

Annex S: Draft Proposed Term Sheet (as proposed by Legal Counsel)

What follows below is an initial draft proposed term sheet that could be the precursor to the ICANN-PTI Contract. This is based on a legal memorandum prepared by legal counsel to the CWG-Stewardship on May 18, 2015. To the extent this term sheet is inconsistent with the current proposal, the current proposal governs. The term sheet will be subject of negotiation between PTI and ICANN (with PTI having independent legal advice).

PROPOSED KEY TERMS FOR ICANN-PTI CONTRACT

- All terms are subject to further review and discussion
- Terms in [square brackets] are placeholders only
- Terms connected by “or” are alternatives
- TBD means To Be Determined

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
PARTIES	<ul style="list-style-type: none"> • The Parties to the ICANN-PTI Contract are: <ul style="list-style-type: none"> ○ ICANN ○ PTI (IANA Functions Operator for naming functions) 		III.A
DURATION		F	
Initial Term	<ul style="list-style-type: none"> • The period of performance of the ICANN-PTI Contract shall commence on [October 1, 2015] (the “Commencement Date”) and shall end on the [fifth (5th)] anniversary of the Commencement Date. 	F.1, I.70	
Renewal Terms	<ul style="list-style-type: none"> • The ICANN-PTI Contract will provide for automatic renewal, unless ICANN elects not to renew the ICANN-PTI Contract upon recommendation by an IANA Function Review Team (IFRT), with support of the ICANN Board. • Any ICANN election of non-renewal shall be provided with not less than [[__] months] prior written notice, and PTI shall provide 	I.59, I.70	III.A.

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	<p>full support and cooperation to ICANN, and to any successor entity to PTI, in order to effect an orderly, stable, secure and efficient transition of this Contract and services and obligations provided by PTI hereunder. See also the Continuity of Operations provisions below.</p> <ul style="list-style-type: none"> • If the ICANN-PTI Contract automatically renews, the extended contract shall include this automatic renewal clause. • The renewal period shall commence immediately following the end of the initial term and shall end on the [fifth (5th)] anniversary of the commencement of the renewal term [TBD] 		
IANA Function Review	<ul style="list-style-type: none"> • The IANA Function Review (IFR) of PTI's performance will be conducted by the IFRT in accordance with the processes set forth in ICANN's governance documents. • PTI shall submit to the procedures and scope of the IFR. PTI agrees to make any necessary changes, including amendment to the ICANN-PTI Contract, as adopted and implemented by ICANN and approved by the Members of ICANN following an IFR. • An initial IFR shall take place two years following the transition of the IANA functions to PTI. • Subsequent IFRs shall occur at no more than five-year intervals. • A Special IFR may also be initiated by the ccNSO and GNSO Councils, following the exhaustion of the identified escalation mechanisms. 		III.A./Annex F
Performance Monitoring	<ul style="list-style-type: none"> • The CSC will be established to monitor PTI performance of the IANA naming function according to the ICANN-PTI Contract and Service Level Expectations (SLEs). • PTI shall act in good-faith to resolve all issues identified by CSC directly and to submit to the escalation mechanics set 		III.A./Annex G

