Exhibit A

AWARD/CONTRACT	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	RATING	PAGE 1	OF	PAGES 65

2. CONTRACT (Proc. Inst. Indent.) NO. SA1301-12-CN-0035	3. EFFECTIVE DATE 10/01/2012	4. REQUISITION/PURCHASE REQUEST/PROJECT NO. AA-OAM-??-?-12-00934

5. ISSUED BY	CODE 000SA	6 ADMINISTERED BY (If other than Item 5)	CODE	000SA

U.S. DEPARTMENT OF COMMERCE
14TH & CONSTITUTION AVE. NW
ACQUISITION SERVICES- ROOM 6520
WASHINGTON DC 20230

U.S. DEPARTMENT OF COMMERCE
14TH & CONSTITUTION AVE. NW
ACQUISITION SERVICES- ROOM 6520
WASHINGTON DC 20230

7. NAME AND ADDRESS OF CONTRACTOR (No. street, county, State and ZIP Code)

INTERNET CORPORATION FOR ASSIGNED NAMES
AND NUMBERS
4676 ADMIRALTY WAY, SUITE #330
MARINA DEL REY CA 902926648
Vendor ID: 00000428
DUNS: 045511487
Cage Code: 4A4S9
CEC:

8. DELIVERY

☐ FOB ORIGIN   ☐ OTHER (See below)

9. DISCOUNT FOR PROMPT PAYMENT

NET 30

10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN   ITEM   NISTFSG

CODE		FACILITY CODE

11. SHIP TO/MARK FOR	CODE NTIA-HCH	12. PAYMENT WILL BE MADE BY	CODE NISTFSG

NATIONAL TEL. AND INFO. ADMIN
1401 CONSTITUTION AVE. NW
ROOM 4888, HCHB

NIST ACCOUNTS PAYABLE OFFICE
BLDG 101, ROOM A-836 MS 1621
100 BUREAU DRIVE

13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:

☐ 10 U.S.C. 2304(c)( )   ☐ 41 U.S.C. 253(c)( )

14. ACCOUNTING AND APPROPRIATION DATA

15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
	Please See Continuation Page for Line Items				

15G. TOTAL AMOUNT OF CONTRACT ▶ $ 0.00

16. TABLE OF CONTENTS

CONTRACTING OFFICER WILL COMPLETE ITEM 17 (SEALED-BID OR NEGOTIATED PROCUREMENT) OR 18 (SEALED-BID PROCUREMENT) AS APPLICABLE

17. ☒ CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 1 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)

18. ☐ SEALED-BID AWARD (Contractor is not required to sign this document.)

Your bid on Solicitation Number

including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the terms listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your bid, and (b) this award/contract. No further contractual document is necessary. (Block 18 should be checked only when awarding a sealed-bid contract.)

19A. NAME AND TITLE OF SIGNER (Type or Print)	20A. NAME OF CONTRACTING OFFICER
ROD A. BECKSTROM PRESIDENT & CEO, ICANN	KATHLEEN M. MCGRATH

19B. NAME OF CONTRACTOR	19C. DATE SIGNED	20B. UNITED STATES OF AMERICA	20C. DATE SIGNED
BY _(Signature of person authorized to sign)_	June 29, 2012	BY _(Signature of Contracting Officer)_	JUL 02, 2012

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is NOT usable

STANDARD FORM 26 (REV. 5/2011)
Prescribed by GSA - FAR (48 CFR) 53.214(a)

	SCHEDULE Continued					
ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE $		AMOUNT $
	Contracting Officer: Mona-Lisa Dunn, 202-482-1470					
	Primary Contracting Officer Representative: Vernita D. Harris, 202-482-4686, vharris@NTIA.doc.gov					
	Alternate Contracting Officer Representative(s):					
	Technical Point of Contact: Vernita D. Harris, 202-482-4686, vharris@NTIA.doc.gov					
	The Contractor shall provide the services in accordance with the terms, conditions, and prices described herein.					
	The Contractor's proposal dated May 31, 2012 and as amended through agreed terms and conditions dated June 23, 2012 and June 26, 2012 are hereby incorporated by reference.					
0001	BASE YEAR - October 1, 2012 - September 30, 2015. The Contractor shall provide the services necessary for the operation of the Internet Assigned Numbers Authority (iANA) in accordance with the attached Statement of Work. The Contractor may not charge the United States Government for performance of the requirements of this contract. Period of Performance: 10/01/2012 to 09/30/2015	0.00	EA	0.00		0.00
0002	OPTION YEAR 1 - October 1, 2015 - September 30, 2017. The Contractor shall provide the services necessary for the operation of the Internet Assigned Numbers Authority (IANA) in accordance with the attached Statement of Work. The Contractor may not charge the United States Government for performance of the requirements of this contract. Accounting and Appropriation Data: 61.12.1200012.100.0012.010102000. 0400000000000000.25970000.000000 $0.00 Period of Performance: 10/01/2015 to 09/30/2017 Pricing Option: Time and Material	1.00	JB	0.00		OPT 0.00
0003	OPTION YEAR 2 - October 1, 2017 - September 30, 2019. The Contractor shall provide the services necessary for the operation of the Internet Assigned Numbers Authority (iANA) in accordance with the attached Statement of Work. The Contractor may not charge the United States Government for performance of the requirements of this contract. Accounting and Appropriation Data: 61.12.1200012.100.0012.010102000. 0400000000000000.25970000.000000 $0.00 Period of Performance: 10/01/2017 to 09/30/2019 Pricing Option: Time and Material	1.00	JB	0.00		OPT 0.00

SA1301-12-CN-0035

3SECTION B SUPPLIES OR SERVICES AND PRICES/COSTS

This is a no cost, $0.00 time and material contract.

B.2   COST/PRICE

The Contractor may not charge the United States Government to perform the requirements of this Contract. The Contractor may establish and collect fees from third parties provided the fee levels are approved by the Contracting Officer and are fair and reasonable. If fees are charged, the Contractor shall base any proposed fee structure on the cost of providing the specific service for which the fee is charged and the resources necessary to monitor the fee driven requirements. The Contractor may propose an interim fee for the first year of the contract, which will expire one year after the contract award. If the Contractor intends to establish and collect fees from third parties beyond the first year of the Contract, the Contractor must collaborate with the interested and affected parties as enumerated in Section C.1.3 to develop a proposed fee structure based on a methodology that tracks the actual costs incurred for each discrete IANA function. The Contractor must submit a copy of proposed fee structure, tracking methodology and description of the collaboration efforts and process to the Contracting Officer.

B.3   PRE-AWARD SURVEY – FAR 9.106 and 9.106-4(a)

At the discretion of the Contracting Officer, a site visit to the Offeror's facility (ies) may also be requested and conducted by the Department of Commerce (Commerce) or its designee. The purpose of this visit will be to gather information relevant to the Offeror's responsibility and prospective capability to perform the requirements under any contract that may be awarded. The Contracting Officer will arrange such a visit at least seven (7) days in advance with the Offeror.

SA1301-12-CN-0035

SECTION C – DESCRIPTION / SPECS / WORK STATEMENT

STATEMENT OF WORK/SPECIFICATIONS

The Contractor shall furnish the necessary personnel, materials, equipment, services and Facilities (except as otherwise specified) to perform the following Statement Work/Specifications.

C.1 BACKGROUND

C.1.1   The U.S. Department of Commerce (DoC), National Telecommunications and Information Administration (NTIA) has initiated this contract to maintain the continuity and stability of services related to certain interdependent Internet technical management functions, known collectively as the Internet Assigned Numbers Authority (IANA).

C.1.2   Initially, these interdependent technical functions were performed on behalf of the Government under a contract between the Defense Advanced Research Projects Agency (DARPA) and the University of Southern California (USC), as part of a research project known as the Tera-node Network Technology (TNT). As the TNT project neared completion and the DARPA/USC contract neared expiration in 1999, the Government recognized the need for the continued performance of the IANA functions as vital to the stability and correct functioning of the Internet.

C.1.3   The Contractor, in the performance of its duties, must have or develop a close constructive working relationship with all interested and affected parties to ensure quality and satisfactory performance of the IANA functions. The interested and affected parties include, but are not limited to, the multi-stakeholder, private sector led, bottom-up policy development model for the domain name system (DNS) that the Internet Corporation for Assigned Names and Numbers (ICANN) represents; the Internet Engineering Task Force (IETF) and the Internet Architecture Board (IAB); Regional Internet Registries (RIRs); top-level domain (TLD) operators/managers (e.g., country codes and generic); governments; and the Internet user community.

C.1.4   The Government acknowledges that data submitted by applicants in connection with the IANA functions may be confidential information. To the extent required by law, the Government shall accord any confidential data submitted by applicants in connection with the IANA functions with the same degree of care as it uses to protect its own confidential information, but not less than reasonable care, to prevent the unauthorized use, disclosure, or publication of confidential information. In providing data that is subject to such a confidentiality obligation to the Government, the Contractor shall advise the Government of that obligation.

SA1301-12-CN-0035

C.2 **CONTRACTOR REQUIREMENTS**

C.2.1 The Contractor must perform the required services for this contract as a prime Contractor, not as an agent or subcontractor. The Contractor shall not enter into any subcontracts for the performance of the services, or assign or transfer any of its rights or obligations under this Contract, without the Government's prior written consent and any attempt to do so shall be void and without further effect. The Contractor shall be a) a wholly U.S. owned and operated firm or fully accredited United States University or College operating in one of the 50 states of the United States or District of Columbia; b) incorporated within one of the fifty (50) states of the United States or District of Columbia; and c) organized under the laws of a state of the United States or District of Columbia. The Contractor shall perform the primary IANA functions of the Contract in the United States and possess and maintain, throughout the performance of this Contract, a physical address within the United States. The Contractor must be able to demonstrate that all primary operations and systems will remain within the United States (including the District of Columbia). The Government reserves the right to inspect the premises, systems, and processes of all security and operational components used for the performance of all Contract requirements and obligations.

C.2.2 The Contractor shall furnish the necessary personnel, material, equipment, services, and facilities, to perform the following requirements without any cost to the Government. The Contractor shall conduct due diligence in hiring, including full background checks.

C.2.3 The Contractor may not charge the United States Government for performance of the requirements of this contract. The Contractor may establish and collect fees from third parties provided the fee levels are approved by the Contracting Officer (CO) and are fair and reasonable. If fees are charged, the Contractor shall base any proposed fee structure on the cost of providing the specific service for which the fee is charged. The Contractor may propose an interim fee for the first year of the contract, which will expire one year after the contract award. The documentation must be based upon the anticipated cost for providing the specific service for which the fee is charged, including start up costs, if any, equipment, personnel, software, etc. If the Contractor intends to establish and collect fees from third parties beyond the first year of the contract, the Contractor must collaborate with the interested and affected parties as enumerated in Section C.1.3 to develop a proposed fee structure based on a methodology that tracks the actual costs incurred for each discrete IANA function enumerated and described in C.2.9. The Contractor must submit a copy of any proposed fee structure including tracking methodology and description of the collaboration and process efforts for fees being proposed after the first year contract award to the Contracting Officer. The performance exclusion C.8.3 shall apply to any fee proposed.

C.2.4 The Contractor is required to perform the IANA functions, which are critical for the operation of the Internet's core infrastructure, in a stable and secure manner. The IANA functions are administrative and technical in nature based on established policies developed by

5

SA1301-12-CN-0035

interested and affected parties, as enumerated in Section C.1.3. The Contractor shall treat each of the IANA functions with equal priority and process all requests promptly and efficiently.

C.2.5 Separation of Policy Development and Operational Roles -- The Contractor shall ensure that designated IANA functions staff members will not initiate, advance, or advocate any policy development related to the IANA functions. The Contractor's staff may respond to requests for information requested by interested and affected parties as enumerated in Section C.1.3 to inform ongoing policy discussions and may request guidance or clarification as necessary for the performance of the IANA functions.

C.2.6 Transparency and Accountability -- Within six (6) months of award, the Contractor shall, in collaboration with all interested and affected parties as enumerated in Section C.1.3, develop user instructions including technical requirements for each corresponding IANA function and post via a website.

C.2.7 Responsibility and Respect for Stakeholders – Within six (6) months of award, the Contractor shall, in collaboration with all interested and affected parties as enumerated in Section C.1.3, develop for each of the IANA functions a process for documenting the source of the policies and procedures and how it will apply the relevant policies and procedures for the corresponding IANA function and post via a website.

C.2.8 Performance Standards -- Within six (6) months of award, the Contractor shall develop performance standards, in collaboration with all interested and affected parties as enumerated in Section C.1.3, for each of the IANA functions as set forth at C.2.9 to C.2.9.4 and post via a website.

C.2.9 Internet Assigned Numbers Authority (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.2.9.1 Coordinate The Assignment Of Technical Protocol Parameters including the management of the Address and Routing Parameter Area (ARPA) TLD -- The Contractor shall review and assign unique values to various parameters (*e.g.,* operation codes, port numbers, object identifiers, protocol numbers) used in various Internet protocols based on established guidelines and policies as developed by interested and affected parties as enumerated in Section C.1.3. The Contractor shall disseminate the listings of assigned parameters through various means (including on-line publication via a website) and shall review technical documents for consistency with assigned values. The Contractor shall operate the ARPA TLD within the current registration policies for this TLD, as documented in RFC 3172-Management Guidelines & Operational Requirements for the Address and Routing Parameter Area Domain,

SA1301-12-CN-0035

and any further clarification of this RFC. The Contractor shall also implement DNSSEC in the ARPA TLD.

C.2.9.2   Perform Administrative Functions Associated With Root Zone Management -- The Contractor shall facilitate and coordinate the root zone of the domain name system, and maintain 24 hour-a-day/7 days-a-week operational coverage. The process flow for root zone management involves three roles that are performed by three different entities through two separate legal agreements: the Contractor as the IANA Functions Operator, NTIA as the Administrator, and VeriSign (or any successor entity as designated by the U.S. Department of Commerce) as articulated in Cooperative Agreement Amendment 11, as the Root Zone Maintainer. The Requirements are detailed at Appendix 1 entitled Authoritative Root Zone Management Process that is incorporated by reference herein as if fully set forth. The Contractor shall work collaboratively with NTIA and the Root Zone Maintainer, in the performance of this function.

C.2.9.2.a   Root Zone File Change Request Management -- The Contractor shall receive and process root zone file change requests for TLDs. These change requests include 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. The Contractor shall process root zone file changes as expeditiously as possible.

C.2.9.2.b   Root Zone "WHOIS" Change Request and Database Management -- The Contractor shall maintain, update, and make publicly accessible a Root Zone "WHOIS" database with current and verified contact information for all TLD registry operators. The Root Zone "WHOIS" database, at a minimum, shall consist of the 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; the name, postal address, email address, and telephone and fax numbers of the TLD registry operator; the name, postal address, email address, and telephone and fax numbers of the technical contact for the TLD registry operator; and the name, postal address, email address, and telephone and fax numbers of the administrative contact for the TLD registry operator; reports; and date record last updated; and any other information relevant to the TLD requested by the TLD registry operator. The Contractor shall receive and process root zone "WHOIS" change requests for TLDs.

C.2.9.2.c   Delegation and Redelegation of a Country Code Top Level-Domain (ccTLD) --The Contractor shall apply existing policy frameworks in processing requests related to the delegation and redelegation of a ccTLD, such as RFC 1591 Domain Name System Structure and Delegation, the Governmental Advisory Committee (GAC) Principles And Guidelines For The Delegation And Administration Of Country Code Top Level Domains, and any further clarification of these policies by interested and affected parties as enumerated in Section C.1.3. If a policy framework does not exist to cover a specific instance, the Contractor will consult with the interested and affected parties, as enumerated in Section C.1.3; relevant public authorities;

7

SA1301-12-CN-0035

and governments on any recommendation that is not within or consistent with an existing policy framework. In making its recommendations, the Contractor shall also take into account the relevant national frameworks and applicable laws of the jurisdiction that the TLD registry serves. The Contractor shall submit its recommendations to the COR via a Delegation and Redelegation Report.

C.2.9.2d   Delegation and Redelegation of a Generic Top Level Domain (gTLD) -- The Contractor 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 Contractor 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. The Contractor shall submit its recommendations to the COR via a Delegation and Redelegation Report.

C.2.9.2.e   Root Zone Automation -- The Contractor shall work with NTIA and the Root Zone Maintainer, and collaborate with all interested and affected parties as enumerated in Section C.1.3, to deploy a fully automated root zone management system within nine (9) months after date of contract award. The fully automated system must, at a minimum, include 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; and a test system, which customers can use to meet the technical requirements for a change request ; an internal interface for secure communications between the IANA Functions Operator; the Administrator, and the Root Zone Maintainer.

C.2.9.2.f   Root Domain Name System Security Extensions (DNSSEC) Key Management --The Contractor shall be responsible for the management of the root zone Key Signing Key (KSK), including generation, publication, and use for signing the Root Keyset. As delineated in the Requirements at Appendix 2 entitled Baseline Requirements for DNSSEC in the Authoritative Root Zone that is incorporated by reference herein as if fully set forth. The Contractor shall work collaboratively with NTIA and the Root Zone Maintainer, in the performance of this function.

C.2.9.2.g   Customer Service Complaint Resolution Process (CSCRP) --The Contractor shall work with NTIA and collaborate with all interested and affected parties as enumerated in Section C.1.3 to establish and implement within six (6) months after date of contract award a process for IANA function customers to submit complaints for timely resolution that follows industry best practice and includes a reasonable timeframe for resolution.

C.2.9.3   Allocate Internet Numbering Resources --The Contractor shall have responsibility for allocated and unallocated IPv4 and IPv6 address space and Autonomous System Number (ASN)

8

SA1301-12-CN-0035

space based on established guidelines and policies as developed by interested and affected parties as enumerated in Section C.1.3. The Contractor shall delegate IP address blocks to Regional Internet Registries for routine allocation typically through downstream providers to Internet end-users within the regions served by those registries. The Contractor shall also reserve and direct allocation of space for special purposes, such as multicast addressing, addresses for private networks as described in RFC 1918-Address Allocation for Private Internets, and globally specified applications.

C.2.9.4   Other services --   The Contractor shall operate the INT TLD within the current registration policies for the TLD. Upon designation of a successor registry by the Government, if any, the Contractor shall cooperate with NTIA to facilitate the smooth transition of operation of the INT TLD. Such cooperation shall, at a minimum, include timely transfer to the successor registry of the then-current top-level domain registration data. The Contractor shall also implement modifications in performance of the IANA functions as needed upon mutual agreement of the parties.

C.2.10   The performance of the IANA functions as articulated in Section C.2 Contractor Requirements shall be in compliance with the performance exclusions enumerated in Section C. 8.

C.2.11   The Contracting Officer's Representative(COR) will perform final inspection and acceptance of all deliverables and reports articulated in Section C.2 Contractor Requirements. *Prior to publication/posting of reports the Contractor shall obtain approval from the COR.* The COR shall not unreasonably withhold approval.

C.2.12.a   Program Manager. The contractor shall provide trained, knowledgeable technical personnel according to the requirements of this contract. All contractor personnel who interface with the CO and COR must have excellent oral and written communication skills. "Excellent oral and written communication skills" is defined as the capability to converse fluently, communicate effectively, and write intelligibly in the English language. The 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 CO and COR and ensures compliance with Federal rules and regulations and responsible for the following:

   ➢ Shall be responsible for the overall contract performance and shall not serve in any other capacity under this contract.
   ➢ Shall have demonstrated communications skills with all levels of management.
   ➢ Shall meet and confer with COR and CO regarding the status of specific contractor activities and problems, issues, or conflicts requiring resolution.
   ➢ Shall be capable of negotiating and making binding decisions for the company.
   ➢ Shall have extensive experience and proven expertise in managing similar multi-task contracts of this type and complexity.

SA1301-12-CN-0035

> ➢ Shall have extensive experience supervising personnel.
> ➢ Shall have a thorough understanding and knowledge of the principles and methodologies associated with program management and contract management.

C.2.12.b   The Contractor shall assign to this contract the following key personnel: IANA Functions Program Manager (C.2.9); IANA Function Liaison for Technical Protocol Parameters Assignment (C.2.9.1); IANA Function Liaison for Root Zone Management (C.2.9.2); IANA Function Liaison for Internet Number Resource Allocation (C.2.9.3).

C.3   SECURITY REQUIREMENTS

C.3.1   Secure Systems -- The Contractor shall install and operate all computing and communications systems in accordance with best business and security practices. The Contractor shall implement a secure system for authenticated communications between it and its customers when carrying out all IANA function requirements. The Contractor shall document practices and configuration of all systems.

C.3.2   Secure Systems Notification -- The Contractor shall implement and thereafter operate and maintain a secure notification system at a minimum, capable of notifying all relevant stakeholders of the discrete IANA functions, of such events as outages, planned maintenance, and new developments. In all cases, the Contractor shall notify the COR of any outages.

C.3.3   Secure Data -- The Contractor shall ensure the authentication, integrity, and reliability of the data in performing each of the IANA functions.

C.3.4   Security Plan --The Contractor shall develop and execute a Security Plan that meets the requirements of this contract and Section C.3. The Contractor shall document in the security plan the process used to ensure information systems including hardware, software, applications, and general support systems have effective security safeguards, which have been implemented, planned for, and documented. The Contractor shall deliver the plan to the COR after each annual update.

C.3.5   Director of Security -- The Contractor shall designate a Director of Security who shall be responsible for ensuring technical and physical security measures, such as personnel access controls. The Contractor shall notify and consult in advance the COR when there are personnel changes in this position. The Director of Security shall be one of the key personnel assigned to this contract.

C.4   PERFORMANCE METRIC REQUIREMENTS

C.4.1   Meetings -- Program reviews and site visits shall occur annually.

SA1301-12-CN-0035

C.4.2   Monthly Performance Progress Report -- The Contractor shall prepare and submit to the COR 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.

C.4.3   Root Zone Management Dashboard -- The Contractor shall work collaboratively with NTIA and the Root Zone Maintainer, and all interested and affected parties as enumerated in Section C.1.3, to develop and make publicly available via a website, a dashboard to track the process flow for root zone management within nine (9) months after date of contract award.

C.4.4   Performance Standards Reports -- The Contractor shall develop and publish reports for each discrete IANA function consistent with Section C.2.8. 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) starting no later than six (6) months after date of contract award.

C.4.5   Customer Service Survey (CSS) --The Contractor shall collaborate with NTIA to develop and conduct an 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 shall submit the CSS Report to the COR.

C.4.6   Final Report -- The Contractor 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 shall submit the report to the CO and the COR no later than 30 days after expiration of the contract.

C.4.7   Inspection and Acceptance -- The COR will perform final inspection and acceptance of all deliverables and reports articulated in Section C.4. *Prior to publication/posting of reports, the Contractor shall obtain approval from the COR*. The COR shall not unreasonably withhold approval.

C.5   AUDIT REQUIREMENTS

C.5.1   Audit Data -- The Contractor shall generate and retain security process audit record data for one year and provide an annual audit report to the CO and the COR. All root zone management operations shall be included in the audit, and records on change requests to the root zone file. The Contractor shall retain these records in accordance with the clause at

SA1301-12-CN-0035

52.215-2. The Contractor shall provide specific audit record data to the CO and COR upon request.

C.5.2   Root Zone Management Audit Data -- The Contractor shall generate and publish via a website a monthly audit report based on information in the performance of *Provision C.9.2(a-g) Perform Administrative Functions Associated With Root Zone Management*. The audit report shall identify each root zone file and root zone "WHOIS" database change request and the relevant policy under which the change was made as well as identify change rejections and the relevant policy under which the change request was rejected. The Report shall start no later than nine (9) months after date of contract award and thereafter is due to the COR no later than 15 calendar days following the end of each month.

C.5.3   External Auditor - - The Contractor shall have an external, independent, specialized compliance audit which shall be conducted annually and it shall be an audit of all the IANA functions security provisions against existing best practices and Section C.3 of this contract.

C.5.4   Inspection and Acceptance -- The COR will perform final inspection and acceptance of all deliverables and reports articulated in Section C.5. *Prior to publication/posting of reports, the Contractor shall obtain approval from the COR*. The COR shall not unreasonably withhold approval.

C. 6   CONFLICT OF INTEREST REQUIREMENTS

C.6.1   The Contractor shall take measures to avoid any activity or situation that could compromise, or give the appearance of compromising, the impartial and objective performance of the contract (e.g., a person has a conflict of interest if the person directly or indirectly appears to benefit from the performance of the contract). The Contractor shall maintain a written, enforced conflict of interest policy that defines what constitutes a potential or actual conflict of interest for the Contractor. At a minimum, this policy must address conflicts based on personal relationships or bias, financial conflicts of interest, possible direct or indirect financial gain from Contractor's policy decisions and employment and post-employment activities.   The conflict of interest policy must include appropriate sanctions in case of non-compliance, including suspension, dismissal and other penalties.

C.6.2   The Contractor shall designate a senior staff member to serve as a Conflict of Interest Officer who shall be responsible for ensuring the Contractor is in compliance with the Contractor's internal and external conflict of interest rules and procedures. The Conflict of Interest Officer shall be one of the key personnel assigned to this contract.

C.6.2.1   The Conflict of Interest Officer shall be responsible for distributing the Contractor's conflict of interest policy to all employees, directors, and subcontractors upon their election, re-election or appointment and annually thereafter.

SA1301-12-CN-0035

C.6.2.2   The Conflict of Interest Officer shall be responsible for requiring that each of the Contractor's employees, directors and subcontractors complete a certification with disclosures of any known conflicts of interest upon their election, re-election or appointment, and annually thereafter.

C.6.2.3   The Conflict of Interest Officer shall require that each of the Contractor's employees, directors, and subcontractors promptly update the certification to disclose any interest, transaction, or opportunity covered by the conflict of interest policy that arises during the annual reporting period.

C.6.2.4   The Conflict of Interest Officer shall develop and publish subject to applicable laws and regulations, a Conflict Of Interest Enforcement and Compliance Report. The report shall describe major events, problems encountered, and any changes, if any, related to Section C.6.

C.6.2.5   See also the clause at H.5. Organizational Conflict of Interest

C. 7   CONTINUITY OF OPERATIONS

C.7.1   Continuity of Operations (COP) – The Contractor shall, at a minimum, maintain multiple redundant sites in at least 2, ideally 3 sites, geographically dispersed within the United States as well as multiple resilient communication paths between interested and affected parties as enumerated in Section C.1.3 to ensure continuation of the IANA functions in the event of cyber or physical attacks, emergencies, or natural disasters.

C.7.2   Contingency and Continuity of Operations Plan (The CCOP) – The Contractor shall collaborate with NTIA and the Root Zone Maintainer, and all interested and affected parties as enumerated in Section C.1.3, to develop and implement a CCOP for the IANA functions within nine (9) months after date of contract award. The Contractor in collaboration with NTIA and the Root Zone Maintainer shall update and test the plan annually. The CCOP shall include details on plans for continuation of each of the IANA functions in the event of cyber or physical attacks, emergencies, or natural disasters. The Contractor shall submit the CCOP to the COR after each annual update.

C.7.3   Transition to Successor Contractor – In the event the Government selects a successor contractor, the Contractor shall have a plan in place for transitioning each of the IANA functions to ensure an orderly transition while maintaining continuity and security of operations. The plan shall be submitted to the COR eighteen (18) months after date of contract award, reviewed annually, and updated as appropriate.

C.8   PERFORMANCE EXCLUSIONS

C.8.1   This contract does not authorize the Contractor to make modifications, additions, or deletions to the root zone file or associated information. (This contract does not alter the root

SA1301-12-CN-0035

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 as designated by the U.S. Department of Commerce). See Amendment 11 at http://ntia.doc.gov/files/ntia/publications/amend11_052206.pdf.

C.8.2   This contract does not authorize the Contractor to make material changes in the policies and procedures developed by the relevant entities associated with the performance of the IANA functions. The Contractor shall not change or implement the established methods associated with the performance of the IANA functions without prior approval of the CO.

C.8.3   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.

SA1301-12-CN-0035

Appendix 1: Authoritative Root Zone Management Process [1]

Authoritative Root Zone Management Process (Present)

---
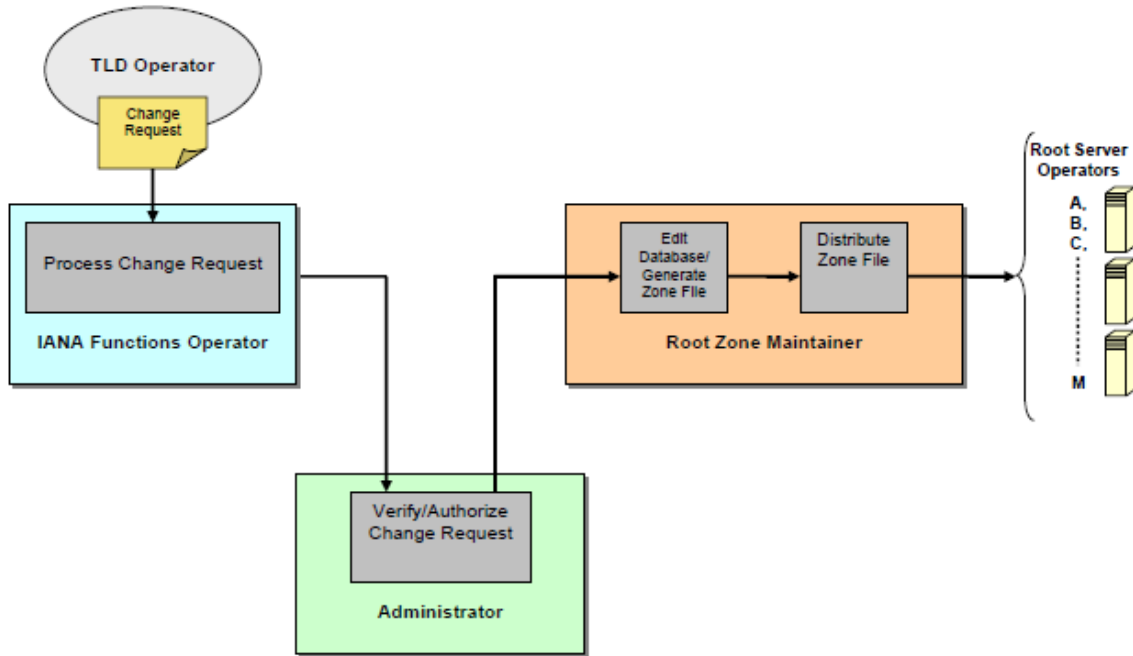
[1] The Root Zone management partners consist of the IANA Functions Operator (per the IANA functions contract), NTIA/Department of Commerce, and the Root Zone Maintainer (per the Cooperative Agreement with VeriSign (or any successor entity as designated by the U.S. Department of Commerce).

15

SA1301-12-CN-0035

Appendix 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 the Department.[2] The baseline requirements encompass the responsibilities and requirements for both the IANA Functions Operator and the Root Zone Maintainer as described and delineated below.

General Requirements

The Root Zone system needs an overall security lifecycle, such as that described in ISO 27001, and any security policy for DNSSEC implementation must be validated against existing standards for security controls.

The remainder of this section highlights security requirements that must be considered in developing any solution. ISO 27002:2005 (formerly ISO 17799:2005) and NIST SP 800-53 are recognized sources for specific controls. Note that reference to SP 800-53 is used as a convenient means of specifying a set of technical security requirements.[3] It is expected that the systems referenced in this document will meet all the SP 800-53 technical security controls required by a HIGH IMPACT system.[4]

Whenever possible, references to NIST publications are given as a source for further information. These Special Publications (SP) and FIPS documents are not intended as a future auditing checklist, but as non-binding guidelines and recommendations to establish a viable IT security policy. Comparable security standards can be substituted where available and appropriate. All of the NIST document references can be found on the NIST Computer Security Research Center webpage (http://www.csrc.nist.gov/).

1) **Security Authorization and Management Policy**

   a) Each partner[5] in the Root Zone Signing process shall have a security policy in place; this security policy must be periodically reviewed and updated, as appropriate.

---

[2] The Root Zone management partners consist of the IANA Functions Operator (per the IANA functions contract), NTIA/Department of Commerce, and Root Zone Maintainer (per the Cooperative Agreement with VeriSign). This document outlines requirements for both the IANA Functions Operator and Root Zone Maintainer in the operation and maintenance of DNSSEC at the authoritative root zone.

[3] Note in particular that the use of the requirements in SP 800-53 does not imply that these systems are subject to other Federal Information Security Management Act (FISMA) processes.

[4] For the purpose of identifying SP 800-53 security requirements, the Root Zone system can be considered a HIGH IMPACT system with regards to integrity and availability as defined in FIPS 199.

[5] For this document, the roles in the Root Zone Signing process are those associated with the Key Signing Key holder, the Zone Signing Key holder, Public Key Distributor, and others to be conducted by the IANA Functions Operator and the Root Zone Maintainer.

SA1301-12-CN-0035

    i)   Supplemental guidance on generating a Security Authorization Policy may be found in NIST SP 800-37.

b)   These policies shall have a contingency plan component to account for disaster recovery (both man-made and natural disasters).[6]

    i)   Supplemental guidance on contingency planning may be found in SP 800-34.

c)   These policies shall address Incident Response detection, handling and reporting (see 4 below).

    i)   Supplemental guidance on incident response handling may be found in NIST SP 800-61.

2) IT Access Control

a)   There shall be an IT access control policy in place for each of the key management functions and it shall be enforced.

    i)   This includes both access to hardware/software components and storage media as well as ability to perform process operations.
    ii) Supplemental guidance on access control policies may be found in NIST SP 800-12.

b)   Users without authentication shall not perform any action in key management.

c)   In the absence of a compelling operational requirement, remote access to any cryptographic component in the system (e.g. HSM) is not permitted.[7]

3) Security Training

a)   All personnel participating in the Root Zone Signing process shall have adequate IT security training.

    i)   Supplemental guidance on establishing a security awareness training program may be found in NIST SP 800-50.

4) Audit and Accountability Procedures

---

[6] For the IANA Functions Operator, the contingency plan must be consistent with and/or included in the "Contingency and Continuity of Operations Pan" as articulated in Section C.7 of the IANA functions contract.
[7] Remote access is any access where a user or information system communicates through a non-organization controlled network (e.g., the Internet).

SA1301-12-CN-0035

a) The organization associated with each role shall develop, disseminate, and periodically review/update: (1) a formal, documented, audit and accountability policy that addresses purpose, scope, roles, responsibilities, management commitment, coordination among organizational entities, and compliance; and (2) formal, documented procedures to facilitate the implementation of the audit and accountability policy and associated audit and accountability controls.

    i)   Supplemental guidance on auditing and accountability policies may be found in NIST SP 800-12.
    ii) Specific auditing events include the following:
        o Generation of keys
        o Generation of signatures
        o Exporting of public key material
        o Receipt and validation of public key material (i.e., from the ZSK holder or from TLDs)
        o System configuration changes
        o Maintenance and/or system updates
        o Incident response handling
        o Other events as appropriate

b) Incident handling for physical and exceptional cyber attacks[8] shall include reporting to the Department's National Telecommunications and Information Administration (NTIA) in a timeframe and format as mutually agreed by the Department, IANA Functions Operator, and Root Zone Maintainer.

c) The auditing procedures shall include monthly reporting to NTIA.[9]

d) The auditing system shall be capable of producing reports on an ad-hoc basis.

e) A version of these reports must be made publically available.

5) Physical Protection Requirements

a) There shall be physical access controls in place to only allow access to hardware components and media to authorized personnel.

    i)   Supplemental guidance on token based access may be found in NIST SP 800-73 and FIPS 201.
    ii) Supplemental guidance on token based access biometric controls may be found in

---

[8] Non-exceptional events are to be included in monthly reporting as required in 4 c.
[9] For the IANA Functions Operator, audit reporting shall be incorporated into the audit report as articulated in C.5.2 of the IANA functions contract.

SA1301-12-CN-0035

NIST SP 800-76.

b) Physical access shall be monitored, logged, and registered for all users and visitors.

c) All hardware components used to store keying material or generate signatures shall have short-term backup emergency power connections in case of site power outage. (*See,* SP 800-53r3)

d) All organizations shall have appropriate protection measures in place to prevent physical damage to facilities as appropriate.

6) All Components

a) All commercial off the shelf hardware and software components must have an established maintenance and update procedure in place.

  i) Supplemental guidance on establishing an upgrading policy for an organization may be found in NIST SP 800-40.

b) All hardware and software components provide a means to detect and protect against unauthorized modifications/updates/patching.

