

MEMORANDUM

TO: [Cross-Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions \(“CWG”\)](#)

FROM: [Sidley Austin LLP \(“Sidley”\)](#)

RE: [Term Sheet – ICANN-PTI Contract](#)

DATE: [May 18, 2015](#)

IANA Functions Contract between ICANN and the NTIA

~~The~~Under the current CWG draft proposal, the IANA Functions Contract between ICANN and the NTIA ~~would~~(the “ICANN-NTIA Contract”) will be replaced by a contract between ICANN and ~~Contract Co~~Post-Transition IANA (“PTI”). As a general matter, the provisions of the agreement setting forth the performance requirements of ICANN and ~~IANA~~PTI would be retained. ~~(A number of these continuing provisions have been referred to above.) In contrast,~~with ICANN essentially assuming the role of the NTIA. However, provisions unique to contracting with the United States Government would not be retained.

This proposed term sheet prepared by Sidley is based upon the term sheet contained in the Public Consultation on Draft Transition Proposal, dated December 1, 2014, with updates to accommodate the iterative process that CWG has undertaken to respond to prior public comments and further analysis.

~~The CWG will create a~~This proposed term sheet ~~with~~sets forth the key provisions required to be in the ~~first~~initial contract between ICANN and ~~Contract Co.~~A high level summary of many key provisions under consideration can be found in Annex 5 to this document. The CWG or the MRT will be responsible for drafting the first post transition IANA Functions Contract based on these key provisions. The Contract Co., at the direction of the MRT, will be responsible for entering into the post transition IANA Functions Contract. Future (post-transition) revisions to and evolution of the contract, when and where appropriate, will be the responsibility of the MRT.PTI (the “ICANN-PTI Contract” or “Contract”). In drafting this term sheet, we assumed the current CWG model, under which PTI would be formed as a separate legal entity and an affiliate or controlled subsidiary of ICANN (depending on the final form of entity of PTI selected).

It is anticipated that this initial proposed term sheet will be further revised after review and consideration by CWG, and to consider the feedback and public comment on the Second Draft Proposal circulated in April 2015.

The contract will be for a limited duration, the length of which is still under consideration by the CWG. The CWG is also considering whether a rebidding (RFP) process will be mandatory when the contract expires or is terminated, or if this will be left to the MRT to decide at that time.

PROPOSED KEY TERMS FOR POST-TRANSITION IANA/ICANN-PTI CONTRACT

- All terms are subject to further review and discussion
- Terms in current IANA Contract are red
- Terms in current IANA/ICANN-PTI Contract but revised for dates or, for change in parties from NTIA to the ICANN-NTIA Contract, or for other non-substantive revisions are in blue
- Terms in current IANA Contract but more significantly revised are in purple
- New terms are in or substantive changes to existing terms are in black
- Terms in [square brackets] are placeholders only
- Terms connected by "or" are alternatives
- TBD means To Be Determined

Note to CWG: Since the contract dates and parties will be universally changed in the ICANN-PTI Contract, we think it is appropriate to merge "red" terms into the "blue" category.

Note to CWG: We have also merged terms previously labeled "purple" into the "black" category to further simplify the color scheme for substantive changes.

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA/ICANN-NTIA Contract	Relevant section of 2 nd Draft Proposal (April 2015)
PARTIES	<ul style="list-style-type: none"> • The Parties to this Agreement the ICANN-PTI Contract are: <ul style="list-style-type: none"> ○ ICANN ○ ICANN (ICANN, Contractor, PTI (IANA Functions Operator ○ for naming functions) "Contract Co." Any act, duty, responsibility, privilege or obligation accorded herein to Contract Co. shall be performed by the Customer Standing Committee (CSC) or the Multistakeholder Review Team (MRT), as noted below. 		III.A
DURATION		F	
Term	<ul style="list-style-type: none"> • The period of performance of this contract is: the ICANN-PTI Contract is: [October 1, 2015] – [TBD] 	F.1, 1.70	
Option Renewal Terms	<ul style="list-style-type: none"> • The MRT may extend the term of this contract by written notice to the Contractor within 15 calendar days before the expiration of the contract; provided that the MRT gives the Contractor a preliminary written notice of its intent to extend at least 30 calendar days before the contract expires. The preliminary notice does not commit the MRT to an extension. • The ICANN-PTI Contract will provide for automatic renewal, unless ICANN elects not to renew the ICANN-PTI Contract upon recommendation by the IANA Function Review Team (IFRT), with support of 	1.59, 1.70	III.A.i.a.