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	<p>forth in the ICANN-PTI Contract and ICANN governance documents.</p> <ul style="list-style-type: none"> The CSC shall be empowered to escalate identified areas of concern as set forth in “Escalation Mechanisms” below. 		
<p>ESCALATION MECHANISMS (IANA Customer Service Complaint Resolution Process)</p>	<ul style="list-style-type: none"> Phase 1: If anyone experiences an issue with PTI’s delivery of IANA naming functions, the complainant can send an email to PTI, which will escalate the complaint internally as required. This process is open to anyone, including individuals, registries, ccTLD regional organizations and ICANN SO/ACs. Phase 2: If the issue identified in Phase 1 is not addressed by PTI to the reasonable satisfaction of the complainant, then complainants that are direct customers only may request mediation. ICANN and CSC will be notified of the issue and CSC will conduct a review to determine whether the issue is part of a persistent performance issue or an indication of a systemic problem. If so, the CSC may seek remediation through the Problem Resolution Process described below. This process is only open to direct customers. Non-direct customers, including TLD organizations, who have issues unresolved in Phase 1, may escalate the issues to the ombudsman or the applicable liaisons to the CSC. The complainant may also initiate an Independent Review Process if the issue is not addressed in the steps above. 		<p>III.A./ Annex I</p>
<p>ESCALATION MECHANISMS (IANA Problem Resolution Process)</p>	<p>The CSC may seek resolution with PTI performance issues in accordance with the Remedial Action Plan which includes:</p> <ul style="list-style-type: none"> CSC reports persistent issues to PTI and requests remedial action in [TBD] days. CSC confirms completion of the remedial 		<p>III.A./ Annex J</p>

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	<p>action by PTI.</p> <ul style="list-style-type: none"> If CSC determines that the remedial action has been exhausted and has not led to necessary improvements, the CSC is authorized to escalate to the ccNSO and/or the GNSO, who might then decide to take further action using agreed consultation and escalation processes to be finalized post-transition. 		
ESCALATION MECHANISMS (Root Zone Emergency Process)	[Retain provisions from current ICANN-NTIA Contract.]		III.A/ Annex K
ESCALATION MECHANISMS (Separation Review)	<ul style="list-style-type: none"> A separation review can be triggered by IFRT in accordance with provisions to be inserted in ICANN governance documents. PTI shall submit to and comply with the IFR mechanics, including the separation review mechanics, adopted and implemented by ICANN. All recommendations resulting from the separation review must be approved by the ICANN board. 		III.A/ Annex L
CONTINUITY OF OPERATIONS	<ul style="list-style-type: none"> Retain provisions from current ICANN-NTIA Contract, except that ICANN will perform duties of the Contract Officer (CO) and Contract Officer Representative (COR). PTI agrees to be fully engaged in the transition plan and to provide appropriate transition staff and expertise to facilitate a stable transition of the IANA functions on terms more fully developed in the ICANN-PTI Contract. ICANN, in conjunction with CSC as necessary, shall review the transition plan every five years. 	C.7	III.A/ Annex M
COST/PRICE	<ul style="list-style-type: none"> Fees, if any, will be based on direct costs and resources incurred by PTI. After one year of charging fees, PTI must collaborate with all Interested and Affected Parties to develop the fee structure and a method to track costs for each IANA function. PTI must submit copies of the above and a description of the collaboration 	B.2	

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	<p>efforts to ICANN.</p> <ul style="list-style-type: none"> “Interested and Affected Parties” means the multistakeholder, private sector led, bottom-up policy development model for the DNS that ICANN represents; [the IETF, the IAB, 5 RIRs;] ccTLD and gTLD operators; governments; and the Internet user community. 		
CONSTRUCTIVE WORKING RELATIONSHIPS	PTI must maintain constructive working relationships with all Interested and Affected Parties to ensure quality and satisfactory performance.	C.1.3	
PTI REQUIREMENTS			
Subcontracting; [U.S. Presence Requirements]	<ul style="list-style-type: none"> No subcontracting. PTI must be U.S. owned and operated, incorporated and organized under U.S. law. Primary IANA functions must be performed in the U.S. PTI must have a U.S. physical address. 	C.2.1	
Performance of IANA Functions	<ul style="list-style-type: none"> IANA functions must be performed in a stable and secure manner. IANA functions are administrative and technical in nature based on established policies developed by the Interested and Affected Parties. PTI must treat each IANA function with equal priority and process all requests promptly and efficiently. 	C.2.4	
Separation of Policy Development and Operational Roles	PTI staff members will not initiate, advance, or advocate any policy development related to the IANA functions. This section shall not be construed to prevent contributions by staff members by way either of background information or direct text contribution to any document, provided both that the PTI staff are not the only authors of the contribution and that the primary function of the staff member's contribution is in supplying relevant IANA experience and insight.	C.2.5	