Role Specific Requirements

7) Root Zone Key Signing Key (KSK) Holder[10]

The Root Zone KSK Holder (RZ KSK) is responsible for: (1) generating and protecting the private component of the RZ KSK(s); (2) securely exporting or importing any public key components, should this be required (3) authenticating and validating the public portion of the RZ Zone Signing Key (RZ ZSK); and (4) signing the Root Zone's DNSKEY record (ZSK/KSK).

  a) **Cryptographic Requirements**

  i) The RZ KSK key pair shall be an RSA key pair, with a modulus of at least 2048 bits.
  ii) RSA key generation shall meet the requirements specified in FIPS 186-3.[11] In particular, key pair generation shall meet the FIPS 186-3 requirements for exponent size and primality testing.
  iii) The RZ KSK private key(s) shall be generated and stored on a FIPS 140-2 validated

---

[10] The Root Zone KSK Holder is a responsibility performed by the IANA Functions Operator.
[11] Note that FIPS 186-3 and FIPS 140-2 are referenced as requirements in sections a and b, rather than supplemental guidance.

SA1301-12-CN-0035

hardware cryptographic module (HSM)[12], validated at Level 4 overall.[13]

    iv) RZ KSK Digital Signatures shall be generated using SHA-256.

    v) All cryptographic functions involving the private component of the KSK shall be performed within the HSM; that is, the private component shall only be exported from the HSM with the appropriate controls (FIPS 140-2) for purposes of key backup.

b)   Multi-Party Control

At least two persons shall be required to activate or access any cryptographic module that contains the complete RZ KSK private signing key.

    i) The RZ KSK private key(s) shall be backed up and stored under at least two-person control. Backup copies shall be stored on FIPS 140-2 compliant HSM, validated at Level 4 overall, or shall be generated using m of n threshold scheme and distributed to organizationally separate parties.

    ii) Backup copies stored on HSMs shall be maintained in different physical locations[14], with physical and procedural controls commensurate to that of the operational system.

    iii) In the case of threshold secret sharing, key shares shall be physically secured by each of the parties.

    iv) In all cases, the names of the parties participating in multi-person control shall be maintained on a list that shall be made available for inspection during compliance audits.

c) Root Zone KSK Rollover

    i) Scheduled rollover of the RZ KSK shall be performed.[15] (See Contingency planning for unscheduled rollover.)

    ii) RZ KSK rollover procedures shall take into consideration the potential future need for algorithm rollover.

    iii) DNSSEC users shall be able to authenticate the source and integrity of the new RZ KSK using the previously trusted RZ KSK's public key.

d)   Contingency Planning

---

[12] FIPS 140 defines hardware cryptographic modules, but this specification will use the more common HSM (for hardware security module) as the abbreviation.

[13] Note that FIPS 186-3 and FIPS 140-2 are referenced as requirements in sections a and b, rather than supplemental guidance.

[14] Backup locations are to be within the United States.

[15] The Department envisions the timeline for scheduled rollover of the RZ KSK to be jointly developed and proposed by the IANA Functions Operator and Root Zone Maintainer, based on consultation and input from the affected parties (e.g. root server operators, large-scale resolver operators, etc). Note that subsequent test plans may specify more or less frequent RZ KSK rollover to ensure adequate testing.

SA1301-12-CN-0035

      i)   Procedures for recovering from primary physical facility failures (e.g., fire or flood that renders the primary site inoperable) shall be designed to reconstitute capabilities within 48 hours.

      ii) Procedures for emergency rollover of the RZ KSK shall be designed to achieve key rollover and publication within 48 hours. These procedures, which are understood to address DNSSEC key provision only, should accommodate the following scenarios:

          (1) The current RZ KSK has been compromised; and

          (2) The current RZ KSK is unavailable, but is not believed to be compromised.

e)   DNS Record Generation/Supporting RZ ZSK rollover

      i)   The RZ KSK Holder shall authenticate the source and integrity of RZ ZSK public key material

          (1) Mechanisms must support proof of possession and verify the parameters (i.e., the RSA exponent)

      ii) The signature on the root zone's DNSKEY record shall be generated using SHA-256.

f)   Audit Generation and Review Procedures

      i)   Designated Audit personnel may not participate in the multi-person control for the RZ ZSK or RZ KSK.

      ii) Audit logs shall be backed up offsite at least monthly.

      iii) Audit logs (whether onsite or offsite) shall be protected from modification or deletion.

      iv) Audit logs shall be made available upon request for Department review.

8)   RZ KSK Public Key Distribution

   a) The RZ KSK public key(s) shall be distributed in a secure fashion to preclude substitution attacks.

   b) Each mechanism used to distribute the RZ KSK public key(s) shall either

      i)   Establish proof of possession of the RZ KSK private key (for public key distribution); or

      ii) Establish proof of possession of the previous RZ KSK private key (for Root zone key rollover).

9)   RZ Zone Signing Key (RZ ZSK) Holder[16]

---

[16] The RZ ZSK holder is a function performed by the Root Zone Maintainer, NOT the IANA Functions Operator.

SA1301-12-CN-0035

The Root Zone ZSK Holder (RZ ZSK) is responsible for (1) generating and protecting the private component of the RZ ZSK(s); (2) securely exporting or importing any public key components, should this be required and (3) generating and signing Zone File Data in accordance to the DNSSEC specifications.

a) **Cryptographic Requirements**

    i)   The RZ ZSK key pair shall be an RSA key pair, with a modulus of at least 1024 bits.[17]

    ii) RSA key generation shall meet the requirements specified in FIPS 186-3.[18] In particular, key pair generation shall meet the FIPS 186-3 requirements for exponent size and primality testing.

    iii) RZ ZSK Digital Signatures shall be generated using SHA-256.

    iv) The RZ ZSK private key(s) shall be generated and stored on a FIPS 140-2 compliant HSM. At a minimum, the HSM shall be validated at Level 4 overall.

    v) All cryptographic functions involving the private component of the RZ ZSK shall be performed within the HSM; that is, the private component shall not be exported from the HSM except for purposes of key backup.

b) **Multi-Party Control**

    i)   Activation of the RZ ZSK shall require at least two-person control. This requirement may be satisfied through a combination of physical and technical controls.

    ii) If the RZ ZSK private key(s) are backed up, they shall be backed up and stored under at least two-person control. Backup copies shall be stored on FIPS 140-2 validated HSM, validated at Level 4 overall.[19]

       (1) Backup copies shall be maintained both onsite and offsite[20], with physical and procedural controls commensurate to that of the operational system.

       (2) The names of the parties participating in multi-person control shall be maintained on a list and made available for inspection during compliance audits.

c) **Contingency Planning**

    i)   Procedures for recovery from failure of the operational HSM containing the RZ ZSK shall be designed to re-establish the capability to sign the zone within 2 hours.

    ii) Procedures for emergency rollover of the RZ ZSK shall be designed to achieve key

---

[17] Note that these requirements correspond to those articulated in NIST SP 800-78 for authentication keys. Since there is no forward security requirement for the DNSSEC signed data, the more stringent requirements imposed on long term digital signatures do not apply.

[18] Note that FIPS 186-3 and FIPS 140-2 are referenced as requirements in sections 8a and 8 b, rather than as supplemental guidance.

[19] Note that FIPS 186-3 and FIPS 140-2 are referenced as requirements in sections 8a and 8 b, rather than as supplemental guidance.

[20] The Department expects backup locations to be within the United States.

SA1301-12-CN-0035

rollover within a technically feasible timeframe as mutually agreed among the Department, Root Zone Maintainer, and the IANA functions operator. These procedures must accommodate the following scenarios:

(1) The current RZ ZSK has been compromised; and

(2) The current RZ ZSK is unavailable (e.g. destroyed), but is not believed to be compromised.

d) Root Zone ZSK Rollover

i)   The RZ ZSK shall be rolled over every six months at a minimum.[21]

ii) DNSSEC users shall be able to authenticate the source and integrity of the new RZ ZSK using the previously trusted RZ ZSK's public key.

iii) RZ KSK holder shall be able to authenticate the source and integrity of the new RZ ZSK.

e) Audit Generation and Review Procedures

i)   Designated Audit personnel may not participate in the control for the RZ ZSK or RZ KSK.

ii) Audit logs shall be backed up offsite at least monthly.

iii) Audit logs (whether onsite or offsite) shall be protected from unauthorized access, modification, or deletion.

iv) Audit logs shall be made available upon request for NTIA review.

Other Requirements

10) Transition Planning

a) The IANA Functions Operator and Root Zone Maintainer shall have plans in place for transitioning the responsibilities for each role while maintaining continuity and security of operations. In the event the IANA Functions Operator or Root Zone Maintainer are no longer capable of fulfilling their DNSSEC related roles and responsibilities (due to bankruptcy, permanent loss of facilities, etc.) or in the event the Department selects a successor, that party shall ensure an orderly transition of their DNSSEC roles and responsibilities in cooperation with the Department.[22]

11) Personnel Security Requirements

---

[21] The timelines specified in this document apply to the operational system.   Subsequent test plans may specify more or less frequent RZ ZSK rollover to ensure adequate testing.

[22] For the IANA Functions Operator, the transition plan shall be incorporated into that which is called for in section C.7.3 of the IANA functions contract.

SA1301-12-CN-0035

a) **Separation of Duties**

    i)   Personnel holding a role in the multi-party access to the RZ KSK may not hold a role in the multi-party access to the RZ ZSK, or vice versa.

    ii) Designated Audit personnel may not participate in the multi-person control for the RZ ZSK or KSK.

    iii) Audit Personnel shall be assigned to audit the RZ KSK Holder or the RZ ZSK Holder, but not both.

b) **Security Training**

    i)   All personnel with access to any cryptographic component used with the Root Zone Signing process shall have adequate training for all expected duties.

12) **Root Zone Maintainer Basic Requirements**

a) Ability to receive NTIA authorized TLD Resource Record Set (RRset) updates from NTIA and IANA Functions Operator

b) Ability to integrate TLD RRset updates into the final zone file

c) Ability to accept NTIA authorized signed RZ keyset(s) and integrate those RRsets into the final zone file

13) **IANA Functions Operator Interface Basic Functionality**

a) Ability to accept and process TLD DS records. New functionality includes:

    i)   Accept TLD DS RRs

       (1) Retrieve TLD DNSKEY record from the TLD, and perform parameter checking for the TLD keys, including verify that the DS RR has been correctly generated using the specified hash algorithm.

    ii) Develop with, and communicate to, TLD operators procedures for:

       (1) Scheduled roll over for TLD key material

       (2) Supporting emergency key roll over for TLD key material.

       (3) Moving TLD from signed to unsigned in the root zone.

b) Ability to submit TLD DS record updates to NTIA for authorization and inclusion into the root zone by the Root Zone Maintainer.

c) Ability to submit RZ keyset to NTIA for authorization and subsequent inclusion into the root zone by the Root Zone Maintainer.

14)   **Root Zone Management Requirements[23]**

---

[23] The Department envisions the IANA Functions Operator and Root Zone Maintainer jointly agree to utilizing pre-existing processes and/or deciding and proposing new methods by which each of these requirements are designed and implemented, subject to Department approval.

SA1301-12-CN-0035

a) Ability and process to store TLD delegations and DS RRs
b) Ability and process to store multiple keys for a delegation with possibly different algorithms
c) Ability and process to maintain a history of DS records used by each delegation
d) Procedures for managing scheduled roll over for TLD key material
e) Procedures for managing emergency key roll over for TLD key material.[24]
f) Procedures for managing the movement of TLD from signed to unsigned.[25]
g) Procedures for DNSSEC revocation at the root zone and returning the root zone to its pre-signed state.

---

[24] To the extent possible, on 24 hour notice under the existing manual system and on 12 hours notice once the automated system is utilized.
[25] To the extent possible, this must be within 48 hours.

SA1301-12-CN-0035

SECTION D - PACKAGING AND MARKING

RESERVED

SA1301-12-CN-0035

SECTION E - INSPECTION AND ACCEPTANCE

E.1   INSPECTION AND ACCEPTANCE

The Contracting Officer's Representative (COR) will perform 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 this Contract. The CO reserves the right to designate other Government agents as authorized representatives upon unilateral written notice to the Contractor, which may be accomplished in the form of a transmittal of a copy of the authorization. The Government reserves the right to inspect the premises, systems, and processes of all security and operational components used for the performance of all Contract requirements and obligations.

E.2   INSPECTION -- TIME-AND-MATERIAL AND LABOR-HOUR (FAR 52.246-6) (MAY 2001)

(a) *Definitions*. As used in this clause--

"Contractor's managerial personnel" means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of --

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at any one plant or separate location where the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

"Materials" includes data when the contract does not include the Warranty of Data clause.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the material, fabricating methods, work, and services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance.

SA1301-12-CN-0035

The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the contract, the Government shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (h) of this clause, the cost of replacement or correction shall be determined under the Payments Under Time-and-Materials and Labor-Hour Contracts clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g)

(1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may --

(i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(ii) Terminate this contract for default.

(2) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to --

SA1301-12-CN-0035

(1) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(2) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(j) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(k) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

SA1301-12-CN-0035

SECTION F - DELIVERIES AND PERFORMANCE

F.1   PERIOD OF PERFORMANCE

The period of performance of this contract is: October 1, 2012 – September 30, 2015.

F.2   PLACE OF PERFORMANCE

The Contractor shall perform all work at the Contractor's facilities.

F.3   DISTRIBUTION OF DELIVERABLES

The Contractor shall submit **one (1) copy** to the COR.

F.4   DELIVERABLES

The listed below are the deliverables required by this contract. Section C of this contract contains information about the deliverables.

Clause No.	Clause	Deliverable	Due Date
C.2.6	Transparency and Accountability	User instructional documentation including technical requirements	Six months after award
C.2.7	Responsibility and Respect for Stakeholders	Documenting the source of the policies and procedures.	Six months after award
C.2.8	Performance Standards	Performance Standards	Six months after award
C.2.9.2e	Root Zone Automation	Automated Root Zone	Nine months after award
C.2.9.2g	Customer Service Complaint Resolution Process (CSCRP)	Customer Compliant Process	Six months after award
C.3.4	Security Plan	Documenting Practices and configuration of all systems	Annually
C.4.1	Monthly Performance Progress Report includes DNSSEC	Report based on C.2	Monthly
C.4.2	Root Zone Management	Root Zone Management	Nine months

SA1301-12-CN-0035

Clause No.	Clause	Deliverable	Due Date
	Dashboard	Dashboard	after award
C.4.3	Performance Standards Reports	Performance Standards Report	Six months after award and monthly thereafter
C.4.4	Customer Service Survey	Customer Service Survey	Annual Report of Customer Survey
C.4.5	Final Report	Final Report	Expiration of Contract
C.5.1	Audit Data	Audit Report	Annually
C.5.2	Root Zone Management Audit Data	Root Zone Management Audit Report	Nine Months after award and Monthly Report thereafter
C.5.3	External Auditor	External Audit Report	Annually
C.6.2.4	Conflict of Interest Enforcement and Compliance Report	Enforcement and Compliance Report	Annually
C.7.2	Contingency and Continuity of Operations Plan (The CCOP)	Contingency and Continuity of Operations for the continuation of the IANA Functions in case of an emergency.	Annually
C.7.3	Transition to Successor	Transition plan in case of successor contractor.	Eighteen (18) months after date of contract award

F.5   GOVERNMENT RIGHTS TO DELIVERABLES

All deliverables provided under this contract become the property of the U.S. Government.

F.6   GOVERNMENT REVIEW OF DELIVERABLES

The Government shall review all deliverables and determine acceptability. Any deficiencies shall be corrected by the Contractor and resubmitted to the Government within ten (10) workdays after notification.

F.7   REQUIRED DELIVERABLES

SA1301-12-CN-0035

The Contractor shall transmit all deliverables so the deliverables are received by the parties listed above on or before the indicated due dates.

F.8   MEETINGS

Program reviews will be scheduled monthly and site visits will occur annually.

SA1301-12-CN-0035

SECTION G - CONTRACT ADMINISTRATION DATA

Notwithstanding the Contractor's responsibility for total management during the performance of the contract, the administration of the contract will require maximum coordination between the Department of Commerce and the Contractor. The following individuals will be the Department of Commerce points of contact during the performance of the contract.

G.1   CONTRACTING OFFICER'S AUTHORITY

CONTRACTING OFFICER'S AUTHORITY (CAR 1352.201-70) (APR 2010)

The Contracting Officer is the only person authorized to make or approve any changes in any of the requirements of this contract, and, notwithstanding any provisions contained elsewhere in this contract, the said authority remains solely in the Contracting Officer. In the event the contractor makes any changes at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract terms and conditions, including price.

CONTRACTING OFFICER'S REPRESENTATIVE (COR) (CAR 1352.201-72) (APR 2010)

(a)   **Vernita D. Harris, Deputy Associate Administrator** is hereby designated as the Contracting Officer's Representative (COR). The COR may be changed at any time by the Government without prior notice to the contractor by a unilateral modification to the contract.

> The COR is located at:
> 1401 Constitution Avenue, N.W., Room 4701, Washington, DC 20230
> PHONE NO: 202.482.4686
> Email: vharris@ntia.doc.gov

 (b)   The responsibilities and limitations of the COR are as follows:

(1) The COR is responsible for the technical aspects of the contract and serves as technical liaison with the contractor. The COR is also responsible for the final inspection and acceptance of all deliverables and such other responsibilities as may be specified in the contract.

(2) The COR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the contract price, terms or conditions. Any contractor request for changes shall be referred to the Contracting Officer directly or through the COR. No such changes shall be made without the express written prior authorization of the Contracting Officer. The Contracting Officer may designate assistant or alternate COR(s) to act for the COR by naming such

SA1301-12-CN-0035

assistant/alternate(s) in writing and transmitting a copy of such designation to the contractor.

SA1301-12-CN-0035

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1   AUDIT AND RECORDS – NEGOTIATION (FAR 52.215-2) (OCT 2010)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Certified cost or pricing data.* If the Contractor has been required to submit certified cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to --

    (1) The proposal for the contract, subcontract, or modification;
    (2) The discussions conducted on the proposal(s), including those related to negotiating;
    (3) Pricing of the contract, subcontract, or modification; or
    (4) Performance of the contract, subcontract or modification.

(d) *Comptroller General*—

    (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

    (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports*. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the

SA1301-12-CN-0035

right to examine and audit the supporting records and materials, for the purpose of evaluating --

(1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(f) *Availability*. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition --

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and --

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which certified cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

Alternate I (Mar 2009). As prescribed in 15.209 (b)(2), substitute the following paragraphs (d)(1) and (g) for paragraphs (d)(1) and (g) of the basic clause:

(d) *Comptroller General or Inspector General*.

SA1301-12-CN-0035

(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to—

(i) Examine any of the Contractor's or any subcontractor's records that pertain to and involve transactions relating to this contract or a subcontract hereunder; and

(ii) Interview any officer or employee regarding such transactions.

(g)(1) Except as provided in paragraph (g)(2) of this clause, the Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract. The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(2) The authority of the Inspector General under paragraph (d)(1)(ii) of this clause does not flow down to subcontracts.

Alternate II (Apr 1998). As prescribed in 15.209(b)(3), add the following paragraph (h) to the basic clause:

(h) The provisions of OMB Circular No.A-133, "Audits of States, Local Governments, and Nonprofit Organizations," apply to this contract.

Alternate III (Jun 1999). As prescribed in 15.209(b)(4), delete paragraph (d) of the basic clause and redesignate the remaining paragraphs accordingly, and substitute the following paragraph (e) for the redesignated paragraph (e) of the basic clause:

(e) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), and (d) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

SA1301-12-CN-0035

H.2   PATENT RIGHTS -- OWNERSHIP BY THE CONTRACTOR (FAR 52.227-11) (DEC 2007)

(a) As used in this clause—

"Invention" means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code, or any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq*.)

"Made" means—

(1) When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

"Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

"Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that is benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Subject invention" means any invention of the Contractor made in the performance of work under this contract.

(b) *Contractor's rights.*

(1) *Ownership.* The Contractor may retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.

(2) *License.*

(i) The Contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to any domestic subsidiaries and affiliates within the corporate structure of which the Contractor

38

SA1301-12-CN-0035

is a part, and includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at contract award. The license is transferable only with the written approval of the agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(ii) The Contractor's license may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of the subject invention in a particular country in accordance with the procedures in FAR 27.302(i)2() and 27.(304(f).

(c) *Contractor's obligations.*

(1) The Contractor shall disclose in writing each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure shall identify the inventor(s) and this contract under which the subject invention was made. It shall be sufficiently complete in technical detail to convey a clear understanding of the subject invention. The disclosure shall also identify any publication, on sale (*i.e.*, sale or offer for sale), or public use of the subject invention, or whether a manuscript describing the subject invention has been submitted for publication and, if so, whether it has been accepted for publication. In addition, after disclosure to the agency, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the subject invention for publication and any on sale or public use.

(2) The Contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer within 2 years of disclosure to the agency. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file either a provisional or a nonprovisional patent application or a Plant Variety Protection Application on an elected subject invention within 1 year after election. However, in any case where a publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the Contractor shall file the application prior to the end of that statutory period. If the Contractor files a provisional application, it shall file a nonprovisional application within 10 months of the filing of the provisional application. The Contractor shall file patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date permission is granted by the Commissioner

SA1301-12-CN-0035

of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) The Contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (c)(2), and (c)(3) of this clause.

(d) *Government's rights*—

(1) *Ownership*. The Contractor shall assign to the agency, on written request, title to any subject invention—

(i) If the Contractor fails to disclose or elect ownership to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain ownership; provided, that the agency may request title only within 60 days after learning of the Contractor's failure to disclose or elect within the specified times.

(ii) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the Contractor shall continue to retain ownership in that country.

(iii) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(2) *License*. If the Contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.

(e) *Contractor action to protect the Government's interest*.

(1) The Contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to—

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and

(ii) Assign title to the agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection and plant variety protection for that subject invention in any country.

SA1301-12-CN-0035

(2) The Contractor shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in the Contractor's format, each subject invention in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Contracting Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) The Contractor shall include, within the specification of any United States nonprovisional patent or plant variety protection application and any patent or plant variety protection certificate issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in the invention."

(f) *Reporting on utilization of subject inventions.* The Contractor shall submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining utilization of the subject invention that are being made by the Contractor or its licensees or assignees. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information as the agency may reasonably specify. The Contractor also shall provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (h) of this clause. The Contractor also shall mark any utilization report as confidential/proprietary to help prevent inadvertent release outside the Government. As required by 35 U.S.C. 202(c)(5), the agency will not disclose that information to persons outside the Government without the Contractor's permission.

(g) *Preference for United States industry*. Notwithstanding any other provision of this clause, neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement

for an agreement may be waived by the agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States, or that under the circumstances domestic manufacture is not commercially feasible.

(h) *March-in rights*. The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), and in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency in effect on the date of contract award.

(i) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it shall—

(1) Not assign rights to a subject invention in the United States without the written approval of the agency, except where an assignment is made to an organization that has as one of its primary functions the management of inventions, provided, that the assignee shall be subject to the same provisions as the Contractor;

(2) Share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (but through their agency if the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) Use the balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions for the support of scientific research or education; and

(4) Make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business concerns, and give a preference to a small business concern when licensing a subject invention if the Contractor determines that the small business concern has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business concerns; provided, that the Contractor is also satisfied that the small business concern has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor.

(5) Allow the Secretary of Commerce to review the Contractor's licensing program and decisions regarding small business applicants, and negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of paragraph (i)(4) of this clause.

SA1301-12-CN-0035

(j) *Communications*. [*Complete according to agency instructions*.]

(k) *Subcontracts*.

> (1) The Contractor shall include the substance of this clause, including this paragraph (k), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization.

> (2) The Contractor shall include in all other subcontracts for experimental, developmental, or research work the substance of the patent rights clause required by FAR Subpart 27.3.

> (3) At all tiers, the patent rights clause must be modified to identify the parties as follows: references to the Government are not changed, and the subcontractor has all rights and obligations of the Contractor in the clause. The Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

> (4) In subcontracts, at any tier, the agency, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (h) of this clause.

H.3   RESERVED

H.4   RIGHTS IN DATA – SPECIAL WORKS (FAR 52.227-17) (DEC 2007)

(a) *Definitions*. As used in this clause--

"Data" means recorded information, regardless of form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Unlimited rights" means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of Rights.*

> (1) The Government shall have—

SA1301-12-CN-0035

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause for copyright.

(ii) The right to limit assertion of copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in that data, in accordance with paragraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to assert claim to copyright subsisting in data first produced in the performance of this contract.

(c) *Copyright—*

(1) *Data first produced in the performance of this contract.*

(i) The Contractor shall not assert or authorize others to assert any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When copyright is asserted, the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all delivered data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the Contracting Officer shall direct the Contractor to assign (with or without registration), or obtain the assignment of, the copyright to the Government or its designated assignee.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contain the copyright notice of 17 U.S.C. 401 or 402, unless the

SA1301-12-CN-0035

Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause.

(d) *Release and use restrictions.* Except as otherwise specifically provided for in this contract, the Contractor shall not use, release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) *Indemnity*. The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the Contractor's consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and these provisions do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

H.5   RIGHTS IN DATA -- EXISTING WORKS (FAR 52.227-18) (DEC 2007)

(a) Except as otherwise provided in this contract, the Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government, for all the material or subject matter called for under this contract, or for which this clause is specifically made applicable.

(b) The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the Contractor's consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

H.6   BANKRUPTCY (FAR 52.242-13) (JUL 1995)

SA1301-12-CN-0035

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

H.7   PRINTING   (CAR 1352.208-70) (APR 2010)

(a) The contractor is authorized to duplicate or copy production units provided the requirement does not exceed 5,000 production units of any one page or 25,000 production units in the aggregate of multiple pages. Such pages may not exceed a maximum image size of 103/4by 141/4inches. A "production unit" is one sheet, size 81/2x 11 inches (215 x 280 mm), one side only, and one color ink. Production unit requirements are outlined in the Government Printing and Binding Regulations.

(b) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the contractor to respond to the terms of the contract).

(c) Costs associated with printing, duplicating, or copying in excess of the limits in paragraph (a) of this clause are unallowable without prior written approval of the Contracting Officer. If the contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or substantial duplicating or copying, it shall immediately provide written notice to the Contracting Officer and request approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with FAR 8.802.

(d) The contractor shall include in each subcontract which may involve a requirement for any printing, duplicating, and copying in excess of the limits specified in paragraph (a) of this clause, a provision substantially the same as this clause, including this paragraph (d).

H.8   KEY PERSONNEL (CAR 1352.237-75) (APR 2010)

(a) The contractor shall assign to this contract the following key personnel:

NAME	POSITION
Elise Gerich	IANA Functions Program Manager

SA1301-12-CN-0035

Michelle Cotton	IANA Function Liaison for Technical Protocol Parameters Assignment
Kim Davies	IANA Function Liaison for Root Zone Management
Leo Vegoda	IANA Function Liaison for Internet Number Resource Allocation
Tomofumi Okubo	Security Director
Steve Antonoff	Conflict of Interest Officer

(b) The contractor shall obtain the consent of the Contracting Officer 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 by the Contracting Officer.

(c) Requests for changes in key personnel shall be submitted to the Contracting Officer 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 Contracting Officer. The Contracting Officer will notify the contractor within 10 working days after receipt of all required information of the decision on substitutions. The contract will be modified to reflect any approved changes.

H.9   ORGANIZATIONAL CONFLICT OF INTEREST (CAR 1352.209-74) (APR 2010)

(a) Purpose. The purpose of this clause is to ensure that the contractor and its subcontractors:

(1) Are not biased because of their financial, contractual, organizational, or other interests which relate to the work under this contract, and

(2) Do not obtain any unfair competitive advantage over other parties by virtue of their performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the contractor, its parents, affiliates, divisions and subsidiaries, and successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, co-sponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(c) Warrant and Disclosure. The warrant and disclosure requirements of this paragraph apply with full force to both the contractor and all subcontractors. The contractor warrants that, to the best of the contractor's knowledge and belief, there are no relevant facts or circumstances which would give rise to an organizational conflict of interest, as defined in FAR Subpart 9.5, and that the contractor has disclosed all relevant information regarding any actual or potential conflict. The contractor agrees it shall make an immediate and full disclosure, in writing, to the

SA1301-12-CN-0035

Contracting Officer of any potential or actual organizational conflict of interest or the existence of any facts that may cause a reasonably prudent person to question the contractor's impartiality because of the appearance or existence of bias or an unfair competitive advantage. Such disclosure shall include a description of the actions the contractor has taken or proposes to take in order to avoid, neutralize, or mitigate any resulting conflict of interest.

(d) Remedies. The Contracting Officer may terminate this contract for convenience, in whole or in part, if the Contracting Officer deems such termination necessary to avoid, neutralize or mitigate an actual or apparent organizational conflict of interest. If the contractor fails to disclose facts pertaining to the existence of a potential or actual organizational conflict of interest or misrepresents relevant information to the Contracting Officer, the Government may terminate the contract for default, suspend or debar the contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(e) Subcontracts. The contractor shall include a clause substantially similar to this clause, including paragraphs (f) and (g), in any subcontract or consultant agreement at any tier expected to exceed the simplified acquisition threshold. The terms "contract," "contractor," and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.

(f) Prime Contractor Responsibilities. The contractor shall obtain from its subcontractors or consultants the disclosure required in FAR Part 9.507–1, and shall determine in writing whether the interests disclosed present an actual, or significant potential for, an organizational conflict of interest. The contractor shall identify and avoid, neutralize, or mitigate any subcontractor organizational conflict prior to award of the contract to the satisfaction of the Contracting Officer. If the subcontractor's organizational conflict cannot be avoided, neutralized, or mitigated, the contractor must obtain the written approval of the Contracting Officer prior to entering into the subcontract. If the contractor becomes aware of a subcontractor's potential or actual organizational conflict of interest after contract award, the contractor agrees that the Contractor may be required to eliminate the subcontractor from its team, at the contractor's own risk.

(g) Waiver. The parties recognize that this clause has potential effects which will survive the performance of this contract and that it is impossible to foresee each circumstance to which it might be applied in the future. Accordingly, the contractor may at any time seek a waiver from the Head of the Contracting Activity by submitting such waiver request to the Contracting Officer, including a full written description of the requested waiver and the reasons in support thereof.

H.10   RESTRICTIONS AGAINST DISCLOSURE (CAR 1352.209-72) (APR 2010)

(a) The contractor agrees, in the performance of this contract, to keep the information furnished by the Government or acquired/developed by the contractor in performance of the contract and designated by the Contracting Officer or Contracting Officer's Representative, in

SA1301-12-CN-0035

the strictest confidence. The contractor also agrees not to publish or otherwise divulge such information, in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the contractor's possession, to those employees needing such information to perform the work described herein, *i.e.,* on a "need to know" basis. The contractor agrees to immediately notify the Contracting Officer in writing in the event that the contractor determines or has reason to suspect a breach of this requirement has occurred.

(b) The contractor agrees that it will not disclose any information described in subsection (a) to any person unless prior written approval is obtained from the Contracting Officer. The contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

H.11   COMPLIANCE WITH LAWS (CAR 1352.209-73) (APR 2010)

The contractor shall comply with all applicable laws, rules and regulations which deal with or relate to performance in accord with the terms of the contract.

H.12   DUPLICATION OF EFFORT (CAR 1352.231-71) (APR 2010)

The contractor hereby certifies that costs for work to be performed under this contract and any subcontracts hereunder are not duplicative of any costs charged against any other Government contract, subcontract, or other Government source. The contractor agrees to advise the Contracting Officer, in writing, of any other Government contract or subcontract it has performed or is performing which involves work directly related to the purpose of this contract. The contractor also certifies and agrees that any and all work performed under this contract shall be directly and exclusively for the use and benefit of the Government, and not incidental to any other work, pursuit, research, or purpose of the contractor, whose responsibility it will be to account for it accordingly.

H.13   HARMLESS FROM LIABILITY

The Contractor shall hold and save the Government, its officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses to which they may be subject, for or on account of any or all suits or damages of any character whatsoever resulting from injuries or damages sustained by any person or persons or property by virtue of performance of this contract, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the Contractor, or any subcontractor, their employees, and agents.

H.14   CONTRACTOR IDENTIFICATION RESPONSIBILITIES

SA1301-12-CN-0035

(a) All Contractor personnel attending meetings, answering Government telephones, and working in other situations where their Contractor status is not obvious to third parties, are required to identify themselves as such to avoid creating an impression in the minds of the public that they are Government officials.

(b) All documents or reports produced by the Contractor shall be suitably marked as Contractor products or that Contractor participation is appropriately identified.

H.15   NOTICE REQUIREMENT

The Contractor agrees that it will immediately inform the Contracting Officer and the Contracting Officer's Representative in the event that the Contractor's Chairman of the Board of Directors initiates any investigation by an independent auditor of potential corporate insolvency.

H.16   CERTIFICATION REGARDING TERRORIST FINANCING IMPLEMENTING EXECUTIVE ORDER 13224

(a) By signing and submitting this application, the prospective Contractor provides the certification set out below:

(1) The Contractor, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates or participates in terrorist acts, or has committed, attempted to commit, facilitated or participated in terrorist acts, as that term is defined in Executive Order 13224.

(2) Before providing any material support or resources to an individual or entity, the Contractor will consider all information about that individual or entity of which it is aware and all public information that is reasonably available to it or of which it must be aware.

(3) The Contractor also will implement reasonable monitoring and oversight procedures to safeguard against assistance being diverted to support terrorist activity.

(b) For the purposes of this certification, the Contractor's obligations under paragraph "a" are not applicable to the procurement of goods and/or services by the Contractor that are acquired in the ordinary course of business through contract or purchase, e.g., utilities, rents, office supplies, gasoline, unless the Contractor has reason to believe that a vendor or supplier of such goods and services commits, attempts to commit, advocates, facilitates or participates in terrorist acts, or has committed, attempted to commit, facilitated or participated in terrorist acts.

SA1301-12-CN-0035

(c) This certification is an express term and condition of any agreement issued as a result of this application, and any violation of it shall be grounds for unilateral termination of the agreement by DoC prior to the end of its term.

SA1301-12-CN-0035

SECTION I - CONTRACT CLAUSES

FEDERAL ACQUISITION REGULATION (FAR)

I.1   52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address: **https://www.acquisition.gov/far/**

I.2   52.202-1 DEFINITIONS (JUL 2004)

I.3   52.203-3 GRATUTIES (APR 1984)

I.4   52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

I.5   52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

I.6   52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)

I.7   52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

I.8   52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007)

I.9   52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010)

I.10   52.204-2 SECURITY REQUIREMENTS (AUG 2000)

I.11   52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

I.12   52.214-34 SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)

I.13   52.215-8 ORDER OF PRECEDENCE—UNIFORM CONTRACT FORMAT (OCT 1997)

I.14   52.216-7 ALLOWABLE COST AND PAYMENT (JUN 2011)

I.15   RESERVED

I.16   52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

I.17   52.222-26 EQUAL OPPORTUNITY (MAR 2007)

SA1301-12-CN-0035

I.18   **52.222.35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)**

I.19   **52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**

I.20   **52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)**

I.21   **52.222-50 COMBATTING TRAFFICKING IN PERSONS (FEB 2009)**

I.22   **52.222.54 EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)**

I.23   **52.223-6 DRUG-FREE WORKPLACE (MAY 2001)**

I.24   **52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)**

I.25   **52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)**

I.26   **52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)**

I.27   **52.227-2 NOTICE OF ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)**

I.28   **52.227-3 PATENT INDEMNITY (APR 1984)**

I.29   **52.227-14 RIGHTS IN DATA—GENERAL, ALTERNATES I, II, III, IV (DEC 2007)**

I.30   **52.229-3 FEDERAL, STATE AND LOCAL TAXES (APR 2003)**

I.31   **52.232-20 LIMITATION OF COST (APR 1984)**

I.32   **52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)**

I.33   **52.232-25 PROMPT PAYMENT (OCT 2008)**

I.34   **52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—CENTRAL CONTRACTOR REGISTRATION (OCT 2003)**

I.35   **52.233-1 DISPUTES (JUL 2002), ALTERNATE I (DEC 1991)**

I.36   **52.233-3 PROTEST AFTER AWARD (AUG 1996)**

SA1301-12-CN-0035

I.37   52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)

I.38   52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)

I.39   52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)

I.40   52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)

I.41   52.242-13 BANKRUPTCY (JUL 1995)

I.42   52.242-14 SUSPENSION OF WORK (APR 1984)

I.43   52.242-15 STOP-WORK ORDER (AUG 1989)

I.44   52.243-1 CHANGES-FIXED PRICE (AUG 1987) Alternate I (APR 1984)

I.45   52.243-2 CHANGES--COST-REIMBURSEMENT (AUG 1987), ALTERNATE I (APR 1984)

I.46   52.244-2 SUBCONTRACTS (OCT 2010)

I.47   52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2010)

I.48   52.245-1 GOVERNMENT PROPERTY (APR 2012)

I.49   52.246-20 WARRANTY OF SERVICES (MAY 2001)
[The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor within 120 days from the date of acceptance by the Government.]

