

## IANA NAMING FUNCTION AGREEMENT

This IANA Naming Function 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 “**Contractor**”) and is effective as of the last date on which all of the conditions set out in Section 1 have been satisfied (the “**Effective Date**”). ICANN and Contractor may each be referred to individually as a “**Party**” and collectively as the “**Parties.**”

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

WHEREAS, [\_\_];

WHEREAS, ICANN and Contractor desire to enter into this Agreement pursuant to which Contractor will ~~perform~~serve as the IANA functions operator for the naming function ~~in order to ensure the continuity of root operations~~ after the Transition.<sup>1, 2</sup>

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

### **ARTICLE I: CONDITIONS PRECEDENT**

#### Section 1.1 Condition Precedent

This Agreement shall be effective as of the last date on which the following conditions have been satisfied: (i) ICANN is released from its obligations [to coordinate root zone management as currently performed by the National Telecommunications and Information Administration, United States Department of Commerce (“**DOC**”), as may be added to or modified by the DOC and ICANN, pursuant to its contract with the DOC, effective as of 01 October 2012 (including any extension thereof)]<sup>3</sup> (the “**IANA Naming Function**”) and (ii) ICANN has accepted the responsibility to perform the IANA Naming Function.<sup>4</sup>

<sup>1</sup> [Note to ICANN – See Paragraph 97 of the CWG Proposal.](#)

<sup>2</sup> [Note to CWG – Discuss proper scope.](#)

<sup>3</sup> [Note to CWG – Discuss proper scope.](#)

<sup>4</sup> [Note to ICANN – Consider adding a second step between clauses \(i\) and \(ii\) above to make it clear that stewardship has transferred from DOC to the multi-stakeholder community. Otherwise, the plain language is somewhat confusing because ICANN is released from the IANA Naming Function responsibilities in clause \(i\), and then accepts that responsibility in clause \(ii\).](#)

## ARTICLE II: REPRESENTATIONS AND WARRANTIES

Section 2.1 ICANN's Warranties. ICANN represents and warrants that (i) it has all necessary rights and powers to enter into and perform its obligations under this Agreement, and (ii) the execution, delivery and performance of this Agreement by ICANN has been duly authorized by all necessary corporate action.<sup>5</sup>

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

## ARTICLE III: SERVICES AND REQUIREMENTS<sup>6</sup>

Section 3.1 U.S. Presence<sup>47</sup>

Section 3.2 Performance of IANA Functions.<sup>28</sup>

Section 3.3 Separation of Policy Development and Operational Roles<sup>9</sup>

Section 3.4 Transparency and Accountability.<sup>310</sup>

Section 3.5 Responsibility and Respect for Stakeholders.<sup>411</sup>

Section 3.6 [.INT TLD]<sup>512 13]6</sup>

<sup>5</sup> Note to ICANN – Adding a heading to make clear that ICANN has obtained all other third party approvals, and consents to enter into this Agreement, and that entering into this Agreement will not trigger a breach or acceleration of rights in favor of a third party. Basically a “Consents” and “No Breach” clause.

<sup>6</sup> Note to ICANN – Per Paragraph 97 of the CWG Proposal, ICANN shall grant PTI the rights and obligations to serve as the IANA Functions Operator (IFO) for the IANA Naming Functions. There should be sections added at the beginning of Article III with a clear appointment of PTI and grant of rights from ICANN. There should also be a description of the services to be provided by PTI and a reference to the SOW.

<sup>47</sup> C.2.1

<sup>28</sup> C.2.4

<sup>9</sup> C.2.5

<sup>310</sup> C.2.6

<sup>411</sup> C.2.7

<sup>5</sup> ~~C.2.9.4~~<sup>12</sup> Need to determine whether .INT should be included in this Agreement.

<sup>13</sup> C.2.9.4 Note to ICANN – Annex A of the CWG Proposal states: “The CWG-Stewardship has considered the .INT domain, and concluded that provided there is no policy change under .INT done by ICANN/IANA the CWG-Stewardship does not see any need for changes in the management of the .INT domain in conjunction with the transition. Future administration of the .INT domain should be subject to review post transition.”