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA/ICA NN-NTIA Contract	Relevant section of 2 nd Draft Proposal (April 2015)
	<p>the ICANN Board.</p> <ul style="list-style-type: none"> Any ICANN election of non-renewal shall be provided with not less than <u>[] months</u> prior <u>written notice</u>, and PTI shall provide 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. If the MRT exercises this option ICANN-PTI Contract automatically renews, the extended contract shall be considered to include this option automatic renewal clause. The renewal period is <u>(TBD)</u>. The option periods are: <ul style="list-style-type: none"> Option Term I: TBD to TBD Option Term II: TBD to TBD The total duration of this contract the ICANN-PTI Contract, including the exercise of any options automatic renewal under this clause, shall not exceed <u>(TBD)</u> years.) 		
<p>Contract Extension IANA Function Review</p>	<ul style="list-style-type: none"> The MRT may require continued performance of any services within the limits of the contract. The extension option may be exercised more than once, but the total extension of performance hereunder shall not exceed <u>12</u> 	<p>1.58</p>	<p>III.A.i.d.</p>

Note to CWG: Consider having renewal term be consistent with period for IFR (i.e., every 5 years).

Note to CWG: This clause was in the prior term sheet, but we do not see a need for its inclusion here. Please advise.

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA/ICANN-NTIA Contract	Relevant section of 2 nd Draft Proposal (April 2015)
	<p>months. The MRT may exercise the option by written notice to the Contractor within 15 calendar days of expiration of the contract.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.</p> <ul style="list-style-type: none"> • 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 following an IFR. • An initial IFR shall take place two years following the transition of the IANA functions to PTI. • Subsequent IFRs shall occur every five years. • [A special review may also be initiated by the Country Code Names Supporting Organisation (ccNSO) or Generic Names Supporting Organisation (GNSO) in the event that the Customer Standing Committee (CSC) or Top-Level Domains (TLDs) raise concerns sufficient to trigger such review.] 		
<p><u>Performance Monitoring</u></p>	<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 		<p><u>III.A.i.</u></p>

Note to CWG: Consider requesting that amendments to the ICANN-PTI Contract (other than renewal and extension in accordance with its terms) require Member approval.

Note to CWG: To be discussed. The punch list notes that the special review should only be triggered after the CSC first takes remedial action procedures and then refers the matter to ccNSO/GNSO for approval.

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA/ICANN-NTIA Contract	Relevant section of 2 nd Draft Proposal (April 2015)
	<p>escalation mechanics set 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 to the ccNSO and/or GNSO. The ccNSO and GNSO will be responsible for developing their own procedures, which will be done post-transition. 		
<p>TERMINATION FOR CAUSE; ESCALATION MECHANISMS (IANA Customer Service Complaint Resolution Process)</p>	<ul style="list-style-type: none"> In the event of a material breach by Contractor of any provision of this agreement, the MRT may provide written notice of breach to Contractor. Email notice shall constitute written notice. Phase 1: If anyone experiences an issue with PTI's delivery of IANA naming functions, the complainant can send an email to PTI who will escalate the complaint internally as required. This process is open to anyone, including individuals, ccTLD regional organizations and ICANN SO/ACs. Within Phase 2 workdays after receipt of the breach notice, the primary contacts for the MRT and Contractor shall meet and discuss the resolution of such breach. Within 5 workdays after receipt, Contractor shall provide a written resolution plan to the MRT, for the MRT's approval within 5 workdays of receiving the resolution plan, approval not to be unreasonably withheld. Upon approval, Contractor shall work diligently to resolve the breach within 30 days of MRT's approval of the resolution plan. If the issue is not addressed, then direct customers only may request mediation. ICANN and CSC is notified of the issue and CSC reviews 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 		<p><u>III.A.ii.c./Annex I</u></p>

Note to CWG: We revised in accordance with III.A.ii.c. and relevant annexes. The annexes are quite detailed, so we attempted to provide only a high-level summary here.

