

COPY

1 JESSE W. MARKHAM, JR. (CA SBN 87788)  
2 WILLIAM L. STERN (CA SBN 96105)  
3 JENNIFER LEE TAYLOR (CA SBN 161368)  
4 KEITH L. BUTLER (CA SBN 215670)  
5 JMarkham@mof.com  
6 MORRISON & FOERSTER LLP  
7 425 Market Street  
8 San Francisco, California 94105-2482  
9 Telephone: 415.268.7000  
10 Facsimile: 415.268.7522

11 Attorneys for Plaintiff  
12 COALITION FOR ICANN TRANSPARENCY INC.

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION

16 COALITION FOR ICANN TRANSPARENCY  
17 INC., a Delaware corporation,

18 Plaintiff,

19 v.

20 VERISIGN, INC., a Delaware corporation;  
21 INTERNET CORPORATION FOR ASSIGNED  
22 NAMES AND NUMBERS, a California  
23 corporation,

24 Defendants.

Case No.

**DECLARATION OF DR.  
MICHAEL A. GEIST IN SUPPORT  
OF THE COALITION FOR ICANN  
TRANSPARENCY'S *EX PARTE*  
APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER**

25 I, Dr. Michael A. Geist, hereby declare:

26 1. I am a law professor at the University of Ottawa, Faculty of Law, where I hold the  
27 Canada Research Chair in Internet and E-Commerce Law, a Director of the Canadian Internet  
28 Registration Authority, and a member of the Advisory Council to the .org Public Interest  
Registry. I have studied, lectured, and written extensively about Internet issues, including the  
domain name registration system since 1997. A copy of my curriculum vitae is attached hereto  
as Exhibit A. As a result of my extensive work in this field, I am familiar with the history and  
operation of the domain name registration system and with the registry agreements governing the

1 operation of the .com and .net registries, including the proposed .com agreement. I have personal  
2 knowledge of the facts stated herein and could testify competently to them if called to do so.

3 **A Brief Explanation of the Internet Address System**

4 2. The Internet is a network of interconnected computers, each of which has a unique  
5 numerical address used to communicate with other computers when connected to the Internet.  
6 These addresses are known as Internet Protocol ("IP") addresses and each one consists of a string  
7 of four sets of numbers, separated by periods. 64.233.161.147 is an example of an IP address.

8 3. These numerical IP addresses are difficult for Internet users to remember, so a user  
9 friendly system was developed, overlaying the actual IP address system with an alpha-numeric  
10 domain name system. Under this system, a single alpha-numeric domain name is associated with  
11 specific IP address. For example, IP address 64.233.161.147 is more commonly known as  
12 google.com.

13 4. These alpha-numeric domain names are also separated by periods (or dots). Top-  
14 level domains ("TLDs") are found to the right of the period. They are either generic TLDs, such  
15 as .com, .gov, .net, .mil, and .biz, or country code TLDs, such as .us, .uk, and .ca. Second-level  
16 domains ("SLDs") are those domains immediately to the left of the top-level domains, such as  
17 "uscourts" in "uscourts.gov." The SLDs identify the host computers and individual websites  
18 under each top level domain. Some of the TLDs (such as .gov, .edu., and .mil) are restricted to  
19 certain types of organizations, while other TLDs (such as .org, .net, and .info) were designed to  
20 indicate the type of organization that is likely to use them but may be owned by anyone. The  
21 .com and .biz TLDs are most commonly used by commercial enterprises.

22 5. Because each domain name refers to a single IP address, each alpha-numeric  
23 domain name must be unique. For the system to work, a framework is needed to track which  
24 alpha-numeric domain name is associated with which IP address. That function is performed by a  
25 domain name registry. The registry is responsible for maintaining a database of domain names  
26 and associated IP addresses within a single TLD.

1                   **Historical Control of the Internet Address System**

2           6.       The Internet as we know it today grew out of a system that was set up and operated  
3 by the U.S. military, with all costs borne by the U.S. military. In the early 1990's the U.S.  
4 military contracted with the National Science Foundation ("NSF") to take over administrative  
5 functions for the civilian Internet (including the .com, .net, .org, .edu, and .gov. top level  
6 domains), and NSF solicited bids for the services necessary to fulfill its contractual obligations.  
7 Network Solutions bid for and received the contract for registration services, touting its previous  
8 experience providing similar services to the military Internet (the .mil top level domain). As a  
9 result of this successful bid, Network Solutions became responsible for both registering domain  
10 names (registrar services) and maintaining the registry linking domain names to specific IP  
11 addresses (registry services), in essence, controlling the internet root server system for the .com,  
12 .net, and .org domains.

13           7.       There was initially no charge to register a domain name through Network  
14 Solutions, but NSF permitted Network Solutions to begin charging fees to register.com, .net, and  
15 .org domain names in the mid-1990's. The initial registration fee was \$100 for two years.

16           8.       In 1997 the Clinton Administration chose the Department of Commerce to take  
17 over the role of NSF, and a July 1, 1997 directive issued by President Clinton authorized the  
18 Secretary of Commerce to "support efforts to make the governance of the domain name system  
19 private and competitive and to create a contractually based self-regulatory regime that deals with  
20 potential conflicts between domain name usage and trademark laws on a global basis." The  
21 Department of Commerce proposed and eventually created a private not-for-profit corporation  
22 that would be responsible for overseeing the policy and operation of the domain name and IP  
23 address system: the Internet Corporation for Assigned Names and Numbers ("ICANN").

24           9.       Under a Memorandum of Understanding (the "MOU") between the Department of  
25 Commerce and ICANN, ICANN administers policy for the domain name and IP address system  
26 subject to the principles set forth in the MOU: stability; competition; private, bottom-up  
27 coordination; and representation. The MOU prohibits ICANN from "unjustifiably or arbitrarily"  
28 injuring "particular persons or entities or particular categories of persons or entities" or acting "in

1 a non-arbitrary and reasonable manner with respect to ... any ... activity related to the DNS  
2 project.” Attached hereto as Exhibit B is a true and correct copy of the MOU.

3 10. ICANN’s bylaws also explicitly recognize “core values,” which “should guide the  
4 decisions and actions of ICANN,” including:

5 a. “Where feasible and appropriate, depending on market mechanisms to promote  
6 and sustain a competitive environment.”

7 b. “Introducing and promoting competition in the registration of domain names  
8 where practicable and beneficial in the public interest.”  
9

10 Attached hereto as Exhibit C is a true and correct copy of excerpts from ICANN’s bylaws.

11 11. ICANN’s mandate was set in response, at least in part, to the express interests of a  
12 large number of stakeholders, including Internet users, domain name registrars, technical groups,  
13 and intellectual property law associations. To ensure that ICANN adequately represented the  
14 interests of the various stakeholders in its decision-making process, ICANN was designed as a  
15 self-regulated (i.e., no government interference) entity with a consensus-based approach in which  
16 public policy discussion was open to all. The governance structure was also designed to ensure  
17 that all stakeholders were represented at the board level either through direct appointment from  
18 stakeholder constituencies, or through an on-line election to permit Internet users to elect board  
19 representatives on a regional basis. ICANN, however, did not fulfill its end of the bargain as it  
20 failed to hold on-line elections for several seats, and ultimately altered its governance structure,  
21 eliminating on-line elections in the process.

22 12. At about the same time, NSF and Network Solutions amended their agreement to  
23 require Network Solutions to design a shared registry system that would allow competing  
24 accredited registrars to register .com, .net, and .org domain names. Although Network Solutions  
25 was permitted to become an accredited registrar in the shared registry system, its registry contract  
26 with ICANN was purportedly renewable only if it divested itself of its registrar business.

27 13. By 2001, ICANN had accredited over 180 registrars who were able to compete to  
28 provide domain name registrations to end users. Also in 2001, ICANN and VeriSign (the

1 successor to Network Solutions) entered into three new registry agreements for the .com, .net, and  
2 .org domains. These contracts permitted VeriSign to continue to operate the registries for these  
3 domains without divesting itself of its registrar business, but required some structural separation  
4 of VeriSign's registry and registrar businesses. The .org agreement was set to expire first, with  
5 the intention that VeriSign would relinquish its right to operate the .org registry. The .net  
6 agreement was set to expire on June 30, 2005, with the intention that ICANN would then solicit  
7 competitive proposals to operate the registry. The .com agreement was set to expire in 2007, with  
8 a presumption favoring renewal of VeriSign's right to operate the .com registry, but also allowing  
9 ICANN to solicit competing proposals under certain circumstances, including a material breach  
10 of the .com registry agreement by VeriSign. ICANN has, in fact, alleged that VeriSign has taken  
11 actions inconsistent with material provisions of the .com registry agreement and that these actions  
12 constitute multiple breaches of the agreement.

### 13 The Present

14 14. Prior to the expiration of the .net registry agreement earlier this year, ICANN  
15 solicited and received five competing bids to operate the .net registry. VeriSign submitted the  
16 winning bid, and signed a new .net registry agreement with ICANN. Although public comment  
17 was solicited on a draft agreement, important provisions were altered in the final agreement,  
18 which was signed by ICANN's board without further opportunity for public review or comment.  
19 The provisions that were added or significantly altered included the fee provision, the renewal  
20 provision, the termination provision, and the definition of consensus policies. Attached as  
21 Exhibit D is a computer-generated comparison of the draft agreement that was distributed for  
22 public comment and the final .net registry agreement that was approved by ICANN. After the  
23 completion of the competitive bidding process, the .net registry fees fell from \$6.00 (under the  
24 2001 agreement) to \$4.25 for the first 18 months under the 2005 agreement. However, beginning  
25 in 2007, the price controls set forth in the 2005 .net Agreement will be eliminated, and the only  
26 restriction will be that VeriSign is required to charge the same price to all registrars and to offer a  
27 volume discount only if the same opportunities to participate are offered to all ICANN-accredited  
28 registrars. Six months' prior notice is also required for any price adjustments.

1           15.     Many of the remaining provisions in the 2005 .net registry agreement mirror the  
2 provisions in the proposed 2005 .com registry agreement, discussed below, and differ materially  
3 from the current .com registry agreement. I have highlighted some of the differences between the  
4 current .com registry agreement and the proposed 2005 .com registry agreement in a chart,  
5 attached hereto as Exhibit E.

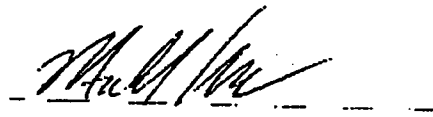
6           16.     After ICANN and VeriSign engaged in extensive disputes and ultimately litigation  
7 over the scope of the definition of "registry services" in the 2001 .com registry agreement, the  
8 two parties entered into a settlement agreement. As part of the settlement, ICANN and VeriSign  
9 proposed extensive changes to the .com registry agreement that go far beyond their dispute over  
10 the definition of "registry services." Instead of merely resolving their dispute, on October 24,  
11 2005, ICANN and VeriSign announced that they had agreed to terms for the new .com registry  
12 agreement to take effect immediately upon its execution, even though the existing .com registry  
13 agreement is not set to expire until 2007. The proposed 2005 .com registry agreement not only  
14 expands the definition of "registry services," but includes unrelated provisions that substantially  
15 increase registration fees and establish a virtually perpetual renewal of the agreement without  
16 allowing competitive bidding, among other provisions as described more fully in Exhibit E.

17           17.     ICANN set a period of approximately two weeks for public review and comment,  
18 prior to approval by ICANN's Board of Directors. ICANN has received an outpouring of public  
19 comment on the agreement, with most of the comments focusing on (1.) the increase in registry  
20 fees proposed under the new agreement, (2.) the renewal provision of the agreement, which all  
21 but eliminates the possibility that there will ever be competitive bidding for the .com registry in  
22 the future, (3.) the expanded definition of registry services that will permit VeriSign to profit by  
23 leveraging its unique and complete control of the registry, (4.) ICANN's abdication of its duty to  
24 support competition, and (5.) the lack of public involvement prior to the release of the proposed  
25 2005 .com registry agreement. Presumably in light of the outpouring of comments, ICANN has  
26 since extended the public comment period until its next meeting in Vancouver, British Columbia,  
27 scheduled to begin on November 30, 2005. The ICANN Board of Directors is scheduled to meet  
28 during the Vancouver meeting.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 23<sup>rd</sup> day of November, 2005, in Ottawa, Ontario, Canada.



Dr. Michael A. Geist

# EXHIBIT A



**DR. MICHAEL A. GEIST**  
**University of Ottawa Law School, Common Law Section**  
**57 Louis Pasteur St.**  
**Ottawa, ON, K1N 6N5**  
**(613) 562-5800, x3319**  
**email: mgeist@uottawa.ca**  
**Web: <http://www.michaelgeist.ca>**

**A. Education**

*J.S.D.*, Columbia University, School of Law, 2002

*LL.M.*, Columbia University, School of Law, 1998

*LL.M.* in Commercial and European Union Law, Wolfson College, University of Cambridge, 1994

*Graduate Legal Research Scholar* (“Kenkyusei”), Kobe University Faculty of Law, 1992-93

*LL.B.*, Osgoode Hall Law School, York University, 1992

*Chinese Law Summer Program*, East China Institute of Politics and Law, Shanghai, PRC, 1990

*Political Science Major*, University of Western Ontario, 1987-89

**B. Employment**

*Canada Research Chair in Internet and E-commerce Law*, University of Ottawa, Faculty of Law, Common Law Section, 2003 - present

*Associate Professor*, University of Ottawa, Faculty of Law, Common Law Section, 2002 – present

*Technology Counsel*, Osler, Hoskin & Harcourt LLP, 2002 - 2004

*Assistant Professor*, University of Ottawa, Faculty of Law, Common Law Section, 1998-2002

*Acting Director*, Ontario Research Network for E-commerce (ORNEC), 2001 - 2002

*Director of E-Commerce Law*, Goodmans LLP, Toronto, 2000 – 2002

*Associate-in-Law*, Columbia University, School of Law, 1996-98

*Assistant Professor*, Dalhousie University, Faculty of Law, 1995-96

*Articling Associate*, Goodman Phillips & Vineberg, Toronto, Ontario 1994-95

**C. Publications**

## **I. Books**

Michael Geist, Internet Law in Canada, 3rd Edition, Captus Press, 2002 (925 pp.)

Michael Geist, Internet Law in Canada, 2<sup>nd</sup> Edition, Captus Press, 2001 (876 pp.)

Michael Geist, Internet Law in Canada, Captus Press, 2000 (747 pp.)

## **II. Book Chapters**

*National Governments and Country Code Top Level Domains: A Global Survey*, in Internet Governance: A Grand Collaboration (D. MacLean, ed.) (New York, UN ICT Task Force) 282 – 90 (2004).

*The Shift Toward “Targeting” For Internet Jurisdiction* in Who Rules the Net? Essays on Internet Governance and Jurisdiction (A. Thierer and C. Wayne Crews Jr. eds.) (Washington, DC: Cato Institute) 91 - 118 (2003).

*On Target? The Shifting Standards for Determining Internet Jurisdiction* in Communications Policy and Information Technology: Promises, Problems, Prospects (L.F. Cranor and S. Greenstein, eds.) (Boston: MIT Press) 65 – 102 (2002).

## **III. Scholarly Articles**

*The Long Arm of the USA Patriot Act: A Threat to Canadian Privacy*, co-authored with Milana Homs, forthcoming UNB Law Journal (2005)

*Untouchable? A Canadian Perspective on the Anti-Spam Battle*, forthcoming 3 University of Ottawa Law and Technology Journal (2005)

*Computer and E-Mail Workplace Surveillance in Canada: The Shift From Reasonable Expectation of Privacy to Reasonable Surveillance*, 82 Canadian Bar Review 151-89 (2003)

*Cyberlaw 2.0*, 44 Boston College Law Review 323 – 58 (2003)

*Fair.com? An Examination of the Allegations of Systemic Unfairness in the ICANN UDRP*, 27 Brooklyn Journal of International Law 903-38 (2002)

*Is There a There There: Towards Greater Certainty for Internet Jurisdiction*, 16 Berkeley Technology Law Journal 1345-1406 (2001)

*When Dot-Coms Die: The E-commerce Challenge to Canada’s Bankruptcy Laws*, 37 Canadian Business Law Journal 34 – 74 (2002)

*Old Copyright Law And New Technologies: Canadian Copyright Reform In The Digital Age*, Transactions of the Royal Society of Canada 69-101 (Toronto: University of Toronto Press) (2001)

*iCraveTV and the New Rules of Internet Broadcasting*, 23 University of Arkansas at Little Rock Law Review 223-42 (2000)

*The Reality of Bytes: Regulating Economic Activity in the Age of the Internet*, 73 Washington Law Review 521- 74 (1998)

*Where Can You Go Today?: The Computerization of Legal Education from Workbooks to the Web*, 11 Harvard Journal of Law and Technology 141- 83 (1997)

*Balanced Budget Legislation: An Assessment of the Recent Canadian Experience*, 29 Ottawa Law Review 1- 38 (1997)

*Towards a General Agreement on the Regulation of Foreign Direct Investment*, 26 Law and Policy in International Business 673 - 717(1995)

*Foreign Direct Investment in Japan: A Guide to the Legal Framework*, 9 Banking and Finance Law Review 305 – 57 (1994)

#### **IV. Ongoing Publications**

*Columnist, Law Bytes*, Toronto Star, 2003 – present

*Columnist, Cyberlaw*, Ottawa Citizen, 2005 - present

*Columnist, Cyberlaw*, Globe and Mail, 1999-2002

*Creator, Developer, and Consulting Editor*, BNA's Internet Law News, 1999–present

*Creator & Author*, Canadian Internet Law Resource Page, September 1998 – present (<http://www.cilrp.org>)

*Creator & Author*, UDRPInfo.com, August 2001 – present (<http://www.udrpinfo.com>)

*Creator & Author*, ccTLD Governance Project, November 2002 – present (<http://www.cctldinfo.com>)

*Creator & Author*, Privacyinfo.ca, November 2002 – present (<http://www.privacyinfo.ca>)

#### **V. Editorial Appointments**

*Editor-in-Chief*, Canadian Privacy Law Review (Butterworths), 2003 - present

*Editor-in-Chief*, Internet and E-commerce Law in Canada (Butterworths), 2000 - present

*Technology Law Editor*, Canadian Business Law Journal, 2001 - present

*Editorial Board Member*, E-Commerce and Law Report (BNA), 2000 - present

*Editorial Board Member*, Journal of Internet Law (Aspen), 2000 - present

*Editorial Board Member*, Internet Law and Business (Computer Law Reporter), 2000 - present

*Editorial Board Member*, Cyberspazio e Diritto - Cyberspace and Law (Italy), 2000 – present

*Contributing Editor*, Canadian Journal of International Business Law and Policy, 1996-98

*Foreign Law Editor*, Columbia Journal of Asian Law, 1996-97

## **VI. Conference Proceedings**

*Copyright & Privacy – Through the Copyright Lens* (Sarah Deutsch et. al.) 4 J. Marshall Rev. Intell. Prop. L. 212 (2005)

*Copyright & Privacy – Through the Technology Lens* (Michael Geist et. al.) 4 J. Marshall Rev. Intell. Prop. L. 242 (2005)

Discussant remarks from *Canada's Intellectual Property Framework: A Comparative Overview, International Conference on Intellectual Property and Innovation in the Knowledge Based Economy* (forthcoming 2004)

*Internet Jurisdiction Law in Canada, Science, Truth & Justice, Canadian Institute for the Administration of Justice Annual Conference* (2001)

*Law on the Web: Tracing the Critical Role of Legal Education, Japan Online Law International Symposium*, (1999)

## **VII. Shorter Articles, Columns, and Opinion Pieces**

*Copyright Reform is not a Spectator Sport*, Canadian Association of University Teachers Bulletin (November 2004)

*A Balanced Approach to Reforming Copyright Law*, University Affairs, 28 – 30 (October 2004)

*The Long Arm of the USA Patriot Act: A Threat to Canadian Privacy?*, 1 Canadian Privacy Law Review 133 – 43 (with Milana Homs) (October 2004)

*Long Arm of U.S. Law Poses Canadian Privacy Risk*, 4 Privacy Advisor, 1 – 4 (August 2004)

*In Web Disputes, U.S. Law Rules the World*, 4 World Internet Law Report 17-18 (March 2003)

*Taxation Without Representation on the Net*, Managing Intellectual Property 4 (September 2002)

*Shift to More Workplace Privacy Protection*, CCH Labour Notes 1217 (August 19, 2002)

*Fairness and the ICANN UDRP*, 3 Internet Law & Business 181-91 (January 2002)

*The Canadian Electoral Process in Cyberspace*, 2 McGill Int'l Rev. 18-9 (Winter 2001)

*E-Trail Traces Raise Legal Issues*, 4 J. of Internet L. (7) 27-8 (Jan. 2001)

*The Future of Internet and E-commerce Law*, The Future of Financial Services 215-7 (KPMG 2000)

*E-Commerce Jurisdiction: The Canadian Approach*, 4 J. of Internet L. (2) 9-11 (Aug. 2000)

*Developing a Law School Web Culture Through Online Law*, JURIST: Law Professors on the Web, (March 1999)

i. Toronto Star Law Bytes Columns

*Copyright's Convergence* (April 4/05)

*Canada Rejects One-Sided Approach to Copyright Reform*(March 28/05)

*New Accountability Needed for Net Service Providers* (March 21/05)

*Keeping An Eye on a Canadian Prize* (March 14/05)

*What Do You Want the Internet To Be?* (March 7/05)

*Let Towns, Cities Provide Cheap, Everywhere Broadband* (February 28/05)

*Music Industry Doesn't Need More Government Protection* (February 21/05)

*Revise Privacy Law to Protect Public, Not Offenders* (February 14/05)

*No Good Reason to Bow to U.S. Pharma's Lobbying* (February 7/05)

*TPMs – A Perfect Storm for Consumers* (January 31/05)

*Why Ottawa Should Stand On Guard in RIM Case* (January 24/05)

*Fairness Calls for Fairer Rules* (January 17/05)

*National Web Library Do-able, Affordable, Visionary* (January 10/05)

*Banner Year for Digital Decisions* (December 20/04)

*CIBC Breach Spotlights Hole in Privacy Law* (December 13/04)

*Time Music Industry Focused on Product* (December 6/04)

*Numbers Don't Crunch Against Downloading* (November 29/04)

*Dot-ca Privacy Plan a Canadian Compromise* (November 22/04)

*Internet-Age Aid For Canadian Culture* (November 15/04)

*Advancing Technology Threatens Cultural Policy* (November 8/04)

*Who Should Own Your Wedding Pictures?* (November 1/04)

*Revise Privacy Law to Expose Offenders, Block Snoops* (October 25/04)

*Privacy Law Perversely Protects Those Who Break It* (October 18/04)

*Court Decision Foreshadows Policy Debate* (October 11/04)

*Why Canada Should Follow UK, Not US, on Copyright Policy* (October 4/04)

*Tackling Innovation Deficit a Balancing Act* (September 27/04)

*No Need for Dickensian Approach to Voice Via Web* (September 20/04)

*Mr. Minister, Please Protect the Public Interest* (September 6/04)

*Music Industry Abruptly Changes Tune on Ringtones* (August 23/04)

*A Blueprint for Better, and Fairer, Copyright Law* (August 9/04)

*U.S. Laws Put Canadian Privacy at Risk* (July 26/04)

*Bridging the Digital Divide* (July 19/04)

*Balancing Rights of Creators, Users* (July 5/04)

*Parties the Same? Not on Tech Issues* (June 21/04)

*Copyright Reform Needs Balanced Approach* (June 14/04)

*Will Copyright Reform Chill Use of the Web?* (May 31/04)

*West Urged To Share Internet Governance* (May 17/04)

*A Recipe For Battling Spam in Canada* (May 3/04)

*Weak Enforcement Undermines Privacy Laws* (April 19/04)

*World Resists One-Size-Fits-All Web Laws* (April 5/04)

*Low Tech Case Has High Tech Impact* (March 22/04)

*Music Licensing Would Be Viable For All* (March 8/04)

*Web Decision Extends Long Arm of Ontario Law* (February 16/04)

*Canada Badly Needs A National Standard* (February 2/04)

*Fighting Privacy Law Questionable* (January 19/04)

*Contentious Laws Will Mould Technology* (January 5/04)

*'D' Is For Disputes That Shape Our Lives* (December 15/03)

*Think Web's Virtually Government Free? Think Again* (December 1/03)

*Name Names, Or Privacy Law Toothless* (November 17/03)

*Will Copyright Treaty Benefit Canadians?* (November 3/03)

*Why We Must Stand on Guard Over Copyrights* (October 20/03)

*Web Privacy vs. Identifying Infringers* (October 6/03)

*Verisign's Tampering Shows High Cost of Apathy* (September 22/03)

*Free, Upgraded Web Data Boon to Lawyers, Public* (September 8/03)

*Web Quandary For Regulators* (August 25/03)

*Fairness Demands Review of Domain Name Dispute Policy* (August 11/03)

*The Tortoise, The Hare, and The Internet* (July 28/03)

*Court Cases Taming 'Wild West Web'* (July 7/03)

*Tax Holiday Expiring, Regulators Aspiring on the Web* (June 30/03)

*Reforming Copyright is a Concern for Everyone* (June 23/03)

*U.S. Extends Its Hegemony over the Internet* (June 9/03)

*Waffling Ontario Coming up Short on Privacy Law* (May 26/03)

*'Big Music' Set to Declare War on its Audience* (May 12/03)

*Have-Not World More Plugged-In Than We Think* (April 21/03)

*High Court Tackles Web Lottery; Online Music To Come* (April 7/03)

*Fairness Says It's Time to Tax Goods Sold Online* (March 24/03)

*Governments Hold Reins in Those National Domains* (March 10/03)

*In Web Disputes, U.S. Law Rules the World* (February 24/03)

*Legalese Proved No Defence in E-Trading Case* (February 10/03)

*Privacy Popular, But Eyes Dropped the Ball* (February 3/03)

*Courts Poised to Decide Internet 'Borders'* (January 13/03)

ii. Globe And Mail Cyberlaw Columns  
*Internet Turf War Playing Out* (November 7/02)

*Net Copyright Reform: Its Deep in Policy Agenda* (October 17/02)

*Federal Proposal Tells Only Part of Cybercrime Story* (October 3/02)

*Net Contract Fights Should Avoid Courts* (September 19/02)

*E-commerce Tax Policy Penalizes Canadian Business* (September 5/02)

*Moves Afoot to Give Consumers E-commerce Legal Certainty* (August 22/02)

*Internet Overseer Takes Wrong Path on Accountability* (August 8/02)

*Domain Name Policy Absurd When it Comes to Trademarks* (July 25/02)

*Internet 'Choke Points' Put the Squeeze on Content* (July 11/02)

*Shift to Workplace Privacy Protection* (June 28/02)

*New Net Laws Reach Beyond Borders* (June 27/02)

*Public's Role in Net Governance Threatened* (June 13/02)

*Time to Hit Delete Key on Weak Spam Policy* (May 30/02)

*Appeal Court Ruling the Latest Word on On-line Music* (May 16/02)

*Web Lottery Case Misses Legal Jackpot* (May 2/02)

*Key Case Restores Copyright Balance* (April 18/02)

*Canadian Privacy Law's Ins and Outs* (April 4/02)

*Music Fans Face Raw Copyright Deal* (March 21/02)

*Domain Dispute Bias Goes From Bad to Worse* (March 7/02)

*Quebec Firm's Language Law Challenge Tests E-jurisdiction* (February 21/02)

*Brands, Free Speech Clash Over Domains* (February 7/02)

*Canada's Online Tax Policy Lags Leaders* (January 24/02)

*Cyberlaw 2002: The Next Generation* (January 3/02)

*The Story of Cyberlaw in 2001* (December 20/01)

*Copyright Debate Turns One-Sided* (December 6/01)

*Canada's Laissez-Faire Stance on Microsoft Stifles Innovation* (November 8/01)

*Anti-terrorism Bill Could Limit E-Speech* (October 25/01)

*Government, Commissioner At Odds Over Privacy* (October 11/01)

*Definitive Dispute Policy Takes Shape* (September 28/01)

*Microsoft Likely to Get More Experience in Court* (September 7/01)

*Cyberlaw Shows Its True Colours* (September 6/01)



*How Bias Besets Domain Cases, (August 23/01)*

*Long Arm of the Law Needs New Guidelines for the Internet, (August 9/01)*

*Russian's Case Shows Severity of Copyright Law, (July 26/01)*

*Canada's On-line Copyright Policy Takes Shape, (July 12/01)*

*Net at Stake Despite Ruling, (June 29/01)*

*E-Borders Loom, For Better or Worse, (June 28/01)*

*It's Time To Speak Out on Internet Legislation, (June 14/01)*

*Privacy Law Needs Open Disclosure, (May 30/01)*

*All Electronic Contracts Are Not Created Equal, (May 25/01)*

*Confusion Reins in Domain Name Cases, (May 14/01)*

*Battles Brew as Online Privacy Policies Diverge, (May 3/01)*

*Laws Spur Growth in E-commerce, (April 19/01)*

*Lots of Legal Challenges When Dot Coms Die, (March 30/01)*

*Get Ready for Reruns over Online TV, (March 15/01)*

*Harmonization of Web Law Sparks Heated Haggling, (March 1/01)*

*B.C. Court Shores Up Protection for Anticorporate Protest Sites, (February 15/01)*

*Like it or Not, Napster and its Kind are Here to Stay, (February 14/01)*

*U.S. Blazes Trail in Clash of Trademarks, Domain Names, (February 1/01)*

*Everybody Wants to Rule the Web, (January 18/01)*

*Privacy Tops Internet Hot Spots for 2001, (January 4/01)*

*Cyberlaw: An A to Z Review, (December 21/00)*

*A Troubling Snapshot of E-Privacy in Canada, (December 7/00)*

*E-content Rules Must Shield Election, not Web Sites, (November 26/00)*

*Privacy Compliance is the New Priority, (November 10/00)*

*Watch Out for the Partitioned Web, (November 2/00)*

*New Dot-ca World Needs an Election, (October 26/00)*

*E-mail Traces Raises Legal Issues, (October 19/00)*

*Dot-ca Dispute Rules Open for Public Debate, (October 5/00)*

*What's In a Name? Domain Reform Holds the Answer*, (September 26/00)

*High-Speed Net Clash Moves Into High Gear*, (September 21/00)

*Trademark Confusion Creeps Into Web Site Content*, (September 7/00)

*WIPO Wipes Out Domain Name Rights*, (August 24/00)

*Copyright Holders May Rule the Day*, (August 10/00)

*Napster North of the 49th Parallel*, (July 27/00)

*When Technology is at Odds with the Law*, (July 13/00)

*Legally, I am Canadian*, (June 29/00)

*Firms Play 'Whack a Mole' Game in Trying to Stop E-competition*, (June 15/00)

*New Laws Aim to Ease Uncertainties of E-commerce*, (June 9/00 - E-Business Special Report)

*The Fine Print Behind FTC's Advertising Rules For the Dot-Com World*, (June 1/00)

*EU Edicts Influence Canadian Cyberlaw*, (May 18/00)

*Domain Name Wars Heat Up*, (May 4/00)

*Proposed Dot-ca Dispute Resolution Method Flawed*, (April 20/00)

*Federal Tribunal Forges Internet Policy*, (April 6/00)

*Stamp of Approval Needed for E-Business*, (March 23/00)

*Courts Take Hands-Off Approach to Passive Web Sites*, (March 9/00)

*Local Laws Begin to Assert Power*, (February 24/00)

*Cookies Crumble Personal Privacy*, (February 10/00)

*A Patently Obvious Threat to E-commerce*, (January 27/00)

*Lawmakers To Mull Milestones in 2000*, (January 13/00)

*H is for Hackers: An A to Z Guide to Cyberlaw in 1999*, (December 28/99)

*Privacy Law No Substitute For Vigilance*, (December 9/99)

*Vital Ruling Misses Boat on Offshore Servers*, (November 18/99)

*What It Means When You Click 'I Agree'*, (October 21/99)

*Buyers Will Be Wary Until Laws Locate E-Commerce*, (Sept. 16/99)

*The Gap Between Won't and Can't*, (August 19/99)

ii. Wallstreetlawyer.Com (Glasser LegalWorks, N.J.)

*Monitoring Online Activity: The Growing Use of E-Monitoring Services*, (December 1999)

*Keeping Pace With Internet Securities Law News*, (November 1999)

*Internet Jurisdiction: Grappling With Which Law Applies*, (October 1999)

*Making Better Use of EDGAR*, (September 1999)

*Off the Grid Trading: Real Goods is for Real*, (August 1999)

*Virtual Roadshows: A Preview of Stock Promotion in the Next Century*, (June 1999)

*Internet Public Offerings: A Guide to the Mania*, (May 1999)

*Buyer Beware: The Growth of Internet Fraud*, (April 1999)

*The Best of Web Watch: A Look Back At Year One*, (Mar. 1999)

*Online Privacy: An Integral Part of Electronic Commerce*, (Feb. 1999)

*Taxing Electronic Commerce: Should the Internet Be Tax-Free?*, (Jan. 1999)

*Digital Signatures: A "Key" to Electronic Commerce*, (Dec. 1998)

*Electronic Commerce: The Global Policy Perspective*, (Nov. 1998)

*The SEC's Online Presence - Much More Than Just Edgar*, (Oct. 1998)

*The Y2K Problem and the Law - Online Legal Resources*, (Sept. 1998)

*Stock Exchanges on the Web - The Developing Economies*, (Aug. 1998)

*Stock Exchanges on the Web - The Asian Economies*, (July 1998)

*Stock Exchanges on the Web - The Developed Nations*, (June 1998)

*Stock Exchanges on the Web - The U.S. Experience*, (May 1998)

*Securities Regulators Online II - The Developing Markets*, (April 1998)

*Securities Regulators Online - The Industrialized Nations*, (Mar. 1998)

iii. Lexis-Nexis Law And Technology Column

*Content Filtering in Libraries: A Federal Court Rules Against Loudoun County Policy*, (Nov. 1998)

*Digital Democracy: Online Voting May Be Around the Corner*, (Nov. 1998)

*Congress Passes Watershed Internet Legislation*, (Nov. 1998)

*The Growing Divide Over Internet Regulation*, (Oct. 1998)

*Eliminating Spam from your Email Diet: Legislative Solutions Gain Popularity*, (Oct. 1998)

*Changing the Face of Legal Scholarship*, (Sept. 1998)

*Mandatory Computer Ownership: Sizing Up The Debate*, (Sept. 1998)

*Web Ed: The Move Into Cyberspace Continues*, (Aug. 1998)

*Privacy: This Summer's Premier Legal Battle*, (May 1998)

*Regulating the Internet: The View From North of the Border*, (May 1998)

*Government Information Online: Tobacco Documents Released*, (April 1998)

*The Year 2000 Problem Hits Home*, (April 1998)

*Internet Jurisdiction: The SEC "Opts Out"*, (April 1998)

*Harvard's Privacy Cybercourse: Offering Legal Education in Cyberspace*, (Mar. 1998)

*Bill's Battles: A Guide to Microsoft's Legal Woes*, (Mar. 1998)

*Taxing Electronic Commerce: Should the Internet Be A Tax-Free Zone*, (Feb. 1998)

*Wrangling Over Law School Rankings*, (Feb. 1998)

*The Courtroom of the Future – Today*, (Jan. 1998)

*Cyberspace Law From A to Z: The Year in Review*, (Jan. 1998)

*Oyez! Oyez! Oyez! The Supreme Court is now in Cyberspace*, (Nov. 1997)

*School Supplies for the 90's*, (Sept. 1997)

*Web Ed: Legal Education Moves Into Cyberspace*, (Sept. 1997)

#### **VIII. Technical Reports, Law Reform, and Commissioned Research Work**

*Global Internet Jurisdiction: The ABA/ICC Survey*, American Bar Association, Business Law Section, Cyberspace Law Committee, Internet Jurisdiction Subcommittee, 2004 (28 pp.)

*Governments and ccTLDs: A Global Survey (Version Two)* Survey conducted in cooperation with the International Telecommunications Union, 2004 (23 pp.)

*Governments and ccTLDs: A Global Survey*, Survey conducted in cooperation with the International Telecommunications Union, 2003 (22 pp.)

*E-Legal Kit – Volume One (E-commerce Law), Volume Two (E-commerce contracting), and Volume Three (Case Studies)*, United Nations International Trade Centre, 2003 (180 pp.)

*Computer And E-Mail Workplace Surveillance In Canada: The Shift From Reasonable Expectation Of Privacy To Reasonable Surveillance*, Canadian Judicial Council, 2002 (54 pp.)

*Is There a There There: Towards Greater Certainty for Internet Jurisdiction*, Uniform Law Conference of Canada and Industry Canada, 2001 (64 pp.)

*In Search of the Virtual Label: Canada's Labeling Legal Framework and the Impact of E-commerce*, Canada Competition Bureau, 2001 (26 pp.)

*The Competitive Threat of Malicious Code: An Environmental Scan*, Canada Competition Bureau, 2001 (18 pp.)

*Survey of Canadian Law Firms E-commerce Best Practices: A 2001 Update*, Industry Canada, 2001 (23 pp.)

*Canadian E-commerce and Privacy Study 2000: A Failure to Communicate*, 2000 (93 pp.)

*Consultation on CIRA Draft ADR Policy: Report and Analysis*, Canadian Internet Registration Authority, 2000 (17 pp.)

*CIRA Consultation on Alternative Dispute Resolution: Report and Analysis*, Canadian Internet Registration Authority, 2000 (22 pp.)

*E-Commerce and Canada's Bankruptcy and Insolvency Act*, Industry Canada, 2000 (38 pp.)

*E-Commerce and Legal Services in Canada: Meeting the Challenge*, Industry Canada, Service Industries & Capital Projects, 2000 (30 pp.)

*Consumer Protection and Licensing Regimes Review: The Implications of Electronic Commerce*, Ontario Ministry of Consumer & Commercial Relations, 1999 (21 pp.)