<sup>6</sup> ~~Need to determine whether .INT should be included in this Agreement.~~

Section 3.7 ~~Contractor To Provide~~ Qualified Program Manager<sup>714</sup>

Section 3.8 Key Personnel<sup>15</sup>

~~Section 3.9 Inspection Of All Deliverables And Reports Before Publication<sup>8</sup>~~

Section 3.9 Changes to Key Personnel.<sup>16</sup>

Section 3.10 Inspection and Acceptance<sup>17</sup>

#### ARTICLE IV: PERFORMANCE

Section 4.1 Constructive Working Relationship<sup>918</sup>

Section 4.2 Continuity of Operations<sup>1019, 1120, 1221</sup>

a. Continuity of Operations (COP)

b. Contingency and Continuity of Operations Plan (the CCOP)

c. Transition to Successor Contractor

Section 4.3 ~~1322~~ [Performance Exclusions<sup>1423</sup>]

#### ARTICLE V: TRANSPARENCY OF DECISION-MAKING

Section 5.1 Transparency.

#### ARTICLE VI: AUDITS, MONITORING AND REVIEWS

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<sup>714</sup> C.2.12.a

<sup>15</sup> C.2.12.b

~~8-E~~

<sup>16</sup> Annex S of CWG Proposal

<sup>17</sup> E

<sup>918</sup> C.1.3

<sup>1019</sup> C.7.1

<sup>1120</sup> C.7.2

<sup>1221</sup> C.7.3. See also paragraph 145 of the CWG Proposal.

<sup>1322</sup> Consider applicability of this provision post-Transition.

<sup>1423</sup> C.8

Section 6.1 Audits<sup>15\_16\_17\_18</sup>~~24~~

d. Audit Data<sup>25</sup>

e. Root Zone Management Audit Data<sup>26</sup>

f. External Auditor<sup>27</sup>

g. Inspections and Acceptance<sup>28</sup>

Section 6.2 Performance Monitoring<sup>19</sup>~~29~~

Section 6.3 IANA Naming Function Reviews<sup>29</sup>~~30~~

### ARTICLE VII: CONFLICT OF INTEREST REQUIREMENTS<sup>31</sup>

### ARTICLE VIII: ~~ARTICLE VII:~~ ESCALATION MECHANISMS<sup>24</sup>~~32~~

Section 8.1 ~~Section 7.1~~ IANA Customer Service Complaint Resolution Process<sup>22</sup>~~33~~

Section 8.2 ~~Section 7.2~~ IANA Problem Resolution Process. <sup>23</sup>~~34~~

~~<sup>15</sup> C.5.1~~

~~<sup>16</sup> C.5.2~~

~~<sup>17</sup> C.5.3~~

~~<sup>18</sup> C.5.4~~<sup>24</sup> Paragraph 163 of the CWG Proposal: “In addition to any statutory requirements, it is the view of the CWG that an independent financial audit of PTI’s financial statements must also be required.” See also Section C.5.3 of the NTIA Contract.

<sup>25</sup> C.5.1

<sup>26</sup> C.5.2

<sup>27</sup> C.5.3

<sup>28</sup> C.5.4

<sup>19</sup>~~29~~ Annex S of CWG Proposal; Section 16.3(a)(v) of the ICANN Bylaws. **Note to ICANN – This section should set forth the role and responsibilities of the CSC.**

~~<sup>20</sup> Annex~~<sup>30</sup> Annexes F and S of CWG Proposal

<sup>31</sup> C.6.1 – C.6.2.5; H.9

<sup>21</sup>~~32~~ Annex S of CWG Proposal

<sup>22</sup>~~33~~ In addition to full escalation path, need to tie to IRP process in ICANN Bylaws.