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA/ICA NN-NTIA Contract	Relevant section of 2 nd Draft Proposal (April 2015)
	<p><u>review process if the issue is not addressed.</u></p> <ul style="list-style-type: none"> Further details of the escalation mechanism may be found in [Final Report]. If Contractor is unable to resolve the breach on a timely basis to the MRT's reasonable satisfaction, or if the MRT and the Contractor are unable to reach a resolution plan on a timely basis, senior management of Contractor and the MRT shall meet to resolve the breach. If Contractor and MRT are unable to resolve the breach, MRT may terminate the agreement by written notice, effective immediately upon receipt by Contractor. However, MRT may require Contractor to perform all of its duties and obligations under the Agreement for up to 1 year, so that the MRT may identify and enter into an agreement with a new party as contractor for the performance of the IANA Functions. If Contractor files for bankruptcy or is deemed insolvent, Contracting Entity may terminate this agreement immediately upon written notice to Contractor. 		
<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 action. If CSC determines that the remedial action has 		<p>III.A.ii.c./ Annex J</p>

Note to CWG: Placeholder for cross-reference to the Final Report, or other appropriate documentation.

Note to CWG: Should ICANN be able to initiate a Remedial Action Plan outside of CSC review as well? It is the contracting party.

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA/ICANN-NTIA Contract	Relevant section of 2 nd Draft Proposal (April 2015)
	<u>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 determined post-transition.</u>		
ESCALATION MECHANISMS (Root Zone Emergency Process)	<u>(Retain provisions from current ICANN-NTIA Contract.)</u>		III.A.ii.c./Annex K
ESCALATION MECHANISMS (Separation Review)	<ul style="list-style-type: none"> A separation review can be triggered by IFRT in accordance with the 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.ii.d.
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.ii.e.
COST/PRICE	<ul style="list-style-type: none"> No charge to Contracting Entity ICANN. Contractor PTI may establish and collect fair and reasonable fees from third parties, subject to the MRT's ICANN's approval). Fees, if any, will be based on direct costs and resources. After one year of charging fees, Contractor PTI must collaborate with all Interested and Affected Parties to develop the fee structure and a method to tracks costs for each IANA function. Contract PTI must submit copies of the above and a description of the 	B.2	

Note to CWG: Please confirm.

Note to CWG: Here, and in a few other places, the original term sheet specified that the CSC would become the Contract Officer or Contract Officer Representative. We assume this was intended in part because ContractCo was not going to have any real staff or employees. ICANN however, can exercise oversight, so unless the powers/ role of the CSC are specifically enumerated in the 2nd Draft Proposal, we have assumed that the contract administration responsibilities are managed by ICANN. Please review and confirm.

Note to CWG: Has this been done in the past? Should we describe those that have been performed previously and that would continue?

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA/ICANN-NTIA Contract	Relevant section of 2 nd Draft Proposal (April 2015)
	<p>collaboration efforts to the MRT 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	Contractor PTI must maintain constructive working relationships with all Interested and Affected Parties to ensure quality and satisfactory performance.	C.1.3	
CONTRACTOR PTI REQUIREMENTS			
Subcontracting; [U.S. Presence Requirements]	<ul style="list-style-type: none"> No subcontracting. [Contractor 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.] [Contractor 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. Contractor 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	IANA PTI staff members will not initiate, advance, or advocate any policy development related to the IANA functions.	C.2.5	
[Functional Separation]	[ICANN will maintain IANA as a functionally separate division within ICANN. ICANN will seek to enhance the separability of IANA and/or the IANA functions from ICANN, to the extent possible without undue expense]		
Transparency and Accountability	Contractor PTI shall collaborate with all Interested and Affected Parties to develop and post user instructions including technical requirements for each IANA function.	C.2.6	Annex C

Note to CWG: Will these functions be captured in the SLE? If so, we will reference the SLE to be attached as Annex I.