#### **D. Conference Papers, Public Lectures, and Addresses**

*Here and There: Unpacking the Complexity of Internet Jurisdiction, Spyware: The Latest Cyber-Regulatory Challenge*, Berkeley Center for Law and Technology, Berkeley, CA, April 2005

*Canadian Copyright Law*, Fordham Annual Conference on International Intellectual Property Law & Policy, New York, NY, March 2005

*Canada's Choice: Copyright, Culture and the Internet*, University of Montreal Speaker Series, Montreal, QC, March 2005

*Data Sharing: Risks, Issues and Realities*, IAPP National Summit, Washington, DC, March 2005

*Keynote Address: Canada's Choice: Copyright, Culture and the Internet, Sound Bytes, Sound Rights: Canada at the Crossroads of Copyright Law, University of Toronto, Toronto, ON, February 2005*

*Copyright and the Internet: Is There A Canadian Way?, KDMI Open Access Lecture Series, University of Toronto, Toronto, ON, February 2005*

*The View From Here: How Will Technology, the Internet and Security Concerns Impact Privacy?, Council of Chief Privacy Officers, Ottawa, ON, February 2005*

*Copyright & Privacy: Through the Technology/Copyright Lens, Piracy v. Privacy, John Marshall Law School, Chicago, IL, November 2004*

*Internet Law Update, Ottawa Technology Lawyers Group, Ottawa, ON, November 2004*

*Untouchable? A Canadian Perspective on the Anti-Spam Battle, International Conference on the Legal Aspects of an E-commerce Transaction, The Hague, The Netherlands, October 2004*

*Untouchable? A Canadian Perspective on the Anti-Spam Battle, IT.Can Annual Conference, Calgary, AB, October 2004*

*Keynote Address – Unhappy Gilmore: The Internet's Six Layers of Liability, Society for the Policing of Cyberspace Annual Conference, Vancouver, BC, October 2004*

*Unhappy Gilmore: The Internet's Six Layers of Liability, The Internet and the Law: A Global Conversation, Ottawa, ON, September 2004*

*Trust, Privacy and Security, E-commerce to the E-economy: Strategies for the 21<sup>st</sup> Century, Ottawa, ON, September 2004*

*Internet Jurisdiction, UNESCAP Conference on Regional Harmonization of Electronic Commerce, Bangkok, Thailand, July 2004*

*Keynote Address - Privacy and Expectations, ARUCC Annual Meeting, Ottawa, ON, June 2004*

*Comparative Domain Name Dispute Resolution, ABA IP Section Summer Conference, Toronto, ON, June 2004*

*Canadian Privacy Law, IAPP Privacy Futures Conference, San Francisco, CA, June 2004*

*Internet Jurisdiction, ICC Commercial Law and Practice Spring Meeting, Rome, Italy, May 2004*

*(Re)Thinking Copyright, ALAI Rethinking Copyright Conference, Ottawa, ON, May 2004*

*Privacy and Expectations, Canadian Access and Privacy Association Annual Meeting, Ottawa, ON, May 2004*

*Sparring With Spam, Law Society of Upper Canada, New Developments in Communications Law, Ottawa, ON, April 2004*

*Beyond ICANN: International Governance of the Internet in the 21<sup>st</sup> Century, ABA International Law Section Spring Meeting, New York, NY, April 2004*

*Chair, Internet Jurisdiction: A Global Survey, ABA Business Law Section Spring Meeting, Seattle, WA, April 2004*

*Rapporteur, UN ICT Task Force Internet Governance Workshop, New York, NY, March 2004*

*Unhappy Gilmore: The Internet's Six Layers of Liability, University of Manitoba, Faculty of Law, Winnipeg, MB, March 2004*

*Panelist, From Wireless to iPod, Canadian Music Week 2004, Toronto, ON, March 2004*

*Governments and ccTLDs: A Survey of National Governments and Internet Governance, ITU Internet Governance Workshop, Geneva, Switzerland, March 2004*

*PIPEDA: Canada's New Privacy Law, 4<sup>th</sup> Annual IAPP Privacy and Security Summit, Washington, DC, February 2004*

*Major Privacy Law Challenges for 2004 and Beyond, Living With the New Private Sector Privacy Law: What You Need To Know, Ottawa, ON, February 2004*

*Selling and Marketing Online – Emerging Legal Issues, Toronto Computer Lawyers Group, Toronto, ON, February 2004*

*Keynote Address – Privacy and Expectations, University of New Brunswick, Faculty of Law, Law Week, Fredericton, NB, February 2004*

*Moderator, ID Theft: Canada's Legal Framework, ORNEC's ID Theft Workshop, Ottawa, ON, February 2004*

*Unhappy Gilmore: The Internet's Six Layers of Liability, Torys Technology Law Speaker Series, Ottawa, ON, February 2004*

*Chair, Law and Regulatory Panel, OECD Spam Summit, Brussels, Belgium, February 2004*

*Panelist, Canadian Copyright – Legislative Reform, Canadian Association of Broadcasters Annual Meeting, Quebec City, QC, November 2003*

*Keynote Address – Privacy and Expectations, 4<sup>th</sup> Annual Privacy and Security Workshop, Toronto, ON, November 2003*

*Who is Watching You? The What, Why & How of Tracking Employees, IAPP Privacy Academy, Chicago, IL, October 2003*

*Current Issues and Key Initiatives: The Privacy Perspective, Privacy, Security, & Trust Workshop, Montreal, QC, October 2003*

*Organizer, University of Ottawa Comparative IP and Cyberlaw Symposium, Toronto, ON, October 2003*

*Keynote Address – Privacy and Expectations, Access and Privacy Workshop 2003, Toronto, ON, October 2003*

*Internet Law Update, Ottawa Technology Lawyers Group, Ottawa, ON, October 2003*

*Speech, Choice & Cyberspace, American Library Association Annual Meeting, Toronto, ON, June 2003*

*Panelist, Expert Spam Workshop, Internet Law and Policy Forum, Ottawa, ON, June 2003*

*E-Borders, Internet and IT Technologies, United States Department of Commerce Commercial Law Development Program, Washington, DC, June 2003*

*Cyberlaw 2.0, Internet Marketing Conference, Montreal, QC, May 2003*

*Moderator, Canadian IT Law Association Spring Training II, Toronto, ON, May 2003*

*Cyberlaw 2.0, Yale Law School, New Haven, CT, April 2003*

*Cyberlaw 2.0, National Law School of India, Bangalore, India, March 2003*

*Legal Issues in E-commerce Law, Bangalore, India, March 2003*

*Legal Issues in E-commerce Law, Mumbai, India, March 2003*

*ccTLDs and Transnational Policymaking, Cardozo Law School, New York, NY, March 2003*

*Keynote Address - ccTLD Governance Project, International Telecommunications Union Workshop on Member States and ccTLDs, Geneva, Switzerland, March 2003*

*Cyberlaw 2.0, Canadian Bar Association – BC Chapter, Computer Law Section, Vancouver, BC, February 2003*

*Watching Your Employees: Emerging Personal Boundaries in the Workplace, 3<sup>rd</sup> Annual Data Privacy and Security Summit, Washington, DC, February 2003*

*Computer And E-Mail Workplace Surveillance In Canada: The Shift From Reasonable Expectation Of Privacy To Reasonable Surveillance, Osgoode Hall Law School, Toronto, February 2003*

*Moderator, The World of Cybertaxes, University of Toronto, Faculty of Law, Toronto, ON, January 2003*

*Cyberlaw 2.0, University of Toronto, Faculty of Law, Toronto, ON, January 2003*

*Cyberlaw 2.0, Torys Technology Law Tuesday Speaker Series, University of Ottawa, Common Law Section, Ottawa, ON, January 2003*

*Recent Developments of the Domain Name Dispute Resolution System in Canada, OCRI/CATA Intellectual Property Management –The Strategic Landscape, Ottawa, ON, January 2003*

*Internet and E-commerce Law Update, Ottawa Technology Lawyers Group, Ottawa, ON, November 2002*

*Panelist, Recent U.S. Legal Developments Roundtable, 4<sup>th</sup> Georgetown University Advanced E-commerce Law Institute, Washington, DC, November 2002*

*Digital Copyright: A Look Ahead, Nikkei Digital Core Speaker Series, Tokyo, Japan, November 2002*



*Recent Developments of the Domain Name Dispute Resolution System in Canada, Recent Developments of Domain Name Dispute Resolution in Canada and Korea, Seoul, Korea, November 2002*

*Computer And E-Mail Workplace Surveillance In Canada: The Shift From Reasonable Expectation Of Privacy To Reasonable Surveillance, Yukon Bar and Bench Day, Whitehorse, Yukon, October 2002*

*Panelist, Primer on Privacy Compliance for the Private Sector, Privacy Trends: Complying with New Demands, Ottawa, ON, October 2002*

*Cyberlaw 2.0, Boston College Symposium on Intellectual Property, E-Commerce and the Internet, Boston, MA, October 2002*

*Creating a Trusted Environment: Legal Challenges, Partnering for E-business, Toronto, ON, October 2002*

*Computer And E-Mail Workplace Surveillance In Canada: The Shift From Reasonable Expectation Of Privacy To Reasonable Surveillance, Canadian Institute for the Administration of Justice Dialogues About Justice: The Public, Legislators, Courts and the Media, Hull, Quebec, October 2002*

*Internet Law Update, 6<sup>th</sup> Annual IT.Can Association Conference, Ottawa, ON, October 2002*

*Computer Surveillance of the Judiciary, 4<sup>th</sup> International Conference on Law via the Internet, Montreal, PQ, October 2002*

*Canada.com: In Search of a Canadian Internet Law Policy, Saskatchewan Law Review Lecture, University of Saskatchewan College of Law, Saskatoon, SK, September 2002*

*Watching Employees: Legal Considerations, Practical Guidelines and Netiquette, ILPF Security v. Privacy Conference, Seattle, WA, September 2002*

*Hot Internet IP Issues Around the World, ABA Summer IPL Conference, Philadelphia, PA, June 2002*

*Extra-Territoriality and the Internet, INET 2002 Conference, Washington, DC, June 2002*

*Cyberlaw 2.0, OBA E-commerce Section Year-End Dinner, Toronto, June 2002*

*Cyberlaw 2.0, OCRI's 45<sup>th</sup> Circuit, Ottawa, June 2002*

*Keynote Address: Jurisdiction, Advocates' Society Lawyers and the Internet, Ottawa, May 2002*

*E-commerce in a World Without Borders, CALT 2002 Annual Conference, Toronto, May 2002*

*E-commerce Legislation Update, IT.Can Law Association Spring Training Conference, Vancouver, May 2002*

*Internet Law Panel, LSUC Communications Law Conference, Ottawa, April 2002*

*Computer And E-Mail Workplace Surveillance In Canada: The Shift From Reasonable Expectation Of Privacy To Reasonable Surveillance, Canadian Judicial Council, Ottawa, March 2002*

*Discussant, Impact of IT for E-Banking, The Information Technology Revolution: Policy Implications for Financial Services, Schulich School of Business, Toronto, March 2002*

*Fair.com? An Examination of the Allegations of Systemic Unfairness in the ICANN UDRP, International Telecoms Laws Post De-Regulatory Landscape, Brooklyn Law School, Brooklyn, NY, March 2002*

*Internet Content Liability, Internet Law and Policy Forum International Workshop on Content-related Issues: Policy/Legal Frameworks and Solutions, Tokyo, Japan, February 2002*

*The Cyberlaw Rules: How the Internet is Transforming Law, Canadian Centre for Management Development's Armchair Series, Ottawa, February 2002*

*Technological Change and Legal Response in E-commerce, Information Technology and Legal Regulation: Promise and Pitfalls, Institute for the Study of Information Technology and Society, Carnegie Mellon University, Pittsburgh, PA, February 2002*

*Copyright and Censorship, Censorship and Privacy: Civil Liberties in a Digital Age, University of Toronto, Toronto, January 2002*

*Chair, Intellectual Property Summit Protecting, Enforcing And Exploiting Your IP Rights In The Global Marketplace, Toronto, January 2002*

*Keynote Address - Domain Names: A New Frontier for Disputes, Advocates' Society Litigation Meets the Internet, Toronto, January 2002*

*Intermediary Liability in the Online Environment: Public Issues, Internet Law and Policy Forum Workshop, Brussels, Belgium, December 2001*

*Copyright and Trade Issues, Centre For Trade Policy and Law Trade and Culture Conference, Ottawa, November 2001*

*Internet Jurisdiction Following Yahoo.com, BNA Public Policy Forum, Washington, DC, November 2001*

*Internet Jurisdiction, Georgetown University Advanced E-commerce Institute, Washington, DC, November 2001*

*Internet Law Update, County of Carleton Law Association Litigation Update, Montebello, Quebec, November 2001*

*Canadian Copyright Reform, Canadian Association of Broadcasters Annual Meeting, Ottawa, October 2001*

*Internet Jurisdiction, Telecommunications Policy Research Conference (TPRC) 2001, Alexandria, Virginia, October 2001*

*Internet Jurisdiction, European E-commerce Legal Information Platform (ECLIP) E-contract Conference, Brussels, Belgium, October 2001*

*Keynote Address – Internet Jurisdiction, Internet Law Insight Conference, Toronto, September 2001*

*Internet Jurisdiction, Uniform Law Conference of Canada Annual Meeting, Toronto, August 2001*

*What, Me Worry? Privacy, Liability and Other Online Legal Issues in the Information Age*, Canadian Bar Association Annual Meeting, Saskatoon, August 2001

*Policies for the New Economy: Legal Framework*, Government of Canada Policy Research Branch, Montreal, June 2001

*Is There a There There? Towards Greater Certainty for Internet Jurisdiction*, Internet Society INET 2001, Stockholm, Sweden, June 2001

*The Internet and Jurisdiction*, EPIC Policy Briefing: Emerging Cyberspace Issues, Washington, D.C., June 2001

*Panelist, The Impact of a Global Internet on Copyright*, Canadian Institute of International Affairs Meeting, Toronto, May 2001

*Discussant, Canada's Intellectual Property Framework: A Comparative Overview*, International Conference on Intellectual Property and Innovation in the Knowledge Based Economy, Toronto, May 2001

*Is There a There There? Towards Greater Certainty for Internet Jurisdiction*, Toronto Computer Lawyers Group, Toronto, May 2001

*Internet Jurisdiction Update*, National Judicial Institute Intellectual Property Seminar, Ottawa, May 2001

*Is There a There There? Towards Greater Certainty of Internet Jurisdiction*, IT.Can Law Association Spring Training Conference, Toronto, April 2001

*The Cyberlaw Rules: How the Internet is Transforming Law*, Ryerson CWC/CTV Women's Career Accelerator, Toronto, April 2001

*Keynote Speaker – Is There a There There? Towards Greater Certainty for Internet Jurisdiction*, University of Washington School of Law - Beyond the Information Superhighway: Searching for the Next Policy Metaphor, Seattle, Washington, April 2001

*Is There a There There? Towards Greater Certainty for Internet Jurisdiction*, Consumer Measures Committee/Uniform Law Conference of Canada Workshop on Consumer Protection and Jurisdiction in Electronic Commerce, Toronto, April 2001

*Conference Chair and Organizer*, Canadian Copyright Law in the Digital Age Forum, Ottawa, March 2001

*International E-commerce Law Update*, Joint Open Forum on Standardization Enablement in Electronic Commerce, Ottawa, March 2001

*Legal Education.com*, National Judicial Institute's Technology-Based Distance Learning and the Judiciary Conference, Ottawa, February 2001

*Legal Issues Panelist*, OECD Conference Building Trust in the Online Environment: Business to Consumer Dispute Resolution, The Hague, Netherlands, December 2000

*CEO Panel Moderator*, Marketing Online Conference, Toronto, December 2000

*Conference Chair*, 2000 Domain Name Governance, Law & Policy Forum, Ottawa, November 2000

*Copyright in the Balance: Old Laws and New Technologies*, Royal Society of Canada Annual Symposium, Ottawa, November 2000

*Copyright Law Moderator*, BNA Internet and E-commerce Law Public Policy Forum, Washington, DC, November 2000

*E-commerce Regulatory Update*, 4th Annual Canadian IT Law Conference, Halifax, October 2000

*Internet Jurisdiction Law in Canada*, Science, Truth & Justice, Canadian Institute for the Administration of Justice Annual Conference, Victoria, October 2000

*Domain Name Dispute Resolution in Canada*, Intellectual Property Institute of Canada AGM, Vancouver, September 2000

*ICANN's Domain Name Dispute Resolution Process*, Internet Law and Policy Forum Jurisdiction II: Global Networks, Local Rules, San Francisco, California, September 2000

*E-commerce and Web for Canadian Lawyers*, Canadian Bar Association Annual Meeting, Halifax, August 2000

*Sale of Services and Internet Jurisdiction*, Internet Jurisdiction Law Plenary, American Bar Association Annual Meeting, London, England, July 2000

*E-Business: The Future*, Comdex Canada, Toronto, July 2000

*The Cyberlaw Rules*, Kiwanis Club of Ottawa, Ottawa, July 2000

*E-commerce Law Moderator*, Third International Workshop on the Technological Challenges of E-commerce, Waterloo, June 2000

*What It Means When You Click I Agree*, Net 2000 Conference, Ottawa, June 2000

*Legaleducation.com*, 10<sup>th</sup> Annual CALI Conference, Chicago, Illinois, June 2000

*Canadian E-commerce Law and Policy: Facing the Future Challenge Today*, Canada-Chile Free Trade Agreement Three Years Later: Lessons and Challenges for the 21st Century, Ottawa, May 2000

*iCraveTV and the New Rules of Internet Broadcasting*, Media Law and Ethics Enter the 21<sup>st</sup> Century, Little Rock, Arkansas, April 2000

*Internet Jurisdiction Update*, University of Montreal Technology Law Forum, Montreal, April 2000

*The Media and Privacy: Friend, Foe or Folly*, Computers, Freedom & Privacy Conference 2000, Toronto, April 2000

*What It Means When You Click I Agree*, E-Commerce Canada 6th Annual Symposium, Ottawa, February 2000

*Online Dispute Resolution and Internet Jurisdiction*, National Capital Association of Communications Lawyers, Ottawa, January 2000

*What It Means When You Click I Agree*, Legal Challenges of the Internet, University of Toronto, January 2000

*Consumer Protection and Licensing Regimes Review: The Implications of Electronic Commerce*, Ontario Ministry of Consumer and Commercial Relations E-Commerce Roundtable, Toronto, December 1999

*Keeping Pace With Internet Jurisdiction Issues*, Compliance Guide to Online Financial Transactions, Strategy Institute, Toronto, October 1999

*The Internet and International Law*, ILSA 5th Annual Conference, Ottawa, September 1999

*Sale of Services and Internet Jurisdiction: A Telemedicine Case Study*, Internet Law and Policy Forum (ILPF) International Conference, Montreal, July 1999

*Reality Testing: Legal Solutions to Hate on the Net*, Second International Symposium on Hate on the Internet, Toronto, March 1999

*Law on the Web: Tracing the Critical Role of Legal Education*, Japan Online Law International Symposium, Nagoya & Kyoto, Japan, March 1999

*Finding Information in a Sea of Knowledge*, 1999 Law Tech Plus, Ottawa, February 1999

*Hate Speech on the Internet*, 1999 CJLSA National Conference, Ottawa, January 1999

*Using Web Lectures in the Classroom*, 1998 CALI Conference - Preparing for the Road Ahead, Chicago, Illinois, June 1998 and 1998 SEAALS Conference, Marco Island, Florida, July 1998

*Weaving the Web into Legal Education*, 1997 CALI Conference - The Democratization of Computer-Assisted Legal Instruction, Chicago, Illinois, June 1997

*Balanced Budget Legislation: An Assessment of the Recent Canadian Experience*, 26th Annual Workshop on Commercial and Consumer Law, Toronto, October 1996

*The Dey Report: The Wave of the Future*, The New Reality: Liability of Officers and Directors In the 90's, Continuing Legal Education Society of Nova Scotia Conference, Halifax, November 1995

## **E. Research Grants, Scholarships Prizes, and Awards**

Rector's Award for Service to the University through Media and Community Relations, 2003

Public Leadership Award, Canarie's IWAY Awards, 2003

Canada's Top 40 Under 40, 2002

Canada Research Chair in Internet and E-commerce Law (\$500,000), 2003

Canada Research Chair Laboratory in Technology Law, Canada Foundation for Innovation (\$250,000), 2003

Canada Research Chair Laboratory in Technology Law, Ontario Innovation Trust (\$250,000), 2003

Ontario Premier's Research Excellence Award (\$150,000), 2003

Amazon.com Cy Pres Fund Award, *Creation of University of Ottawa Technology Law Clinic* (\$240,000), 2002

Canadian Association of Law Teachers 2002 Scholarly Paper Award, 2002

Social Sciences and Humanities Research Council of Canada, Initiative on the New Economy - *Jurisdiction Law and the Internet: An Examination of the Effects on E-commerce* (\$192,550), 2002

Ontario Research and Development Challenge Fund – *Creation of Ontario Research Network for E-commerce (principal investigator)* (\$13.5 million), 2001

Foundation for Legal Education Research Grant – *Everyone Wants to Rule the Cyberworld: Internet Jurisdiction after the Yahoo! France Case* (\$4,000), 2001

Uniform Law Conference of Canada Research Grant – *Is There a There There? Towards Greater Certainty for Internet Jurisdiction* (\$5,000), 2001

Centre for Innovation Law and Policy Faculty Research Grant - *Canadian privacy policies* (\$10,000), 2000

Centre for Innovation Law and Policy Faculty Research Grant - *Web seal programs* (\$10,000), 2000

Centre for Innovation Law and Policy Curriculum Development Award - *E-Commerce Law Workshop* (\$17,000), 2000

University of Ottawa Law School Faculty Research Stipend (\$3,000), 2000

University of Ottawa Research Travel Grant, American Bar Association Internet Jurisdiction Work (\$900), 2000

American Bar Association Research Grant, *Internet Jurisdiction Project* (\$6000), 1999-2000

Fulbright Scholarship, (U.S. \$15,000), 1996-97

SSHRC Doctoral Fellowship, (\$14,400), 1996 – 98

Wien Fellowship, Columbia Law School, 1997-98

Associate Fellowship, Columbia Law School, 1996 – 98

Wolfson College Jennings Prize, 1994

Monbusho Scholarship, Government of Japan (\$30,000), 1992 – 93

Ivan Cleveland Rand Scholarship in Constitutional Law, 1989 - 90

Cassels, Brock & Blackwell Prize in Constitutional Law, 1989 - 90

Bassel, Sullivan & Leake Prize in Civil Procedure, 1989 - 90

Samuel Rubinoff Prize in Legal Research and Writing, 1989 – 90

## **F. University Academic Activities**

### **I. Subjects Taught**

Regulation of Internet Commerce

Regulation of Internet Communication

Electronic Commerce Law Workshop

Technology Law Internship

Contracts

Business Associations

Legal Research and Writing

### **II. Graduate Supervisions**

William H. Abbott, LL.M. Candidate, E-commerce and Consumer Protection, 2000 – 01

Rosena Vranjic, LL.M. Candidate, Internet and Society, 2000 – 01

Marianne Kroes, LL.M. Candidate, Internet Jurisdiction, 2000 – 01

Goldie Shea-Green, LL.M. Candidate, Copyright and Webcasting, 2000 - 01

William Karam, LL.M. Candidate, E-commerce and Securities Regulation, 2001

Greg Hagen, LL.M. Candidate, Internet Governance, 2001 – 02

Daniel Tsai, LL.M. Candidate, Internet Law, 2001 – 03

John Bruce, LL.M. Candidate, Privacy, 2002 – 03

Sukesh Kamra, LL.M. Candidate, Jurisdiction, 2003

Karen Ng, LL.M. Candidate, Spam, 2003

Charles Li, LL.M. Candidate, E-commerce contracting, 2003

Cristos Velasco, LL.M. Candidate, E-commerce Consumer Protection, 2004

Christopher Shaw, LL.M. Candidate, VoIP Regulation, 2004

### **III. Undergraduate Supervisions**

Martin Finestone, LL.B. Candidate, Mobile Commerce, 2003

Julia Herzog, LL.B. Candidate, Internet Retransmission, 2002

Tannis Waugh, LL.B. Candidate, Anti-terrorism Legislation and Hate Speech, 2002

Michael Carlson, LL.B. Candidate, E-commerce and the WTO, 2001

Dina Taub, LL.B. Candidate, Internet Taxation, 2000

Stephen Kovacic, LL.B. Candidate, Encryption Policy, 1999

Stacey Shein, LL.B. Candidate, E-commerce legislation, 1999

#### **IV. University Administrative Duties**

*Member*, Scientific Advisory Board, Ontario Research Network for E-commerce, 2002 – present

*Chair*, Legal Cluster, Ontario Research Network for E-commerce, 2002 - present

*Member*, Hiring Committee, 2002 - present

*Member*, Law School Technology Steering Committee, 2000 - present

*Member, Program Development*, LL.M. Program in Law & Technology, 2000-01

*Guest Speaker on Law and Technology*, Faculty of Engineering, 1999 - 2001

*Member, Program Development*, Graduate Certificate in E-commerce, 1999 – present

*Member, Program Development*, M.Eng in Internet Technologies, 1999 – 2001

*Member*, University E-Society Working Group, 2000 - present

*Chair*, Orientation Committee, 2000

*Member*, Admissions Committee, 1998 – 2000

*Member*, Library Committee, 1998 - 2000

*Member*, JSD Tory Writing Prize Committee, 1999

#### **G. Professional and Community Service**

##### **I. Peer Review Activity**

National Science Foundation (U.S.)



Social Sciences and Humanities Research Council of Canada

National Research Council of Canada

Major Canadian and Australian Law Reviews

## **II. Government Testimony, Delegations and Task Forces**

*Task Force Member*, National Ministerial Task Force on Spam, 2004

*E-commerce Advisor*, Canadian Delegation, Hague Conference Draft Convention on Jurisdiction and the Enforcement of Judgments, 2001

*Delegation Member*, Canadian Delegation, UNCITRAL Working Group on Electronic Commerce, 2001

*House of Commons Industry Committee Hearings on Bill C-54* (Electronic Commerce Privacy Legislation), March 4, 1999

## **III. International Legal Committees**

Canadian Representative, Dot-Org Advisory Council, 2003 – present

Co-chair, Internet Jurisdiction Project, American Bar Association and International Chamber of Commerce, 2002 - present

Adviser, American Law Institute Project on International Intellectual Property, 2002 - present

Legal Expert Network, Carnegie Mellon Institute for the Study of Information Technology and Society, 2001 - present

Internet Corporation for Assigned Names and Numbers (ICANN), North American Membership Implementation Task Force Member, 2000

Dutch Special Commission on Fundamental Rights in the Digital era, International Review Board, 1999-2000

American Bar Association Internet Jurisdiction Project, Sale of Services Working Group Chair, 1998–2000

## **IV. Corporate and Academic Boards**

Quova, 2005 - present

Canadian IT Law Association, 2001 - present

Canadian Internet Registration Authority (CIRA), 2001 – present

Watchfire, 2001 – present

Verifia, 2001 - 2003

NetActive Inc., 2000 – 2001

CanadaMD.com, 2000 - 2001

Youtopia.com, 1999-2002

Center for Computer Assisted Legal Instruction (CALI) Editorial Board, 1997-present

#### **V. Conferences Organized**

The Internet and the Law: A Global Conversation, October 2004 (250 attendees)

Comparative IP and Cyberlaw Symposium, October 2003 (200 attendees)

Public Forum on the Draft Ontario Privacy Legislation, March 2002, (65 attendees)

Copyright Law in the Digital Age Public Forum, March 2001, (300 attendees)

2000 Domain Name Governance, Law, and Policy Forum, November 2000 (200 attendees)

#### **VI. Academic And Conference Legal Committees**

*Chair*, Programming Committee, Ottawa Technology Lawyers Group, 2002- present

*Member*, OCRI 45<sup>th</sup> Circuit Advisory Board, 2000 - 2004

*Advisory Member*, Japan Law Online Working Group, Nagoya, Japan 1999-2002

*Co-Editor*, JURIST Canada: The Law Professors' Portal, 1999-2001

*Advisory Committee Member*, Law Tech Plus Conference, 1998-99

*International Program Committee Member*, IASTED International Conference on Law & Technology 1999 & 2000

# EXHIBIT B

MEMORANDUM OF UNDERSTANDING BETWEEN  
THE U.S. DEPARTMENT OF COMMERCE  
AND  
INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

I. PARTIES

This document constitutes an agreement between the U.S. Department of Commerce (DOC or USG) and the Internet Corporation for Assigned Names and Numbers (ICANN), a not-for-profit corporation.

II. PURPOSE

A. Background

On July 1, 1997, as part of the Administration's Framework for Global Electronic Commerce, the President directed the Secretary of Commerce to privatize the management of the domain name system (DNS) in a manner that increases competition and facilitates international participation in its management.

On June 5, 1998, the DOC published its Statement of Policy, *Management of Internet Names and Addresses*, 63 *Fed. Reg.* 31741(1998) (Statement of Policy). The Statement of Policy addressed the privatization of the technical management of the DNS in a manner that allows for the development of robust competition in the management of Internet names and addresses. In the Statement of Policy, the DOC stated its intent to enter an agreement with a not-for-profit entity to establish a process to transition current U.S. Government management of the DNS to such an entity based on the principles of stability, competition, bottom-up coordination, and representation.

B. Purpose

Before making a transition to private sector DNS management, the DOC requires assurances that the private sector has the capability and resources to assume the important responsibilities related to the technical management of the DNS. To secure these assurances, the Parties will collaborate on this DNS Project (DNS Project). In the DNS Project, the Parties will 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.

In the DNS Project, the parties will jointly design, develop, and test the mechanisms, methods, and procedures to carry out the following DNS management functions:

- a. Establishment of policy for and direction of the allocation of IP number blocks;
- b. Oversight of the operation of the authoritative root server system;
- c. Oversight of the policy for determining the circumstances under which new top level domains would be added to the root system;
- d. Coordination of the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet; and
- e. Other activities necessary to coordinate the specified DNS management functions, as agreed by the Parties.

The Parties will jointly design, develop, and test the mechanisms, methods, and procedures that will achieve

the transition without disrupting the functional operation of the Internet. The Parties will also prepare a joint DNS Project Report that documents the conclusions of the design, development, and testing.

DOC has determined that this project can be done most effectively with the participation of ICANN. ICANN has a stated purpose to perform the described coordinating functions for Internet names and addresses and is the organization that best demonstrated that it can accommodate the broad and diverse interest groups that make up the Internet community.

### C. The Principles

The Parties will abide by the following principles:

#### 1. Stability

This Agreement promotes the stability of the Internet and allows the Parties to plan for a deliberate move from the existing structure to a private-sector structure without disruption to the functioning of the DNS. The Agreement calls for the design, development, and testing of a new management system that will not harm current functional operations.

#### 2. Competition

This Agreement promotes the management of the DNS in a manner that will permit market mechanisms to support competition and consumer choice in the technical management of the DNS. This competition will lower costs, promote innovation, and enhance user choice and satisfaction.

#### 3. Private, Bottom-Up Coordination

This Agreement is intended to result in the design, development, and testing of a private coordinating process that is flexible and able to move rapidly enough to meet the changing needs of the Internet and of Internet users. This Agreement is intended to foster the development of a private sector management system that, as far as possible, reflects a system of bottom-up management.

#### 4. Representation.

This Agreement promotes the technical management of the DNS in a manner that reflects the global and functional diversity of Internet users and their needs. This Agreement is intended to promote the design, development, and testing of mechanisms to solicit public input, both domestic and international, into a private-sector decision making process. These mechanisms will promote the flexibility needed to adapt to changes in the composition of the Internet user community and their needs.

### III. AUTHORITIES

A. DOC has authority to participate in the DNS Project with ICANN under the following authorities:

(1) 15 U.S.C. § 1525, the DOC's Joint Project Authority, which provides that the DOC may enter into joint projects with nonprofit, research, or public organizations on matters of mutual interest, the cost of which is equitably apportioned;

(2) 15 U.S.C. § 1512, the DOC's authority to foster, promote, and develop foreign and domestic commerce;

(3) 47 U.S.C. § 902, which specifically authorizes the National Telecommunications and Information Administration (NTIA) to coordinate the telecommunications activities of the Executive Branch and assist in the formulation of policies and standards for those activities including, but not limited to, considerations of

interoperability, privacy, security, spectrum use, and emergency readiness;

(4) Presidential Memorandum on Electronic Commerce, 33 Weekly Comp. Presidential Documents 1006 (July 1, 1997), which directs the Secretary of Commerce to transition DNS management to the private sector; and

(5) Statement of Policy, *Management of Internet Names and Addresses*, (63 Fed. Reg. 31741(1998) (Attachment A), which describes the manner in which the Department of Commerce will transition DNS management to the private sector.

B. ICANN has the authority to participate in the DNS Project, as evidenced in its Articles of Incorporation (Attachment B) and Bylaws (Attachment C). Specifically, ICANN has stated that its business purpose is to:

- (i) coordinate the assignment of Internet technical parameters as needed to maintain universal connectivity on the Internet;
- (ii) perform and oversee functions related to the coordination of the Internet Protocol (IP) address space;
- (iii) perform and oversee functions related to the coordination of the Internet domain name system, including the development of policies for determining the circumstances under which new top-level domains are added to the DNS root system;
- (iv) oversee operation of the authoritative Internet DNS root server system; and
- (v) engage in any other related lawful activity in furtherance of Items (i) through (iv).

#### IV. MUTUAL INTEREST OF THE PARTIES

Both DOC and ICANN have a mutual interest in a transition that ensures that future technical management of the DNS adheres to the principles of stability, competition, coordination, and representation as published in the Statement of Policy. ICANN has declared its commitment to these principles in its Bylaws. This Agreement is essential for the DOC to ensure continuity and stability in the performance of technical management of the DNS now performed by, or on behalf of, the U.S. Government. Together, the Parties will collaborate on the DNS Project to achieve the transition without disruption.

#### V. RESPONSIBILITIES OF THE PARTIES

##### A. General.

1. The Parties agree to jointly participate in the DNS Project for the design, development, and testing of the mechanisms, methods and procedures that should be in place for the private sector to manage the functions delineated in the Statement of Policy in a transparent, non-arbitrary, and reasonable manner.
2. The Parties agree that the mechanisms, methods, and procedures developed under the DNS Project will ensure that private-sector technical management of the DNS shall not apply standards, policies, procedures or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause and will ensure sufficient appeal procedures for adversely affected members of the Internet community.
3. Before the termination of this Agreement, the Parties will collaborate on a DNS Project Report that will document ICANN's test of the policies and procedures designed and developed pursuant to this Agreement.
4. The Parties agree to execute the following responsibilities in accordance with the Principles and Purpose of this Agreement as set forth in section II.

B. DOC. The DOC agrees to perform the following activities and provide the following resources in support of the DNS Project:

1. Provide expertise and advice on existing DNS management functions.
2. Provide expertise and advice on methods and administrative procedures for conducting open, public proceedings concerning policies and procedures that address the technical management of the DNS.
3. Identify with ICANN the necessary software, databases, know-how, other equipment, and intellectual property necessary to design, develop, and test methods and procedures of the DNS Project.
4. Participate, as necessary, in the design, development, and testing of the methods and procedures of the DNS Project to ensure continuity including coordination between ICANN and Network Solutions, Inc.
5. Collaborate on a study on the design, development, and testing of a process for making the management of the root server system more robust and secure. This aspect of the DNS Project will address:
  - a. Operational requirements of root name servers, including host hardware capacities, operating system and name server software versions, network connectivity, and physical environment.
  - b. Examination of the security aspects of the root name server system and review of the number, location, and distribution of root name servers considering the total system performance, robustness, and reliability.
  - c. Development of operational procedures for the root server system, including formalization of contractual relationships under which root servers throughout the world are operated.
6. Consult with the international community on aspects of the DNS Project.
7. Provide general oversight of activities conducted pursuant to this Agreement.
8. Maintain oversight of the technical management of DNS functions currently performed either directly, or subject to agreements with the U.S. Government, until such time as further agreement(s) are arranged as necessary, for the private sector to undertake management of specific DNS technical management functions.

C. ICANN. ICANN agrees to perform the following activities and provide the following resources in support of the DNS Project and further agrees to undertake the following activities pursuant to its procedures as set forth in Attachment B (Articles of Incorporation) and Attachment C (By-Laws), as they may be revised from time to time in conformity with the DNS Project:

1. Provide expertise and advice on private sector functions related to technical management of the DNS such as the policy and direction of the allocation of IP number blocks and coordination of the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet.
2. Collaborate on the design, development and testing of procedures by which members of the Internet community adversely affected by decisions that are in conflict with the bylaws of the organization can seek external review of such decisions by a neutral third party.

3. Collaborate on the design, development, and testing of a plan for introduction of competition in domain name registration services, including:

- a. Development of procedures to designate third parties to participate in tests conducted pursuant to this Agreement.
- b. Development of an accreditation procedure for registrars and procedures that subject registrars to consistent requirements designed to promote a stable and robustly competitive DNS, as set forth in the Statement of Policy.
- c. Identification of the software, databases, know-how, intellectual property, and other equipment necessary to implement the plan for competition;

4. Collaborate on written technical procedures for operation of the primary root server including procedures that permit modifications, additions or deletions to the root zone file.

5. Collaborate on a study and process for making the management of the root server system more robust and secure. This aspect of the Project will address:

- a. Operational requirements of root name servers, including host hardware capacities, operating system and name server software versions, network connectivity, and physical environment.
- b. Examination of the security aspects of the root name server system and review of the number, location, and distribution of root name servers considering the total system performance; robustness, and reliability.
- c. Development of operational procedures for the root system, including formalization of contractual relationships under which root servers throughout the world are operated.

6. Collaborate on the design, development and testing of a process for affected parties to participate in the formulation of policies and procedures that address the technical management of the Internet. This process will include methods for soliciting, evaluating and responding to comments in the adoption of policies and procedures.

7. Collaborate on the development of additional policies and procedures designed to provide information to the public.

8. Collaborate on the design, development, and testing of appropriate membership mechanisms that foster accountability to and representation of the global and functional diversity of the Internet and its users, within the structure of private- sector DNS management organization.

9. Collaborate on the design, development and testing of a plan for creating a process that will consider the possible expansion of the number of gTLDs. The designed process should consider and take into account the following:

- a. The potential impact of new gTLDs on the Internet root server system and Internet stability.
- b. The creation and implementation of minimum criteria for new and existing gTLD registries.
- c. Potential consumer benefits/costs associated with establishing a competitive environment for



gTLD registries.

d. Recommendations regarding trademark/domain name policies set forth in the Statement of Policy; recommendations made by the World Intellectual Property Organization (WIPO) concerning: (i) the development of a uniform approach to resolving trademark/domain name disputes involving cyberspiracy; (ii) a process for protecting famous trademarks in the generic top level domains; (iii) the effects of adding new gTLDs and related dispute resolution procedures on trademark and intellectual property holders; and recommendations made by other independent organizations concerning trademark/domain name issues.

10. Collaborate on other activities as appropriate to fulfill the purpose of this Agreement, as agreed by the Parties.

#### D. Prohibitions.

1. ICANN shall not act as a domain name Registry or Registrar or IP Address Registry in competition with entities affected by the plan developed under this Agreement. Nothing, however, in this Agreement is intended to prevent ICANN or the USG from taking reasonable steps that are necessary to protect the operational stability of the Internet in the event of the financial failure of a Registry or Registrar or other emergency.

2. Neither Party, either in the DNS Project or in any act related to the DNS Project, shall act unjustifiably or arbitrarily to injure particular persons or entities or particular categories of persons or entities.

3. Both Parties shall act in a non-arbitrary and reasonable manner with respect to design, development, and testing of the DNS Project and any other activity related to the DNS Project.

#### VI. EQUITABLE APPORTIONMENT OF COSTS

The costs of this activity are equitably apportioned, and each party shall bear the costs of its own activities under this Agreement. This Agreement contemplates no transfer of funds between the Parties. Each Party's estimated costs for the first six months of this Agreement are attached hereto. The Parties shall review these estimated costs in light of actual expenditures at the completion of the first six month period and will ensure costs will be equitably apportioned.

#### VII. PERIOD OF AGREEMENT AND MODIFICATION/TERMINATION

This Agreement will become effective when signed by all parties. The Agreement will terminate on September 30, 2000, but may be amended at any time by mutual agreement of the parties. Either party may terminate this Agreement by providing one hundred twenty (120) days written notice to the other party. In the event this Agreement is terminated, each party shall be solely responsible for the payment of any expenses it has incurred. This Agreement is subject to the availability of funds.

---

Joe Sims  
Counsel to ICANN  
Jones, Day, Reavis & Pogue  
1450 G Street N.W.  
Washington, D.C. 20005-2088

---

J. Beckwith Burr  
Associate Administrator, NTIA  
U.S. Department of Commerce  
Washington, D.C. 20230

---

## PARTIES ESTIMATED SIX MONTH COSTS

### A. ICANN

Costs to be borne by ICANN over the first six months of this Agreement include: development of Accreditation Guidelines for Registries; review of Technical Specifications for Shared Registries; formation and operation of Government, Root Server, Membership and Independent Review Advisor Committees; advice on formation of and review of applications for recognition by Supporting Organizations; promulgation of conflicts of interest policies; review and adoption of At-Large membership and elections processes and independent review procedures, etc; quarterly regular Board meetings and associated costs (including open forums, travel, staff support and communications infrastructure); travel, administrative support and infrastructure for additional open forums to be determined; internal executive, technical and administrative costs; legal and other professional services; and related other costs. The estimated six month budget (subject to change and refinement over time) is \$750,000 - 1 million.

### B. DOC

Costs to be borne by DOC over the first six months of this Agreement include: maintenance of DNS technical management functions currently performed by, or subject to agreements with, the U.S. Government, expertise and advice on existing DNS management functions; expertise and advice on administrative procedures; examination and review of the security aspects of the Root Server System (including travel and technical expertise); consultations with the international community on aspects of the DNS Project (including travel and communications costs); general oversight of activities conducted pursuant to the Agreement; staff support equal to half-time dedication of 4-5 full time employees, travel, administrative support, communications and related other costs. The estimate six month budget (subject to change and refinement over time) is \$250,000 - \$350,000.