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
Transparency and Accountability	PTI shall collaborate with all Interested and Affected Parties to develop and post user instructions including technical requirements for the IANA naming function.	C.2.6	Annex C
Performance; Service Levels	PTI shall collaborate with all Interested and Affected Parties to develop, maintain, enhance and post performance standards for each IANA function. ICANN and PTI shall develop service level agreements (SLAs) to be annexed to the Contract in accordance with the SLEs attached as Annex I hereto for the performance of these functions.	C.2.8	Annex C/ Annex H
Internet Assigned Numbers Authority (IANA) Naming Functions	IANA naming functions include: the administration of certain responsibilities associated with the Internet DNS root zone management; and other services related to the management of the ARPA and INT top-level domains (TLDs).	C.2.9	
IANA Functions	IANA functions include (1) the IANA Naming Functions, (2) the coordination of the assignment of technical Internet protocol parameters, and (3) the allocation of Internet numbering resources.		
Responsibility and Respect for Stakeholders	PTI shall collaborate with all Interested and Affected Parties to develop and post for each IANA function a process for documenting the source of policies and procedures and how each will be implemented.	C.2.7	
Perform Administrative Functions Associated With Root Zone Management	<ul style="list-style-type: none"> • PTI will facilitate and coordinate the root zone of the DNS and maintain 24/7 operational coverage. • Process flow for root zone management involves two roles that are performed by two different entities: <ul style="list-style-type: none"> ○ PTI as the IANA Functions Operator ○ VeriSign (or its successor) as the Root Zone Maintainer (RZM). • PTI shall work collaboratively with the RZM. • Any amendment to the roles and responsibilities of PTI and the RZM with respect to root zone management will require approval of the ICANN Board [and 	C.2.9.2	III.A./

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	the Members of ICANN or a Special IFR.]		
Root Zone File Change Request Management	<ul style="list-style-type: none"> • The RZM will receive and process from PTI root zone file change requests for TLDs, including 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. No authorization for TLD change requests will be needed. • RZM shall process root zone file changes as expeditiously as possible. 	C.2.9.2.a	III.A.
Root Zone "WHOIS" Change Request and Database Management	<ul style="list-style-type: none"> • PTI will maintain, update, and make publicly accessible a Root Zone "WHOIS" database with current and verified contact information for all TLD registry operators, at a minimum: <ul style="list-style-type: none"> ○ TLD name; ○ the IP address of the primary nameserver and secondary nameserver for the TLD; ○ the corresponding names of such nameservers; ○ the creation date of the TLD; ○ name, address, email, phone and fax numbers of the TLD registry operator; ○ name, address, email, phone and fax numbers of the technical contact for the TLD registry operator; ○ name, postal address, email address, phone and fax numbers of the administrative contact for the TLD registry operator; ○ reports; ○ date record last updated; ○ any other information relevant to the TLD requested by the TLD registry 	C.2.9.2.b	III.A., paragraph 150

