE 4 MEMBERSHIP**

### Section 4.1 Members

ICANN shall be the sole member of the Corporation within the meaning of section 5056 of the California Corporations Code (“**CCC**”) (the “**Member**”). No other person shall be admitted to membership of the Corporation without the approval of the Member.

### Section 4.2 Rights of the Member

The Member shall have the right to vote, as set forth in these Bylaws, on the election of directors, on the sale, transfer or disposition of the Corporation’s assets (other than in the ordinary course of the Corporation’s business), on any merger

and its principal terms and any amendment to those terms, on any election to dissolve the Corporation and on any amendment or repeal of these Bylaws. In addition, the Member shall have all rights afforded to the Member as set forth in the Articles of Incorporation of the Corporation (the “**Articles of Incorporation**”) and to members under the CCC.

Section 4.3 Proof of Action of the Member

The vote, written assent, or other action of the Member shall be evidenced by, and the Corporation shall be entitled to rely upon, a certificate of the secretary or other officer of the Member stating (a) the actions taken by the Member, (b) that such actions were taken in accordance with the Member’s bylaws (the “**ICANN Bylaws**”) and (c) the authorization of the Member for such certification.

Section 4.4 Annual Meeting of the Member

An annual meeting of the Member of the Corporation shall be held on a date specified by the Board or the Member pursuant to Section 4.7 of these Bylaws. At the annual meeting, Directors shall be elected and other proper business may be transacted to fulfill the Member’s obligations.

Consistent with ICANN’s Bylaws, meetings of the Member shall be held at any place within or outside California designated by the Board or by the written consent of the Member entitled to vote at such meeting given before or after the meeting. In the absence of any such designation, Member meetings shall be held at the Corporation’s principal office.

Section 4.5 Special Meetings of the Member

Special meetings of the Member for any lawful purpose or purposes may be called at any time by the Board or the Member.

Section 4.6 Action by Written Consent

Any action required or permitted to be taken by the Member hereunder may be taken without a meeting, if the Member consents in writing to the action. The written consent shall be filed with the minutes of the meeting. The action by written consent shall have the same force and effect as a unanimous vote of the Member.

Section 4.7 Manner of Giving Notice

Notice of any meeting of the Member shall be given pursuant to section 5511 of the CCC.

Section 4.8 Liabilities of the Member

There shall be no membership fees, dues, or assessments. The Member shall not be personally liable to the Corporation's creditors for any indebtedness or liability, and any and all creditors of the Corporation shall look only to the assets of the Corporation for payment.

**ARTICLE 5 DIRECTORS**

Section 5.1 Corporate Powers Exercised by Board

Subject to the provisions of the Articles of Incorporation, these Bylaws, the CCC and any other applicable laws, and those powers expressly reserved to the Member, the business and affairs of the Corporation shall be managed, and all corporate powers shall be exercised, by or under the direction of the board of directors of the Corporation (the "**Board**" or "**PTI Board**"). The Board may delegate the management of the activities of the Corporation to any person or persons, management company or committee however composed, provided that the activities and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

Section 5.2 Number; Composition and Qualifications

5.2.1 Number

The authorized number of directors of the Corporation ("**Directors**") shall be five.

5.2.2 Composition

5.2.2.1 The Directors shall consist of (a) three persons employed by ICANN or the Corporation who shall be nominated by the Member, which shall include the President ("**ICANN Directors**"), and (b) two persons not employed by either ICANN or the Corporation who shall be nominated by ICANN's Nominating Committee (as used in ICANN's Bylaws, the "**Nominating Committee**") pursuant to and in accordance with section 8.1 of the ICANN Bylaws ("**Nominating Committee Directors**").

5.2.2.2 Notwithstanding Section 5.2.2.1(b), because the Nominating Committee will not be available to nominate the Nominating Committee Directors at the time of the election by the Member of the first slate of Directors (the "**Initial Directors**"), the Member shall elect as Initial Directors the two candidates recommended by the Cross-Community Working Group to Develop an IANA Stewardship Proposal for Naming Related Functions, without reference to Section 8.1 of the ICANN Bylaws, which candidates shall serve as the Nominating Committee Directors until the term of such Directors ends in accordance with Section 5.5.1 or such position otherwise becomes vacant.

- 5.2.2.3 Notwithstanding Section 5.2.2.1, (a) all Nominating Committee Directors and (b) at least one ICANN Director must not be “interested persons.” An “interested person” is (i) any person compensated by the Corporation for services rendered to the Corporation within the previous 12 months (other than any reasonable compensation paid to a Director as a Director), whether as a full- or part-time employee, independent contractor, or otherwise 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 such person.
- 5.2.2.4 ICANN, as the Member, shall elect all ICANN Directors and Nominating Committee Directors in accordance with this Article 5.
- 5.2.2.5 Other than ICANN, no person or entity shall have the right to elect or designate a Director.

### 5.2.3 Qualifications

The Directors shall be:

- 5.2.3.1 Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making;
- 5.2.3.2 Persons with an understanding of the Corporation’s purposes and the potential impact of the Corporation’s decisions on the global Internet community, and committed to the success of the Corporation;
- 5.2.3.3 Persons who, collectively, have executive management, operational, technical, financial and corporate governance experience;
- 5.2.3.4 Persons who, in the aggregate, have personal familiarity with the operation of generic top-level domain registries and registrars; with country code top-level domain name registries; with IP address registries; with Internet technical standards and protocols; and with policy-implementation procedures; and
- 5.2.3.5 Persons who are able to work and communicate in written and spoken English.

### Section 5.3 Additional Qualifications

- 5.3.1 Notwithstanding anything herein to the contrary, no official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director. As used herein, the term “official” means a person who (a) holds an elective governmental office or (b) is employed by such government or multinational entity and whose primary function

with such government or entity is to develop or influence governmental or public policies.