I.50   52.246-25 LIMITATION OF LIABILITY—SERVICES (FEB 1997)

I.51   52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (MAY 2004) ALT II (SEP 1996)

I.52   52.249-5 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS) (SEP 1996)

I.53   52.249-6 TERMINATION (COST REIMBURSEMENT) (MAY 2004) (ALT V) (SEP 1996)

I.54   52.249-14 EXCUSABLE DELAYS (APR 1984)

I.55   52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

SA1301-12-CN-0035

CLAUSES INCORPORATED IN FULL TEXT

I.56   52.204-7 CENTRAL CONTRACTOR REGISTRATION (FEB 2012)

(a) Definitions. As used in this clause—

"Central Contractor Registration (CCR) database" means the primary Government repository for Contractor information required for the conduct of business with the Government.

"Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

"Data Universal Numbering System+4 (DUNS+4) number" means the DUNS number means the number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same concern.

"Registered in the CCR database" means that—

> (1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

> (2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record "Active". The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

(b)

> (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

> (2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS or DUNS+4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

SA1301-12-CN-0035

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) Via the internet at http://fedgov.dnb.com/webform or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business name.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company physical street address, city, state and Zip Code.

(iv) Company mailing address, city, state and Zip Code (if separate from physical).

(v) Company telephone number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

SA1301-12-CN-0035

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)

    (1)

        (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to:

           (A) Change the name in the CCR database;

           (B) Comply with the requirements of Subpart 42.12 of the FAR;

           (C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

        (ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

    (2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of

SA1301-12-CN-0035

assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the CCR accessed through https://www.acquisition.gov or by calling 1-888-227-2423, or 269-961-5757.

I.57   52.216-11 COST CONTRACT – NO FEE (APR 1984)

(a) The Government shall not pay the Contractor a fee for performing this contract.

I.58   52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 15 calendar days of expiration of the contract.

I.59   52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a)   The Government 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 Government 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 Government to an extension.

(b)   If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c)   The total duration of this contract, including the exercise of any options under this clause, shall not exceed seven years.

I.60   52.233-2 SERVICE OF PROTEST (SEP 2006)

(a) Protests, as defined in section 31.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer addressed as follows: Mona-Lisa Dunn, Contracting Officer, 1401 Constitution Avenue, NW, Room 6521, Washington, DC 20230 by obtaining written and dated acknowledgment of receipt from Mona-Lisa Dunn.

SA1301-12-CN-0035

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

I.61 52.237-3 CONTINUITY OF SERVICES (JAN 1991)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to --

(1) Furnish phase-in training; and

(2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice,

(1) furnish phase-in, phase-out services for up to 90 days after this contract expires and

(2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

COMMERCE ACQUISITION REGULATION (CAR) CLAUSES INCORPORATED IN FULL TEXT

I.62 1352.208-70 RESTRICTIONS ON PRINTING AND DUPLICATING (APR 2010)

SA1301-12-CN-0035

(a) The contractor is authorized to duplicate or copy production units provided the requirement does not exceed 5,000 production units of any one page or 25,000 production units in the aggregate of multiple pages. Such pages may not exceed a maximum image size of 10-3/4 by 14-1/4 inches. A "production unit" is one sheet, size 8-1/2 x 11 inches (215 x 280 mm), one side only, and one color ink. Production unit requirements are outlined in the Government Printing and Binding Regulations.

(b) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the contractor to respond to the terms of the contract).

(c) Costs associated with printing, duplicating, or copying in excess of the limits in paragraph (a) of this clause are unallowable without prior written approval of the Contracting Officer. If the contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or substantial duplicating or copying, it shall immediately provide written notice to the Contracting Officer and request approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with FAR 8.802.

(d) The contractor shall include in each subcontract which may involve a requirement for any printing, duplicating, and copying in excess of the limits specified in paragraph (a) of this clause, a provision substantially the same as this clause, including this paragraph (d).

I.63   1352.209-72 RESTRICTIONS AGAINST DISCLOSURE (APR 2010)

(a) The contractor agrees, in the performance of this contract, to keep the information furnished by the Government or acquired/developed by the contractor in performance of the contract and designated by the Contracting Officer or Contracting Officer's Representative, in the strictest confidence. The contractor also agrees not to publish or otherwise divulge such information, in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the contractor's possession, to those employees needing such information to perform the work described herein, *i.e.*, on a "need to know" basis. The contractor agrees to immediately notify the Contracting Officer in writing in the event that the contractor determines or has reason to suspect a breach of this requirement has occurred.

(b) The contractor agrees that it will not disclose any information described in subsection (a) to any person unless prior written approval is obtained from the Contracting Officer. The contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

SA1301-12-CN-0035

I.64   1352.209-73 COMPLIANCE WITH THE LAWS (APR 2010)

The contractor shall comply with all applicable laws, rules and regulations which deal with or relate to performance in accord with the terms of the contract.

I.65   1352.233-70 AGENCY PROTESTS (APR 2010)

(a) An agency protest may be filed with either: (1) The Contracting Officer, or (2) at a level above the Contracting Officer, with the appropriate agency Protest Decision Authority. *See* 64 FR 16,651 (April 6, 1999).

(b) Agency protests filed with the Contracting Officer shall be sent to the following address:

> **Ms. Mona-Lisa Dunn, Contracting Officer**
> U.S. Department of Commerce
> Office of Acquisition Management
> Commerce Acquisition Solutions, Room 6521
> 14th and Constitution Avenue, NW
> Washington, D.C. 20230
> Fax: 202-482-1470
> Email: mdunn@doc.gov

(c) Agency protests filed with the agency Protest Decision Authority shall be sent to the following address:

> **Mr. Mark Langstein, Esquire**
> U.S. Department of Commerce
> Office of the General Counsel
> Contract Law Division--Room 5893
> Herbert C. Hoover Building
> 14th Street and Constitution Avenue, NW
> Washington, D.C. 20230.
> FAX: (202) 482-5858

(d) A complete copy of all agency protests, including all attachments, shall be served upon the Contract Law Division of the Office of the General Counsel within one day of filing a protest with either the Contracting Officer or the Protest Decision Authority.

(e) Service upon the Contract Law Division shall be made as follows: U.S. Department of Commerce, Office of the General Counsel, Chief, Contract Law Division, Room 5893, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. FAX: (202) 482–5858.

SA1301-12-CN-0035

I.66   1352.233-71 GAO AND COURT OF FEDERAL CLAIMS PROTESTS (APR 2010)

(a) A protest may be filed with either the Government Accountability Office (GAO) or the Court of Federal Claims unless an agency protest has been filed.

(b) A complete copy of all GAO or Court of Federal Claims protests, including all attachments, shall be served upon (i) the Contracting Officer, and (ii) the Contract Law Division of the Office of the General Counsel, within one day of filing a protest with either GAO or the Court of Federal Claims.

(c) Service upon the Contract Law Division shall be made as follows: U.S. Department of Commerce, Office of the General Counsel, Chief, Contract Law Division, Room 5893, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. FAX: (202) 482–5858.

I.67   1352.237-71 SECURITY PROCESSING REQUIREMENTS - LOW RISK CONTRACTS (APR 2010)

(a) Investigative Requirements for Low Risk Contracts. All contractor (and subcontractor) personnel proposed to be employed under a Low Risk contract shall undergo security processing by the Department's Office of Security before being eligible to work on the premises of any Department of Commerce owned, leased, or controlled facility in the United States or overseas, or to obtain access to a Department of Commerce IT system. All Department of Commerce security processing pertinent to this contract will be conducted at no cost to the contractor.

(b) Investigative requirements for Non-IT Service Contracts are:

(1) Contracts more than 180 days – National Agency Check and Inquiries (NACI)

(2)   Contracts less than 180 days – Special Agency Check (SAC)

(c) Investigative requirements for IT Service Contracts are:

(1) Contracts more than 180 days – National Agency Check and Inquiries (NACI)

(2) Contracts less than 180 days – National Agency Check and Inquiries (NACI)

(d) In addition to the investigations noted above, non-U.S. citizens must have a background check that includes an Immigration and Customs Enforcement agency check.

(e) Additional Requirements for Foreign Nationals (Non-U.S. Citizens). Non-U.S. citizens (lawful permanent residents) to be employed under this contract within the United States must have:

SA1301-12-CN-0035

(1) Official legal status in the United States;

(2) Continuously resided in the United States for the last two years; and

(3) Obtained advance approval from the servicing Security Officer in consultation with

the Office of Security headquarters.

(f) DoC Security Processing Requirements for Low Risk Non-IT Service Contracts. Processing requirements for Low Risk non-IT Service Contracts are as follows:

(1) Processing of a NACI is required for all contract employees employed in Low Risk non-IT service contracts for more than 180 days. The Contracting Officer's Representative (COR) will invite the prospective contractor into e-QIP to complete the SF-85. The contract employee must also complete fingerprinting.

(2) Contract employees employed in Low Risk non-IT service contracts for less than 180 days require processing of Form OFI-86C Special Agreement Check (SAC), to be processed. The Sponsor will forward a completed Form OFI-86C, FD-258, Fingerprint Chart, and Credit Release Authorization to the servicing Security Officer, who will send the investigative packet to the Office of Personnel Management for processing.

(3) Any contract employee with a favorable SAC who remains on the contract over 180 days will be required to have a NACI conducted to continue working on the job site.

(4) For Low Risk non-IT service contracts, the scope of the SAC will include checks of the Security/Suitability Investigations Index (SII), other agency files (INVA), Defense Clearance Investigations Index (DCII), FBI Fingerprint (FBIF), and the FBI Information Management Division (FBIN).

(5) In addition, for those individuals who are not U.S. citizens (lawful permanent residents), the Sponsor may request a Customs Enforcement SAC on Form OFI-86C, by checking Block #7, Item I. In Block 13, the Sponsor should enter the employee's Alien Registration Receipt Card number to aid in verification.

(6) Copies of the appropriate forms can be obtained from the Sponsor or the Office of Security. Upon receipt of the required forms, the Sponsor will forward the forms to the servicing Security Officer. The Security Officer will process the forms and advise the Sponsor and the Contracting Officer whether the contract employee can commence work prior to completion of the suitability determination based on the type of work and risk to the facility (i.e., adequate controls and restrictions are in place). The Sponsor will notify the contractor of favorable or unfavorable findings of

SA1301-12-CN-0035

the suitability determinations. The Contracting Officer will notify the contractor of an approved contract start date.

(g) Security Processing Requirements for Low Risk IT Service Contracts. Processing of a NACI is required for all contract employees employed under Low Risk IT service contracts.

(1) Contract employees employed in all Low Risk IT service contracts will require a National Agency Check and Inquiries (NACI) to be processed. The Contracting Officer's Representative (COR) will invite the prospective contractor into e-QIP to complete the SF-85. Fingerprints and a Credit Release Authorization must be completed within three working days from start of work, and provided to the Servicing Security Officer, who will forward the investigative package to OPM.

(2) For Low Risk IT service contracts, individuals who are not U.S. citizens (lawful permanent residents) must undergo a NACI that includes an agency check conducted by the Immigration and Customs Enforcement Service. The Sponsor must request the ICE check as a part of the NAC.

(h) Notification of Disqualifying Information. If the Office of Security receives disqualifying information on a contract employee, the Sponsor and Contracting Officer will be notified. The Sponsor shall coordinate with the Contracting Officer for the immediate removal of the employee from duty requiring access to Departmental facilities or IT systems. Contract employees may be barred from working on the premises of a facility for any of the following reasons:

(1) Conviction of a felony crime of violence or of a misdemeanor involving moral turpitude.

(2) Falsification of information entered on security screening forms or of other documents submitted to the Department.

(3) Improper conduct once performing on the contract, including criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government regardless of whether the conduct was directly related to the contract.

(4) Any behavior judged to pose a potential threat to Departmental information systems, personnel, property, or other assets.

(i) Failure to comply with security processing requirements may result in termination of the contract or removal of contract employees from Department of Commerce facilities or denial of access to IT systems.

SA1301-12-CN-0035

(j) Access to National Security Information. Compliance with these requirements shall not be construed as providing a contract employee clearance to have access to national security information.

(k) The contractor shall include the substance of this clause, including this paragraph, in all subcontracts.

I.68   1352.242-70 POSTAWARD CONFERENCE (APR 2010)

A post award conference with the successful Offeror may be required. If required, the Contracting Officer will contact the contractor within 10 days of contract award to arrange the conference.

I.69   1352.246-70 PLACE OF ACCEPTANCE (APR 2010)

(a) The Contracting Officer or the duly authorized representative will accept supplies and services to be provided under this contract.

(b) The place of acceptance will be:
U.S Department of Commerce – NTIA
Office of International Affairs
1401 Constitution Avenue, NW,
Room 4701
Washington, DC 20230

I.70   1352.270-70 PERIOD OF PERFORMANCE (APR 2010)

(a) The base period of performance of this contract is from October 1, 2012 through September 30, 2015. If an option is exercised, the period of performance shall be extended through the end of that option period.

(b) The option periods that may be exercised are as follows:

Period	Start Date	End Date
Option I	October 1, 2015	September 30, 2017
Option II	October 1, 2017	September 30, 2019

(c) The notice requirements for unilateral exercise of option periods are set out in FAR 52.217-9 (see Paragraph I.59 above).

Exhibit B

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. Contract ID Code		Page of Pages	
					1	4

2. AMENDMENT MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (if applicable)
0004	SEP 17, 2015	AA-NTI-WC-O-15-00241	

6. ISSUED BY CODE 000SA	7. ADMINISTERED BY (If other than item 6) CODE
U.S. DEPARTMENT OF COMMERCE 14TH & CONSTITUTION AVE. NW ACQUISITION SERVICES RM 6520 WASHINGTON DC 20230 Vernita D. Harris 202-482-4686 vharris@NTIA.doc.gov	See Block 6

8. NAME AND ADDRESS OF CONTRACTOR (NO., Street, Country, State and ZIP Code)		(x)	9A. AMENDMENT OF SOLICITATION NO.
INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS DUNS: 045511487 12025 WATERFRONT DRIVE Cage Code: 4A4S9 SUITE 300 LOS ANGELES CA 90094			
			9B. DATED (SEE ITEM 11)
310-823-9358		×	10A. MODIFICATION OF CONTRACT/ORDER NO. SA1301-12-CN-0035
			10B. DATED (SEE ITEM 13)
CODE 00000428	FACILITY CODE		OCT 01, 2012

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
(a) By completing items 8 and 15, and returning _____ copies of amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OR OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)	Modification Amount: $0.00
See Schedule	Modification Obligated Amount: $0.00

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

Check One		
	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.	
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).	
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:	
×	D. OTHER (Specify type of modification and authority) Exercising of Government Option	

E. IMPORTANT: Contractor ☒ is not, ☐ is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible)

The purpose of this modification is to exercise option 1.

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)
	LaVonne Jinks-Umstead, Director 202-482-0557 ljinks-umstead@doc.gov

15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
_____ (Signature of person authorized to sign)		*(signature)* (Signature of Contracting Officer)	September 17, 2015

NSN 7540-01-152-8070
Previous Edition unusable

STANDARD FORM 30. (Rev. 10-83)
Prescribed by GSA FAR (48 CFR) 53.243

	SCHEDULE Continued				
ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE $	AMOUNT $
	Contracting Officer: LaVonne Jinks-Umstead, 202-482-0557, ljinks-umstead@doc.gov Primary Contracting Officer Representative: None Alternate Contracting Officer Representative(s): Vernita D. Harris, 202-482-4686, vharris@NTIA.doc.gov Primary Technical Point of Contact: None Alternate Technical Point of Contact(s): None				
ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE $	AMOUNT $

Table of Contents

SECTION B
SUPPLIES OR SERVICES AND PRICES/COSTS

B. 1   Modification Description

Modification Description

The purpose of the modification is to exercise the first one-year option period. The task order is changed as follows:

1. The first option period is hereby exercised. The period of performance for the option period is from October 1, 2015 through September 30, 2016.

2. Under page 30, F.1 PERIOD OF PERFORMANCE, delete: "September 30, 2015", and replace with "September 30, 2016."

All other terms and conditions remain unchanged.

Exhibit C

Domain Name Agreements between the U.S. Department of Commerce, Network Solutions, Inc., and the Internet Corporation for Assigned Names and Numbers (ICANN) (September 28, 1999)

- Registrar Accreditation Agreement
- Registrar License and Agreement
- Amendment 1 to JPA/MoU
- Zone File Access Agreement
- NSI Registry Agreement

Tentative Agreements among ICANN, the U.S. Department of Commerce, and Network Solutions, Inc.

(Posted September 28, 1999)

-
-
  - **REGISTRAR ACCREDITATION AGREEMENT**
    - **Table of Contents**
- **I. DEFINITIONS**
- **II. TERMS AND CONDITIONS OF AGREEMENT**
- A. Accreditation.
  B. Registrar Use of ICANN Name.
  C. General Obligations of ICANN.
  D. General Obligations of Registrar.
  E. Submission of SLD Holder Data to Registry.
  F. Public Access to Data on SLD Registrations.
  G. Retention of SLD Holder and Registration Data.
  H. Rights in Data.
  I. Data Escrow.
  J. Business Dealings, Including with SLD Holders.
  K. Domain-Name Dispute Resolution.
  L. Accreditation Fees.
  M. Specific Performance.
  N. Termination of Agreement.
  O. Term of Agreement; Renewal; Right to Substitute Updated Agreement.
  P. Resolution of Disputes Under This Agreement.
  Q. Limitations on Monetary Remedies for Violations of this Agreement.
  R. Handling by ICANN of Registrar-Supplied Data.
  S. Miscellaneous.

- _____
- This REGISTRAR ACCREDITATION AGREEMENT ("Agreement") is by and between the Internet Corporation for Assigned Names and Numbers, a not-for-profit corporation, and _____ ("Registrar"), a _____, and shall be deemed made on _____, 1999, at Los Angeles, California, USA.
- **I. DEFINITIONS**
- As used in this Agreement, the following terms shall have the following meanings:
- A. "Accredit" means to identify and set minimum standards for the performance of registration functions, to recognize persons or entities meeting those standards, and to enter into an accreditation agreement that sets forth the rules and procedures applicable to the provision of registration services.
- B. A "Consensus Policy" is one adopted by ICANN as follows:
- 1. "Consensus Policies" are those adopted based on a consensus among Internet stakeholders represented in the ICANN process, as demonstrated by (1) the adoption of the policy by the ICANN Board of Directors, (2) a recommendation that the policy should be adopted, by at least a two-thirds vote of the council of the ICANN Supporting Organization to which the matter is delegated, and (3) a written report and supporting materials (which must include all substantive submissions to the Supporting Organization relating to the proposal) that (i) documents the extent of agreement and disagreement among impacted groups, (ii) documents the outreach process used to seek to achieve adequate representation of the views of groups that are likely to be impacted, and (iii) documents the nature and intensity of reasoned support and opposition to the proposed policy.
- 2. In the event that Registrar disputes the presence of such a consensus, it shall seek review of that issue from an Independent Review Panel established under ICANN's bylaws. Such review must be sought within fifteen working days of publication of the Board's action adopting the policy. The decision of the panel shall be based on the report and supporting materials required by Section I.B.1 above. In the event that Registrar seeks review and the Panel sustains the Board's determination that the policy is based on a consensus among Internet stakeholders represented in the ICANN process, then Registrar must implement such policy unless it promptly seeks and obtains a stay or injunctive relief under Section II.P.
- 3. In the event, following a decision by the Independent Review Panel convened under Section I.B.2 above, that Registrar still disputes the presence of such a consensus, it may seek further review of that issue within fifteen working days of publication of the decision in accordance with the dispute-resolution procedures set forth in Section II.P below; provided, however, that Registrar must continue to implement the policy unless it has obtained a stay or injunctive relief under Section II.P or a final decision is rendered in accordance with the provisions of Section II.P that relieves Registrar of such obligation. The decision in any such further review shall be based on the report and supporting materials required by Section I.B.1 above.

- 4. A policy adopted by the ICANN Board of Directors on a temporary basis, without a prior recommendation by the council of an ICANN Supporting Organization, shall also be considered to be a Consensus Policy if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, and if immediate temporary adoption of a policy on the subject is necessary to maintain the stability of the Internet or the operation of the domain name system, and if the proposed policy is as narrowly tailored as feasible to achieve those objectives. In adopting any policy under this provision, the ICANN Board of Directors shall state the period of time for which the policy is temporarily adopted and shall immediately refer the matter to the appropriate Supporting Organization for its evaluation and review with a detailed explanation of its reasons for adopting the temporary policy and why the Board believes the policy should receive the consensus support of Internet stakeholders. If the period of time for which the policy is adopted exceeds 45 days, the Board shall reaffirm its temporary adoption every 45 days for a total period not to exceed 180 days, in order to maintain such policy in effect until such time as it meets the standard set forth in Section I.B.1. If the standard set forth in Section I.B.1 above is not met within the temporary period set by the Board, or the council of the Supporting Organization to which it has been referred votes to reject the temporary policy, it will no longer be a "Consensus Policy."
- 5. For all purposes under this Agreement, the policies specifically identified by ICANN on its website (www.icann.org) at the date of this Agreement as having been adopted by the ICANN Board of Directors before the date of this Agreement shall be treated in the same manner and have the same effect as "Consensus Policies."
- 6. In the event that, at the time the ICANN Board adopts a policy under Section I.B.1 during the term of this Agreement, ICANN does not have in place an Independent Review Panel established under ICANN's bylaws, the fifteen-working-day period allowed under Section I.B.2 to seek review shall be extended until fifteen working days after ICANN does have such an Independent Review Panel in place and Registrar shall not be obligated to comply with the policy in the interim.
- C. "DNS" refers to the Internet domain-name system.
- D. "ICANN" refers to the Internet Corporation for Assigned Names and Numbers, a party to this Agreement.
- E. An "ICANN-adopted policy" (and references to ICANN "adopt[ing]" a policy or policies) refers to a Consensus Policy adopted by ICANN (i) in conformity with applicable provisions of its articles of incorporation and bylaws and Section II.C of this Agreement and (ii) of which Registrar has been given notice and a reasonable period in which to comply.
- F. "IP" means Internet Protocol.
- G. "Personal Data" refers to data about any identified or identifiable natural person.
- H. The word "Registrar," when appearing with an initial capital letter, refers to _____, a party to this Agreement.

- I. The word "registrar," when appearing without an initial capital letter, refers to a person or entity that contracts with SLD holders and a registry, collecting registration data about the SLD holders and submitting zone file information for entry in the registry database.
- J. A "Registry" is the person(s) or entity(ies) then responsible, in accordance with an agreement between ICANN and that person or entity (those persons or entities) or, if that agreement is terminated or expires, in accordance with an agreement between the US Government and that person or entity (those persons or entities), for providing registry services.
- K. An "SLD" is a second-level domain of the DNS.
- L. An SLD registration is "sponsored" by the registrar that placed the record associated with that registration into the registry. Sponsorship of a registration may be changed at the express direction of the SLD holder or, in the event a registrar loses accreditation, in accordance with then-current ICANN-adopted policies.
- M. A "TLD" is a top-level domain of the DNS.
-
- **II. TERMS AND CONDITIONS OF AGREEMENT**
- The parties agree as follows:
- A. Accreditation. During the term of this Agreement, Registrar is hereby accredited by ICANN to act as a registrar (including to insert and renew registration of SLDs in the registry database) for the .com, .net, and .org TLDs.
- B. Registrar Use of ICANN Name. Registrar is hereby granted a non-exclusive worldwide license to state during the term of this Agreement that it is accredited by ICANN as a registrar in the .com, .net, and .org TLDs. No other use of ICANN's name is licensed hereby. This license may not be assigned or sublicensed by Registrar.
- C. General Obligations of ICANN. With respect to all matters that impact the rights, obligations, or role of Registrar, ICANN shall during the Term of this Agreement:
- 1. exercise its responsibilities in an open and transparent manner;
- 2. not unreasonably restrain competition and, to the extent feasible, promote and encourage robust competition;
- 3. not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and not single out Registrar for disparate treatment unless justified by substantial and reasonable cause; and
- 4. ensure, through its reconsideration and independent review policies, adequate appeal procedures for Registrar, to the extent it is adversely affected by ICANN standards, policies, procedures or practices.
-
- D. General Obligations of Registrar.
- 1. During the Term of this Agreement:
- a. Registrar agrees that it will operate as a registrar for TLDs for which it is accredited by ICANN in accordance with this Agreement;

- b. Registrar shall comply, in such operations, with all ICANN-adopted Policies insofar as they:
- i. relate to one or more of the following: (A) issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, technical reliability and/or stable operation of the Internet or domain-name system, (B) registrar policies reasonably necessary to implement Consensus Policies relating to the Registry, or (C) resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names), and
- ii. do not unreasonably restrain competition.
- 2. To the extent that Consensus Policies are adopted in conformance with Section II.C of this Agreement, the measures permissible under Section II.D.1.b.i shall include, without limitation:
- i. principles for allocation of SLD names (e.g., first-come/first-served, timely renewal, holding period after expiration);
- ii. prohibitions on warehousing of or speculation in domain names by registrars;
- iii. reservation of SLD names that may not be registered initially or that may not be renewed due to reasons reasonably related to (a) avoidance of confusion among or misleading of users, (b) intellectual property, or (c) the technical management of the DNS or the Internet (e.g., "example.com" and single-letter/digit names);
- iv. the allocation among continuing registrars of the SLD names sponsored in the registry by a registrar losing accreditation; and
- v. the transfer of registration data upon a change in registrar sponsoring the registration.
- Nothing in this Section II.D shall limit or otherwise affect Registrar's obligations as set forth elsewhere in this Agreement.
- E. Submission of SLD Holder Data to Registry. During the term of this Agreement:
- 1. As part of its registration of SLDs in the .com, .net, and .org TLDs, Registrar shall submit to, or shall place in the registry database operated by Registry the following data elements concerning SLD registrations that Registrar processes:
- a. The name of the SLD being registered;
- b. The IP addresses of the primary nameserver and secondary nameserver(s) for the SLD;
- c. The corresponding names of those nameservers;
- d. Unless automatically generated by the registry system, the identity of the registrar;
- e. Unless automatically generated by the registry system, the expiration date of the registration; and
- f. Other data required as a result of further development of the registry system by the Registry.
- 2. Within five (5) business days after receiving any updates from the SLD holder to the data elements listed in Sections II.E.1.b and c for any SLD registration

Registrar sponsors, Registrar shall submit the updated data elements to, or shall place those elements in the registry database operated by Registry.

- 3. In order to allow reconstitution of the registry database in the event of an otherwise unrecoverable technical failure or a change in the designated Registry permitted by the contract Registry has with ICANN and/or the United States Department of Commerce, within ten days of any such request by ICANN Registrar shall submit an electronic database containing the data elements listed in Sections II.F.1.a through d for all active records in the registry sponsored by Registrar, in a format specified by ICANN, to the Registry for the appropriate TLD.

- F. <u>Public Access to Data on SLD Registrations</u>. During the term of this Agreement:

- 1. At its expense, Registrar shall provide interactive public access on a current basis (such as through a Whois service) to data concerning all active SLD registrations sponsored by Registrar in the registry for the .com, .net, and .org TLDs. The data accessible shall consist of elements that are designated from time to time according to an ICANN-adopted policy. Until ICANN otherwise specifies by means of an ICANN-adopted policy, this data shall consist of the following elements as contained in Registrar's database:

- a. The name of the SLD being registered and the TLD for which registration is being requested;

- b. The IP addresses of the primary nameserver and secondary nameserver(s) for the SLD;

- c. The corresponding names of those nameservers;

- d. The identity of Registrar (which may be provided through Registrar's website);

- e. The original creation date of the registration;

- f. The expiration date of the registration;

- g. The name and postal address of the SLD holder;

- h. The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the technical contact for the SLD; and

- i. The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for the SLD.

- 2. Upon receiving any updates to the data elements listed in Sections II.F.1.b through d and f through i from the SLD holder, Registrar shall promptly update its database used to provide the public access described in Section II.F.1.

- 3. Registrar may subcontract its obligation to provide the public access described in Section II.F.1 and the updating described in Section II.F.2, provided that Registrar shall remain fully responsible for the proper provision of the access and updating.

- 4. Registrar shall abide by any ICANN-adopted Policy that requires registrars to cooperatively implement a distributed capability that provides query-based Whois search functionality across all registrars. If the Whois service implemented by registrars does not in a reasonable time provide reasonably robust, reliable, and convenient access to accurate and up-to-date data, the Registrar shall abide by any ICANN-adopted Policy requiring Registrar, if reasonably determined by ICANN to be necessary (considering such

possibilities as remedial action by specific registrars), to supply data from Registrar's database to facilitate the development of a centralized Whois database for the purpose of providing comprehensive Registrar Whois search capability.

- 5. In providing query-based public access to registration data as required by Sections II.F.1 and II.F.4, Registrar shall not impose terms and conditions on use of the data provided except as permitted by an ICANN-adopted policy. Unless and until ICANN adopts a different policy, Registrar shall permit use of data it provides in response to queries for any lawful purposes except to: (a) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail (spam); or (b) enable high volume, automated, electronic processes that apply to Registrar (or its systems).
- 6. In addition, Registrar shall provide third-party bulk access to the data subject to public access under Section II.F.1 under the following terms and conditions:
- a. Registrar shall make a complete electronic copy of the data available at least one time per week for download by third parties who have entered into a bulk access agreement with Registrar.
- b. Registrar may charge an annual fee, not to exceed US$10,000, for such bulk access to the data.
- c. Registrar's access agreement shall require the third party to agree not to use the data to allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail (spam).
- d. Registrar's access agreement may require the third party to agree not to use the data to enable high-volume, automated, electronic processes that apply to Registrar (or its systems).
- e. Registrar's access agreement may require the third party to agree not to sell or redistribute the data except insofar as it has been incorporated by the third party into a value-added product or service that does not permit the extraction of a substantial portion of the bulk data from the value-added product or service for use by other parties.
- f. Registrar may enable SLD holders to elect not to have data concerning their registrations available for bulk access based on Registrar's "Opt-Out" policy, and Registrar may require the third party to abide by the terms of that Opt-Out policy; provided, however, that Registrar may not use such data subject to opt-out in its own value-added product or service.
- 7. Registrar's obligations under Section II.F.6 shall remain in effect until the earlier of (a) replacement of this policy with a different ICANN-adopted policy governing bulk access to the data subject to public access under Section II.F.1, or (b) demonstration, to the satisfaction of the United States Department of Commerce, that no individual or entity is able to exercise market power with respect to registrations or with respect to registration data used for development of value-added products and services by third parties.
- 8. To comply with applicable statutes and regulations and for other reasons, ICANN may from time to time adopt policies establishing limits on the Personal Data concerning SLD registrations that Registrar may make available to the public through a public-access service described in this Section II.F and on the

manner in which Registrar may make them available. In the event ICANN
adopts any such policy, Registrar shall abide by it.

- G. <u>Retention of SLD Holder and Registration Data</u>.
- 1. During the term of this Agreement, Registrar shall maintain its own electronic
  database, as updated from time to time, containing data for each active SLD
  registration sponsored by it in the registry for the .com, .net, and .org TLDs. The
  data for each such registration shall include the elements listed in
  Sections II.F.1.a through i, as well as the name and (where available) postal
  address, e-mail address, voice telephone number, and fax number of the billing
  contact.
- 2. During the term of this Agreement and for three years thereafter, Registrar
  (itself or by its agent) shall maintain the following records relating to its dealings
  with the Registry and SLD holders:
- a. In electronic form, the submission date and time, and the content, of all
  registration data (including updates) submitted in electronic form to the Registry;
- b. In electronic, paper, or microfilm form, all written communications constituting
  registration applications, confirmations, modifications, or terminations and
  related correspondence with actual SLD holders, including registration
  contracts; and
- c. In electronic form, records of the accounts of all SLD holders with Registrar,
  including dates and amounts of all payments and refunds.
- Registrar shall make these records available for inspection by ICANN upon
  reasonable notice. ICANN shall not disclose such records except as expressly
  permitted by an ICANN-adopted policy.
- H. <u>Rights in Data</u>. Registrar disclaims all rights to exclusive ownership or use of
  the data elements listed in Sections II.E.1.a. through c. for all SLD registrations
  submitted by Registrar to, or sponsored by Registrar in, the registry database for
  the .com, .net, and .org TLDs. Registrar does not disclaim rights in the data
  elements listed in Sections II.E.1.d through f and II.F.1.d through i concerning
  active SLD registrations sponsored by it in the registry for the .com, .net, and
  .org TLDs, and agrees to grant non-exclusive, irrevocable, royalty-free licenses
  to make use of and disclose the data elements listed in Sections II.F.1.d through
  i for the purpose of providing a service (such as a Whois service under II.F.4)
  providing interactive, query-based public access. Upon a change in sponsorship
  from Registrar of any SLD registration in the registry for the .com, .net, and .org
  TLDs, Registrar acknowledges that the registrar gaining sponsorship shall have
  the rights of an owner to the data elements listed in Sections II.E.1.d and e and
  II.F.1.d through i concerning that registration, with Registrar also retaining the
  rights of an owner in that data. Nothing in this Section II.H prohibits Registrar
  from (1) restricting bulk public access to data elements in a manner consistent
  with any ICANN-adopted policies or (2) transferring rights it claims in data
  elements subject to the provisions of this Section II.H.
- I. <u>Data Escrow</u>. During the term of this Agreement, on a schedule, under the
  terms, and in the format specified in the then-current ICANN-adopted policy on
  registrar escrow requirements, Registrar shall submit an electronic copy of the
  database described in Section II.G.1 to ICANN or, at Registrar's election and at

its expense, to a reputable escrow agent mutually approved by Registrar and ICANN, such approval also not to be unreasonably withheld by either party. The data shall be held under an agreement among Registrar, ICANN, and the escrow agent (if any) providing that (1) the data shall be received and held in escrow, with no use other than verification that the deposited data is complete and in proper format, until released to ICANN; (2) the data shall be released from escrow upon expiration without renewal or termination of this Agreement; and (3) ICANN's rights under the escrow agreement shall be assigned with any assignment of this Agreement. The escrow shall provide that in the event the escrow is released under this Section II.I, ICANN (or its assignee) shall have a non-exclusive, irrevocable, royalty-free license to exercise (only for transitional purposes) or have exercised all rights necessary to provide registrar services.

- J. <u>Business Dealings, Including with SLD Holders</u>.
- 1. In the event ICANN adopts a policy supported by a consensus of ICANN-accredited registrars establishing or approving a Code of Conduct for such registrars, Registrar shall abide by that Code.
- 2. Registrar shall abide by applicable laws and governmental regulations.
- 3. Registrar shall not represent to any actual or potential SLD holder that Registrar enjoys access to a registry for which Registrar is accredited that is superior to that of any other registrar accredited for that registry.
- 4. Registrar shall not activate any SLD registration unless and until it is satisfied that it has received a reasonable assurance of payment of its registration fee. For this purpose, a charge to a credit card, general commercial terms extended to creditworthy customers, or other mechanism providing a similar level of assurance of payment shall be sufficient, provided that the obligation to pay becomes final and non-revocable by the SLD holder upon activation of the registration.
- 5. Registrar shall register SLDs to SLD holders only for fixed periods. At the conclusion of the registration period, failure by or on behalf of the SLD holder to pay a renewal fee within the time specified in a second notice or reminder shall, in the absence of extenuating circumstances, result in cancellation of the registration. In the event that ICANN adopts a policy concerning procedures for handling expiration of registrations, Registrar shall abide by that policy.
- 6. Registrar shall not insert or renew any SLD name in any registry for which Registrar is accredited by ICANN in a manner contrary to an ICANN-adopted policy stating a list or specification of excluded SLD names that is in effect at the time of insertion or renewal.
- 7. Registrar shall require all SLD holders to enter into an electronic or paper registration agreement with Registrar including at least the following provisions:
- a. The SLD holder shall provide to Registrar accurate and reliable contact details and promptly correct and update them during the term of the SLD registration, including: the full name, postal address, e-mail address, voice telephone number, and fax number if available of the SLD holder; name of authorized person for contact purposes in the case of an SLD holder that is an organization, association, or corporation; and the data elements listed in Section II.F.1.b, c, and h through i above.