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA/CA NN-NTIA Contract	Relevant section of 2 nd Draft Proposal (April 2015)
Responsibility and Respect for Stakeholders	Contractor 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	C.2.7	
Performance; [Service Levels]	Contractor PTI shall collaborate with all Interested and Affected Parties to develop, maintain, enhance and post performance standards for each IANA function. [Contractor and the MRT shall develop a Service Level Agreement (SLA) as an annex] CANN and PTI shall develop service level agreements (SLAs) in accordance with the SLEs attached as Annex I hereto for the performance of these functions[, subject to the approval of the MRT CANN, not to be unreasonably withheld or delayed].	C.2.8	Annex C
Internet Assigned Numbers Authority (IANA) Functions	[IANA functions include (1) the coordination of the assignment of technical Internet protocol parameters; (2) the administration of certain responsibilities associated with the Internet DNS root zone management; (3) the allocation of Internet numbering resources; and (4) other services related to the management of the ARPA and INT top-level domains (TLDs)].	C.2.9	
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	
[Independent Evaluator]	[The MRT shall appoint an] <u>[An independent evaluator assigned]</u> shall be appointed to verify that a root zone change request followed all applicable policies and procedures and authorize such change before it is implemented by the RZM. The independent evaluator shall be appointed for set contract periods of [3] years with the possibility of renewal at the agreement of both parties. The MRT shall CANN shall be empowered to reassign or terminate the evaluator due to a finding of a conflict of interest or a determination that the evaluator failed to properly perform its duties.]		
Perform Administrative Functions Associated With Root Zone Management	<ul style="list-style-type: none"> ContractorPTI will facilitate and coordinate the root zone of the DNS and maintain 24/7 operational coverage. Process flow for root zone management involves three<u>[two]</u> roles that are performed by three<u>[two]</u> 	C.2.9.2	III.A.iii.a./ Annex N

Note to CWG: Included in prior term sheet, but please update as required. Does this assume the numbers and IP protocols will be handled by PTI? Is that a correct assumption?

Note to CWG: Has this obligation been assumed by CSC or some other person? Please advise or amend as necessary.

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA/ICANN-NTIA Contract	Relevant section of 2 nd Draft Proposal (April 2015)
	<p>different entities:</p> <ul style="list-style-type: none"> o Contractor PTI as the IANA Functions Operator o [[the MRT] or [the Independent Evaluator] as the Administrator]] o VeriSign (or its successor as designated by [the MRT/ICANN]) as the RZM. • Contractor PTI shall work collaboratively with [the Administrator and] the RZM. • <u>Any amendment to the roles and responsibilities of PTI and the RZM with respect to root zone management will require approval of [_____].</u> 		
Root Zone File Change Request Management	<ul style="list-style-type: none"> • Contractor 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. <u>No authorization for TLD change requests will be needed.</u> • Contractor RZM shall process root zone file changes as expeditiously as possible. 	C.2.9.2.a	III.A.iii.a
Root Zone "WHOIS" Change Request and Database Management	<ul style="list-style-type: none"> • Contractor 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"> o TLD name; o the IP address of the primary nameserver and secondary nameserver for the TLD; o the corresponding names of such nameservers; o the creation date of the TLD; o name, address, email, phone and fax numbers of the TLD registry operator; o name, address, email, phone and fax numbers of 	C.2.9.2.b	III.A.iii.a/Annex N

Note to CWG: Please advise. The 2nd Draft Proposal refers only to required consultation with the community.

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA ICA NN-NTIA Contract	Relevant section of 2nd Draft Proposal (April 2015)
	<p>the technical contact for the TLD registry operator;</p> <ul style="list-style-type: none"> o name, postal address, email address, phone and fax numbers of the administrative contact for the TLD registry operator; o reports; o date record last updated; o any other information relevant to the TLD requested by the TLD registry operator. <ul style="list-style-type: none"> • ContractorThe RMZ 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 Redefinition of a Country Code Top Level -Domain (ccTLD)</p>	<ul style="list-style-type: none"> • ContractorPTI shall apply existing policy frameworks in processing requests related to the delegation and redefinition 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, the ContractorPTI 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. • ContractorPTI shall also take into account the relevant national frameworks and applicable laws of the jurisdiction that the TLD registry serves. • ContractorPTI shall submit its recommendations to the [[CSC] or [MRT]] or [RZM] or [Independent Evaluator]] via a Delegation and Redefinition Report. • [Inclusion of an "appeals mechanism" is under review.] 	<p>C.2.9.2.c</p>	<p>III.A.iv.a./Annex O</p>

Note to CWG: Please confirm.