- 5.3.2 No person who serves in any capacity (including as a liaison) on any Supporting Organization Council (as used in the ICANN Bylaws) or Advisory Committee (as used in the ICANN Bylaws) shall simultaneously serve as a Director of the Corporation.
- 5.3.3 No person who serves on the Nominating Committee in any capacity shall be eligible for nomination by any means to any position on the Board.
- 5.3.4 No person who serves on the EC Administration (as used in the ICANN Bylaws) while serving in that capacity shall be considered for nomination or election to the Board, nor serve simultaneously on the EC Administration and as a Director.
- 5.3.5 The Nominating Committee Directors must not be, and for at least the previous three years, must not have been, (a) an employee of ICANN or the Corporation, (b) a director of ICANN, or (c) an external consultant or advisor retained by ICANN (either directly in his or her individual capacity or indirectly as an employee of an organization retained by ICANN).
- 5.3.6 In carrying out its responsibility to nominate the Nominating Committee Directors for election by the Member, the Nominating Committee shall seek to ensure that the Board is composed of Directors who, in the aggregate, display diversity in geography, culture, skills, experience and perspective, by applying the criteria set forth in Section 5.2 and Section 5.3.

#### Section 5.4 Election of Chairperson; Term of Chair

A chairperson of the Board (the “**Chairperson**”) shall be elected annually by a majority of the Directors then in office, which majority shall include the approval of at least one Nominating Committee Director and one ICANN Director (other than the President). The President shall not be the Chairperson. The Chairperson 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 or her by the Board or prescribed by these Bylaws. No Chairperson may serve as Chairperson for a term of more than six years.

#### Section 5.5 Terms; Election of Successors

- 5.5.1 The Initial Directors elected by the Member shall hold office until the end of the annual meeting of the Member in 2017. Other than the Initial Directors and the President of the Corporation, the Directors shall be elected by the Member at the annual meeting of the Member for the terms set forth as follows:
  - 5.5.1.1 One Nominating Committee Director shall sit in Seat 1. The initial term for such Director shall begin upon the election of Directors at the annual meeting of the Member in 2017 and shall end at the end of the annual

meeting of the Member held in 2019, and subsequent terms shall begin upon the conclusion of each annual meeting of the Member held in 2019 and every third year thereafter.

- 5.5.1.2 One Nominating Committee Director shall sit in Seat 2. The initial term for such Director shall begin upon the election of Directors at the annual meeting of the Member in 2017 and shall end at the end of the annual meeting of the Member held in 2020, and subsequent terms shall begin upon the conclusion of each annual meeting of the Member held in 2020 and every third year thereafter.
- 5.5.1.3 One ICANN Director (other than the President) shall sit in Seat 3. The initial term for such Director shall begin upon the election of Directors at the annual meeting of the Member in 2017 and shall end at the end of the annual meeting of the Member held in 2019, and subsequent terms shall begin upon the conclusion of each annual meeting of the Member held in 2019 and every third year thereafter.
- 5.5.1.4 One ICANN Director (other than the President) shall sit in Seat 4. The initial term for such Director shall begin upon the election of Directors at the annual meeting of the Member in 2017 and shall end at the end of the annual meeting of the Member held in 2020, and subsequent terms shall begin upon the conclusion of each annual meeting of the Member held in 2020 and every third year thereafter.
- 5.5.2 No Nominating Committee Director may serve more than two consecutive terms. For these purposes, a person elected to fill a vacancy in a term shall not be deemed to have served that term, and service as an Initial Director for the term specified in Sections 5.2.2.2 and 5.5.1 shall not count as a term for the purpose of this Section. There shall be no limit on the number of terms an ICANN Director (other than the President) may serve. The term as an ICANN Director of the person holding the office of President shall be for as long as, and only for as long as, such person holds the office of President.
- 5.5.3 ICANN shall seek to ensure that the ICANN Directors meet the qualifications and requirements established in Section 5.2 and Section 5.3. Each ICANN Director, including an ICANN Director (other than the person holding the office of President) elected to fill a vacancy, shall hold office until the expiration of the term for which he or she was elected and until the election and qualification of a successor, or until that ICANN Director's earlier resignation or removal in accordance with these Bylaws and the CCC.
- 5.5.4 At least two months before the date of any election of Directors (or promptly following the occurrence of any vacancy on the Board for a Nominating Committee Director), the Nominating Committee shall nominate qualified candidates for election as Nominating Committee Directors by the Member. If such nominees meet the qualifications and requirements of Section 5.2 and



Section 5.3, the Member shall elect such nominees to the Board absent extraordinary circumstances. The Nominating Committee shall seek to ensure that the Nominating Committee Directors meet the qualifications and requirements established in Section 5.2 and Section 5.3. Each Nominating Committee Director, including a Nominating Committee Director elected to fill a vacancy, shall hold office until the expiration of the term for which he or she was elected and until the election and qualification of a successor, or until that Nominating Committee Director's earlier resignation or removal in accordance with these Bylaws and the CCC.

## Section 5.6 Vacancies

### 5.6.1 Events Causing Vacancy

A vacancy or vacancies on the Board shall be deemed to exist on the occurrence of the following: (a) the death, resignation, or removal of any Director; (b) whenever the number of authorized Directors is increased; or (c) the failure of the Member, at any meeting at which any Director or Directors are to be elected, to elect the full authorized number of Directors.

### 5.6.2 Removal

A Director may be removed without cause by the Member at any time.

The Board may by resolution declare vacant the office of a Director who has been declared of unsound mind by an order of court, or convicted of a felony, or found by final order or judgment of any court to have breached a duty under the CCC.

The Board may by resolution declare vacant the office of a Director (other than the person holding the office of President) who fails to attend three regularly scheduled Board meetings in any 12-month period; provided, however, that such removal must be authorized by an affirmative vote of the Member.