- An SLD holder's willful provision of inaccurate or unreliable information, its willful failure promptly to update information provided to Registrar, or its failure to respond for over fifteen calendar days to inquiries by Registrar concerning the accuracy of contact details associated with the SLD holder's registration shall constitute a material breach of the SLD holder-registrar contract and be a basis for cancellation of the SLD registration.
- Any SLD holder that intends to license use of a domain name to a third party is nonetheless the SLD holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the SLD.
- b. Registrar shall provide notice to each new or renewed SLD holder stating:
- i. The purposes for which any Personal Data collected from the applicant are intended;
- ii. The intended recipients or categories of recipients of the data (including the Registry and others who will receive the data from Registry);
- iii. Which data are obligatory and which data, if any, are voluntary; and
- iv. How the SLD holder or data subject can access and, if necessary, rectify the data held about them.
- c. The SLD holder shall consent to the data processing referred to in Section II.J.7.b.
- d. The SLD holder shall represent that notice has been provided equivalent to that described in Section II.J.7.b. above to any third-party individuals whose Personal Data are supplied to Registrar by the SLD holder, and that the SLD holder has obtained consent equivalent to that referred to in Section II.J.7.c of any such third-party individuals.
- e. Registrar shall agree that it will not process the Personal Data collected from the SLD holder in a way incompatible with the purposes and other limitations about which it has provided notice to the SLD holder in accordance with Section II.J.7.b, above.
- f. Registrar shall agree that it will take reasonable precautions to protect Personal Data from loss, misuse, unauthorized access or disclosure, alteration, or destruction.
- g. The SLD holder shall represent that, to the best of the SLD holder's knowledge and belief, neither the registration of the SLD name nor the manner in which it is directly or indirectly used infringes the legal rights of a third party.
- h. For the adjudication of disputes concerning or arising from use of the SLD name, the SLD holder shall submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (1) of the SLD holder's domicile and (2) where Registrar is located.
- i. The SLD holder shall agree that its registration of the SLD name shall be subject to suspension, cancellation, or transfer pursuant to any ICANN-adopted policy, or pursuant to any registrar or registry procedure not inconsistent with an ICANN-adopted policy, (1) to correct mistakes by Registrar or the Registry in registering the name or (2) for the resolution of disputes concerning the SLD name.

- j. The SLD holder shall indemnify and hold harmless the Registry and its directors, officers, employees, and agents from and against any and all claims, damages, liabilities, costs, and expenses (including reasonable legal fees and expenses) arising out of or related to the SLD holder's domain name registration.
- 8. Registrar shall abide by any ICANN-adopted policies requiring reasonable and commercially practicable (a) verification, at the time of registration, of contact information associated with an SLD registration sponsored by Registrar or (b) periodic re-verification of such information. Registrar shall, upon notification by any person of an inaccuracy in the contact information associated with an SLD registration sponsored by Registrar, take reasonable steps to investigate that claimed inaccuracy. In the event Registrar learns of inaccurate contact information associated with an SLD registration it sponsors, it shall take reasonable steps to correct that inaccuracy.
- 9. Registrar shall abide by any ICANN-adopted policy prohibiting or restricting warehousing of or speculation in domain names by registrars.
- 10. Registrar shall maintain in force commercial general liability insurance with policy limits of at least US$500,000 covering liabilities arising from Registrar's registrar business during the term of this Agreement.
- 11. Nothing in this Agreement prescribes or limits the amount Registrar may charge SLD holders for registration of SLD names.
- K. Domain-Name Dispute Resolution. During the term of this Agreement, Registrar shall have in place a policy and procedure for resolution of disputes concerning SLD names. In the event that ICANN adopts a policy or procedure for resolution of disputes concerning SLD names that by its terms applies to Registrar, Registrar shall adhere to the policy or procedure.
- L. Accreditation Fees. As a condition of accreditation, Registrar shall pay accreditation fees to ICANN. These fees consist of yearly and on-going components.
- 1. The yearly component for the term of this Agreement shall be US $5,000. Payment of the yearly component shall be due upon execution by Registrar of this Agreement and upon each anniversary date after such execution during the term of this Agreement (other than the expiration date).
- 2. Registrar shall pay the on-going component of Registrar accreditation fees adopted by ICANN in accordance with the provisions of Section II.C above, provided such fees are reasonably allocated among all registrars that contract with ICANN and that any such fees must be expressly approved by registrars accounting, in aggregate, for payment of two-thirds of all registrar-level fees. Registrar shall pay such fees in a timely manner for so long as all material terms of this Agreement remain in full force and effect, and notwithstanding the pendency of any dispute between Registrar and ICANN.
- 3. On reasonable notice given by ICANN to Registrar, accountings submitted by Registrar shall be subject to verification by an audit of Registrar's books and records by an independent third-party that shall preserve the confidentiality of such books and records (other than its findings as to the accuracy of, and any necessary corrections to, the accountings).

- M. <u>Specific Performance</u>. While this Agreement is in effect, either party may seek specific performance of any provision of this Agreement in the manner provided in Section II.P below, provided the party seeking such performance is not in material breach of its obligations.
- N. <u>Termination of Agreement</u>. This Agreement may be terminated before its expiration by Registrar by giving ICANN thirty days written notice. It may be terminated before its expiration by ICANN in any of the following circumstances:
- 1. There was a material misrepresentation, material inaccuracy, or materially misleading statement in Registrar's application for accreditation or any material accompanying the application.
- 2. Registrar:
- a. is convicted of a felony or other serious offense related to financial activities, or is judged by a court to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of these; or
- b. is disciplined by the government of its domicile for conduct involving dishonesty or misuse of funds of others.
- 3. Any officer or director of Registrar is convicted of a felony or of a misdemeanor related to financial activities, or is judged by a court to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these; provided, such officer or director is not removed in such circumstances.
- 4. Registrar fails to cure any breach of this Agreement (other than a failure to comply with a policy adopted by ICANN during the term of this Agreement as to which Registrar is seeking, or still has time to seek, review under Section I.B.2 of whether a consensus is present) within fifteen working days after ICANN gives Registrar notice of the breach.
- 5. Registrar fails to comply with a ruling granting specific performance under Sections II.M and II.P.
- 6. Registrar continues acting in a manner that ICANN has reasonably determined endangers the stability or operational integrity of the Internet after receiving three days notice of that determination.
- 7. Registrar becomes bankrupt or insolvent.
- This Agreement may be terminated in circumstances 1 through 6 above only upon fifteen days written notice to Registrar (in the case of circumstance 4 occurring after Registrar's failure to cure), with Registrar being given an opportunity during that time to initiate arbitration under Section II.P to determine the appropriateness of termination under this Agreement. In the event Registrar initiates litigation or arbitration concerning the appropriateness of termination by ICANN, the termination shall be stayed an additional thirty days to allow Registrar to obtain a stay of termination under Section II.P below. If Registrar acts in a manner that ICANN reasonably determines endangers the stability or operational integrity of the Internet and upon notice does not immediately cure, ICANN may suspend this Agreement for five working days pending ICANN's application for more extended specific performance or injunctive relief under

Section II.P. This Agreement may be terminated immediately upon notice to Registrar in circumstance 7 above.

- O. <u>Term of Agreement; Renewal; Right to Substitute Updated Agreement</u>. This Agreement shall have an initial term of five years, unless sooner terminated. Thereafter, if Registrar seeks to continue its accreditation, it may apply for renewed accreditation, and shall be entitled to renewal provided it meets the ICANN-adopted policy on accreditation criteria then in effect, is in compliance with its obligations under this Agreement, as amended, and agrees to be bound by the then-current Registrar accreditation agreement (which may differ from those of this Agreement) that ICANN adopts in accordance with Section II.C. and II.D (as Section II.D may have been amended by an ICANN-adopted policy). In connection with renewed accreditation, Registrar shall confirm its assent to the terms and conditions of the such then-current Registrar accreditation agreement by signing that accreditation agreement. In the event that, during the term of this Agreement, ICANN posts on its web site an updated form of registrar accreditation agreement applicable to accredited registrars in the .com, .net, or .org TLDs, Registrar (provided it has not received (1) a notice of breach that it has not cured or (2) a notice of termination of this Agreement under Section II.N above) may elect, by giving ICANN written notice, to enter an agreement in the updated form in place of this Agreement. In the event of such election, Registrar and ICANN shall promptly sign a new accreditation agreement that contains the provisions of the updated form posted on the web site, with the length of the term of the substituted agreement as stated in the updated form posted on the web site, calculated as if it commenced on the date this Agreement was made, and this Agreement will be deemed terminated.

- P. <u>Resolution of Disputes Under this Agreement</u>. Disputes arising under or in connection with this Agreement, including (1) disputes arising from ICANN's failure to renew Registrar's accreditation and (2) requests for specific performance, shall be resolved in a court of competent jurisdiction or, at the election of either party, by an arbitration conducted as provided in this Section II.P pursuant to the International Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration shall be conducted in English and shall occur in Los Angeles County, California, USA. There shall be three arbitrators: each party shall choose one arbitrator and, if those two arbitrators do not agree on a third arbitrator, the third shall be chosen by the AAA. The parties shall bear the costs of the arbitration in equal shares, subject to the right of the arbitrators to reallocate the costs in their award as provided in the AAA rules. The parties shall bear their own attorneys' fees in connection with the arbitration, and the arbitrators may not reallocate the attorneys' fees in conjunction with their award. The arbitrators shall render their decision within ninety days of the conclusion of the arbitration hearing. In the event Registrar initiates arbitration to contest the appropriateness of termination of this Agreement by ICANN, Registar may at the same time request that the arbitration panel stay the termination until the arbitration decision is rendered, and that request shall have the effect of staying the termination until the arbitration panel has granted an ICANN request for specific performance and Registrar has failed to comply with such ruling. In the

event Registrar initiates arbitration to contest an Independent Review Panel's decision under Section I.B.2 sustaining the Board's determination that a policy is supported by consensus, Registar may at the same time request that the arbitration panel stay the requirement that it comply with the policy until the arbitration decision is rendered, and that request shall have the effect of staying the requirement until the decision or until the arbitration panel has granted an ICANN request for lifting of the stay. In all litigation involving ICANN concerning this Agreement (whether in a case where arbitration has not been elected or to enforce an arbitration award), jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles, California, USA; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction. For the purpose of aiding the arbitration and/or preserving the rights of the parties during the pendency of an arbitration, the parties shall have the right to seek temporary or preliminary injunctive relief from the arbitration panel or in a court located in Los Angeles, California, USA, which shall not be a waiver of this arbitration agreement.

- Q. <u>Limitations on Monetary Remedies for Violations of this Agreement</u>. ICANN's aggregate monetary liability for violations of this Agreement shall not exceed the amount of accreditation fees paid by Registrar to ICANN under Section II.L of this Agreement. Registrar's monetary liability to ICANN for violations of this Agreement shall be limited to accreditation fees owing to ICANN under this Agreement. In no event shall either party be liable for special, indirect, incidental, punitive, exemplary, or consequential damages for any violation of this Agreement.

- R. <u>Handling by ICANN of Registrar-Supplied Data</u>. Before receiving any Personal Data from Registrar, ICANN shall specify to Registrar in writing the purposes for and conditions under which ICANN intends to use the Personal Data. ICANN may from time to time provide Registrar with a revised specification of such purposes and conditions, which specification shall become effective no fewer than thirty days after it is provided to Registrar. ICANN shall not use Personal Data provided by Registrar for a purpose or under conditions inconsistent with the specification in effect when the Personal Data were provided. ICANN shall take reasonable steps to avoid uses of the Personal Data by third parties inconsistent with the specification.

- S. <u>Miscellaneous</u>.

- 1. <u>Assignment</u>. Either party may assign or transfer this Agreement only with the prior written consent of the other party, which shall not be unreasonably withheld, except that ICANN may, with the written approval of the United States Department of Commerce, assign this agreement by giving Registrar written notice of the assignment. In the event of assignment by ICANN, the assignee may, with the approval of the United States Department of Commerce, revise the definition of "Consensus Policy" to the extent necessary to meet the organizational circumstances of the assignee, provided the revised definition requires that Consensus Policies be based on a demonstrated consensus of Internet stakeholders.

- 2. <u>No Third-Party Beneficiaries</u>. This Agreement shall not be construed to create any obligation by either ICANN or Registrar to any non-party to this Agreement, including any SLD holder.
- 3. <u>Notices, Designations, and Specifications</u>. All notices to be given under this Agreement shall be given in writing at the address of the appropriate party as set forth below, unless that party has given a notice of change of address in writing. Any notice required by this Agreement shall be deemed to have been properly given when delivered in person, when sent by electronic facsimile, or when scheduled for delivery by internationally recognized courier service. Designations and specifications by ICANN under this Agreement shall be effective when written notice of them is deemed given to Registrar.
- If to ICANN, addressed to:
- Internet Corporation for Assigned Names and Numbers
  Registrar Accreditation
  4676 Admiralty Way, Suite 330
  Marina Del Rey, California 90292
  Telephone: 1/310/823-9358
  Facsimile: 1/310/823-8649
- If to Registrar, addressed to:
- With a copy to:
- 4. <u>Dates and Times</u>. All dates and times relevant to this Agreement or its performance shall be computed based on the date and time observed in Los Angeles, California, USA.
- 5. <u>Language</u>. All notices, designations, and specifications made under this Agreement shall be in the English language.
- 6. <u>Entire Agreement</u>. Except for any written transition agreement that may be executed concurrently herewith by both parties, this Agreement constitutes the entire agreement of the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties.
- 7. <u>Amendments and Waivers</u>. No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.
- 8. <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives.
- INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS
-
-

- By:_____
- Michael M. Roberts
  Interim President and CEO
-
- [REGISTRAR]
-
- By:_____
-
- _____
  - **Transition Agreement**
- In connection and simultaneously with entry into a Registrar Accreditation Agreement ("Accreditation Agreement"), and as a condition of the effectiveness thereof, ICANN and NSI hereby agree as follows:
- 1. ICANN accepts NSI's application for accreditation, finds the application fully satisfactory, and agrees that it shall not at any time assert, for purposes of the Accreditation Agreement, that there was any material misrepresentation, material inaccuracy, or materially misleading statement in NSI's application for accreditation or any material accompanying the application.
- 2. It is recognized that the Whois lookup capability is currently generated by NSI from static database files and lags the Registry database in timeliness. NSI will complete the development of an interactive Whois capability providing near real-time-access (referred to as a "current basis" in Section II.F.1 of the Accreditation Agreement) to the database within six months after the date of the Accreditation Agreement.
- 3. NSI's obligation under II.J.4. shall not become effective until four months after the date of the Accreditation Agreement.
- 4. NSI will approve the on-going component of Registrar accreditation fees, as provided in Section II.L.2 of the Accreditation Agreement, if its portion thereof does not exceed $2,000,000 annually. NSI agrees to prepay $1,000,000 toward its share of the on-going component of its Registrar accreditation fees at the time of signing of the Accreditation Agreement.
- 5. In the case of actual conflict while they are both in effect, the term(s) of the Cooperative Agreement shall take precedence over this Agreement.
- IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives.
-
- INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS
-
- By:_____
- Michael M. Roberts
  Interim President and CEO
-
- NETWORK SOLUTIONS, INC.
-
- By:_____

-
-

  - **Page modified 28-September-1999**

 Tentative Agreements among ICANN, the U.S. Department of Commerce, and Network Solutions, Inc.

(Posted September 28, 1999)

[Note: ICANN has posted the following document for public review and comment. To submit comments, click here.]

-

REGISTRAR LICENSE AND AGREEMENT

This Registrar License and Agreement (the "Agreement") is dated as of _____, 1999 ("Effective Date") by and between Network Solutions, Inc., a Delaware corporation, with its principal place of business located at 505 Huntmar Park Drive, Herndon, Virginia 20170 ("NSI"or the "Registry"), and _____, a _____ corporation, with its principal place of business located at _____ ("Registrar"). NSI and Registrar may be referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, multiple registrars will provide Internet domain name registration services within the .com, .org and .net top-level domains wherein NSI operates and maintains certain TLD servers and zone files ("Registry");

WHEREAS, Registrar wishes to register second-level domain names in the multiple registrar system for the .com, .org and .net TLDs.

NOW, THEREFORE, for and in consideration of the mutual promises, benefits and covenants contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, NSI and Registrar, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

1.1 "DNS" refers to the Internet domain name system.

1.2 "IP" means Internet Protocol.

1.3 An "SLD" is a second-level domain of the DNS.

1.4 The "System" refers to the multiple registrar system developed by NSI for registration of second-level domain names in the .com, .org and .net TLDs.

1.5 A "TLD" is a top-level domain of the DNS.

1.6 The "Licensed Product" refers to the RRP, APIs, and software, collectively.

2. OBLIGATIONS OF THE PARTIES

2.1 System Operation and Access. Throughout the Term of this Agreement, NSI shall operate the System and provide Registrar with access to the System enabling Registrar to transmit domain name registration information for the .com, .org and .net TLDs to the System according to a protocol developed by NSI and known as the Registry Registrar Protocol ("RRP").

2.2 Distribution of RRP, APIs and Software. No later than three business days after the Effective Date of this Agreement, NSI shall provide to Registrar (i) full documentation of the RRP, (ii) "C" and "Java" application program interfaces ("APIs") to the RRP with documentation, and (iii) reference client software ("Software") that will enable Registrar to develop its system to register second-level domain names through the System for the .com, .org and .net TLDs. If NSI elects to modify or upgrade the APIs and/or RRP, NSI shall provide updated APIs to the RRP with documentation and updated Software to Registrar promptly as such updates become available.

2.3 New Architectural Features. NSI will use its best commercial efforts to develop and implement two additional modifications to the Licensed Product by January 15, 2000 as follows:

2.3.1 NSI will issue an upgrade to the Licensed Product that will enable a Registrar to accept initial domain name registrations or renewals of a minimum of one year in length, or in multiples of one year increments, up to a maximum of ten (10) years.

2.3.2 NSI will issue an upgrade to the Licensed Product that will enable registrars to accept the addition of one additional year to a registrant's "current" registration period when a registrant changes from one registrar to another.

Registrars will be able to offer these new features only for new registrations or renewals occurring after the Upgrade is deployed. Both Upgrades will be introduced into the Operational Test and Evaluation environment for testing prior to deployment.

2.4 Registrar Responsibility for Customer Support. Registrar shall be responsible for providing customer service (including domain name record support), billing and technical support, and customer interface to accept customer (the "SLD holder") orders.

2.5 Data Submission Requirements. As part of its registration of all SLD registrations in the .com, .net, and .org TLDs during the Term of this Agreement, Registrar shall submit the following data elements using the RRP concerning SLD registrations it processes:

2.5.1 The name of the SLD being registered;

2.5.2 The IP addresses of the primary nameserver and any secondary nameservers for the SLD; and

2.5.3 The corresponding host names of those nameservers.

2.6 License. Registrar grants NSI as Registry a non-exclusive non-transferable limited license to the data elements consisting of the SLD name registered, the IP addresses of nameservers, and the identity of the registering registrar for propagation of and the provision of authorized access to the TLD zone files.

2.7 Registrar's Registration Agreement and Domain Name Dispute Policy. Registrar shall have developed and employ in its domain name registration business an electronic or paper registration agreement, including a domain name dispute policy, a copy of which is attached to this Agreement as Exhibit A (which may be amended from time to time by Registrar, provided a copy is furnished to the Registry three (3) business days in advance of any such amendment), to be entered into by Registrar with each SLD holder as a condition of registration. Registrar shall include terms in its agreement with each SLD holder that are consistent with Registrar's duties to NSI hereunder.

2.8 Secure Connection. Registrar agrees to develop and employ in its domain name registration business all necessary technology and restrictions to ensure that its connection to the System is secure. All data exchanged between Registrar's system and the System shall be protected to avoid unintended disclosure of information. Each RRP session shall be authenticated and encrypted using two-way secure socket layer ("SSL") protocol. Registrar agrees to authenticate every RRP client connection with the System using both an X.509 server certificate issued by a commercial Certification Authority identified by the Registry and its Registrar password, which it shall disclose only to its employees with a need to know. Registrar agrees to notify Registry within four hours of learning that its Registrar password has been compromised in any way or if its server certificate has been revoked by the issuing Certification Authority or compromised in any way.

2.9 Domain Name Lookup Capability. Registrar agrees to employ in its domain name registration business NSI's Registry domain name lookup capability to determine if a requested domain name is available or currently unavailable for registration.

2.10 Transfer of Sponsorship of Registrations. Registrar agrees to implement transfers of SLD registrations from another registrar to Registrar and vice versa pursuant to the Policy on Transfer of Sponsorship of Registrations Between Registrars appended hereto as Exhibit B.

2.11 Time. Registrar agrees that in the event of any dispute concerning the time of the entry of a domain name registration into the Registry database, the time shown in the NSI Registry records shall control.

2.12 Compliance with Terms and Conditions. Registrar agrees to comply with all other reasonable terms or conditions established from time to time, to assure sound operation of the System, by NSI as Registry in a non-arbitrary manner and applicable to all registrars, including NSI, and consistent with NSI's Cooperative Agreement with the United States Government or NSI's Registry Agreement with the Internet Corporation for Assigned Names and Numbers ("ICANN"), as applicable, upon NSI's notification to Registrar of the establishment of those terms and conditions.

2.13 Resolution of Technical Problems. Registrar agrees to employ necessary employees, contractors, or agents with sufficient technical training and experience to respond to and fix all technical problems concerning the use of the RRP and the APIs in conjunction with Registrar's systems. Registrar agrees that in the event of significant degradation of the System or other emergency, Network Solutions, as Registry, may, in its sole discretion, temporarily suspend access to the System. Such temporary suspensions shall be applied in a nonarbitrary manner and shall apply fairly to any registrar similarly situated, including NSI.

2.14 Surety Instrument. During the Initial Term and any Renewal Terms, Registrar shall have in place a performance bond, letter of credit or equivalent instrument (the "Surety Instrument") from a surety acceptable to NSI, in the amount of $100,000 U.S. dollars. The terms of the Surety Instrument shall indemnify and hold harmless NSI and its employees, directors, officers, representatives, agents and affiliates from all costs and damages (including reasonable attorneys' fees) which it may suffer by reason of Registrar's failure to indemnify NSI as provided in Section 6.16 by making payment(s) up to the full amount of the bond within ten (10) days of NSI's having notified the surety of its claim(s) of damages, having identified the basis for any such claim. NSI shall not be entitled to payment under the Surety Instrument until such time as it has certified that it has incurred expenses for which it is entitled to reimbursement in accordance with the provisions of Section 6.16 of this Agreement.

2.15 Prohibited Domain Name Registrations. Registrar agrees to comply with the policies of NSI as Registry that will be applicable to all registrars and that will prohibit the registration of certain domain names in the .com, .org and .net TLDs which are not allowed to be registered by statute or regulation.

2.16 Indemnification Required of SLD Holders. Registrar shall require each SLD holder to indemnify, defend and hold harmless NSI, and its directors, officers, employees and agents from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses arising out of or relating to the SLD holder's domain name registration.

3. LICENSE

3.1 License Grant. Subject to the terms and conditions of this Agreement, NSI hereby grants Registrar and Registrar accepts a non-exclusive, non-transferable, worldwide limited license to use for the Term and purposes of this Agreement the RRP, APIs and Software, as well as updates and redesigns thereof,

to provide domain name registration services in the .com, .org and .net TLDs only and for no other purpose. The RRP, APIs and Software, as well as updates and redesigns thereof, will enable Registrar to register domain names with the Registry on behalf of its SLD holders. Registrar, using the RRP, APIs and Software, as well as updates and redesigns thereof, will be able to invoke the following operations on the System: (i) check the availability of a domain name, (ii) register a domain name, (iii) re-register a domain name, (iv) cancel the registration of a domain name it has registered, (v) update the nameservers of a domain name, (vi) transfer a domain name from another registrar to itself with proper authorization, (vii) query a domain name registration record, (viii) register a nameserver, (ix) update the IP addresses of a nameserver, (x) delete a nameserver, (xi) query a nameserver, and (xii) establish and end an authenticated session.

3.2 Limitations on Use. Notwithstanding any other provisions in this Agreement, except with the written consent of NSI, Registrar shall not: (i) sublicense the RRP, APIs or Software or otherwise permit any use of the RRP, APIs or Software by or for the benefit of any party other than Registrar, (ii) publish, distribute or permit disclosure of the RRP, APIs or Software other than to employees, contractors, and agents of Registrar for use in Registrar's domain name registration business, (iii) decompile, reverse engineer, copy or re-engineer the RRP, APIs or Software for any unauthorized purpose, or (iv) use or permit use of the RRP, APIs or Software in violation of any federal, state or local rule, regulation or law, or for any unlawful purpose.

Registrar agrees to employ the necessary measures to prevent its access to the System granted hereunder from being used for (i) the transmission of unsolicited, commercial e-mail (spam) to entities other than Registrar's customers; (ii) high volume, automated, electronic processes that apply to NSI for large numbers of domain names, except as reasonably necessary to register domain names or modify existing registrations; or (iii) high volume, automated, electronic, repetitive queries for the purpose of extracting data to be used for Registrar's purposes, except as reasonably necessary to register domain names or modify existing registrations.

3.3 Changes to Licensed Materials. NSI may from time to time make modifications to the RRP, APIs or Software licensed hereunder that will enhance functionality or otherwise improve the System. NSI will provide Registrar with at least sixty (60) days notice prior to the implementation of any material changes to the RRP, APIs or software licensed hereunder.

4. SUPPORT SERVICES

4.1 Engineering Support. NSI agrees to provide Registrar with reasonable engineering telephone support (between the hours of 9 a.m. to 5 p.m. local Herndon, Virginia time or at such other times as may be mutually agreed upon) to address engineering issues arising in connection with Registrar's use of the System.

4.2 Customer Service Support. During the Term of this Agreement, NSI will provide reasonable telephone and e-mail customer service support to Registrar, not SLD holders or prospective customers of Registrar, for non-technical issues solely relating to the System and its operation. NSI will provide Registrar with a telephone number and e-mail address for such support during implementation of the

RRP, APIs and Software. First-level telephone support will be available on a 7-day/24-hour basis. NSI will provide a web-based customer service capability in the future and such web-based support will become the primary method of customer service support to Registrar at such time.

5. FEES

5.1 License Fee. As consideration for the license of the RRP, APIs and Software, Registrar agrees to pay NSI on the Effective Date a non-refundable one-time fee in the amount of $ 10,000 payable in United States dollars (the "License Fee") and payable by check to Network Solutions, Inc., Attention: Registry Accounts Receivable, 505 Huntmar Park Drive, Herndon, Virginia 20170 or by wire transfer to NationsBank, for the credit of Network Solutions, Inc., Account #004112889843, ABA # 05000017, Swift, NABKUS3ARIC. No later than three (3) business days after either the receipt (and final settlement if payment by check) of such License Fee, or the Effective Date of this Agreement, whichever is later, NSI will provide the RRP, APIs and Software to Registrar.

5.2 Registration Fees.

(a) From the Effective Date of this Agreement through January 15, 2000, Registrar agrees to pay NSI the non-refundable amounts of $18 United States dollars for each initial two-year domain name registration and $9 United States dollars for each one-year domain name re-registration (collectively, the "Registration Fees") registered by Registrar through the System.

(b) Thereafter, and for the balance of the term of this Agreement, Registrar agrees to pay NSI the non-refundable amounts of $6 United States dollars for each annual increment of an initial domain name registration and $6 United States dollars for each annual increment of a domain name re-registration (collectively, the "Registration Fees") registered by Registrar through the System.

(c) NSI reserves the right to adjust the Registration Fees prospectively upon thirty (30) days prior notice to Registrar, provided that such adjustments are consistent with NSI's Cooperative Agreement with the United States Government or its Registry Agreement with ICANN, as applicable, and are applicable to all registrars in the .com, .org and .net TLDs. NSI will invoice Registrar monthly in arrears for each month's Registration Fees. All Registration Fees are due immediately upon receipt of NSI's invoice pursuant to a letter of credit, deposit account, or other acceptable credit terms agreed by the Parties.

5.3 Change in Registrar Sponsoring Domain Name. Registrar may assume sponsorship of a SLD holder's existing domain name registration from another registrar by following the policy set forth in Exhibit B to this Agreement. Registrar agrees to pay NSI the applicable Registration Fee as set forth above. For transfers taking place after January 15, 2000, this shall result in a corresponding extension of the existing registration. The losing registrar's Registration Fees will not be refunded as a result of any such transfer.

5.4 Non-Payment of Registration Fees. Timely payment of Registration Fees is a material condition of performance under this Agreement. In the event that Registrar fails to pay its Registration Fees, either initial or re-registration fees, within three (3) days of the date when due, NSI may stop accepting new

registrations and/or delete the domain names associated with invoices not paid in full from the Registry database and give written notice of termination of this Agreement pursuant to Section 6.1(b) below.

6. MISCELLANEOUS

6.1 **Term of Agreement and Termination**.

(a) **Term of the Agreement**. The duties and obligations of the Parties under this Agreement shall apply from the Effective Date through and including the last day of the calendar month sixty (60) months from the Effective Date (the "Initial Term"). Upon conclusion of the Initial Term, all provisions of this Agreement will automatically renew for successive five (5) year renewal periods until the Agreement has been terminated as provided herein, Registrar elects not to renew, or NSI ceases to operate as the registry for the .com, .org and .net TLDs. In the event that revisions to NSI's Registrar License and Agreement are approved or adopted by the U.S. Department of Commerce, or ICANN, as appropriate, Registrar will execute an amendment substituting the revised agreement in place of this Agreement, or, at Registrar's option, exercised within fifteen (15) days, may terminate this Agreement immediately by giving written notice to NSI.

(b) **Termination For Cause**. In the event that either Party materially breaches any term of this Agreement including any of its representations and warranties hereunder and such breach is not substantially cured within thirty (30) calendar days after written notice thereof is given by the other Party, then the non-breaching Party may, by giving written notice thereof to the other Party, terminate this Agreement as of the date specified in such notice of termination.

.

(c) **Termination at Option of Registrar**. Registrar may terminate this Agreement at any time by giving NSI thirty (30) days notice of termination.

(d) **Termination Upon Loss of Registrar's Accreditation**. This Agreement shall terminate in the event Registrar's accreditation by ICANN, or its successor, is terminated or expires without renewal.

(e) **Termination in the Event that Successor Registry is Named**. This Agreement shall terminate in the event that the U.S. Department of Commerce or ICANN, as appropriate, designates another entity to serve as the registry for the .com, .net. and .org TLDs (the "Successor Registry").

(f) **Termination in the Event of Bankruptcy**. Either Party may terminate this Agreement if the other Party is adjudged insolvent or bankrupt, or if proceedings are instituted by or against a Party seeking relief, reorganization or arrangement under any laws relating to insolvency, or seeking any assignment for the benefit of creditors, or seeking the appointment of a receiver, liquidator or trustee of a Party's property or assets or the liquidation, dissolution or winding up of a Party's business.

(g) **Effect of Termination**. Upon expiration or termination of this Agreement, NSI will complete the registration of all domain names processed by Registrar prior to the date of such expiration or termination, provided that Registrar's payments to NSI for Registration Fees are current and timely.

Immediately upon any expiration or termination of this Agreement, Registrar shall (i) transfer its sponsorship of SLD name registrations to another licensed registrar(s) of the Registry, in compliance with any procedures established or approved by the U.S. Department of Commerce or ICANN, as appropriate, and (ii) either return to NSI or certify to NSI the destruction of all data, software and documentation it has received under this Agreement.

(h) **Survival**. In the event of termination of this Agreement, the following shall survive: (i) Sections 2.6, 2.7, 2.14, 6.1(g), 6.6, 6.7, 6.10, 6.12, 6.13, 6.14 and 6.16; (ii) the SLD holder's obligations to indemnify, defend, and hold harmless NSI, as stated in Section 2.16; (iii) the surety's obligations under the Surety Instrument described in Section 2.13 with respect to matters arising during the term of this Agreement; and (iv) Registrar's payment obligations as set forth in Section 5.2 with respect to initial registrations or re-registrations during the term of this Agreement. Neither Party shall be liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with its terms but each Party shall be liable for any damage arising from any breach by it of this Agreement.

6.2. **No Third Party Beneficiaries; Relationship of The Parties**. This Agreement does not provide and shall not be construed to provide third parties (i.e., non-parties to this Agreement), including any SLD holder, with any remedy, claim, cause of action or privilege. Nothing in this Agreement shall be construed as creating an employer-employee or agency relationship, a partnership or a joint venture between the Parties.

6.3 **Force Majeure**. Neither Party shall be responsible for any failure to perform any obligation or provide service hereunder because of any Act of God, strike, work stoppage, governmental acts or directives, war, riot or civil commotion, equipment or facilities shortages which are being experienced by providers of telecommunications services generally, or other similar force beyond such Party's reasonable control.

6.4 **Further Assurances**. Each Party hereto shall execute and/or cause to be delivered to each other Party hereto such instruments and other documents, and shall take such other actions, as such other Party may reasonably request for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.

6.5 **Amendment in Writing**. Any amendment or supplement to this Agreement shall be in writing and duly executed by both Parties.

6.6 **Attorneys' Fees**. If any legal action or other legal proceeding (including arbitration) relating to the performance under this Agreement or the enforcement of any provision of this Agreement is brought against either Party hereto, the prevailing Party shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing Party may be entitled).

6.7 **Dispute Resolution; Choice of Law; Venue**. The Parties shall attempt to resolve any disputes between them prior to resorting to litigation. This Agreement is to be construed in accordance with and governed by the internal laws of the Commonwealth of Virginia, United States of America without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other

than the internal laws of the Commonwealth of Virginia to the rights and duties of the Parties. Any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement shall be brought or otherwise commenced in any state or federal court located in the eastern district of the Commonwealth of Virginia. Each Party to this Agreement expressly and irrevocably consents and submits to the jurisdiction and venue of each state and federal court located in the eastern district of the Commonwealth of Virginia (and each appellate court located in the Commonwealth of Virginia) in connection with any such legal proceeding.

6.8 **Notices**. Any notice or other communication required or permitted to be delivered to any Party under this Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service or by telecopier during business hours) to the address or telecopier number set forth beneath the name of such Party below, unless party has given a notice of a change of address in writing:

if to Registrar:

_____

_____

_____

_____

_____

_____

with a copy to:

_____

_____

_____

_____

_____

_____

if to NSI:

Network Solutions, Inc.
505 Huntmar Park Drive

Herndon, Virginia 20170

Attention: Director, Customer Affairs

Telecopier: + 1 (703) 742-8706

with a copy to:

General Counsel

505 Huntmar Park Drive

Herndon, Virginia 20170

Telecopier: + 1 (703) 742-0065

6.9 **Assignment/Sublicense**. Except as otherwise expressly provided herein, the provisions of this Agreement shall inure to the benefit of and be binding upon, the successors and permitted assigns of the Parties hereto. Registrar shall not assign, sublicense or transfer its rights or obligations under this Agreement to any third person without the prior written consent of NSI.

6.10 **Use of Confidential Information**. The Parties' use and disclosure of Confidential Information disclosed hereunder are subject to the terms and conditions of the Parties' Confidentiality Agreement (Exhibit C) that will be executed contemporaneously with this Agreement. Registrar agrees that the RRP, APIs and Software are the Confidential Information of NSI.

6.11 **Delays or Omissions; Waivers**. No failure on the part of either Party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of either Party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise or waiver of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. No Party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

6.12 **Limitation of Liability**. IN NO EVENT WILL NSI BE LIABLE TO REGISTRAR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES RESULTING FROM LOSS OF PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF NSI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.13 **Construction**. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement.

6.14 **Intellectual Property**. Subject to Section 2.6 above, each Party will continue to independently own its intellectual property, including all patents, trademarks, trade names, service marks, copyrights, trade secrets, proprietary processes and all other forms of intellectual property.

6.15 **Representations and Warranties**

(a) **Registrar**. Registrar represents and warrants that: (1) it is a corporation duly incorporated, validly existing and in good standing under the law of the _____, (2) it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement, (3) it is, and during the Term of this Agreement will continue to be, accredited by ICANN or its successor, pursuant to an accreditation agreement dated after November ___, 1999, (4) the execution, performance and delivery of this Agreement has been duly authorized by Registrar, (5) no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by Registrar in order for it to enter into and perform its obligations under this Agreement, and (6) Registrar's Surety Instrument provided hereunder is a valid and enforceable obligation of the surety named on such Surety Instrument.

(b) **NSI**. NSI represents and warrants that: (1) it is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, (2) it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement, (3) the execution, performance and delivery of this Agreement has been duly authorized by NSI, and (4) no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by NSI in order for it to enter into and perform its obligations under this Agreement.

(c) **Disclaimer of Warranties**. The RRP, APIs and Software are provided "as-is" and without any warranty of any kind. NSI EXPRESSLY DISCLAIMS ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. NSI DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE RRP, APIs OR SOFTWARE WILL MEET REGISTRAR'S REQUIREMENTS, OR THAT THE OPERATION OF THE RRP, APIs OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE RRP, APIs OR SOFTWARE WILL BE CORRECTED. FURTHERMORE, NSI DOES NOT WARRANT NOR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE RRP, APIs, SOFTWARE OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. SHOULD THE RRP, APIs OR SOFTWARE PROVE DEFECTIVE, REGISTRAR ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION OF REGISTRAR'S OWN SYSTEMS AND SOFTWARE.