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	<p>operator.</p> <ul style="list-style-type: none"> The RZM shall receive and process root zone “WHOIS” change requests for TLDs from PTI. No authorization for TLD change requests shall be required. 		
<p>Delegation and Redelelegation of a Country Code Top Level -Domain (ccTLD)</p>	<ul style="list-style-type: none"> PTI shall apply existing policy frameworks in processing requests related to the delegation and redelegation of a ccTLD, such as RFC 1591, the GAC Principles (2005) and any further clarification of these policies by Interested and Affected Parties. If a policy framework does not exist to cover a specific instance, PTI will consult with the Interested and Affected Parties; relevant public authorities; and governments on any recommendation that is not within or consistent with an existing policy framework. PTI shall also take into account the relevant national frameworks and applicable laws of the jurisdiction that the TLD registry serves. PTI shall submit its recommendations to the [[CSC] or [RZM] or [Independent Evaluator]] via a Delegation and Redelelegation Report. 	<p>C.2.9.2.c</p>	<p>III.A, paragraph 160/ Annex O</p>
<p>Delegation and Redelelegation of a Generic Top Level Domain (gTLD)</p>	<ul style="list-style-type: none"> PTI shall verify that all requests related to the delegation and redelegation of gTLDs are consistent with the procedures developed by ICANN. PTI shall submit its request to the RZM via a Delegation and Redelelegation Report, with a copy to ICANN and the registry operator(s) involved. 	<p>C.2.9.2.d</p>	
<p>Root Zone Automation</p>	<ul style="list-style-type: none"> PTI shall work with ICANN, the CSC and the RZM, and collaborate with all Interested and Affected Parties, to deploy a fully automated root zone management system promptly, including, at a minimum: <ul style="list-style-type: none"> a secure (encrypted) system for customer communications; an automated provisioning protocol 	<p>C.2.9.2.e</p>	

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	<p>allowing customers to manage their interactions with the root zone management system;</p> <ul style="list-style-type: none"> ○ 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; ○ test system, which customers can use to meet the technical requirements for a change request; ○ an internal interface for secure communications between ICANN, PTI, and the RZM. 		
Root DNSSEC Key Management	<ul style="list-style-type: none"> • PTI shall be responsible for the management of the root zone Key Signing Key (KSK), including generation, publication, and use for signing the Root Keyset. 	C.2.9.2.f	
.INT TLD	<ul style="list-style-type: none"> • PTI shall operate the .INT TLD within the current registration policies for the TLD. • If ICANN designates a successor registry, PTI will facilitate a smooth transition. 	C.2.9.4	
Inspection Of All Deliverables And Reports Before Publication	<ul style="list-style-type: none"> • [ICANN] will perform final inspection and acceptance of all deliverables and reports, including those articulated as Contractor Requirements in the NTIA-ICANN Contract. 	C.2.11	
PTI To Provide Qualified Program Manager	<ul style="list-style-type: none"> • PTI shall provide trained, knowledgeable technical personnel with excellent oral and written communication skills (i.e., the capability to converse fluently, communicate effectively, and write intelligibly in the English language). • PTI's IANA Functions Program Manager organizes, plans, directs, staffs, and coordinates the overall program effort; manages contract and subcontract activities as the authorized interface with ICANN, including CSC, and the IFRT and is responsible for the following: 	C.2.12.a	

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	<ul style="list-style-type: none"> ○ Shall be responsible for the overall ICANN-PTI Contract performance and shall not serve in any other capacity under the ICANN-PTI Contract. ○ Shall have demonstrated communications skills with all levels of management. ○ Shall meet and confer with ICANN regarding the status of specific PTI activities and problems, issues, or conflicts requiring resolution. ○ Shall be capable of negotiating and making binding decisions for PTI within his or her scope of delegated authority. ○ Shall have extensive experience and proven expertise in managing similar multi-task contracts of this type and complexity. 		
Key Personnel	<ul style="list-style-type: none"> ● In addition to the Qualified Program Manager, PTI shall assign to the ICANN-PTI Contract the following key personnel: <ul style="list-style-type: none"> ○ IANA Functions Program Manager ○ IANA Function Liaison for Root Zone Management 	C.2.12.b	
Changes to Key Personnel	<ul style="list-style-type: none"> ● PTI shall obtain PTI Board consent prior to making key personnel substitutions. ● Replacements for key personnel must possess qualifications equal to or exceeding the qualifications of the personnel being replaced, unless an exception is approved. ● Requests for changes in key personnel shall be submitted to the PTI Board at least 15 working days prior to making any permanent substitutions. The request should contain a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the PTI Board. The PTI Board will notify PTI within 10 working days after receipt of all required information of the decision on substitutions. 	H.8	