<sup>23</sup>~~34~~ Consider handling section in CSC Charter and not in PTI Bylaws. **Note to ICANN – We recommend including in the contract. Note that Section 18.12(a)(ii) of the draft ICANN Bylaws states that there will be an IANA Problem Resolution Process set forth in the IANA Naming Function Contract.**

[Section 8.3](#) [Independent Review Process](#).<sup>35</sup>

**ARTICLE IX:~~ARTICLE VIII:~~ TERM; RENEWAL; TRANSITION AND TERMINATION**<sup>2436</sup>

[Section 9.1](#) ~~Section 8.1~~ [Initial Term; Renewal](#)

[Section 9.2](#) ~~Section 8.2~~ [Renewal](#)<sup>37</sup>

- (i) [SCWG Recommendation]
- (ii) [Other termination]

[Section 9.3](#) ~~Section 8.3~~ [Transition and Termination](#)

- (a) [Insertion of Transition Process]
- (b) Commitment to Not Interfere With Staff Transfer.
- (c) [Termination.](#)

[Section 9.4](#) ~~Section 8.4~~ [Survival of Terms](#)

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

[Section 10.1](#) ~~Section 9.1~~ [Resources and Fees](#)<sup>2538, 2639</sup>

[Section 10.2](#) ~~Section 9.2~~ [Budget](#)<sup>2740</sup>

<sup>35</sup> [Note to ICANN – This section shall address the availability of the IRP as a point of escalation for claims regarding PTI service complaints by direct customers of the IANA naming functions that are not resolved through mediation, per Section 4.3\(b\)\(iii\)\(C\) of the ICANN Bylaws. See also Sections 4.3\(a\)\(v\), 4.3\(i\)\(v\), and 4.3\(b\)\(iii\)\(B\) of the CWG Proposal.](#)

<sup>2436</sup> F.2

<sup>37</sup> [Note to ICANN – Paragraph 110 of the CWG proposal states: “The contract will provide for automatic renewal, subject to potential non-renewal by ICANN if recommended by the IANA Function Review”](#)

<sup>2538</sup> Revised requirement C.2.2. [Note to ICANN - Clarify the substantive ways in which Section C.2.2 of the current NTIA contract would be revised.](#)

<sup>2639</sup> Annex S of CWG Proposal; Section 16.3(a)(vi) of ICANN Bylaws.

<sup>2740</sup> Section 22.4(b)(i) of the ICANN Bylaws. [Note to ICANN - This section to include the requirements related to ICANN funding of PTI, per Section 16.3\(a\)\(x\) of the ICANN Bylaws. See also Annex Q and Paragraphs 106, 109, 145, 161-163, and 194 of the CWG Proposal.](#)

ARTICLE XI:~~ARTICLE X:~~ SECURITY REQUIREMENTS<sup>2841</sup>

Section 11.1 ~~Section 10.1~~ Secure Systems.

Section 11.2 ~~Section 10.2~~ Notification Systems.

Section 11.3 ~~Section 10.3~~ Data.

Section 11.4 ~~Section 10.4~~ Security Plan.

Section 11.5 ~~Section 10.5~~ Director of Security.

ARTICLE XII:~~ARTICLE XI:~~ INTELLECTUAL PROPERTY<sup>2942</sup>

Section 12.1 ~~Section 11.1~~ Ownership.

Section 12.2 ~~Section 11.2~~ Assignment.

Section 12.3 ~~Section 11.3~~ Work for Hire.

Section 12.4 ~~Section 11.4~~ License.

Section 12.5 IP Enforcement and Defense.

ARTICLE XIII:~~ARTICLE XII:~~ CONFIDENTIALITY AND DATA PROTECTION<sup>3043</sup>

Section 13.1 ~~Section 12.1~~ Confidentiality.

Section 13.2 ~~Section 12.2~~ Consent.

Section 13.3 Disclosure.

Section 13.4 Requests for Information.<sup>44</sup>

<sup>2841</sup> C.3

<sup>29</sup> ~~Annex S~~<sup>42</sup> Note to ICANN – This section to reflect the understanding agreed to at the CWG IANA Meeting #75 (January 21, 2016) and Section H.2 of the NTIA contract as applicable. Note that H.2 differs significantly from Annex S of the CWG Proposal.