---

Comments concerning the layout, construction and functionality of this site should be sent to [webmaster@icann.org](mailto:webmaster@icann.org).

Page Updated 31-December-99.

(c) 1999 The Internet Corporation for Assigned Names and Numbers. All rights reserved.

# EXHIBIT C



## BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

A California Nonprofit Public-Benefit Corporation

As amended effective 08 April 2005

### TABLE OF CONTENTS

- ARTICLE I: [MISSION AND CORE VALUES](#)
- ARTICLE II: [POWERS](#)
- ARTICLE III: [TRANSPARENCY](#)
- ARTICLE IV: [ACCOUNTABILITY AND REVIEW](#)
- ARTICLE V: [OMBUDSMAN](#)
- ARTICLE VI: [BOARD OF DIRECTORS](#)
- ARTICLE VII: [NOMINATING COMMITTEE](#)
- ARTICLE VIII: [ADDRESS SUPPORTING ORGANIZATION](#)
- ARTICLE IX: [COUNTRY-CODE NAMES SUPPORTING ORGANIZATION](#)
- ARTICLE X: [GENERIC NAMES SUPPORTING ORGANIZATION](#)
- ARTICLE XI: [ADVISORY COMMITTEES](#)
- ARTICLE XI-A: [OTHER ADVISORY MECHANISMS](#)
- ARTICLE XII: [BOARD AND TEMPORARY COMMITTEES](#)
- ARTICLE XIII: [OFFICERS](#)
- ARTICLE XIV: [INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS](#)
- ARTICLE XV: [GENERAL PROVISIONS](#)
- ARTICLE XVI: [FISCAL MATTERS](#)
- ARTICLE XVII: [MEMBERS](#)
- ARTICLE XVIII: [OFFICES AND SEAL](#)
- ARTICLE XIX: [AMENDMENTS](#)
- ARTICLE XX: [TRANSITION ARTICLE](#)
- ANNEX A: [GNSO POLICY-DEVELOPMENT PROCESS](#)
- ANNEX B: [ccNSO POLICY-DEVELOPMENT PROCESS \(ccPDP\)](#)
- ANNEX C: [THE SCOPE OF THE ccNSO](#)

### ARTICLE I: MISSION AND CORE VALUES

#### Section 1. MISSION

The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN:

1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are
  - a. Domain names (forming a system referred to as "DNS");
  - b. Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and
  - c. Protocol port and parameter numbers.
2. Coordinates the operation and evolution of the DNS root name server system.
3. Coordinates policy development reasonably and appropriately related to these technical functions.

#### Section 2. CORE VALUES

In performing its mission, the following core values should guide the decisions and actions of ICANN:

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.

2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.
3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.
4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.
5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.
6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.
7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.
8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.
9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.
10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.
11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

## **ARTICLE II: POWERS**

### **Section 1. GENERAL POWERS**

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the powers of ICANN shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board. With respect to any matters that would fall within the provisions of Article III, Section 6, the Board may act only by a majority vote of all members of the Board. In all other matters, except as otherwise provided in these Bylaws or by law, the Board may act by majority vote of those present at any annual, regular, or special meeting of the Board. Any references in these Bylaws to a vote of the Board shall mean the vote of only those members present at the meeting where a quorum is present unless otherwise specifically provided in these Bylaws by reference to "all of the members of the Board."

### **Section 2. RESTRICTIONS**

ICANN shall not act as a Domain Name System Registry or Registrar or Internet Protocol Address Registry in competition with entities affected by the policies of ICANN. Nothing in this Section is intended to prevent ICANN from taking whatever steps are necessary to protect the operational stability of the Internet in the event of financial failure of a Registry or Registrar or other emergency.

### **Section 3. NON-DISCRIMINATORY TREATMENT**

ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.

## **ARTICLE III: TRANSPARENCY**

**Section 1. PURPOSE**

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

**Section 2. WEBSITE**

ICANN shall maintain a publicly-accessible Internet World Wide Web site (the "Website"), which may include, among other things, (i) a calendar of scheduled meetings of the Board, Supporting Organizations, and Advisory Committees; (ii) a docket of all pending policy development matters, including their schedule and current status; (iii) specific meeting notices and agendas as described below; (iv) information on ICANN's budget, annual audit, financial contributors and the amount of their contributions, and related matters; (v) information about the availability of accountability mechanisms, including reconsideration, independent review, and Ombudsman activities, as well as information about the outcome of specific requests and complaints invoking these mechanisms; (vi) announcements about ICANN activities of interest to significant segments of the ICANN community; (vii) comments received from the community on policies being developed and other matters; (viii) information about ICANN's physical meetings and public forums; and (ix) other information of interest to the ICANN community.

**Section 3. MANAGER OF PUBLIC PARTICIPATION**

There shall be a staff position designated as Manager of Public Participation, or such other title as shall be determined by the President, that shall be responsible, under the direction of the President, for coordinating the various aspects of public participation in ICANN, including the Website and various other means of communicating with and receiving input from the general community of Internet users.

**Section 4. MEETING NOTICES AND AGENDAS**

At least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

**Section 5. MINUTES AND PRELIMINARY REPORTS**

1. All minutes of meetings of the Board and Supporting Organizations (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN Secretary for posting on the Website.
2. No later than five (5) business days after each meeting (as calculated by local time at the location of ICANN's principal office), any actions taken by the Board shall be made publicly available in a preliminary report on the Website; provided, however, that any actions relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the preliminary report made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant preliminary report the reason for such nondisclosure.
3. No later than the day after the date on which they are formally approved by the Board (or, if such day is not a business day, as calculated by local time at the location of ICANN's principal office, then the next immediately following business day), the minutes shall be made publicly available on the Website; provided, however, that any minutes relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure.

**Section 6. NOTICE AND COMMENT ON POLICY ACTIONS**

1. With respect to any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges, ICANN shall:
  - a. provide public notice on the Website explaining what policies are being considered for adoption and why, at least twenty-one days (and if practical, earlier) prior to any action by the Board;
  - b. provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to

see the comments of others, and to reply to those comments, prior to any action by the Board; and

c. in those cases where the policy action affects public policy concerns, to request the opinion of the Governmental Advisory Committee and take duly into account any advice timely presented by the Governmental Advisory Committee on its own initiative or at the Board's request.

2. Where both practically feasible and consistent with the relevant policy development process, an in-person public forum shall also be held for discussion of any proposed policies as described in Section 6(1)(b) of this Article, prior to any final Board action.

3. After taking action on any policy subject to this Section, the Board shall publish in the meeting minutes the reasons for any action taken, the vote of each Director voting on the action, and the separate statement of any Director desiring publication of such a statement.

## **Section 7. TRANSLATION OF DOCUMENTS**

As appropriate and to the extent provided in the ICANN budget, ICANN shall facilitate the translation of final published documents into various appropriate languages.

## **ARTICLE IV: ACCOUNTABILITY AND REVIEW**

### **Section 1. PURPOSE**

In carrying out its mission as set out in these Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws, and with due regard for the core values set forth in Article I of these Bylaws. The provisions of this Article, creating processes for reconsideration and independent review of ICANN actions and periodic review of ICANN's structure and procedures, are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article III and the Board and other selection mechanisms set forth throughout these Bylaws.

### **Section 2. RECONSIDERATION**

1. ICANN shall have in place a process by which any person or entity materially affected by an action of ICANN may request review or reconsideration of that action by the Board.

2. Any person or entity may submit a request for reconsideration or review of an ICANN action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:

a. one or more staff actions or inactions that contradict established ICANN policy(ies); or

b. one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act.

3. There shall be a Committee of the Board consisting of not less than three directors to review and consider any such requests ("Reconsideration Committee"). The Reconsideration Committee shall have the authority to:

a. evaluate requests for review or reconsideration;

b. determine whether a stay of the contested action pending resolution of the request is appropriate;

c. conduct whatever factual investigation is deemed appropriate;

d. request additional written submissions from the affected party, or from other parties; and

e. make a recommendation to the Board of Directors on the merits of the request.

4. ICANN shall absorb the normal administrative costs of the reconsideration process. It reserves the right to recover from a party requesting review or reconsideration any costs which are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate

to evaluating the Reconsideration Request shall be communicated to the party seeking reconsideration, who shall then have the option of withdrawing the request or agreeing to bear such costs.

5. All Reconsideration Requests must be submitted to an e-mail address designated by the Board's Reconsideration Committee within thirty days after:

- a. for requests challenging Board actions, the date on which information about the challenged Board action is first published in a preliminary report or minutes of the Board's meetings; or
- b. for requests challenging staff actions, the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or
- c. for requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

6. All Reconsideration Requests must include the information required by the Reconsideration Committee, which shall include at least the following information:

- a. name, address, and contact information for the requesting party, including postal and e-mail addresses;
- b. the specific action or inaction of ICANN for which review or reconsideration is sought;
- c. the date of the action or inaction;
- d. the manner by which the requesting party will be affected by the action or inaction;
- e. the extent to which, in the opinion of the party submitting the Request for Reconsideration, the action or inaction complained of adversely affects others;
- f. whether a temporary stay of any action complained of is requested, and if so, the harms that will result if the action is not stayed;
- g. in the case of staff action or inaction, a detailed explanation of the facts as presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies);
- h. in the case of Board action or inaction, a detailed explanation of the material information not considered by the Board and, if the information was not presented to the Board, the reasons the party submitting the request did not submit it to the Board before it acted or failed to act;
- i. what specific steps the requesting party asks ICANN to take-i.e., whether and how the action should be reversed, cancelled, or modified, or what specific action should be taken;
- j. the grounds on which the requested action should be taken; and
- k. any documents the requesting party wishes to submit in support of its request.

7. All Reconsideration Requests shall be posted on the Website.

8. The Reconsideration Committee shall have authority to consider Reconsideration Requests from different parties in the same proceeding so long as (i) the requests involve the same general action or inaction and (ii) the parties submitting Reconsideration Requests are similarly affected by such action or inaction.

9. The Reconsideration Committee shall review Reconsideration Requests promptly upon receipt and announce, within thirty days, its intention to either decline to consider or proceed to consider a Reconsideration Request after receipt of the Request. The announcement shall be posted on the Website.

10. The Reconsideration Committee announcement of a decision not to hear a Reconsideration Request must contain an explanation of the reasons for its decision.



11. The Reconsideration Committee may request additional information or clarifications from the party submitting the Request for Reconsideration.
12. The Reconsideration Committee may ask the ICANN staff for its views on the matter, which comments shall be made publicly available on the Website.
13. If the Reconsideration Committee requires additional information, it may elect to conduct a meeting with the party seeking Reconsideration by telephone, e-mail or, if acceptable to the party requesting reconsideration, in person. To the extent any information gathered in such a meeting is relevant to any recommendation by the Reconsideration Committee, it shall so state in its recommendation.
14. The Reconsideration Committee may also request information relevant to the request from third parties. To the extent any information gathered is relevant to any recommendation by the Reconsideration Committee, it shall so state in its recommendation.
15. The Reconsideration Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the party seeking reconsideration or review, by the ICANN staff, and by any third party.
16. To protect against abuse of the reconsideration process, a request for reconsideration may be dismissed by the Reconsideration Committee where it is repetitive, frivolous, non-substantive, or otherwise abusive, or where the affected party had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. Likewise, the Reconsideration Committee may dismiss a request when the requesting party does not show that it will be affected by ICANN's action.
17. The Reconsideration Committee shall make a final recommendation to the Board with respect to a Reconsideration Request within ninety days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. The final recommendation shall be posted on the Website.
18. The Board shall not be bound to follow the recommendations of the Reconsideration Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken.
19. The Reconsideration Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:
  - a. the number and general nature of Reconsideration Requests received;
  - b. the number of Reconsideration Requests on which the Committee has taken action;
  - c. the number of Reconsideration Requests that remained pending at the end of the calendar year and the average length of time for which such Reconsideration Requests have been pending;
  - d. a description of any Reconsideration Requests that were pending at the end of the calendar year for more than ninety (90) days and the reasons that the Committee has not taken action on them;
  - e. the number and nature of Reconsideration Requests that the Committee declined to consider on the basis that they did not meet the criteria established in this policy;
  - f. for Reconsideration Requests that were denied, an explanation of any other mechanisms available to ensure that ICANN is accountable to persons materially affected by its decisions; and
  - g. whether or not, in the Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.
20. Each annual report shall also aggregate the information on the topics listed in paragraph 19(a)-(e) of this Section for the period beginning 1 January 2003.

**Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS**

1. In addition to the reconsideration process described in Section 2 of this Article, ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.
2. Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action.
3. Requests for such independent review shall be referred to an Independent Review Panel ("IRP"), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws.
4. The IRP shall be operated by an international arbitration provider appointed from time to time by ICANN ("the IRP Provider") using arbitrators under contract with or nominated by that provider.
5. Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures, which shall implement and be consistent with this Section 3.
6. Either party may elect that the request for independent review be considered by a three-member panel; in the absence of any such election, the issue shall be considered by a one-member panel.
7. The IRP Provider shall determine a procedure for assigning members to individual panels; provided that if ICANN so directs, the IRP Provider shall establish a standing panel to hear such claims.
8. The IRP shall have the authority to:
  - a. request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties;
  - b. declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and
  - c. recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP.
9. Individuals holding an official position or office within the ICANN structure are not eligible to serve on the IRP.
10. In order to keep the costs and burdens of independent review as low as possible, the IRP should conduct its proceedings by e-mail and otherwise via the Internet to the maximum extent feasible. Where necessary, the IRP may hold meetings by telephone.
11. The IRP shall adhere to conflicts-of-interest policy stated in the IRP Provider's operating rules and procedures, as approved by the Board.
12. Declarations of the IRP shall be in writing. The IRP shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party. The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.
13. The IRP operating procedures, and all petitions, claims, and declarations, shall be posted on the Website when they become available.
14. The IRP may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets.
15. Where feasible, the Board shall consider the IRP declaration at the Board's next meeting.

**Section 4. PERIODIC REVIEW OF ICANN STRUCTURE AND OPERATIONS**

1. The Board shall cause a periodic review, if feasible no less frequently than every three years, of the performance and operation of each Supporting Organization, each Supporting Organization Council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness. The results of such reviews shall be posted on the Website for public review and comment, and shall be considered by the Board no later than the second scheduled meeting of the Board after such results have been posted for 30 days. The consideration by the Board includes the ability to revise the structure or operation of the parts of ICANN being reviewed by a two-thirds vote of all members of the Board.
2. The first of such reviews, to be initiated no later than 15 December 2003 and to be completed in time for Board consideration at ICANN's annual meeting in 2004, shall be of the GNSO Council and the ICANN Root Server System Advisory Committee. The second of such reviews, to be initiated no later than 15 November 2004 and to be completed in time for Board consideration at ICANN's annual meeting in 2005, shall be of the ccNSO, the ccNSO Council, and such other organizations as the Board may designate.
3. The Governmental Advisory Committee shall provide its own review mechanisms.

## ARTICLE V: OMBUDSMAN

### Section 1. OFFICE OF OMBUDSMAN

1. There shall be an Office of Ombudsman, to be managed by an Ombudsman and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.
2. The Ombudsman shall be appointed by the Board for an initial term of two years, subject to renewal by the Board.
3. The Ombudsman shall be subject to dismissal by the Board only upon a three-fourths (3/4) vote of the entire Board.
4. The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in its entirety and without change in the general ICANN budget recommended by the ICANN President to the Board. Nothing in this Article shall prevent the President from offering separate views on the substance, size, or other features of the Ombudsman's proposed budget to the Board.

### Section 2. CHARTER

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Reconsideration Policy set forth in [Section 2 of Article IV](#) or the Independent Review Policy set forth in [Section 3 of Article IV](#) have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN staff, the Board, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results.

### Section 3. OPERATIONS

The Office of Ombudsman shall:

1. facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN community (excluding employees and vendors/suppliers of ICANN) may have with specific actions or failures to act by the Board or ICANN staff which have not otherwise become the subject of either the Reconsideration or Independent Review Policies;
2. exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN's interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to

vendor/supplier relations;

3. have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN);

4. heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN community and online availability;

5. maintain neutrality and independence, and have no bias or personal stake in an outcome; and

6. comply with all ICANN conflicts-of-interest and confidentiality policies.

#### **Section 4. INTERACTION WITH ICANN AND OUTSIDE ENTITIES**

1. No ICANN employee, Board member, or other participant in Supporting Organizations or Advisory Committees shall prevent or impede the Ombudsman's contact with the ICANN community (including employees of ICANN). ICANN employees and Board members shall direct members of the ICANN community who voice problems, concerns, or complaints about ICANN to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.

2. ICANN staff and other ICANN participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.

3. Contact with the Ombudsman shall not constitute notice to ICANN of any particular action or cause of action.

4. The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.

5. The Ombudsman shall not take any actions not authorized in these Bylaws, and in particular shall not institute, join, or support in any way any legal actions challenging ICANN structure, procedures, processes, or any conduct by the ICANN Board, staff, or constituent bodies.

#### **Section 5. ANNUAL REPORT**

The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such annual report should include a description of any trends or common elements of complaints received during the period in question, as well as recommendations for steps that could be taken to minimize future complaints. The annual report shall be posted on the Website.

### **ARTICLE VI: BOARD OF DIRECTORS**

#### **Section 1. COMPOSITION OF THE BOARD**

The ICANN Board of Directors ("Board") shall consist of fifteen voting members ("Directors"). In addition, six non-voting liaisons ("Liaisons") shall be designated for the purposes set forth in Section 9 of this Article. Only Directors shall be included in determining the existence of quorums, and in establishing the validity of votes taken by the ICANN Board.

#### **Section 2. DIRECTORS AND THEIR SELECTION; ELECTION OF CHAIRMAN AND VICE-CHAIRMAN**

1. The Directors shall consist of:

a. Eight voting members selected by the Nominating Committee established by Article VII of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seats 1 through 8.

b. Two voting members selected by the Address Supporting Organization according to the provisions of Article VIII of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seat 9 and Seat 10.

c. Two voting members selected by the Country-Code Names Supporting Organization according to the provisions of Article IX of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seat 11 and Seat 12.

d. Two voting members selected by the Generic Names Supporting Organization according to the provisions of Article X of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seat 13 and Seat 14.

e. The President ex officio, who shall be a voting member.

2. In carrying out its responsibilities to fill Seats 1 through 8, the Nominating Committee shall seek to ensure that the ICANN Board is composed of members who in the aggregate display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in Section 3 of this Article. At no time shall the Nominating Committee select a Director to fill any vacancy or expired term whose selection would cause the total number of Directors (not including the President) who are citizens of countries in any one Geographic Region (as defined in Section 5 of this Article) to exceed five; and the Nominating Committee shall ensure through its selections that at all times the Board includes at least one Director who is a citizen of a country in each ICANN Geographic Region.

3. In carrying out their responsibilities to fill Seats 9 through 14, the Supporting Organizations shall seek to ensure that the ICANN Board is composed of members that in the aggregate display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in Section 3 of this Article. At any given time, no two Directors selected by a Supporting Organization shall be citizens of the same country or of countries located in the same Geographic Region.

4. The Board shall annually elect a Chairman and a Vice-Chairman from among the Directors, not including the President.

### Section 3. CRITERIA FOR SELECTION OF DIRECTORS

ICANN Directors shall be:

1. Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making;
2. Persons with an understanding of ICANN's mission and the potential impact of ICANN decisions on the global Internet community, and committed to the success of ICANN;
3. Persons who will produce the broadest cultural and geographic diversity on the Board consistent with meeting the other criteria set forth in this Section;
4. Persons who, in the aggregate, have personal familiarity with the operation of gTLD registries and registrars; with ccTLD registries; with IP address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet;
5. Persons who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and
6. Persons who are able to work and communicate in written and spoken English.

### Section 4. ADDITIONAL QUALIFICATIONS

1. Notwithstanding anything herein to the contrary, no official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director. As used herein, the term "official" means a person (i) who holds an elective governmental office or (ii) who is employed by such government or multinational entity and whose primary function with such government or entity is to develop or influence governmental or public policies.

2. No person who serves in any capacity (including as a liaison) on any Supporting Organization Council shall simultaneously serve as a Director or liaison to the Board. If such a person accepts a nomination to be considered for selection by the Supporting Organization Council to be a Director, the person shall not, following such

nomination, participate in any discussion of, or vote by, the Supporting Organization Council relating to the selection of Directors by the Council, until the Council has selected the full complement of Directors it is responsible for selecting. In the event that a person serving in any capacity on a Supporting Organization Council accepts a nomination to be considered for selection as a Director, the constituency group or other group or entity that selected the person may select a replacement for purposes of the Council's selection process.

3. Persons serving in any capacity on the Nominating Committee shall be ineligible for selection to positions on the Board as provided by Article VII, Section 8.

## **Section 5. INTERNATIONAL REPRESENTATION**

In order to ensure broad international representation on the Board, the selection of Directors by the Nominating Committee and each Supporting Organization shall comply with all applicable diversity provisions of these Bylaws or of any Memorandum of Understanding referred to in these Bylaws concerning the Supporting Organization. One intent of these diversity provisions is to ensure that at all times each Geographic Region shall have at least one Director, and at all times no region shall have more than five Directors on the Board (not including the President). As used in these Bylaws, each of the following is considered to be a "Geographic Region": Europe; Asia/Australia/Pacific; Latin America/Caribbean islands; Africa; and North America. The specific countries included in each Geographic Region shall be determined by the Board, and this Section shall be reviewed by the Board from time to time (but at least every three years) to determine whether any change is appropriate, taking account of the evolution of the Internet.

## **Section 6. DIRECTORS' CONFLICTS OF INTEREST**

The Board, through a committee designated for that purpose, shall require a statement from each Director not less frequently than once a year setting forth all business and other affiliations which relate in any way to the business and other affiliations of ICANN. Each Director shall be responsible for disclosing to ICANN any matter that could reasonably be considered to make such Director an "interested director" within the meaning of Section 5233 of the California Nonprofit Public Benefit Corporation Law ("CNPBCL"). In addition, each Director shall disclose to ICANN any relationship or other factor that could reasonably be considered to cause the Director to be considered to be an "interested person" within the meaning of Section 5227 of the CNPBCL. The Board shall adopt policies specifically addressing Director, Officer, and Supporting Organization conflicts of interest. No Director shall vote on any matter in which he or she has a material and direct financial interest that would be affected by the outcome of the vote.

## **Section 7. DUTIES OF DIRECTORS**

Directors shall serve as individuals who have the duty to act in what they reasonably believe are the best interests of ICANN and not as representatives of the entity that selected them, their employers, or any other organizations or constituencies.

## **Section 8. TERMS OF DIRECTORS**

1. Subject to the provisions of the Transition Article of these Bylaws, the regular term of office of Director Seats 1 through 14 shall begin as follows:

- a. The regular terms of Seats 1 through 3 shall begin at the conclusion of ICANN's annual meeting in 2003 and each ICANN annual meeting every third year after 2003;
- b. The regular terms of Seats 4 through 6 shall begin at the conclusion of ICANN's annual meeting in 2004 and each ICANN annual meeting every third year after 2004;
- c. The regular terms of Seats 7 and 8 shall begin at the conclusion of ICANN's annual meeting in 2005 and each ICANN annual meeting every third year after 2005;
- d. The regular terms of Seats 9 and 12 shall begin on the day six months after the conclusion of ICANN's annual meeting in 2002 and each ICANN annual meeting every third year after 2002;
- e. The regular terms of Seats 10 and 13 shall begin on the day six months after the conclusion of ICANN's annual meeting in 2003 and each ICANN annual meeting every third year after 2003; and
- f. The regular terms of Seats 11 and 14 shall begin on the day six months after the conclusion of ICANN's annual meeting in 2004 and each ICANN annual meeting every third year after 2004.

2. Each Director holding any of Seats 1 through 14, including a Director selected to fill a vacancy, shall hold office for a term that lasts until the next term for that Seat commences and until a successor has been selected and qualified

or until that Director resigns or is removed in accordance with these Bylaws.

3. At least one month before the commencement of each annual meeting, the Nominating Committee shall give the Secretary of ICANN written notice of its selection of Directors for seats with terms beginning at the conclusion of the annual meeting.

4. No later than five months after the conclusion of each annual meeting, any Supporting Organization entitled to select a Director for a Seat with a term beginning on the day six months after the conclusion of the annual meeting shall give the Secretary of ICANN written notice of its selection.

5. Subject to the provisions of the Transition Article of these Bylaws, no Director may serve more than three consecutive terms. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term.

6. The term as Director of the person holding the office of President shall be for as long as, and only for as long as, such person holds the office of President.

### Section 9. NON-VOTING LIAISONS

1. The non-voting liaisons shall include:

- a. One appointed by the Governmental Advisory Committee;
- b. One appointed by the Root Server System Advisory Committee established by Article XI of these Bylaws;
- c. One appointed by the Security and Stability Advisory Committee established by Article XI of these Bylaws;
- d. One appointed by the Technical Liaison Group established by Article XI-A of these Bylaws;
- e. One appointed by the At-Large Advisory Committee established by Article XI of these Bylaws; and
- f. One appointed by the Internet Engineering Task Force.

2. Subject to the provisions of the Transition Article of these Bylaws, the non-voting liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a non-voting liaison shall give the Secretary of ICANN written notice of its appointment.

3. Non-voting liaisons shall serve as volunteers, without compensation other than the reimbursement of certain expenses.

4. Each non-voting liaison may be reappointed, and shall remain in that position until a successor has been appointed or until the liaison resigns or is removed in accordance with these Bylaws.

5. The non-voting liaisons shall be entitled to attend Board meetings, participate in Board discussions and deliberations, and have access (under conditions established by the Board) to materials provided to Directors for use in Board discussions, deliberations and meetings, but shall otherwise not have any of the rights and privileges of Directors. Non-voting liaisons shall be entitled (under conditions established by the Board) to use any materials provided to them pursuant to this Section for the purpose of consulting with their respective committee or organization.

### Section 10. RESIGNATION OF A DIRECTOR OR NON-VOTING LIAISON

Subject to Section 5226 of the CNPBCL, any Director or non-voting liaison may resign at any time, either by oral tender of resignation at any meeting of the Board (followed by prompt written notice to the Secretary of ICANN) or by giving written notice thereof to the President or the Secretary of ICANN. Such resignation shall take effect at the time specified, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective. The successor shall be selected pursuant to Section 12 of this Article.

### Section 11. REMOVAL OF A DIRECTOR OR NON-VOTING LIAISON

<http://www.icann.org/general/archive-bylaws/bylaws-08apr05.htm>

11/16/2005

1. Any Director may be removed, following notice to that Director and, if selected by a Supporting Organization, to that Supporting Organization, by a three-fourths (3/4) majority vote of all Directors; provided, however, that the Director who is the subject of the removal action shall not be entitled to vote on such an action or be counted as a voting member of the Board when calculating the required three-fourths (3/4) vote; and provided further, that each vote to remove a Director shall be a separate vote on the sole question of the removal of that particular Director.

2. With the exception of the non-voting liaison appointed by the Governmental Advisory Committee, any non-voting liaison may be removed, following notice to that liaison and to the organization by which that liaison was selected, by a three-fourths (3/4) majority vote of all Directors if the selecting organization fails to promptly remove that liaison following such notice. The Board may request the Governmental Advisory Committee to consider the replacement of the non-voting liaison appointed by that Committee if the Board, by a three-fourths (3/4) majority vote of all Directors, determines that such an action is appropriate.

## Section 12. VACANCIES

1. A vacancy or vacancies in the Board of Directors shall be deemed to exist in the case of the death, resignation, or removal of any Director; if the authorized number of Directors is increased; or if a Director has been declared of unsound mind by a final order of court or convicted of a felony or incarcerated for more than 90 days as a result of a criminal conviction or has been found by final order or judgment of any court to have breached a duty under Sections 5230 et seq. of the CNPBCL. Any vacancy occurring on the Board of Directors shall be filled by the Nominating Committee, unless (a) that Director was selected by a Supporting Organization, in which case that vacancy shall be filled by that Supporting Organization, or (b) that Director was the President, in which case the vacancy shall be filled in accordance with the provisions of Article XIII of these Bylaws. The selecting body shall give written notice to the Secretary of ICANN of their appointments to fill vacancies. A Director selected to fill a vacancy on the Board shall serve for the unexpired term of his or her predecessor in office and until a successor has been selected and qualified. No reduction of the authorized number of Directors shall have the effect of removing a Director prior to the expiration of the Director's term of office.

2. The organizations selecting the non-voting liaisons identified in Section 9 of this Article are responsible for determining the existence of, and filling, any vacancies in those positions. They shall give the Secretary of ICANN written notice of their appointments to fill vacancies.

## Section 13. ANNUAL MEETINGS

Annual meetings of ICANN shall be held for the purpose of electing Officers and for the transaction of such other business as may come before the meeting. Each annual meeting for ICANN shall be held at the principal office of ICANN, or any other appropriate place of the Board's time and choosing, provided such annual meeting is held within 14 months of the immediately preceding annual meeting. If the Board determines that it is practical, the annual meeting should be distributed in real-time and archived video and audio formats on the Internet.

## Section 14. REGULAR MEETINGS

Regular meetings of the Board shall be held on dates to be determined by the Board. In the absence of other designation, regular meetings shall be held at the principal office of ICANN.

## Section 15. SPECIAL MEETINGS

Special meetings of the Board may be called by or at the request of one-quarter (1/4) of the members of the Board or by the Chairman of the Board or the President. A call for a special meeting shall be made by the Secretary of ICANN. In the absence of designation, special meetings shall be held at the principal office of ICANN.

## Section 16. NOTICE OF MEETINGS

Notice of time and place of all meetings shall be delivered personally or by telephone or by electronic mail to each Director and non-voting liaison, or sent by first-class mail (air mail for addresses outside the United States) or facsimile, charges prepaid, addressed to each Director and non-voting liaison at the Director's or non-voting liaison's address as it is shown on the records of ICANN. In case the notice is mailed, it shall be deposited in the United States mail at least fourteen (14) days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone or facsimile or electronic mail it shall be delivered personally or by telephone or facsimile or electronic mail at least forty-eight (48) hours before the time of the holding of the meeting. Notwithstanding anything in this Section to the contrary, notice of a meeting need not be given to any Director who signed a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.



**Section 17. QUORUM**

At all annual, regular, and special meetings of the Board, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, unless otherwise provided herein or by law. If a quorum shall not be present at any meeting of the Board, the Directors present thereat may adjourn the meeting from time to time to another place, time, or date. If the meeting is adjourned for more than twenty-four (24) hours, notice shall be given to those Directors not at the meeting at the time of the adjournment.

**Section 18. ACTION BY TELEPHONE MEETING OR BY OTHER COMMUNICATIONS EQUIPMENT**

Members of the Board or any Committee of the Board may participate in a meeting of the Board or Committee of the Board through use of (i) conference telephone or similar communications equipment, provided that all Directors participating in such a meeting can speak to and hear one another or (ii) electronic video screen communication or other communication equipment; provided that (a) all Directors participating in such a meeting can speak to and hear one another, (b) all Directors are provided the means of fully participating in all matters before the Board or Committee of the Board, and (c) ICANN adopts and implements means of verifying that (x) a person participating in such a meeting is a Director or other person entitled to participate in the meeting and (y) all actions of, or votes by, the Board or Committee of the Board are taken or cast only by the members of the Board or Committee and not persons who are not members. Participation in a meeting pursuant to this Section constitutes presence in person at such meeting. ICANN shall make available at the place of any meeting of the Board the telecommunications equipment necessary to permit members of the Board to participate by telephone.

**Section 19. ACTION WITHOUT MEETING**

Any action required or permitted to be taken by the Board or a Committee of the Board may be taken without a meeting if all of the Directors entitled to vote thereat shall individually or collectively consent in writing to such action. Such written consent shall have the same force and effect as the unanimous vote of such Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

**Section 20. ELECTRONIC MAIL**

If permitted under applicable law, communication by electronic mail shall be considered equivalent to any communication otherwise required to be in writing. ICANN shall take such steps as it deems appropriate under the circumstances to assure itself that communications by electronic mail are authentic.

**Section 21. RIGHTS OF INSPECTION**

Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind, and to inspect the physical properties of ICANN. ICANN shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

**Section 22. COMPENSATION**

The Directors shall receive no compensation for their services as Directors. The Board may, however, authorize the reimbursement of actual and necessary reasonable expenses incurred by Directors and non-voting liaisons performing their duties as Directors or non-voting liaisons.

**Section 23. PRESUMPTION OF ASSENT**

A Director present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting, or unless such Director files a written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof, or forwards such dissent or abstention by registered mail to the Secretary of ICANN immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of such action.

**ARTICLE VII: NOMINATING COMMITTEE****Section 1. DESCRIPTION**

There shall be a Nominating Committee of ICANN, responsible for the selection of all ICANN Directors except the President and those Directors selected by ICANN's Supporting Organizations, and for such other selections as are set forth in these Bylaws.

**Section 2. COMPOSITION**

The Nominating Committee shall be composed of the following persons:

1. A non-voting Chair, appointed by the ICANN Board;
2. The immediately previous Nominating Committee Chair, as a non-voting advisor;
3. A non-voting liaison appointed by the ICANN Root Server System Advisory Committee established by Article XI of these Bylaws;
4. A non-voting liaison appointed by the ICANN Security and Stability Advisory Committee established by Article XI of these Bylaws;
5. A non-voting liaison appointed by the Governmental Advisory Committee;
6. Subject to the provisions of the Transition Article of these Bylaws, five voting delegates selected by the At-Large Advisory Committee established by Article XI of these Bylaws;
7. Two voting delegates, one representing small business users and one representing large business users, selected by the Business Users Constituency of the Generic Names Supporting Organization established by Article X of these Bylaws;
8. One voting delegate each selected by the following entities:
  - a. The gTLD Registry Constituency of the Generic Names Supporting Organization established by Article X of these Bylaws;
  - b. The gTLD Registrars Constituency of the Generic Names Supporting Organization established by Article X of these Bylaws;
  - c. The Council of the Country Code Names Supporting Organization established by Article IX of these Bylaws;
  - d. The Internet Service Providers Constituency of the Generic Names Supporting Organization established by Article X of these Bylaws;
  - e. The Intellectual Property Constituency of the Generic Names Supporting Organization established by Article X of these Bylaws;
  - f. The Council of the Address Supporting Organization established by Article VIII of these Bylaws;
  - g. An entity designated by the Board to represent academic and similar organizations;
  - h. Consumer and civil society groups, selected by the Non-commercial Users Constituency of the Generic Names Supporting Organization established by Article X of these Bylaws;
  - i. The Internet Engineering Task Force; and
  - j. The ICANN Technical Liaison Group established by Article XI-A of these Bylaws; and
9. A non-voting Associate Chair, who may be appointed by the Chair, at his or her sole discretion, to serve during all or part of the term of the Chair. The Associate Chair may not be a person who is otherwise a member of the same Nominating Committee. The Associate Chair shall assist the Chair in carrying out the duties of the Chair, but shall not serve, temporarily or otherwise, in the place of the Chair.

**Section 3. TERMS**

Subject to the provisions of the Transition Article of these Bylaws:

1. Each voting delegate shall serve a one-year term. A delegate may serve at most two successive one-year terms, after which at least two years must elapse before the individual is eligible to serve another term.
2. The regular term of each voting delegate shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the immediately following ICANN annual meeting.
3. Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, the immediately previous Chair serving as an advisor, and any Associate Chair shall serve as such until the conclusion of the next ICANN annual meeting.
4. Vacancies in the positions of delegate, non-voting liaison, or Chair shall be filled by the entity entitled to select the delegate, non-voting liaison, or Chair involved. A vacancy in the position of non-voting advisor (immediately previous Chair) may be filled by the Board from among persons with prior service on the Board or a Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 2(9) of this Article.
5. The existence of any vacancies shall not affect the obligation of the Nominating Committee to carry out the responsibilities assigned to it in these Bylaws.

#### **Section 4. CRITERIA FOR SELECTION OF NOMINATING COMMITTEE DELEGATES**

Delegates to the ICANN Nominating Committee shall be:

1. Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and with experience and competence with collegial large group decision-making;
2. Persons with wide contacts, broad experience in the Internet community, and a commitment to the success of ICANN;
3. Persons whom the selecting body is confident will consult widely and accept input in carrying out their responsibilities;
4. Persons who are neutral and objective, without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out their Nominating Committee responsibilities;
5. Persons with an understanding of ICANN's mission and the potential impact of ICANN's activities on the broader Internet community who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and
6. Persons who are able to work and communicate in written and spoken English.

#### **Section 5. DIVERSITY**

In carrying out its responsibilities to select members of the ICANN Board (and selections to any other ICANN bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the ICANN Board (and such other bodies), and seek to ensure that the persons selected to fill vacancies on the ICANN Board (and each such other body) shall, to the extent feasible and consistent with the other criteria required to be applied by Section 4 of this Article, make selections guided by Core Value 4 in Article I, Section 2.

#### **Section 6. ADMINISTRATIVE AND OPERATIONAL SUPPORT**

ICANN shall provide administrative and operational support necessary for the Nominating Committee to carry out its responsibilities.

#### **Section 7. PROCEDURES**

The Nominating Committee shall adopt such operating procedures as it deems necessary, which shall be published on the Website.

#### **Section 8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE**

No person who serves on the Nominating Committee in any capacity shall be eligible for selection by any means to any position on the Board or any other ICANN body having one or more membership positions that the Nominating Committee is responsible for filling, until the conclusion of an ICANN annual meeting that coincides with, or is after, the conclusion of that person's service on the Nominating Committee.

#### **Section 9. INELIGIBILITY FOR SERVICE ON NOMINATING COMMITTEE**

No person who is an employee of or paid consultant to ICANN (including the Ombudsman) shall simultaneously serve in any of the Nominating Committee positions described in Section 2 of this Article.

### **ARTICLE VIII: ADDRESS SUPPORTING ORGANIZATION**

#### **Section 1. DESCRIPTION**

1. The Address Supporting Organization (ASO) shall advise the Board with respect to policy issues relating to the operation, assignment, and management of Internet addresses.
2. The ASO shall be the entity established by the Memorandum of Understanding entered on 21 October 2004 between ICANN and the Number Resource Organization (NRO), an organization of the existing regional Internet registries (RIRs).

#### **Section 2. ADDRESS COUNCIL**

1. The ASO shall have an Address Council, consisting of the members of the NRO Number Council.
2. The Address Council shall select Directors to those seats on the Board designated to be filled by the ASO.

### **ARTICLE IX: COUNTRY-CODE NAMES SUPPORTING ORGANIZATION**

#### **Section 1. DESCRIPTION**

There shall be a policy-development body known as the Country-Code Names Supporting Organization (ccNSO), which shall be responsible for:

1. developing and recommending to the Board global policies relating to country-code top-level domains;
2. Nurturing consensus across the ccNSO's community, including the name-related activities of ccTLDs; and
3. Coordinating with other ICANN Supporting Organizations, committees, and constituencies under ICANN.

In addition to the above core responsibilities, the ccNSO may also engage in other activities authorized by its members, including: seeking to develop voluntary best practices for ccTLD managers, assisting in skills building within the global community of ccTLD managers, and enhancing operational and technical cooperation among ccTLD managers.

#### **Section 2. ORGANIZATION**

The ccNSO shall consist of (i) ccTLD managers that have agreed in writing to be members of the ccNSO (see Section 4(2) of this Article) and (ii) a ccNSO Council responsible for managing the policy-development process of the ccNSO.

#### **Section 3. ccNSO COUNCIL**

1. The ccNSO Council shall consist of (a) three ccNSO Council members selected by the ccNSO members within each of ICANN's Geographic Regions in the manner described in Section 4(7) through (9) of this Article; (b) three ccNSO Council members selected by the ICANN Nominating Committee; (c) liaisons as described in paragraph 2 of this Section; and (iv) observers as described in paragraph 3 of this Section.
2. There shall also be one liaison to the ccNSO Council from each of the following organizations, to the extent they choose to appoint such a liaison: (a) the Governmental Advisory Committee; (b) the At-Large Advisory Committee; and (c) each of the Regional Organizations described in Section 5 of this Article. These liaisons shall not be members of or entitled to vote on the ccNSO Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO Council. Appointments of liaisons shall be made by providing written notice to the

ICANN Secretary, with a notification copy to the ccNSO Council Chair, and shall be for the term designated by the appointing organization as stated in the written notice. The appointing organization may recall from office or replace its liaison at any time by providing written notice of the recall or replacement to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.