6.16. **Indemnification**. Registrar, at its own expense and within thirty (30) days of presentation of a demand by NSI under this paragraph, will indemnify, defend and hold harmless NSI and its employees, directors, officers, representatives, agents and affiliates, against any claim, suit, action, or other proceeding brought against NSI or any affiliate of NSI based on or arising from any claim or alleged claim (i) relating to any product or service of Registrar; (ii) relating to any agreement, including Registrar's dispute policy, with any SLD holder of Registrar; or (iii) relating to Registrar's domain name registration business, including, but not limited to, Registrar's advertising, domain name application process, systems and other processes, fees charged, billing practices and customer service; provided, however, that in any such case: (a) NSI provides Registrar with prompt notice of any such claim, and (b) upon Registrar's written request, NSI will provide to Registrar all available information and assistance

reasonably necessary for Registrar to defend such claim, provided that Registrar reimburses NSI for its actual and reasonable costs. Registrar will not enter into any settlement or compromise of any such indemnifiable claim without NSI's prior written consent, which consent shall not be unreasonably withheld. Registrar will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by NSI in connection with or arising from any such indemnifiable claim, suit, action or proceeding.

6.17 **Entire Agreement; Severability**. This Agreement, which includes Exhibits A, B and C, constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth in the first paragraph hereof.

Network Solutions, Inc.

By: By:

Name: Name:

Title: Title:

Exhibit A

Registrar's Dispute Policy

[To be supplied from time to time by Registrar]

Exhibit B

Policy on Transfer of Sponsorship of Registrations Between Registrars

Registrar Requirements

The registration agreement between each Registrar and its SLD holder shall include a provision explaining that an SLD holder will be prohibited from changing its Registrar during the first 60 days after initial registration of the domain name with the Registrar. Beginning on the 61st day after the initial registration with the Registrar, the procedures for change in sponsoring registrar set forth in this policy shall apply. Enforcement shall be the responsibility of the Registrar sponsoring the domain name registration.

For each instance where an SLD holder wants to change its Registrar for an existing domain name (i.e., a domain name that appears in a particular top-level domain zone file), the gaining Registrar shall:

1) Obtain express authorization from an individual who has the apparent authority to legally bind the SLD holder (as reflected in the database of the losing Registrar).

a) The form of the authorization is at the discretion of each gaining Registrar.

b) The gaining Registrar shall retain a record of reliable evidence of the authorization.

2) In those instances when the Registrar of record is being changed simultaneously with a transfer of a domain name from one party to another, the gaining Registrar shall also obtain appropriate authorization for the transfer. Such authorization shall include, but not be limited to, one of the following:

a) A bilateral agreement between the parties.

b) The final determination of a binding dispute resolution body.

c) A court order.

3) Request, by the transmission of a "transfer" command as specified in the Registry Registrar Protocol, that the Registry database be changed to reflect the new Registrar.

a) Transmission of a "transfer" command constitutes a representation on the part of the gaining Registrar that:

(1) the requisite authorization has been obtained from the SLD holder listed in the database of the losing Registrar, and

(2) the losing Registrar will be provided with a copy of the authorization if and when requested.

In those instances when the Registrar of record denies the requested change of Registrar, the Registrar of record shall notify the prospective gaining Registrar that the request was denied and the reason for the denial.

Instances when the requested change of sponsoring Registrar may be denied include, but are not limited to:

1) Situations described in the Domain Name Dispute Resolution Policy

2) A pending bankruptcy of the SLD Holder

3) Dispute over the identity of the SLD Holder

4) Request to transfer sponsorship occurs within the first 60 days after the initial registration with the Registrar

In all cases, the losing Registrar shall respond to the email notice regarding the "transfer" request within five (5) days. Failure to respond will result in a default "approval" of the "transfer."

Registry Requirements.

Upon receipt of the "transfer" command from the gaining Registrar, the Registry will transmit an email notification to both Registrars.

The Registry shall complete the "transfer" if either:

1) the losing Registrar expressly "approves" the request, or

2) the Registry does not receive a response from the losing Registrar within five (5) days.

When the Registry's database has been updated to reflect the change to the gaining Registrar, the Registry will transmit an email notification to both Registrars.

Records of Registration.

Each SLD holder shall maintain its own records appropriate to document and prove the initial domain name registration date, regardless of the number of Registrars with which the SLD holder enters into a contract for registration services.

Exhibit C

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT is entered into by and between Network Solutions, Inc. ("NSI"), a Delaware corporation having its principal place of business in Herndon, VA, and , a _____ corporation having its principal place of business in _____ ("Registrar"), through their authorized representatives, and takes effect on the date executed by the final party (the "Effective Date").

Under this Confidentiality Agreement ("Confidentiality Agreement"), the Parties intend to disclose to one another information which they consider to be valuable, proprietary, and confidential.

NOW, THEREFORE, the parties agree as follows:

1. **Confidential Information**

1.1 "Confidential Information", as used in this Confidentiality Agreement, shall mean all information and materials including, without limitation, computer software, data, information, databases, protocols, reference implementation and documentation, and functional and interface specifications, provided by the disclosing party to the receiving party under this Confidentiality Agreement and marked or otherwise identified as Confidential, provided that if a communication is oral, the disclosing party will notify the receiving party in writing within 15 days of the disclosure.

2. **Confidentiality Obligations**

2.1 In consideration of the disclosure of Confidential Information, the Parties agree that:

(a) The receiving party shall treat as strictly confidential, and use all reasonable efforts to preserve the secrecy and confidentiality of, all Confidential Information received from the disclosing party, including implementing reasonable physical security measures and operating procedures.

(b) The receiving party shall make no disclosures whatsoever of any Confidential Information to others, provided however, that if the receiving party is a corporation, partnership, or similar entity, disclosure is permitted to the receiving party's officers, employees, contractors and agents who have a demonstrable need to know such Confidential Information, provided the receiving party shall advise such personnel of the confidential nature of the Confidential Information and of the procedures required to maintain the confidentiality thereof, and shall require them to acknowledge in writing that they have read, understand, and agree to be individually bound by the terms of this Confidentiality Agreement.

(c) The receiving party shall not modify or remove any Confidential legends and/or copyright notices appearing on any Confidential Information.

2.2 The receiving party's duties under this section (2) shall expire five (5) years after the information is received or earlier, upon written agreement of the Parties.

3. **Restrictions On Use**

3.1 The receiving party agrees that it will use any Confidential Information received under this Confidentiality Agreement solely for the purpose of providing domain name registration services as a registrar and for no other purposes whatsoever.

3.2 No commercial use rights or any licenses under any patent, patent application, copyright, trademark, know-how, trade secret, or any other NSI proprietary rights are granted by the disclosing party to the receiving party by this Confidentiality Agreement, or by any disclosure of any Confidential Information to the receiving party under this Confidentiality Agreement.

3.3 The receiving party agrees not to prepare any derivative works based on the Confidential Information.

3.4 The receiving party agrees that any Confidential Information which is in the form of computer software, data and/or databases shall be used on a computer system(s) that is owned or controlled by the receiving party.

4. **Miscellaneous**

4.1 This Confidentiality Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia and all applicable federal laws. The Parties agree that, if a suit to enforce this Confidentiality Agreement is brought in the U.S. Federal District Court for the Eastern District of Virginia, they will be bound by any decision of the Court.

4.2 The obligations set forth in this Confidentiality Agreement shall be continuing, provided, however, that this Confidentiality Agreement imposes no obligation upon the Parties with respect to information that (a) is disclosed with the disclosing party's prior written approval; or (b) is or has entered the public domain through no fault of the receiving party; or (c) is known by the receiving party prior to the time of disclosure; or (d) is independently developed by the receiving party without use of the Confidential Information; or (e) is made generally available by the disclosing party without restriction on disclosure.

4.3 This Confidentiality Agreement may be terminated by either party upon breach by the other party of any its obligations hereunder and such breach is not cured within three (3) calendar days after the allegedly breaching party is notified by the disclosing party of the breach. In the event of any such termination for breach, all Confidential Information in the possession of the Parties shall be immediately returned to the disclosing party; the receiving party shall provide full voluntary disclosure to the disclosing party of any and all unauthorized disclosures and/or unauthorized uses of any Confidential Information; and the obligations of Sections 2 and 3 hereof shall survive such termination and remain in full force and effect. In the event that the Registrar License and Agreement between the Parties is terminated, the Parties shall immediately return all Confidential Information to the disclosing party and the receiving party shall remain subject to the obligations of Sections 2 and 3.

4.4 The terms and conditions of this Confidentiality Agreement shall inure to the benefit of the Parties and their successors and assigns. The Parties' obligations under this Confidentiality Agreement may not be assigned or delegated.

4.5 The Parties agree that they shall be entitled to seek all available legal and equitable remedies for the breach of this Confidentiality Agreement.

4.6 The terms and conditions of this Confidentiality Agreement may be modified only in a writing signed by NSI and Registrar.

4.7 EXCEPT AS MAY OTHERWISE BE SET FORTH IN A SIGNED, WRITTEN AGREEMENT BETWEEN THE PARTIES, THE PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, AS TO THE ACCURACY, COMPLETENESS, CONDITION, SUITABILITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY OF ANY CONFIDENTIAL INFORMATION, AND THE PARTIES SHALL HAVE NO LIABILITY WHATSOEVER TO ONE ANOTHER RESULTING FROM RECEIPT OR USE OF THE CONFIDENTIAL INFORMATION.

4.8 If any part of this Confidentiality Agreement is found invalid or unenforceable, such part shall be deemed stricken herefrom and the Parties agree: (a) to negotiate in good faith to amend this Confidentiality Agreement to achieve as nearly as legally possible the purpose or effect as the stricken part, and (b) that the remainder of this Confidentiality Agreement shall at all times remain in full force and effect.

4.9 This Confidentiality Agreement contains the entire understanding and agreement of the Parties relating to the subject matter hereof.

4.10 Any obligation imposed by this Confidentiality Agreement may be waived in writing by the disclosing party. Any such waiver shall have a one-time effect and shall not apply to any subsequent situation regardless of its similarity.

4.11 Neither Party has an obligation under this Confidentiality Agreement to purchase, sell, or license any service or item from the other Party.

4.12 The Parties do not intend that any agency or partnership relationship be created between them by this Confidentiality Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, duly authorized representatives of NSI and Registrar have executed this Confidentiality Agreement in Virginia on the dates indicated below.

("Registrar") Network Solutions, Inc.   ("NSI")

By: _____   By: _____

Title: _____   Title:_____

Date:_____   Date:_____

Page modified 28-September-1999

Tentative Agreements among ICANN, the U.S. Department of Commerce, and Network Solutions, Inc.

(Posted September 28, 1999)

[Note: ICANN has posted the following document for public review and comment. To submit comments, click here.]

Memorandum of Understanding (MOU) between the Department of Commerce (DOC) and the Internet Corporation for Assigned Names and Numbers (ICANN)

AMENDMENT 1

Pursuant to the Memorandum of Understanding (MOU) between the Department of Commerce (DOC) and the Internet Corporation for Assigned Names and Numbers (ICANN), dated November 25, 1998, the Parties hereby agree to adopt the following terms as contemplated in Section V of the MOU:

1. The Agreement entitled "Registry Agreement" between ICANN and Network Solutions, Inc. (NSI) dated _____ and relating to the provision of registry services for the .com, .net and .org TLDs is hereby approved by the DOC. ICANN will not enter into any amendment of, or substitute for, said agreement, nor will said agreement be assigned by ICANN, without the prior approval of DOC.

2. ICANN shall not enter into any agreement with any successor registry to NSI for the .com, .net. and .org TLDs without the prior approval by DOC of the successor registry and the provisions of the agreement between the registry and ICANN.

3. ICANN agrees that, in the event of the termination by DOC of the Cooperative Agreement pursuant to Section 1.B.8 of their agreement, ICANN shall (1) exercise its rights under its Registry Agreement with

NSI to terminate NSI as the operator of the registry database for .com, .net and .org and (2) cooperate with the Department to facilitate the transfer of those registry operations to a successor registry.

4. In the event that the DOC, pursuant to the terms of the Registry Agreement between ICANN and NSI, approves the assignment of that agreement by ICANN to another non-profit entity, that new entity shall also be required to agree to be bound by this Agreement, and that entity shall succeed to the duties, obligations and benefits of this Agreement, and shall be recognized by DOC as the "NewCo" identified in Amendment 11 to the Cooperative Agreement and Section I.B.1 of Amendment 19 of the Cooperative Agreement.

5. If DOC withdraws its recognition of ICANN or any successor entity by terminating this Agreement, ICANN agrees that it will assign to DOC any rights that ICANN has in all existing contracts with registries and registrars.

_____   _____

Michael R. Roberts   J. Beckwith Burr
Interim President and CEO   Assistant Administrator
Internet Corporation for Assigned   National Telecommunications and
Names and Numbers   Information Administration

Page modified 28-September-1999

Tentative Agreements among ICANN, the U.S. Department of Commerce, and Network Solutions, Inc.

(Posted September 28, 1999)

[Note: ICANN has posted the following document for public review and comment. To submit comments, click here.]

Zone File Access Agreement

505 Huntmar Park Drive · Herndon, Virginia, USA 20170

Telephone +1-703-326-2600 · Fax +1-703-834-2652

AGREEMENT

1. PARTIES

The User named in this Agreement hereby contracts with Network Solutions, Inc. ("Network Solutions") for a non-exclusive, non-transferable, limited right to access Internet host rz.internic.net, or other servers designated by Network Solutions from time to time, and to transfer a copy of the described Data to the User's Internet Host machine specified below, under the terms of this Agreement. Upon execution of this Agreement by Network Solutions, Network Solutions will return a copy of this Agreement to you for your records with your UserID and Password entered in the spaces set forth below.

2. USER INFORMATION

(a) User: _____

(b) Contact Person: _____

(c) Street Address: _____

(d) City, State or Province: _____

(e) Country and Postal Code: _____

(f) Telephone Number: _____
(including area/country code)

(g) Fax Number: _____
(including area/country code)

(h) E-Mail Address: _____

(i) Specific Internet host machine which will be used to access Network Solutions' server to transfer copies of the Data:

Name: _____

IP Address: _____

(j) Purpose(s) for which the Data will be used: During the term of this Agreement, you may use the data for any legal purpose, not prohibited under Section 4 below. You may incorporate some or all of the Data in your own products or services, and distribute those products or services for a purpose not prohibited under Section 4 below.

3. TERM

This Agreement is effective for a period of three (3) months from the date of execution by Network Solutions (the "Initial Term"). Upon conclusion of the Initial Term this Agreement will automatically renew for successive three month renewal terms (each a "Renewal Term") until terminated by either party as set forth in Section 12 of this Agreement or one party provides the other party with a written notice of termination at least seven (7) days prior to the end of the Initial Term or the then current Renewal Term.

NOTICE TO USER: CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS. YOU MAY USE THE USER ID AND ASSOCIATED PASSWORD PROVIDED IN CONJUNCTION WITH THIS AGREEMENT ONLY TO OBTAIN A COPY OF NETWORK SOLUTIONS' AGGREGATED .COM, .ORG, AND .NET TOP LEVEL DOMAIN ("TLD") ZONE FILES, AND ANY ASSOCIATED ENCRYPTED CHECKSUM FILES (COLLECTIVELY THE "DATA"), VIA THE FILE TRANSFER PROTOCOL ("FTP") PURSUANT TO THESE TERMS.

4. GRANT OF ACCESS

Network Solutions grants to you a non-exclusive, non-transferable, limited right to access Internet host rz.internic.net, or such other servers designated by Network Solutions from time to time, and to transfer a copy of the Data to the Internet host machine identified in Section 2 of this Agreement no more than once per 24 hour period using FTP for the purposes described in the next following sentence. You agree that you will use this Data only for lawful purposes but that, under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of unsolicited, commercial e-mail (spam) to entities other than your own existing customers; (2) enable high volume, automated, electronic processes that apply to Network Solutions (or its systems) for large numbers of domain names; or (3) enable high volume, automated, electronic, repetitive queries against Network Solutions' Whois database or Whois databases of third parties. Network Solutions reserves the right, with the approval of the U.S. Department of Commerce, which shall not unreasonably be withheld, to specify additional specific categories of prohibited uses by giving you reasonable written notice at any time and upon receiving such notice you shall not make such prohibited use of the Data you obtain under this Agreement. You agree that you will only copy the Data you obtain under this Agreement into a machine-readable or printed form as necessary to use it in accordance with this Agreement in support of your use of the Data. You agree that you will comply with all applicable laws and regulations governing the use of

the Data. You agree to take all reasonable steps to protect against unauthorized access to, use and disclosure of the Data you obtain under this Agreement. Except as provided in Section 2(j) above, you agree not to distribute the Data you obtained under this Agreement or any copy thereof to any other party without the express prior written consent of Network Solutions.

5. FEE

You agree to remit in advance to Network Solutions a quarterly fee of $0 (USD) for the right to access the files during either the Initial Term or Renewal Term of this Agreement. Network Solutions reserves the right to adjust this fee on thirty days' prior notice to reflect a change in the cost of providing access to the files.

6. PROPRIETARY RIGHTS

You agree that no ownership rights in the Data are transferred to you under this Agreement. You agree that any copies of the Data that you make will contain the same notice that appears on and in the Data obtained under this Agreement.

7. METHOD OF ACCESS

Network Solutions reserves the right, with the approval of the U.S. Department of Commerce, which shall not unreasonably be withheld, to change the method of access to the Data at any time. You also agree that, in the event of significant degradation of system processing or other emergency, Network Solutions may, in its sole discretion, temporarily suspend access under this Agreement in order to minimize threats to the operational stability and security of the Internet and the NSI system.

8. NO WARRANTIES

The Data is being provided "as-is." Network Solutions disclaims all warranties with respect to the Data, either expressed or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement of third party rights. Some jurisdictions do no allow the exclusion of implied warranties or the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

9. SEVERABILITY

In the event of invalidity of any provision of this Agreement, the parties agree that such invalidity shall not affect the validity of the remaining provisions of this Agreement.

10. NO CONSEQUENTIAL DAMAGES

In no event shall Network Solutions be liable to you for any consequential, special, incidental or indirect damages of any kind arising out of the use of the Data or the termination of this Agreement, even if Network Solutions has been advised of the possibility of such damages.

11. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia. You agree that any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement shall be brought or otherwise commenced in the state or federal courts located in the eastern district of the Commonwealth of Virginia. You expressly and irrevocably agree and consent to the personal jurisdiction and venue of the federal and states courts located in the eastern district of the Commonwealth of Virginia (and each appellate court located therein). The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed.

12. TERMINATION

You may terminate this Agreement at any time by erasing the Data you obtained under this Agreement from your Internet host machine together with all copies of the Data and providing written notice of your termination to Network Solutions, Attention: Registry, Customer Affairs, 505 Huntmar Park Drive, Herndon, Virginia 20170. Network Solutions has the right to terminate this Agreement immediately if you fail to comply with any term or condition of this Agreement. You agree upon receiving notice of such termination of this Agreement by Network Solutions or expiration of this Agreement to erase the Data you obtained under this Agreement together with all copies of the Data.

13. ENTIRE AGREEMENT

This is the entire agreement between you and Network Solutions concerning access and use of the Data, and it supersedes any prior agreements or understandings, whether written or oral, relating to access and use of the Data.

Network Solutions, Inc.   User: _____

By: _____   By: _____

(sign)   (sign)

Name: _____   Name: _____

(print)   (print)

Title: _____   Title: _____

Date: _____   Date: _____

ASSIGNED USERID AND PASSWORD

(To be assigned by Network Solutions upon execution of this Agreement):

USERID: _____ PASSWORD: _____

Page modified 28-September-1999

Tentative Agreements among ICANN, the U.S. Department of Commerce, and Network Solutions, Inc.

(Posted September 28, 1999)

REGISTRY AGREEMENT

This REGISTRY AGREEMENT ("Agreement") is by and between the Internet Corporation for Assigned Names and Numbers, a not-for-profit corporation, and Network Solutions, Inc., a Delaware corporation.

Definitions

For purposes of this Agreement, the following definitions shall apply:

1. A "Consensus Policy" is one adopted by ICANN as follows:

(a) "Consensus Policies" are those adopted based on a consensus among Internet stakeholders represented in the ICANN process, as demonstrated by (1) the adoption of the policy by the ICANN Board of Directors, (2) a recommendation that the policy should be adopted by at least a two-thirds vote of the council of the ICANN Supporting Organization to which the matter is delegated, and (3) a written report and supporting materials (which must include all substantive submissions to the Supporting Organization relating to the proposal) that (i) documents the extent of agreement and disagreement among impacted groups, (ii) documents the outreach process used to seek to achieve adequate

representation of the views of groups that are likely to be impacted, and (iii) documents the nature and intensity of reasoned support and opposition to the proposed policy.

(b) In the event that NSI disputes the presence of such a consensus, it shall seek review of that issue from an Independent Review Panel established under ICANN's bylaws. Such review must be sought within fifteen working days of the publication of the Board's action adopting the policy. The decision of the panel shall be based on the report and supporting materials required by subsection (a) above. In the event that NSI seeks review and the Panel sustains the Board's determination that the policy is based on a consensus among Internet stakeholders represented in the ICANN process, then NSI must implement such policy unless it promptly seeks and obtains injunctive relief under Section 13 below.

(c) If, following a decision by the Independent Review Panel convened under subsection (b) above, NSI still disputes the presence of such a consensus, it may seek further review of that issue within fifteen working days of publication of the decision in accordance with the dispute resolution procedures set forth in Section 13 below; provided, however, that NSI must continue to implement the policy unless it has obtained injunctive relief under Section 13 below or a final decision is rendered in accordance with the provisions of Section 13 that relieves NSI of such obligation. The decision in any such further review shall be based on the report and supporting materials required by subsection (a) above.

(d) A policy adopted by the ICANN Board of Directors on a temporary basis, without a prior recommendation by the council of an ICANN Supporting Organization, shall also be considered to be a Consensus Policy if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, and if immediate temporary adoption of a policy on the subject is necessary to maintain the stability of the Internet or the operation of the domain name system, and if the proposed policy is as narrowly tailored as feasible to achieve those objectives. In adopting any policy under this provision, the ICANN Board of Directors shall state the period of time for which the policy is temporarily adopted and shall immediately refer the matter to the appropriate Supporting Organization for its evaluation and review with a detailed explanation of its reasons for adopting the temporary policy and why the Board believes the policy should receive the consensus support of Internet stakeholders. If the period of time for which the policy is adopted exceeds 45 days, the Board shall reaffirm its temporary adoption every 45 days for a total period not to exceed 180 days, in order to maintain such policy in effect until such time as it meets the standard set forth in subsection (a) above. If the standard set forth in subsection (a) above is not met within the temporary period set by the Board, or the council of the Supporting Organization to which it has been referred votes to reject the temporary policy, it will no longer be a "Consensus Policy."

(e) For all purposes under this Agreement, the policies identified in Appendix A adopted by the ICANN Board of Directors before the effective date of this Agreement shall be treated in the same manner and have the same effect as "Consensus Policies."

(f) In the event that, at the time the ICANN Board adopts a policy under subsection (a) above during the term of this Agreement, ICANN does not have in place an Independent Review Panel established under ICANN's bylaws, the fifteen working day period allowed under subsection (b) above to seek review shall

be extended until fifteen working days after ICANN does have such an Independent Review Panel in place and NSI shall not be obligated to comply with the policy in the interim.

2. The "Effective Date" is the date on which the Agreement is signed by ICANN and NSI.

3. The "Expiration Date" is the date specified in Section 23 below.

4. "gTLDs" means the .com, .net, and .org TLDs, and any new gTLDs established by ICANN.

5. "ICANN" refers to the Internet Corporation for Assigned Names and Numbers, a party to this Agreement.

6. "NSI" refers to Network Solutions, Inc., in its capacity as a domain name registry for the Registry TLDs, a party to this Agreement.

7. "Personal Data" refers to data about any identified or identifiable natural person.

8. "Registry Data" means all data maintained in electronic form in the registry database, and shall include Zone File Data, all data submitted by registrars in electronic form, and all other data concerning particular registrations or nameservers maintained in electronic form in the registry database.

9. "Registry Services" means operation of the registry for the Registry TLDs and shall include receipt of data concerning registrations and nameservers from registrars, provision of status information to registrars, operation of the registry TLD zone servers, and dissemination of TLD zone files.

10. "Registry TLDs" refers to the .com, .net, and .org TLDs.

11. "SLD" refers to a second-level domain in the Internet domain name system.

12. "Term of this Agreement" begins on the Effective Date and runs through the earliest of (a) the Expiration Date, (b) termination of this Agreement under Section 14 or Section 16(c), or (c) termination of this Agreement pursuant to withdrawal of the Department of Commerce's recognition of ICANN under Section 24.

13. "TLD" refers to a top-level domain in the Internet domain name system.

14. "Zone File Data" means all data contained in domain name system zone files for the Registry TLDs as provided to TLD nameservers on the Internet.

Agreements

NSI and ICANN agree as follows:

1. Designation of Registry. ICANN acknowledges and agrees that NSI is and will remain the registry for the Registry TLD(s) throughout the Term of this Agreement.

2. <u>Recognition in Authoritative Root Server System</u>. In the event and to the extent that ICANN is authorized to set policy with regard to an authoritative root server system, it will ensure that (A) the authoritative root will point to the TLD zone servers designated by NSI for the Registry TLDs throughout the Term of this Agreement and (B) any changes to TLD zone server designation submitted to ICANN by NSI will be implemented by ICANN within five business days of submission. In the event that this Agreement is terminated (A) under Section 14 or 16(C) by NSI or (B) under Section 24 due to the withdrawal of recognition of ICANN by the United States Department of Commerce, ICANN's obligations concerning TLD zone server designations for the .com, .net, and .org TLDs in the authoritative root server system shall be as stated in a separate agreement between ICANN and the Department of Commerce.

3. <u>General Obligations of NSI</u>.

(A) During the Term of this Agreement:

(i) NSI agrees that it will operate the registry for the Registry TLDs in accordance with this Agreement;

(ii) NSI shall comply, in its operation of the registry, with all Consensus Policies insofar as they:

(a) are adopted by ICANN in compliance with Section 4 below,

(b) relate to one or more of the following: (1) issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, technical reliability and/or stable operation of the Internet or domain-name system, (2) registry policies reasonably necessary to implement Consensus Policies relating to registrars, or (3) resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names), and

(c) do not unreasonably restrain competition.

(B) NSI acknowledges and agrees that upon the earlier of (i) the Expiration Date or (ii) termination of this Agreement by ICANN pursuant to Section 14, it will cease to be the registry for the Registry TLDs, unless prior to the end of the term of this Agreement NSI is chosen as the Successor Registry in accordance with the provisions of this Agreement.

(C) To the extent that Consensus Policies are adopted in conformance with Section 4 of this Agreement, the measures permissible under Section 3(A)(ii)(b) shall include, without limitation:

(i) principles for allocation of SLD names (e.g., first-come/first-served, timely renewal, holding period after expiration);

(ii) prohibitions on warehousing of or speculation in domain names by registries or registrars;

(iii) reservation of SLD names that may not be registered initially or that may not be renewed due to reasons reasonably related to (a) avoidance of confusion among or misleading of users, (b) intellectual property, or (c) the technical management of the DNS or the Internet (e.g., "example.com" and single-letter/digit names); and

(iv) the allocation among continuing registrars of the SLD names sponsored in the registry by a registrar losing accreditation.

Nothing in this Section 3 shall limit or otherwise affect NSI's obligations as set forth elsewhere in this Agreement.

4. General Obligations of ICANN. With respect to all matters that impact the rights, obligations, or role of NSI, ICANN shall during the Term of this Agreement:

(A) exercise its responsibilities in an open and transparent manner;

(B) not unreasonably restrain competition and, to the extent feasible, promote and encourage robust competition;

(C) not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and not single out NSI for disparate treatment unless justified by substantial and reasonable cause; and

(D) ensure, through its reconsideration and independent review policies, adequate appeal procedures for NSI, to the extent it is adversely affected by ICANN standards, policies, procedures or practices.

5. Protection from Burdens of Compliance With ICANN Policies. ICANN hereby agrees to indemnify and hold harmless NSI, and its directors, officers, employees and agents from and against any and all claims, damages or liabilities arising solely from NSI's compliance as required by this Agreement with an ICANN policy adopted after both parties have entered into this Agreement, except that NSI shall not be indemnified or held harmless hereunder to the extent that the claims, damages or liabilities arise from the particular manner in which NSI has chosen to comply with the policy. In addition, NSI shall be given a reasonable period after receiving notice of adoption of an ICANN Consensus Policy in which to comply with that policy.

6. NSI Registry-Level Financial Support of ICANN. NSI, in its role as operator of the registry for the Registry TLDs, shall pay the gTLD registry-level fees adopted by ICANN in conformance with Section 4 of this Agreement, provided such fees are reasonably allocated among all gTLD registries that contract with ICANN and provided further that, if NSI's share of the total gTLD registry-level fees are or are budgeted to be in excess of $250,000 in any given year, any such excess must be expressly approved by gTLD registries accounting, in aggregate, for payment of two-thirds of all gTLD registry-level fees. NSI shall pay such fees in a timely manner throughout the Term of this Agreement, and notwithstanding the pendency of any dispute between NSI and ICANN. NSI agrees to prepay $250,000 toward its share of gTLD registry-level fees at the time of signing of this Agreement.

7. Data Escrow. NSI shall deposit into escrow all Registry Data on a schedule (not more frequently than weekly for a complete set of Registry Data, and daily for incremental updates) and in an electronic format mutually approved from time to time by NSI and ICANN, such approval not to be unreasonably withheld by either party. The escrow shall be maintained, at NSI's expense, by a reputable escrow agent mutually approved by NSI and ICANN, such approval also not to be unreasonably withheld by either party. The escrow shall be held under an agreement among ICANN, NSI, the United States Department

of Commerce, and the escrow agent providing that (A) the data shall be received and held in escrow, with no use other than verification that the deposited data is complete and in proper format, until released to ICANN or to the United States Department of Commerce; (B) the data shall be released to ICANN upon termination of this Agreement by ICANN under Section 14 or upon the Expiration Date if (1) this Agreement has not sooner been terminated and (2) it has been finally determined by the ICANN Board (and no injunction obtained pursuant to Section 13 has been obtained) that NSI will not be designated as the successor registry under Section 22 of this Agreement; and (C), in the alternative, the data shall be released to the United States Department of Commerce according to the terms of the cooperative agreement between NSI and the United States Government.

8. <u>NSI Handling of Personal Data</u>. NSI agrees to notify registrars sponsoring registrations in the registry of the purposes for which Personal Data submitted to the registry by registrars is collected, the recipients (or categories of recipients) of such Personal Data, and the mechanism for access to and correction of such Personal Data. NSI shall take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction. NSI shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

9. <u>Publication by NSI of Registry Data</u>.

(A) NSI shall provide an interactive service (such as a WHOIS service) providing free public query-based (web and, after January 15, 2000, command-line) access to current registry database data which, in response to input of an SLD name, shall report at least the following data elements in response to queries: (a) the SLD name registered, (b) the TLD in which the SLD is registered; (c) the IP addresses and corresponding names of the primary nameserver and secondary nameserver(s) for such SLD, (d) the identity of the sponsoring Registrar, and (e) the date of the most recent modification to the domain name record in the registry database; provided, however, that if ICANN adopts a Consensus Policy that adds to or subtracts from these elements, NSI will implement that policy.

(B) To ensure operational stability of the registry, NSI may temporarily limit access under subsection (A) on an equitable basis, in which case NSI shall immediately notify ICANN of the nature of and reason for the limitation. NSI shall not continue the limitation longer than three business days if ICANN objects in writing, which objection shall not be unreasonably made.

(C) NSI as registry shall comply with Consensus Policies providing for development and operation of a capability that provides distributed free public query-based (web and command-line) access to current registration data implemented by registrars providing for capabilities comparable to WHOIS, including (if called for by the Consensus Policy) registry database lookup capabilities according to a specified format. If such a service implemented by registrars on a distributed basis does not within a reasonable time provide reasonably robust, reliable and convenient access to accurate and up-to-date registration data, NSI as registry shall cooperate and, if reasonably determined to be necessary by ICANN (considering such possibilities as remedial action by specific registrars), provide data from the registry database to facilitate the development of a centralized service providing equivalent functionality in a manner established by a Consensus Policy.

10. Rights in Data. Except as permitted by the Registrar License and Agreement, NSI shall not be entitled to claim any intellectual property rights in data in the registry supplied by or through registrars other than NSI. In the event that Registry Data is released from escrow under Section 7 or transferred to a Successor Registry under Section 22(D), any rights held by NSI as registry in the data shall automatically be licensed on a non-exclusive, irrevocable, royalty-free, paid-up basis to the recipient of the data.

11. Limitation of Liability. Neither party shall be liable to the other under this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages.

12. Specific Performance. During the Term of this Agreement, either party may seek specific performance of any provision of this Agreement as provided by Section 13, provided the party seeking such performance is not in material breach of its obligations.

13. Resolution of Disputes Under This Agreement. Disputes arising under or in connection with this Agreement, including requests for specific performance, shall be resolved in a court of competent jurisdiction or, at the election of both parties (except for any dispute over whether a policy adopted by the Board is a Consensus Policy, in which case at the election of either party), by an arbitration conducted as provided in this Section pursuant to the International Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration shall be conducted in English and shall occur in Los Angeles County, California, USA. There shall be three arbitrators: each party shall choose one arbitrator and, if the two arbitrators are not able to agree on a third arbitrator, the third shall be chosen by the AAA. The parties shall bear the costs of the arbitration in equal shares, subject to the right of the arbitrators to reallocate the costs in their award as provided in the AAA rules. The parties shall bear their own attorneys' fees in connection with the arbitration, and the arbitrators may not reallocate the attorneys' fees in conjunction with their award. The arbitrators shall render their decision within ninety days of the initiation of arbitration. In all litigation involving ICANN concerning this Agreement (whether in a case where arbitration has not been elected or to enforce an arbitration award), jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles, California, USA; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction. For the purpose of aiding the arbitration and/or preserving the rights of the parties during the pendency of an arbitration, the parties shall have the right to seek temporary or preliminary injunctive relief from the arbitration panel or a court located in Los Angeles, California, USA, which shall not be a waiver of this arbitration agreement.

14. Termination.

(A) In the event an arbitration award or court judgment is rendered specifically enforcing any provision of this Agreement or declaring a party's rights or obligations under this Agreement, either party may, by giving written notice, demand that the other party comply with the award or judgment. In the event that the other party fails to comply with the order or judgment within ninety days after the giving of notice (unless relieved of the obligation to comply by a court or arbitration order before the end of that ninety-day period), the first party may terminate this Agreement immediately by giving the other party written notice of termination.

(B) In the event of termination by DOC of its Cooperative Agreement with NSI pursuant to Section I.B.8 of that Agreement, ICANN shall, after receiving express notification of that fact from DOC and a request from DOC to terminate NSI as the operator of the registry database for the Registry TLDs, terminate NSI's rights under this Agreement, and shall cooperate with DOC to facilitate the transfer of the operation of the registry database to a successor registry.

15. Assignment. Neither party may assign this Agreement without the prior written approval of the other party, such approval not to be unreasonably withheld. Notwithstanding the foregoing sentence, a party may assign this Agreement by giving written notice to the other party in the following circumstances, provided the assignee agrees in writing with the other party to assume the assigning party's obligations under this Agreement: (a) NSI may assign this Agreement as part of the transfer of its registry business approved under Section 25 and (b) ICANN may, in conjunction with a reorganization or reincorporation of ICANN and with the written approval of the Department of Commerce, assign this Agreement to another non-profit corporation organized for the same or substantially the same purposes as ICANN.

16. Relationship to Cooperative Agreement Between NSI and U.S. Government.

(A) NSI's obligations under this Agreement are conditioned on the agreement by NSI and the Department of Commerce to Amendment 19 to the Cooperative Agreement in the form attached to this Agreement as Appendix C.

(B) If within a reasonable period of time ICANN has not made substantial progress towards having entered into agreements with competing registries and NSI is adversely affected from a competitive perspective, NSI may terminate this Agreement with the approval of the U.S. Department of Commerce. In such event, as provided in Section 16(A) above, the Cooperative Agreement shall replace this Agreement.

(C) In the case of conflict while they are both in effect, and to the extent that they address the same subject in an inconsistent manner, the term(s) of the Cooperative Agreement shall take precedence over this Agreement.

