Memorandum

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| 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

Under the current CWG draft proposal, the IANA Functions Contract between ICANN and the NTIA (the “**ICANN-NTIA Contract**”) will be replaced by a contract between ICANN and Post-Transition IANA (“**PTI**”). As a general matter, the provisions of the agreement setting forth the performance requirements of ICANN and PTI would be retained, 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.

This proposed term sheet sets forth the key provisions required to be in the initial contract between ICANN and 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.

**PROPOSED KEY TERMS FOR ICANN-PTI CONTRACT**

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| * All terms are subject to further review and discussion * Terms in current ICANN-PTI Contract but revised for dates, for change in parties from the ICANN-NTIA Contract, or for other non-substantive revisions are in blue * New terms 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 |

| **PROVISION** | **SUMMARY OF KEY TERMS** | **Compare to Current ICANN-NTIA Contract** | **Relevant section of 2nd Draft Proposal (April 2015)** |
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| **PARTIES** | * The Parties to the ICANN-PTI Contract are:   + ICANN   + PTI (IANA Functions Operator for naming functions) |  | III.A |
| **DURATION** |  | F |  |
| Term | * The period of performance of the ICANN-PTI Contract is: [October 1, 2015] – [TBD] | F.1, I.70 |  |
| **Renewal Terms** | * 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 the ICANN Board. * Any ICANN election of non-renewal shall be provided with not less than [[\_\_] months] prior written notice, 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 ICANN-PTI Contract automatically renews, the extended contract shall include this automatic renewal clause. * The renewal period is [TBD]. * The total duration of the ICANN-PTI Contract, including the automatic renewal under this clause, shall not exceed [TBD] years. | I.59, I.70 | III.A.i.a. |
| IANA Function Review | * 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 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.] |  | III.A.i.d. |
| Performance Monitoring | * 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 forth in the ICANN-PTI Contract and ICANN governance documents. * 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. |  | III.A.i. |
| **ESCALATION MECHANISMS (IANA Customer Service Complaint Resolution Process)** | * 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. * Phase 2: 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 review process if the issue is not addressed.   Further details of the escalation mechanism may be found in [Final Report]. |  | III.A.ii.c./ Annex I |
| **ESCALATION MECHANISMS (IANA Problem Resolution Process)** | The CSC may seek resolution with PTI performance issues in accordance with the Remedial Action Plan which includes:   * 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 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. |  | III.A.ii.c./ Annex J |
| **ESCALATION MECHANISMS (Root Zone Emergency Process)** | [Retain provisions from current ICANN-NTIA Contract.] |  | III.A.ii.c./ Annex K |
| **ESCALATION MECHANISMS (Separation Review)** | * 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** | * 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** | * No charge to ICANN. * PTI may establish and collect fair and reasonable fees from third parties, subject to ICANN’s approval. * Fees, if any, will be based on direct costs and resources. * After one year of charging fees, PTI must collaborate with all Interested and Affected Parties to develop the fee structure and a method to tracks costs for each IANA function. PTI must submit copies of the above and a description of the collaboration efforts to ICANN. * “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. | B.2 |  |
| **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] | * 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 | * 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. | C.2.5 |  |
| Transparency and Accountability | 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 |
| 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) in accordance with the SLEs attached as Annex I hereto for the performance of these functions[, subject to the approval of ICANN, not to be unreasonably withheld or delayed]. | C.2.8 | Annex C |
| Internet Assigned Numbers Authority (IANA) Functions | IANA functions include (1) the coordinationof 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] | [[An independent evaluator] 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. ICANN 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 | * 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:   + PTI as the IANA Functions Operator   + VeriSign (or its successor as designated by [ICANN]) as the 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 [\_\_\_\_\_\_\_\_]. | C.2.9.2 | III.A.iii.a./ Annex N |
| Root Zone File Change Request Management | * The RZM will receive andprocess 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.iii.a |