3. The ccNSO Council may agree with the Council of any other ICANN Supporting Organization to exchange observers. Such observers shall not be members of or entitled to vote on the ccNSO Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO Council. The appointing Council may designate its observer (or revoke or change the designation of its observer) on the ccNSO Council at any time by providing written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.

4. Subject to the provisions of the Transition Article of these Bylaws: (a) the regular term of each ccNSO Council member shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the third ICANN annual meeting thereafter; (b) the regular terms of the three ccNSO Council members selected by the ccNSO members within each ICANN Geographic Region shall be staggered so that one member's term begins in a year divisible by three, a second member's term begins in the first year following a year divisible by three, and the third member's term begins in the second year following a year divisible by three; and (c) the regular terms of the three ccNSO Council members selected by the Nominating Committee shall be staggered in the same manner. Each ccNSO Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

5. A ccNSO Council member may resign at any time by giving written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.

6. ccNSO Council members may be removed for not attending three consecutive meetings of the ccNSO Council without sufficient cause or for grossly inappropriate behavior, both as determined by at least a 66% vote of all of the members of the ccNSO Council.

7. A vacancy on the ccNSO Council shall be deemed to exist in the case of the death, resignation, or removal of any ccNSO Council member. Vacancies in the positions of the three members selected by the Nominating Committee shall be filled for the unexpired term involved by the Nominating Committee giving the ICANN Secretary written notice of its selection, with a notification copy to the ccNSO Council Chair. Vacancies in the positions of the ccNSO Council members selected by ccNSO members shall be filled for the unexpired term by the procedure described in Section 4(7) through (9) of this Article.

8. The role of the ccNSO Council is to administer and coordinate the affairs of the ccNSO (including coordinating meetings, including an annual meeting, of ccNSO members as described in Section 4(6) of this Article) and to manage the development of policy recommendations in accordance with Section 6 of this Article. The ccNSO Council shall also undertake such other roles as the members of the ccNSO shall decide from time to time.

9. The ccNSO Council shall make selections to fill Seats 11 and 12 on the Board by written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all the members of the ccNSO Council then in office. Notification of the ccNSO Council's selections shall be given by the ccNSO Council Chair in writing to the ICANN Secretary, consistent with Article VI, Sections 8(4) and 12(1).

10. The ccNSO Council shall select from among its members the ccNSO Council Chair and such Vice Chair(s) as it deems appropriate. Selections of the ccNSO Council Chair and Vice Chair(s) shall be by written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all the members of the ccNSO Council then in office. The term of office of the ccNSO Council Chair and any Vice Chair(s) shall be as specified by the ccNSO Council at or before the time the selection is made. The ccNSO Council Chair or any Vice Chair(s) may be recalled from office by the same procedure as used for selection.

11. The ccNSO Council, subject to direction by the ccNSO members, shall adopt such rules and procedures for the ccNSO as it deems necessary, provided they are consistent with these Bylaws. Rules for ccNSO membership and operating procedures adopted by the ccNSO Council shall be published on the Website.

12. Except as provided by paragraphs 9 and 10 of this Section, the ccNSO Council shall act at meetings. The ccNSO Council shall meet regularly on a schedule it determines, but not fewer than four times each calendar year. At the discretion of the ccNSO Council, meetings may be held in person or by other means, provided that all ccNSO Council members are permitted to participate by at least one means described in paragraph 14 of this Section. Except where determined by a majority vote of the members of the ccNSO Council present that a closed session is appropriate, physical meetings shall be open to attendance by all interested persons. To the extent practicable, ccNSO Council meetings should be held in conjunction with meetings of the Board, or of one or more of ICANN's other Supporting Organizations.

13. Notice of time and place (and information about means of participation other than personal attendance) of all meetings of the ccNSO Council shall be provided to each ccNSO Council member, liaison, and observer by e-mail, telephone, facsimile, or a paper notice delivered personally or by postal mail. In case the notice is sent by postal mail, it shall be sent at least 21 days before the day of the meeting. In case the notice is delivered personally or by telephone, facsimile, or e-mail it shall be provided at least seven days before the day of the meeting. At least seven days in advance of each ccNSO Council meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

14. Members of the ccNSO Council may participate in a meeting of the ccNSO Council through personal attendance or use of electronic communication (such as telephone or video conference), provided that (a) all ccNSO Council members participating in the meeting can speak to and hear one another, (b) all ccNSO Council members participating in the meeting are provided the means of fully participating in all matters before the ccNSO Council, and (c) there is a reasonable means of verifying the identity of ccNSO Council members participating in the meeting and their votes. A majority of the ccNSO Council members (i.e. those entitled to vote) then in office shall constitute a quorum for the transaction of business, and actions by a majority vote of the ccNSO Council members present at any meeting at which there is a quorum shall be actions of the ccNSO Council, unless otherwise provided in these Bylaws. The ccNSO Council shall transmit minutes of its meetings to the ICANN Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following the meeting, and no later than 21 days following the meeting.

#### Section 4. MEMBERSHIP

1. The ccNSO shall have a membership consisting of ccTLD managers. Any ccTLD manager that meets the membership qualifications stated in paragraph 2 of this Section shall be entitled to be members of the ccNSO. For purposes of this Article, a ccTLD manager is the organization or entity responsible for managing an ISO 3166 country-code top-level domain and referred to in the IANA database under the current heading of "Sponsoring Organization", or under any later variant, for that country-code top-level domain.

2. Any ccTLD manager may become a ccNSO member by submitting an application to a person designated by the ccNSO Council to receive applications. Subject to the provisions of the Transition Article of these Bylaws, the application shall be in writing in a form designated by the ccNSO Council. The application shall include the ccTLD manager's recognition of the role of the ccNSO within the ICANN structure as well as the ccTLD manager's agreement, for the duration of its membership in the ccNSO, (a) to adhere to rules of the ccNSO, including membership rules, (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO membership fees established by the ccNSO Council under Section 7(3) of this Article. A ccNSO member may resign from membership at any time by giving written notice to a person designated by the ccNSO Council to receive notices of resignation. In the absence of designation by the ccNSO Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN Secretary, who shall notify the ccNSO Council of receipt of any such applications and notices.

3. Neither membership in the ccNSO nor membership in any Regional Organization described in Section 5 of this Article shall be a condition for access to or registration in the IANA database. Membership in the ccNSO is independent of any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services.

4. The Geographic Regions of ccTLDs shall be as described in Article VI, Section 5 of these Bylaws. For purposes of this Article, managers of ccTLDs within a Geographic Region that are members of the ccNSO are referred to as ccNSO members "within" the Geographic Region, regardless of the physical location of the ccTLD manager. In cases where the Geographic Region of a ccNSO member is unclear, the ccTLD member should self-select according to procedures adopted by the ccNSO Council.

5. Each ccTLD manager may designate in writing a person, organization, or entity to represent the ccTLD manager. In the absence of such a designation, the ccTLD manager shall be represented by the person, organization, or entity listed as the administrative contact in the IANA database.

6. There shall be an annual meeting of ccNSO members, which shall be coordinated by the ccNSO Council. Annual meetings should be open for all to attend, and a reasonable opportunity shall be provided for ccTLD managers that are not members of the ccNSO as well as other non-members of the ccNSO to address the meeting. To the extent practicable, annual meetings of the ccNSO members shall be held in person and should be held in conjunction with meetings of the Board, or of one or more of ICANN's other Supporting Organizations.

7. The ccNSO Council members selected by the ccNSO members from each Geographic Region (see Section 3(1)(a) of this Article) shall be selected through nomination, and if necessary election, by the ccNSO members within

that Geographic Region. At least 90 days before the end of the regular term of any ccNSO-member-selected member of the ccNSO Council, or upon the occurrence of a vacancy in the seat of such a ccNSO Council member, the ccNSO Council shall establish a nomination and election schedule, which shall be sent to all ccNSO members within the Geographic Region and posted on the Website.

8. Any ccNSO member may nominate an individual to serve as a ccNSO Council member representing the ccNSO member's Geographic Region. Nominations must be seconded by another ccNSO member from the same Geographic Region. By accepting their nomination, individuals nominated to the ccNSO Council agree to support the policies committed to by ccNSO members.

9. If at the close of nominations there are no more candidates nominated (with seconds and acceptances) in a particular Geographic Region than there are seats on the ccNSO Council available for that Geographic Region, then the nominated candidates shall be selected to serve on the ccNSO Council. Otherwise, an election by written ballot (which may be by e-mail) shall be held to select the ccNSO Council members from among those nominated (with seconds and acceptances), with ccNSO members from the Geographic Region being entitled to vote in the election through their designated representatives. In such an election, a majority of all ccNSO members in the Geographic Region entitled to vote shall constitute a quorum, and the selected candidate must receive the votes of a majority of those cast by ccNSO members within the Geographic Region. The ccNSO Council Chair shall provide the ICANN Secretary prompt written notice of the selection of ccNSO Council members under this paragraph.

10. Subject to clause 4(11), ICANN policies shall apply to ccNSO members by virtue of their membership to the extent, and only to the extent, that the policies (a) have been developed through the ccPDP as described in Section 6 of this Article, and (b) have been recommended as such by the ccNSO to the Board, and (c) are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN in its activities concerning ccTLDs.

11. A ccNSO member shall not be bound if it provides a declaration to the ccNSO Council stating that (a) implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in paragraph 10 of this Section), and (b) failure to implement the policy would not impair DNS operations or interoperability, giving detailed reasons supporting its statements. After investigation, the ccNSO Council will provide a response to the ccNSO member's declaration. If there is a ccNSO Council consensus disagreeing with the declaration, which may be demonstrated by a vote of 14 or more members of the ccNSO Council, the response shall state the ccNSO Council's disagreement with the declaration and the reasons for disagreement. Otherwise, the response shall state the ccNSO Council's agreement with the declaration. If the ccNSO Council disagrees, the ccNSO Council shall review the situation after a six-month period. At the end of that period, the ccNSO Council shall make findings as to (a) whether the ccNSO members' implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in paragraph 10 of this Section) and (b) whether failure to implement the policy would impair DNS operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO Council.

## Section 5. REGIONAL ORGANIZATIONS

The ccNSO Council may designate a Regional Organization for each ICANN Geographic Region, provided that the Regional Organization is open to full membership by all ccNSO members within the Geographic Region. Decisions to designate or de-designate a Regional Organization shall require a 66% vote of all of the members of the ccNSO Council and shall be subject to review according to procedures established by the Board.

## Section 6. ccNSO POLICY-DEVELOPMENT PROCESS AND SCOPE

1. The scope of the ccNSO's policy-development role shall initially be as stated in Annex C to these Bylaws; any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

2. In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The ccPDP shall initially be as stated in Annex B to these Bylaws; modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

## Section 7. STAFF SUPPORT AND FUNDING

1. Upon request of the ccNSO Council, a member of the ICANN staff may be assigned to support the ccNSO and shall be designated as the ccNSO Staff Manager. Alternatively, the ccNSO Council may designate, at ccNSO

expense, another person to serve as ccNSO Staff Manager. The work of the ccNSO Staff Manager on substantive matters shall be assigned by the Chair of the ccNSO Council, and may include the duties of ccPDP Issue Manager.

2. Upon request of the ccNSO Council, ICANN shall provide administrative and operational support necessary for the ccNSO to carry out its responsibilities. Such support shall not include an obligation for ICANN to fund travel expenses incurred by ccNSO participants for travel to any meeting of the ccNSO or for any other purpose. The ccNSO Council may make provision, at ccNSO expense, for administrative and operational support in addition or as an alternative to support provided by ICANN.

3. The ccNSO Council shall establish fees to be paid by ccNSO members to defray ccNSO expenses as described in paragraphs 1 and 2 of this Section, as approved by the ccNSO members.

4. Written notices given to the ICANN Secretary under this Article shall be permanently retained, and shall be made available for review by the ccNSO Council on request. The ICANN Secretary shall also maintain the roll of members of the ccNSO, which shall include the name of each ccTLD manager's designated representative, and which shall be posted on the Website.

## ARTICLE X: GENERIC NAMES SUPPORTING ORGANIZATION

### Section 1. DESCRIPTION

There shall be a policy-development body known as the Generic Names Supporting Organization (GNSO), which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains.

### Section 2. ORGANIZATION

The GNSO shall consist of (i) various Constituencies representing particular groups of stakeholders, as described in Section 5 of this Article and (ii) a GNSO Council responsible for managing the policy development process of the GNSO.

### Section 3. GNSO COUNCIL

1. Subject to the provisions of the Transition Article of these Bylaws, the GNSO Council shall consist of three representatives selected by each of the Constituencies described in Section 5 of this Article, and three persons selected by the ICANN Nominating Committee. No two representatives selected by a Constituency shall be citizens of the same country or of countries located in the same Geographic Region. There may also be two liaisons to the GNSO Council, one appointed by each of the Governmental Advisory Committee and the At-Large Advisory Committee from time to time, who shall not be members of or entitled to vote on the GNSO Council, but otherwise shall be entitled to participate on equal footing with members of the GNSO Council. The appointing Advisory Committee shall designate its liaison (or revoke or change the designation of its liaison) on the GNSO Council by providing written notice to the Chair of the GNSO Council and to the ICANN Secretary. The GNSO Council may also have observers as described in paragraph 9 of this Section.

2. Subject to the provisions of the Transition Article of these Bylaws: (a) the regular term of each GNSO Council member shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the second ICANN annual meeting thereafter; (b) the regular term of one representative selected by each Constituency shall begin in an even-numbered year and the regular term of the other representative selected by the Constituency shall begin in an odd-numbered year; and (c) the regular term of one of the three members selected by the Nominating Committee shall begin in even-numbered years and the regular term of the other two of the three members selected by the Nominating Committee shall begin in odd-numbered years. Each GNSO Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

3. A GNSO Council member may resign at any time by giving written notice to the ICANN Secretary. A GNSO Council member selected by a Constituency may be removed by that Constituency according to its published procedures. A GNSO Council member selected by the Nominating Committee may be removed for cause stated by a three-fourths (3/4) vote (see Section 5(2) of this Article) of all members of the GNSO Council (excluding the member to be removed), subject to approval by the ICANN Board. A vacancy on the GNSO Council shall be deemed to exist in the case of the death, resignation, or removal of any member. Vacancies shall be filled for the unexpired term involved by the Nominating Committee giving the ICANN Secretary written notice of its selection, unless the member holding the position before the vacancy occurred was selected by a Constituency, in which case that Constituency shall fill the unexpired term by giving the ICANN Secretary written notice of its selection.

4. The GNSO Council is responsible for managing the policy development process of the GNSO. It shall adopt such



procedures as it sees fit to carry out that responsibility, provided that such procedures are approved by the Board, and further provided that, until any modifications are recommended by the GNSO Council and approved by the Board, the applicable procedures shall be as set forth in Section 6 of this Article. In addition, the GNSO Council is responsible for managing open forums, in the form of mailing lists or otherwise, for the participation of all who are willing to contribute to the work of the GNSO; such forums shall be appropriately moderated to ensure maximum focus on the business of the GNSO and to minimize non-substantive and abusive postings.

5. No more than one officer, director or employee of any particular corporation or other organization (including its subsidiaries and affiliates) shall serve on the GNSO Council at any given time.

6. The GNSO Council shall make selections to fill Seats 13 and 14 on the ICANN Board by written ballot or by action at a meeting; any such selection must have affirmative votes comprising a majority of the votes of all the members of the GNSO Council. Notification of the GNSO Council's selections shall be given by the GNSO Chair in writing to the ICANN Secretary, consistent with Article VI, Sections 8(4) and 12(1).

7. The GNSO Council shall select the GNSO Chair, for a term the GNSO Council specifies but not longer than one year, by written ballot or by action at a meeting. Any such selection must have affirmative votes comprising a majority of the votes of all the members of the GNSO Council.

8. Except as provided by paragraph 6 of this Section, the GNSO Council shall act at meetings. Members of the GNSO Council may participate in a meeting of the GNSO Council through use of (i) conference telephone or similar communications equipment, provided that all members participating in such a meeting can speak to and hear one another or (ii) electronic video screen communication or other communication equipment; provided that (a) all members participating in such a meeting can speak to and hear one another, (b) all members are provided the means of fully participating in all matters before the GNSO Council, and (c) ICANN adopts and implements means of verifying that (x) a person participating in such a meeting is a member of the GNSO Council or other person entitled to participate in the meeting and (y) all actions of, or votes by, the GNSO Council are taken or cast only by the members of the GNSO Council and not persons who are not members. Members entitled to cast a majority of the total number of votes of GNSO Council members then in office shall constitute a quorum for the transaction of business, and acts by a majority vote of the GNSO Council members present at any meeting at which there is a quorum shall be acts of the GNSO Council, unless otherwise provided herein. (See Section 5(2) of this Article concerning the number of votes that GNSO Council members may cast.) Advance notice of such meetings shall be posted on the Website, if reasonably practicable, at least 7 days in advance of the meeting. Except where determined by a majority vote (see Section 5(2) of this Article) of members of the GNSO Council present that a closed session is appropriate, meetings shall be open to physical or electronic attendance by all interested persons. The GNSO Council shall transmit minutes of its meetings to the ICANN Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following the meeting, and no later than 21 days following the meeting.

9. The GNSO Council may agree with the Council of any other ICANN Supporting Organization to exchange observers. Such observers shall not be members of or entitled to vote on the GNSO Council, but otherwise shall be entitled to participate on equal footing with members of the GNSO Council. The appointing Council shall designate its observer (or revoke or change the designation of its observer) on the GNSO Council by providing written notice to the Chair of the GNSO Council and to the ICANN Secretary.

#### **Section 4. STAFF SUPPORT AND FUNDING**

1. A member of the ICANN staff shall be assigned to support the GNSO, whose work on substantive matters shall be assigned by the Chair of the GNSO Council, and shall be designated as the GNSO Staff Manager (Staff Manager).

2. ICANN shall provide administrative and operational support necessary for the GNSO to carry out its responsibilities. Such support shall not include an obligation for ICANN to fund travel expenses incurred by GNSO participants for travel to any meeting of the GNSO or for any other purpose.

#### **Section 5. CONSTITUENCIES**

1. The following self-organized Constituencies are hereby recognized as representative of a specific and significant group of stakeholders and, subject to the provisions of the Transition Article of these Bylaws, shall each select two representatives to the GNSO Council:

- a. gTLD Registries (representing all gTLD registries under contract to ICANN);
- b. Registrars (representing all registrars accredited by and under contract to ICANN);

- c. Internet Service and Connectivity Providers (representing all entities providing Internet service and connectivity to Internet users);
- d. Commercial and Business Users (representing both large and small commercial entity users of the Internet);
- e. Non-Commercial Users (representing the full range of non-commercial entity users of the Internet); and
- f. Intellectual Property Interests (representing the full range of trademark and other intellectual property interests relating to the DNS).

2. The number of votes that members of the GNSO Council may cast shall be equalized so that the aggregate number of votes of representatives selected by the Constituencies (currently the gTLD Registries and Registrars) that are under contract with ICANN obligating them to implement ICANN-adopted policies is equal to the number of votes of representatives selected by other Constituencies. Initially, each member of the GNSO Council selected by the gTLD Registries Constituency or the Registrars Constituency shall be entitled to cast two votes and all other members (including those selected by the Nominating Committee) shall be entitled to cast one vote. In the event that there is a change in the Constituencies that are entitled to select voting members of the GNSO Council, the Board shall review the change in circumstances and by resolution revise the procedure for equalization of votes in a manner consistent with this paragraph 2.

3. Each Constituency identified in paragraph 1 of this Section shall maintain its recognition, and thus its ability to select GNSO Council representatives, only so long as it in fact represents the interests globally of the stakeholder communities it purports to represent, and shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness. No individual or entity shall be excluded from participation in a Constituency merely because of participation in another Constituency.

4. Any group of individuals or entities may petition the Board for recognition as a new or separate Constituency. Any such petition shall contain a detailed explanation of:

- a. Why the addition of such a Constituency will improve the ability of the GNSO to carry out its policy-development responsibilities; and
- b. Why the proposed new Constituency would adequately represent, on a global basis, the stakeholders it seeks to represent.

Any petition for the recognition of a new Constituency shall be posted for public comment.

5. The Board may create new Constituencies in response to such a petition, or on its own motion, if it determines that such action would serve the purposes of ICANN. In the event the Board is considering acting on its own motion it shall post a detailed explanation of why such action is necessary or desirable, set a reasonable time for public comment, and not make a final decision on whether to create such new Constituency until after reviewing all comments received. Whenever the Board posts a petition or recommendation for a new Constituency for public comment, it shall notify the GNSO Council and shall consider any response to that notification prior to taking action.

## Section 6. POLICY DEVELOPMENT PROCESS

Initially, the policy-development procedures to be followed by the GNSO shall be as stated in Annex A to these Bylaws. These procedures may be supplemented or revised in the manner stated in Section 3(4) of this Article.

## ARTICLE XI: ADVISORY COMMITTEES

### Section 1. GENERAL

The Board may create one or more Advisory Committees in addition to those set forth in this Article. Advisory Committee membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. Advisory Committees shall have no legal authority to act for ICANN, but shall report their findings and recommendations to the Board.

### Section 2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following Advisory Committees:

#### 1. Governmental Advisory Committee

- a. The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.
- b. Membership in the Governmental Advisory Committee shall be open to all national governments. Membership shall also be open to Distinct Economies as recognized in international fora, and multinational governmental organizations and treaty organizations, on the invitation of the Governmental Advisory Committee through its Chair.
- c. The Governmental Advisory Committee may adopt its own charter and internal operating principles or procedures to guide its operations, to be published on the Website.
- d. The chair of the Governmental Advisory Committee shall be elected by the members of the Governmental Advisory Committee pursuant to procedures adopted by such members.
- e. Each member of the Governmental Advisory Committee shall appoint one accredited representative to the Committee. The accredited representative of a member must hold a formal official position with the member's public administration. The term "official" includes a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization and whose primary function with such government, public authority, or organization is to develop or influence governmental or public policies.
- f. The Governmental Advisory Committee shall annually appoint one non-voting liaison to the ICANN Board of Directors, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN Nominating Committee.
- g. The Governmental Advisory Committee may designate a non-voting liaison to each of the Supporting Organization Councils and Advisory Committees, to the extent the Governmental Advisory Committee deems it appropriate and useful to do so.
- h. The Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues on which it or any of ICANN's supporting organizations or advisory committees seeks public comment, and shall take duly into account any timely response to that notification prior to taking action.
- i. The Governmental Advisory Committee may put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.
- j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.
- k. If no such solution can be found, the ICANN Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.

#### 2. Security and Stability Advisory Committee

- a. The role of the Security and Stability Advisory Committee ("SAC") is to advise the ICANN community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems. It shall have the following responsibilities:

1. To develop a security framework for Internet naming and address allocation services

that defines the key focus areas, and identifies where the responsibilities for each area lie. The committee shall focus on the operational considerations of critical naming infrastructure.

2. To communicate on security matters with the Internet technical community and the operators and managers of critical DNS infrastructure services, to include the root name server operator community, the top-level domain registries and registrars, the operators of the reverse delegation trees such as in-addr.arpa and ip6.arpa, and others as events and developments dictate. The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols related to DNS and address allocation and those engaged in operations planning.

3. To engage in ongoing threat assessment and risk analysis of the Internet naming and address allocation services to assess where the principal threats to stability and security lie, and to advise the ICANN community accordingly. The Committee shall recommend any necessary audit activity to assess the current status of DNS and address allocation security in relation to identified risks and threats.

4. To communicate with those who have direct responsibility for Internet naming and address allocation security matters (IETF, RSSAC, RIRs, name registries, etc.), to ensure that its advice on security risks, issues, and priorities is properly synchronized with existing standardization, deployment, operational, and coordination activities. The Committee shall monitor these activities and inform the ICANN community and Board on their progress, as appropriate.

5. To report periodically to the Board on its activities.

6. To make policy recommendations to the ICANN community and Board.

b. The SAC's chair and members shall be appointed by the Board.

c. The SAC shall annually appoint a non-voting liaison to the ICANN Board according to Section 9 of Article VI.

### 3. Root Server System Advisory Committee

a. The role of the Root Server System Advisory Committee ("RSSAC") shall be to advise the Board about the operation of the root name servers of the domain name system. The RSSAC shall consider and provide advice on the operational requirements of root name servers, including host hardware capacities, operating systems and name server software versions, network connectivity and physical environment. The RSSAC shall examine and advise on the security aspects of the root name server system. Further, the RSSAC shall review the number, location, and distribution of root name servers considering the total system performance, robustness, and reliability.

b. Membership in the RSSAC shall consist of (i) each operator of an authoritative root name server (as listed at <ftp://ftp.internic.net/domain/named.root>), and (ii) such other persons as are appointed by the ICANN Board.

c. The initial chairman of the DNS Root Server System Advisory Committee shall be appointed by the Board; subsequent chairs shall be elected by the members of the DNS Root Server System Advisory Committee pursuant to procedures adopted by the members.

d. The Root Server System Advisory Committee shall annually appoint one non-voting liaison to the ICANN Board of Directors, without limitation on re-appointment, and shall annually appoint one non-voting liaison to the ICANN Nominating Committee.

### 4. At-Large Advisory Committee

a. The role of the At-Large Advisory Committee ("ALAC") shall be to consider and provide advice on the activities of ICANN, insofar as they relate to the interests of individual Internet users.

b. The ALAC shall consist of (i) two members selected by each of the Regional At-Large Organizations ("RALOs") established according to paragraph 4(g) of this Section, and (ii) five members selected by

the Nominating Committee. The five members selected by the Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to Section 5 of Article VI.

c. Subject to the provisions of the Transition Article of these Bylaws, the regular terms of members of the ALAC shall be as follows:

1. The term of one member selected by each RALO shall begin at the conclusion of an ICANN annual meeting in an even-numbered year.
2. The term of the other member selected by each RALO shall begin at the conclusion of an ICANN annual meeting in an odd-numbered year.
3. The terms of three of the members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an odd-numbered year and the terms of the other two members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an even-numbered year.
4. The regular term of each member shall end at the conclusion of the second ICANN annual meeting after the term began.

d. The Chair of the ALAC shall be elected by the members of the ALAC pursuant to procedures adopted by the Committee.

e. The ALAC shall annually appoint one non-voting liaison to the ICANN Board of Directors, without limitation on re-appointment, and shall, after consultation with each RALO, annually appoint five voting delegates (no two of whom shall be citizens of countries in the same Geographic Region, as defined according to Section 5 of Article VI) to the Nominating Committee.

f. Subject to the provisions of the Transition Article of these Bylaws, the At-Large Advisory Committee may designate non-voting liaisons to each of the ccNSO Council and the GNSO Council.

g. There shall be one RALO for each Geographic Region established according to Section 5 of Article VI. Each RALO shall serve as the main forum and coordination point for public input to ICANN in its Geographic Region and shall be a non-profit organization certified by ICANN according to criteria and standards established by the Board based on recommendations of the At-Large Advisory Committee. An organization shall become the recognized RALO for its Geographic Region upon entering a Memorandum of Understanding with ICANN addressing the respective roles and responsibilities of ICANN and the RALO regarding the process for selecting ALAC members and requirements of openness, participatory opportunities, transparency, accountability, and diversity in the RALO's structure and procedures, as well as criteria and standards for the RALO's constituent At-Large Structures.

h. Each RALO shall be comprised of self-supporting At-Large Structures within its Geographic Region that have been certified to meet the requirements of the RALO's Memorandum of Understanding with ICANN according to paragraph 4(i) of this Section. If so provided by its Memorandum of Understanding with ICANN, a RALO may also include individual Internet users who are citizens or residents of countries within the RALO's Geographic Region.

i. The criteria and standards for the certification of At-Large Structures within each Geographic Region shall be established by the Board based on recommendations from the ALAC and shall be stated in the Memorandum of Understanding between ICANN and the RALO for that Geographic Region. The criteria and standards for the certification of At-Large Structures shall be established in such a way that participation by individual Internet users who are citizens or residents of countries within the Geographic Region (as defined in Section 5 of Article VI) of the RALO will predominate in the operation of each At-Large Structure within the RALO, while not necessarily excluding additional participation, compatible with the interests of the individual Internet users within the region, by others. Each RALO's Memorandum of Understanding shall also include provisions designed to allow, to the greatest extent possible, every individual Internet user who is a citizen of a country within the RALO's Geographic Region to participate in at least one of the RALO's At-Large Structures. To the extent compatible with these objectives, the criteria and standards should also afford to each RALO the type of structure that best fits the customs and character of its Geographic Region. Once the criteria and standards have been established, the ALAC shall be responsible for certifying organizations as meeting the criteria and standards for At-Large Structures. Decisions to certify or de-certify an At-Large Structure shall require

a 2/3 vote of all of the members of the ALAC and shall be subject to review according to procedures established by the Board. On an ongoing basis, the ALAC may also give advice as to whether a prospective At-Large Structure meets the applicable criteria and standards.

j. The ALAC is also responsible, working in conjunction with the RALOs, for coordinating the following activities:

1. Keeping the community of individual Internet users informed about the significant news from ICANN;
2. Distributing (through posting or otherwise) an updated agenda, news about ICANN, and information about items in the ICANN policy-development process;
3. Promoting outreach activities in the community of individual Internet users;
4. Developing and maintaining on-going information and education programs, regarding ICANN and its work;
5. Establishing an outreach strategy about ICANN issues in each RALO's Region;
6. Making public, and analyzing, ICANN's proposed policies and its decisions and their (potential) regional impact and (potential) effect on individuals in the region;
7. Offering Internet-based mechanisms that enable discussions among members of At-Large structures; and
8. Establishing mechanisms and processes that enable two-way communication between members of At-Large Structures and those involved in ICANN decision-making, so interested individuals can share their views on pending ICANN issues.

### **Section 3. PROCEDURES**

Each Advisory Committee shall determine its own rules of procedure and quorum requirements.

### **Section 4. TERM OF OFFICE**

The chair and each member of a committee shall serve until his or her successor is appointed, or until such committee is sooner terminated, or until he or she is removed, resigns, or otherwise ceases to qualify as a member of the committee.

### **Section 5. VACANCIES**

Vacancies on any committee shall be filled in the same manner as provided in the case of original appointments.

### **Section 6. COMPENSATION**

Committee members shall receive no compensation for their services as a member of a committee. The Board may, however, authorize the reimbursement of actual and necessary expenses incurred by committee members, including Directors, performing their duties as committee members.

## **ARTICLE XI-A: OTHER ADVISORY MECHANISMS**

### **Section 1. EXTERNAL EXPERT ADVICE**

1. Purpose. The purpose of seeking external expert advice is to allow the policy-development process within ICANN to take advantage of existing expertise that resides in the public or private sector but outside of ICANN. In those cases where there are relevant public bodies with expertise, or where access to private expertise could be helpful, the Board and constituent bodies should be encouraged to seek advice from such expert bodies or individuals.

2. Types of Expert Advisory Panels.

- a. On its own initiative or at the suggestion of any ICANN body, the Board may appoint, or authorize

the President to appoint, Expert Advisory Panels consisting of public or private sector individuals or entities. If the advice sought from such Panels concerns issues of public policy, the provisions of Section 1(3)(b) of this Article shall apply.

b. In addition, in accordance with Section 1(3) of this Article, the Board may refer issues of public policy pertinent to matters within ICANN's mission to a multinational governmental or treaty organization.

### 3. Process for Seeking Advice-Public Policy Matters.

a. The Governmental Advisory Committee may at any time recommend that the Board seek advice concerning one or more issues of public policy from an external source, as set out above.

b. In the event that the Board determines, upon such a recommendation or otherwise, that external advice should be sought concerning one or more issues of public policy, the Board shall, as appropriate, consult with the Governmental Advisory Committee regarding the appropriate source from which to seek the advice and the arrangements, including definition of scope and process, for requesting and obtaining that advice.

c. The Board shall, as appropriate, transmit any request for advice from a multinational governmental or treaty organization, including specific terms of reference, to the Governmental Advisory Committee, with the suggestion that the request be transmitted by the Governmental Advisory Committee to the multinational governmental or treaty organization.

4. Process for Seeking and Advice-Other Matters. Any reference of issues not concerning public policy to an Expert Advisory Panel by the Board or President in accordance with Section 1(2)(a) of this Article shall be made pursuant to terms of reference describing the issues on which input and advice is sought and the procedures and schedule to be followed.

5. Receipt of Expert Advice and its Effect. External advice pursuant to this Section shall be provided in written form. Such advice is advisory and not binding, and is intended to augment the information available to the Board or other ICANN body in carrying out its responsibilities.

6. Opportunity to Comment. The Governmental Advisory Committee, in addition to the Supporting Organizations and other Advisory Committees, shall have an opportunity to comment upon any external advice received prior to any decision by the Board.

## Section 2. TECHNICAL LIAISON GROUP

1. Purpose. The quality of ICANN's work depends on access to complete and authoritative information concerning the technical standards that underlie ICANN's activities. ICANN's relationship to the organizations that produce these standards is therefore particularly important. The Technical Liaison Group (TLG) shall connect the Board with appropriate sources of technical advice on specific matters pertinent to ICANN's activities.

2. TLG Organizations. The TLG shall consist of four organizations: the European Telecommunications Standards Institute (ETSI), the International Telecommunications Union's Telecommunication Standardization Sector (ITU-T), the World Wide Web Consortium (W3C), and the Internet Architecture Board (IAB).

3. Role. The role of the TLG organizations shall be to channel technical information and guidance to the Board and to other ICANN entities. This role has both a responsive component and an active "watchdog" component, which involve the following responsibilities:

a. In response to a request for information, to connect the Board or other ICANN body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which ICANN seeks an authoritative answer to a specific technical question. Where information is requested regarding a particular technical standard for which a TLG organization is responsible, that request shall be directed to that TLG organization.

b. As an ongoing "watchdog" activity, to advise the Board of the relevance and progress of technical developments in the areas covered by each organization's scope that could affect Board decisions or other ICANN actions, and to draw attention to global technical standards issues that affect policy development within the scope of ICANN's mission. This component of the TLG role covers circumstances in which ICANN is unaware of a new development, and would therefore otherwise not realize that a question should be asked.

4. TLG Procedures. The TLG shall not have officers or hold meetings, nor shall it provide policy advice to the Board as a committee (although TLG organizations may individually be asked by the Board to do so as the need arises in areas relevant to their individual charters). Neither shall the TLG debate or otherwise coordinate technical issues across the TLG organizations; establish or attempt to establish unified positions; or create or attempt to create additional layers or structures within the TLG for the development of technical standards or for any other purpose.

5. Technical Work of the IANA. The TLG shall have no involvement with the IANA's work for the Internet Engineering Task Force, Internet Research Task Force, or the Internet Architecture Board, as described in the Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority ratified by the Board on 10 March 2000.

6. Individual Technical Experts. Each TLG organization shall designate two individual technical experts who are familiar with the technical standards issues that are relevant to ICANN's activities. These 8 experts shall be available as necessary to determine, through an exchange of e-mail messages, where to direct a technical question from ICANN when ICANN does not ask a specific TLG organization directly.

7. Board Liaison and Nominating Committee Delegate. Annually, in rotation, one TLG organization shall appoint one non-voting liaison to the Board according to Article VI, Section 9(1)(d). Annually, in rotation, one TLG organization shall select one voting delegate to the ICANN Nominating Committee according to Article VII, Section 2(8)(j). The rotation order for the appointment of the non-voting liaison to the Board shall be ETSI, ITU-T, and W3C. The rotation order for the selection of the Nominating Committee delegate shall be W3C, ETSI, and ITU-T. (IAB does not participate in these rotations because the IETF otherwise appoints a non-voting liaison to the Board and selects a delegate to the ICANN Nominating Committee.)

## ARTICLE XII: BOARD AND TEMPORARY COMMITTEES

### Section 1. BOARD COMMITTEES

The Board may establish one or more committees of the Board, which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all members of the Board; provided, however, that any Director or Directors which are the subject of the removal action shall not be entitled to vote on such an action or be counted as a member of the Board when calculating the required two-thirds (2/3) vote; and, provided further, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all members of the Board.

### Section 2. POWERS OF BOARD COMMITTEES

1. The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:

- a. The filling of vacancies on the Board or on any committee;
- b. The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;
- c. The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
- d. The appointment of committees of the Board or the members thereof;
- e. The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CNPBCL;
- f. The approval of the annual budget required by Article XVI; or
- g. The compensation of any officer described in Article XIII.

2. The Board shall have the power to prescribe the manner in which proceedings of any Committee of the Board shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless these Bylaws, the Board or such committee shall



otherwise provide, the regular and special meetings shall be governed by the provisions of Article VI applicable to meetings and actions of the Board. Each committee shall keep regular minutes of its proceedings and shall report the same to the Board from time to time, as the Board may require.

### **Section 3. TEMPORARY COMMITTEES**

The Board may establish such temporary committees as it sees fit, with membership, duties, and responsibilities as set forth in the resolutions or charters adopted by the Board in establishing such committees.

## **ARTICLE XIII: OFFICERS**

### **Section 1. OFFICERS**

The officers of ICANN shall be a President (who shall serve as Chief Executive Officer), a Secretary, and a Chief Financial Officer. ICANN may also have, at the discretion of the Board, any additional officers that it deems appropriate. Any person, other than the President, may hold more than one office, except that no member of the Board (other than the President) shall simultaneously serve as an officer of ICANN.

### **Section 2. ELECTION OF OFFICERS**

The officers of ICANN shall be elected annually by the Board, pursuant to the recommendation of the President or, in the case of the President, of the Chairman of the ICANN Board. Each such officer shall hold his or her office until he or she resigns, is removed, is otherwise disqualified to serve, or his or her successor is elected.

### **Section 3. REMOVAL OF OFFICERS**

Any Officer may be removed, either with or without cause, by a two-thirds (2/3) majority vote of all the members of the Board. Should any vacancy occur in any office as a result of death, resignation, removal, disqualification, or any other cause, the Board may delegate the powers and duties of such office to any Officer or to any Director until such time as a successor for the office has been elected.

### **Section 4. PRESIDENT**

The President shall be the Chief Executive Officer (CEO) of ICANN in charge of all of its activities and business. All other officers and staff shall report to the President or his or her delegate, unless stated otherwise in these Bylaws. The President shall serve as an ex officio member of the Board, and shall have all the same rights and privileges of any Board member. The President shall be empowered to call special meetings of the Board as set forth herein, and shall discharge all other duties as may be required by these Bylaws and from time to time may be assigned by the Board.

### **Section 5. SECRETARY**

The Secretary shall keep or cause to be kept the minutes of the Board in one or more books provided for that purpose, shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law, and in general shall perform all duties as from time to time may be prescribed by the President or the Board.

### **Section 6. CHIEF FINANCIAL OFFICER**

The Chief Financial Officer ("CFO") shall be the chief financial officer of ICANN. If required by the Board, the CFO shall give a bond for the faithful discharge of his or her duties in such form and with such surety or sureties as the Board shall determine. The CFO shall have charge and custody of all the funds of ICANN and shall keep or cause to be kept, in books belonging to ICANN, full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of ICANN in such depositories as may be designated for that purpose by the Board. The CFO shall disburse the funds of ICANN as may be ordered by the Board or the President and, whenever requested by them, shall deliver to the Board and the President an account of all his or her transactions as CFO and of the financial condition of ICANN. The CFO shall be responsible for ICANN's financial planning and forecasting and shall assist the President in the preparation of ICANN's annual budget. The CFO shall coordinate and oversee ICANN's funding, including any audits or other reviews of ICANN or its Supporting Organizations. The CFO shall be responsible for all other matters relating to the financial operation of ICANN.

### **Section 7. ADDITIONAL OFFICERS**

In addition to the officers described above, any additional or assistant officers who are elected or appointed by the Board shall perform such duties as may be assigned to them by the President or the Board.

**Section 8. COMPENSATION AND EXPENSES**

The compensation of any Officer of ICANN shall be approved by the Board. Expenses incurred in connection with performance of their officer duties may be reimbursed to Officers upon approval of the President (in the case of Officers other than the President), by another Officer designated by the Board (in the case of the President), or the Board.