The Board may, by a majority vote of the Directors who meet all of the required qualifications to be a Director set forth in these Bylaws, remove a Director (other than the person holding the office of President) who fails or ceases to meet any required qualification that was in effect at the beginning of that Director's current term of office; provided, however, that such removal must be authorized by an affirmative vote of the Member.

### 5.6.3 No Removal on Reduction of Number of Directors

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 the CCC.

#### 5.6.4 Resignations

Except as provided in this Section 5.6.4, any Director may resign by giving written notice to the Chairperson, the President, the Secretary, or the Board. Such a written resignation will be effective on the later of (a) the date it is delivered or (b) the time specified in the written notice that the resignation is to become effective. If the resignation is effective at a future time, a successor may be elected in accordance with these Bylaws to take office when the resignation becomes effective. No Director may resign if the Corporation would then be left without any duly elected Directors in charge of its affairs, except upon notice to the California Attorney General (the “**Attorney General**”).

#### 5.6.5 Election to Fill Vacancies

If there is a vacancy on the Board, including a vacancy created by the removal of a Director, and such vacancy is the result of an ICANN Director (other than the person holding the office of President) no longer being on the Board, the Member (and not the Board) may fill such vacancy by electing an ICANN Director as soon as practicable after the vacancy occurs. If such vacancy is the result of a Nominating Committee Director no longer being on the Board, the Member shall fill such vacancy by electing a Nominating Committee Director promptly following the receipt of a nomination by the Nominating Committee subject to and in accordance with Section 5.5.4. A vacancy of the ICANN Director holding the office of President shall be filled by the person appointed to hold the office of President pursuant to Section 7.2.

#### Section 5.7 Regular Meetings

Each year, the Board shall hold at least one meeting, at a time and place fixed by the Board, for the purposes of the appointment of Officers and the transaction of other business. 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.

#### Section 5.8 Special Meetings

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

#### Section 5.9 Notice of Meetings

##### 5.9.1 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 5.7), notice of the time and place of all regular and special meetings shall be given to each Director by one of the following methods:

- (a) Personal delivery of oral or written notice;
- (b) First-class mail, postage prepaid;
- (c) Telephone, including a voice messaging system or other system or technology designed to record and communicate messages; or
- (d) Facsimile, e-mail 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, phone number, facsimile number or e-mail address as shown on the records of the Corporation. Any oral notice given personally or by telephone may be communicated directly to the Director or to a person who would reasonably be expected to promptly communicate 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.

#### 5.9.2 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, telephone, voice messaging system or other system or technology designed to record and communicate messages, facsimile, e-mail or other electronic transmission shall be delivered at least 48 hours before the time set for the meeting.

#### 5.9.3 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 Corporation, 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.

### Section 5.10 Place of Board Meetings

Regular and special meetings of the Board may be held at any place within or outside California 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 Corporation.

#### 5.10.1 Meetings by Telephone or Similar Communication Equipment

Any meeting may be held by conference telephone or other communications equipment permitted by the CCC, as long as each Director participating in the meeting can communicate concurrently with the other Directors, and each

Director is provided the means of participating in all matters before the Board, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the Corporation. All such Directors shall be deemed to be present in person at such meeting.

## Section 5.11 Quorum and Action of the Board

### 5.11.1 Quorum

A majority of Directors then in office, provided at least one ICANN Director and at least one Nominating Committee Director is present, shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 5.13.

### 5.11.2 Minimum Vote Requirements for Valid Board Action

Every act taken or decision made by a vote of the majority of the Directors present at a meeting duly held at which a quorum is present is the act of the Board, unless a greater number is expressly required by the CCC, the Articles 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 of the required quorum for that meeting.

### 5.11.3 When a Greater Vote Is Required for Valid Board Action

The following actions shall require approval by at least four of the five authorized Directors except as otherwise provided in Section 5.11.3(a) and the approval of the Member in order to be effective.

- (a) Approval of contracts or transactions in which a Director has a material financial interest (provided that such action must be approved by all of the disinterested Directors and the vote of any interested Director is not counted); provided, that, a Director shall not be deemed to have a financial interest if the source of such financial interest is solely based on such Director's employment with ICANN, service on ICANN's board of directors or any compensation related to such employment or service;
- (b) Creation of, and appointment to, Committees (but not advisory committees) as described in Section 6.1;
- (c) Indemnification of Directors as described in Article 8;
- (d) Any sale, transfer or other disposition of the Corporation's assets, other than (i) in the ordinary course of the Corporation's business, (ii) in connection with an IANA Naming Function Separation Process (as defined in the ICANN Bylaws) or (iii) the disposition of obsolete, damaged, redundant or unused assets;

- (e) Any merger, consolidation, sale or reorganization of the Corporation; and
- (f) Any dissolution, liquidation or winding-up of the business and affairs of the Corporation or the commencement of any other voluntary bankruptcy proceeding of the Corporation.

Section 5.12 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 (a) a quorum is present, and (b) 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. Directors can protest the lack of notice only by presenting a written protest to the Secretary either in person, by first-class mail addressed to the Secretary at the principal office of the Corporation as contained on the records of the Corporation as of the date of the protest, or by facsimile addressed to the facsimile number of the Corporation as contained on the records of the Corporation as of the date of the protest.

Section 5.13 Adjournment

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

Section 5.14 Conduct of Meetings

Meetings of the Board shall be presided over by the Chairperson, or, if the Chairperson is absent, the President or, if the President and Chairperson are both absent, by the Vice President (if any) or, in the absence of each of these persons, by a chairperson of the meeting, chosen by a majority of the Directors present at the meeting. 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 Articles of Incorporation, or with any provisions of law applicable to the Corporation.

