

## **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 [PTI], a California nonprofit public benefit corporation (the “**PTI**”), and shall be effective as of the last date on which each of the conditions set forth in Section 1 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 key Internet domain name functions to the global multi-stakeholder community, PTI will perform the IANA functions on behalf of ICANN; and

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

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 in any material respect 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 in any material respect 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, if ICANN is making similar changes in performing, or is similarly suspending or terminating, similar services for itself.

Section 3.4 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 3.5 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 will provide adequate office space and related facilities to enable PTI to perform the IANA functions 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 5.1.

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.

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

Section 5.1 Costs. The costs and expenses to be allocated to PTI for the Services shall be the actual costs (on a fully allocated basis) incurred, and value of the resources utilized, by ICANN in connection with the provision of such Services. These costs and resources include all direct costs attributable to personnel (including personnel time), materials and supplies, and third-party services and programs incurred in rendering the Services, and any specifically-identifiable indirect costs (including Facilities costs) that relate to the aforesaid costs. ICANN shall provide PTI with a quarterly invoice detailing the Services provided hereunder and the reimbursement amounts payable pursuant to the preceding sentence. Payment for the services shall be due and payable on the thirtieth day following receipt of the invoice therefor.

Section 5.2 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 5.3 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 5.4 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 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.

(b) 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 5.2, 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.

### Section 6.3 Employee Transition.

(a) Prior to the third anniversary of the Effective Date, ICANN will 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 functions that PTI is performing on ICANN’s behalf. Following the date that PTI implements these benefits, systems and processes (“**Employee Transition Date**”), (i) ICANN will 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. 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 will 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.

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

Section 8.1 Term. This Agreement shall be for a term beginning on the Effective Date and shall remain in effect thereafter until terminated pursuant to Section 8.2.

Section 8.2 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, provided that, if PTI is 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) at the time such written notice is provided by ICANN pursuant to this Section 8.2(b), and for long as PTI remains an affiliate of ICANN, such termination shall not be effective until such time as PTI has obtained alternative services for the Services; or
- (c) 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, however, that (i) such breach has not been waived by the terminating Party; and (ii) such breach has not been cured within 30 days following the terminating Party's written notice of such breach; and provided, further, that if such breach cannot reasonably be cured within 30 days and the

breaching Party is diligently proceeding to cure such breach, this Agreement may not be terminated pursuant to this subsection (c).

Section 8.3 Survival. Upon the expiration or termination of this Agreement under this Article VIII, 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: Sections 3.4, 3.5 and 8.3, and Articles VII and IX.

#### **ARTICLE IX: MISCELLANEOUS**

Section 9.1 Notices. All notices to be given under or in relation to this Agreement will 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:

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

Any notice required by this Agreement will 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 will work together to implement such notice means under this Agreement.

Section 9.2 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 9.3 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 9.4 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 9.5 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.

Section 9.6 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.

Section 9.7 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 9.8 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, the termination of employment of any employee or other labor trouble, 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 use commercially reasonable efforts to (a) resume performance of its obligations under this Agreement as soon as reasonably practical; and (b) pending such resumption, to facilitate any commercially reasonable efforts that PTI may make to procure alternative services.

Section 9.9 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 9.10 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 9.11 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 9.12 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one single agreement between the Parties.

Section 9.13 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 9.14 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 9.15 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 9.16 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]

Discussion Draft as of 12 August, 2016.

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.
Audit	Management of the external 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 will assign a Treasurer and Secretary to PTI and will 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 will 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.

Service	Description
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.
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; and maintain necessary policies and software to facilitate the security of PTI's computer systems.
Insurance Administration	Administration and oversight of the procurement and maintenance of the company-placed insurance programs, including property, cargo, general liability, professional liability, auto 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.
Security	Security services, including investigations, and facilities security infrastructure.

Service	Description
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.
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).