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA/ICA NN-NTIA Contract	Relevant section of 2 nd Draft Proposal (April 2015)
Delegation and Redelegation of a Generic Top Level Domain (gTLD)	<ul style="list-style-type: none"> ContractorPTI shall verify that all requests related to the delegation and redelegation of gTLDs are consistent with the procedures developed by ICANN. (In making a delegation or redelegation recommendation, the ContractorPTI must provide documentation verifying that ICANN followed its own policy framework including specific documentation demonstrating how the process provided the opportunity for input from relevant stakeholders and was supportive of the global public interest.) ContractorPTI shall submit its recommendations to the [[CSC]] or [[MRT]] or [[RZM]] or [Independent Evaluator]] via a Delegation and Redelegation Report. 	C.2.9.2.d	
Root Zone Automation	<ul style="list-style-type: none"> ContractorPTI 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 allowing customers to manage their interactions with the root zone management system; 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 the ContractorPTI, [[ICANN/the CSC,]] and the RZM. 	C.2.9.2.e	
Root DNSSEC Key Management	<ul style="list-style-type: none"> ContractorPTI 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	
Customer Service Complaint Resolution Process (CSCR)	<ul style="list-style-type: none"> Contractor will work with the MRT and all Interested and Affected Parties to maintain and improve the process for IANA function customers to submit complaints for timely resolution Process must follow industry best practice and include a reasonable timeframe for resolution. 	C.2.9.2.g	
.INT TLD	<ul style="list-style-type: none"> ContractorPTI shall operate the .INT TLD within the 	C.2.9.4	

Note to CWG: Should PTI have this policy-review responsibility? Is this consistent with its mission?

Note to CWG: Include ICANN as a report recipient too?

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA/ICANN-NTIA Contract	Relevant section of 2 nd Draft Proposal (April 2015)
	<ul style="list-style-type: none"> current registration policies for the TLD. If the MRT ICANN designates a successor registry, the Contractor PTI will facilitate a smooth transition. 		
Inspection Of All Deliverables And Reports Before Publication	<ul style="list-style-type: none"> The MRT ICANN will perform final inspection and acceptance of all deliverables and reports, including those articulated in Section C.2 as Contractor Requirements in the NTIA-ICANN Contract. Prior to publication/posting of reports the Contractor PTI shall obtain approval from the MRT ICANN, not to be unreasonably withheld or delayed. 	C.2.11	
ICANN PTI To Provide Qualified Program Manager	<ul style="list-style-type: none"> Contractor 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). The 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 the MRT and ICANN, including CSC, and the IFRT and is responsible for the following: <ul style="list-style-type: none"> ➤ Shall be responsible for the overall contract ICANN-PTI Contract performance and shall not serve in any other capacity under this contract. the ICANN-PTI Contract. ➤ Shall have demonstrated communications skills with all levels of management. ➤ Shall meet and confer with the CSC (and, when necessary, the MRT) ICANN regarding the status of specific contractor PTI activities and problems, issues, or conflicts requiring resolution. ➤ Shall be capable of negotiating and making binding decisions for Contractor 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. 	C.2.12.a	
Key Personnel	<ul style="list-style-type: none"> The Contractor In addition to the Qualified Program Manager, PTI shall assign to this contract the ICANN- 	C.2.12.b	

Note to CWG: Is the expectation that ICANN or CSC will have approval rights in the case of deliverables and reports?