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
Budget Meetings; Funding	ICANN will meet [annually] with the [President of PTI] to review and approve the budget for the IANA Naming Services for the next [three] years. ICANN shall fund PTI at agreed budget levels.		
TRANSPARENCY OF DECISION-MAKING	<p>To enhance consistency, predictability and integrity in decision-making of IANA related decisions, PTI shall:</p> <ul style="list-style-type: none"> • Continue the current practice of public reporting on naming related decisions. • Make public all recommendations by PTI on naming related decisions. • Agree not to redact any PTI Board minutes related to naming decisions. • Have the President and PTI Board Chair sign an annual attestation that it has complied with the above provisions. • ICANN shall provide PTI a budget sufficient to allow it to hire independent legal counsel to provide advice on the interpretation of existing naming related policy. • These provisions regarding reporting and transparency, along with the availability of independent legal advice, are intended to discourage decisions that may not be fully supported by existing policy. 		
SECURITY REQUIREMENTS	Retain from current ICANN-NTIA Contract.	C.3	
PERFORMANCE METRIC REQUIREMENTS			
Program Reviews and Site Visits	<ul style="list-style-type: none"> • Program Reviews shall be conducted monthly by CSC and ICANN. • Site Visits shall be conducted on-demand by the IFRT. 	C.4.1	Annex F
Monthly Performance Progress Report	<ul style="list-style-type: none"> • PTI shall prepare and submit to the CSC and ICANN a performance progress report every month (no later than 15 calendar days following the end of each month) that contains statistical and narrative information on the performance of the IANA 	C.4.2	Annex F

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	<p>functions (i.e., assignment of technical protocol parameters; administrative functions associated with root zone management; and allocation of Internet numbering resources) during the previous calendar month.</p> <ul style="list-style-type: none"> The report shall include a narrative summary of the work performed for each of the functions with appropriate details and particularity. The report shall also describe major events, problems encountered, and any projected significant changes, if any, related to the performance of requirements set forth in C.2.9 to C.2.9.4 of the ICANN-NTIA Contract. 		
Root Zone Management dashboard	<ul style="list-style-type: none"> PTI shall work collaboratively with ICANN and the RZM, and all Interested and Affected Parties, to maintain and enhance the dashboard to track the process flow for root zone management. 	C.4.3	
Performance Standards Reports	<ul style="list-style-type: none"> PTI shall publish reports for each discrete IANA function consistent with Section C.2.8 of the ICANN-NTIA Contract. 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). 	C.4.4	
Customer Service Survey	<ul style="list-style-type: none"> PTI shall collaborate with the CSC and ICANN to maintain and enhance the annual customer service survey consistent with the performance standards for each of the discrete IANA functions. The survey shall include a feedback section for each discrete IANA function. No later than 30 days after conducting the survey, PTI shall submit the CSS Report to ICANN and publicly post the CSS Report. 	C.4.5	Annex F
Final Report	<ul style="list-style-type: none"> PTI shall prepare and submit a final report on the performance of the IANA functions that documents standard operating procedures, including a description of the techniques, methods, software, and tools 	C.4.6	