**Section 9. CONFLICTS OF INTEREST**

The Board, through a committee designated for that purpose, shall establish a policy requiring a statement from each Officer not less frequently than once a year setting forth all business and other affiliations which relate in any way to the business and other affiliations of ICANN.

**ARTICLE XIV: INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS**

ICANN shall, to maximum extent permitted by the CNPBCL, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of ICANN, provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in ICANN's best interests and not criminal. For purposes of this Article, an "agent" of ICANN includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (including a member of any Supporting Organization, any Advisory Committee, the Nominating Committee, any other ICANN committee, or the Technical Liaison Group) acting within the scope of his or her responsibility; or is or was serving at the request of ICANN as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not ICANN would have the power to indemnify the agent against that liability under the provisions of this Article.

**ARTICLE XV: GENERAL PROVISIONS****Section 1. CONTRACTS**

The Board may authorize any Officer or Officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of ICANN, and such authority may be general or confined to specific instances. In the absence of a contrary Board authorization, contracts and instruments may only be executed by the following Officers: President, any Vice President, or the CFO. Unless authorized or ratified by the Board, no other Officer, agent, or employee shall have any power or authority to bind ICANN or to render it liable for any debts or obligations.

**Section 2. DEPOSITS**

All funds of ICANN not otherwise employed shall be deposited from time to time to the credit of ICANN in such banks, trust companies, or other depositories as the Board, or the President under its delegation, may select.

**Section 3. CHECKS**

All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of ICANN shall be signed by such Officer or Officers, agent or agents, of ICANN and in such a manner as shall from time to time be determined by resolution of the Board.

**Section 4. LOANS**

No loans shall be made by or to ICANN and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances; provided, however, that no loans shall be made by ICANN to its Directors or Officers.

**ARTICLE XVI: FISCAL MATTERS****Section 1. ACCOUNTING**

The fiscal year end of ICANN shall be determined by the Board.

**Section 2. AUDIT**

At the end of the fiscal year, the books of ICANN shall be closed and audited by certified public accountants. The appointment of

the fiscal auditors shall be the responsibility of the Board.

### **Section 3. ANNUAL REPORT AND ANNUAL STATEMENT**

The Board shall publish, at least annually, a report describing its activities, including an audited financial statement and a description of any payments made by ICANN to Directors (including reimbursements of expenses). ICANN shall cause the annual report and the annual statement of certain transactions as required by the CNPBCL to be prepared and sent to each member of the Board and to such other persons as the Board may designate, no later than one hundred twenty (120) days after the close of ICANN's fiscal year.

### **Section 4. ANNUAL BUDGET**

At least forty-five (45) days prior to the commencement of each fiscal year, the President shall prepare and submit to the Board, a proposed annual budget of ICANN for the next fiscal year, which shall be posted on the Website. The proposed budget shall identify anticipated revenue sources and levels and shall, to the extent practical, identify anticipated material expense items by line item. The Board shall adopt an annual budget and shall publish the adopted Budget on the Website.

### **Section 5. FEES AND CHARGES**

The Board may set fees and charges for the services and benefits provided by ICANN, with the goal of fully recovering the reasonable costs of the operation of ICANN and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of ICANN. Such fees and charges shall be fair and equitable, shall be published for public comment prior to adoption, and once adopted shall be published on the Website in a sufficiently detailed manner so as to be readily accessible.

## **ARTICLE XVII: MEMBERS**

ICANN shall not have members, as defined in the California Nonprofit Public Benefit Corporation Law ("CNPBCL"), notwithstanding the use of the term "Member" in these Bylaws, in any ICANN document, or in any action of the ICANN Board or staff.

## **ARTICLE XVIII: OFFICES AND SEAL**

### **Section 1. OFFICES**

The principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America. ICANN may also have an additional office or offices within or outside the United States of America as it may from time to time establish.

### **Section 2. SEAL**

The Board may adopt a corporate seal and use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

## **ARTICLE XIX: AMENDMENTS**

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the Articles of Incorporation or Bylaws of ICANN may be altered, amended, or repealed and new Articles of Incorporation or Bylaws adopted only upon action by a two-thirds (2/3) vote of all members of the Board.

## **ARTICLE XX: TRANSITION ARTICLE**

### **Section 1. PURPOSE**

This Transition Article sets forth the provisions for the transition from the processes and structures defined by the ICANN Bylaws, as amended and restated on 29 October 1999 and amended through 12 February 2002 (the "Old Bylaws"), to the processes and structures defined by the Bylaws of which this Article is a part (the "New Bylaws").

### **Section 2. BOARD OF DIRECTORS**

1. For the period beginning on the adoption of this Transition Article and ending on the Effective Date and Time of

the New Board, as defined in paragraph 5 of this Section 2, the Board of Directors of the Corporation ("Transition Board") shall consist of the members of the Board who would have been Directors under the Old Bylaws immediately after the conclusion of the annual meeting in 2002, except that those At-Large members of the Board under the Old Bylaws who elect to do so by notifying the Secretary of the Board on 15 December 2002 or in writing or by e-mail no later than 23 December 2002 shall also serve as members of the Transition Board. Notwithstanding the provisions of Article VI, Section 12 of the New Bylaws, vacancies on the Transition Board shall not be filled. The Transition Board shall not have liaisons as provided by Article VI, Section 9 of the New Bylaws. The Board Committees existing on the date of adoption of this Transition Article shall continue in existence, subject to any change in Board Committees or their membership that the Transition Board may adopt by resolution.

2. The Transition Board shall elect a Chair and Vice-Chair to serve until the Effective Date and Time of the New Board.

3. The "New Board" is that Board described in Article VI, Section 2(1) of the New Bylaws.

4. Promptly after the adoption of this Transition Article, a Nominating Committee shall be formed including, to the extent feasible, the delegates and liaisons described in Article VII, Section 2 of the New Bylaws, with terms to end at the conclusion of the ICANN annual meeting in 2003. The Nominating Committee shall proceed without delay to select Directors to fill Seats 1 through 8 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for those Seats in Article VI, Section 8(1)(a)-(c) of the New Bylaws, and shall give the ICANN Secretary written notice of that selection.

5. The Effective Date and Time of the New Board shall be a time, as designated by the Transition Board, during the first regular meeting of ICANN in 2003 that begins not less than seven calendar days after the ICANN Secretary has received written notice of the selection of Directors to fill at least ten of Seats 1 through 14 on the New Board. As of the Effective Date and Time of the New Board, it shall assume from the Transition Board all the rights, duties, and obligations of the ICANN Board of Directors. Subject to Section 4 of this Article, the Directors (Article VI, Section 2(1)(a)-(d)) and non-voting liaisons (Article VI, Section 9) as to which the ICANN Secretary has received notice of selection shall, along with the President (Article VI, Section 2(1)(e)), be seated upon the Effective Date and Time of the New Board, and thereafter any additional Directors and non-voting liaisons shall be seated upon the ICANN Secretary's receipt of notice of their selection.

6. The New Board shall elect a Chairman and Vice-Chairman as its first order of business. The terms of those Board offices shall expire at the end of the annual meeting in 2003.

7. Committees of the Board in existence as of the Effective Date and Time of the New Board shall continue in existence according to their existing charters, but the terms of all members of those committees shall conclude at the Effective Date and Time of the New Board. Temporary committees in existence as of the Effective Date and Time of the New Board shall continue in existence with their existing charters and membership, subject to any change the New Board may adopt by resolution.

8. In applying the term-limitation provision of Section 8(5) of Article VI, a Director's service on the Board before the Effective Date and Time of the New Board shall count as one term.

### Section 3. ADDRESS SUPPORTING ORGANIZATION

The Address Supporting Organization shall continue in operation according to the provisions of the Memorandum of Understanding originally entered on 18 October 1999 between ICANN and a group of regional Internet registries (RIRs), and amended in October 2000, until a replacement Memorandum of Understanding becomes effective. Promptly after the adoption of this Transition Article, the Address Supporting Organization shall make selections, and give the ICANN Secretary written notice of those selections, of:

1. Directors to fill Seats 9 and 10 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for each of those Seats in Article VI, Section 8(1)(d) and (e) of the New Bylaws; and

2. the delegate to the Nominating Committee selected by the Council of the Address Supporting Organization, as called for in Article VII, Section 2(8)(f) of the New Bylaws.

With respect to the ICANN Directors that it is entitled to select, and taking into account the need for rapid selection to ensure that the New Board becomes effective as soon as possible, the Address Supporting Organization may select those Directors from among the persons it previously selected as ICANN Directors pursuant to the Old Bylaws. To the extent the Address Supporting Organization does not provide the ICANN Secretary written notice, on or before 31 March 2003, of its selections for Seat 9 and Seat 10, the Address Supporting Organization shall be deemed to have selected for Seat 9 the person it selected as an ICANN Director pursuant to the Old Bylaws for a term beginning in 2001 and for Seat 10 the person it selected as an ICANN Director

pursuant to the Old Bylaws for a term beginning in 2002.

#### Section 4. COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

1. Upon the enrollment of thirty ccTLD managers (with at least four within each Geographic Region) as members of the ccNSO, written notice shall be posted on the Website. As soon as feasible after that notice, the members of the initial ccNSO Council to be selected by the ccNSO members shall be selected according to the procedures stated in Article IX, Section 4(8) and (9). Upon the completion of that selection process, a written notice that the ccNSO Council has been constituted shall be posted on the Website. Three ccNSO Council members shall be selected by the ccNSO members within each Geographic Region, with one member to serve a term that ends upon the conclusion of the first ICANN annual meeting after the ccNSO Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN annual meeting after the ccNSO Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN annual meeting after the ccNSO Council is constituted. (The definition of "ccTLD manager" stated in Article IX, Section 4(1) and the definitions stated in Article IX, Section 4(4) shall apply within this Section 4 of Article XX.)
2. After the adoption of Article IX of these Bylaws, the Nominating Committee shall select the three members of the ccNSO Council described in Article IX, Section 3(1)(b). In selecting three individuals to serve on the ccNSO Council, the Nominating Committee shall designate one to serve a term that ends upon the conclusion of the first ICANN annual meeting after the ccNSO Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN annual meeting after the ccNSO Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN annual meeting after the ccNSO Council is constituted. The three members of the ccNSO Council selected by the Nominating Committee shall not take their seats before the ccNSO Council is constituted.
3. Upon the ccNSO Council being constituted, the At-Large Advisory Committee and the Governmental Advisory Committee may designate one liaison each to the ccNSO Council, as provided by Article IX, Section 3(2)(a) and (b).
4. Upon the ccNSO Council being constituted, the Council may designate Regional Organizations as provided in Article IX, Section 5. Upon its designation, a Regional Organization may appoint a liaison to the ccNSO Council.
5. Until the ccNSO Council is constituted, Seats 11 and 12 on the New Board shall remain vacant. Promptly after the ccNSO Council is constituted, the ccNSO shall, through the ccNSO Council, make selections of Directors to fill Seats 11 and 12 on the New Board, with terms to conclude upon the commencement of the next regular term specified for each of those Seats in Article VI, Section 8(1)(d) and (f) of the New Bylaws, and shall give the ICANN Secretary written notice of its selections.
6. Until the ccNSO Council is constituted, the delegate to the Nominating Committee established by the New Bylaws designated to be selected by the ccNSO shall be appointed by the Transition Board or New Board, depending on which is in existence at the time any particular appointment is required, after due consultation with members of the ccTLD community. Upon the ccNSO Council being constituted, the delegate to the Nominating Committee appointed by the Transition Board or New Board according to this Section 4(9) then serving shall remain in office, except that the ccNSO Council may replace that delegate with one of its choosing within three months after the conclusion of ICANN's annual meeting, or in the event of a vacancy. Subsequent appointments of the Nominating Committee delegate described in Article VII, Section 2(8)(c) shall be made by the ccNSO Council.

#### Section 5. GENERIC NAMES SUPPORTING ORGANIZATION

1. The Domain Name Supporting Organization shall cease operations upon the adoption of this Transition Article, except that the Names Council of the Domain Name Supporting Organization may act for the limited purpose of authorizing the transfer of any funds it has collected to the benefit of the Generic Names Supporting Organization.
2. The Generic Names Supporting Organization ("GNSO") shall commence operations upon the adoption of this Transition Article, and the following six DNSO constituencies shall automatically become constituencies of the GNSO, initially under their existing charter:
  - a. The commercial and business entities constituency of the DNSO shall become the Commercial and Business Users constituency of the GNSO.
  - b. The gTLD registries constituency of the DNSO shall become the gTLD Registries constituency of the GNSO.
  - c. The ISP and connectivity providers constituency of the DNSO shall become the Internet Service and

Connectivity Providers constituency of the GNSO.

d. The non-commercial domain name holders constituency of the DNSO shall become the Non-Commercial Users constituency of the GNSO.

e. The registrars constituency of the DNSO shall become the Registrars constituency of the GNSO.

f. The trademark, other intellectual property and anti-counterfeiting interests constituency of the DNSO shall become the Intellectual Property Interests constituency of the GNSO.

3. Notwithstanding the adoption or effectiveness of the New Bylaws, each GNSO constituency described in paragraph 2 of this Section 5 shall continue operating as before and no constituency official, task force, or other activity shall be changed until further action of the constituency, provided that each GNSO constituency shall submit to the ICANN Secretary a new charter and statement of operating procedures, adopted according to the constituency's processes and consistent with the New Bylaws, no later than 15 July 2003.

4. Until the conclusion of the ICANN annual meeting in 2003, the GNSO Council shall consist of three representatives of each constituency of the GNSO plus, upon their selection by the Nominating Committee, three persons selected by that committee. It may also have liaisons appointed by the Governmental Advisory Committee and (Interim) At-Large Advisory Committee, as provided in Article X, Section 3(1) of the New Bylaws. Thereafter, the composition of the GNSO Council shall be as provided in the New Bylaws, as they may be amended from time to time, without regard to this Transition Article. All committees, task forces, working groups, drafting committees, and similar groups established by the DNSO Names Council and in existence immediately before the adoption of this Transition Article shall continue in existence as groups of the GNSO Council with the same charters, membership, and activities, subject to any change by action of the GNSO Council.

5. Upon the adoption of this Transition Article, the three representatives on the Domain Name Supporting Organization ("DNSO") Names Council from each of six DNSO constituencies shall be seated as representatives of constituencies on the GNSO Council, as follows:

a. The three representatives of the commercial and business entities constituency of the DNSO shall be seated as representatives of the Commercial and Business Users constituency of the GNSO.

b. The three representatives of the gTLD registries constituency of the DNSO shall be seated as representatives of the gTLD Registries constituency of the GNSO.

c. The three representatives of the ISP and connectivity providers constituency of the DNSO shall be seated as representatives of the Internet Service and Connectivity Providers constituency of the GNSO.

d. The three representatives of the non-commercial domain name holders constituency of the DNSO shall be seated as representatives of the Non-Commercial Users constituency of the GNSO.

e. The three representatives of the registrars constituency of the DNSO shall be seated as representatives of the Registrars constituency of the GNSO.

f. The three representatives of the trademark, other intellectual property and anti-counterfeiting interests constituency of the DNSO shall be seated as representatives of the Intellectual Property Interests constituency of the GNSO.

6. The terms of the GNSO Council members described in paragraph 5 of this Section 5 shall last for the remainder of their terms under the Old Bylaws, except that the terms of all of those GNSO Council members shall end at the conclusion of the ICANN annual meeting in 2003. Any vacancy occurring before that time in a position on the GNSO Council described in paragraph 5 of this Section 5 shall be filled by the constituency that the vacant position represents for the remainder of the term lasting until the conclusion of the ICANN annual meeting in 2003. In selecting three persons to serve on the GNSO Council, the initial Nominating Committee shall designate one to serve a term until the conclusion of the ICANN annual meeting in 2004 and the other two to serve terms until the conclusion of the ICANN annual meeting in 2005.

7. Promptly after the adoption of this Transition Article, the Generic Names Supporting Organization shall, through the GNSO Council, make selections of Directors to fill Seats 13 and 14 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for each of those Seats in Article VI, Section 8(1)(d) and (e) of the New Bylaws, and shall give the ICANN Secretary written notice of its selections.

8. In the absence of further action on the topic by the New Board, each of the GNSO constituencies shall select two representatives to the GNSO Council no later than 1 October 2003, and shall provide the ICANN Secretary written notice of its selections. Each constituency shall designate one of those representatives to serve a one-year term, and one to serve a two year-term. Each successor to those representatives shall serve a two-year term.

9. Upon the adoption of this Transition Article, and until further action by the ICANN Board, the GNSO Council shall assume responsibility for the DNSO General Assembly e-mail announcement and discussion lists.

10. Each of the constituencies identified in paragraph 5 of this Section 5 that are designated to select a delegate to the Nominating Committee under Article VII, Section 2 of the New Bylaws shall promptly, upon adoption of this Transition Article, notify the ICANN Secretary of the person(s) selected to serve as delegates.

## Section 6. PROTOCOL SUPPORTING ORGANIZATION

The Protocol Supporting Organization referred to in the Old Bylaws is discontinued.

## Section 7. ADVISORY COMMITTEES AND TECHNICAL LIAISON GROUP

1. Upon the adoption of the New Bylaws, the Governmental Advisory Committee shall continue in operation according to its existing operating principles and practices, until further action of the committee. The Governmental Advisory Committee may designate liaisons to serve with other ICANN bodies as contemplated by the New Bylaws by providing written notice to the ICANN Secretary. Promptly upon the adoption of this Transition Article, the Governmental Advisory Committee shall notify the ICANN Secretary of the person selected as its delegate to the Nominating Committee, as set forth in Article VII, Section 2 of the New Bylaws.

2. The organizations designated as members of the Technical Liaison Group under Article XI-A, Section 2(2) of the New Bylaws shall each designate the two individual technical experts described in Article XI-A, Section 2(6) of the New Bylaws, by providing written notice to the ICANN Secretary. As soon as feasible, the delegate from the Technical Liaison Group to the Nominating Committee shall be selected according to Article XI-A, Section 2(7) of the New Bylaws.

3. Upon the adoption of the New Bylaws, the Security and Stability Advisory Committee shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the Security and Stability Advisory Committee shall notify the ICANN Secretary of the person selected as its delegate to the Nominating Committee, as set forth in Article VII, Section 2(4) of the New Bylaws.

4. Upon the adoption of the New Bylaws, the Root Server System Advisory Committee shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the Root Server Advisory Committee shall notify the ICANN Secretary of the person selected as its delegate to the Nominating Committee, as set forth in Article VII, Section 2(3) of the New Bylaws.

### 5. At-Large Advisory Committee

a. There shall exist an Interim At-Large Advisory Committee until such time as ICANN recognizes, through the entry of a Memorandum of Understanding, all of the Regional At-Large Organizations (RALOs) identified in Article XI, Section 2(4) of the New Bylaws. The Interim At-Large Advisory Committee shall be composed of (i) ten individuals (two from each ICANN region) selected by the ICANN Board following nominations by the At-Large Organizing Committee and (ii) five additional individuals (one from each ICANN region) selected by the initial Nominating Committee as soon as feasible in accordance with the principles established in Article VII, Section 5 of the New Bylaws. The initial Nominating Committee shall designate two of these individuals to serve terms until the conclusion of the ICANN annual meeting in 2004 and three of these individuals to serve terms until the conclusion of the ICANN annual meeting in 2005.

b. Upon the entry of each RALO into such a Memorandum of Understanding, that entity shall be entitled to select two persons who are citizens and residents of that Region to be members of the At-Large Advisory Committee established by Article XI, Section 2(4) of the New Bylaws. Upon the entity's written notification to the ICANN Secretary of such selections, those persons shall immediately assume the seats held until that notification by the Interim At-Large Advisory Committee members previously selected by the Board from the RALO's region.

c. Upon the seating of persons selected by all five RALOs, the Interim At-Large Advisory Committee shall become the At-Large Advisory Committee, as established by Article XI, Section 2(4) of the New Bylaws. The five individuals selected to the Interim At-Large Advisory Committee by the Nominating Committee shall become members of the At-Large Advisory Committee for the remainder of the terms for which they were selected.

d. Promptly upon its creation, the Interim At-Large Advisory Committee shall notify the ICANN Secretary of the persons selected as its delegates to the Nominating Committee, as set forth in Article VII, Section 2(6) of the New Bylaws.

## Section 8. OFFICERS

ICANN officers (as defined in Article XIII of the New Bylaws) shall be elected by the then-existing Board of ICANN at the annual meeting in 2002 to serve until the annual meeting in 2003.

## Section 9. GROUPS APPOINTED BY THE PRESIDENT

Notwithstanding the adoption or effectiveness of the New Bylaws, task forces and other groups appointed by the ICANN President shall continue unchanged in membership, scope, and operation until changes are made by the President.

## Section 10. CONTRACTS WITH ICANN

Notwithstanding the adoption or effectiveness of the New Bylaws, all agreements, including employment and consulting agreements, entered by ICANN shall continue in effect according to their terms.

---

# Annex A: GNSO Policy-Development Process

The following process shall govern the GNSO policy development process ("PDP") until such time as modifications are recommended to and approved by the ICANN Board of Directors ("Board").

## 1. Raising an Issue

An issue may be raised for consideration as part of the PDP by any of the following:

- a. *Board Initiation.* The Board may initiate the PDP by instructing the GNSO Council ("Council") to begin the process outlined in this Annex.
- b. *Council Initiation.* The GNSO Council may initiate the PDP by a vote of at least twenty-five percent (25%) of the members of the Council present at any meeting in which a motion to initiate the PDP is made.
- c. *Advisory Committee Initiation.* An Advisory Committee may raise an issue for policy development by action of such committee to commence the PDP, and transmission of that request to the GNSO Council.

## 2. Creation of the Issue Report

Within fifteen (15) calendar days after receiving either (i) an instruction from the Board; (ii) a properly supported motion from a Council member; or (iii) a properly supported motion from an Advisory Committee, the Staff Manager will create a report (an "Issue Report"). Each Issue Report shall contain at least the following:

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the issue;
- c. How that party is affected by the issue;
- d. Support for the issue to initiate the PDP;
- e. A recommendation from the Staff Manager as to whether the Council should initiate the PDP for this issue (the



"Staff Recommendation"). Each Staff Recommendation shall include the opinion of the ICANN General Counsel regarding whether the issue proposed to initiate the PDP is properly within the scope of the ICANN policy process and within the scope of the GNSO. In determining whether the issue is properly within the scope of the ICANN policy process, the General Counsel shall examine whether such issue:

1. is within the scope of ICANN's mission statement;
2. is broadly applicable to multiple situations or organizations;
3. is likely to have lasting value or applicability, albeit with the need for occasional updates;
4. will establish a guide or framework for future decision-making; or
5. implicates or affects an existing ICANN policy.

f. On or before the fifteen (15) day deadline, the Staff Manager shall distribute the Issue Report to the full Council for a vote on whether to initiate the PDP, as discussed below.

### 3. Initiation of PDP

The Council shall initiate the PDP as follows:

a. *Issue Raised by the Board.* If the Board directs the Council to initiate the PDP, then the Council shall meet and do so within fifteen (15) calendar days after receipt of the Issue Report, with no intermediate vote of the Council.

b. *Issue Raised by Other than by the Board.* If a policy issue is presented to the Council for consideration via an Issue Report, then the Council shall meet within fifteen (15) calendar days after receipt of such Report to vote on whether to initiate the PDP. Such meeting may be convened in any manner deemed appropriate by the Council, including in person, via conference call or via electronic mail.

c. *Vote of the Council.* A vote of more than 33% of the Council members present in favor of initiating the PDP will suffice to initiate the PDP; unless the Staff Recommendation stated that the issue is not properly within the scope of the ICANN policy process or the GNSO, in which case a Supermajority Vote of the Council members present in favor of initiating the PDP will be required to initiate the PDP.

### 4. Commencement of the PDP

At the meeting of the Council initiating the PDP, the Council shall decide, by a majority vote of members present at the meeting, whether to appoint a task force to address the issue. If the Council votes:

a. In favor of convening a task force, it shall do so in accordance with the provisions of Item 7 below.

b. Against convening a task force, then it will collect information on the policy issue in accordance with the provisions of Item 8 below.

### 5. Composition and Selection of Task Forces

a. Upon voting to appoint a task force, the Council shall invite each of the constituencies of the GNSO to appoint one individual to participate in the task force. Additionally, the Council may appoint up to three outside advisors to sit on the task force. (Each task force member is referred to in this Annex as a "Representative" and collectively, the "Representatives"). The Council may increase the number of Representatives per constituency that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.

b. Any constituency wishing to appoint a Representative to the task force must submit the name of the constituency designee to the Staff Manager within ten (10) calendar days after such request in order to be included on the task force. Such designee need not be a member of the Council, but must be an individual who has an interest, and ideally knowledge and expertise, in the area to be developed, coupled with the ability to devote a substantial amount of time to task force activities.

c. The Council may also pursue other options that it deems appropriate to assist in the PDP, including appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Staff Manager within thirty-five (35) calendar days after

initiation of the PDP.

## 6. Public Notification of Initiation of the PDP

After initiation of the PDP, ICANN shall post a notification of such action to the Website. A public comment period shall be commenced for the issue for a period of twenty (20) calendar days after initiation of the PDP. The Staff Manager, or some other designated representative of ICANN shall review the public comments and incorporate them into a report (the "Public Comment Report") to be included in either the Preliminary Task Force Report or the Initial Report, as applicable.

## 7. Task Forces

a. *Role of Task Force.* If a task force is created, its role will generally be to (i) gather information detailing the positions of formal constituencies and provisional constituencies, if any, within the GNSO; and (ii) otherwise obtain relevant information that will enable the Task Force Report to be as complete and informative as possible.

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that will document the positions of various parties or groups as specifically and comprehensively as possible, thereby enabling the Council to have a meaningful and informed deliberation on the issue.

b. *Task Force Charter or Terms of Reference.* The Council, with the assistance of the Staff Manager, shall develop a charter or terms of reference for the task force (the "Charter") within ten (10) calendar days after initiation of the PDP. Such Charter will include:

1. the issue to be addressed by the task force, as such issue was articulated for the vote before the Council that commenced the PDP;
2. the specific timeline that the task force must adhere to, as set forth below, unless the Board determines that there is a compelling reason to extend the timeline; and
3. any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice of outside advisors on the issue.

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of a majority of the Council members present.

c. *Appointment of Task Force Chair.* The Staff Manager shall convene the first meeting of the task force within five (5) calendar days after receipt of the Charter. At the initial meeting, the task force members will, among other things, vote to appoint a task force chair. The chair shall be responsible for organizing the activities of the task force, including compiling the Task Force Report. The chair of a task force need not be a member of the Council.

d. *Collection of Information.*

1. *Constituency Statements.* The Representatives will each be responsible for soliciting the position of their constituencies, at a minimum, and other comments as each Representative deems appropriate, regarding the issue under consideration. This position and other comments, as applicable, should be submitted in a formal statement to the task force chair (each, a "Constituency Statement") within thirty-five (35) calendar days after initiation of the PDP. Every Constituency Statement shall include at least the following:

- (i) If a Supermajority Vote was reached, a clear statement of the constituency's position on the issue;
- (ii) If a Supermajority Vote was not reached, a clear statement of all positions espoused by constituency members;
- (iii) A clear statement of how the constituency arrived at its position(s). Specifically, the statement should detail specific constituency meetings, teleconferences, or other means of deliberating an issue, and a list of all members who participated or otherwise submitted their views;
- (iv) An analysis of how the issue would affect the constituency, including any financial

impact on the constituency; and

(v) An analysis of the period of time that would likely be necessary to implement the policy.

2. *Outside Advisors.* The task force, should it deem it appropriate or helpful, may solicit the opinions of outside advisors, experts, or other members of the public, in addition to those of constituency members. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from outside advisors; (ii) accompanied by a detailed statement of the advisors' (A) qualifications and relevant experience; and (B) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within thirty-five (35) calendar days after initiation of the PDP.

e. *Task Force Report.* The chair of the task force, working with the Staff Manager, shall compile the Constituency Statements, Public Comment Report, and other information or reports, as applicable, into a single document ("Preliminary Task Force Report") and distribute the Preliminary Task Force Report to the full task force within forty (40) calendar days after initiation of the PDP. The task force shall have a final task force meeting within five (5) days after the date of distribution of the Preliminary Task Force Report to deliberate the issues and try and reach a Supermajority Vote. Within five (5) calendar days after the final task force meeting, the chair of the task force and the Staff Manager shall create the final task force report (the "Task Force Report") and post it on the Comment Site. Each Task Force Report must include:

1. A clear statement of any Supermajority Vote position of the task force on the issue;
2. If a Supermajority Vote was not reached, a clear statement of all positions espoused by task force members submitted within the twenty-day timeline for submission of constituency reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the constituency(ies) that held the position;
3. An analysis of how the issue would affect each constituency of the task force, including any financial impact on the constituency;
4. An analysis of the period of time that would likely be necessary to implement the policy; and
5. The advice of any outside advisors appointed to the task force by the Council, accompanied by a detailed statement of the advisors' (i) qualifications and relevant experience; and (ii) potential conflicts of interest.

#### **8. Procedure if No Task Force is Formed**

- a. If the Council decides not to convene a task force, the Council will request that, within ten (10) calendar days thereafter, each constituency appoint a representative to solicit the constituency's views on the issue. Each such representative shall be asked to submit a Constituency Statement to the Staff Manager within thirty-five (35) calendar days after initiation of the PDP.
- b. The Council may also pursue other options that it deems appropriate to assist in the PDP, including appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Staff Manager within thirty-five (35) calendar days after initiation of the PDP.
- c. The Staff Manager will take all Constituency Statements, Public Comment Statements, and other information and compile (and post on the Comment Site) an Initial Report within fifty (50) calendar days after initiation of the PDP. Thereafter, the PDP shall follow the provisions of Item 9 below in creating a Final Report.

#### **9. Public Comments to the Task Force Report or Initial Report**

- a. The public comment period will last for twenty (20) calendar days after posting of the Task Force Report or Initial Report. Any individual or organization may submit comments during the public comment period, including any constituency that did not participate in the task force. All comments shall be accompanied by the name of the author of the comments, the author's relevant experience, and the author's interest in the issue.
- b. At the end of the twenty (20) day period, the Staff Manager will be responsible for reviewing the comments received and adding those deemed appropriate for inclusion in the Staff Manager's reasonable discretion to the Task

Force Report or Initial Report (collectively, the "Final Report"). The Staff Manager shall not be obligated to include all comments made during the comment period, including each comment made by any one individual or organization.

c. The Staff Manager shall prepare the Final Report and submit it to the Council chair within ten (10) calendar days after the end of the public comment period.

#### 10. Council Deliberation

a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair will (i) distribute the Final Report to all Council members; and (ii) call for a Council meeting within ten (10) calendar days thereafter. The Council may commence its deliberation on the issue prior to the formal meeting, including via in-person meetings, conference calls, e-mail discussions or any other means the Council may choose. The deliberation process shall culminate in a formal Council meeting either in person or via teleconference, wherein the Council will work towards achieving a Supermajority Vote to present to the Board.

b. The Council may, if it so chooses, solicit the opinions of outside advisors at its final meeting. The opinions of these advisors, if relied upon by the Council, shall be (i) embodied in the Council's report to the Board, (ii) specifically identified as coming from an outside advisor; and (iii) be accompanied by a detailed statement of the advisor's (x) qualifications and relevant experience; and (y) potential conflicts of interest.

#### 11. Council Report to the Board

The Staff Manager will be present at the final meeting of the Council, and will have five (5) calendar days after the meeting to incorporate the views of the Council into a report to be submitted to the Board (the "Board Report"). The Board Report must contain at least the following:

- a. A clear statement of any Supermajority Vote recommendation of the Council;
- b. If a Supermajority Vote was not reached, a clear statement of all positions held by Council members. Each statement should clearly indicate (i) the reasons underlying each position and (ii) the constituency(ies) that held the position;
- c. An analysis of how the issue would affect each constituency, including any financial impact on the constituency;
- d. An analysis of the period of time that would likely be necessary to implement the policy;
- e. The advice of any outside advisors relied upon, which should be accompanied by a detailed statement of the advisor's (i) qualifications and relevant experience; and (ii) potential conflicts of interest;
- f. The Final Report submitted to the Council; and
- g. A copy of the minutes of the Council deliberation on the policy issue, including the all opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

#### 12. Agreement of the Council

A Supermajority Vote of the Council members will be deemed to reflect the view of the Council, and may be conveyed to the Board as the Council's recommendation. Abstentions shall not be permitted; thus all Council members must cast a vote unless they identify a financial interest in the outcome of the policy issue. Notwithstanding the foregoing, as set forth above, all viewpoints expressed by Council members during the PDP must be included in the Board Report.

#### 13. Board Vote

- a. The Board will meet to discuss the GNSO Council recommendation as soon as feasible after receipt of the Board Report from the Staff Manager.
- b. In the event that the Council reached a Supermajority Vote, the Board shall adopt the policy according to the Council Supermajority Vote recommendation unless by a vote of more than sixty-six (66%) percent of the Board determines that such policy is not in the best interests of the ICANN community or ICANN.
- c. In the event that the Board determines not to act in accordance with the Council Supermajority Vote recommendation, the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board

Statement"); and (ii) submit the Board Statement to the Council.

d. The Council shall review the Board Statement for discussion with the Board within twenty (20) calendar days after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

e. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for its current recommendation. In the event that the Council is able to reach a Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than sixty-six (66%) percent of the Board determines that such policy is not in the interests of the ICANN community or ICANN.

f. In any case in which the Council is not able to reach Supermajority, a majority vote of the Board will be sufficient to act.

g. When a final decision on a GNSO Council Recommendation or Supplemental Recommendation is timely, the Board shall take a preliminary vote and, where practicable, will publish a tentative decision that allows for a ten (10) day period of public comment prior to a final decision by the Board.

#### **14. Implementation of the Policy**

Upon a final decision of the Board, the Board shall, as appropriate, give authorization or direction to the ICANN staff to take all necessary steps to implement the policy.

#### **15. Maintenance of Records**

Throughout the PDP, from policy suggestion to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each PDP issue, which will describe:

- a. The initial suggestion for a policy;
- b. A list of all suggestions that do not result in the creation of an Issue Report;
- c. The timeline to be followed for each policy;
- d. All discussions among the Council regarding the policy;
- e. All reports from task forces, the Staff Manager, the Council and the Board; and
- f. All public comments submitted.

#### **16. Additional Definitions**

"Comment Site" and "Website" refer to one or more web sites designated by ICANN on which notifications and comments regarding the PDP will be posted.

"Staff Manager" means an ICANN staff person(s) who manages the PDP.

"Supermajority Vote" means a vote of more than sixty-six (66) percent of the members present at a meeting of the applicable body.

---

## **Annex B: ccNSO Policy-Development Process (ccPDP)**

The following process shall govern the ccNSO policy-development process ("PDP").

### **1. Request for an Issue Report**

An Issue Report may be requested by any of the following:

- a. *Council.* The ccNSO Council (in this Annex B, the "Council") may call for the creation of an Issue Report by an affirmative vote of at least seven of the members of the Council present at any meeting or voting by e-mail.
- b. *Board.* The ICANN Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process.
- c. *Regional Organization.* One or more of the Regional Organizations representing ccTLDs in the ICANN recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process.
- d. *ICANN Supporting Organization or Advisory Committee.* An ICANN Supporting Organization or an ICANN Advisory Committee may call for creation of an Issue Report by requesting the Council to begin the policy-development process.
- e. *Members of the ccNSO.* The members of the ccNSO may call for the creation of an Issue Report by an affirmative vote of at least ten members of the ccNSO present at any meeting or voting by e-mail.

Any request for an Issue Report must be in writing and must set out the issue upon which an Issue Report is requested in sufficient detail to enable the Issue Report to be prepared. It shall be open to the Council to request further information or undertake further research or investigation for the purpose of determining whether or not the requested Issue Report should be created.

## 2. Creation of the Issue Report and Initiation Threshold

Within seven days after an affirmative vote as outlined in Item 1(a) above or the receipt of a request as outlined in Items 1 (b), (c), or (d) above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of ICANN (in which case the costs of the Issue Manager shall be borne by ICANN) or such other person or persons selected by the Council (in which case the ccNSO shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate), the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the issue;
- c. How that party is affected by the issue;
- d. Support for the issue to initiate the PDP;
- e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP for this issue (the "Manager Recommendation"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN General Counsel regarding whether the issue is properly within the scope of the ICANN policy process and within the scope of the ccNSO. In coming to his or her opinion, the General Counsel shall examine whether:
  - 1) The issue is within the scope of ICANN's mission statement;
  - 2) Analysis of the relevant factors according to Article IX, Section 6(2) and Annex C affirmatively demonstrates that the issue is within the scope of the ccNSO;

In the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

- 3) Implicates or affects an existing ICANN policy;
- 4) Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this Annex B) or to the scope of the ccNSO (Annex C) shall be within the scope of ICANN and the ccNSO.

f. In the event that the Manager Recommendation is in favor of initiating the PDP, a proposed time line for conducting each of the stages of PDP outlined herein (PDP Time Line).

g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the ICANN Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP.

### 3. Initiation of PDP

The Council shall decide whether to initiate the PDP as follows:

a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP. Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur by e-mail.

b. A vote of ten or more Council members in favor of initiating the PDP shall be required to initiate the PDP provided that the Issue Report states that the issue is properly within the scope of the ICANN mission statement and the ccNSO Scope. In the event that the Issue Report states it is not properly within the scope of the ICANN mission statement or the ccNSO Scope, then a vote of twelve or more Council members in favor of initiating the PDP shall be required to initiate the PDP.

### 4. Decision Whether to Appoint Task Force; Establishment of Time Line

At the meeting of the Council where the PDP has been initiated (or, where the Council employs a vote by e-mail, in that vote) pursuant to Item 3 above, the Council shall decide, by a majority vote of members present at the meeting (or voting by e-mail), whether or not to appoint a task force to address the issue. If the Council votes:

a. In favor of convening a task force, it shall do so in accordance with Item 7 below.

b. Against convening a task force, then it shall collect information on the policy issue in accordance with Item 8 below.

The Council shall also, by a majority vote of members present at the meeting or voting by e-mail, approve or amend and approve the PDP Time Lines set out in the Issue Report.

### 5. Composition and Selection of Task Forces

a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see Article IX, Section 6) to appoint two individuals to participate in the task force (the "Representatives"). Additionally, the Council may appoint up to three advisors (the "Advisors") from outside the ccNSO and, following formal request for GAC participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee to sit on the task force. The Council may increase the number of Representatives that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.

b. Any Regional Organization wishing to appoint Representatives to the task force must provide the names of the Representatives to the Issue Manager within ten (10) calendar days after such request so that they are included on the task force. Such Representatives need not be members of the Council, but each must be an individual who has an interest, and ideally knowledge and expertise, in the subject matter, coupled with the ability to devote a substantial amount of time to the task force's activities.

c. The Council may also pursue other actions that it deems appropriate to assist in the PDP, including appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager in accordance with the PDP Time Line.

### 6. Public Notification of Initiation of the PDP and Comment Period

After initiation of the PDP, ICANN shall post a notification of such action to the Website and to the other ICANN Supporting Organizations and Advisory Committees. A comment period (in accordance with the PDP Time Line, and ordinarily at least 21 days long) shall be commenced for the issue. Comments shall be accepted from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. The Issue Manager, or some other designated Council representative shall review the comments and incorporate them into a report (the "Comment Report") to be included in either the Preliminary

Task Force Report or the Initial Report, as applicable.

## 7. Task Forces

a. *Role of Task Force.* If a task force is created, its role shall be responsible for (i) gathering information documenting the positions of the ccNSO members within the Geographic Regions and other parties and groups; and (ii) otherwise obtaining relevant information that shall enable the Task Force Report to be as complete and informative as possible to facilitate the Council's meaningful and informed deliberation.