Section 5.15 Action Without Meeting

Any action required or permitted to be taken by the Board may be taken without a meeting, if (a) all Directors, individually or collectively, consent in writing to the action and (b) the number of Directors then in office constitutes a quorum as set forth in Section 5.11.1, which, for the avoidance of doubt, requires a majority of Directors then in office including at least one ICANN Director and at least one Nominating Committee Director. 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.

Section 5.16 Fees and Compensation of Directors

The Corporation shall not pay any compensation to Directors for services rendered to the Corporation as Directors, except that Directors shall be reimbursed for reasonable expenses (including travel) incurred solely in connection with their work on the Board.

Section 5.17 Non-Liability of Directors

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

**ARTICLE 6 COMMITTEES**

Section 6.1 Committees of Directors

Subject to Section 5.11.3, the Board may, by resolution adopted by at least four of the five authorized Directors, create one or more committees of the Board (“**Committees**”), each consisting of two or more Directors with at least one ICANN Director and one Nominating Committee Director, to serve at the discretion of the Board. Any Committee, to the extent provided in the resolution of the Board and approved by the Member, may be given the authority of the Board, except that no Committee may:

- (a) approve any action for which the CCC also requires approval of the members or approval of a majority of all members;
- (b) fill vacancies on the Board or in any Committee which has the authority of the Board;

- (c) to the extent permitted under Section 5.16, fix compensation or expense reimbursement of the Directors for serving on the Board or on any Committee;
- (d) amend or repeal Bylaws or adopt new Bylaws;
- (e) amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- (f) appoint any other Committees or the members of these Committees;
- (g) expend corporate funds to support a nominee for Director after more persons have been nominated than can be elected; or
- (h) approve any transaction (i) between the Corporation and one or more of its Directors or (ii) between the Corporation and any entity in which one or more of its Directors have a material financial interest.

#### Section 6.2 Meetings and Action of Board 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.

#### Section 6.3 Quorum Rules for Board Committees

A majority of the Committee members (provided that at least one ICANN Director Committee member and one Nominating Committee Director Committee member is present) 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 of the Committee members present 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 the CCC relating to actions that require a majority vote of the entire Board. 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 required quorum for that meeting.

Section 6.4 Revocation of Delegated Authority

Subject to Section 5.11.3 and Section 6.1, the Board may revoke or reduce 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.

Section 6.5 Audit Committee

The Corporation shall have an Audit Committee, which shall not include (i) paid or unpaid staff or employees of the Corporation, including, if staff members or employees, the President or the Treasurer, and (ii) any person with a material financial interest in any entity doing business with the Corporation; provided, that, a Director shall not be deemed to have a financial interest if the source of such financial interest is based solely on such Director's employment with ICANN, service on ICANN's board of directors or any compensation related to such employment or service. If there is a finance committee, members of the finance committee shall constitute less than 50% of the membership of the Audit Committee and the chairperson of the Audit Committee shall not be a member of the finance committee. Subject to the supervision of the Board, the Audit Committee shall:

- (a) make recommendations to the Board on the retention and termination of an independent certified public accountant (“CPA”);
- (b) confer with the CPA to satisfy Audit Committee members that the financial affairs of the Corporation are in order;
- (c) review and determine whether to accept the annual audit;
- (d) approve non-audit services by the CPA and ensure such services conform to applicable standards; and
- (e) if requested by the Board, negotiate the CPA's compensation on behalf of the Board.

Section 6.6 Advisory Committees

The Board shall not create any advisory committees.

**ARTICLE 7 OFFICERS**

Section 7.1 Officers

The officers of the Corporation (“**Officers**”) shall be a President, a Secretary and a Treasurer. These Officers may, but need not be, selected from among the ICANN Directors. 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.

Section 7.2 Election of Officers

Except for the President, the Officers shall be elected annually by the Board at the annual meeting of the Board, 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 President shall be elected annually by the Member at the annual meeting of the Member, and shall serve at the discretion of the Member until his or her successor shall be elected, or his or her earlier resignation or removal.

Officers may be elected for an unlimited number of consecutive terms.

Section 7.3 Removal of Officers

Subject to the rights, if any, of an Officer under any contract of employment, the President may be removed, with or without cause, by the Member, and any other Officer may be removed, with or without cause, by the Board, at any regular or special meeting of the Board.

Section 7.4 Resignation of Officers

Any Officer may resign at any time by giving written notice to the Corporation. 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 Corporation under any contract to which the Officer is a party.

Section 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, provided that such vacancies shall be filled as they occur and not on an annual basis. In the event of a vacancy in any office other than the President, such vacancy may be filled temporarily by appointment by the President, 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, other than the position of President which shall be filled only by action of the Member.

## Section 7.6 Responsibilities of Officers

### 7.6.1 President

The president of the Corporation (the “**President**”) shall be selected by the Member. The President shall preside at all Member meetings, and in the Chairperson’s absence, the President 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 or her by the Board or prescribed by these Bylaws. Subject to such supervisory powers as may be given by the Board to the Chairperson, the President shall be the general manager of the Corporation, and subject to the control of the Board, shall supervise, direct and control the Corporation’s day-to-day activities, business and affairs. 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, with the approval of the Member, or these Bylaws.

### 7.6.2 Vice Presidents

In the absence or disability of the President, the vice presidents, if any, of the Corporation (each a “**Vice President**”) in order of their rank as fixed by the Board, or, if not ranked, a Vice President designated by the Board, shall perform all the duties of the President and, when so acting, have all the powers of and be subject to all the restrictions upon, the President. The Vice Presidents shall have such other powers and perform such other duties as may be prescribed by the Board.