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	employed in the performance of the IANA functions. PTI shall submit the report to the CSC and ICANN no later than 30 days after expiration of the ICANN-PTI Contract.		
Inspection and acceptance	<ul style="list-style-type: none"> The CSC and ICANN will perform final inspection and acceptance of all deliverables and reports articulated in Section C.4 of the ICANN-NTIA Contract. 	C.4	
AUDIT REQUIREMENTS / IANA FUNCTION REVIEW & IFRT	<ul style="list-style-type: none"> Retain provisions from current ICANN-NTIA Contract, except that ICANN is the CO and COR. PTI shall submit to the procedures and scope of the IFR and CSC as set forth in ICANN governance documents. PTI agrees to make any necessary changes, including amendment to the ICANN-PTI Contract, as adopted and implemented by ICANN following an IFR. 	C.5	Annex F
CONFLICT OF INTEREST REQUIREMENTS	Retain provisions from current ICANN-NTIA.	C.6, H.9	
PERFORMANCE EXCLUSIONS			
PTI not authorized to make changes to Root Zone; link to VeriSign Cooperative Agreement	PTI not authorized to make modifications, additions, or deletions to the root zone file or associated information. (The ICANN-PTI Contract will not alter the root zone file responsibilities as set forth in Amendment 11 of the [Cooperative Agreement NCR-9218742 between the U.S. Department of Commerce and VeriSign, Inc. or any successor entity]). See Amendment 11 at http://ntia.doc.gov/files/ntia/publications/amend11_052206.pdf .	C.8.1	
PTI not to change policies and procedures or methods	PTI not authorized to make material changes in the policies and procedures developed by the relevant entities associated with the performance of the IANA functions. PTI shall not change the established methods associated with the performance of the IANA functions without prior approval of ICANN.	C.8.2	
Relationship to other	The performance of the functions under the	C.8.3	

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
contracts	ICANN-PTI Contract, including the development of recommendations in connection with Section C.2.9.2 of the ICANN-NTIA Contract, shall not be, in any manner, predicated or conditioned on the existence or entry into any contract, agreement or negotiation between PTI and any party requesting such changes or any other third-party. Compliance with this Section must be consistent with C.2.9.2d of the ICANN-NTIA Contract.	(which cross-references C.2.9.2)	
Baseline Requirements for DNSSEC in the Authoritative Root Zone	DNSSEC at the authoritative Root Zone requires cooperation and collaboration between the root zone management partners and ICANN. The baseline requirements encompass the responsibilities and requirements for both PTI and the RZM, to be retained as set forth in Appendix 2 to the ICANN-NTIA Contract.	Appendix 2	
INSPECTION AND ACCEPTANCE	ICANN will perform representative final inspection and acceptance of all work performed, written communications regardless of form, reports, and other services and deliverables related to Section C prior to any publication/posting called for by the ICANN-PTI Contract. Any deficiencies shall be corrected by PTI and resubmitted to ICANN within 10 workdays after notification.	E	
INTELLECTUAL PROPERTY			
Trademarks	[ICANN will grants PTI an exclusive, royalty-free, fully-paid, worldwide license to use the IANA trademark and all related trademarks in connection with PTI's activities under the ICANN-PTI Contract.]		
Patents, Inventions, Copyrights, Copyrightable Works and Trade Secrets	<p>ICANN shall own all intellectual property conceived, reduced to practice, created or otherwise developed by PTI under the Contract.</p> <p>PTI shall assign, and shall cause any employees or contractors to assign, all rights in any patentable subject matter, patent applications, copyrights, trade secrets and all other intellectual property created by the PTI during the course of PTI's duties under the ICANN-PTI Contract to ICANN.</p> <p>With respect to copyright, the ICANN-PTI Contract is a "work for hire" agreement and ICANN shall be deemed the author and shall own all copyrightable</p>	H.2	

PROVISION	SUMMARY OF KEY TERMS	Current IANA Contract Section	Final Proposal Section
	<p>works created by PTI hereunder, and all copyright rights thereto. In the event this is not deemed a work for hire agreement, PTI shall assign ownership of the copyrightable works and copyrights to ICANN.</p> <p>ICANN shall license back any patents, patent applications, copyrights and trade secrets to PTI for the duration of the ICANN-PTI Contract solely to the extent necessary for PTI to perform its obligations under the ICANN-PTI Contract. This license shall be non-exclusive and royalty-free.</p>		
CONFIDENTIALITY AND DATA PROTECTION	The ICANN-PTI Contract will contain reasonable and customary provisions relating to confidentiality and data protection.	H.10	
INDEMNIFICATION	[ICANN shall indemnify, defend and hold harmless PTI from all claims arising from PTI's performance or failure to perform under the ICANN-PTI Contract.]	H.13	