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that shall document the positions of various parties or groups as specifically and comprehensively as possible, thereby enabling the Council to have a meaningful and informed deliberation on the issue.

b. *Task Force Charter or Terms of Reference.* The Council, with the assistance of the Issue Manager, shall develop a charter or terms of reference for the task force (the "Charter") within the time designated in the PDP Time Line. Such Charter shall include:

1. The issue to be addressed by the task force, as such issue was articulated for the vote before the Council that initiated the PDP;
2. The specific time line that the task force must adhere to, as set forth below, unless the Council determines that there is a compelling reason to extend the timeline; and
3. Any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice of outside advisors on the issue.

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of a majority of the Council members present at a meeting or voting by e-mail. The quorum requirements of Article IX, Section 3(14) shall apply to Council actions under this Item 7(b).

c. *Appointment of Task Force Chair.* The Issue Manager shall convene the first meeting of the task force within the time designated in the PDP Time Line. At the initial meeting, the task force members shall, among other things, vote to appoint a task force chair. The chair shall be responsible for organizing the activities of the task force, including compiling the Task Force Report. The chair of a task force need not be a member of the Council.

d. *Collection of Information.*

1. *Regional Organization Statements.* The Representatives shall each be responsible for soliciting the position of the Regional Organization for their Geographic Region, at a minimum, and may solicit other comments, as each Representative deems appropriate, including the comments of the ccNSO members in that region that are not members of the Regional Organization, regarding the issue under consideration. The position of the Regional Organization and any other comments gathered by the Representatives should be submitted in a formal statement to the task force chair (each, a "Regional Statement") within the time designated in the PDP Time Line. Every Regional Statement shall include at least the following:

- (i) If a Supermajority Vote (as defined by the Regional Organization) was reached, a clear statement of the Regional Organization's position on the issue;
- (ii) If a Supermajority Vote was not reached, a clear statement of all positions espoused by the members of the Regional Organization;
- (iii) A clear statement of how the Regional Organization arrived at its position(s). Specifically, the statement should detail specific meetings, teleconferences, or other means of deliberating an issue, and a list of all members who participated or otherwise submitted their views;
- (iv) A statement of the position on the issue of any ccNSO members that are not members of the Regional Organization;
- (v) An analysis of how the issue would affect the Region, including any financial impact



on the Region; and

(vi) An analysis of the period of time that would likely be necessary to implement the policy.

2. *Outside Advisors.* The task force may, in its discretion, solicit the opinions of outside advisors, experts, or other members of the public. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from outside advisors; (ii) accompanied by a detailed statement of the advisors' (a) qualifications and relevant experience and (b) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within the time designated in the PDP Time Line.

e. *Task Force Report.* The chair of the task force, working with the Issue Manager, shall compile the Regional Statements, the Comment Report, and other information or reports, as applicable, into a single document ("Preliminary Task Force Report") and distribute the Preliminary Task Force Report to the full task force within the time designated in the PDP Time Line. The task force shall have a final task force meeting to consider the issues and try and reach a Supermajority Vote. After the final task force meeting, the chair of the task force and the Issue Manager shall create the final task force report (the "Task Force Report") and post it on the Website and to the other ICANN Supporting Organizations and Advisory Committees. Each Task Force Report must include:

1. A clear statement of any Supermajority Vote (being 66% of the task force) position of the task force on the issue;
2. If a Supermajority Vote was not reached, a clear statement of all positions espoused by task force members submitted within the time line for submission of constituency reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the Regional Organizations that held the position;
3. An analysis of how the issue would affect each Region, including any financial impact on the Region;
4. An analysis of the period of time that would likely be necessary to implement the policy; and
5. The advice of any outside advisors appointed to the task force by the Council, accompanied by a detailed statement of the advisors' (i) qualifications and relevant experience and (ii) potential conflicts of interest.

## 8. Procedure if No Task Force is Formed

- a. If the Council decides not to convene a task force, each Regional Organization shall, within the time designated in the PDP Time Line, appoint a representative to solicit the Region's views on the issue. Each such representative shall be asked to submit a Regional Statement to the Issue Manager within the time designated in the PDP Time Line.
- b. The Council may, in its discretion, take other steps to assist in the PDP, including, for example, appointing a particular individual or organization, to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager within the time designated in the PDP Time Line.
- c. The Council shall formally request the Chair of the GAC to offer opinion or advice.
- d. The Issue Manager shall take all Regional Statements, the Comment Report, and other information and compile (and post on the Website) an Initial Report within the time designated in the PDP Time Line. Thereafter, the Issue Manager shall, in accordance with Item 9 below, create a Final Report.

## 9. Comments to the Task Force Report or Initial Report

- a. A comment period (in accordance with the PDP Time Line, and ordinarily at least 21 days long) shall be opened for comments on the Task Force Report or Initial Report. Comments shall be accepted from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. All comments shall include the author's name, relevant experience, and interest in the issue.
- b. At the end of the comment period, the Issue Manager shall review the comments received and may, in the Issue

Manager's reasonable discretion, add appropriate comments to the Task Force Report or Initial Report, to prepare the "Final Report". The Issue Manager shall not be obligated to include all comments made during the comment period, nor shall the Issue Manager be obligated to include all comments submitted by any one individual or organization.

c. The Issue Manager shall prepare the Final Report and submit it to the Council chair within the time designated in the PDP Time Line.

#### **10. Council Deliberation**

a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair shall (i) distribute the Final Report to all Council members; (ii) call for a Council meeting within the time designated in the PDP Time Line wherein the Council shall work towards achieving a recommendation to present to the Board; and (iii) formally send to the GAC Chair an invitation to the GAC to offer opinion or advice. Such meeting may be held in any manner deemed appropriate by the Council, including in person or by conference call. The Issue Manager shall be present at the meeting.

b. The Council may commence its deliberation on the issue prior to the formal meeting, including via in-person meetings, conference calls, e-mail discussions, or any other means the Council may choose.

c. The Council may, if it so chooses, solicit the opinions of outside advisors at its final meeting. The opinions of these advisors, if relied upon by the Council, shall be (i) embodied in the Council's report to the Board, (ii) specifically identified as coming from an outside advisor; and (iii) accompanied by a detailed statement of the advisor's (a) qualifications and relevant experience and (b) potential conflicts of interest.

#### **11. Recommendation of the Council**

In considering whether to make a recommendation on the issue (a "Council Recommendation"), the Council shall seek to act by consensus. If a minority opposes a consensus position, that minority shall prepare and circulate to the Council a statement explaining its reasons for opposition. If the Council's discussion of the statement does not result in consensus, then a recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council, and shall be conveyed to the Members as the Council's Recommendation. Notwithstanding the foregoing, as outlined below, all viewpoints expressed by Council members during the PDP must be included in the Members Report.

#### **12. Council Report to the Members**

In the event that a Council Recommendation is adopted pursuant to Item 11 then the Issue Manager shall, within seven days after the Council meeting, incorporate the Council's Recommendation together with any other viewpoints of the Council members into a Members Report to be approved by the Council and then to be submitted to the Members (the "Members Report"). The Members Report must contain at least the following:

a. A clear statement of the Council's recommendation;

b. The Final Report submitted to the Council; and

c. A copy of the minutes of the Council's deliberation on the policy issue (see Item 10), including all the opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

#### **13. Members Vote**

Following the submission of the Members Report and within the time designated by the PDP Time Line, the ccNSO members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP Time Line (at least 21 days long).

In the event that at least 50% of the ccNSO members lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO members lodge votes in the first round of voting, the first round will not be employed and the results of a second round of voting, conducted after at least thirty days notice to the ccNSO members, will be employed irrespective of whether 50% of the ccNSO members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favor of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO Recommendation.

#### **14. Board Report**

The Issue Manager shall within seven days after a ccNSO Recommendation being made in accordance with Item 13 incorporate the ccNSO Recommendation into a report to be approved by the Council and then to be submitted to the Board (the "Board Report"). The Board Report must contain at least the following:

- a. A clear statement of the ccNSO recommendation;
- b. The Final Report submitted to the Council; and
- c. the Members' Report.

#### 15. Board Vote

- a. The Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.
- b. The Board shall adopt the ccNSO Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN community or of ICANN.

1. In the event that the Board determines not to act in accordance with the ccNSO Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO Recommendation in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "Supplemental Recommendation"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13. In the event that more than 66% of the votes cast by ccNSO Members during the voting period are in favor of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that such policy is not in the best interest of the ICANN community or of ICANN.

4. In the event that the Board does not accept the ccNSO Supplemental Recommendation, it shall state its reasons for doing so in its final decision ("Supplemental Board Statement").

5. In circumstances where

- (i) the Board determines not to accept a ccNSO Supplemental Recommendation, and

- (ii) the opinion of the General Counsel pursuant to Item 2.e. was that the issue was within the scope of the ccNSO pursuant to the ccNSO's Scope,

then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

#### 16. Implementation of the Policy

Upon adoption by the Board of a ccNSO Recommendation or ccNSO Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN staff to implement the policy.

#### 17. Maintenance of Records

With respect to each ccPDP for which an Issue Report is requested (see Item 1), ICANN shall maintain on the Website a status web page detailing the progress of each ccPDP, which shall provide a list of relevant dates for the ccPDP and shall also link to the following documents, to the extent they have been prepared pursuant to the ccPDP:

- a. Issue Report;
- b. PDP Time Line;
- c. Comment Report;
- d. Regional Statement(s);
- e. Preliminary Task Force Report;
- f. Task Force Report;
- g. Initial Report;
- h. Final Report;
- i. Members' Report;
- j. Board Report;
- k. Board Statement;
- l. Supplemental Members' Report; and
- m. Supplemental Board Statement.

In addition, ICANN shall post on the Website comments received in electronic written form specifically suggesting that a ccPDP be initiated.

---

## **Annex C: The Scope of the ccNSO**

This annex describes the scope and the principles and method of analysis to be used in any further development of the scope of the ccNSO's policy-development role. As provided in Article IX, Section 6(2) of the Bylaws, that scope shall be defined according to the procedures of the ccPDP.

The scope of the ccNSO's authority and responsibilities must recognize the complex relation between ICANN and ccTLD managers/registries with regard to policy issues. This annex shall assist the ccNSO, the ccNSO Council, and the ICANN Board and staff in delineating relevant global policy issues.

### *Policy areas*

The ccNSO's policy role should be based on an analysis of the following functional model of the DNS:

1. Data is registered/maintained to generate a zone file,
2. A zone file is in turn used in TLD name servers.

Within a TLD two functions have to be performed (these are addressed in greater detail below):

1. Entering data into a database (Data Entry Function) and
2. Maintaining and ensuring upkeep of name-servers for the TLD (Name Server Function).

These two core functions must be performed at the ccTLD registry level as well as at a higher level (IANA function and root servers) and at lower levels of the DNS hierarchy. This mechanism, as RFC 1591 points out, is recursive:

There are no requirements on sub domains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively. In particular, all sub domains shall be allowed to operate their own domain name servers, providing in them whatever information the sub domain manager sees fit (as long as it is true and correct).

#### *The Core Functions*

##### 1. Data Entry Function (DEF):

Looking at a more detailed level, the first function (entering and maintaining data in a database) should be fully defined by a naming policy. This naming policy must specify the rules and conditions:

- (a) under which data will be collected and entered into a database or data changed (at the TLD level among others, data to reflect a transfer from registrant to registrant or changing registrar) in the database.
- (b) for making certain data generally and publicly available (be it, for example, through Whois or nameservers).

##### 2. The Name-Server Function (NSF)

The name-server function involves essential interoperability and stability issues at the heart of the domain name system. The importance of this function extends to nameservers at the ccTLD level, but also to the root servers (and root-server system) and nameservers at lower levels.

On its own merit and because of interoperability and stability considerations, properly functioning nameservers are of utmost importance to the individual, as well as to the local and the global Internet communities.

With regard to the nameserver function, therefore, policies need to be defined and established. Most parties involved, including the majority of ccTLD registries, have accepted the need for common policies in this area by adhering to the relevant RFCs, among others RFC 1591.

#### *Respective Roles with Regard to Policy, Responsibilities, and Accountabilities*

It is in the interest of ICANN and ccTLD managers to ensure the stable and proper functioning of the domain name system. ICANN and the ccTLD registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO cannot be established without reaching a common understanding of the allocation of authority between ICANN and ccTLD registries.

Three roles can be distinguished as to which responsibility must be assigned on any given issue:

- Policy role: i.e. the ability and power to define a policy;
- Executive role: i.e. the ability and power to act upon and implement the policy; and
- Accountability role: i.e. the ability and power to hold the responsible entity accountable for exercising its power.

Firstly, responsibility presupposes a policy and this delineates the policy role. Depending on the issue that needs to be addressed those who are involved in defining and setting the policy need to be determined and defined. Secondly, this presupposes an executive role defining the power to implement and act within the boundaries of a policy. Finally, as a counter-balance to the executive role, the accountability role needs to be defined and determined.

The information below offers an aid to:

1. delineate and identify specific policy areas;
2. define and determine roles with regard to these specific policy areas.

This annex defines the scope of the ccNSO with regard to developing policies. The scope is limited to the policy role of the ccNSO policy-development process for functions and levels explicitly stated below. It is anticipated that the accuracy of the assignments of policy, executive, and accountability roles shown below will be considered during a scope-definition ccPDP process.

*Name Server Function (as to ccTLDs)*

Level 1: Root Name Servers  
Policy role: IETF, RSSAC (ICANN)  
Executive role: Root Server System Operators  
Accountability role: RSSAC (ICANN), (US DoC-ICANN MoU)

Level 2: ccTLD Registry Name Servers in respect to interoperability  
Policy role: ccNSO Policy Development Process (ICANN), for best practices a ccNSO process can be organized  
Executive role: ccTLD Manager  
Accountability role: part ICANN (IANA), part Local Internet Community, including local government

Level 3: User's Name Servers  
Policy role: ccTLD Manager, IETF (RFC)  
Executive role: Registrant  
Accountability role: ccTLD Manager

*Data Entry Function (as to ccTLDs)*

Level 1: Root Level Registry  
Policy role: ccNSO Policy Development Process (ICANN)  
Executive role: ICANN (IANA)  
Accountability role: ICANN community, ccTLD Managers, US DoC, (national authorities in some cases)

Level 2: ccTLD Registry  
Policy role: Local Internet Community, including local government, and/or ccTLD Manager according to local structure  
Executive role: ccTLD Manager  
Accountability role: Local Internet Community, including national authorities in some cases

Level 3: Second and Lower Levels  
Policy role: Registrant  
Executive role: Registrant  
Accountability role: Registrant, users of lower-level domain names

# EXHIBIT D

*(Note: This draft agreement is subject to approval, and to changes as the evaluation*

*period progresses and additional input is received.)*

## **REGISTRY AGREEMENT**

This REGISTRY AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, July 1, 2005 by

and between Internet Corporation for Assigned Names and Numbers, a California

nonprofit public benefit corporation, and ~~[Registry Operator's name], a [insert ("ICANN"), and VeriSign, Inc. a Delaware jurisdiction and type of organization].~~  
corporation.

### **ARTICLE I INTRODUCTION**

Section 1.1 Effective Date. The Effective Date for purposes of this Agreement shall be

the date on which the TLD (as defined below) is delegated within the authoritative rootserver

system to nameservers designated by Registry Operator.

Section 1.2 Top-Level Domain. The Top-Level Domain to which this Agreement applies is .net ("TLD").

Section 1.3 Designation as Registry Operator. Upon the Effective Date, until the Expiration Date as defined in Section 4.1 hereof, ICANN hereby designates VeriSign,

\_\_\_\_\_Inc. as the sole registry operator for the TLD ("Registry Operator").

### **ARTICLE II REPRESENTATIONS AND WARRANTIES**

Section 2.1 Registry Operator's Representations and Warranties.

(a) Organization; Due Authorization and Execution. Registry Operator is a \_\_\_\_\_corporation, duly organized, validly existing and in good standing under the laws

of \_\_\_\_\_Delaware, and Registry Operator has all requisite power and authority to enter

into this Agreement. All corporate approvals and actions necessary for the entrance by Registry Operator into this Agreement have been obtained and this Agreement has been duly and validly executed and delivered by Registry Operator.

(b) Statements made During Application Process. The factual statements contained in Registry Operator's application for the TLD, or made by Registry Operator in negotiating this Agreement, were true and correct in all material respects at the time the application was submitted to ICANN and are true and correct in all material respects as of the date this Agreement is entered into set forth above.



## Section 2.2 ICANN's Representations and Warranties.

(a) Organization; Due Authorization and Execution. ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of California. ICANN has all requisite corporate power and authority to enter into this Agreement. All corporate approvals and actions necessary for the entrance by ICANN into this Agreement have been obtained and this Agreement has been duly and validly executed and delivered by ICANN.

.NET Registry Agreement

## **ARTICLE III COVENANTS**

Section 3.1 Covenants of Registry Operator. Registry Operator covenants and agrees

with ICANN as follows:

(a) Preserve Security and Stability.

(i) ICANN Temporary Specifications or Policies. Registry Operator shall comply with and implement all specifications or policies established by the ICANN Board of Directors on a temporary basis, if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, so long as the ICANN Board of Directors reasonably determines that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the Stability or Security (as defined in Section 3.1(d)(iv)(G)) of Registry Services or the DNS ("Temporary Specification or Policies"). Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any specification or policy under this provision, the ICANN Board of Directors shall state the period of time for which the specification or policy is temporarily adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the temporary specification or policy and why the Board believes the specification or policy should receive the consensus support of Internet stakeholders. If the period of time for which the specification or policy is adopted exceeds 90 days, the ICANN Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such policy in effect until such time as it shall become a Consensus Policy as described in Section 3.1(b) below. If during such one year period, the temporary policy or specification does not become a Consensus Policy meeting the standard set forth in Section 3.1(b) below, Registry Operator shall no longer be required to comply with or implement such temporary policy or specification.

Draft .NET Registry Agreement

9 March 2005

Page 3 of 19

(b) Consensus Policies.

(i) At all times during the term of this Agreement and subject to the terms hereof, Registry Operator will fully comply with and implement all Consensus Policies found at <http://www.icann.org/general/consensuspolicies>.

htm, as of the Effective Date and as may in the future be developed and adopted in accordance with ICANN's Bylaws and as set forth below.

(ii) "Consensus Policies" are those specifications or policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 3.1(b)(iv)

.NET Registry Agreement

below. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with ICANN's Bylaws, and any Consensus Policy that is adopted through such a revised process and covering those topics listed in Section 3.1(b)(iv) below shall be considered a Consensus Policy for purposes of this Agreement.

(iii) For all purposes under this Agreement, the policies identified at <http://www.icann.org/general/consensus-policies.htm> shall be treated in the same manner and have the same effect as "Consensus Policies."

(iv) Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following: (1) issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, Security and/or Stability of the Internet or DNS; (2) functional and performance specifications for the provision of Registry Services (as defined in Section 3.1(d)(iii) below); (3) Security and Stability of the registry database for the TLD; (4) registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars; or (5) resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names). Such categories of issues referred to in the preceding sentence shall include, without limitation:

(A) principles for allocation of registered names in the TLD (e.g., first-come, first-served, timely renewal, holding period after expiration);

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

Draft .NET Registry Agreement

9 March 2005

Page 4 of 19

(C) reservation of registered names in the TLD 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., establishment of reservations of names from registration);

(D) maintenance of and access to accurate and up-to-date information concerning domain name registrations;

(E) procedures to avoid disruptions of domain name registration

due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of .NET Registry Agreement

responsibility for serving registered domain names in a TLD affected by such a suspension or termination; and

(F) resolution of disputes regarding whether particular parties may register or maintain registration of particular domain names.

(v) In addition to the other limitations on Consensus Policies, they shall not:

(A) prescribe or limit the price of Registry Services;

(B) modify the standards for the consideration of proposed Registry Services, including the definitions of Security and Stability (set forth below) and the standards applied by ICANN;

(C) for three years following the Effective Date, modify the procedure for the consideration of proposed Registry Services;

(D) modify the terms or conditions for the renewal or termination of this Agreement;

(E) modify ICANN's obligations to Registry Operator under Section 3.2 (a), (b), and (c);

(F) modify the limitations on Consensus Policies or Temporary Specifications or Policies;

(G) modify the definition of Registry Services;

(H) modify the terms of Sections 7.2 and 7.3, below; and

(I) alter services that have been implemented pursuant to Section 3.1(d) of this Agreement (unless justified by compelling and just cause based on Security and Stability).

(vi) Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Specifications or Policies in which to comply with such policy or specification, taking into account any urgency involved.

In the event of a conflict between Registry Services (as defined in Section 3.1(d)(iii) below), on the one hand, and Consensus Policies developed in accordance with this Section 3.1(b) or any Temporary Specifications or Policies established pursuant to Section 3.1(a)(i) above, on the other hand, the Consensus Policies or Temporary Specifications or Policies shall control, notwithstanding any other provisions contained within this Agreement.

.NET Registry Agreement

(c) Handling of Registry Data.

(i) Data Escrow. Registry Operator shall establish at its expense a data escrow or mirror site policy for the Registry Data compiled by Registry Operator. Registry Data, as used in this Agreement, shall mean the following: (1) data for domains sponsored by all registrars, consisting of domain name, server name for each nameserver, registrar id, updated date, creation date, expiration date, status information, and DNSSEC-related key material; (2) data for nameservers sponsored by all registrars consisting of server name, each IP address, registrar id, updated date,

creation date, expiration date, and status information; (3) data for registrars sponsoring registered domains and nameservers, consisting of registrar id, registrar address, registrar telephone number, registrar e-mail address, whois server, referral URL, updated date and the name,

~~Draft .NET Registry Agreement~~

~~9 March 2005~~

~~Page 5 of 19~~

telephone number, and e-mail address of all the registrar's administrative, billing, and technical contacts; (4) domain name registrant data collected by the Registry Operator from registrars as part of or following registration of a domain name; and (5) the DNSSEC-related material necessary to sign the .net zone (e.g., public and private portions of .net zone keysigning keys and zone-signing keys). The escrow agent or mirror-site manager, and the obligations thereof, shall be mutually agreed upon by ICANN and Registry Operator on commercially reasonable standards that are technically and practically sufficient to allow a successor registry operator to assume management of the TLD. To this end, Registry Operator shall periodically 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 Registry Operator and ICANN, such approval not to be unreasonably withheld by either party. In addition, Registry Operator will deposit into escrow that data collected from registrars as part of offering Registry Services introduced after the Effective Date of this Agreement. ~~The escrow shall be maintained, at Registry Operator's expense, by a reputable escrow agent mutually approved by Registry Operator and ICANN, such approval also not to be unreasonably withheld by either party.~~ The schedule, content, format, and procedure for escrow deposits shall be as reasonably established by ICANN from time to time, and as set forth in Appendix 1 hereto. Changes to the schedule, content, format, and procedure may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall unreasonably withhold) or through the establishment of a Consensus Policy as outlined in Section 3.1(b) above. The escrow shall be held under an agreement, substantially in the form of Appendix 2, as the same may be revised from time to time, among ICANN, Registry Operator, and the escrow agent.

(ii) Personal Data. Registry Operator shall notify registrars sponsoring registrations in the registry for the TLD of the purposes for which Personal Data (as defined below) submitted to Registry Operator by registrars, if any, is collected, the intended recipients (or categories of recipients) of such Personal Data, and the mechanism for access to and correction of .NET Registry Agreement

such Personal Data. Registry Operator shall take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided

to registrars. "Personal Data" shall refer to all data about any identified or identifiable natural person.

(iii) Bulk Zone File Access. Registry Operator shall provide bulk access to the zone files for the registry for the TLD to ICANN on a continuous basis in the manner ICANN may reasonably specify from time

~~Draft .NET Registry Agreement~~

9 March 2005

Page 6 of 19

to time. Bulk access to the zone files shall be provided to third parties on the terms set forth in the TLD zone file access agreement reasonably established by ICANN, which initially shall be in the form attached as Appendix 3 hereto. Changes to the zone file access agreement may be made upon the mutual written consent of ICANN and Registry Operator (which consent neither party shall unreasonably withhold).

(iv) Monthly Reporting. Within 20 days following the end of each calendar month, Registry Operator shall prepare and deliver to ICANN a report providing such data and in the format specified in Appendix 4. ICANN may audit Registry Operator's books and records relating to data contained in monthly reports from time to time upon reasonable advance written notice, provided that such audits shall not exceed one per quarter. Any such audit shall be at ICANN's cost, unless such audit shall reflect a material discrepancy or discrepancies in the data provided by Registry Operator. In the latter event, Registry Operator shall reimburse ICANN for all costs and expenses associated with such audit, which reimbursement shall be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(v) Whois Service. Registry Operator shall provide such whois data as set forth in Appendix 5.

(d) Registry Operations.

(i) Registration Restrictions. Registry Operator shall reserve, and not register any TLD strings (i) appearing on the list of reserved TLD strings attached as Appendix 6 hereto or (ii) located at <http://data.iana.org/TLD/tlds-alpha-by-domain.txt> for initial (i.e., other than renewal) registration at the second level within the TLD.

(ii) Functional and Performance Specifications. Functional and Performance Specifications for operation of the TLD shall be as set forth in Appendix 7 hereto, and shall address without limitation DNS services; operation of the shared registration system; and nameserver operations. Registry Operator shall keep technical and operational records sufficient to evidence compliance with such specifications for at least one year,

.NET Registry Agreement

which records ICANN may audit from time to time upon reasonable advance written notice, provided that such audits shall not exceed one per quarter. Any such audit shall be at ICANN's cost.

(iii) Registry Services. Registry Services are, for purposes of this Agreement, defined as the following: (a) those services that are both (i) operations of the registry critical to the following tasks: the receipt of data

from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone

~~Draft .NET Registry Agreement~~

~~9 March 2005~~

~~Page 7 of 19~~

servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; and (ii) provided by the Registry Operator for the .net registry as of the Effective Date, as the case may be; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy (as defined in Section 3.1(b) above); (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above. Only Registry Services defined in (a) and (b) above are subject to the maximum price provisions of Section 7.3, below.

(iv) Process for Consideration of Proposed Registry Services.

Following written notification by Registry Operator to ICANN that Registry Operator may make a change in a Registry Service within the scope of the preceding paragraph:

(A) ICANN shall have 15 calendar days to make a "preliminary determination" whether a Registry Service requires further consideration by ICANN because it reasonably determines such Registry Service: (i) could raise significant Security or Stability issues or (ii) could raise significant competition issues.

(B) Registry Operator must provide sufficient information at the time of notification to ICANN that it may implement such a proposed Registry Service to enable ICANN to make an informed "preliminary determination." Information provided by Registry Operator and marked "CONFIDENTIAL" shall be treated as confidential by ICANN. Registry Operator will not designate "CONFIDENTIAL" information necessary to describe the purpose of the proposed Registry Service and the effect on users of the DNS.

(C) ICANN may seek expert advice during the preliminary determination period (from entities or persons subject to confidentiality agreements) on the competition, Security or Stability implications of the Registry Service in order to make its "preliminary determination." To the extent ICANN determines to disclose

.NET Registry Agreement

confidential information to any such experts, it will provide notice to Registry Operator of the identity of the expert(s) and the information it intends to convey.

(D) If ICANN determines during the 15 calendar day "preliminary determination" period that the proposed Registry Service, does not raise significant Security or Stability (as defined below), or

~~Draft .NET Registry Agreement~~

competition issues, Registry Operator shall be free to deploy it upon such a determination.

(E) In the event ICANN reasonably determines during the 15 calendar day "preliminary determination" period that the Registry Service might raise significant competition issues, ICANN shall refer the issue to the appropriate governmental competition authority or authorities with jurisdiction over the matter within five business days of making its determination, or two business days following the expiration of such 15 day period, whichever is earlier, with notice to Registry Operator. Any such referral communication shall be posted on ICANN's website on the date of transmittal. Following such referral, ICANN shall have no further responsibility, and Registry Operator shall have no further obligation to ICANN, with respect to any competition issues relating to the Registry Service. If such a referral occurs, the Registry Operator will not deploy the Registry Service until 45 calendar days following the referral, unless earlier cleared by the referred governmental competition authority.

(F) In the event that ICANN reasonably determines during the 15 calendar day "preliminary determination" period that the proposed Registry Service might raise significant Stability or Security issues (as defined below), ICANN will refer the proposal to a Standing Panel of experts (as defined below) within five business days of making its determination, or two business days following the expiration of such 15 day period, whichever is earlier, and simultaneously invite public comment on the proposal. The Standing Panel shall have 45 calendar days from the referral to prepare a written report regarding the proposed Registry Service's effect on Security or Stability (as defined below), which report (along with a summary of any public comments) shall be forwarded to the ICANN Board. The report shall set forward the opinions of the Standing Panel, including, but not limited to, a detailed statement of the analysis, reasons, and information upon which the panel has relied in reaching their conclusions, along with the response to any specific questions that were included in the referral from ICANN staff. Upon ICANN's referral to the Standing Panel, Registry Operator may submit additional information or analyses [.NET Registry Agreement](#) regarding the likely effect on Security or Stability of the Registry Service.

(G) Upon its evaluation of the proposed Registry Service, the Standing Panel will report on the likelihood and materiality of the proposed Registry Service's effects on Security or Stability, including whether the proposed Registry Service creates a ~~Draft .NET Registry Agreement~~

reasonable risk of a meaningful adverse effect on Security or Stability as defined below:

**Security:** For purposes of this Agreement, an effect on security by the proposed Registry Service shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

**Stability:** For purposes of this Agreement, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs sponsored by the IETF or (2) creates a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs and relying on Registry Operator's delegation information or provisioning services.

(H) Following receipt of the Standing Panel's report, which will be posted (with appropriate confidentiality redactions made after consultation with Registry Operator) and available for public comment, the ICANN Board will have 30 calendar days to reach a decision. In the event the ICANN Board reasonably determines that the proposed Registry Service creates a reasonable risk of a meaningful adverse effect on Stability or Security, Registry Operator will not offer the proposed Registry Service. An unredacted version of the Standing Panel's report shall be provided to Registry Operator upon the posting of the report. The Registry Operator may respond to the report of the Standing Panel or otherwise submit to the ICANN Board additional information or analyses regarding the likely effect on Security or Stability of the Registry Service.

.NET Registry Agreement

(I) The Standing Panel shall consist of a total of 20 persons expert in the design, management and implementation of the complex systems and standards-protocols utilized in the Internet infrastructure and DNS (the "Standing Panel"). The members of the Standing Panel will be selected by its Chair. The Chair of the Standing Panel will be a person who is agreeable to both ICANN and the registry constituency of the supporting organization then



responsible for generic top level domain registry policies. All members of the Standing Panel and the Chair shall execute an agreement requiring that they shall consider the issues before the panel neutrally and according to the definitions of Security and Stability. For each matter referred to the Standing Panel, the Chair shall select no more than five members from the Standing Panel to evaluate the referred matter, none of which shall have an existing competitive, financial, or legal conflict of interest, and with due regard to the particular technical issues raised by the referral.

(e) Fees and Payments. Registry Operator shall pay the Registry-Level Fees to ICANN on a quarterly basis in accordance with Section 7.2 hereof.

~~(f) Cooperation. Registry Operator shall cooperate with ICANN in efforts to~~  
The parties agree to cooperate with each other and share promote and facilitate the security and stability of the Internet and maintain a reliable and stable DNS. To this end, Registry Operator shall provide such data and assistance to ICANN as it may reasonably request from time to time. data as necessary to accomplish the terms of this Agreement.

Section 3.2 Covenants of ICANN. ICANN covenants and agrees with Registry Operator as follows:

(a) Open and Transparent. Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

(b) Equitable Treatment. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

(c) TLD Zone Servers. 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 (i) the authoritative root will point to the TLD zone servers designated by Registry Operator for the Registry TLD throughout the Term of this Agreement; and (ii) any changes to the TLD zone server designation submitted to ICANN by Registry Operator will be implemented by ICANN within seven days of submission.

(d) Nameserver Changes. Registry Operator may request changes in the nameserver delegation for the Registry TLD. Any such request must be made in a format, and otherwise meet technical requirements, specified from time to time by ICANN. ICANN will use commercially reasonable efforts to have such requests implemented in the Authoritative Root-Server System within seven calendar days of the submission.

.NET Registry Agreement

(e) Root-zone Information Publication. ICANN's publication of root-zone contact information for the Registry TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact

Draft .NET Registry Agreement

9 March 2005

Page 11 of 19

information for the Registry Operator must be made in the format specified from time to time by ICANN.

#### ARTICLE IV TERM OF AGREEMENT

Section 4.1 Term. The initial term of this Agreement shall be six years from the Effective Date (the "Expiration Date"). Registry Operator agrees that upon the earlier of

(i) termination of this Agreement by ICANN in accordance with Article VI below or (ii) the

Expiration Date, it will cease to be the Registry Operator for the TLD, unless, with respect to termination under the foregoing clause (ii), Registry Operator and ICANN

agree on terms for renewal of the Agreement as set forth in Section 4.2 below prior to the Expiration Date.

Section 4.2 Renewal. This Agreement shall be renewed upon the expiration of the

initial term set forth in Section 4.1 above, and each later term, unless the following any renewal term, unless: (i) has

occurred: (i) following notice of breach to Registry Operator in accordance with Section

6.1 and failure to cure such breach within the time period prescribed in Section 6.1, an

arbitrator or court has determined that Registry Operator has been in fundamental and

material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or

(e); Section 5.2 or Section 7.3 ~~despite notice and an opportunity to cure in accordance with Article VI hereof and~~ (ii) following the final decision of such arbitrator or

court, Registry Operator has failed to ~~correct the conduct found to constitute such breach. Provided, comply within ten days with the decision of the~~ arbitrator or court, or within such other time period as may be prescribed by the arbitrator or court. Upon renewal, in the event that the terms of this Agreement are not

similar to the terms generally in effect in the Registry Agreements of the 5 largest gTLDs (determined by the number of domain name registrations under management at

the time of renewal), renewal shall be upon terms reasonably necessary to render the

terms of this Agreement similar to such terms in the Registry Agreements for those

~~however, that Registry Operator agrees that any renewal other gTLDs. The preceding sentence, however, shall not apply to the terms of this Agreement is conditioned on its negotiation of renewal terms acceptable to ICANN, including, but not~~

~~limited to, provisions relating to registry level fees.~~

Agreement regarding the price of Registry Services; the standards for the consideration

of proposed Registry Services, including the definitions of Security and Stability and the standards applied by ICANN in the consideration process; the terms or conditions for the renewal or termination of this Agreement; ICANN's obligations to Registry Operator under Section 3.2 (a), (b), and (c); the limitations on Consensus Policies or Temporary Specifications or Policies; the definition of Registry Services; or the terms of Section

7.3. Upon renewal, Registry-Level Transaction Fees may be reasonably modified so long as any increase in such fees shall not exceed the average of the percentage increase in Registry-Level Transaction Fees for the 5 largest gTLDs (determined as above), during the prior three-year period.

Section 4.3 Changes. While this Agreement is in effect, the parties agree to engage in good faith negotiations at regular intervals (at least once every three calendar years following the Effective Date) regarding possible changes to the terms of the Agreement, including to Section 7.2 regarding fees and payments to ICANN.

.NET Registry Agreement

Section 4.4 Failure to Perform in Good Faith. In the event Registry Operator shall have been repeatedly and willfully in fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); Section 5.2 or Section 7.3, and arbitrators in accordance with Section 5.1(b) of this Agreement repeatedly have found Registry Operator to have been in fundamental and material breach of this Agreement, including in at least three separate awards, then the arbitrators shall award such punitive, exemplary or other damages as they may believe appropriate under the circumstances.

## **ARTICLE V DISPUTE RESOLUTION**

Section 5.1 Resolution of Disputes.

(a) Cooperative Engagement. In the event of a disagreement between Registry Operator and ICANN arising under or out of this Agreement, either party may by notice to the other invoke the dispute resolution provisions of this Article V.

Provided, however, that before either party may initiate arbitration as provided in Section 5.1(b) below, ICANN and Registry Operator must attempt to resolve the

Draft .NET Registry Agreement

9 March 2005

Page 12 of 19

dispute by cooperative engagement as set forth in this Section 5.1(a). If either party provides written notice to the other demanding cooperative engagement as set forth in this Section 5.1(a), then each party will, within seven calendar days after such written notice is deemed received in accordance with Section 8.6 hereof, designate a single executive officer as its representative under this Section 5.1(a) with full authority to act on such party's behalf to resolve the dispute. The designated representatives shall, within 2 business days after being designated, confer by telephone or in person to attempt to resolve the dispute. If they are not able to resolve the dispute during such telephone conference or meeting, they shall further meet in person at a location reasonably designated by ICANN within 7 calendar days after such initial telephone conference or meeting, at which meeting the parties shall attempt to reach a definitive resolution. The time schedule and process set forth in this Section 5.1(a) may be modified with respect to any dispute, but only if both parties agree to a revised time schedule or process in writing in advance. Settlement communications within the scope of this paragraph shall be inadmissible in any arbitration or litigation between the parties.

(b) Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, shall be resolved through binding arbitration conducted as provided in this Section 5.1(b) pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted in the English language and shall occur in Los Angeles County, California, USA only following the failure to resolve the dispute pursuant to cooperative engagement discussions as set forth in Section 5.1(a) above. 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 ICC. The prevailing party in the arbitration shall have the right to recover its costs and reasonable attorneys' fees, which the NET Registry Agreement

arbitrators shall include in their awards. Any party that seeks to confirm or vacate an arbitration award issued under this Section 5.1(b) may do so only pursuant to the applicable arbitration statutes. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles County, 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 a temporary stay or injunctive relief from the arbitration panel or a court, which shall not be a waiver of this agreement to arbitrate.

Section 5.2 Specific Performance. Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrators specific performance of the terms of

this Agreement (in addition to any other remedy to which each party is entitled).

Draft .NET Registry Agreement

9 March 2005

Page 13 of 19

Section 5.3 Limitation of Liability. ICANN's aggregate monetary liability for violations of

this Agreement shall not exceed the amount of Registry-Level Fees paid by Registry

Operator to ICANN within the preceding twelve-month period pursuant to Section 7.2 of

this Agreement. Registry Operator's aggregate monetary liability to ICANN for violations

of this Agreement shall be limited to fees and monetary sanctions due and owing to

ICANN under this Agreement. In no event shall either party be liable for special, indirect,

incidental, punitive, exemplary, or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations

undertaken in this Agreement, except as provided pursuant to Section 4.4 of this Agreement. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, REGISTRY OPERATOR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED BY ITSELF, ITS SERVANTS, OR ITS AGENTS OR THE RESULTS OBTAINED FROM

THEIR WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF

MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR

PURPOSE.

.NET Registry Agreement

#### **ARTICLE VI TERMINATION PROVISIONS**

Section 6.1 Termination by ICANN. ICANN may terminate this Agreement if and only

if: (i) Registry Operator fails to cure any fundamental and material breach of Registry

Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); Section 5.2 or Section

7.3 ~~despite notice and an opportunity to cure in accordance with Section 6.3~~

within thirty calendar days after ICANN gives Registry Operator written notice of the

breach, which notice shall include with specificity the details of the alleged breach; and

(ii) (a) an arbitrator or court has finally determined that Registry Operator is, or was, in

fundamental and material breach and failed to cure such breach within the prescribed

time period and (b) following the decision of such arbitrator or court, Registry Operator

has failed to comply with the decision of the arbitrator or court.

Section 6.2 Bankruptcy. This Agreement shall automatically terminate in the event

Registry Operator shall voluntarily or involuntarily be subject to bankruptcy proceedings.

~~Section 6.3 Notice; Opportunity to Cure. This Agreement may be terminated in the~~

~~circumstances described in Section 6.1 above only following written notice to Registry~~

~~Operator and Registry Operator's failure to cure in the prescribed time period, with~~

~~Registry Operator being given an opportunity during that time to initiate arbitration under~~

~~Section 5.1(b) to determine the appropriateness of termination under this Agreement.~~

~~In the event Registry Operator initiates arbitration concerning the appropriateness of~~

~~termination by ICANN, Registry Operator 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 decision or until the~~

~~arbitration panel has granted an ICANN request for lifting of the stay. Section 6.4~~

Transition of Registry upon Termination of Agreement. Upon any termination of this Agreement as provided in Sections 6.1 and 6.2, the parties agree to

work cooperatively to facilitate and implement the transition of the registry for the TLD in

accordance with this Section ~~6.4.6.3~~. Registry Operator shall agree to provide ICANN or

any successor registry authority that may be designated for the TLD with any data

regarding operations of the registry for the TLD necessary to maintain operations that

~~Draft .NET Registry Agreement~~

~~9 March 2005~~

~~Page 14 of 19~~

may be reasonably requested in addition to that data escrowed in accordance with

Section 3.1(c)(i) hereof.