### 7.6.3 Secretary

The secretary of the Corporation (the “**Secretary**”) shall certify and keep or cause to be kept at the principal office of the Corporation the original or a copy of the Articles of Incorporation and these Bylaws, as amended to date. The Secretary shall keep or cause to be kept at the principal office of the Corporation a record of the Corporation’s Member. The Secretary shall keep or cause to be kept a minute book as described in Section 9.4. The Secretary shall give, or cause to be given, notice of all meetings of the Member and the Board in accordance with these Bylaws. The Secretary shall keep or cause to be kept the seal of the Corporation, 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.

### 7.6.4 Treasurer

The treasurer of the Corporation (the “**Treasurer**”) shall (a) 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 Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements, (b)

prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports, (c) deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board, (d) disburse, or cause to be disbursed, the funds of the Corporation as may be ordered by the Board, (e) render, or cause to be rendered to the President and Directors, whenever they request it, an account of all of his or her transactions as Treasurer and of the financial condition of the Corporation, and (f) have other powers and perform such other duties incident to the office of Treasurer as may be prescribed by the Board or these Bylaws.

## Section 7.7 Compensation of Officers

### 7.7.1 Salaries Fixed by Board

The salaries of Officers paid by the Corporation, 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. If any Officer also serves as a Director, the Officer shall not receive compensation for service as a Director, but shall not be prevented from receiving a salary fixed in accordance with this Section for service as an Officer. In all cases, any salaries received by Officers and paid by the Corporation shall be reasonable and given in return for services actually rendered for the Corporation which relate to the performance of the public benefit purposes of the Corporation. No salaried Officer serving as a Director shall be permitted to vote on his or her own compensation as an Officer.

### 7.7.2 Fairness of Compensation

The Board shall periodically review the fairness of compensation, in accordance with the requirements of California's Nonprofit Integrity Act of 2004, including benefits, paid to every person, regardless of title, with powers, duties, or responsibilities comparable to the president, chief executive officer, treasurer or chief financial officer (a) once such person is hired, (b) upon any extension or renewal of such person's term of employment, and (c) when such person's compensation is modified (unless all employees are subject to the same general modification of compensation).

## **ARTICLE 8 INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS**

The Corporation shall, to the maximum extent permitted by the CCC, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of the Corporation, provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in the Corporation's best interests and not criminal. For purposes of this Article 8, an

“agent” of the Corporation includes any person who is or was a Director, Officer, employee, or any other agent of the Corporation acting within the scope of his or her responsibility; or is or was serving at the request of the Corporation as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the Corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent’s status as such, whether or not the Corporation would have the power to indemnify the agent against that liability under the provisions of this Article 8.

## **ARTICLE 9 CORPORATE RECORDS, REPORTS AND SEAL**

### Section 9.1 Accounting

The fiscal year of the Corporation shall be the same as the fiscal year of the Member. At the end of each fiscal year, the books of the Corporation shall be closed and audited by a CPA. The Corporation shall make the audit available to the Attorney General and to the public on the same basis that the Internal Revenue Service Form 990 is required to be made available.

### Section 9.2 Annual Budget

- (a) At least nine months prior to the commencement of each fiscal year, the Corporation shall submit to the PTI Board and the Board of Directors of ICANN (the “**ICANN Board**”) a proposed annual operating plan and budget for the Corporation’s next fiscal year (“**Annual Budget**”).
- (b) During the Annual Budget development process, and prior to approval of the Annual Budget by the PTI Board, the Corporation shall consult with the Supporting Organizations and Advisory Committees, as well as the Registries Stakeholder Group, IAB and RIRs (all as defined in the ICANN Bylaws).
- (c) Prior to approval of the Annual Budget by the PTI Board, a draft of the Annual Budget shall be posted on the ICANN Website (as defined in the ICANN Bylaws) and shall be subject to public comment.
- (d) After reviewing the comments submitted during the public comment period, the PTI Board may direct the Corporation to post a revised draft of the Annual Budget on the Website and may direct the Corporation to conduct one or more additional public comment periods of lengths determined by the PTI Board, in accordance with ICANN’s public comment processes.
- (e) Immediately after the PTI Board approves the Annual Budget, it shall be submitted to the ICANN Board for inclusion in ICANN’s proposed annual operating plan and annual budget.

- (f) On a monthly basis, the Corporation’s actual performance shall be measured against the Annual Budget and reported to the PTI Board.

### Section 9.3 Strategic Plan

- (a) The Corporation shall develop and annually update a four-year strategic plan that outlines the Corporation’s strategic priorities (the “**Strategic Plan**”). This Strategic Plan process may be run concurrently with the Annual Budget development process described at Section 9.2.
- (b) The Corporation shall consult with the Supporting Organizations and Advisory Committees, as well as the Registries Stakeholder Group, IAB and RIRs in the development and updating of the Strategic Plan.
- (c) Prior to approval of the Strategic Plan by the PTI Board, a draft of the Strategic Plan shall be posted on the ICANN Website (as defined in ICANN’s Bylaws) and shall be subject to public comment.
- (d) After reviewing the comments submitted during the public comment period, the PTI Board may direct the Corporation to post a revised draft of the Strategic Plan on the Website and may direct the Corporation to conduct one or more additional public comment periods of lengths determined by the PTI Board, in accordance with ICANN’s public comment processes.
- (e) Promptly after the PTI Board approves the Strategic Plan, the Strategic Plan shall be submitted to the ICANN Board.
- (f) On a yearly basis, the Corporation’s actual performance shall be measured against the Strategic Plan and reported to the PTI Board.

### Section 9.4 Minute Book

The Corporation shall keep a minute book in written form which shall contain a record of all actions by the Member, the Board, the Audit Committee or any Board Committee including (a) the time, date and place of each meeting; (b) whether a meeting is regular or special and, if special, how called; (c) the manner of giving notice of each meeting and a copy thereof; (d) the names of those present at each meeting; (e) the minutes of all meetings; (f) any written waivers of notice, consents to the holding of a meeting or approvals of the minutes thereof; (g) all written consents for action without a meeting; (h) all protests concerning lack of notice; and (i) formal dissents from Board actions.