17. NSI Agreements with Registrars. NSI shall make access to the Shared Registration System available to all ICANN-accredited registrars subject to the terms of the NSI/Registrar License and Agreement (attached as Appendix B). Such agreement may be revised by NSI, provided however, that any such changes must be approved in advance by ICANN.

18. Performance and Functional Specifications for Registry Services. Unless and until ICANN adopts different standards as a Consensus Policy pursuant to Section 4, NSI shall provide registry services to ICANN-accredited registrars meeting the performance and functional specifications set forth in SRS specification version 1.0.6 dated September 10, 1999, as supplemented by Appendix E. In the event ICANN adopts different performance and functional standards for the registry as a Consensus Policy in compliance with Section 4, NSI shall comply with those standards to the extent practicable, provided that compensation pursuant to the provisions of Section 20 has been resolved prior to implementation

and provided further that NSI is given a reasonable time for implementation. In no event shall NSI be required to implement any such different standards before 3 years from the Effective Date of this Agreement.

19. Bulk Access to Zone Files. NSI shall provide third parties bulk access to the zone files for .com, .net, and .org TLDs on the terms set forth in the zone file access agreement (attached as Appendix D). Such agreement may be revised by NSI, provided however, that any such changes must be approved in advance by ICANN.

20. Price for Registry Services. The price(s) to accredited registrars for entering initial and renewal SLD registrations into the registry database and for transferring a SLD registration from one accredited registrar to another will be as set forth in Section 5 of Appendix B, Registrar License and Agreement. These prices shall be increased through an amendment to this Agreement as approved by ICANN and NSI, such approval not to be unreasonably withheld, to reflect demonstrated increases in the net costs of operating the registry arising from (1) ICANN policies adopted after the date of this Agreement, or (2) legislation specifically applicable to the provision of Registry Services adopted after the date of this Agreement, to ensure that NSI recovers such costs and a reasonable profit thereon; provided that such increases exceed any reductions in costs arising from (1) or (2) above.

21. Additional NSI Obligations.

(A) NSI shall provide all licensed Accredited Registrars (including NSI acting as registrar) with equivalent access to the Shared Registration System. NSI further agrees that it will make a certification to ICANN every six months, using the objective criteria set forth in Appendix F that NSI is providing all licensed Accredited Registrars with equivalent access to its registry services.

(B) NSI will ensure, in a form and through ways described in Appendix F that the revenues and assets of the registry are not utilized to advantage NSI's registrar activities to the detriment of other registrars.

22. Designation of Successor Registry.

(A) Not later than one year prior to the end of the term of this Agreement, ICANN shall, in accordance with Section 4, adopt an open, transparent procedure for designating a Successor Registry. The requirement that this procedure be opened one year prior to the end of the Agreement shall be waived in the event that the Agreement is terminated prior to its expiration.

(B) NSI or its assignee shall be eligible to serve as the Successor Registry and neither the procedure established in accordance with subsection (A) nor the fact that NSI is the incumbent shall disadvantage NSI in comparison to other entities seeking to serve as the Successor Registry.

(C) If NSI or its assignee is not designated as the Successor Registry, NSI or its assignee shall cooperate with ICANN and with the Successor Registry in order to facilitate the smooth transition of operation of the registry to Successor Registry. Such cooperation shall include the timely transfer to the Successor Registry of an electronic copy of the registry database and of a full specification of the format of the data.

(D) ICANN shall select as the Successor Registry the eligible party that it reasonably determines is best qualified to perform the registry function under terms and conditions developed as a Consensus Policy, taking into account all factors relevant to the stability of the Internet, promotion of competition, and maximization of consumer choice, including without limitation: functional capabilities and performance specifications proposed by the eligible party for its operation of the registry, the price at which registry services are proposed to be provided by the party, relevant experience of the party, and demonstrated ability of the party to handle operations at the required scale. ICANN shall not charge any additional fee to the Successor Registry.

(E) In the event that a party other than NSI or its assignee is designated as the Successor Registry, NSI shall have the right to challenge the reasonableness of ICANN's failure to designate NSI or its assignee as the Successor Registry under the provisions of Section 13 of this Agreement.

23. Expiration of this Agreement. The Expiration Date shall be four years after the Effective Date, unless extended as provided below. In the event that NSI completes the legal separation of ownership of its Registry Services business from its registrar business by divesting all the assets and operations of one of those businesses within 18 months after Effective Date to an unaffiliated third party that enters an agreement enforceable by ICANN and the Department of Commerce (i) not to be both a registry and a registrar in the Registry TLDs, and (ii) not to control, own or have as an affiliate any individual(s) or entity(ies) that, collectively, act as both a registry and a registrar in the Registry TLDs, the Expiration Date shall be extended for an additional four years, resulting in a total term of eight years. For the purposes of this Section, "unaffiliated third party" means any entity in which NSI (including its successors and assigns, subsidiaries and divisions, and their respective directors, officers, employees, agents and representatives) does not have majority equity ownership or the ability to exercise managerial or operational control, either directly or indirectly through one or more intermediaries. "Control," as used in this Section 23, means any of the following: (1) ownership, directly or indirectly, or other interest entitling NSI to exercise in the aggregate 25% or more of the voting power of an entity; (2) the power, directly or indirectly, to elect 25% or more of the board of directors (or equivalent governing body) of an entity; or (3) the ability, directly or indirectly, to direct or cause the direction of the management, operations, or policies of an entity.

24. Withdrawal of Recognition of ICANN by the Department of Commerce. In the event that, prior to the expiration or termination of this Agreement under Section 14 or 16(C), the United States Department of Commerce withdraws its recognition of ICANN as NewCo under the Statement of Policy pursuant to the procedures set forth in Section 5 of Amendment 1 (dated November __, 1999) to the Memorandum of Understanding between ICANN and the Department of Commerce, this Agreement shall terminate.

25. Assignment of Registry Assets. NSI may assign and transfer its registry assets in connection with the sale of its registry business only with the approval of the Department of Commerce.

26. Option to Substitute Generic Agreement. At NSI's option, it may substitute any generic ICANN/Registry agreement that may be adopted by ICANN for this Agreement; provided, however, that

Sections 16, 19, 20, 21, 23, 24, and 25 of this Agreement will remain in effect following any such election by NSI.

27. <u>Notices, Designations, and Specifications</u>. All notices to be given under this Agreement shall be given in writing at the address of the appropriate party as set forth below, unless that party has given a notice of change of address in writing. Any notice required by this Agreement shall be deemed to have been properly given when delivered in person, when sent by electronic facsimile, or when scheduled for delivery by internationally recognized courier service. Designations and specifications by ICANN under this Agreement shall be effective when written notice of them is deemed given to Registry.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina Del Rey, California 90292
Telephone: 1/310/823-9358
Facsimile: 1/310/823-8649
Attention: Chief Executive Officer

If to Registry, addressed to:

1. Network Solutions, Inc.
505 Huntmar Park Drive
Herndon, VA 20170
Telephone: 1/703/742-0400
Facsimile: 1/703/742-3386
Attention: General Counsel

2. Network Solutions, Inc.
505 Huntmar Park Drive
Herndon, VA 20170
Telephone: 1/703/742-0400
Facsimile: 1/703/742-3386
Attention: Registry General Manager

28. <u>Dates and Times</u>. All dates and times relevant to this Agreement or its performance shall be computed based on the date and time observed in Los Angeles, California, USA.

29. <u>Language</u>. All notices, designations, and specifications made under this Agreement shall be in the English language.

30. <u>Entire Agreement</u>. This Agreement constitutes the entire agreement of the parties hereto pertaining to the registry for the Registry TLDs and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject. This Agreement is intended to coexist with any Registrar Accreditation Agreement between the parties.

31. <u>Amendments and Waivers</u>. No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

32. <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By:_____
Michael M. Roberts
Interim President and CEO
Date: _____

NETWORK SOLUTIONS, INC.

By:_____

Date: _____

Page updated 28-September-1999

Exhibit D

GAO   U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

B-327398

September 12, 2016

The Honorable Charles E. Grassley
Chairman, Committee on the Judiciary
United States Senate

The Honorable Ted Cruz
United States Senate

The Honorable Bob Goodlatte
Chairman, Committee on the Judiciary
House of Representatives

The Honorable Darrell Issa
House of Representatives

Subject: *Department of Commerce—Property Implications of Proposed Transition of U.S.*
Government Oversight of Key Internet Technical Functions

Congressional Requesters:

This responds to your request for our legal opinion regarding the property implications of the
proposed transition, by the Department of Commerce's (Commerce) National
Telecommunications and Information Administration (NTIA), of the United States Government's
oversight of key technical functions supporting the Internet including the Internet domain name
system. These technical functions, known as the Internet Assigned Numbers Authority (IANA)
functions, are currently performed by the Internet Corporation for Assigned Names and
Numbers (ICANN), a non-profit corporation, pursuant to a contract with Commerce administered
by NTIA (referred to herein as the NTIA-ICANN contract). Verisign, Inc. (Verisign) currently
performs related root zone management services pursuant to a cooperative agreement with
Commerce, also administered by NTIA (referred to herein as the NTIA-Verisign cooperative
agreement).

For nearly two decades, NTIA has been leading efforts to transfer the U.S. Government's
oversight role to a global multistakeholder community[1] pursuant to a 1997 Presidential policy
directive. On March 10, 2016, the ICANN Board of Directors submitted a detailed transition
proposal (2016 Transition Proposal) for NTIA's review, developed at NTIA's request by the

---

[1] In this opinion, as in our previous report on these matters, we use the term "global multistakeholder community" to
refer to parties interested in Internet governance and policy from around the world and from multiple sectors and
industries, including technical, government, business, and public-interest organizations and individuals. *See* GAO,
INTERNET MANAGEMENT: Structured Evaluation Could Help Assess Proposed Transition of Key Domain Name
and Other Technical Functions, GAO-15-642 (Washington, D.C.: Aug. 19, 2015) (2015 GAO Report).

global multistakeholder community over the past two years.[2] The 2016 Transition Proposal consists of two parts, one addressing the technical transition of NTIA's oversight role and the other addressing new measures to be put in place to ensure the accountability of ICANN to the global multistakeholder community after NTIA withdraws from its role. On June 9, 2016, NTIA reported that it had determined the 2016 Transition Proposal meets criteria the agency established in 2014.[3] NTIA also reported that it had followed recommendations we made to NTIA in 2015[4] regarding a framework for the agency's assessment of the transition proposal.

NTIA is currently prohibited by statute, through at least September 30, 2016, from using appropriated funds to relinquish its responsibilities regarding the IANA functions including the Internet domain name system.[5] A number of steps also remain before the transition can occur, including putting new organizational structures and legal agreements into place. NTIA has advised Members of Congress that while it "maintains the flexibility to extend its contract with ICANN if necessary" beyond the contract's current September 30, 2016 expiration date,[6] NTIA intends to allow the contract to expire as of October 1, barring any significant impediment.

You asked whether the transition would result in the transfer of any kind of U.S. Government property without the legal authorization by Congress required by the Property Clause of the U.S. Constitution. That provision, in Article IV of the Constitution, states in relevant part:

> "The Congress shall have Power to dispose of and make all needful
> Rules and Regulations respecting the Territory or other Property
> belonging to the United States . . . ."

U.S. Const. art. IV, § 3, cl. 2. Disposal of U.S. Government property by NTIA without the requisite statutory authority would violate the Constitution.

---

[2] *See* Letter from Dr. Steven Crocker, Chairman, ICANN Board of Directors, to Hon. Lawrence E. Strickling, Assistant Secretary for Communications and Information, Department of Commerce, and Administrator, NTIA, March 10, 2016, and enclosures, *available at* https://www.icann.org/en/system/files/files/iana-stewardship-transition-package-10mar16-en.pdf (last visited Sept. 1, 2016).

[3] U.S. Department of Commerce, NTIA, *IANA Stewardship Transition Proposal Assessment Report* (June 9, 2016) (2016 NTIA Assessment Report) *available at* https://www.ntia.doc.gov/files/ntia/publications/iana_stewardship_transition_assessment_report.pdf (last visited Sept. 1, 2016). NTIA's 2014 criteria were that the proposal must have broad community support; must not replace NTIA's role with a government-led or inter-governmental organization; and must establish a structure that: (1) supports and enhances the multistakeholder model; (2) maintains the security, stability, and resiliency of the Internet domain name system; (3) meets the needs and expectations of the global customers and partners of the IANA services; and (4) maintains the openness of the Internet.

[4] *See* 2015 GAO Report, *supra* note 1.

[5] *See* Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 539, 129 Stat. 2242 (2015).

[6] NTIA, Quarterly Report on the Transition of the Stewardship of the Internet Assigned Numbers Authority Functions Q2 FY2016 (May 2016) at 3. The NTIA-ICANN contract authorizes unilateral extension by NTIA through September 30, 2019. NTIA's cooperative agreement with Verisign, which will require modification to implement the proposed transition, currently expires on November 30, 2018 and also provides for extension by NTIA in certain circumstances. Because Verisign performs additional services for NTIA under the cooperative agreement unrelated to the proposed transition, the agreement is expected to remain in effect in some form after the transition.

We agreed to address:

(1) whether the authoritative root zone file, the Internet domain name system, or any aspect of the IANA technical functions is U.S. Government property; and

(2) if so, whether the proposed transition would result in the transfer or other disposal of such property and whether NTIA has the statutory authority for such disposal required by Article IV.

Our practice when preparing legal opinions is to obtain the views of the relevant agencies in order to establish a factual record and obtain the agencies' legal positions on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/products/GAO-06-1064SP. In response to our requests, we received responses and documentation from officials at Commerce, including NTIA; the Department of Defense's (DOD) Defense Advanced Research Projects Agency (DARPA); the National Science Foundation (NSF); and others.[7]

SUMMARY

This is a case of first impression. Determining U.S. Government property interests involved in the proposed transition raises a series of novel, complex, and highly fact-specific issues. Courts have applied property law principles to certain aspects of Internet activity with varying results, but we are aware of no case in which a court has addressed the key questions presented here. In addition, while we obtained copies of NTIA's current and four predecessor IANA-functions contracts with ICANN and the NTIA-Verisign cooperative agreement, identifying Government property potentially affected by the transition is complicated by the absence, due to the passage of time, of key 1970s-1990s contract documents that may have addressed the parties' respective property rights. Because of the current state of the case law, the incomplete record before us, and other uncertainties, our opinion with respect to the U.S. Government's property rights is necessarily limited.

With these caveats and for the reasons discussed below, we find as follows:

(1) It is unlikely that either the authoritative root zone file—the public "address book" for the top level of the Internet domain name system—or the Internet domain name system as a whole, is U.S. Government property under Article IV. We did not identify any Government-held copyrights, patents, licenses, or other traditional intellectual property interests in either the root zone file or the domain name system. It also is doubtful that either would be considered property under common law principles, because no entity appears to have a right to their exclusive possession or use.

---

[7] We received oral and written responses and documentation from Commerce and NTIA officials on multiple occasions between December 2015 and August 2016; from DARPA officials between February and March 2016; from NSF officials in May 2016; and from ICANN and Verisign officials between February and August 2016. We also sought views and information from, among others, officials formerly at NTIA and ICANN; officials at the Congressional Research Service and the National Archives and Records Administration; and officials and researchers currently or formerly at the University of Southern California (USC), which carried out research and development under a series of contracts with DARPA considered to have resulted in the Internet domain name system, the authoritative root zone file, and the IANA functions (we interviewed Dr. Paul Mockapetris, credited as a lead developer of the domain name system and the authoritative root zone file; reviewed the archives of the late Dr. Jon Postel, credited as a lead developer of the IANA functions; and obtained documentation from officials at USC's Office of Contracts and Grants and Office of General Counsel and USC's Information Sciences Institute).

However, we find that the U.S. Government does have certain rights under a series of contracts and agreements related to the domain name system and the IANA functions, and has title to limited intellectual and tangible property related to performance of these functions, all of which constitute U.S. Government property under Article IV. This property includes: (a) possible rights, licenses, and ownership of data and information produced under current and previous contracts and agreements; (b) a service mark for InterNIC®, held by Commerce and licensed to ICANN to provide domain name system-related public information; (c) minimal tangible property the Government has received as "deliverables" under the NTIA-ICANN and NTIA-Verisign agreements in the form of hard copies of reports, data, and other information; and (d) the Government's right to ICANN's and Verisign's continued performance of the IANA functions and root zone management services, through expiration of their current agreements with NTIA.

(2) We find that almost all of U.S. Government property that we have identified will be retained and not transferred or otherwise disposed of in connection with the proposed transition. The Government's right to ICANN's and Verisign's continued performance under their current agreements—which right constitutes Article IV property—would be disposed of if NTIA terminates the agreements or relevant provisions rather than allowing them to expire. However, we also find that NTIA has the requisite authority to terminate the agreements and thus to dispose of this Government property interest.

<div align="center">*   *   *</div>

Although it is unlikely that NTIA's planned actions would violate the Constitution, we acknowledge that the proposed transition would result in NTIA surrendering the role that the U.S. Government has played in some form for nearly 50 years. Today, NTIA exercises both broad contractual oversight and specific contractual control regarding the IANA functions and domain name system, a role described by the global multistakeholder community and NTIA itself as providing "stewardship," an "accountability backstop," and a "safety net." Congress may wish to take steps to address the broader issues raised by the transition if it believes there should continue to be direct U.S. oversight and control. This opinion expresses no views on the merits of the proposed transition.

TECHNICAL BACKGROUND: THE INTERNET, ITS SUPPORTING TECHNICAL FUNCTIONS, AND THE DOMAIN NAME SYSTEM

To determine whether U.S. Government property may be affected by the proposed transition, we begin by reviewing the basic structure and systems in which the transition will occur: the Internet, its supporting technical functions, and the domain name system including the authoritative root zone file.

I. The Internet

The Internet is not a single system but a "network of networks"—a collection of interconnected networks (hence the name, Internet)—allowing millions of users to communicate across distance and computer platforms. For purposes of this opinion, we use the term Internet to refer to the infrastructure, such as routers, servers, and connected devices, through which communication occurs. Today, there are an increasing number of connected devices—not just computers but, for example, smartphones, tablets, and, as part of the so-called "Internet of things," cameras, cars, and buildings with network connectivity.

It is also important to understand that no formal institutional or governmental mechanism enforces the way the Internet works. The effectiveness of the current system relies on the mutual agreement of users to abide by the now-standard protocols and processes, with the utility of the system increasing as more people use the same system. While nothing stops any user from opting out of this system, a computer or other device that deviates from the standards risks losing the ability to communicate with other devices that do follow the standards.

II. The Internet Technical Functions and the Domain Name System

The legal issues addressed in this opinion pertain only to the aspects of Internet activity that may be affected by the proposed transition—the IANA technical functions, the domain name system, and the authoritative root zone file, which make efficient Internet communication possible. The IANA functions have been described as helping to "keep[] the Internet running smoothly"[8] and fall into three basic categories—numbers, names, and protocol parameters. These functions are currently carried out pursuant to NTIA's contract with ICANN and its related cooperative agreement with Verisign.

A. The Numbers Function

To enable the billions of devices connected to the Internet to communicate with each other, each device is assigned a unique numeric Internet Protocol (IP) address that designates its location within the network. This system of unique IP addresses makes it possible for users to send and receive messages, conduct business transactions online, and access information from connected devices anywhere on the Internet. ICANN's role, under its contract with NTIA and a memorandum of understanding with five Regional Internet Registries around the world, is to allocate large blocks of IP addresses and other numbers to the regional registries in accordance with globally developed policies. Each regional registry then further allocates blocks of IP addresses within in its region; the addresses eventually reach Internet Service Providers who allocate them to end users.[9]

B. The Names Function, including the Domain Name System and the Authoritative Root Zone File

As more and more users connected to the Internet, a naming system was developed known today as the domain name system. The domain name system makes it easier for individuals to navigate the Internet by translating easier-to-remember domain names (*e.g.,* www.gao.gov) into the corresponding numerical IP addresses needed for sending and receiving information (*e.g.,* 161.203.16.77, the IP address for GAO's website). Domain names reflect a hierarchy. In left-to-right languages such as English, the "top level" of the domain name is at the far right, following the final period or "dot." Today, there are over 1,400 top-level domain names, both generic top-level domain names ("gTLDs"), such as .gov, .com, and .org, and country-code top-level domain names ("ccTLDs"), such as .us and .ca.[10]

[8] *See* "Introducing IANA," *available at* https://www.iana.org/about (last visited Sept. 1, 2016).

[9] Regional Internet Registries are nonprofit corporations that administer and register IP address space and Autonomous System numbers within a defined region. Internet service providers generally assign a single IP address to a home or organization's network router, which then assigns local IP addresses to connected devices within the local network.

[10] At a more tangible level, the domain name system has been described as a system of interconnected databases and also as a set of protocol specifications, software application programs, network infrastructure, and a "namespace" *i.e.,* all of the unique domain names that can be looked up. *See* Letter from General Counsel,

One of the critical components of the domain name system is the authoritative root zone file. The authoritative root zone file functions as a type of "address book" or "master directory" for the top level—and only the top level—of the domain name system. The file contains, among other things, the IP addresses of all of the top-level domains' root servers,[11] as well as technical and administrative information about the designated operators of each top-level domain. The content of the authoritative root zone file is public[12] and generally is updated at least once a day. The authoritative root zone file is placed on a set of distribution servers where it can only be accessed by operators of 13 root servers.[13]

When a user types a domain name into an Internet browser to reach a website, this generally starts a search, known a query, to a root server.[14] The root server then uses the authoritative root zone file to respond with information on the location of the relevant top-level domain name server. The top-level domain name server, which contains similar information about the operators and IP addresses of all of the second-level domains' name servers registered within each respective top-level domain, in turn sends queries to these and other servers, and the website ultimately is delivered to the user. (There may also be queries to third-level and other level domains' name servers, depending on the domain name.) Figure 1 depicts the relationship of the root zone to the remainder of the domain name system.

Figure 1: Relationship of the Root Zone to Other Components of the Domain Name System
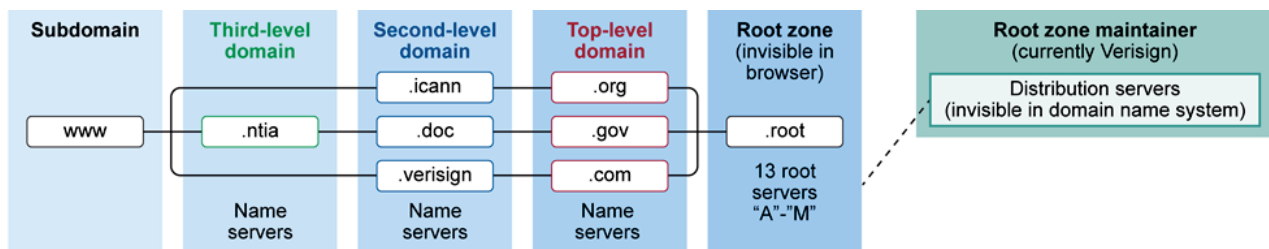
Source: GAO. | B-327398

Department of Commerce, to Managing Associate General Counsel, GAO (Dec. 15, 2015) (2015 Commerce Letter) at 1; ICANN Security and Stability Advisory Committee, *Overview and History of the IANA Functions*, SAC067 (Aug. 15, 2014) at 10.

[11] Servers in the root zone are often referred to as root servers, while servers in the top level and below are often referred to as name servers.

[12] A copy of the authoritative root zone file is available on the InterNIC® website, for example, currently managed by ICANN under a service mark license from Commerce. See https://www.internic.net/domain/root.zone (last visited Sept. 1, 2016).

[13] There are 13 servers, known as "A" through "M," in the "root zone" (also known as the "root level") above the top-level domain. These are operated by 12 entities including Verisign, ICANN, and U.S. Government agencies such as the U.S. Department of Defense. The "A" root server originally functioned as the "master" root server because the authoritative root zone file was placed there. For security reasons, the master role was transferred in 2002 to a separate set of distribution servers, which are not visible in the domain name system.

[14] Individual computers store information from recent queries of the domain name system in a local cache file, including records of where to access recently-used top-level domains. This means the Internet user's computer does not always need access to root servers when converting an Internet domain name to an IP address.

Changes to the authoritative root zone file are currently made through a process carried out by ICANN, NTIA, and Verisign, pursuant to their respective agreements. Top-level domain operators submit requests to ICANN for changes to the root zone file—for example, to add, modify, or delete name servers or points of contact. Additions of new top-level domain names, or changes to the top-level domain operator of an existing top-level domain (referred to as re-delegation), also are processed via requests for changes to the root zone file. ICANN processes all change requests in accordance with globally developed policies and forwards them to NTIA, with a copy sent simultaneously to Verisign. NTIA verifies that ICANN has followed processes and procedures ICANN has put in place to implement the global policies and, without exercising policy judgment over the content of the change, authorizes Verisign to implement the change. Finally, Verisign makes the change in the authoritative root zone file and places the updated file on the distribution servers, where it can be accessed by operators of the 13 root servers. This process is depicted in Figure 2.

Figure 2: Current Authoritative Root Zone Management Process

Source: GAO. | B-327398
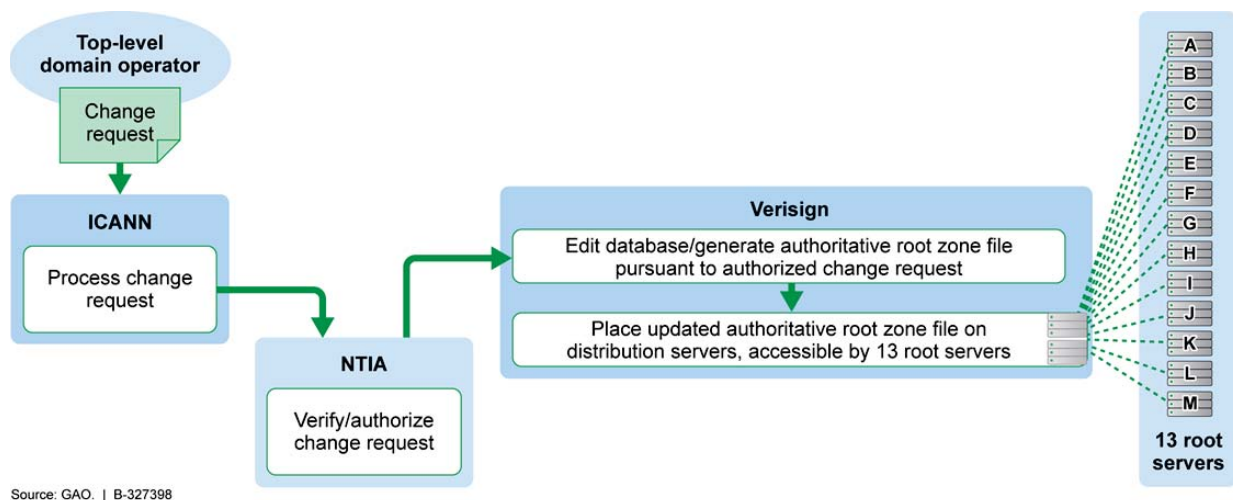
C. The Protocol Parameters Function

Computers and other devices on the Internet communicate using structured commands and data. Protocols define the structure and format of information to be sent over a network and the commands to manage the transfer of information. (The hypertext transfer protocol, for example, is ".http.") Protocols ensure that information can be sent and received in a standard, interoperable way. Protocol parameters, in turn, refer to the commands or identifiers (sequences of letters, numbers, or symbols) that manage the transfer of information. ICANN's role, under its contract with NTIA and a memorandum of understanding with the Internet Engineering Task Force,[15] is to maintain a complete and public database of the protocol parameters.

---

[15] The Internet Engineering Task Force is an open international community of network designers, operators, vendors, and researchers concerned with the evolution of the Internet architecture and the smooth operation of the Internet.

ANALYSIS

The U.S. Government's potential property rights with respect to IANA technical functions, the Internet domain name system, and the authoritative root zone file are governed in the first instance by the terms of the Government contracts and agreements under which they were developed and have been carried out. After describing the meaning of "property" under the Article IV Property Clause, we therefore review, to the extent possible, the specific rights or types of rights that the Government may have obtained in any such property under the terms of the contracts and agreements. We then determine whether any Government property would be transferred or otherwise disposed of in connection with the proposed transition and if so, whether NTIA has the statutory authority required by Article IV.

I.   **Whether There is Property Related to the Domain Name System and the IANA Functions That Constitutes U.S. Government Property under the Article IV Property Clause and Relevant Government Contracts and Agreements**

   A. The Scope of the Article IV Property Clause

Courts and commentators have addressed whether certain aspects of Internet activity, most notably domain names, constitute property.[16] We are aware of no case, however, in which a court has addressed the threshold question presented here: whether entire components of the Internet system, such as the domain name system, the authoritative root zone file, or aspects of the IANA technical functions, constitute U.S. Government property under Article IV.

As noted, the Property Clause states in relevant part that "[t]he Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . . ." By virtue of the Property Clause, no agency or official of the U.S. Government is authorized to sell, lease, give away, or otherwise dispose of Government property without statutory authority, either explicit or by necessary implication. *Royal Indemnity Co. v. United States*, 313 U.S. 289 (1941). This principle has been consistently applied by both the courts and this Office.[17]

The courts have interpreted Congress's authority under the Property Clause expansively. In a case involving real property, for example, the Supreme Court declared in *Kleppe v. New Mexico*, 426 U.S. 529, 539 (1976), that "while the furthest reaches of the power granted by the Property Clause have not yet been definitively resolved, we have repeatedly observed that '[the] power over the public land thus entrusted to Congress is without limitations.'" (Citation omitted.)

---

[16] Most recently, the U.S. Court of Appeals for the D.C. Circuit held that although country-code top-level domain names may constitute property under the Federal Sovereign Immunities Act, attachment and sale of the names was inappropriate because it would substantially impair ICANN's interests and those of other third parties worldwide. *See Weinstein v. Islamic Republic of Iran*, 2016 U.S. App. LEXIS 13981 (D.C. Cir. Aug. 2, 2016). Other recent "Internet property" decisions include *Stern v. Islamic Republic of Iran*, 73 F. Supp. 3d 46 (D.D.C. 2014) (country-code top-level domain names may be property under state law but not attachable under District of Columbia statute), *aff'd on other grounds, Weinstein, supra,* and *Sprinkler Warehouse, Inc. v. Systematic Rain, Inc.*, 880 N.W. 2d 16 (Minn. 2016) (second-level domain names are property under state law and subject to writ of execution). *See generally* Markus Muller, *Who Owns the Internet? Ownership as a Legal Basis for American Control of the Internet*, 15 Fordham Intell. Prop. Media & Ent. L.J. 709 (Spring 2005); William Larsen, *A* Stern *Look at the Property Status of Top-Level Domains*, 82 U. Chi. L. Rev. 1457 (Summer 2015).

[17] For a general discussion of the scope of the Property Clause, see GAO, *Principles of Federal Appropriations Law*, Vol. III, 3rd ed. Ch. 12, § A.5, Ch. 13, § H.1, GAO-08-978SP (Washington, D.C.: Sept. 2008).

The Property Clause also applies to personal property, both tangible (*e.g.,* Government maps[18]) and intangible (*e.g.,* intellectual property such as Government-held patents[19]). As the Supreme Court explained in *Ashwander v. Tenn. Valley Auth.,* 297 U.S. 288 (1936), in finding that electrical energy—generated at a federally owned dam from water power within the Government's exclusive control—constitutes Government property under Article IV:

> "The grant [in the Property Clause] was made in broad terms, and the power of regulation and disposition was not confined to territory, but extended to 'other property belonging to the United States,' so that the power may be applied, as Story says, 'to the due regulation of all other personal and real property rightfully belonging to the United States.' And so, he adds, 'it has been constantly understood and acted upon.'"

Id. at 331.

The *Ashwander* Court also made clear that the method by which Government property is disposed of must be in the public interest:

> "The [Property Clause] provision is silent as to the method of disposing of property belonging to the United States. That method, of course, must be an appropriate means of disposition according to the nature of the property, it must be one adopted in the public interest as distinguished from private or personal ends . . . ."

Id. at 338. Applying these standards, the Court found that the Tennessee Valley Authority had the requisite statutory authority to "dispose of" the electrical energy by selling it to a power company.

Vested legal rights—where there is an immediate and fixed right of present or future enjoyment—also constitute intangible property under Article IV, including the Government's right to contract performance in accordance with the original contract terms. *See, e.g., Royal Indemnity, supra* (Government's contractual right to full payment under surety bond itself constituted Government property; acceptance of less than full payment by unauthorized official violated Article IV).[20] GAO has likewise found that Article IV requires agencies to have statutory authority before they may "dispose of" their contractual rights to full performance. As we explained in B-156883, June 23, 1965:

> "[T]he courts have held that once a contractual right has become vested in the United States . . . to demand performance [of] a valid and otherwise legal contract[,] . . . there exists no authority . . . gratuitously to

---

[18] *See, e.g., Puerto Rico Reconstruction Co. – Sale of Prints of Survey Map*, 39 Op. Att'y Gen. 324 (1939) (agency's proposed sale of U.S. Government aerial survey maps to private individuals in absence of statutory authority would violate Art. IV).

[19] *See, e.g., Grant of Revocable Licenses Under Government-Owned Patents*, 34 Op. Att'y Gen. 320 (1924) (U.S. Navy-held patents constitute Article IV property).

[20] *See also United States v. San Francisco*, 112 F. Supp. 451, 453 (N.D. Cal. 1953), *aff'd,* 223 F.2d 737 (9th Cir.), *cert. denied,* 350 U.S. 903 (1955) (Secretary of Interior's waiver of right to city's reimbursement of road maintenance costs constituted "giv[ing] away [of] property of the United States" in violation of Article IV).

> waive or surrender such right. . . . It is a well-established principle
> of law that valid contracts are to be enforced and performed as written . . . ."[21]

Finally, as a guidepost in determining what may constitute "property" beyond these examples, the Supreme Court has recognized the "basic axiom that '[property] interests . . . are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law.'" *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1001 (1984) (citations omitted). Courts addressing property interests under state and federal common law principles, in turn, have long recognized that property is comprised of a legal "bundle of rights." *See generally* 63C Am. Jur. 2d Property § 1 (2016). These rights are recognized to include the right to possess, exclude, use, control, and dispose,[22] with the right to exclude being "'one of the most essential sticks in the bundle of rights that are commonly characterized as property.'"[23]

B. Article IV Government Property Based on the Contracts and Agreements under which the Domain Name System and IANA Functions Were Developed and Continue to be Carried Out

As NTIA has stated succinctly, "the U.S. Government has played a pivotal role in creating the Internet as we know it today."[24] Through a series of contracts and agreements beginning in the late 1960s, described in Appendix I to this opinion, the U.S. Government is considered to have been principally responsible for funding the development of the Internet and its supporting technical functions and for overseeing and providing accountability as these functions have been carried out. The contracts and agreements most relevant to whether there is Government property under Article IV which may be affected by the proposed transition are:

(1) 1970s-1990s DARPA contracts with the University of California at Los Angeles (UCLA) and the University of Southern California (USC), under which the Internet domain name system, authoritative root zone file, and IANA technical functions are considered to have been created and initially carried out;

(2) a 1993 NSF cooperative agreement with Network Solutions, Inc., now in effect as the NTIA-Verisign agreement, under which various domain name system services, including changes to the authoritative root zone file, have been carried out;

---

[21] *See also* B-276550, Dec. 15, 1997 (finding GSA lacked statutory authority required by Article IV to compromise the Government's right to the City of Boston's full payment under a promissory note). *See generally* Staff Judge Advocate, U.S. Air Force, *Acquiring and Enforcing the Government's Rights in Technical Data and Computer Software* (7th ed. Aug. 2015) at 65 (waiver of Government's contractual technical data rights, without Congressional authorization, may violate the Constitution).

[22] *See, e.g., United States v. General Motors Corp.*, 323 U.S. 373 (1945); *United States v. Lutz*, 295 F.2d 736 (5th Cir. 1961).

[23] *Dolan v. City of Tigard*, 512 U.S. 374, 384 (1994) (citation omitted). *See, e.g., Loretto v. Teleprompter Manhattan CATV Corp.,* 458 U.S. 419, 435-36 (1982) ("The power to exclude has traditionally been one of the most treasured strands in an owner's bundle of property rights."); *Kaiser Aetna v. United States*, 444 U.S. 164, 179-80 (1979) (citations omitted) (right to exclude is "so universally held to be a fundamental element of the property right").

[24] 63 Fed. Reg. 31741, 31742 (June 10, 1998).

(3) a 1998 Commerce joint project agreement with ICANN, under which ICANN began to assume the responsibilities of overseeing the technical management of the Internet, including the domain name system; and

(4) 2000-present NTIA contracts with ICANN, for performance of the IANA functions.