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA/ICANN-NTIA Contract	Relevant section of 2 nd Draft Proposal (April 2015)
	<p><u>PTI Contract</u> the following key personnel:</p> <ul style="list-style-type: none"> o IANA Functions Program Manager o IANA Function Liaison for Root Zone Management 		
Changes to Key Personnel	<ul style="list-style-type: none"> • Contractor <u>PTI</u> shall obtain CSC <u>ICANN</u> 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 CSC <u>ICANN</u> 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 CSC <u>ICANN</u>. <u>ICANN</u> will notify the Contractor <u>PTI</u> within 10 working days after receipt of all required information of the decision on substitutions. The contract <u>ICANN-PTI Contract</u> will be modified to reflect any approved changes. 	H.8	
Budget Meetings; Funding	<p>[The MRT] <u>ICANN</u> will meet [annually] with the President of Contractor <u>PTI</u> to review and approve the budget for the IANA Naming Services for the next [three] years.) <u>ICANN shall fund PTI at agreed budget levels.</u></p>		
TRANSPARENCY OF DECISION-MAKING	<p>To enhance consistency, predictability and integrity in decision-making of IANA related decisions, Contractor <u>PTI</u> shall:</p> <ul style="list-style-type: none"> • Continue the current practice of public reporting on naming related decisions. • Make public all recommendations by Contractor <u>PTI</u> on naming related decisions. • Agree not to redact any <u>PTI</u> Board minutes related to naming decisions. • Have the President and <u>PTI</u> Board Chair sign an annual attestation that it has complied with the above provisions. • Provide IANA <u>ICANN shall provide PTI</u> a budget sufficient to allow it to hire independent legal counsel to provide advice on the interpretation of 		

Note to CWG: If PTI has an ICANN-designated insider board, the board could oversee this and the contractual requirement could be eliminated.

Note to CWG: If PTI has an ICANN-designated insider board, the board could oversee this and the contractual requirement could be eliminated.

Note to CWG: Interplay with CCWG budget approval and role of PTI Board to be discussed.

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA/ICANN-NTIA Contract	Relevant section of 2 nd Draft Proposal (April 2015)
	<p>existing naming related policy.</p> <ul style="list-style-type: none"> 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 IANA/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 <u>(CSC/ICANN)</u>. Site Visits shall be conducted annually <u>on-demand</u> by the IFRT. 	C.4.1	Annex F
Monthly Performance Progress Report	<ul style="list-style-type: none"> Contractor <u>PTI</u> shall prepare and submit to the <u>(CSC/ICANN)</u> 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 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. 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 <u>of the ICANN-NTIA Contract</u>. 	C.4.2	Annex F
Root Zone Management dashboard	<ul style="list-style-type: none"> Contractor <u>PTI</u> shall work collaboratively with the CSC and ICANN 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"> Contractor <u>PTI</u> shall publish reports for each discrete IANA function consistent with Section C.2.8 <u>of the ICANN-NTIA Contract</u>. The Performance Standards 	C.4.4	

Note to CWG: Please confirm.

Note to CWG: Copy ICANN on the reports? Would seem to make sense.

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA/ICANN-NTIA Contract	Relevant section of 2 nd Draft Proposal (April 2015)
	Metric Reports will be published via a website every month (no later than 15 calendar days following the end of each month).		
Customer Service Survey	<ul style="list-style-type: none"> Contractor PTI shall collaborate with the [CSC/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, the Contractor PTI shall submit the CSS Report to the CSC/ICANN and publicly post the CSS Report. 	C.4.5	Annex F
Final Report	<ul style="list-style-type: none"> Contractor 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 employed in the performance of the IANA functions. The Contractor PTI shall submit the report to the [CSC/ICANN] no later than 30 days after expiration of the contract/ICANN-PTI Contract. 	C.4.6	
Inspection and acceptance	<ul style="list-style-type: none"> The [CSC/ICANN] will perform final inspection and acceptance of all deliverables and reports articulated in Section C.4. of the ICANN-NTIA Contract. Prior to publication/posting of reports, the Contractor PTI shall obtain approval from the CSC/ICANN, not to be unreasonably withheld or delayed. 	C.4.74	
AUDIT REQUIREMENTS AU DIT REQUIREMENTS / IANA FUNCTION REVIEW & IFR	<ul style="list-style-type: none"> Retain provisions from current IANA/ICANN-NTIA Contract, except that CSC will perform duties of Contract Officer (CO) and Contract Officer Representative (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 IANA Contract except that CSC or MRT will perform duties of CO and COR/ICANN-NTIA.	C.6, H.9	