### Section 9.5 Books and Records of Account

The Corporation 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, assets, liabilities, receipts, disbursements, gains, and losses.

Section 9.6 Articles of Incorporation and Bylaws

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

Section 9.7 Maintenance and Inspection of Federal Tax Exemption Application and Annual Information Returns

The Corporation 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 Internal Revenue Code of 1986, as amended.

Section 9.8 Annual Report; Statement of Certain Transactions

9.8.1 Annual Report

No later than 120 days after the close of the Corporation's fiscal year, the Corporation shall make available to the Member and each Director an annual report in accordance with section 6321 of the CCC, which shall be accompanied by the annual independent audit.

9.8.2 Statement of Certain Transactions

As part of the annual report described in Section 9.8.1, the Corporation shall include an annual statement of certain transactions, as required by section 6322 of the CCC.

Section 9.9 Rights of Inspection

Each Director shall have the absolute right at any reasonable time to inspect the books, records, documents of every kind, and physical properties of the Corporation. 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. The Member shall have all rights of inspection granted to members under the CCC.

Section 9.10 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.

## **ARTICLE 10 EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS**

### **Section 10.1 Execution of Instruments**

The Board, except as otherwise provided in these Bylaws, may by resolution authorize any Officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, 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 Corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

### **Section 10.2 Checks and Notes**

All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation shall be signed by such Officer or Officers, agent or agents, of the Corporation and in such manner as shall from time to time be determined by resolution of the Board.

### **Section 10.3 Deposits**

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

## **ARTICLE 11 CONSTRUCTION AND DEFINITIONS**

Unless the context requires otherwise, the general provisions, rules of construction, and definitions of the CCC 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 Corporation and a natural person. All references to statutes, regulations and laws shall include any future statutes, regulations and laws that replace those referenced.

## **ARTICLE 12 AMENDMENTS**

These Bylaws may only be adopted, amended, or repealed in whole or in part with the approval of (a) at least four of the five authorized Directors and (b) the Member. If any provision of these Bylaws requires the vote of a larger proportion of the Board than is otherwise required by law, that provision may not be altered, amended or repealed, except by that greater vote. Any amendment to these Bylaws shall also be subject to the procedures and limitations on amending these Bylaws that are set forth within the ICANN Bylaws.





**CERTIFICATE OF SECRETARY**

I certify that I am the duly elected and acting Secretary of Public Technical Identifiers, a California nonprofit public benefit corporation; that these Bylaws, consisting of */###/* pages, are the Bylaws of this Corporation as adopted by the Board of Directors and the Member on [ ]; and that these Bylaws have not been amended or modified since that date.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.

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**[NAME]**  
Secretary

2 September 2016

Public Technical Identifiers, through its sole member, ICANN  
12025 Waterfront Drive  
Suite 300  
Los Angeles, California 90094

Re: Resignation of Incorporator

Dear PTI,

With this letter, I hereby submit my resignation as an Incorporator of Public Technical Identifiers effective as of 15 September 2016 or as soon thereafter as the sole member of PTI is able to meet to discuss and accept my resignation.

Sincerely,

Akram Atallah  
President, Global Domains Division  
ICANN

# Staff Report of Public Comment Proceeding Template (v4.0)

## **Overview:**

*This template is being provided to assist staff in the preparation of a report that summarizes and, where appropriate, analyzes public comments. Please save the document in either \*.doc/\*.docx and submit to: [public-comment@icann.org](mailto:public-comment@icann.org).*

## **Instructions:**

- **Title:** Please enter the exact title that was used in the original Announcement.
- **Comment Period:** Enter the original Open, Close, and Staff Report Due Dates. (*Format: Day Month Year, e.g., 15 June 2016*). Please note if any extensions were approved.
- **Prepared By:** This field will accommodate a situation where an individual or group other than the principal staff contact, e.g., a Working Group, develops a report.
- **Important Information Links:** Do not enter any information in this section; the Public Comment Team will provide the appropriate links.
- **Section I: General Overview and Next Steps:** Please use this area to provide any general summary or highlights of the comments and indicate the next steps following publication of the report.
- **Section II: Contributors:** Please use the tables provided to identify those organizations/groups and individuals who provided comments. It is not necessary to identify “spammers” or other commenters who posted off-topic or irrelevant submissions. In addition, if there is a large number of submissions, it is acceptable to characterize the respondent communities rather than attempt to list them individually in tables.
- **Section III: Summary of Comments:** This section should provide an accurate, representative, and thorough review of the comments provided. As the disclaimer explains, this is a summary only of those contributions that the author determines to be appropriate to the topic’s purpose. Authors are cautioned to be conscious of bias and avoid characterizing or assessing the submitted public comments. If an analysis of the comments is intended, please use Section IV below.
- **Section IV: Analysis of Comments:** Please use this section for any assessments, evaluations, and judgments of the comments submitted and provide sufficient rationale for any positions that are advocated. If an analysis will not be undertaken or, if one will be published subsequently, please add a note to that effect in this section.