~~Section 6.5~~6.4 Rights in Data. Registry Operator shall not be entitled to claim any intellectual property rights in Registry Data. In the event that Registry Data is released

from escrow as set forth in Section 3.1(c)(i), rights, if any, held by Registry Operator in

the data shall automatically be licensed on a non-exclusive, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.

~~Section 6.66.5~~ No Reimbursement. Any and all expenditures, capital investments or other investments made by Registry Operator in connection with this Agreement shall be at Registry Operator's own risk and ICANN shall have no obligation to reimburse Registry Operator for any such expense, capital expenditure or investment. Registry Operator shall not be required to make any payments to a successor registry operator by reason of registry fees paid to Registry Operator prior to the effective date of (i) any termination or expiration of this Agreement or (ii) transition of the registry, unless any delay in transition of the registry to a successor operator shall be due to the actions of Registry Operator.

NET Registry Agreement

## **ARTICLE VII SPECIAL PROVISIONS**

### Section 7.1 Registry-Registrar Agreement.

(a) Access to Registry Services. Registry Operator shall make access to Registry Services, including the shared registration system, available to all ICANN-accredited registrars, subject to the terms of the Registry-Registrar Agreement attached as Appendix ~~—8~~ hereto. Registry Operator shall provide all ICANN-accredited registrars following execution of the Registry-Registrar Agreement, provided registrars are in compliance with such agreement, operational access to Registry Services, including the shared registration system for the TLD. Such nondiscriminatory access shall include without limitation the following:

- (i) All registrars (including any registrar affiliated with Registry Operator) can connect to the shared registration system gateway for the TLD via the Internet by utilizing the same maximum number of IP addresses and SSL certificate authentication;
- (ii) Registry Operator has made the current version of the registrar toolkit software accessible to all registrars and has made any updates available to all registrars on the same schedule;
- (iii) All registrars have the same level of access to customer support personnel via telephone, e-mail and Registry Operator's website;

~~Draft NET Registry Agreement~~

~~9 March 2005~~

~~Page 15 of 19~~

- (iv) All registrars have the same level of access to registry resources to resolve registry/registrar or registrar/registrar disputes and technical and/or administrative customer service issues;

(v) All registrars have the same level of access to data generated by Registry Operator to reconcile their registration activities from Registry Operator's Web and ftp servers;

(vi) All registrars may perform basic automated registrar account management functions using the same registrar tool made available to all registrars by Registry Operator; and

(vii) The shared registration system does not include, for purposes of providing discriminatory access, any algorithms or protocols that differentiate among registrars with respect to functionality, including database access, system priorities and overall performance.

Such Registry-Registrar Agreement may be revised by Registry Operator from time to time, provided however, that any such revisions must be approved in advance by ICANN.

.NET Registry Agreement

(b) Registry Operator Shall Not Act as Own Registrar. Registry Operator shall not act as a registrar with respect to the TLD. This shall not preclude Registry Operator from registering names within the TLD to itself through a request made to an ICANN-accredited registrar.

(c) Restrictions on Acquisition of Ownership or Controlling Interest in Registrar. Registry Operator shall not acquire, directly or indirectly, control of, or a greater than fifteen percent ownership interest in, any ICANN-accredited registrar.

Section 7.2 Fees to be Paid to ICANN.

~~[to be negotiated consistent with .net RFP]~~

(a) Registry-Level Transaction Fee. Commencing on 1 July 2005, Registry Operator shall pay ICANN a Registry-Level Transaction Fee in an amount equal to US\$0.75 for each annual increment of an initial or renewal domain name registration and for transferring a domain name registration from one ICANN-accredited

registrar to another during the calendar quarter to which the Registry-Level Transaction Fee pertains. ICANN intends to apply this fee to purposes including: (a) a special restricted fund for developing country Internet communities to enable further participation in the ICANN mission by developing country stakeholders, (b) a special restricted fund to enhance and facilitate the security and stability of the DNS, and (c) general operating funds to support ICANN's mission to ensure the stable and secure operation of the DNS.

(b) Payment Schedule. Registry Operator shall pay the Registry-Level Fees specified in Sections 7.2(a) and (c), and Section 7.2(d), if applicable, by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.

(c) Fixed Registry-Level Fee. Commencing on 1 July 2005, Registry Operator shall pay ICANN a quarterly Fixed Registry-Level Fee in an amount equal to US\$37,950 for each quarter during the twelve-month period ending June 30, 2006. Such fee is subject to increase on July 1 of each year thereafter in an amount established by ICANN's Board of Directors, but not to exceed a sum equal to 115% of the prior year's fee. One dollar (USD) of the Fixed Registry-



Level Fee shall be waived for each dollar that the Registry-Level Transaction Fee exceeds US\$2,000,000 per annum.

(d) Variable Registry-Level Fee. For fiscal quarters in which ICANN does not collect a variable accreditation fee from all registrars, upon receipt of written notice from ICANN, Registry Operator shall pay ICANN a Variable Registry-Level Fee. The fee will be calculated by ICANN, paid to ICANN by the Registry Operator in accordance with the Payment Schedule in Section 7.2(b), and the Registry Operator will invoice and collect the fees from the registrars who are party to a Registry-Registrar Agreement with Registry Operator. The fee will

.NET Registry Agreement consist of two components; each component will be calculated by ICANN for each registrar:

(i) The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year but shall not exceed eighty percent (80%) of the registrar level transaction fee as established pursuant to the approved 2004-2005 ICANN Budget.

(ii) The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year, but the sum of the perregistrar fees calculated for all registrars shall not exceed the total Per-Registrar Variable funding established pursuant to the approved 2004-2005 ICANN Budget.

(e) Interest on Late Payments. For any payments ten days or more overdue, Registry Operator shall pay interest on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

Section 7.3 Pricing for Domain Name Registrations and Registry Services.

{to be negotiated consistent with .net RFP}

(a) Prices for Registry Services. From 1 July 2005 through 31 December 2006, the price to ICANN-accredited registrars for new and renewal domain name registrations and for transferring a domain name registration from one ICANN-accredited

registrar to another, shall not exceed US\$4.25 (consisting of a US\$3.50 service fee and a US\$0.75 ICANN fee). On 1 January 2007, the controls on Registry Operator's pricing set forth in this Agreement shall be eliminated, provided that the same price shall be charged to all registrars with respect to each annual increment of a new or renewal domain name registration, and for transferring a domain name registration from one ICANN-accredited registrar to another (provided that volume discounts and marketing support and incentive programs may be made if the same opportunities to qualify for those discounts and marketing support and incentive programs is available to all ICANN-accredited registrars).

(b) Adjustments to Pricing for Domain Name Registrations. Registry Operator shall provide no less than six months prior notice in advance of any price increase for domain name registrations and shall continue to offer domain name registrations for periods of up to ten years.

**ARTICLE VIII MISCELLANEOUS**

Section 8.1 Indemnification of ICANN. Registry Operator shall indemnify, defend, and hold harmless ICANN (including its directors, officers, employees, and agents) from and against any and all claims, damages, liabilities, costs, and expenses, including .NET Registry Agreement reasonable legal fees and expenses, arising out of or directly relating to third-party claims against ICANN and any of the following: (a) ~~the selection of Registry Operator to operate the registry for the TLD;~~ (b) ~~the entry of this Agreement;~~ (c) ~~establishment or operation of the registry for the TLD;~~ (d) ~~Registry Services;~~ (e) to the extent the acts giving rise to the claim were performed by or at the direction of Registry Operator; (c) collection or handling of Personal Data by Registry Operator; (f) any dispute concerning registration of a domain name within the domain of the TLD for the registry; and (g) ~~Draft .NET Registry Agreement~~ ~~9 March 2005~~ ~~Page 16 of 19~~ ~~e) duties and obligations of Registry Operator in operating the registry for the TLD;~~ With respect to each of (a), (c), provided that, with respect to item (g) only, Registry Operator shall not be obligated to indemnify, defend, or hold harmless ICANN to the extent the claim, damage, liability, (d), and (e), such indemnification obligation shall not apply to any claim arising, in whole cost, or expense arose due to a breach by ICANN of any obligation contained in this or in part, out of any conduct of ICANN inconsistent with ICANN's obligations under this Agreement. For avoidance of doubt, nothing in this Section 8.1 shall be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for the costs associated with the negotiation or execution of this Agreement, or with the monitoring or management of the parties' respective obligations under this Agreement. Further, this section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties.

Section 8.2 Indemnification Procedures. If any third-party claim is commenced that is indemnified under Section 8.1 above, notice thereof shall be given to ICANN as promptly as practicable. If ICANN receives notice of any third-party claim that is

indemnified under Section 8.1 above, ICANN shall promptly notify Registry Operator of such claim. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN within a reasonable period of time, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to the indemnified party to handle and defend the same, at the indemnifying party's sole cost and expense, provided that in all events ICANN shall be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN policies or conduct. ICANN shall cooperate, at its own cost, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom; provided, however, that the indemnified party may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is indemnified shall be entered into without the consent of ICANN, which consent shall not be unreasonably withheld. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section, Registry Operator may participate in such defense, at its sole cost and expense, and ICANN shall have the right to defend the claim in such manner as it may deem appropriate, at the reasonable cost and expense of Registry Operator.

Section 8.3 No Offset. All payments due under this Agreement shall be made in a timely manner throughout the term of this Agreement and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

Section 8.4 Use of ICANN Name and Logo. ICANN grants to Registry Operator ~~an~~ non-exclusive royalty-free license to state that it is designated by ICANN as the Registry Operator for the Registry TLD and to use a logo specified by ICANN to signify that .NET Registry Agreement

Registry Operator is an ICANN-designated registry authority. This license may not be assigned or sublicensed by Registry Operator.

Section 8.5 Assignment and Subcontracting. Any assignment of this Agreement shall be effective only upon written agreement by the assignee with the other party to assume the assigning party's obligations under this Agreement. Moreover, neither party may assign this Agreement without the prior written approval of the other party.

~~Draft .NET Registry Agreement~~

~~9 March 2005~~

~~Page 17 of 19~~

Notwithstanding the foregoing, ICANN may assign this Agreement (i) in conjunction with a reorganization or re-incorporation of ICANN, to another nonprofit corporation organized for the same or substantially the same purposes, or (ii) as may be required pursuant to the terms of that certain Memorandum of Understanding between ICANN and the U.S. Department of Commerce, as the same may be amended from time to time. Registry Operator must provide notice to ICANN of any subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder. Any subcontracting of technical operations shall provide that the subcontracted entity become party to the data escrow agreement mandated by Section 3.1(c)(i) hereof.

Section 8.6 Amendments and Waivers. 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 or failure to enforce any of the provisions hereof 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.

Section 8.7 No Third-Party Beneficiaries. This Agreement shall not be construed to

create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder. Section 8.8 Notices, Designations, and Specifications. All notices to be given under or in relation to this Agreement shall be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. Any change in the contact information for notice below shall be given by the party within 30 days of such change. Any notice required by this Agreement shall be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within two (2) business days. Whenever this Agreement shall specify a URL address for certain information, Registry Operator shall be deemed to have been given notice of any such information when electronically posted at the designated URL. In the event other means of notice shall become practically achievable, such as notice via a secure NET Registry Agreement website, the parties shall work together to implement such notice means under this

Agreement.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers

4676 Admiralty Way, Suite 330

Marina Del Rey, California 90292

Draft .NET Registry Agreement

9 March 2005

Page 18 of 19

Telephone: 1-310-823-9358

Facsimile: 1-310-823-8649

Attention: President and CEO

With a Required Copy to: General Counsel

Email: \_\_\_\_\_ (As specified from time to time.)

If to Registry Operator, addressed to:

\_\_\_\_\_

VeriSign, Inc.

21355 Ridgetop Circle

Dulles, VA 20166

Telephone: \_\_\_\_\_1-703-948-4463

Facsimile: \_\_\_\_\_1-703-450-7326

Attention: \_\_\_\_\_VP, Associate General Counsel, VNDS

With a Required Copy to: General Counsel

Email: \_\_\_\_\_(As specified from time to time.)

Section 8.9 Language. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

Section 8.10 Counterparts. 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.

Section 8.11 Entire Agreement. This Agreement (including its Appendices, which form

a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations

and discussions, whether oral or written, between the parties on that subject. In the

event of a conflict between the provisions in the body of this Agreement and any provision in its Appendices, the provisions in the body of the Agreement shall control.

Draft .NET Registry Agreement

9 March 2005

Page 19 of 19

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

By: \_\_\_\_\_

{insert name of official}

{insert title of official}

Dr. Paul Twomey

President and CEO

Date:

**{insert name of Registry Operator}**

**VeriSign, Inc.**

By: \_\_\_\_\_

{insert name of official}

{insert title of official}

Mark D. McLaughlin

Sr. Vice President

Date:

**.NET Agreement Appendix 1**

**Data Escrow Specification**

**EXHIBIT A - Task Order and Statement of Work**

**TASK ORDER TITLE**

Exhibit A to the Escrow Agreement dated \_\_\_\_\_.

COMPANY NAME

Data Escrow Provider

STATEMENT OF WORK

Establish an escrow account to deposit all data identified in Section 3.1(c)(i) of the Registry Agreement between VeriSign, Inc. ("VNDS") and the Internet Corporation for Assigned Names and Numbers ("ICANN") ( the "Data") in an electronic format mutually approved by VNDS and ICANN. More specifically, to meet the Data Escrow requirements outlined in the Registry Agreement, VNDS will store in escrow with Data Escrow Provider a complete set of Data in an electronic format agreed upon by VNDS and ICANN. Data Escrow Provider will verify that the data is complete, accurate, and delivered in the intended format using scripts provided by VNDS. The escrow deposit verification process will validate completeness and integrity (accuracy) of the data as well as validate that the file format sent is the format received by Data Escrow Provider (correctness). Refer to Exhibit B to review the verification processes. The Introspection validation, defined in Exhibit B, will be implemented in a later phase, as mutually agreed by the parties hereto.

Data will be securely and electronically transmitted on a daily and weekly basis as follows:

Weekly Escrow Deposits:

VNDS will deposit a complete set of Data into escrow on a weekly basis by electronically and securely transmitting a snapshot of each operational Registrar's data (the "Deposit Materials"). The snapshot captures the state of each Registrar's data at the time the snapshot was created. Specific data elements contained in the Deposit Materials are identified in Table 1.

Daily Escrow Deposits:

VNDS will securely and electronically deposit a transaction log for each operational Registrar representing transactions that occurred over the previous 24 hour period (the "Additional Deposit"). The logs will be escrowed daily, being in the form of Additional Deposit each Tuesday through Sunday, and being in the form of the Weekly Deposit Materials each Monday, which shall capture that Sunday's data. The Daily Additional Deposit will act as incremental updates to the Weekly Deposit Materials and will include all Registrar activity, such as add, delete, and transfer of a domain name. Specific data elements contained in the Additional Deposit are identified in Table 2.

Electronic Delivery Service Escrow Deposit Method:

The "Electronic Delivery Service" escrow deposit method shall mean and refer to the following: VNDS shall transmit the Deposit Materials and Additional Deposit to a secure server on a weekly and daily basis, respectively. VNDS shall provide a secure ID and password for Data Escrow Provider. Data Escrow Provider shall pull the transmitted data from the server and store it in a secured location. The transmitted data will be made available to Data Escrow Provider as follows:

Daily Deposits:

Daily transactional data will be made available at the close of business each Tuesday through Sunday for the previous calendar day. For example,

transactional data created on Monday would be available to the escrow company on Tuesday at the close of business. The results of transactions completed on Sunday will be made available in the Weekly Deposit Materials, thus no separate Daily Additional Deposit will be made for Sunday activity.

Weekly Deposits:

Weekly database snapshots taken at midnight on Sundays will be available not later than 6 p.m. each Monday.

Data Transmission File Sizes:

The Weekly Deposit Materials shall include the Registrar Domain Report, Registrar Nameserver Report, and Registrar Whois Report, and may include Domain Name Registrant Data, DNSSEC-Related Data and Registry Service Data as set forth below.

FILE SIZE ESTIMATES

Daily Weekly

Current Data Escrow Size up to 400 Megabytes up to 4 Gigabytes

Forecasted 2005 Data Escrow Size up to 600 Megabytes up to 7.5 Gigabytes

Total Forecasted Escrow Size up to 1.5 Gigabytes up to 15 Gigabytes

**Table 1: Weekly Deposit Materials Format**

Registrar Weekly Reports

1. Registrar Domain Report

Title: Registrar Domain Report

Report name: rgr\_domain

Description: This report contains data for domains sponsored by all registrars. Each domain is listed once with the current status and associated nameserver.

Fields:

Domain Name (domainname)

Server name for each nameserver (servername)

Registrar ID (GURID)

Updated Date (updatedate)

Creation Date (createdate)

Expiration Date (expirationdate)

Status Information (statusname)

DNSSEC-Related Key Material (dnssec) [as applicable]

2. Registrar Nameserver Report

Title: Registrar Nameserver Report

Report name: rgr\_nameserver

Description: This report contains data for all nameservers sponsored by all registrars. The nameserver is listed once with all associated information.

Fields:

Server Name (servername)

IP Address (ipaddress)

Registrar ID (gurid)

Updated Date (updatedate)

Creation Date (createdate)

Expiration Date (expirationdate)

Status Information (statusname)



### 3. Registrar Whois Report

Title: Registrar Whois Report

Report name: Registrar Whois

Description: This report contains data for registrars sponsoring registered domains and nameservers and will consist of one record for each registrar.

Fields:

Registrar ID (REGISTRARID)

Registrar Name (REGISTRARNAME)

Address 1 (ADDRESSLINE1)

Address 2 (ADDRESSLINE2)

Address 3 (ADDRESSLINE3)

City (CITY)

State / Province (STATEPROVINCE)

Postal Code (POSTALCODE)

Country (COUNTRYCODE)

Telephone Number (PHONENUMBER)

Fax Number (FAXNUMBER)

E-Mail Address (EMAIL)

Whois Server (WHOISSERVER)

Web URL (URL)

Updated Date (UPDATEDATE)

Administrative Contact First Name (ADMINFNAME)

Administrative Contact Last Name (ADMINLNAME)

Administrative Contact Telephone Number (ADMINPHONE)

Administrative Contact E-Mail (ADMINEMAIL)

Billing Contact First Name (BILLINGFNAME)

Billing Contact Last Name (BILLINGLNAME)

Billing Contact Telephone Number (BILLINGPHONE)

Billing Contact E-Mail (BILLINGEMAIL)

Technical Contact First Name (TECHFNAME)

Technical Contact Last Name (TECHLNAME)

Technical Contact Telephone Number (TECHPHONE)

Technical Contact E-Mail (TECHEMAIL)

### 4. Domain Name Registrant Data

If VNDS requires registrars to provide it with registrant domain name registration data, VNDS shall escrow such registrant domain name registration data that is collected from registrars.

### 5. DNSSEC-Related Data

If VNDS requires registrars to provide it with DNSSEC related material necessary to sign the .NET zone (e.g., public and private portions of the .NET zone) keysigning

keys and zone-signing keys, VNDS shall escrow such DNSSEC-related material.

### 6. Registry Services Data

VNDS shall escrow data collected from registrars as part of offering Registry Services introduced after the Effective Date of its Registry Agreement with

ICANN, if any.

**Table 2: Daily Additional Deposit Format**

Registrar Daily Additional Deposits

**1. Registrar Transaction Report**

Title: Registrar Transaction Report

Report name: rgr\_transaction

Description: This report contains transactions associated with a specific registrar. Domain operations produce one row for each associated nameserver.

Nameserver operations produce one row for each associated ipaddress. A

transactionid is included to allow unique identification of transactions. The content of columns 3 and 4 is dependent on the operation in the following ways:

operation OE (ADD DOMAIN, MOD DOMAIN, DEL DOMAIN) =>

[domainname][servername]

operation OE (ADD NAMESERVER, MOD NAMESERVER, DEL

NAMESERVER) => [ipaddress][servername]

operation OE (TRANSFER DOMAIN) => [domainname][null]

Only the seven (7) operation types above are included in the report.

Fields:

transactionid

operationname

domainname | ipaddress

servername | null

transactiondate

**1. ADDITIONAL TERMS AND CONDITIONS**

Registry Operator shall periodically deposit into escrow all Data on a schedule (not more frequently than weekly for a complete set of Data, and daily for incremental updates) and in an electronic format mutually approved from time to time by Registry Operator and ICANN, such approval not to be unreasonably withheld by either party. The escrow shall be maintained, at Registry Operator's expense, by a reputable escrow agent mutually approved by Registry Operator and ICANN, such approval also not to be unreasonably withheld by either party. The schedule, content, format, and procedure for escrow deposits shall be as reasonably established by ICANN from time to time. Changes to the schedule, content, format, and procedure may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall unreasonably withhold) or through the establishment of Consensus Policies as set forth in Section 3.1(b) of the Registry Agreement between VNDS and ICANN. The escrow shall be held under an agreement, substantially in the form of Appendix 2, among ICANN, Registry Operator, and the Escrow Agent.

**2. PERIOD OF PERFORMANCE**

Period of Performance shall be as defined by section 7(a) of this Escrow Agreement.

**3. FEE SCHEDULE**

Fees to be paid by VNDS shall be as follows:

Initialization fee (one time only) \$ \_\_\_\_\_

\*Annual maintenance/storage fee \$ \_\_\_\_\_

\*includes two cubic feet of storage space

Additional Services Available:

Electronic Updates

Transmitted once daily \$ \_\_\_\_\_

Price quoted is limited to 650 MB per update.

Electronic Updates over 650 MB \$ \_\_\_\_\_

Fee incurred for updates over 650 MB will be billed on a monthly basis.

Additional Services

Verification / File Listing Services \$ \_\_\_\_\_

(This includes up to one hour of service for each deposit)

Additional Storage Space \$ \_\_\_\_\_

Payable by Licensee or Producer Only Upon Release Request:

Due Only Upon Licensee's or Producer's

Request for Release of Deposit Materials \$ \_\_\_\_\_

Fees due in full, in US dollars, upon receipt of signed contract or deposit material, whichever comes first. Thereafter, fees shall be subject to their current pricing, provided that such prices shall not increase by more than 10% per year. The renewal date for this Agreement will occur on the anniversary of the first invoice. If other currency acceptance is necessary, please contact your Account Manager to make arrangements.

#### EXHIBIT B

The goal of the Escrow Process is to periodically encapsulate all

Registrarspecific

information into a single Escrow File and to make this file available to a third party for escrow storage. Existing Daily and Weekly reports as well as a Registrars Report (note a) will be used to construct the Escrow File because these reports, when taken together, describe completely the entire set of domains, nameservers, and Registrars.

The Escrow Process employs a method of encapsulation whereby the Daily, Weekly, and Registrar reports are concatenated, compressed, signed, and digested into a single file. The format of this encapsulation enables the single file to be verified for Completeness (note b), Correctness (note c), and Integrity (note d) by a third party. The Escrow Process includes data format specification for each report file using regular expression algebra. This format specification is stored with the report file itself and is used for format verification later. The report file along with data format specification is then digitally signed for authentication, non-repudiation and message integrity verification.

#### Verification Process

The goal of the Verification Process is to verify Completeness (note b), Correctness (note c), and Integrity (note d) of an Escrow File. The Verification Process uses layers of meta-data encapsulated in the Escrow File to construct a Verification Report (note f). The verification report produced by the verification process indicates whether the data file meets the authentication requirements. The report has 2 sections actions and results. Actions section describes each of the actions taken against the data file and whether those actions met success or

failure. Results section describes the results of the Verification Process. If there was a failure in the Actions section then the Results section will describe details of the failure and indicate that the Data File is corrupt and cannot be verified. If no errors are present the Results section will indicate that the file is valid.

#### Notes

##### a. Registrars Report

The existing Daily and Weekly reports associate Data and transactions to specific Registrars by naming each report with a specific Registrar Id. The Registrar report provides a mapping between these Registrar Ids and other associated Registrar information such as name, credit, billing address, contact info, and location.

##### b. Completeness

A data file transfer is complete if all data files transferred from the source machine are present on the destination machine.

##### c. Correctness

A data file transfer is correct if each data file on the destination machine has the same information content as that on source machine.

##### d. Integrity

A data file transfer has integrity if no data file was altered by a third party while in transit.

##### e. Regular Expression Algebra

The regular expression algebra is a powerful data description language. The data structure description can be as specific or generic as necessary.

##### f. Verification Report

The verification report produced by the Verification Process indicates whether a Data File meets the authentication requirements. The report has 2 sections:

##### Actions

This section describes each of the actions taken against the Data File and whether those actions met "SUCCESS" or "FAILURE".

##### Results

This section describes the results of the Verification Process. If there was a "FAILURE" in the Actions section then the Results section will describe details of the failure and indicate that the Data File is corrupt and cannot be verified. If no errors are present the Results section will enumerate the Report Files contained within the Data File and indicate that the file is valid.

## **.NET Agreement Appendix 2**

### **Escrow Agreement**

This Escrow Agreement ("Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between VeriSign, Inc. ("VNDS"), [Escrow Agent] ("Escrow Agent"), and the Internet Corporation for Assigned Names and Numbers ("ICANN").

**Preliminary Statement.** VNDS intends to deliver the "Deposit Materials" and any "Additional Deposit" to Escrow Agent as defined and provided for herein. VNDS desires Escrow Agent to hold the Deposit Materials and, upon certain events described herein, deliver the Deposit Materials (or a copy thereof) to ICANN in accordance with the terms hereof.

Now, therefore, in consideration of the foregoing, of the mutual promises hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Delivery by VNDS.** VNDS shall be solely responsible for delivering to Escrow Agent the Deposit Materials, as defined and described in Exhibit A, the "Task Order and Statement of Work," attached as Appendix 1 to the .NET Registry Agreement between Registry Operator and ICANN and incorporated herein by reference. VNDS may elect to deliver the Deposit Materials by the "Electronic Delivery Service," also defined in Exhibits A and B to Appendix 1 or in a manner mutually agreed upon by Escrow Agent and VNDS. Upon receipt of the Deposit Materials via Electronic Delivery Service, Escrow Agent shall download the Deposit Materials onto CD-ROM, or other electronic storage media as mutually agreed upon by Escrow Agent and VNDS, and generate a file listing, which Escrow Agent shall, within ten (10) business days of the end of each calendar month, forward to VNDS, via email or post. Within two (2) business days after receiving them, Escrow Agent shall verify that any Deposit Materials are in the proper format and appear to be complete by performing the verification procedures specified in Exhibit B of Appendix 1. Escrow Agent shall deliver, on the last business day of each month, a written certification to ICANN that it has performed those verification procedures on all Deposit Materials received during the last month and shall deliver to ICANN a copy of the verification reports generated by those procedures. If Escrow Agent discovers that any Deposit Materials fail the verification procedures, Escrow Agent shall notify ICANN of such nonconformity within forty-eight (48) hours. Escrow Agent shall then hold the Deposit Materials in accordance with the terms and conditions hereof.

**2. Duplication; Periodic Updates**

(a) Escrow Agent may duplicate the Deposit Materials by any means in order to comply with the terms and provisions of this Agreement. Alternatively, Escrow Agent, by notice to VNDS, may reasonably require VNDS to promptly duplicate the Deposit Materials and forward the same to Escrow Agent.

(b) VNDS shall deposit with Escrow Agent the "Additional Deposit," as defined and described in the attached Exhibit A of Appendix 1. Within two (2) business days after receiving them, Escrow Agent shall verify that any Additional Deposits are in the proper format and appear to be complete by performing the verification procedures specified in Exhibit B1 and B2 of Appendix 1. Escrow Agent shall deliver, on the last business day of each month, a written certification to ICANN that it has performed those verification procedures on all Additional Deposits received during the last month and shall deliver to ICANN a copy of the verification reports generated by those procedures. If Escrow Agent discovers that any Additional Deposits fail the verification procedures, Escrow Agent shall notify ICANN of such nonconformity within forty-eight (48) hours.

**3. Notification of Deposits.** Simultaneous with the delivery to Escrow Agent of the Deposit Materials or any Additional Deposit, as the case may be, VNDS shall deliver to Escrow Agent a written statement, via email, specifically identifying all items deposited and stating that the Deposit Materials and/or any Additional Deposit have been inspected by VNDS and are complete and accurate. Escrow

Agent shall, within ten (10) business days of receipt of any Deposit Materials or Additional Deposit, send notification to VNDS, via email, that it has received from VNDS such Deposit Materials and/or any such Additional Deposit. In addition, Escrow Agent shall also include a copy of the verification report as confirmation that it has run the verification process.

#### **4. Delivery by Escrow Agent**

**4.1 Delivery by Escrow Agent to ICANN.** Escrow Agent shall deliver the Deposit Materials and any Additional Deposits received since the last submission of Deposit Material ("Outstanding Additional Deposits"), or a complete copy thereof, to ICANN only in the event that:

(a) VNDS notifies Escrow Agent to effect such delivery to ICANN at a specific address, the notification being accompanied by a check payable to Escrow Agent in the amount of one hundred dollars (\$100.00); or

(b) Escrow Agent receives from ICANN:

(i) Written notification that the Registry Agreement between VNDS and ICANN dated \_\_\_\_\_, 2005 ("Registry Agreement") has been finally, validly and legally terminated under Section 6 of the Registry Agreement and no injunction or similar order has been obtained from an arbitrator or court prohibiting ICANN from securing the data in this escrow ("Registry Termination");

(ii) evidence satisfactory to Escrow Agent that ICANN has previously notified VNDS of such Registry Termination in writing;

(iii) a written demand that the Deposit Materials and Outstanding Additional Deposits be released and delivered to ICANN;

(iv) a written undertaking from ICANN that the Deposit Materials and Outstanding Additional Deposits being supplied to ICANN will be used only as permitted under the terms of the Registry Agreement;

(v) specific instructions from ICANN for this delivery; and

(vi) a check from VNDS, or from ICANN (who will then be reimbursed by VNDS), payable to Escrow Agent in the amount of one hundred dollars (\$100.00); or

(c) Release occurs according to Paragraph 8(b).

**4.2 Delivery at VNDS's Request.** If the provisions of 4.1(a) are satisfied, Escrow Agent shall, within five (5) business days after receipt of the notification and check specified in paragraph 4.1(a), deliver the Deposit Materials and Outstanding Additional Deposits in accordance with the applicable instructions.

**4.3 Delivery at ICANN's Request.** If the provisions of paragraphs 4.1(b) or 4.1(c) are satisfied, Escrow Agent within five (5) business days after receipt of all the documents specified in these paragraphs, shall deliver the following: (i) to VNDS, a photostatic copy of all such documents; (ii) to ICANN, as specifically instructed by ICANN, electronic copies of the Deposit Materials and electronic copies of the Outstanding Additional Deposits; provided, however, that if the delivery is commenced by reason of paragraph 4.1 (c), VNDS may make the payment owing to Escrow Agent during the five (5) business day period referenced above, and Escrow Agent shall not thereafter deliver to ICANN the materials specified in subpart (ii), above. Following receipt of the notice to VNDS under subpart (i) of the preceding sentence, VNDS shall have thirty (30) days from the date on which VNDS receives such documents ("Objection Period") to

notify Escrow Agent of its objection ("Objection Notice") to the release of the Deposit Materials to ICANN and request that the issue of entitlement to a copy of the Deposit Materials be submitted to arbitration in accordance with the following provisions:

(a) The sending of an Objection Notice shall not delay delivery of Deposit Materials and Outstanding Additional Deposits to ICANN:

(b) If VNDS shall send an Objection Notice to Escrow Agent during the Objection Period, the matter shall be submitted to and settled by arbitration by a panel of three (3) arbitrators chosen by the American Arbitration Association in accordance with the rules of the American Arbitration Association. The arbitrators shall apply the law of California exclusive of its conflicts of laws rules. At least one (1) arbitrator shall be reasonably familiar with the Internet industry. The decision of the arbitrators shall be binding and conclusive on all parties involved, and judgment upon their decision may be entered in a court of competent jurisdiction. All costs of the arbitration incurred by Escrow Agent, including reasonable attorneys' fees and costs, shall be paid by the party which does not prevail in the arbitration; provided, however, if the arbitration is settled prior to a decision by the arbitrators, the parties involved in the arbitration shall each pay an equal percentage of all such costs.

(c) Notwithstanding Paragraph 4.3(b), the parties agree that any arbitration brought pursuant to Paragraph 4.3 shall not re-evaluate, reconsider, or otherwise subject to review any issues, causes of action, or other claims which were decided, in an arbitration or court decision involving the parties hereto concerning the Registry Agreement and/or the Cooperative Agreement, and that any decision regarding such issues or claims in an arbitration brought pursuant to Paragraph 4.3 would be invalid, unenforceable, and not binding. The propriety, validity, legality, or effectiveness of any terminations or actions under the Registry Agreement and/or Cooperative Agreement shall be determined solely through procedures and remedies provided for by those respective agreements, not through any arbitration brought pursuant to Paragraph 4.3. Any arbitration proceeding brought pursuant to Paragraph 4.3 shall be limited to a determination of whether Paragraph 4.1(b) and (c) has been satisfied.

(d) VNDS may, at any time prior to the commencement of arbitration proceedings, notify Escrow Agent that VNDS has withdrawn the Objection Notice. Upon receipt of any such notice from VNDS, Escrow Agent shall promptly deliver Deposit Materials and Outstanding Additional Deposits to ICANN in accordance with the instructions provided by ICANN.

(e) If the release of materials to ICANN pursuant to Paragraph 4.3 is judged to be proper in any arbitration brought in accordance with Paragraph 4.3, Escrow Agent shall promptly deliver to ICANN, in accordance with the instructions specified in paragraph 4.1(b)(v) above, any Deposit Materials and Outstanding Additional Deposits that have not previously been delivered. All parties agree that Escrow Agent shall not be required to deliver such Deposit Materials and Outstanding Additional Deposits until all such fees then due to Escrow Agent have been paid.

(f) If the release of the Deposit Materials and Outstanding Additional Deposits to

ICANN pursuant to Paragraph 4.3 is judged to have been improper in any arbitration brought in accordance with Paragraph 4.3, ICANN shall promptly return or destroy, at VNDS's discretion, those Deposit Materials and Outstanding Additional Deposits that were received by ICANN pursuant to Paragraph 4.3.

**4.4 Delivery by Escrow Agent to VNDS.** Escrow Agent shall release and deliver the Deposit Materials and any Additional Deposit to VNDS upon termination of this Agreement in accordance with paragraph 7(a) or 7(b) hereof.

**5. Indemnity.** VNDS and ICANN shall jointly and severally indemnify and hold harmless Escrow Agent and each of its directors, officers, agents, employees and stockholders ("Escrow Agent Indemnitees") absolutely and forever, from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Escrow Agent Indemnitee in connection with this Agreement or the performance of Escrow Agent or any Escrow Agent Indemnitee hereunder. Escrow Agent shall likewise indemnify VNDS, ICANN, and each of their directors, officers, agents, employees and stockholders ("Indemnitees") absolutely and forever, from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its employees, or contractors in satisfying Escrow Agent's obligations under this Agreement.

**6. Disputes and Interpleader.**

(a) Escrow Agent may submit any dispute under this Agreement to any court of competent jurisdiction in an interpleader or similar action other than a matter submitted to arbitration after Escrow Agent's receipt of an Objection Notice under Paragraph 4 and the parties under this Agreement submit the matter to such arbitration as described in Paragraph 4 of this Agreement. Any and all costs incurred by Escrow Agent in connection therewith, including reasonable attorneys' fees and costs, shall be borne 50% by each of VNDS and ICANN.

(b) Escrow Agent shall perform any acts ordered by any court of competent jurisdiction, without any liability or obligation to any party hereunder by reason of such act.

**7. Term and Renewal.**

(a) The initial term of this Agreement shall be two (2) years, commencing on the date hereof (the "Initial Term"). This Agreement shall be automatically extended for an additional term of one year ("Additional Term") at the end of the Initial Term and at the end of each Additional Term hereunder unless, on or before ninety (90) days prior to the end of the Initial Term or an Additional Term, as the case may be, either (i) Escrow Agent or (ii) VNDS, with the concurrence of ICANN, notifies the other parties that it wishes to terminate the Agreement at the end of such term.

(b) In the event VNDS gives notice of its intent to terminate pursuant to Paragraph 7(a), and ICANN fails to concur according to Paragraph 7(a), ICANN shall be responsible for payment of all subsequent fees in accordance with



Exhibit A of Appendix 1 and shall have the right to terminate this Agreement at the end of the Initial Term or any Additional Term upon giving the other parties ninety (90) days notice.

(c) In the event of termination of this Agreement in accordance with Paragraph 7(a) or 7(b) hereof, VNDS shall pay all fees due Escrow Agent and shall promptly notify ICANN that this Agreement has been terminated and that Escrow Agent shall return to VNDS all copies of the Deposit Materials and any Additional Deposit then in its possession.

**8. Fees.** VNDS shall pay to Escrow Agent the applicable fees in accordance with Exhibit A of Appendix 1 as compensation for Escrow Agent's services under this Agreement. The first year's fees are due upon receipt of the signed contract or Deposit Materials, whichever comes first, and shall be paid in U.S. Dollars.

**(a) Payment.** Escrow Agent shall issue an invoice to VNDS following execution of this Agreement ("Initial Invoice"), on the commencement of any Additional Term hereunder, and in connection with the performance of any additional services hereunder. Payment is due upon receipt of an invoice. All fees and charges are exclusive of, and VNDS is responsible for the payment of, all sales, use and like taxes. Escrow Agent shall have no obligations under this Agreement until the Initial Invoice has been paid in full by VNDS.

**(b) Nonpayment.** In the event of non-payment of any fees or charges invoiced by Escrow Agent, Escrow Agent shall give notice of non-payment of any fee due and payable hereunder to VNDS and, in such an event, VNDS shall have the right to pay the unpaid fee within ten (10) business days after receipt of notice from Escrow Agent. If VNDS fails to pay in full all fees due during such ten (10) day period, Escrow Agent shall give notice of non-payment of any fee due and payable hereunder to ICANN and, in such event, ICANN shall have the right to pay the unpaid fee within ten (10) business days of receipt of such notice from Escrow Agent. Upon payment of the unpaid fee by either VNDS or ICANN, as the case may be, this Agreement shall continue in full force and effect until the end of the applicable term. Upon a failure to pay the unpaid fee under this paragraph 8(b) by either VNDS or ICANN, or by VNDS under 4.3, the Escrow Agent shall proceed as set forth in paragraph 4.3 as though ICANN had requested delivery of the Deposit Materials.

**9. Ownership of Deposit Materials.** The parties recognize and acknowledge that ownership of the Deposit Materials during the effective term of this Agreement shall remain with VNDS at all times.

**10. Miscellaneous.**

**(a) Remedies.** Except for misrepresentation, negligence or misconduct by Escrow Agent, its employees, or contractors, Escrow Agent shall not be liable to VNDS or to ICANN for any act, or failure to act, by Escrow Agent in connection with this Agreement. Any liability of Escrow Agent regardless of the cause shall be limited to the fees exchanged under this Agreement. Escrow Agent will not be liable for special, indirect, incidental or consequential damages hereunder.

**(b) Permitted Reliance and Abstention.** Escrow Agent may rely and shall be fully protected in acting or refraining from acting upon any notice or other document believed by Escrow Agent in good faith to be genuine and to have

been signed or presented by the proper person or entity. Escrow Agent shall have no duties or responsibilities except those expressly set forth herein.

**(c) Independent Contractor.** Escrow Agent is an independent contractor and is not an employee or agent of either VNDS or ICANN.

**(d) Amendments.** This Agreement shall not be modified or amended except by another agreement in writing executed by each of the parties hereto.