<sup>3043</sup> H.10

<sup>44</sup> Note to ICANN – This section to include the concept that any person or entity materially affected by a decision or action of PTI may request documents and information reasonably related to any such decision or action, except that PTI may redact such documents and information to the extent that such documents or information: (i) relate to confidential personnel matters, (ii) are covered by attorney-client privilege, work product doctrine or other recognized legal privilege, (iii) are subject to a legal obligation that PTI maintain its confidentiality, (iv) would disclose trade secrets, or (v) would present a material risk of negative impact to the security, stability or resiliency of the Internet. In the case of any redaction, PTI will provide the requestor a written rationale for such redaction.

ARTICLE XIV:~~ARTICLE XIII-~~ INDEMNIFICATION<sup>3145</sup>

Section 14.1 ~~Section 13.1~~ Indemnification by ICANN.<sup>3246</sup>

Section 14.2 ~~Section 13.2~~ Indemnification by Contractor.<sup>3347</sup>

ARTICLE XV:~~ARTICLE XIV-~~ MISCELLANEOUS

Section 15.1 ~~Section 14.1~~ Notices.

Section 15.2 ~~Section 14.2~~ Amendments and Waiver.<sup>48</sup>

Section 15.3 ~~Section 14.3~~ Severability.

Section 15.4 ~~Section 14.4~~ [Change Control Process.]<sup>3449</sup>

Section 15.5 ~~Section 14.5~~ Assignment and Subcontracting.<sup>50</sup>

Section 15.6 ~~Section 14.6~~ Relationship of Parties.

Section 15.7 ~~Section 14.7~~ Governing Law.

Section 15.8 ~~Section 14.8~~ Third-Party Beneficiaries.<sup>51</sup>

Section 15.9 ~~Section 14.9~~ English Version.

Section 15.10 ~~Section 14.10~~ Savings Clause.

Section 15.11 Further Assurances.

Section 15.12 ~~Section 14.11~~ Cumulative Remedies.

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<sup>3145</sup> H.13

<sup>3246</sup> Note that Annex S provides “ICANN shall indemnify, defend and hold harmless Contractor from all claims arising from Contractor’s performance or failure to perform under the ICANN-Contractor Contract”.

<sup>3347</sup> Note that Annex S provides “ICANN shall indemnify, defend and hold harmless Contractor from all claims arising from Contractor’s performance or failure to perform under the ICANN-Contractor Contract”.

<sup>48</sup> See Section 18.6 of the ICANN Bylaws.

<sup>3449</sup> For more streamlined SLA revision.

<sup>50</sup> Note to ICANN – Subcontracting shall be prohibited. Section 16.3(a)(vii) of ICANN Bylaws. PTI may not assign without ICANN’s prior written consent. Section C.2.1 of the NTIA contract.

<sup>51</sup> Note to ICANN – IANA customers, including the Empowered Community and the operators of TLDs, should be made third party beneficiaries to the contract.

| [Section 15.13](#) ~~Section 14.12~~ Counterparts.

| [Section 15.14](#) ~~Section 14.13~~ Headings.

| [Section 15.15](#) ~~Section 14.14~~ Entire Agreement.

[Signature Page Follows]





## **ANNEX A: STATEMENT OF WORK<sup>52</sup>**

1. IANA Naming Functions<sup>35, 36, 53</sup>
  - a. [INSERT SERVICE LEVELS and performance standards]<sup>54 55</sup>
  - ~~b. Operate ARPA TLD~~
  - b. Coordinate the Assignment of Technical Protocol Parameters including the management of the Address and Routing Parameter Area (ARPA)<sup>56</sup> TLD
  - c. Facilitate and coordinate root zone of DNS<sup>37, 57</sup>
    - i. Root Zone File Change Request Management
    - ii. Root Zone “WHOIS” Change Request and Database Management
    - iii. Delegation and Redefinition of a Country Code Top Level-Domain (ccTLD)<sup>58</sup>
    - iv. Retirement of a Country Code Top Level Domain
    - v. Delegation and Redefinition of a Generic Top Level Domain (gTLD)<sup>59</sup>
    - vi. Root Zone Automation

<sup>52</sup> Note to CWG – Who does CWG intend will draft the SOW? The CWG proposal itself does not specify.