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA/ICANN-NTIA Contract	Relevant section of 2 nd Draft Proposal (April 2015)
CONTINUITY OF OPERATIONS	Retain provisions from current IANA Contract except that CSC will perform duties of CO and COR	C.7	
PERFORMANCE EXCLUSIONS			
Contractor PTI not authorized to make changes to Root Zone; link to VeriSign Cooperative Agreement	Contractor PTI not authorized to make modifications, additions, or deletions to the root zone file or associated information. (This contract does <u>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.</u>	C.8.1	
Contractor PTI not to change policies and procedures or methods	Contractor 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. The Contractor PTI shall not change or implement the established methods associated with the performance of the IANA functions without prior approval of the CSC/ICANN.	C.8.2	
Relationship to other contracts	The performance of the functions under this contract <u>the ICANN-PTI Contract</u> , including the development of recommendations in connection with Section C.2.9.2 of <u>the ICANN-NTIA Contract</u> , shall not be, in any manner, predicated or conditioned on the existence or entry into any contract, agreement or negotiation between the Contractor PTI and any party requesting such changes or any other third-party. Compliance with this Section must be consistent with C.2.9.2d <u>of the ICANN-NTIA Contract</u> .	C.8.3 (which cross-references C.2.9.2)	
Baseline Requirements for DNSSEC in the Authoritative Root Zone	The performance of the functions under this contract, including the development of recommendations in connection with Section C.2.9.2, shall not be, in any manner, predicated or conditioned on the existence or entry into any contract, agreement or negotiation between the Contractor and any party requesting such changes or any other third party. Compliance with this Section must be consistent with C.2.9.2d <u>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.</u>	Appendix 2	
INSPECTION AND	CSC/ICANN will perform representative final inspection	E	

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA/ICANN-NTIA Contract	Relevant section of 2 nd Draft Proposal (April 2015)
<u>ACCEPTANCE</u>	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 this <u>the ICANN-PTI Contract</u> . Any deficiencies shall be corrected by the Contractor <u>PTI</u> and resubmitted to the CSC <u>ICANN</u> within ten <u>(10)</u> workdays after notification.		
INTELLECTUAL PROPERTY			
Patents and Copyrights	<p><u>ICANN shall own all intellectual property conceived, reduced to practice, created or otherwise developed by PTI under the Contract.</u></p> <p>Contractor <u>PTI</u> shall assign, and shall cause any employees or contractors to assign, all rights in any patentable subject matter and any patent applications for inventions, copyrights, trade secrets and all other intellectual property created by the Contractor <u>PTI</u> during the course of Contractor's duties hereunder <u>PTI's duties under the ICANN-PTI Contract to ICANN.</u></p> <p>This agreement <u>With respect to copyright, the ICANN-PTI Contract</u> is a "work for hire" agreement and the Contracting Entity <u>ICANN</u> shall be deemed the author and shall own all copyrightable works created by the Contractor <u>PTI</u> hereunder, and all copyright rights thereto. In the event this is not deemed a work for hire agreement, Contractor hereby assigns <u>PTI shall assign</u> ownership of the copyrightable works and copyrights to the Contracting Entity <u>ICANN.</u></p> <p>Contractor <u>ICANN</u> shall license back these any <u>patents and patent applications, copyrights and trademarks</u> to Contractor <u>PTI</u> for the duration of this Agreement <u>the ICANN-PTI Contract</u> solely to the extent necessary for Contractor <u>PTI</u> to perform its obligations under this Agreement <u>the ICANN-PTI Contract</u>. This license shall be non-exclusive and royalty-free.</p>	H.2	
CONFIDENTIALITY AND DATA	The Agreement <u>ICANN-PTI Contract</u> will contain reasonable and customary provisions relating to	H.10	

Note to CWG: Consider whether this is duplicative or could be combined with "Inspection and Acceptance" term above.

Note to CWG: IP ownership to be discussed. Consider what kind of IP will be developed and which entity is in the best position to be owner.

PROVISION	SUMMARY OF KEY TERMS	Compare to Current IANA/ICA NN-NTIA Contract	Relevant section of 2 nd Draft Proposal (April 2015)
PROTECTION	confidentiality and data protection.		
INDEMNIFICATION	<p>Contractor <u>[ICANN]</u> shall indemnify, defend and hold harmless the Contracting Entity, the MRT and the CSC PTI from all claims arising from Contractor's <u>PTI's</u> performance or failure to perform under this Agreement. <u>the ICANN-PTI Contract.]</u></p>	H.13	

Note to CWG: Please consider whether desired to include at the outset. Third parties may want some guarantees from ICANN.

ANNEX I
[SERVICE LEVEL EXPECTATIONS TO BE ATTACHED]