*Note: You may also utilize, for this section, the Public Comment Issue Tracking Checklist template, which is available at: <https://community.icann.org/x/d67hAq>.*

# Staff Report of Public Comment Proceeding

Draft PTI Bylaws			
<b>Publication Date:</b>	18 August 2016		
<b>Prepared By:</b>	ICANN Staff		
<b>Public Comment Proceeding</b>		<b>Important Information Links</b>	
Open Date:	12 July 2016		
Close Date:	11 August 2016		
Staff Report Due Date:	18 August 2016		
	<a href="#">Announcement</a>		
	<a href="#">Public Comment Proceeding</a>		
	<a href="#">View Comments Submitted</a>		
<b>Staff Contact:</b>	Samantha Eisner	<b>Email:</b>	<a href="mailto:samantha.eisner@icann.org">samantha.eisner@icann.org</a>
Section I: General Overview and Next Steps			
<p>As required in the IANA Stewardship Transition Coordination Group (ICG) proposal that was transmitted to and accepted by the National Telecommunications and Information Agency (NTIA), one of the key implementation planning items is the development of an ICANN affiliate to perform the naming-related IANA functions. On 10 August 2016, ICANN formally incorporated an affiliate entity, referred to as PTI (or Public Technical Identifiers) to house this work. ICANN also intends to subcontract the performance of the numbering- and protocol parameter-related IANA functions to PTI.</p> <p>The Bylaws for PTI still need to be finalized, including issues such as the composition of the Board, conduct of Board meetings, the powers of the Board and PTI officers, and budgeting, planning and record keeping requirements.</p> <p>The proposed draft of the PTI Bylaws was developed collaboratively by the ICANN legal team and the independent counsel retained to advise the IANA Stewardship Transition Proposal on Naming Related Functions (CWG-Stewardship).</p> <p>These proposed draft Bylaws were out for a 30-day public comment from 12 July – 11 August to allow any interested party to review and provide feedback. This timeline allows for comments to be analyzed and incorporated in time for an approval of the PTI Bylaws by the ICANN Board and PTI Board prior to the anticipated expiration of the IANA Functions Contract between ICANN and NTIA.</p> <p><b>Next Steps:</b></p> <p>The PTI Bylaws have been updated to reflect changes to address comments. The updated document is provided along with this Summary, in clean and redline form. ICANN will be presenting this document to the ICANN Board and PTI Board for their approval.</p>			
Section II: Contributors			

At the time this report was prepared, a total of four (4) community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

**Organizations and Groups:**

<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>
Business Constituency	Steve DelBianco	BC
Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions	Lise Fuhr	CWG-Stewardship
Registries Stakeholder Group	Stephane Van Gelder	RySG

**Individuals:**

<b>Name</b>	<b>Affiliation (if provided)</b>	<b>Initials</b>
Chuck Gomez		

**Section III: Summary of Comments**

*General Disclaimer:* This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above ([View Comments Submitted](#)).

The BC addressed its comments to the four issues highlighted in the public comment documentation.

*Selection of PTI Chair* – The BC expressed its concern with the proposal that the Chair of the PTI Board be selected from among the two Nominating Committee-identified chairs, as this level of specificity was not in the CWG Proposal, while understanding the intention behind this recommendation. The BC recommended an alternative approach, that the Nominating Committee be given a four month time frame to identify whether it can find a candidate with the potential to serve as PTI Chair, and then if it cannot find a sufficient number, then the criteria could be relaxed to include ICANN-Nominated director. The BC also noted its support for the qualifications for Board members as set out in the proposed Bylaws.

*Quorum* – The BC confirmed its support for the proposed definition of quorum that requires one ICANN-nominated and one Nominating Committee-nominated director.

*Higher Thresholds for Certain Issues* – The BC agreed with ICANN's concern that requiring both Nominating Committee-nominated directors' approval for certain actions would place the power for a single director to block PTI action. The BC noted its support for a simpler 4/5 definition of super-majority, as it still requires at least one of the Nominating Committee-nominated directors to be in favor of the action.

*Limiting PTI's Remit* – The BC requested that more language be inserted into the PTI Bylaws to express PTI's limited role in performing the IANA functions, so that it does not become a venue to re-litigate policy decisions.

The CWG-Stewardship provided comments on 10 topics, and provided proposed revisions to the Bylaws as an attachment to its comments. The CWG addressed the following items:

*Principal office identification* – The CWG-Stewardship recommended that PTI’s principal office be described in the same manner that ICANN’s principal office is described, for consistency.

*Purpose* – The CWG Stewardship recommended that the purpose of PTI be aligned with the language that was developed for PTI’s Articles of Incorporation, which specifically identifies PTI’s role in performing the IANA functions on behalf of ICANN.

*Selection of PTI Chair* – The CWG-Stewardship agreed with concerns that had been raised regarding a requirement that the PTI Chair be selected from among the Nominating Committee-appointed Directors, as that could place unintentionally limitations on how the selection processes. The CWG-Stewardship therefore recommended that any Director could be selected to serve as Chair, under the following conditions: a majority of the Board selected the Chair, including at least one ICANN-nominated Director and one Nominating Committee-nominated Director. Further, the CWG-Stewardship requested that any Chair should be limited to six years of service as Chair, so that it does not become a permanent position.

*Initial Directors* – The Bylaws call for two directors to be nominated by the ICANN Nominating Committee. However, the Nominating Committee will not be in a position to complete nominations until 2017. The CWG-Stewardship noted a community proposal that its Co-Chairs serve as the initial directors in those two seats until the Nominating Committee could complete its selection process. The Bylaws, however, require modification to allow for the two seats to be filled prior to the Nominating Committee completing its nomination process. As a result, the CWG-Stewardship recommended the addition of language specifying that there will be Initial Directors, and the seats that would be filled by the Nominating Committee would be instead filled upon the recommendation of the CWG-Stewardship.

*Terms of Directors* – The CWG-Stewardship noted its agreement with concerns that had been raised regarding the two-year terms previously recommended by the CWG-Stewardship, particularly when coupled with a two-term limit. The frequency of the onboarding and election processes could become quite burdensome. As a result, the CWG-Stewardship proposed that the Nominating Committee-nominated Directors serve for a maximum of two consecutive three-year terms. The ICANN-nominated Directors would also serve for three year terms, but without limitation. The CWG-Stewardship recommended revisions to the identification of when the Director terms begin and end, to account for both the Initial Director term and the three-year terms.