Whether any equipment, data, rights, or other property created or used under these agreements in fact belongs to the United States depends in the first instance on the terms of the agreements. Government contracts and agreements often address matters such as which party shall furnish and own tangible property used to perform the required work; which party shall own patents or copyrights obtained on the work and what rights (licenses) the other party shall have; and what rights the parties shall have in other data, software, or processes developed or used under the agreement.

The types of property most likely to have been developed or used under the above-noted agreements are equipment and other tangible property; intellectual property (specifically patents, copyrights, trademarks and service marks, and trade secrets); technical data, computer software, and other information; and Government rights in any of the foregoing or any other Government rights under the contracts and agreements. In the remainder of this section and to the extent possible based on the limited record before us, we review the agreement terms to determine what property the Government may have obtained.

1. 1970s-1990s DARPA Contracts with UCLA and USC

a. 1980s DARPA Contracts: the Authoritative Root Zone File, the Domain Name System, and Related Tangible Property

We were unable to obtain copies of the 1980s DARPA contracts under which the authoritative root zone file and the domain name system are considered to have been developed.[25] While we therefore cannot determine what specific rights the contracts may have granted to the Government, we are able to comment on whether what was developed—the authoritative root zone file and the domain name system—likely constituted property, and U.S. Government property, at that time and today. We also can comment on whether any U.S. Government-owned equipment or other tangible property used to perform these contracts is likely still in use today. If the root zone file and the domain name system do not constitute Government property, and if any Government equipment used to perform the contracts is no longer in use, then the contract terms addressing the parties' property rights respecting these items may, to some extent, be moot.

For the reasons discussed below, we find it is unlikely that either the authoritative root zone file or the domain name system is U.S. Government property. We also find that any Government equipment or other tangible property used to perform the contracts under which they were developed likely would now be obsolete and no longer in use.

Patent rights in the root zone file and the domain name system. Federal patent statutes protect four broad categories of inventions or discoveries: "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" which is, among other things, novel, nonobvious, and fully and particularly described. Patent holders are

---

[25] Dr. Mockapetris told us the contracts did not require development of a specific product, but rather called for "performance of Internet research," for example.

given the right to exclude others from making, using, or selling the invention for a period of time, previously 17 years and now 20 years, from the filing of the patent. *See* 35 U.S.C. §§ 101-103, 112, 154.

We did not identify any U.S. Government-held patents associated with the authoritative root zone file or the domain name system in the U.S. Patent and Trademark Office's patent databases, nor were any of the Government officials or other individuals to whom we spoke aware of any such U.S. Government-held patents, including officials from Commerce (which issues patents). In addition, the root zone file appears ineligible for patent protection because it appears to be strictly a data file. By comparison, while aspects of the domain name system may have been patentable, Dr. Mockapetris, credited as a lead developer of the domain name system and the authoritative root zone file, told us that Government contractors involved at the time considered but declined to seek patents for the system or its components for various reasons. We also question whether a patent could have been obtained for the system once it became widely known and used, as it is now, because it may no longer have been able to meet the "novelty" requirement.

Copyrights in the root zone file and the domain name system. Federal copyright statutes protect "*original* works of authorship fixed in any tangible medium of expression" including "literary works." 17 U.S.C. § 102(a) (emphasis added).[26] We did not identify any U.S. Government-held copyrights[27] associated with the root zone file or the domain name system in the U.S. Copyright Office's copyright registration system, nor were any U.S. Government officials or other individuals to whom we spoke, including officials from Commerce and Verisign (which makes changes to the authoritative root zone file, as noted), aware of any Government-held copyrights or licenses for the file or domain name system.

Moreover, we question whether the authoritative root zone file would qualify for copyright protection, either in its original configuration or today. The Supreme Court recognized in *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991), that mere databases or compilations of factual information, without the degree of "originality" required by the copyright laws, are ineligible for copyright protection. The Court in *Feist* therefore held that a telephone company's "White Pages" could not be copyrighted because it lacked the requisite originality. The company merely published basic subscriber information—name, town, and telephone number—and arranged it alphabetically. It is Commerce's position, *see* 2015 Commerce Letter at 4-5, that because the root zone file is a purely factual listing of top-level domains and corresponding numerical IP addresses and other factual information, without any apparent degree of creative originality, the authoritative root zone file is not eligible for copyright protection under *Feist*. We agree.

Trademark or service marks in the root zone file and the domain name system. Trademarks are words, phrases, logos, or other graphic symbols used by manufacturers or merchants to identify their goods and distinguish them from others. 15 U.S.C. §§ 1051-1127. Service marks are generally the same as trademarks except they identify and distinguish the source of services rather than goods. 15 U.S.C. § 1053. We did not identify any Government-held trademarks or

---

[26] "Literary works" is broadly defined as "works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied." 17 U.S.C. § 101.

[27] Copyrights cannot be obtained for works prepared by an officer or employee of the U.S. Government as part of that person's official duties. However, the Government may receive and hold copyrights obtained by others. 17 U.S.C. § 105.

service marks associated with the authoritative root zone file or the domain name system in the U.S. Patent and Trademark Office's Trademark Electronic Search System, nor were any U.S. Government officials or other individuals to whom we spoke, including officials from Commerce (which issues trademarks and service marks), aware of any such Government-held marks.

<u>Trade secrets in the root zone file and the domain name system</u>. Federal and state law provides various protections for information that constitutes a trade secret. *See, e.g.,* 18 U.S.C. §§ 1832, 1839, 1905; National Conference of Commissioners on Uniform State Laws, Uniform Trade Secrets Act (UTSA) (1985). Trade secret information is generally defined as information for which the owner has taken reasonable measures to keep secret and the information derives independent economic value from not being generally known by the public. 18 U.S.C. § 1839; UTSA § 1(4). To our knowledge, no assertions of trade secret status for the root zone file or the domain name system have been made by the U.S. Government or others, and no efforts have been taken to protect the file or the system from disclosure. Indeed, because the value of the root zone file in particular is in its public dissemination, a copy is freely available to the public and not kept secret.

<u>Common law property rights in the root zone file and the domain name system</u>. As discussed above, courts applying traditional common law property principles have defined property in terms of a "bundle of rights," with a key right being the right to exclude others from the property. Commerce asserts that no entity (including the U.S. Government) owns the authoritative root zone file based in part on cases finding that telephone numbers, zip codes, and home addresses are incapable of exclusive possession or control.[28] As Commerce told us, "[a]s a dynamic collection of technical, locational information published in the public domain for the nonexclusive use of Internet users, the root zone file cannot appropriately be described in terms of property interests." 2015 Commerce Letter at 5.

We find that while the root zone file and the domain name system may or may not initially have been subject to exclusive Government possession or use pursuant to the DARPA contracts under which they were created, today copies are freely available to the public. Neither the U.S. Government nor any other entity appears to have a right to their exclusive possession or use. Although NTIA oversees and has some control over the file and the system through its ICANN and Verisign agreements, this does not make NTIA their "owner."[29]

<u>Equipment and other tangible property used in performing the 1980s DARPA contracts</u>. There is evidence that some Government-funded equipment (*e.g.,* computers) was used to perform the contracts under which the root zone file and domain name system were developed. Dr. Mockapetris told us he believed the first root zone file was created on a DARPA-funded computer at USC, for example. It is not clear whether USC or DARPA held title to any such equipment, however, and in any event, the equipment likely would now be obsolete and no longer in use.

---

[28] Commerce cites to *In re Best Re-Mfg. Co.*, 453 F.2d 848 (9th Cir. 1971), and *In re iPhone App. Litig.*, 844 F. Supp. 2d 1040 (N.D. Cal. 2012). 2015 Commerce Letter at 5.

[29] Although we find it is unlikely that the root zone file and the domain name system constitute U.S. Government property, the Government may nonetheless have obtained rights in these or other data under the 1980s contracts, which rights themselves would constitute Government property under Article IV. Government procurement contracts today, for example, often provide the Government with non-exclusive rights to use data first produced in the performance of the contract regardless of whether the data constitute "property." Such a non-exclusive use right in the root zone file might be of limited practical value today, however, because a copy is available to everyone.

b. 1970s-1990s DARPA Contracts, Including the Tera-node Network Technology Contract: the IANA Functions and Related Tangible Property

We were unable to obtain copies of the 1970s-1990s DARPA contracts under which the IANA functions are considered to have been developed and performed. We obtained information about key terms of Task 4 of DARPA's final IANA-functions contract with USC, however, known as the Tera-node Network Technology (TNT) contract, No. DABT63-95-C-0095. Task 4, "Network Infrastructure Activities," required performance of the IANA functions, among other things, and was in effect from July 1995 to July 1999. We also obtained considerable information about IANA-functions related data and intellectual property produced by USC under Task 4 or prior DARPA-USC IANA-functions contracts. We therefore offer observations about what property rights the Government may have obtained related to the IANA functions.

Patents, copyrights, data, and other information rights related to the IANA functions. At the time the TNT contract was awarded, DOD's general procurement policy was to balance the Government's need to acquire technical data produced under its contracts, and rights to use that data, with the contractor's competing property rights and economic interests in such data, and to acquire only the minimum essential technical data and data rights needed by the Government.[30] For technical data specified to be delivered to the Government and computer software[31] that "may be originated, developed, or delivered," DOD policy generally prescribed use of a standard contract clause, "Rights in Technical Data and Computer Software," which, depending on various factors, provided for Government data use rights rather than data acquisition.[32] In addition, DOD policy generally allowed the contractor to copyright any technical data or computer software produced or developed under the contract, with the Government obtaining a non-exclusive, paid-up license in the copyright for Government purposes, with the scope based on the type of rights the Government held in the work.[33] Finally, DOD policy at the time called for inclusion of various patent rights clauses.[34] In light of these DOD general policies and the corresponding standard contract clauses, it is possible the TNT/Task 4 contract provided the Government with some type of non-exclusive rights in data and computer software developed by USC under the contract, some type of non-exclusive, paid-up license to any USC-copyrighted work prepared under the contract, and some type of non-exclusive license in any patents or inventions USC may have obtained or conceived of under the contract.

Inclusion of such contract terms and Government rights in the TNT/Task 4 contract would have been consistent, in turn, with the rights USC proposed to grant the Government with respect to

---

[30] *See* Department of Defense Federal Acquisition Regulation Supplement (DFARS) §§ 227.402-70, 227.402-71(a) (1994). These basic DOD procurement policies remain in effect today. *See* DFARS §§ 227.7103-1(a), 227.7203-1(a) (2015). All citations to the DFARS and the Federal Acquisition Regulation (FAR) in this opinion are found in the corresponding section of Title 48 of the Code of Federal Regulations.

[31] "Computer software" was defined as computer programs and computer data bases. DFARS § 227.401(5) (1994).

[32] In general, the Government was granted standard license rights (either "unlimited rights," "Government purpose license rights," or "limited rights") or it negotiated specific alternative rights. *See* DFARS §§ 227.402-72, 227.403-70, 227.403-77 (1994); § 252.227-7013 (Oct. 1988). DOD policy today states that the Government obtains rights in technical data and computer software under an irrevocable license and the contractor retains all rights not granted to the Government. *See* DFARS §§ 227.7103-4(a), 227.7203-4(a) (2015).

[33] *See* DFARS § 227.403-76 (1994); § 252.227-7013(e) (Oct. 1988).

[34] *See, e.g.,* DFARS subpart 227.3 (1994).

any results of its Task 4 work. In particular, USC offered to grant the Government "nonexclusive[] . . . rights to any results, prototypes, or other products of this effort" and to give a free copy of any software created to any organization for non-commercial use.[35] Agreements signed after award of the TNT/Task 4 contract also suggest the Government obtained some kind of non-exclusive data, copyright, and patent licenses, with USC retaining title.[36] *First,* in December 1998, USC signed a Transition Agreement with the newly formed ICANN. As of January 1, 1999, the agreement transferred to ICANN all of USC's IANA-functions responsibilities and title or a license (and, at ICANN's option, title) in all of USC's IANA-related "assets." USC's IANA assets were identified as a service mark in "Internet Assigned Numbers Authority," a copyright in the IANA logo, a list of IANA "intellectual property" items, and any additional intellectual property "created or received in IANA's operations" after January 1, 1999. *Second,* in February 2000, ICANN exercised its option to acquire title to the listed USC intellectual property[37] and NTIA approved this acquisition in its first IANA-functions contract with ICANN. The NTIA contract incorporated ICANN's contract quotation, which stated that "[b]ecause the Government is not giving up any *rights* it holds in the [USC] intellectual property, but is merely consenting to transfer of *title* in the intellectual property from one party (the former contractor) to another (the new contractor), this term involves no cost to the Government." (Emphasis added.)

NTIA told us it has not attempted to define the Government's specific rights in the USC intellectual property acquired by ICANN (or the Government's other possible rights under the 1970s-1990s DARPA contracts), and ICANN declined to offer its view of the Government's or its own rights.[38]

We find that if there are any Government licenses or other rights in this former USC intellectual property now owned by ICANN, or in other data or property produced under the 1970s-1990s IANA-functions contracts, these rights would constitute Government property under Article IV.

Equipment and other tangible property used in performing the TNT contract. The TNT contract/Task 4 documents we obtained state that USC was to provide "all personnel, materials, and facilities" for performance of the required work. The Government thus was not required to provide any equipment or other Government property to USC, and even if such equipment were provided and used, it likely would now be obsolete and no longer in use.

---

[35] USC's TNT contract proposal for Task 4 stated, "Proprietary Claims. This proposal may contain original ideas for network administration and management. We wish those ideas to be protected from dissemination unless and until the effort is funded, in accordance with federal procurement regulations. *The government has (non-exclusively) all rights to any results, prototypes, or other products of this effort.* Any software created in this effort will be provided free of charge, except for a nominal handling fee, to any organization for non-commercial use. USC wishes to retain the rights to share in profits of any commercial exploitation of the results and products of this effort." (Emphasis added.)

[36] Because USC had been performing the IANA functions under contract to DARPA since 1977, as noted in Appendix I, the Government's possible data rights licenses under the TNT/Task 4 contract may also have included rights in any technical data, copyrights, and other property developed by USC under these previous contracts.

[37] *See* Feb. 9, 2000 USC-ICANN Agreement and Assignment of Licensed Rights.

[38] ICANN did assert that the listed USC intellectual property to which ICANN took title in 2000 reflected the relatively unsophisticated and fully manual nature of how the IANA functions were performed at that time and included some open source software freely available for use, outdated databases, and various other items no longer in use.

2. 1993 NSF Cooperative Agreement with Network Solutions, now in effect as the NTIA Cooperative Agreement with Verisign

As discussed in Appendix I, NSF entered into a cooperative agreement with Network Solutions, Inc., in 1993 to assist in providing expanded and coordinated network information services for the non-military Internet. Among other things, Network Solutions provided second-level domain name registration services to the non-governmental sector and, in cooperation with USC, managed the root zone and made changes to the authoritative root zone file. As an early part of the NTIA-led transition efforts, NSF transferred administration of the agreement to NTIA in September 1998, and Verisign took over Network Solutions' role under the agreement when it acquired the company in 2000.

The Government's right to Verisign's continued performance. Because Verisign is under an enforceable agreement with NTIA through at least November 30, 2018, the Government has a fixed and immediate right to Verisign's continued performance of the root zone management services through that date. In fact, the agreement explicitly authorizes NTIA to seek specific performance of any or all provisions. This right to performance constitutes Government property under Article IV.

Data rights under the agreement. The cooperative agreement grants the Government broad use rights in any "data first produced under an award" where the awardee is a non-profit institution or, if the awardee is a commercial entity, the agency exercises its discretion to apply this data rights provision. NSF and NTIA did not indicate whether they elected to apply this provision to Network Solutions or Verisign.

Patent licenses under the agreement. The cooperative agreement grants the U.S. Government a non-exclusive, non-transferable, irrevocable, paid-up license in any invention, conceived or first reduced to practice by the awardee, in the performance of any "experimental, developmental, or research" work under the agreement if the awardee elects to retain title to the invention. We believe this license would apply to work by Network Solutions both before and after NTIA took over the agreement in 1998 (including work reflected in a copy of software and data that Network Solutions delivered to NTIA when it took over, discussed below) and to work by Verisign after it acquired Network Solutions. NSF told us work under the agreement at the time it was the administrator was reasonably considered as experimental, developmental, or research work, while NTIA said work under the agreement since it has been the administrator does not qualify as such. NSF said it was unaware of any inventions by Network Solutions under the agreement; Verisign told us it holds patents for what it describes as its "unnaturally perfect" root zone management processes (but was uncertain whether these processes are considered work under the cooperative agreement). We believe that if there are any Government licenses in any covered inventions, they would constitute Government property under Article IV.

Copyright licenses under the agreement. The cooperative agreement grants the U.S. Government a non-exclusive, non-transferable, irrevocable, royalty-free license in any copyright obtained by the awardee or others in material produced by the awardee under the agreement. We believe this license would apply to work by Network Solutions both before and after NTIA took over the agreement in 1998 (including work reflected in a copy of software and data that Network Solutions delivered to NTIA when it took over, discussed below) and to work by

Verisign after it acquired Network Solutions. NSF and NTIA told us they had no information or records indicating any such copyrights had been obtained to date. We believe that if there are any Government licenses in any such copyrights, they would constitute Government property under Article IV.

Service mark under the agreement: the InterNIC® service mark. The cooperative agreement originally required Network Solutions to collaborate with other named parties to operate an interface for registration of domain names and other services. That interface, an Internet "network information center," became known as InterNIC®. NSF acquired title to the InterNIC® service mark and the services were offered by Network Solutions through the InterNIC® website. NSF assigned the mark to Commerce in 1998 as part of the NTIA-led transition and Commerce reduced some of Network Solutions' InterNIC® services starting in 1999. Since 2001, Commerce has licensed the mark to ICANN, which manages the InterNIC® website as a public resource for domain name system information, including posting a copy of the authoritative root zone file. We conclude that Commerce's service mark is Government property under Article IV.

Equipment and other tangible property received under or used to perform work under the cooperative agreement. The cooperative agreement vests title in the Government in any equipment used to perform work under the agreement that is purchased or fabricated with Government funds. According to NSF, its records indicate it awarded a total of $80,747 to Network Solutions for the purchase of equipment, but do not indicate what, if any, equipment Network Solutions may have purchased. Verisign and NTIA have no information about the purchase of any such Government-owned equipment or its possible transfer to Verisign, and even if it was purchased, it likely would now be obsolete and no longer in use, according to Verisign and NTIA.

Separately, Appendix 11 to the cooperative agreement, added by NTIA when it took over the agreement in 1998, required, among other things, that Network Solutions deliver an electronic copy of all software and data it had generated under the agreement up to October 1998, as well as a copy of all documentation for such data and software. NTIA told us that Network Solutions delivered these copies—ten 8 mm data cartridges containing database files with a 3-ring binder listing the databases on the cartridges, and several additional 3-ring binders containing the data and software documentation—and the copies are now stored in agency files. We conclude these "hard copies" of data and software are Government property under Article IV. The Government's possible patent and copyrights licenses and other data rights in the work contained in these copies are discussed above.

3. 1998 Commerce Joint Project Agreement with ICANN

As noted in Appendix I, another early step in the NTIA-led transition was a November 1998 "joint project agreement" (JPA) between Commerce and ICANN to carry out the Domain Name System Project. According to NTIA, the JPA was intended "to transition the U.S. Government's technical domain name system coordination and management functions to the private sector"[39] and ICANN began "assuming the responsibilities of overseeing the technical management of the Internet, including the Domain Name System" under the JPA.[40] ICANN subsequently took

---

[39] *See* 2016 NTIA Assessment Report, *supra* note 3, at 3.

[40] *See* NTIA-ICANN License Agreement for InterNIC® service mark (Jan. 8, 2001) ("[O]n November 25, 1998, [Commerce] and [ICANN] entered into a Memorandum of Understanding establishing a joint project under which ICANN is assuming the responsibilities of overseeing the technical management of the Internet, including the Domain

over the IANA functions from USC following execution of the December 1998 USC-ICANN Transition Agreement and performed these functions for approximately 14 months without a formal Government contract, before being awarded the initial IANA-functions contract by NTIA in February 2000.

The only overarching agreement between the Government and ICANN during this 14-month gap period appears to be the 1998 JPA. The agreement does not grant the Government any explicit ownership or licenses in any copyrights, patents, data, or other property that may have been produced under the agreement, however. Further, as required by Commerce's JPA statutory authority, 15 U.S.C. § 1525, the agreement requires the parties to bear the costs of their own activities with the costs "equitably apportioned." The fact that any data or other property ICANN may have created under the JPA would have been produced at its own expense also could weigh against the Government's obtaining rights in any such property.

NTIA told us it does not believe the Government obtained any ownership or other rights in any property that may have been produced under the JPA (and it is unaware that any such property was produced), nor has NTIA identified grounds on which the Government could assert such rights. ICANN characterized the JPA as aspirational and advisory only.

On these facts, we find it unlikely that the Government obtained any rights or title in any data or other property that ICANN may have produced during the 14-month gap period before ICANN was under contract to NTIA.

4. 2000-present NTIA Contracts with ICANN for Performance of the IANA functions

The final source of potential U.S. Government property that may be affected by the proposed transition is the series of five services contracts between NTIA and ICANN for performance of the IANA functions. The first contract was awarded on February 9, 2000, and similar contracts were awarded in 2001, 2003, 2006, and 2012. These contracts include and incorporate by reference numerous FAR contract provisions. The required ICANN services have varied to some extent from contract to contract, but the core services have been the numbers, names, and protocol parameters IANA functions. As discussed below, we find the Government has or may have obtained certain rights and minimal tangible property under these contracts which would constitute Government property under Article IV.

The Government's right to ICANN's continued performance. Because ICANN is under an enforceable contract with NTIA through at least September 30, 2016, the Government has a fixed and immediate right to ICANN's continued performance of the IANA functions through that date. This right to performance constitutes Government property under Article IV.

Data, software, and other information rights, including data in the ICANN "deliverables." The 2003, 2006, and 2012 contracts require ICANN to perform specific tasks in addition to the core IANA functions. The 2012 contract includes 18 such tasks, for example, some of which simply require submission of routine monthly progress reports and other contract administration-related information. Other tasks require ICANN's development of new data and processes. Under the 2012 contract, for instance, ICANN must deploy a fully automated and secure root zone

---

Name System"). *See also* ICANN, Response to Commerce Solicitation SA 1301-12-RP-0043, Vol. I, Technical Proposal (May 31, 2012) (2012 ICANN Contract Proposal) at 23 ("ICANN's first MoU with [NTIA] contained provisions governing ICANN's performance of the IANA Functions.").

management system; develop performance standards for each of the IANA functions; establish a customer complaint process; and develop user instructions for each IANA function. As we previously reported, NTIA required many of these additional tasks based on input from the global multistakeholder community, which wanted greater accountability from ICANN. 2015 GAO Report at 11-12.

The 2012 contract's 18 additional tasks, and the 8 additional tasks required by the 2003 and 2006 contracts, are designated as "deliverables." The contracts require NTIA to review and inspect the deliverables, determine their acceptability, and approve any publication or posting of the deliverables called for by the contracts.[41] The 2003, 2006, and 2012 contracts also declare that *"[a]ll deliverables provided under this contract become the property of the U.S. Government."* (Emphasis added.)

Literally read, this broad and unqualified "U.S. Government property" provision could be interpreted to mean the Government obtained title not only in the hard copies of the deliverables, but also in the data contained in the deliverables. While NTIA acknowledges that this provision creates confusion, it states that because contracts must be read as a whole, the provision should be read together with some (but not all) of the contracts' multiple data rights provisions.[42] In particular, NTIA asserts this "U.S. Government property" provision should be read together with FAR § 52.227-14 Alternative III, Rights in Data—General (Dec. 2007), incorporated into the 2003, 2006, and 2012 contracts. NTIA states that when the "U.S. Government property" provision is read together with this data rights provision, the result is that the Government took title only to the physical medium in which deliverables were transmitted, while it obtained use rights or potential use rights in, not title to, the underlying data and software contained in the deliverables.[43]

In particular, NTIA states that it has the following rights in data contained in the deliverables:

(a) the Government holds "unlimited rights"[44] in deliverables consisting of "data first produced in the performance of the contract[s]"[45] (10 of the 18 deliverables in the 2012 contract, *e.g.,* the

---

[41] Because NTIA required some of the 2012 contract deliverables for the benefit of the public and Internet community, the contract requires several deliverables to be posted on a public website. (ICANN has posted these items on its website.) According to NTIA, only the deliverables relating to security or ICANN's proprietary business operations have not been made publicly available.

[42] The 2003, 2006, and 2012 contracts incorporate multiple and different data rights clauses and alternatives. The 2012 contract incorporates seven data rights clauses and alternatives, for example, while the 2003 contract incorporates six somewhat different clauses and alternatives (not including the separate patent clause, discussed below).

[43] Some commentators have suggested that because the authoritative root zone file is not one of the 18 deliverables in the 2012 contract, it is not U.S. Government property. Others have suggested that because the 2012 contract deliverables included deployment of an automated root zone management system, the authoritative root zone file is U.S. Government property. In our view, the terms of the 2012 contact are not determinative since we conclude the root zone file likely is not Government property for the reasons discussed above.

[44] FAR § 52.227-14(a) (Dec. 2007) defined "unlimited rights" as "the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so."

[45] The Government's unlimited rights in such "data first produced" are subject to potential copyright assertions under FAR § 52.227-14(c) (Dec. 2007). Our conclusions regarding the Government's potential rights in ICANN copyrights are discussed below.

new IANA-functions performance standards);

(b) the Government holds similar unlimited use rights in deliverables consisting of "information incidental to contract administration," because such information is not even deemed "data" in which the Government obtains specific rights under the FAR[46] (7 of the 18 deliverables in the 2012 contract and all 8 deliverables in the 2003 and 2006 contracts, *e.g.,* monthly performance progress reports); and

(c) the Government has the ability to obtain "restricted rights" in the remaining deliverable under the 2012 contract, that is, the automated root zone management system.[47] Specifically, NTIA states that under FAR § 52.227-14(g) Alternate III (Dec. 2007), incorporating FAR 52.227-14(g)(4)(i), it may request delivery of the ICANN software used to operate this system. If and when it requests delivery, it would then negotiate a "restricted rights" license from ICANN. NTIA indicates it does not plan to request ICANN's software, however, because it does not need it—the Government is not performing the IANA functions now and, in light of the proposed transition, does not plan to do so in the future. NTIA indicates it may still request the software after the contract expires, however, as part of post-contract procurement-related and close-out activities.

ICANN generally declined to offer its view of NTIA's or its own rights under the five contracts. ICANN stated, however, that because it has never been requested or required to deliver, and has not delivered, what ICANN states is its proprietary software used to perform the IANA functions, the U.S. Government does not currently have any rights in that software under the 2012 contract or otherwise. ICANN also declined to offer its view about whether NTIA may request and obtain negotiated restricted rights in its software after the current contract expires.[48]

We lack the record necessary to analyze the Government's property rights under the five NTIA-ICANN contracts. The contracts contain multiple data rights provisions without distinguishing the portion of contract performance to which each provision pertains. The three most recent contracts also include the non-standard "U.S. Government property" clause. NTIA acknowledges the ambiguity created by having multiple data rights provisions and the confusion created by inclusion of the "U.S. Government property" clause, but states that its interpretation of the contract is reasonable based on its understanding of the contract and what the parties intended.

---

[46] FAR § 52.227-14(a) (Dec. 2007) defined "data" to include technical data and software but excluded "information incidental to contract administration such as financial, administrative, cost or pricing, or management information."

[47] ICANN asserts that the software it uses to operate the root zone management system is not itself a deliverable. ICANN asserted in its 2012 Contract Proposal that the root zone management software, along with 14 additional pieces of software, is proprietary and qualifies as "restricted computer software." FAR § 52.227-14(a) (Dec. 2007) defined "restricted computer software" as "computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software."

[48] ICANN did assert that the 15 items of software it listed in its 2012 Contract Proposal were developed wholly at private expense and therefore are proprietary. It also asserted that the 15 software items are not a legacy of any of the USC intellectual property listed in the 1998 USC-ICANN Transition Agreement in which ICANN obtained a license in 1999 and title in 2000. ICANN believes there is no overlap between the USC intellectual property and the custom software, tools, and systems that ICANN uses to perform the IANA functions today.

We agree contracts should be read as a whole [49] and should be interpreted in accordance with the parties' understanding, as shown by their conduct prior to any dispute.[50] We also agree there is a difference between the Government obtaining title to the physical medium in which data are delivered and obtaining title to, or rights in, the underlying data itself.[51] Reading the contract as NTIA suggests—granting the Government title to the "hard copies" of the deliverables and use rights in the deliverables data—also would be consistent with the fact that these are services contracts, with the "deliverables" requirement being a mechanism to ensure the additional tasks are performed.

NTIA may nonetheless be understating the Government's rights. While NTIA appears to argue it has data rights only with respect to the deliverables, FAR § 52.227-14 (Dec. 2007) provided "unlimited rights" to the Government in data first produced under the contract irrespective of whether the contract specifies delivery. The Government therefore may have rights in data or software produced under the NTIA-ICANN contracts even if it has not been specified for delivery.[52] Additionally, for the contracts containing the "U.S. Government property" clause in addition to the standard data rights clause (FAR § 52.227-14), the Government may also have *title* to such "first produced" data. *See Ervin and Assoc., Inc. v. United States*, 59 Fed. Cl. 267 (2004), *aff'd per curiam*, 120 F. App'x 353 (Fed. Cir. 2005); *Cygnus Corp., Inc.*, ASBCA No. 53,618, 03-1 BCA ¶ 32,140 (2003).[53]

We conclude that the Government holds title to the minimal tangible property in which it received any of the 26 deliverables under the contracts, *e.g.,* hard copies of reports and other documents, and that this constitutes U.S. Government property under Article IV. In light of the multiple uncertainties with respect to data and software produced under or used to perform the contracts, we can only say that if the Government has any rights or licenses in such data or software, they would constitute Government property under Article IV.

Patent licenses under the contracts. Each of the contracts includes a FAR patent clause (not always the same clause). In general, the clauses authorize ICANN to retain title to any potentially patentable invention made in performing work under the contracts, or any invention conceived of or first reduced to practice in performing the contracts. If ICANN retains title, the Government obtains either a non-exclusive, non-transferable, irrevocable, paid-up license to

---

[49] Contract interpretation begins with the language of the written agreement, *see Foley Co. v. United States,* 11 F.3d 1032 (Fed. Cir.1993), but the document must be considered as a whole and interpreted so as to harmonize and give reasonable meaning to all of its parts. *McAbee Constr., Inc. v. United States*, 97 F.3d 1431 (Fed. Cir.1996).

[50] *See, e.g., Jowett, Inc. v. United States*, 234 F.3d 1364 (Fed. Cir. 2000); *Julius Goldman's Egg City v. United States*, 697 F.2d 1051 (Fed. Cir.), *cert. denied*, 464 U.S. 814 (1983).

[51] The Government generally obtains title to the physical medium in which data are delivered—paper copies or a compact disc, for example. By contrast, to balance the Government's need to acquire or obtain access to data against the contractor's proprietary interests in the data, the Government generally obtains rights in data, with the precise rights depending on the terms of the contract. *See, e.g.,* FAR §§ 27.402 (2015), 52.227-14 (May 2014).

[52] The 2000, 2001, 2003 and 2006 NTIA-ICANN contracts did not specify delivery of the software ICANN used to perform those contracts, for example, and ICANN asserted no restrictions on the Government's rights in that software as it did for the 2012 contract.

[53] The *Ervin* court appeared to accept the United States' characterization of a "U.S. Government property" clause as a second data rights clause (in addition to the standard FAR § 52.227-14 data rights clause). The Board in *Cygnus* found that a "U.S. Government property" clause, accompanied by the standard data rights clause, gave the Government "preemptive ownership rights." *See* Maj. Katherine White, *Losing Rights to Intellectual Property: The Perils of Contracting with the Federal Government*, 2005 Army Law. 146 (Jan. 2005) (discussing *Ervin*).

practice the invention or, if ICANN declines or fails to elect to retain title, the Government may obtain title. We identified no such inventions or patents and NTIA and ICANN told us they are unaware of any.

Copyright licenses under the contracts. FAR § 52.227-14(c)(1)(iii) (Dec. 2007), which NTIA states applies to the NTIA-ICANN contracts, allows ICANN, with NTIA's permission, to assert a copyright in data first produced in performing the contracts. The Government obtains a broad paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data (and obtains a more limited license if the data are computer software). We identified no registered ICANN copyrights in such data or software.[54]

Equipment and other tangible property received under or used to perform the ICANN contracts. The contracts require ICANN to provide all equipment and other material needed to perform the required services. This is reflected in the contracts' Statement of Work, which specifies that ICANN is to "furnish the necessary personnel, *materials, equipment*, services and *facilitie*s to perform [the tasks] without any cost to the Government." (Emphasis added.)[55] The contracts did not require the Government to provide ICANN with any equipment and Commerce told us no Government property has, in fact, been provided. 2015 Commerce Letter at 3.[56]

II. Whether the Proposed Transition Would Result in the Transfer or Other Disposal of U.S. Government Property and NTIA's Statutory Authority for Such Disposal

Almost all of the Article IV Government property we have identified related to the domain name system and IANA functions will not, according to NTIA, be transferred or otherwise disposed of in connection with the proposed transition. Specifically, based on NTIA's representations:

- If the Government has any vested data use or ownership rights under the 1970s-1990s DARPA contracts, the 1993 cooperative agreement with Network Solutions and now Verisign, the 1998 Commerce-ICANN joint project agreement, or the 2000-present NTIA-ICANN IANA-functions contracts, these rights survive expiration or termination of the agreements and the Government will not transfer, waive, renounce, or otherwise dispose of these rights;[57]

- Commerce's InterNIC® service mark, currently licensed to ICANN through 2025 for use in providing domain name system information to the public, will remain in effect and not be disposed of; and

---

[54] ICANN told us it may hold common-law copyrights in some of the software it is using to perform the 2012 contract to which it has asserted restrictions, but states the software was *not* first produced under the contract.

[55] In some of the contracts, this provision includes an exception under which NTIA might furnish equipment to perform the contract. Commerce told us no Government equipment was furnished under these exceptions. *See* 2015 Commerce Letter at 3.

[56] As noted above, we also conclude the Government owns the minimal tangible property in the 26 deliverables transmitted to NTIA under the 2003, 2006, and 2012 contracts.

[57] Government data rights generally survive expiration or termination of the contracts unless provided otherwise. *See generally INSLAW, Inc. v. United States*, 40 Fed. Cl. 843 (1998). Moreover, as noted, certain of the Government's potential rights are stated as "irrevocable" and others are stated as "unlimited rights" in both scope and time.

- The tangible property (hard copies of information) that NTIA has received from Network Solutions and ICANN will continue to be stored in agency files and retained pursuant to applicable records retention requirements.

The one category of Government property we identified that might be disposed of in connection with the transition is the Government's right to ICANN's and Verisign's continued performance under their NTIA agreements, if NTIA terminates the agreements or relevant provisions before they expire. This would constitute disposal under Article IV because the Government would be waiving continued performance.[58]

However, we find NTIA has the authority required by Article IV to terminate the agreements. NTIA stated, and we agree, that it has broad statutory authority for its IANA-functions contracts with ICANN and its assumption of the cooperative agreement with Network Solutions in 1998, now in effect as the Verisign agreement. [59] NTIA's statutory contracting authority, in turn, authorizes it to terminate these agreements if doing so would be in the public interest. *United States v. Corliss Steam-Engine Co.,* 91 U.S. 321 (1875).[60] The ICANN and Verisign agreements' termination-for-convenience provisions require NTIA to apply this "public interest" standard,[61] which echoes the Supreme Court's declaration in *Ashwander*, *supra* page 9, that Article IV Government property must be disposed of in a manner serving the public interest. Thus NTIA has the requisite authority to terminate the agreements.

CONCLUSION

For the foregoing reasons, we find it is unlikely that either the authoritative root zone file or the Internet domain name system is U.S. Government property under Article IV. We also find that the possible U.S. property interests that we have identified either would not be disposed of in connection with the proposed transition or would be disposed of in compliance with Article IV.