~~<sup>35</sup> C.2.9~~

~~<sup>36, 53</sup> C.2.8, 2.9~~

<sup>54</sup> Note to ICANN – Section III.A of the CWG Proposal states that the ICANN and PTI contract will include service level agreements for the naming functions. Paragraph 134 of the CWG Proposal states that the performance standards under the current NTIA and ICANN Contract are inadequate, so the customers should re-evaluate the current minimum acceptable service levels, reporting requirements and breach levels. See also Paragraphs 136 and 137 and Annex H of the CWG Proposal.

<sup>55</sup> C.2.8

<sup>56</sup> C.2.9.1

~~<sup>37, 57</sup> C.2.9.2~~

<sup>58</sup> See also Sections 7 and 8 of Annex C of the CWG Proposal.

<sup>59</sup> See Sections 7 and 8 of Annex C of the CWG Proposal.

vii. [Root Domain Name System Security Extensions \(DNSSEC\) Key Management](#)

viii. [Customer Service Complaint Resolution Process \(CSCR\)](#)

ix. [Non-Discrimination; No Additional Requirements](#)<sup>60</sup>

2. Performance Metric Requirements<sup>3861</sup>

- a. Program Reviews and Site Visits
- b. Monthly Performance Progress Report
- c. [Root Zone Management Dashboard](#)
- d. ~~e.~~ Performance Standards Reports
- e. ~~d.~~ Customer Service Survey
- f. ~~e.~~ Final Report.
- g. ~~f.~~ Inspection and acceptance

3. Baseline Requirements For DNSSEC In The Authoritative Root Zone<sup>3962</sup>

- a. DNSSEC at the authoritative Root Zone requires cooperation and collaboration
- b. General Requirements
- c. Security Authorization and Management Policy
- d. IT Access Control
- e. Security Training
- f. Audit and Accountability Procedures
- g. Physical Protection Requirements
- h. All Components

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<sup>60</sup> [See Sections 7 and 8 of Annex C of the CWG Proposal.](#)

<sup>3861</sup> C.4

<sup>3962</sup> Appendix 2

| [i. Root Zone Key Signing Key \(KSK\) Holder](#)

| [j. RZ KSK Public Key Distribution](#)

| [k. RZ Zone Signing Key \(RZ ZSK\) Holder](#)

| [l. ~~i~~-Transition Planning](#)

| [m. Personnel Security Requirements](#)

| [n. Root Zone Maintainer Basic Requirements](#)

| [o. ~~j~~-IANA Functions Operator Interface Basic Functionality](#)

| [p. Root Zone Management Requirements](#)

**ANNEX B: SERVICE LEVEL AGREEMENTS FOR THE DELIVERY OF NAMING SERVICES**

<b>Summary report:</b>	
<b>Litéra® Change-Pro TDC 7.5.0.176 Document comparison done on 5/26/2016 6:26:29 PM</b>	
<b>Style name:</b> Sidley Default	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://SIDLEYDMS/ACTIVE/214827151/1	
<b>Description:</b> ICANN - IANA Naming Function Agreement-HEADINGS, ICANN Draft	
<b>Modified DMS:</b> iw://SIDLEYDMS/ACTIVE/214827151/9	
<b>Description:</b> ICANN - IANA Naming Function Agreement-HEADINGS, Sidley Comments, May 26	
<b>Changes:</b>	
<a href="#">Add</a>	270
<del>Delete</del>	143
<del>Move From</del>	1
<del>Move To</del>	1
<del>Table Insert</del>	0
<del>Table Delete</del>	0
<del>Table moves to</del>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>415</b>