*Supermajority for Certain Board Actions* – The CWG Stewardship identified that language at Section 5.11.3 should be clarified to specify a threshold that required four of five Board Director approval, as opposed to a 4/5 threshold. The use of the fraction could be subject to interpretation that less than four Board members are required to approve, depending on the number of Board members available to vote on the action.

*Unanimous Written Board Consent* – The CWG-Stewardship noted that written consent to Board action is authorized under California law, but only if all Directors in office approve, and then only if the number of Directors then in office constitutes a quorum. The CWG-Stewardship recommended that the quorum requirement be specified to require at least one ICANN-nominated Director and one Nominating Committee-nominated Director.

*Establishment of Board Committees* – The CWG-Stewardship, similar to the concerns raised in the Supermajority section, requested a clarification that four Directors would have to approve the establishment of Committees, as opposed to a 4/5 threshold.



*Annual Budget* – The CWG-Stewardship identified some clarifications to the PTI Budget process in the PTI Bylaws that more accurately describe the budget process developed by ICANN, in coordination with the CWG-Stewardship’s budget design team.

*Amendments* – The CWG-Stewardship identified a clarification to the amendment threshold that would do two things: (1) clarify that four Directors would have to approve the establishment of Committees, as opposed to a 4/5 threshold; and (2) remove language that appeared to be carried over from an older draft of the Bylaws, that identified that both of the Nominating Committee-nominated Directors would have to approve Bylaws modifications.

Chuck Gomes commented on the portion of the Bylaws related to the PTI Budgeting Process, noting the coordination with ICANN’s Finance and IANA Departments. He relayed that the CWG-Stewardship’s budget design team (or DT-O) supported the budget process that was provided to the CWG-Stewardship for consideration, and that that DT-O members agreed that the process met the requirements within the CWG-Stewardship’s proposal. Chuck confirmed his assessment that the PTI Bylaws do not have to include the full level of detail of the entire budget process, and his support for the language confirmed through the CWG-Stewardship on this topic.

The RySG thanked the PTI Bylaws drafters for their work in service to the ICANN Community.

#### **Section IV: Analysis of Comments**

*General Disclaimer:* This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

The comments submitted have resulted in modifications to the proposed Bylaws as posted for public comment. The changes proposed by the CWG-Stewardship have been adopted in full, and these modifications also resolve concerns raised or noted by other commenters.

Specifically, the comments resulted in the following changes:

*Principal office identification* – The language at Article 2 has been updated to mirror how the principal office is identified in ICANN’s Bylaws.

*Purpose* – The language at Article 3 has been updated to reflect the language agreed upon in finalizing the PTI Articles of Incorporation. As both the CWG-Stewardship and BC noted, it is important to reflect PTI’s narrow remit in performance of the IANA functions. The modified text now does this.

*Selection of PTI Chair* – Both the CWG-Stewardship and the BC provided comments on this topic. The CWG-Stewardship’s proposed approach has been incorporated at Section 5.4. Each approach was addressed to the concern that limitation of the PTI Board Chair to one of two individuals could be unduly limiting. The CWG-Stewardship’s approach of expanding to any Director (other than the President), while requiring support from at least one each of the Nominating Committee-nominated Directors and the ICANN-nominated Directors, provided a simpler solution that did not create an additional burden on the ICANN Nominating Committee or cause changes to their selection cycle. The requirement that this role could not be served for more than six years at a time also places a limitation on the ability of any single ICANN-nominated Director to make the Chair a “permanent” role.

*Initial Directors* – ICANN understands the community’s wish to have community-nominated directors in place from the initial seating of the PTI Board, and not have a one-year period where the Board is only made up of ICANN-nominated Directors. The definition proposed for Initial Directors is satisfactory to ICANN and we agree serves the purpose needed. The proposed modifications have been incorporated into Section 5.2.2.

*Terms of Directors* – The proposed modifications to Section 5.5.1 have been incorporated into the Bylaws. The three-year term seems a good compromise to the concerns raised. With the development of the “Initial Director” concept, ICANN and the counsel to the CWG-Stewardship also developed language for inclusion at Section 5.5.2 regarding term limits, to confirm that the single year term for Initial Directors would not be counted as a “term” when calculating the two-term limit.

*Supermajority Thresholds* – ICANN accepted the modifications at Sections 5.11.3, 6.1 (Board Committee establishment); and Article 12 (Amendments) that were proposed by the CWG-Stewardship. The language presented clarifies the meaning of the language, and removes the opportunity for interpretation of how many directors should be available to vote on any matter requiring a threshold that was previously identified at 4/5. This formulation also builds in a requirement that for any of these areas requiring a heightened threshold, at least one of the Nominating Committee-nominated Directors must support the action. This modification also directly addresses the BC’s comment supporting a simple 4/5 threshold, as opposed to requiring support from both Nominating Committee-nominated Directors.

*Unanimous Written Board Consent* – ICANN has incorporated the revision to Section 5.15 as proposed by the CWG-Stewardship, clarifying that quorum even in this special case requires at least one ICANN-nominated and one Nominating Committee-nominated Director. This supports the Quorum definition already within the Bylaws at Section 5.11.1. This modification also furthers the BC’s comment in support of the definition of quorum.

*Annual Budget* – ICANN has incorporated the proposed revisions at Section 9.2 that clarify the PTI Budgeting process that has been agreed upon with the involvement of the CWG-Stewardship’s budget development team (DT-O). Chuck Gomes’ comment is also directly supported by this modification.

No edits were required to address the RySG’s comment.













Pages 158/225 – 225/225 removed. The Board decided to take up (1) Consideration of Ombudsman Report Regarding dotgay, LLC's application for .GAY; and (2) Reconsideration Request 16-3 (dotgay LLC) after receiving additional information from staff.