---

[58] If NTIA allows the agreements or relevant provisions to expire, this would not constitute disposal because ICANN's and Verisign's required performances would have been completed.
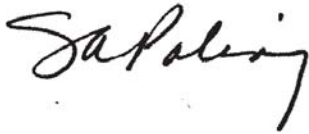
[59] When we addressed similar matters in 2000, NTIA cited to 15 U.S.C. § 1512 (Commerce authority to foster, promote, and develop foreign and domestic commerce) and 47 U.S.C. § 902(b)(2) (NTIA authority to coordinate the telecommunications activities of the executive branch). *See* GAO, *Department of Commerce: Relationship with Internet Corporation for Assigned Names and Numbers,* GAO/OGC-00-33R (Washington, D.C.: July 7, 2000) (2000 GAO Legal Opinion) at 3-4, 8-9. We find these statutes authorize NTIA's ICANN and Verisign agreements, supported by the Federal Grant and Cooperative Agreement Act, 31 U.S.C. §§ 6301-6308 (governing executive department use of procurement contracts, cooperative agreements, and grant agreements); the general authorities governing executive agency procurements, 41 U.S.C. §§ 3101 *et seq.*; and the Government's inherent authority to contract in order to exercise its powers and discharge its duties. *See generally* John Cibinic, Jr., Ralph C. Nash, Jr. & Christopher R. Yukins, *Formation of Government Contracts* (4th ed. 2011), Ch. 1, Sec. II, and cases discussed therein.

[60] *See also* B-180381, May 3, 1974 (citing *Corliss* as authority for the Government's termination-for-convenience); B-106595, Nov. 28, 1951 (same); 18 Comp. Gen. 826 (1939) (same).

[61] The ICANN contract authorizes termination-for-convenience "in the Government's interest" and the Verisign cooperative agreement authorizes such termination "whenever, for any reason, . . . in the best interest of the Government."

If you have any questions, please contact Susan D. Sawtelle, Managing Associate General Counsel, at (202) 512-6417 or SawtelleS@gao.gov. Assistant General Counsel Hannah Laufe, Senior Attorney Geoffrey Hamilton, Director Mark Goldstein, Assistant Directors Katharine K. Perl and Alwynne Wilbur, and Senior Analyst John Healey also made key contributions to this opinion.

Sincerely,

Susan A. Poling
General Counsel

Appendix I: Chronology of the U.S. Government's Support of the Development of the Internet and Its Technical Functions and the Decision to Relinquish the Government's Oversight Role

APPENDIX I: Chronology of the U.S. Government's Support of the Development of the Internet and Its Technical Functions and the Decision to Relinquish the Government's Oversight Role

I. The U.S. Government's Support of the Development of the Internet, Supporting Technical Functions, and the Domain Name System

A. U.S. Support of Development of the Internet

What began as a research project involving four host computers in the 1960s has evolved to the vast global system of interconnected networks used by billions of people worldwide today. In the United States, where most of the research and development work occurred, this work largely occurred as part of a series of U.S. Government-funded computer networking contract efforts, beginning with the Defense Department's ARPANET in 1969.

Several other U.S. Government agencies, notably NSF, also developed networks so that their researchers could communicate and share data. NSF's NSFNET went online in 1986 and eventually became the largest and most advanced of the U.S. Government networks, providing a "backbone" to connect other networks serving more than 4,000 research and educational institutions throughout the country.[62] In 1991, NSF took on responsibility for coordinating and funding the management of the non-military portion of the Internet infrastructure. After Congress authorized NSF to allow commercial activity on the NSFNET in 1992[63] and firms saw the opportunities for commerce, education, and other activity, commercial entities began to build their own infrastructure networks. This led to the decommissioning of the NSFNET backbone in 1995, and in 1998, NSF's direct role in development of the Internet infrastructure ended.

B. U.S. Support of Development and Oversight of the Internet Technical Functions and the Domain Name System

At the same time that the U.S. Government was funding development of the ARPANET and NSFNET infrastructure, the Government also was supporting development of technical functions and systems needed to make these systems run smoothly—what became the IANA functions, the Internet domain name system, and the authoritative root zone file. These efforts were carried out in large part by a series of U.S. Government contracts and cooperative agreements. According to the available records and our interviews of key individuals involved at the time, these U.S. Government contract-funded efforts included the following:

1. The IANA technical functions

The concept of what later became known as the IANA functions was initially developed in the early 1970s by a team led by the late Dr. Jon Postel at the University of California at Los Angeles.[64] When Dr. Postel moved to the University of Southern California's Information

---

[62] The National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy also developed backbone facilities. The ARPANET was decommissioned in 1990.

[63] *See* Scientific and Advanced-Technology Act of 1992, Pub. L. No. 102-476, § 4, 42 U.S.C. § 1862(g).

[64] One of the documents authored by Dr. Postel, often cited as the beginning of what became the IANA functions, is Jon Postel, UCLA Computer Science Department, "Proposed Standard Socket Numbers," Request for Comments (RFC) 349 (May 30, 1972) (" I propose that there be a czar (me ?) who hands out official socket numbers for use by

Sciences Institute in 1977, this work moved with him;[65] the work was performed under various U.S. Defense Department-funded research projects. Development and implementation of the IANA functions continued at USC until around 1999, including through the final DARPA-USC contract awarded in 1995. This contract, for work on the Tera-node Network Technology (TNT) project, contained Task 4 requiring performance of "network infrastructure activities" including "acting as the Internet Assigned Numbers Authority." As discussed below, ICANN began taking over the IANA functions in December 1998 or January 1999 as part of the NTIA-led transition efforts.

2. The domain name system and the authoritative root zone file

One of the initial concepts of what became the domain name system and the authoritative root zone file was developed in 1983 by a team led by Dr. Paul Mockapetris, in collaboration with Dr. Postel and others, under a DARPA contract with USC.[66] The domain name system was initially created to support the ARPANET. Dr. Mockapetris introduced an updated domain name system in 1987, replacing the 1983 system. According to Dr. Mockapetris, these DARPA contracts did not require development of a specific product; rather, they were more general and called for "performance of Internet research," for example.

 By 1992, there was a need for expanded and coordinated network information services for the non-military Internet and, as noted above, NSF took on this role with its new statutory authority allowing commercial activity on the NSFNET. As part of its new role, NSF awarded a cooperative agreement to Network Solutions, Inc., effective January 1, 1993. Among other things, Network Solutions was responsible for managing the NSFNET and, through the InterNIC® Internet Network Information Center, providing second-level domain name registration and other services to the non-governmental community, in cooperation with USC. USC was carrying out the IANA functions led by Dr. Postel, including under the TNT contract as of 1995. DARPA and other DOD agencies also contracted with SRI International at this time to carry out certain domain name system functions, in coordination with Dr. Postel. Network Solutions' work under NSF continued until September 1998, when, as part of the NTIA-led transition efforts discussed below, NSF transferred responsibility for administering the cooperative agreement to NTIA.

II. The Decision to Relinquish the U.S. Government's Oversight Role

By the late 1990s, it became clear that the Internet could benefit not just the U.S. military and scientific communities that had developed it, but the commercial, education, and other communities as well. Some saw a need for a corresponding change in the oversight role still played by the U.S. Government. As NTIA described some of the concerns at the time:

> "From its origins as a U.S.-based research vehicle, the Internet is rapidly becoming an international medium for commerce, education and

---

standard protocols. This czar should also keep track of and publish a list of those socket numbers where host specific services can be obtained. . . .."), *available at* https://tools.ietf.org/html/rfc349 (last visited Sept. 1, 2016).

[65] An attorney for USC told us USC started performing the IANA functions in 1977 under various DOD contracts. *See* 2000 GAO Legal Opinion, *supra* note 59 at 18, n. 26.

[66] *See generally* Paul V. Mockapetris & Kevin J. Dunlap, "Development of the Domain Name System," 18 ACM SIGCOMM Computer Comm. Rev. 123 (Aug. 1988).

>communication. . . . As the Internet becomes commercial, it becomes less
>appropriate for U.S. research agencies to direct and fund these functions."[67]

On July 1, 1997, President Clinton issued a policy memorandum directing the Secretary of
Commerce to "support efforts to make the governance of the domain name system private and
competitive and to create a contractually based self-regulatory regime . . . ."[68] This policy
directive officially launched the United States' efforts to transition out of its contractual role and
responsibilities in the development, performance, and oversight of the Internet technical
functions.

In response to the President's policy directive, NTIA solicited public input in 1997 and 1998 on
how best to accomplish this transition[69] and issued a Statement of Policy in June 1998 (known
as the "White Paper") describing the public input it had received and laying out how it planned to
move forward with the transition.[70] Among these plans was to enter into an agreement with a
new, not-for-profit entity, referred to as the "new corporation" (and later as "NewCo"), that would
establish and coordinate a process to transition current U.S. Government management of the
domain name system based on the principles of stability, competition, bottom-up coordination,
and representation. As discussed below, that entity, formed later in 1998, was ICANN.

In September 1998, NSF and the Department of Commerce entered into a Memorandum of
Agreement transferring NSF's responsibility for administering the 1993 cooperative agreement
with Network Solutions to Commerce, as the lead agency responsible for the transition. NTIA,
charged with administering the agreement, modified it the following month by adding
Amendment 11. Among other things, Amendment 11 designated Network Solutions as the root
zone administrator and made it responsible for implementing changes to the authoritative root
zone file. Significantly, Amendment 11 required Network Solutions to request NTIA's "written
direction" before "making or rejecting any modifications, additions or deletions to the root zone
file." According to a former NTIA official involved at the time, this pre-authorization
requirement—which is the basis of NTIA's current control over changes to the authoritative root
zone file—was motivated in part by NTIA concerns that Network Solutions might attempt to
assert unilateral control over the root zone file.[71] NTIA subsequently reduced Network
Solutions' responsibilities under the cooperative agreement (*e.g.,* it scaled back the InterNIC®
services and took over management of the InterNIC® website) and Verisign replaced Network
Solutions as the awardee after it acquired Network Solutions in 2000. The cooperative
agreement currently is scheduled to expire on November 30, 2018, and may be extended by
Commerce under certain circumstances.

---

[67] NTIA, Statement of Policy, Management of Internet Names and Addresses, 63 Fed. Reg. 31741, 31741 (June 10, 1998) (known as the "White Paper").

[68] The White House, *Memorandum for the Heads of Executive Departments and Agencies* (July 1, 1997), *available at* http://clinton4.nara.gov/WH/New/Commerce/directive.html (last visited Sept. 1, 2016).

[69] *See* Request for Comment, Registration and Administration of Internet Domain Names, 62 Fed. Reg. 35896 (July 2, 1997); Request for Comment, Proposed Rule, Improvement of Technical Management of Internet Names and Addresses, 63 Fed. Reg. 8826 (Feb. 20, 1998) (known as the "Green Paper").

[70] NTIA White Paper, *supra* note 67.

[71] Another motivation, according to the former NTIA official, was to provide Network Solutions with a defense against allegations of antitrust violations. *See PGMedia, Inc. v. Network Solutions, Inc.*, 51 F. Supp. 2d 389, 403 (S.D.N.Y. 1999), *aff'd sub nom. Name.Space, Inc. v. Network Solutions, Inc.*, 202 F.3d 573 (2d Cir. 2000).

Also in September 1998, ICANN was formed as a not-for-profit "public benefit" corporation.[72] According to ICANN, its primary functions are: (1) to coordinate, at the top level, the global Internet's systems of unique identifiers (names, numbers and protocol parameters) and (2) to operate as a private sector-led, multistakeholder organization responsible for bottom-up policy development reasonably and appropriately related to these technical functions.[73]

On November 25, 1998, Commerce and ICANN signed a joint project agreement (JPA) for the "Domain Name System Project." The stated purpose of the project was to jointly "design, develop, and test the mechanisms, methods, and procedures that should be in place and the steps necessary to transition management responsibility for DNS functions now performed by, or on behalf of, the U.S. Government to a private-sector not-for-profit entity. Once testing is successfully completed, it is contemplated that management of the DNS will be transitioned to the mechanisms, methods, and procedures designed and developed in the DNS project." According to NTIA, ICANN began assuming the IANA responsibilities under the JPA.[74]

On December 24, 1998, ICANN and USC signed a Transition Agreement. The agreement provided for USC's transfer of its IANA-function responsibilities to ICANN as of January 1, 1999,[75] along with its IANA-related assets, including an IANA copyright and service mark and a license in other listed intellectual property, with an option to obtain title to that intellectual property.[76] Persons involved at the time told us that because the transition from NTIA to ICANN and the global multistakeholder community was planned to occur relatively quickly—to start in late 1998 and be completed in 1999 or 2000—no new contract was initially put in place following the DARPA-USC TNT contract. ICANN nevertheless began performing the IANA functions in late 1998 or early 1999 after it signed the December Transition Agreement with USC.[77] From this time until February 2000, ICANN performed the IANA functions without a formal U.S. Government contract; the only overarching ICANN agreement with the U.S. Government during this time was the November 1998 JPA.

On February 9, 2000, NTIA awarded ICANN the first in a series of contracts to perform the IANA functions on behalf of the U.S. Government. ICANN simultaneously exercised its option to acquire title to USC's intellectual property[78] and NTIA approved this acquisition, as well as

---

[72] ICANN was incorporated in California; its Articles of Incorporation state it is "not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable and public purposes."

[73] 2012 ICANN Contract Proposal, Vol. I, *supra* note 40, at 267.

[74] *See* note 40, *supra.*

[75] The effective date of the agreement was the later of January 1, 1999 or the date when Government approval was received. Persons involved at the time told us the November 25, 1998 JPA was considered to constitute that approval.

[76] The listed intellectual property included specific "computer programs, data, documents, protocols, processes, and other materials" as well as "[a]ll intellectual property rights (including all patents, copyrights, trademarks, service marks, and trade secret rights) in all computer programs, data, documents, protocols, and processes."

[77] ICANN indicates it began performing the IANA functions on December 24, 1998, the date of the USC-ICANN Transition Agreement. *See* 2012 ICANN Proposal, *supra* note 40, at 267-68 ("ICANN has successfully performed the IANA Functions since December 24, 1998 . . . Having assumed these key [USC] resources . . . ICANN was tasked, in December 1998, with the responsibilities of the IANA functions.").

[78] *See* Feb. 9, 2000 USC-ICANN Agreement and Assignment of Licensed Rights.

USC's transfer of its IANA-functions responsibilities, as part of the contract. NTIA awarded additional IANA functions contracts to ICANN in 2001, 2003, 2006, and 2012, with the current contract scheduled to expire on September 30, 2016, unless extended (NTIA may unilaterally extend through September 30, 2019). All of the NTIA contracts have been performed at no cost to the Government, although with NTIA's approval, they allow ICANN to charge fees for the IANA functions to third parties.[79]

On March 14, 2014, NTIA announced that it planned to proceed with the transition if a proposal were developed that met its criteria, including maintaining the security, stability, and resiliency of the Internet domain name system, maintaining the openness of the Internet, and establishing structures and procedures that are not led by governments or inter-governmental organizations. Following a two-year proposal development process coordinated by ICANN, the multistakeholder community submitted a proposal to the ICANN Board of Directors in early 2016 which it believed fulfilled NTIA's criteria. The Board submitted the proposal to NTIA on March 10 for its review and assessment, and NTIA reported to Congress and the public on June 9 that the proposal meets NTIA's 2014 criteria.

The key feature of the proposed transition is NTIA's relinquishment of its rights and responsibilities under its current contract with ICANN—there will no longer be any U.S. Government contract for performance of the IANA functions. NTIA's current cooperative agreement with Verisign also will require modification to eliminate NTIA's role in root zone management, but the agency and Verisign have not yet announced what specific changes will be made. In the meantime, ICANN has negotiated an agreement with Verisign to replace that portion of the NTIA-Verisign agreement and posted the draft agreement for public review.[80] According to ICANN, the replacement agreement with Verisign will go into effect upon expiration of the current NTIA-ICANN contract.

Finally, ICANN reported to NTIA on August 12, 2016 that all tasks remaining to be completed prior to the transition will be completed by September 30.[81] Based on this representation, NTIA advised several dozen Members of Congress on August 16 that it intends to allow its current contract with ICANN to expire as of October 1, barring any significant impediment. NTIA is prohibited by statute, through at least September 30, from using appropriated funds to relinquish its domain name and IANA functions responsibilities.

---

[79] As we previously reported, to date ICANN has not charged fees for these services. Rather, its revenue comes primarily from fees for other services charged to operators of generic top-level domains (such as Verisign, which operates .com, .net, and .name) and registrars for generic top-level domains (such as GoDaddy) that register new second-level domain names. *See* 2015 GAO Report at 13-18, 55-57.

[80] "Root Zone Maintainer Service Agreement," *available at* https://www.icann.org/iana_imp_docs/67-root-zone-maintainer-service-agreement-v-1-0 (last visited Sept. 1, 2016).

[81] These tasks do not, however, include addressing all of NTIA's recommendations regarding internal controls matters the agency identified in its assessment of the 2016 Transition Proposal. NTIA did not require that its internal controls recommendations be addressed as a pre-condition to the transition, and ICANN has indicated it will continue to consider NTIA's recommendations after the transition.

Exhibit E

QUARTERLY REPORT ON THE TRANSITION
OF THE STEWARDSHIP OF THE INTERNET ASSIGNED
NUMBERS AUTHORITY ("IANA") FUNCTIONS
(Q3 FY2016)

The Consolidated Appropriations Act, 2016, Public Law 114-113, directs the National Telecommunications and Information Administration ("NTIA") to report on all aspects of the proposed transition of the U.S. government's stewardship role over the IANA functions. This report covers activities from April 1, 2016 to June 31, 2016. NTIA's previous reports and detailed background can be found on NTIA's website.[1] As required by Public Law 114-113, NTIA will continue to update this report on a quarterly basis.

I.   Status of IANA Stewardship Transition Proposal

A. IANA Stewardship Transition Proposal Assessment

On March 10, 2016, ICANN delivered to NTIA the Internet multistakeholder community's proposal to transition the U.S. Government's stewardship role for the Internet Assigned Numbers Authority (IANA). Upon receiving the proposal, NTIA worked with U.S. Government agencies to review the proposal and ensure that it met the criteria outlined by NTIA in March 2014.[2] On June 9, 2016, NTIA announced that the proposal met its criteria.[3] Specifically, NTIA found that the proposal has broad community support and:

- Supports and enhances the multistakeholder model;
- Maintains the security, stability, and resiliency of the Internet Domain Name System (DNS);
- Meets the needs and expectations of the global customers;
- Maintains the openness of the Internet; and
- Does not replace NTIA's role with a government-led or intergovernmental organization solution.

NTIA also evaluated the proposal against relevant portions of an internal control framework, as recommended by the U.S. Government Accountability Office, [4] and found that the proposal adheres to internal control principles. In addition, a panel of corporate governance experts reviewed the ICANN accountability enhancements and concluded that the plan is consistent with sound

---

[1] These reports and other NTIA publications on this topic can be found at: http://www.ntia.doc.gov/category/iana-functions.

[2] *See* NTIA's March 2014 announcement at: http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions.

[3] *See* NTIA's June 9, 2016 announcement and assessment of the proposal at: https://www.ntia.doc.gov/press-release/2016/iana-stewardship-transition-proposal-meets-criteria-complete-privatization.

[4] *See* the U.S. Governmental Accountability Office's August 2015 report on Internet Management at: http://www.gao.gov/assets/680/672055.pdf.

principles of good governance.[5] NTIA's full assessment report is available at
https://www.ntia.doc.gov/files/ntia/publications/combined_iana_stewardship_transition_assessment
_report.pdf.

Industry and civil society stakeholders have praised the proposed transition and NTIA's
assessment.[6] For example, the Internet Association, Computer & Communications Industry
Association (CCIA), and the Internet Infrastructure Coalition (i2 Coalition) said "[t]he internet
economy applauds NTIA for its deliberative and thorough work" and further stated they believe the
transition proposal provides "the internet with the best path forward for self-governance."[7] The
U.S. Council for International Business said "NTIA's approval of the plan highlights its strength
and the broad support it has received from all stakeholders."[8] The U.S. Chamber of Commerce said
it "appreciates the thorough analysis put forth by NTIA" and that it continues to "support the long-
planned transition of IANA functions and the much-needed improvements to overall ICANN
accountability."[9] Freedom House stated that "NTIA's announcement brings us another step closer
to ensuring that the internet remains an open platform."[10] The Internet Society's Kathy Brown said
NTIA's assessment "reaffirms the value and power of the multistakeholder bottom-up process" and
"puts to rest any concern about capture or control of IANA by any one stakeholder."[11] Former
Homeland Security Secretary Michael Chertoff and retired Vice Chairman of the Joint Chiefs of
Staff James Cartwright recently stated that "we support this stewardship transition, as it will pave
the way for American values and the free and open Internet around the world."

B. NTIA Engagement

In releasing its assessment report, NTIA notified ICANN Board Chairman Steve Crocker that
NTIA had completed its assessment of the IANA Stewardship Transition Proposal and requested
that ICANN provide an implementation planning status report to NTIA by August 12, 2016.[12]
Chairman Crocker confirmed that ICANN will deliver this report[13] assessing whether ICANN can
complete all of the transition-related planning work by the September 30, 2016, expiration of the
IANA functions contract.

---

[5] *See* Corporate Governance Report at:
https://www.ntia.doc.gov/files/ntia/publications/attachment_6_corporate_governance_report.pdf.
[6] *See* NTIA Blog "What They're Saying: Reaction to NTIA's Assessment of the IANA Stewardship Transition
Proposal: https://www.ntia.doc.gov/blog/2016/what-they-re-saying-reaction-ntia-s-assessment-iana-stewardship-
transition-proposal.
[7] *See* the IA, CCIA, and i2 Coalition statement at: https://internetassociation.org/internet-association-ccia-i2coalition-
statement-on-the-ntia-report-on-the-icann-transition-proposals/.
[8] *See* USCIB's statement at: http://www.uscib.org/uscib-hails-us-approval-of-internet-stewardship-transition-proposal-
2/.
[9] *See* the U.S. Chamber of Commerce's statement at: https://www.uschamber.com/press-release/us-chamber-statement-
ntia-support-icann-transition-plan.
[10] *See* Freedom House's statement at: https://freedomhouse.org/article/us-moves-privatize-oversight-internet-domain-
name-system.
[11] *See* the Internet Society's statement at: https://www.internetsociety.org/blog/public-policy/2016/06/important-next-
step-iana-stewardship-transition-ntia-says-proposal-meets.
[12] *See* NTIA's letter to ICANN Board Chairman Steve Crocker at:
https://www.ntia.doc.gov/files/ntia/publications/crocker_transmittal_letter_20160609.pdf.
[13] *See* ICANN Board Chairman Steven Crocker's response to NTIA at:
https://www.icann.org/en/system/files/correspondence/marby-to-strickling-06jun16-en.pdf.

NTIA briefed Congressional staff on June 8, 2016, in advance of releasing its report. On June 9, 2016, NTIA officially notified Congress of the release of its assessment report and an outline of the next steps.[14] Additionally, NTIA sent a letter to Senators John Thune and Marco Rubio informing them that NTIA separately analyzed the recommendations they outlined in their July 2014 letter to ICANN and found that the IANA Stewardship Transition Proposal adequately addressed each recommendation.[15] NTIA also transmitted to Congress on June 9 an exchange of letters between NTIA and ICANN regarding the operation of U.S. Government-administered top-level domains (TLDs) reaffirming the U.S. Government's sole administrative authority over the .mil, .gov, .us, and .edu TLDs and that no change would be made to these TLDs without the express approval of the U.S. Government.[16]

NTIA attended ICANN56 in Helsinki, Finland from June 27 through June 30, 2016, during which it represented the U.S. Government on the Government Advisory Council (GAC) and monitored the deliberations of the Cross Community Working Group on Enhanced Accountability on further enhancements to ICANN's accountability and transparency.

II. Transition Timing and Next Steps

The next step in the transition is for ICANN to deliver its implementation status report on or around August 12, 2016. NTIA will continue to provide timely updates to Congress in addition to quarterly written reports as the process continues.

III. Conclusion

For the last 18 years, the U.S. Government has worked closely with businesses, civil society groups, governments, and technical experts to develop a multistakeholder, private sector-led system for the global coordination of the Internet DNS. NTIA's announcement in 2014 initiated the final step in the privatization process by asking ICANN to convene global stakeholders to develop a transition plan. The two years of effort by the Internet multistakeholder community to develop the transition plan reflect truly historic and unprecedented work. NTIA believes that the plan developed by the community has strengthened the multistakeholder process and will result in ICANN's becoming even more directly accountable to the customers of the IANA functions and to the broader Internet community. The proposal also ensures the continued leadership of the private sector in making decisions related to the technical underpinning of the Internet. NTIA appreciates

---

[14] *See* NTIA's letter to Members of Congress at:
https://www.ntia.doc.gov/files/ntia/publications/ntia_letter_to_congress_transmitting_ntias_assessment_of_iana_transition_proposal_06.09.16.pdf.

[15] *See* NTIA's letter to Senators Thune and Rubio at:
https://www.ntia.doc.gov/files/ntia/publications/ntia_letter_to_senators_thune_and_rubio_on_iana_transition_06.09.16.pdf.

[16] As stated in NTIA's June 9, 2016 letter to Members of Congress: "Also, to address questions raised by a few Members of Congress, please be assured the operation of and responsibility for the .mil and .gov domains will not be impacted by the transition. ICANN cannot reassign the .mil, .gov, .edu, or .us domains without the approval of the U.S. Government. However, to ease all concerns, NTIA and ICANN have reaffirmed that the U.S. Government is the sole administrator of .mil, .gov, .edu, and .us and that no change can be made to these domains without the express approval of the U.S. Government." *See* Exchange of Letters – U.S. Government Administered TLDs at:
https://www.ntia.doc.gov/page/exchange-letters-us-government-administered-tlds.

the interest of Congress in this important topic and its support for the multistakeholder approach to Internet governance.[17]

---

[17] *See* S.Con.Res.50, 112th Congress (2011-2012), *available at* https://www.congress.gov/bill/112th-congress/senate-concurrent-resolution/50/text.

Exhibit F

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

STATE OF ARIZONA;
STATE OF TEXAS
STATE OF OKLAHOMA; and
STATE OF NEVADA,
 	
          Plaintiffs,
 	
v.
 	
NATIONAL TELECOMMUNICATIONS
AND INFORMATION ADMINISTRATION
(NTIA); UNITED STATES OF AMERICA;
UNITED STATES DEPARTMENT OF
COMMERCE; PENNY PRITZKER, in her
Official Capacity as Secretary of Commerce;
LAWRENCE E. STRICKLING, in his Official
Capacity as Assistant Secretary for
Communications and Information and
Administrator of NTIA,
 	
          Defendants.
	CIVIL ACTION NO. _____

DECLARATION OF LESLIE WELCH

My name is Leslie Welch and I am over the age of 18 and fully competent to make this declaration and state the following:

1.   I am the Director of Operations for the Arizona Attorney General's Office (Office). In my capacity as Director, I oversee the Operations Division, which has responsibility among other areas for procurement and review and approval of expenditures by the Office. I therefore have first-hand knowledge that the Office has a .gov website, www.azag.gov, and pays approximately $125 per year as a domain name fee for that website. Attached as Exhibits 1 and

2 to this Declaration are copies of the Office's Requisition to pay the $125 annual fee for azag.gov, dated August 3, 2016, and a bank statement showing the Office's payment of that fee.

2. The office spends significant resources to promote its azag.gov website, including engaging in community outreach. The Office also uses the website to notify the public regarding issues of great importance, including the filing of particular lawsuits and receiving complaints related to consumer fraud and civil rights, among other things. The Office would therefore suffer substantial harm if the Office were not permitted to continue to have that website address.

3. I am aware that the United States' Government, through the dotgov.gov website for the General Services Administration, sets the domain name fee for the Office's website.

4. I am also aware that the National Telecommunications & Information Administration (NTIA) provides certain oversight of the Internet, including any changes to the .gov generic top level domain.

5. I am also aware that unless temporary relief is granted by September 30th, 2016, NTIA's contract with the Internet Corporation for Assigned Names and Numbers (ICANN) will end and NTIA's contractual rights providing oversight of the .gov generic top level domain under that contract will have been forfeited immediately.

6. After federal Government oversight is lost, I am aware of no means by which federal government oversight and protection of the interests of the Office could be restored.

7. The absence of federal government oversight deprives the Office of protection from the federal government against interference with the Office's ability to communicate with its citizens, for example if ICANN disagrees with the content of the Office's speech. Moreover, ICANN could indirectly interfere with the Office's ability to communicate with its citizens by precipitously increasing the domain name fee for all .gov domain names.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 28th day of September, 2016

_____
LESLIE WELCH

EXHIBIT 1

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
Operations Division / Procurement Section

REQUISITION

000200

DIVISION TRACKING NO.: 5238179   **PURCHASE ORDER NO.:** E17

VENDOR INFORMATION			
VENDOR NO.:		**CONTRACT NO.:**	
NAME:	Visa P-card DOTGOV	**ADDRESS:**	

REQUESTOR/ SHIP-TO/ BILLING INSTRUCTIONS: F.O.B. DESTINATION

REQUESTOR		SHIP TO	BILL TO:
Date:	8/3/2016	Office of the Attorney General	Office of the Attorney General
Name:	Brenda Case	Attn: John Abretske	Attn: Accounts Payable
DIV/SEC:	OPS/ISS	15 S 15th Ave, Basement	1275 W Washington Street
Phone:	(602) 542-7973	Phoenix, AZ 85007	Phoenix, AZ 85007

Qty	Model #	Description	Unit Price	Taxable	Extended Price
1		AGAZ.GOV	$ 125.00	0.000	$ 125.00
				0.000	$ 0.00
1		AZAG.GOV	$ 125.00	0.000	$ 125.00
				0.000	$ 0.00
				0.000	$ 0.00
				0.083	$ 0.00
				0.000	$ 0.00
				0.083	$ 0.00
				0.000	$ 0.00
				0.083	$ 0.00
				0.083	$ 0.00
				0.083	$ 0.00

Comments and/or Special Instructions:		
See attached receipt. Domain Fees.	Sub Total	$ 250.00
	Delivery	
	Grand Total	$ 250.00

FUND SOURCE

FY	FUNCTION	AMT OR %	FY	FUNCTION	AMT OR %
	ICAB20978	(00)		8581	

The State of Arizona's Uniform Terms and Conditions are incorporated into this purchase order as if fully set forth herein and prevail in the case of conflict. Terms may be obtained and downloaded https://spo.az.gov/administration-policy/state-procurement-resource/standard-forms-and-documents or call 602.542.8030 to receive the documents in an alternative form.

SECTION/DIVISION MANAGER APPROVAL

Signature certifies that this expenditure is for valid public purpose & is consistent with any applicable statutes, laws, appropriations, grants & contracts.

Section Mgr.:	Date: 8-3-16	Division Mgr.:	Date:

PROCUREMENT AUTHORIZATION

Approved by:	Authorized Procurement Officer	Date: 8/8/16

Fees - DOTGOV

Payment Status Summary			
Total Domains Submitted:	2	**Total Amount Submitted:**	$250.00
Total Domains Paid:	2	**Total Domains Failed:**	0
Total of All Successful Charges:	$250.00		

Domain Name	Payment Status	Amount
AGAZ.GOV	Completed	$ 125.00
AZAG.GOV	Completed	$ 125.00

Rezek, Pamela

From:	registrar@dotgov.gov
Sent:	Wednesday, August 03, 2016 9:50 AM
To:	Rezek, Pamela
Subject:	Invoice for AGAZ.GOV

DOTGOV.GOV DOMAINS   INVOICE

===

This payment was SUCCESSFULLY PROCESSED!

Date: Wed Aug 03 09:41:43 UTC 2016
Invoice#: 1789628
Quantity: 1 Year(s)
Item Code: .gov-renew
Description: AGAZ.GOV
Price each: $125.00
Amount: $125.00

Total: $125.00
Payments/Credits: -$125.00
Balance Due: $0.00

Please visit www.dotgov.gov for more details.
If you have any questions regarding your .GOV domain name or account, please contact the .GOV Help Desk by e-mail
at: registrar@dotgov.gov or by telephone at 877-734-4688.

Sincerely,
.GOV Customer Service
registrar@dotgov.gov

Rezek, Pamela

From:	registrar@dotgov.gov
Sent:	Wednesday, August 03, 2016 9:50 AM
To:	Rezek, Pamela
Subject:	Invoice for AZAG.GOV

DOTGOV.GOV DOMAINS   INVOICE
==
This payment was SUCCESSFULLY PROCESSED!

Date: Wed Aug 03 09:41:44 UTC 2016
Invoice#: 1789631
Quantity: 1 Year(s)
Item Code: .gov-renew
Description: AZAG.GOV
Price each: $125.00
Amount: $125.00

Total: $125.00
Payments/Credits: -$125.00
Balance Due: $0.00

Please visit www.dotgov.gov for more details.
If you have any questions regarding your .GOV domain name or account, please contact the .GOV Help Desk by e-mail
at: registrar@dotgov.gov or by telephone at 877-734-4688.

Sincerely,
.GOV Customer Service
registrar@dotgov.gov

1

EXHIBIT 2

U.S.bank.

U.S BANCORP SERVICE CENTER
P.O. Box 6343
Fargo, ND 58125-6343

AZ - AGA

ACCOUNT NUMBER	4246-0400-1493-8494
STATEMENT DATE	08-08-16
TOTAL ACTIVITY	$1,970.85

000001835 01 AV 0.376 106481629807552 P
JOHN ABRETSKE
ATTORNEY GENERAL
1275 WEST WASHINGTON
PHOENIX AZ   85007-2926

"MEMO STATEMENT ONLY"
DO NOT REMIT PAYMENT

NEW ACCOUNT ACTIVITY

POST DATE	TRAN DATE	TRANSACTION DESCRIPTION	REFERENCE NUMBER	MCC	AMOUNT
07-12	07-11	MAILCHIMP MAILCHIMP.COM GA PUR ID: 10594219-4501437 TAX: 0.00	24692166193000579046243	7399	75.00
07-18	07-15	MICROSOFT *ANSWER DESK 800-642-7676 WA PUR ID: Z10BL4WYVOPI TAX: 0.00	24430996197400323047427	4816	499.00
07-18	07-16	AMAZON MKTPLACE PMTS AMZN.COM/BILL WA PUR ID: 104-2143140-36630 TAX: 0.00	24692166198000200669475	5942	433.85
07-18	07-17	AMAZON MKTPLACE PMTS AMZN.COM/BILL WA PUR ID: 104-7802076-53642 TAX: 0.00	24692166199000697916982	5942	18.45
07-19	07-18	EIG*MYDOMAIN 866-5392854 MA PUR ID: 76496886 TAX: 0.00	24906416200028265640427	5968	12.59
07-22	07-22	DMI* DELL K-12/GOVT 800-981-3355 TX PUR ID: N/A-ONLINE CUSTOM TAX: 16.11	24692166204000464162409	5045	220.06
07-26	07-26	DMI* DELL K-12/GOVT 800-981-3355 TX PUR ID: N/A-ONLINE CUSTOM TAX: 3.16	24692166208000769681588	5045	43.15
07-27	07-27	DMI* DELL K-12/GOVT 800-981-3355 TX PUR ID: N/A-ONLINE CUSTOM TAX: 4.34	24692166209000305035546	6045	59.33
07-27	07-27	DMI* DELL K-12/GOVT 800-981-3355 TX PUR ID: N/A-ONLINE CUSTOM TAX: 1.82	24692166209000305035561	5045	24.81
08-01	07-29	CANYON OFFICE SOLUTIONS 480-335-8046 AZ PUR ID: 334959 TAX: 0.00	24828246211980015390245	5943	322.54
08-03	08-03	DMI* DELL K-12/GOVT 800-981-3355 TX PUR ID: N/A-ONLINE CUSTOM TAX: 0.88	24692166216000316204892	5045	12.05
08-04	08-03	VSN*DOTGOVREGISTRATION 877-734-4688 VA PUR ID: AS0CE84F42DE TAX: 0.00	24692166216000718293022	4816	125.00

Default Accounting Code:

CUSTOMER SERVICE CALL 800-344-5696	ACCOUNT NUMBER 4246-0400-1493-8494		ACCOUNT SUMMARY	
			PREVIOUS BALANCE	$.00
	STATEMENT DATE	DISPUTED AMOUNT	PURCHASES & OTHER CHARGES	$1,970.85
	08-08-16	$.00		
SEND BILLING INQUIRIES TO:	AMOUNT DUE		CASH ADVANCES	$.00
	$0.00		CASH ADVANCE FEE	$.00
C/O U.S. BANCORP SERVICE CENTER, INC U.S. BANK NATIONAL ASSOCIATION P.O. BOX 6335 FARGO, ND 58125-6335	DO NOT REMIT		CREDITS	$.00
			TOTAL ACTIVITY	$1,970.85

usbank.

Account Name:	JOHN ABRETSKE
Company Name:	AZ - AGA
Account Number:	4246-0400-1493-8494
Statement Date:	08-08-16

		NEW ACCOUNT ACTIVITY			
POST DATE	TRAN DATE	TRANSACTION DESCRIPTION	REFERENCE NUMBER	MCC	AMOUNT
08-04	08-03	VSN*DOTGOVREGISTRATION 877-734-4688 VA PUR ID: AR0CD901074A TAX: 0.00	24692166216000718293030	4816	125.00