| Root Zone “WHOIS” Change Request and Database Management | * 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:   + 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 operator. * The RMZ shall receive and process root zone “WHOIS” change requests for TLDs from PTI. No authorization for TLD change requests shall be required. | C.2.9.2.b | III.A.iii.a/ Annex N |
| Delegation and Redelegation of a Country Code Top Level -Domain (ccTLD) | * 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 Redelegation Report. * [Inclusion of an “appeals mechanism” is under review.] | C.2.9.2.c | III.A.iv.a./Annex O |
| Delegation and Redelegation of a Generic Top Level Domain (gTLD) | * PTI 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, PTI 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. * PTI shall submit its recommendations to the [[CSC] *or* [RZM] *or* [Independent Evaluator]] via a Delegation and Redelegation Report. | C.2.9.2.d |  |
| Root Zone Automation | * 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:   + 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 PTI, [ICANN/the CSC,]and the RZM. | C.2.9.2.e |  |
| Root DNSSEC Key Management | * 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 | * PTI shall operate the .INT TLD within the currentregistration 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 | * [ICANN] will perform final inspection andacceptance of all deliverables and reports, including those articulated as Contractor Requirements in the NTIA-ICANN Contract. * Prior to publication/posting of reports PTI shall obtain approval from [ICANN], not to be unreasonably withheld or delayed*.* | C.2.11 |  |
| PTI To Provide Qualified Program Manager | * PTI shall provide trained, knowledgeable technicalpersonnel 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: * 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. | C.2.12.a |  |
| Key Personnel | * In addition to the Qualified Program Manager, PTI shall assign to the ICANN-PTI Contract the following key personnel:   + IANA Functions Program Manager   + IANA Function Liaison for Root Zone Management | C.2.12.b |  |
| Changes to Key Personnel | * PTI shall obtain ICANN 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 ICANN 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 ICANN. ICANN will notify PTI within 10 working days after receipt of all required information of the decision on substitutions. The ICANN-PTI Contract will be modified to reflect any approved changes. | H.8 |  |
| 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** | To enhance consistency, predictability and integrity in decision-making of IANA related decisions, PTI shall:   * 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 | * Program Reviews shall be conducted monthly by [CSC/ICANN]. * Site Visits shall be conducted on-demand by the IFRT. | C.4.1 | Annex F |
| Monthly Performance Progress Report | * PTI shall prepare and submit tothe [CSC/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 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 of the ICANN-NTIA Contract. | C.4.2 | Annex F |
| Root Zone Management dashboard | * PTI shall work collaboratively with [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 | * 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 | * PTI shall collaborate with [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, PTI shall submit the CSS Report to ICANN and publicly post the CSS Report. | C.4.5 | Annex F |
| Final Report | * PTI shall prepare and submit a final report on theperformance 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. PTI shall submit the report to [CSC/ICANN] no later than 30 days after expiration of the ICANN-PTI Contract. | C.4.6 |  |
| Inspection and acceptance | * [CSC/ICANN] will perform final inspection and acceptance ofall deliverables and reports articulated in Section C.4 of the ICANN-NTIA Contract. * Prior to publication/posting of reports, PTI shall obtain approval from ICANN, not to be unreasonably withheld or delayed. | C.4 |  |
| **AUDIT REQUIREMENTS / IANA FUNCTION REVIEW & IFRT** | * 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.pd](http://ntia.doc.gov/files/ntia/publications/amend11_052206.pdf)f. | C.8.1 |  |
| PTI not to change policies and procedures or methods | PTI not authorized to make material changes in the policiesand procedures developed by the relevant entities associated with the performance of the IANA functions. PTI shall not change or implement the established methods associated with the performance of the IANA functions without prior approval of ICANN. | C.8.2 |  |
| Relationship to other contracts | The performance of the functions under the 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. | C.8.3 (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** |  |  |  |
| Patents and Copyrights | ICANN shall own all intellectual property conceived, reduced to practice, created or otherwise developed by PTI under the Contract.  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.  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 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.  ICANN shall license back any patents, patent applications, copyrights and trademarks 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. | H.2 |  |
| **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 |  |

**ANNEX I**

**[SERVICE LEVEL EXPECTATIONS TO BE ATTACHED]**