**(e) Assignment.** Neither VNDS nor ICANN may assign or transfer this Agreement (by merger, sale of assets, operation of law, or otherwise), except that the rights and obligations of VNDS or ICANN automatically shall be transferred to the assignee of one of those parties' rights and obligations under the Registry Agreement. Escrow Agent may not assign or transfer this Agreement without the prior written consent of both VNDS and ICANN.

**(f) Entire Agreement.** This Agreement, including all exhibits hereto, supersedes all prior discussions, understandings and agreements between Escrow Agent and the other parties with respect to the matters contained herein, and constitutes the entire agreement between Escrow Agent and the other parties with respect to the matters contemplated herein. All exhibits attached to Appendix 1, specifically, Exhibit A (consisting of Task Order and Statement of Work, File Size Estimates, Table 1, Table 2, and Additional Terms and Conditions), Exhibit B1 and Exhibit B2, are by this reference made a part of this Agreement and are incorporated herein.

**(g) Counterparts; Governing Law.** This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement. This Agreement shall be governed by and interpreted in accordance with the laws of California, without regard to its conflicts of law principles. Except as specifically provided for herein, all of the parties additionally consent to the personal jurisdiction of California, acknowledge that venue is proper in any state and Federal court in California, agree to any action related to this Agreement properly brought in one of these courts, and waive any objection it has or may have in the future with respect to any of the foregoing.

**(h) Confidentiality.** Escrow Agent will hold and release the Deposit Materials only in accordance with the terms and conditions hereof, and will maintain the confidentiality of the Deposit Materials at all times.

**(i) Notices.** All notices, requests, demands or other communications required or permitted to be given or made under this Agreement shall be in writing and shall be delivered by hand or by commercial overnight delivery service which provides for evidence of receipt, or mailed by certified mail, return receipt requested, postage prepaid. If delivered personally or by commercial overnight delivery service, the date on which the notice, request, instruction or document is delivered shall be the date on which delivery is deemed to be made, and if delivered by mail, the date on which such notice, request, instruction or document is received shall be the date on which delivery is deemed to be made. Any party may change its address for the purpose of this Agreement by notice in writing to the other parties as provided herein.

**(j) Survival.** Paragraphs 5, 6, 8, 9 and 10 shall survive any termination of this

Agreement.

(k) No Waiver. No failure on the part of any party hereto to exercise, and no delay in exercising any right, power or single or partial exercise of any right, power or remedy by any party will preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver or assent by any party hereto to any breach of or default in any term or condition of this Agreement shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other term or condition hereof.

IN WITNESS WHEREOF each of the parties has caused its duly authorized officer to execute this Agreement as of the date and year first above written.

Escrow Agent

By:

Title:

Print Name:

Address:

Phone:

Fax:

E-mail:

VeriSign, Inc.

By:

Title:

Print Name:

Address:

Phone:

Fax:

E-mail:

Internet Corporation for Assigned Names and Numbers

By:

Title:

Print Name:

Address:

Phone:

Fax:

E-mail:

**.NET Registry Agreement: Appendix 3**

**Zone File Access Agreement**

**1. PARTIES**

The User named in this Agreement hereby contracts with VeriSign, Inc. ("VNDS")

for a

non-exclusive, non-transferable, limited right to access an Internet host server or

servers designated by VNDS 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 VNDS, VNDS 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 VNDS's 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 VNDS (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 .NET TOP-LEVEL DOMAIN ("TLD") ZONE FILES, AND ANY ASSOCIATED**

ENCRYPTED CHECKSUM FILES (COLLECTIVELY THE "DATA"), VIA THE FILE TRANSFER PROTOCOL ("FTP") OR HYPERTEXT TRANSFER PROTOCOL ("HTTP")

PURSUANT TO THESE TERMS.

#### **4. GRANT OF ACCESS**

VNDS grants to you a non-exclusive, non-transferable, limited right to access an Internet host server or servers designated by VNDS 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 without the express prior written consent of

VNDS using FTP or HTTP for the purposes described in this Section 4. You agree that

you will:

(a) use this Data only for lawful purposes but that under no circumstances will you use

this Data to: (1) allow, enable, or otherwise support any marketing activities, regardless

of the medium used. Such media include but are not limited to e-mail, telephone, facsimile, postal mail, SMS, and wireless alerts; or (2) enable high volume, automated,

electronic processes that send queries or data to the systems of VNDS or any ICANNaccredited

registrar, except as reasonably necessary to register domain names or modify existing registrations. VNDS reserves the right, with the approval of the Internet

Corporation for Assigned Names and Numbers ("ICANN"), 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.

(b) copy the Data you obtain under this Agreement into a machine-readable or printed

form only as necessary to use it in accordance with this Agreement in support of your

use of the Data.

(c) comply with all applicable laws and regulations governing the use of the Data.

(d) not distribute the Data you obtained under this Agreement or any copy thereof to any

other party without the express prior written consent of VNDS, except that you may

redistribute the Data insofar as it has been incorporated by you into a value-added product or service that does not permit the extraction of a substantial portion of the Data from the value-added product or service, provided you prohibit the recipient of the Data from using the Data in a manner contrary to Section 4(a).  
(e) take all reasonable steps to protect against unauthorized access to, use, and disclosure of the Data you obtain under this Agreement.

#### **5. FEE**

You agree to remit in advance to VNDS a quarterly fee of \$0 (USD) for the right to access the files during either the Initial Term or Renewal Term of this Agreement.  
VNDS reserves the right to adjust, with the approval of ICANN, 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**

VNDS reserves the right, with the approval of ICANN, 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, VNDS 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.

#### **8. NO WARRANTIES**

The Data is being provided "as-is." VNDS 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 not 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 VNDS 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 VNDS 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, USA. 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 only in the state or federal courts in Fairfax County and the Eastern District of the Commonwealth of in Virginia, USA. You expressly and irrevocably agree and consent to the personal jurisdiction and venue of the federal and states courts located Virginia, USA (and each appellate court located therein) for matters arising in connection with this Agreement or your obtaining, use, or distribution of the Data. 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 VNDS at 21345 Ridgetop Circle, Dulles, VA 20169, Attention: Customer Service. VNDS 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 VNDS or expiration of this Agreement to erase the Data you obtained under this Agreement together with all copies of the Data.

#### **13. DEFINITION**

"Data" means all data contained in a DNS zone file for the Registry TLD as provided to TLD nameservers on the Internet.

#### **14. ENTIRE AGREEMENT**

This is the entire agreement between you and VNDS 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.

VeriSign, Inc.

By:

(sign)

Name:

(print)

Title:

Date:

User:

By:

(sign)

Name:

(print)

Title:

Date:

#### **ASSIGNED USERID AND PASSWORD**

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

USERID: PASSWORD:

#### **.NET Agreement: Appendix 4**

#### **Registry Operator's Monthly Report**

Registry Operator shall provide the following information in its monthly reports.

Reports

shall be submitted via email to <registry-reports@icann.org>. ICANN shall use reasonable commercial efforts to preserve the confidentiality of the information reported

until three months after the end of the month to which the report relates.

**1. Accredited Registrar Status.** State the number of registrars in each of the following

three categories: (1) operational, (2) ramp-up (registrars that have received a password

for access to OT&E), and (3) pre-ramp-up (registrars that have requested access, but

have not yet entered the ramp-up period).

**2. Service Level Agreement Performance.** Compare Service Level Agreement requirements with actual performance measures for the reporting month.

**3. TLD Zone File Access Activity.** State the total number of zone file access passwords at end of the reporting month.

**4. Completed System Software Releases.** Describe significant releases during the

reporting month, including release name, features, and completion date.

**5. Whois Service Activity.** State the number of Whois queries during the reporting

month.



**6. Total Number of Transactions by Subcategory by Month.** State the total number of transactions during the reporting month, in the following subcategories: adds, deletes, modifies, checks, renews, transfers, restores.

**7. Daily Transaction Range.** Tabulate the number of total daily transactions. The range of transaction volume should be shown for each month, along with the average daily transaction volume.

**8. Per-Registrar Activity Report.** This report shall be transmitted to ICANN electronically in comma or pipe separated-value format, using the following fields per registrar:

Field # Field Name Notes

01 registrar-name registrar's full corporate name

02 iana-id <http://www.iana.org/assignments/registrar-ids>

03 total-domains total domains under sponsorship

04 total-nameservers total nameservers registered

05 net-adds-1-yr domains successfully added (and not deleted within the add grace period)

06 net-adds-2-yr number of domains successfully registered with an initial term of two years

07 net-adds-3-yr number of domains successfully registered with an initial term of three years

08 net-adds-4-yr etc.

09 net-adds-5-yr " "

10 net-adds-6-yr " "

11 net-adds-7-yr " "

12 net-adds-8-yr " "

13 net-adds-9-yr " "

14 net-adds-10-yr " "

15 net-renews-1-yr domains renewed either automatically or by command (and not deleted within the renew grace period)

16 net-renews-2-yr number of domains successfully renewed with a new renewal period of two years

17 net-renews-3-yr number of domains successfully renewed with a new renewal period of three years

18 net-renews-4-yr etc.

19 net-renews-5-yr " "

20 net-renews-6-yr " "

21 net-renews-7-yr " "

22 net-renews-8-yr " "

23 net-renews-9-yr " "

24 net-renews-10-yr " "

25 transfer-gainingsuccessful

transfers initiated by this registrar that were ack'd by the other registrar – either by command or automatically

26 transfer-gainingnacked

transfers initiated by this registrar that were n'acked by the other registrar

27 transfer-losingsuccessful

transfers initiated by another registrar that this registrar ack'd – either by command or automatically

28 transfer-losingnacked

transfers initiated by another registrar that this registrar n'acked

29 transfer-disputedwon

number of transfer disputes in which this registrar prevailed

30 transfer-disputedlost

number of transfer disputes this registrar lost

31 transfer-disputednodecision

number of transfer disputes involving this registrar with a split or no decision

32 deleted-domainsgrace

domains deleted within the add grace period

33 deleted-domainsnograce

domains deleted outside the add grace period

34 restored-domains domain names restored from redemption period

35 restored-noreport total number of restored names for which the registrar failed to submit a restore report

## **.NET Agreement Appendix 5**

### **Whois Specifications**

#### **Public Whois Specification**

Registry Operator's Whois service is the authoritative Whois service for all second-level Internet domain names registered in the .NET top-level domain and for all hosts registered using these names. This service is available to anyone. It is available via port 43 access and via links at the Registry Operator's web site. It is updated daily.

To use Registry Whois via port 43 enter the applicable parameter on the command line as illustrated below:

• For a domain name: whois "domain verisign.net"

• For a registrar name: whois "registrar Go Daddy Software, Inc."

• For a nameserver: whois "DNS3.REGISTER.NET" or whois "nameserver 216.21.234.72"

By default, Whois performs a very broad search, looking in all record types for matches to your query in these fields: domain name, nameserver name, nameserver IP address, and registrar names. Use keywords to narrow the search (for example, 'domain root'). Specify only part of the search string to perform a "partial" search on domain. Every domain starting with the string will be found. A trailing dot (or dots) after your text or the partial keyword indicates a

partial search. For example, entering 'mack.' will find "Mack", "Mackall", "Mackay", and so on.

To use Registry Whois using the web interface:

- Go to [www.verisign-grs.net/whois](http://www.verisign-grs.net/whois)
- Click on the appropriate button ("domain," "registrar" or "nameserver")
- Enter the applicable parameter:
  - Domain name including the TLD (e.g., [verisign-grs.net](http://www.verisign-grs.net))
  - Full name of the registrar including punctuation, "Inc.", etc. (e.g., [America Online, Inc.](http://www.americaonline.com))
  - Full host name or the IP address (e.g., [ns1.crsnic.net](http://ns1.crsnic.net) or [198.41.3.39](http://198.41.3.39))
- Click on the "submit" button.

For all registered second-level domain names in .NET, information as illustrated in the following example is displayed in a thin format, where the entry parameter is the domain name (including the TLD):

Domain Name: [VERISIGN-GRS.NET](http://www.verisign-grs.net)  
Registrar: [NETWORK SOLUTIONS, LLC](http://www.networksolutions.com)  
Whois Server: [whois.networksolutions.com](http://whois.networksolutions.com)  
Referral URL: <http://www.networksolutions.com>  
Name Server: [NS1.CRSNIC.NET](http://ns1.crsnic.net)  
Name Server: [NS2.NSIREGISTRY.NET](http://ns2.nsiregistry.net)  
Name Server: [NS3.VERISIGN-GRS.NET](http://ns3.verisign-grs.net)  
Name Server: [NS4.VERISIGN-GRS.NET](http://ns4.verisign-grs.net)  
Status: REGISTRAR-LOCK  
Updated Date: 20-oct-2004  
Creation Date: 08-sep-2000  
Expiration Date: 08-sep-2008  
>>> Last update of whois database: Wed, 2 Feb 2005 07:52:23 EST <<<

For all ICANN-accredited registrars who are authorized to register .net secondlevel

domain names through Registry Operator, information as illustrated in the following example is displayed, where the entry parameter is the full name of the registrar (including punctuation, "Inc.", etc.):

Registrar Name: [SAMPLE REGISTRAR, INC. DBA SAMPLE NAMES](http://www.sample-registrar.com)  
Address: [1234 Any Way, Anytown, VA 20153, US](http://www.sample-registrar.com)  
Phone Number: [703-555-5555](http://www.sample-registrar.com)  
Email: [registrar-agent@samplenames.net](mailto:registrar-agent@samplenames.net)  
Whois Server: [whois.registrar.samplenames.net](http://whois.registrar.samplenames.net)  
Referral URL: [www.registrar.samplenames.net](http://www.registrar.samplenames.net)  
Admin Contact: Jane Doe  
Phone Number: [703-555-5556](http://www.sample-registrar.com)  
Email: [janedoe@samplenames.net](mailto:janedoe@samplenames.net)  
Admin Contact: John Smith  
Phone Number: [703-555-5557](http://www.sample-registrar.com)  
Email: [johnsmith@samplenames.net](mailto:johnsmith@samplenames.net)  
Admin Contact: Domain Name Administrator  
Phone Number: [703-555-5558](http://www.sample-registrar.com)  
Email: [dns-eng@samplenames.net](mailto:dns-eng@samplenames.net)  
Billing Contact: Petranella Jones  
Phone Number: [703-555-5559](http://www.sample-registrar.com)  
Email: [pjones@samplenames.net](mailto:pjones@samplenames.net)  
Technical Contact: Harry Nerd

Phone Number: 703 555-6000  
Email: [harrynerd@samplenames.net](mailto:harrynerd@samplenames.net)  
Technical Contact: Harry Nerd II  
Phone Number: 703-555-6001  
Email: [harrynerd@samplenames.net](mailto:harrynerd@samplenames.net)

>>> Last update of whois database: Wed, 2 Feb 2005 07:52:23 EST <<<

For all hosts registered using second-level domain names in .NET, information as illustrated in the following example is displayed, where the entry parameter is either the full host name or the IP address:

Server Name: DNS.MOMINC.NET  
IP Address: 209.143.112.34  
Registrar: BULKREGISTER, LLC.  
Whois Server: [whois.bulkregister.net](http://whois.bulkregister.net)  
Referral URL: <http://www.bulkregister.net>

>>> Last update of whois database: Wed, 2 Feb 2005 07:52:23 EST <<<

### **Whois Provider Data Specification**

Registry Operator shall provide bulk access to up-to-date data concerning domain name and nameserver registrations maintained by Registry Operator in connection with the Registry TLD on a daily schedule, only for purposes of providing free public query-based access to up-to-date data concerning domain name and nameserver registrations in multiple TLDs, to a party designated from time to time in writing by ICANN. The specification of the content and format of this data, and the procedures for providing access, shall be as stated below, until changed according to the Registry Agreement.

#### **Content**

The data shall be provided in three files:

A. *Domain file.* One file shall be provided reporting on the domains sponsored by all registrars. For each domain, the file shall give the domainname, servername for each nameserver, registrarid, and updateddate.

B. *Nameserver file.* One file shall be provided reporting on the nameservers sponsored by all registrars. For each registered nameserver, the file shall give the servername, each ipaddress, registrarid, and updateddate.

C. *Registrar file.* A single file shall be provided reporting on the registrars sponsoring registered domains and nameservers. For each registrar, the following data elements shall be given: registrarid, registrar address, registrar telephone number, registrar e-mail address, whois server, referral URL, updateddate and the name, telephone number, and e-mail address of all the registrar's administrative, billing, and technical contacts.

#### **Format**

The format for the above files shall be as specified by ICANN, after consultation with Registry Operator.

#### **Procedures for Providing Access**

The procedures for providing daily access shall be as mutually agreed by ICANN and Registry Operator. In the absence of an agreement, the files shall be provided by Registry Operator sending the files in encrypted form to the party designated by ICANN by Internet File Transfer Protocol.

### **Whois Data Specification – ICANN**

Registry Operator shall provide bulk access by ICANN to up-to-date data

concerning domain name and nameserver registrations maintained by Registry Operator in connection with the .NET TLD on a daily schedule, only for purposes of verifying and ensuring the operational stability of Registry Services and the DNS.. The specification of the content and format of this data, and the procedures for providing access, shall be as stated below, until changed according to the Registry Agreement.

#### Content

The data shall be provided in three files:

A. Domain file. One file shall be provided reporting on the domains sponsored by all registrars. For each domain, the file shall give the domainname, servename for each nameserver, registrarid, and updateddate.

B. Nameserver file. One file shall be provided reporting on the nameservers sponsored by all registrars. For each registered nameserver, the file shall give the servename, each ipaddress, registrarid, and updateddate.

C. Registrar file. A single file shall be provided reporting on the registrars sponsoring registered domains and nameservers. For each registrar, the following data elements shall be given: registrarid, registrar address, registrar telephone number, registrar e-mail address, whois server, referral URL, updateddate and the name, telephone number, and e-mail address of all the registrar's administrative, billing, and technical contacts.

#### Format

The format for the above files shall be as specified by ICANN, after consultation with Registry Operator.

#### Procedures for Providing Access

The procedures for providing daily access shall be as mutually agreed by ICANN and Registry Operator. In the absence of an agreement, an up-to-date version (encrypted using a public key supplied by ICANN) of the files shall be placed at least once per day on a designated server and available for downloading by ICANN by Internet File Transfer Protocol.

## **.NET Agreement Appendix 6** **Schedule of Reserved Names**

Except to the extent that ICANN otherwise expressly authorizes in writing, the Registry

Operator shall reserve names formed with the following labels from initial (i.e. other than renewal) registration within the TLD:

**A. Labels Reserved at All Levels.** The following names shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations:

ICANN-related names:

- aso
- gnso
- icann
- internic

• ccnso

IANA-related names:

• afrinic

• apnic

• arin

• example

• gtd-servers

• iab

• iana

• iana-servers

• iesg

• ietf

• irtf

• istf

• lacnic

• latnic

• rfc-editor

• ripe

• root-servers

**B. Additional Second-Level Reservations.** In addition, the following names shall be

reserved at the second level:

• All single-character labels.

• All two-character labels shall be initially reserved. The reservation of a twocharacter

label string shall be released to the extent that the Registry Operator reaches agreement with the government and country-code manager, or the ISO 3166 maintenance agency, whichever appropriate. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.

**C. Tagged Domain Names.** All labels with hyphens in the third and fourth character

positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")

**D. Second-Level Reservations for Registry Operations.** The following names are

reserved for use in connection with the operation of the registry for the Registry TLD.

They may be used by Registry Operator, but upon conclusion of Registry Operator's

designation as operator of the registry for the Registry TLD they shall be transferred as

specified by ICANN:

• nic

• whois

• www

**.NET Agreement Appendix 7**

## **Functional and Performance Specifications**

These functional specifications for the Registry TLD consist of the following parts:

1. Verisign Registry Operator Registrar Protocol;
2. Supported initial and renewal registration periods;
3. Grace period policy;
4. Nameserver functional specifications;
5. Patch, update, and upgrade policy; and
6. Migration to Extensible Provisioning Protocol Plan.
7. Performance Specifications

### **1. Registry Operator Registrar Protocol**

#### **1.1 Extensible Provisioning Protocol**

Subject to the Migration to Extensible Provisioning Protocol Plan described in Part 6 below, Registry Operator shall implement the Extensible Provisioning Protocol (“EPP”) in conformance with the Proposed Standard and Informational RFCs 3730, 3731, 3732, 3734, 3735, and 3915 published by the Internet Engineering Task Force (“IETF”) and/or any successor standards, versions, modifications or additions thereto as Registry Operator deems reasonably necessary. Subject to the Migration to Extensible Provisioning Protocol Plan described in Part 6 below, when Registry Operator implements EPP it will support EPP in conformance with the aforementioned standards. Implementation of EPP is subject to Registry Operator reasonably determining that (i) the standard can be implemented in a way that minimizes disruption to customers; and (ii) the standard provides a solution for which the potential advantages are reasonably justifiable when weighed against the costs that Registry Operator and its registrar customers would incur in implementing the new standard.

#### **1.2 Registry Registrar Protocol**

Subject to the Migration to Extensible Provisioning Protocol Plan described in Part 6 below, Registry Operator will support Registry Registrar Protocol (“RRP”) Version 2.1.2 in accordance with the patch, update, and upgrade policy below, or any successor standards, versions, upgrades, modifications or additions thereto as it deems reasonably necessary. Registry Operator will provide the current version of the protocol for download on its website by registrars.

### **2. Supported initial and renewal registration periods**

a. Initial registrations of Registered Names (where available according to functional specifications and other requirements) may be made in the registry for terms of up to ten years.

b. Renewal registrations of Registered Names (where available according to functional specifications and other requirements) may be made in the registry for terms not exceed a total of ten years.

c. Upon change of sponsorship of the registration of a Registered Name from one registrar to another, according to Part A of the ICANN Policy on Transfer of Registrations between Registrars, the term of registration of the Registered Name shall be extended by one year, provided that the maximum term of the registration as of the effective date of the sponsorship change shall not exceed ten years.

d. The change of sponsorship of registration of Registered Names from one registrar to another, according to Part B of the ICANN Policy on Transfer of Registrations between Registrars shall not result in the extension of the term of the registration and Registry Operator may assist in such change of sponsorship.

### **3. Grace period policy**

This section describes Registry Operator's practices for operational "Grace" and "Pending" periods, including relationships among sequential operations that occur within given time frames. A *Grace Period* refers to a specified number of calendar days following a Registry operation in which a domain action may be reversed and a credit may be issued to a registrar. Relevant registry operations in this context are:

- Registration of a new domain.
- Extension of an existing domain.
- Auto-Renew of an existing domain;
- Transfer of an existing domain; and
- Deletion of an existing domain.

Extension of a registration period is accomplished using the RRP or EPP RENEW command or by auto-renewal; registration is accomplished using the RRP ADD command or the EPP CREATE command; deletion/removal is accomplished using the RRP DEL command or the EPP DELETE command; transfer is accomplished using the RRP or EPP TRANSFER command or, where ICANN approves a bulk transfer under Part B of the ICANN Policy on Transfer of Registrations between Registrars, using the procedures specified in that Part. Restore is accomplished using the RRP RESTORE command or EPP UPDATE command.

There are five grace periods provided by Registry Operator's Shared Registration System: *Add Grace Period, Renew/Extend Grace Period, Auto-Renew Grace Period, Transfer Grace Period, and Redemption Grace Period.*

A *Pending Period* refers to a specified number of calendar days following a Registry operation in which final Registry action is deferred before the operation may be completed. Relevant Registry operations in this context are:

- Transfer of an existing domain.
- Deletion of an existing domain, and
- Restore of a domain name in Redemption Grace Period.

#### **3.1 Grace Periods**

##### **3.1.1 Add Grace Period**

The *Add Grace Period* is a specified number of calendar days following the initial registration of a domain. The current value of the *Add Grace Period* for all registrars is five calendar days. If a Delete, Extend (RRP or EPP Renew command), or Transfer operation occurs within the five calendar days, the following rules apply:

*Delete.* If a domain is deleted within the *Add Grace Period*, the sponsoring Registrar at the time of the deletion is credited for the amount of the registration; provided, however, that Registry Operator shall have the right to charge Registrars a fee as set forth in its Registry-Registrar Agreement for disproportionate deletes during the *Add Grace Period*. The domain is deleted



from the Registry database and is immediately available for registration by any Registrar. See Section 3.2 for a description of overlapping grace period exceptions.

*Extend (RRP or EPP Renew command).* If a domain is extended within the *Add Grace Period*, there is no credit for the add. The expiration date of the domain registration is extended by the number of years, up to a total of ten years, as specified by the registrar's requested Extend operation.

*Transfer (other than ICANN-approved bulk transfer).* Transfers under Part A of the ICANN Policy on Transfer of Registrations between Registrars may not occur during the *Add Grace Period* or at any other time within the first 60 days after the initial registration. Enforcement is the responsibility of the Registrar sponsoring the domain name registration and is enforced by the SRS.

*Bulk Transfer (with ICANN approval).* Bulk transfers with ICANN approval may be made during the *Add Grace Period* according to the procedures in Part B of the ICANN Policy on Transfer of Registrations between Registrars. The expiration dates of transferred registrations are not affected. The losing Registrar's account is charged for the initial add.

### **3.1.2 Renew/Extend Grace Period**

The *Renew/Extend Grace Period* is a specified number of calendar days following the renewal/extension of a domain name registration period through an RRP Command Renew. The current value of the *Renew/Extend Grace Period* is five calendar days. If a Delete, Extend, or Transfer occurs within that five calendar days, the following rules apply:

*Delete.* If a domain is deleted within the *Renew/Extend Grace Period*, the sponsoring Registrar at the time of the deletion receives a credit of the renew/extend fee. The domain immediately goes into the Redemption Grace Period. See Section 3.2 for a description of overlapping grace period exceptions.

*Extend (RRP Command "Renew").* A domain registration can be extended within the *Renew/Extend Grace Period* for up to a total of ten years. The account of the sponsoring Registrar at the time of the additional extension will be charged for the additional number of years the registration is extended.

*Transfer (other than ICANN-approved bulk transfer).* If a domain is transferred within the *Renew/Extend Grace Period*, there is no credit. The expiration date of the domain registration is extended by one year and the years added as a result of the Extend remain on the domain name up to a total of 10 years.

*Bulk Transfer (with ICANN approval).* Bulk transfers with ICANN approval may be made during the *Renew/Extend Grace Period* according to the procedures in Part B of the ICANN Policy on Transfer of Registrations between Registrars. The expiration dates of transferred registrations are not affected. The losing Registrar's account is charged for the Renew/Extend operation.

### **3.1.3 Auto-Renew Grace Period**

The *Auto-Renew Grace Period* is a specified number of calendar days following an auto-renewal. An auto-renewal occurs if a domain name registration is not renewed by the expiration date; in this circumstance the registration will be automatically renewed by the system the first day after the expiration date. The current value of the *Auto-Renew Grace Period* is 45 calendar days. If a Delete,

Extend, or Transfer occurs within the *Auto-Renew Grace Period*, the following rules apply:

*Delete.* If a domain is deleted within the *Auto-Renew Grace Period*, the sponsoring Registrar at the time of the deletion receives a credit of the Auto-Renew fee. The domain immediately goes into the Redemption Grace Period. See Section 3.2 for a description of overlapping grace period exceptions.

*Extend.* A domain can be extended within the *Auto-Renew Grace Period* for up to a total of ten years. The account of the sponsoring Registrar at the time of the additional extension will be charged for the additional number of years the registration is extended.

*Transfer (other than ICANN-approved bulk transfer).* If a domain is transferred within the *Auto-Renew Grace Period*, the losing Registrar is credited with the Auto-Renew charge and the year added by the Auto-Renew operation is cancelled. The expiration date of the domain is extended by one year up to a total maximum of ten and the gaining Registrar is charged for that additional year, even in cases where a full year is not added because of the 10-year registration term maximum.

*Bulk Transfer (with ICANN approval).* Bulk transfers with ICANN approval may be made during the *Auto-Renew Grace Period* according to the procedures in Part B of the ICANN Policy on Transfer of Registrations between Registrars. The expiration dates of transferred registrations are not affected. The losing Registrar's account is charged for the Auto-Renew.

#### **3.1.4 Transfer Grace Period**

The *Transfer Grace Period* is a specified number of calendar days following the transfer of a domain according to Part A of the ICANN Policy on Transfer of Registrations between Registrars. The current value of the *Transfer Grace Period* is five calendar days. If a Delete, Extend, or Transfer occurs within that five calendar days, the following rules apply:

*Delete.* If a domain is deleted within the *Transfer Grace Period*, the sponsoring Registrar at the time of the deletion receives a credit of the transfer fee. The domain immediately goes into the Redemption Grace Period. See Section 3.2 for a description of overlapping grace period exceptions.

*Extend.* If a domain registration is extended within the *Transfer Grace Period*, there is no credit for the transfer. The Registrar's account will be charged for the number of years the registration is extended. The expiration date of the domain registration is extended by the number of years, up to a maximum of ten years, as specified by the registrar's requested Extend operation.

*Transfer (other than ICANN-approved bulk transfer).* If a domain is transferred within the *Transfer Grace Period*, there is no credit. The expiration date of the domain registration is extended by one year up to a maximum term of ten years. The ICANN Policy on Transfer of Registrations between Registrars does not allow transfers within the first 60 days after another transfer has occurred; it is registrars' responsibility to enforce this restriction.

*Bulk Transfer (with ICANN approval).* Bulk transfers with ICANN approval may be made during the *Transfer Grace Period* according to the procedures in Part B of the ICANN Policy on Transfer of Registrations between Registrars. The

expiration dates of transferred registrations are not affected. The losing Registrar's account is charged for the Transfer operation that occurred prior to the Bulk Transfer.

### **3.1.5 Bulk Transfer Grace Period**

There is no grace period associated with Bulk Transfer operations. Upon completion of the Bulk Transfer, any associated fee is not refundable.

### **3.1.6 Redemption Grace Period**

A domain name is placed in REDEMPTIONPERIOD status when a registrar requests the deletion of a domain that is not within the Add Grace Period. A name that is in REDEMPTIONPERIOD status will not be included in the zone file. A registrar can not modify or purge a domain in REDEMPTIONPERIOD status. The only action a registrar can take on a domain in REDEMPTIONPERIOD is to request that it be restored. Any other registrar requests to modify or otherwise update the domain will be rejected. Unless restored, the domain will be held in REDEMPTIONPERIOD status for a specified number of calendar days. The current length of this Redemption Period is 30 calendar days.

### **3.2 Overlapping Grace Periods**

If an operation is performed that falls into more than one grace period, the actions appropriate for each grace period apply (with some exceptions as noted below).

• If a domain is deleted within the Add Grace Period and the Extend Grace Period, then the Registrar is credited the registration and extend amounts, taking into account the number of years for which the registration and extend were done.

• If a domain is auto-renewed, then extended, and then deleted within the Extend Grace Period, the registrar will be credited for any Auto-Renew fee charged and the number of years for the extension.

#### **3.2.1 Overlap Exception**

• If a domain registration is extended within the Transfer Grace Period, then the current Registrar's account is charged for the number of years the registration is extended.

**Note:** If several billable operations, including a transfer, are performed on a domain and the domain is deleted within the grace periods of each of those operations, only those operations that were performed after the latest transfer, including the latest transfer, are credited to the current Registrar.

### **3.3 Pending Periods**

#### **3.3.1 Transfer Pending Period**

The *Transfer Pending Period* is a specified number of calendar days following a request from a registrar (registrar A) to transfer a domain in which the current registrar of the domain (registrar B) may explicitly approve or reject the transfer request. The current value of the *Transfer Pending Period* is five calendar days for all registrars. The transfer will be finalized upon receipt of explicit approval or rejection from the current registrar (registrar B). If the current registrar (registrar B) does not explicitly approve or reject the request initiated by registrar A, the registry will approve the request automatically after the end of the *Transfer Pending Period*. During the *Transfer Pending Period*:

a. RRP or EPP TRANSFER request or RRP or EPP RENEW request is denied.

- b. SYNC is not allowed.
- c. RRP DEL or EPP DELETE request is denied.
- d. Bulk Transfer operations are allowed.
- e. RRP MOD or EPP UPDATE request is denied.

After a transfer of a domain, the RRP or EPP TRANSFER request may be denied for 60 days.

### **3.3.2 Pending Delete Period**

A domain name is placed in PENDING DELETE status if it has not been restored during the Redemption Grace Period. A name that is in PENDING DELETE status will not be included in the zone file. All registrar requests to modify or otherwise update a domain in PENDING DELETE status will be rejected. A domain name is purged from the registry database a specified number of calendar days after it is placed in PENDING DELETE status. The current length of this Pending Delete Period is five calendar days.

## **4. Nameserver functional specifications**

Nameserver operations for the Registry TLD shall comply with RFCs 1034, 1035, and 2182.

## **5. Patch, update, and upgrade policy**

Registry Operator may issue periodic patches, updates or upgrades to the Software, RRP/EPP or APIs ("Licensed Product") licensed under the Registry-Registrar Agreement (the "Agreement") that will enhance functionality or otherwise improve the Shared Registration System under the Agreement. For the purposes of this Part 5 of Appendix 7, the following terms have the associated meanings set forth herein.

1. A "Patch" means minor modifications to the Licensed Product made by Registry Operator during the performance of error correction services. A Patch does not constitute a Version.
2. An "Update" means a new release of the Licensed Product which may contain error corrections, minor enhancements, and, in certain circumstances, major enhancements, and which is indicated by a change in the digit to right of the decimal point in the version number of the Licensed Product.
3. An "Upgrade" means a new release of the Licensed Product which involves the addition of substantial or substantially enhanced functionality and which is indicated by a change in the digit to the left of the decimal point in the version of the Licensed Product.
4. A "Version" means the Licensed Product identified by any single version number.

Each Update and Upgrade causes a change in version.

\* Patches do not require corresponding changes to client applications developed, implemented, and maintained by each registrar.

\* Updates may require changes to client applications by each registrar in order to take advantage of the new features and/or capabilities and continue to have access to the Shared Registration System.

\* Upgrades require changes to client applications by each registrar in order to take advantage of the new features and/or capabilities and continue to have access to the Shared Registration System.

Registry Operator, in its sole discretion, will deploy Patches during scheduled and announced Shared Registration System maintenance periods. For Updates and Upgrades, Registry Operator will give each registrar notice prior to deploying the Updates and Upgrades into the production environment. The notice shall be at least ninety (90) days. Such notice will include an initial notice before deploying the Update that requires changes to client applications or the Upgrade into the Operational Test and Evaluation ("OT&E") environment to which all registrars have access. Registry Operator will maintain the Update or Upgrade in the OT&E environment for at least thirty (30) days, to allow each registrar the opportunity to modify its client applications and complete testing, before implementing the new code in the production environment. This notice period shall not apply in the event Registry Operator's system is subject to the imminent threat of a failure or a material security threat, the discovery of a major security vulnerability, or a Denial of Service (DoS) attack where the Registry Operator's systems are rendered inaccessible by being subject to:

i) excessive levels of data traffic

ii) unauthorized traffic

iii) data traffic not conforming to the protocols used by the Registry

## **6. Migration to Extensible Provisioning Protocol Plan**

Support of RRP and EPP:

Subject to this Part 6, Registry Operator will support the RRP as a "thin" registry. Registry Operator shall deploy a production interface for EPP no later than July 1, 2005 unless otherwise agreed to in writing by Registry Operator and ICANN. When Registry Operator implements EPP, it will continue to support RRP until all impacted registrars have migrated to EPP, but in no event later than 18 months after the deployment date unless otherwise agreed upon in writing by Registry Operator.

Dual RRP and EPP Operations:

1. When Registry Operator implements EPP, it will provide an extended period for impacted registrars to transition from RRP to EPP on a timeframe acceptable to registrars, but in no event later than 18 months after the deployment date unless otherwise agreed upon in writing by Registry Operator.

2. When Registry Operator implements EPP, the RRP implementation will be completely replaced by EPP on a date determined jointly by Registry Operator, ICANN, and the registrar community, which date shall not be later than 18 months after the deployment date of EPP unless otherwise agreed upon in writing by Registry Operator.

3. When Registry Operator implements EPP, the EPP implementation will not support the use of authinfo codes to verify transfers until all impacted registrars have migrated to EPP.

## **7. Performance Specifications**

These Performance Specifications provide a means to measure Registry Operator's delivery of SRS, DNS Name Server and Whois services for the Registry TLD and serve as the basis for the Service Level Agreements Credits

("SLA Credits") set forth in Appendix 10.

1. Definitions. Capitalized terms used in this section and not otherwise defined shall have the meaning ascribed to them in the Registry Agreement.

1.1 "Core Internet Service Failure" means an extraordinary and identifiable event beyond the control of Registry Operator affecting the Internet services to be measured pursuant to Section 7 below. Such events include but are not limited to congestion collapse, partitioning, power grid failures, and routing failures.

1.2 "Credit Level" means the credit levels set forth in the Table SLA Credits in Section 2 of Appendix 10 that outlines the total credits, penalties and/or liabilities that may be assessed to Registry Operator and sole remedies available to ICANN-Accredited Registrars for Registry Operators failure to meet Performance Specifications outlined in this Appendix 7.

1.3 "DNS Name Server" means the service complying with RFC 1034 made available on TCP/UDP port 53 on Registry Operator's selected servers.

1.4 "ICANN-Accredited Registrar" means an ICANN-Accredited Registrar that has a Registry-Registrar Agreement in effect with Registry Operator.

1.5 "Monthly Timeframe" means each single calendar month beginning and ending at 0000 Coordinated Universal Time (UTC).

1.6 "Performance Specifications" means a description of the measurable functional attributes of a particular System Services.

1.7 "Registrar Community" means all of the ICANN-Accredited Registrars who have a Registry-Registrar Agreements in effect with Registry Operator for the Registry TLD and who have registered greater than 150 net new .net domain names in the prior thirty (30) calendar day period.

1.8 "Round-trip" means the amount of measured time that it takes for a reference query to make a complete trip from the SRS gateway, through the SRS system, back to the SRS gateway.

1.9 "Service Level Agreement (SLA)" means the service level agreements attached as Appendix 10 to the Registry Agreement outlining performance standards levels.

1.10 "SRS" means the Shared Registration System, a system that the Registry Operator provides to the Registrar Community via a defined protocol (EPP/RRP) for registry-registrar interaction. Specifically, it refers to the ability of ICANN Accredited Registrars to add, modify, and delete (create, update and delete) information associated with registered domain names and associated DNS Name Servers.

1.11 "System Services" means the SRS, DNS Name Server and Whois services for the Registry TLD for which availability and Performance Specifications are established.

1.12 "Whois" refers to the Registry Operator's Whois service provided in accordance with Appendix 5.

2. Service Availability. Service availability is defined as the time, in minutes, that the Registry Operator's System Services are each individually responding to its users ("Service Availability") as further defined in Sections 2.1 through 2.4.

**2.1. Service Availability** is measured as follows:

Service Availability % =  $\{[(MTM - POMU) - UOM] / (MTM - POMU)\} * 100$

where:

**MTM** = Monthly Timeframe Minutes calculated as the number days in that month times 24 hours times 60 minutes. For example, the MTM for January is 31 days \* 24 hours \* 60 minutes or MTM = 44,640 minutes.

**POMU** = Planned Outage Minutes Used equals the number of minutes of a Planned Outage (as defined in Section 3 below) or Extended Planned Outage (as defined in Section 4 below) for that Monthly Timeframe for each individual System Service. No Monthly Timeframe shall have both a Planned and an Extended Planned Outage.

**UOM** = Unplanned Outage Minutes equals the total number of minutes the System Services is unavailable excluding any Planned Outages (as defined in Section 3 below) or Extended Planned Outage (as defined in Section 4 below) for that Monthly Timeframe.

The Service Availability calculation shall be calculated by the Registry Operator and the results reported for each Monthly Timeframe for SRS, Whois and DNS Name Server availability. For Service Availability Performance Specifications measured by calendar year, Yearly Timeframe Minutes (YTM) shall be substituted for Monthly Timeframe Minutes (MTM) in the calculation above.

Yearly Timeframe Minutes calculated as 365 days \* 24 hours \* 60 minutes = 525,600 minutes. Results will be reported to the Registrar Community via e-mail and to ICANN according to Appendix 4.

**2.2 Service Availability—SRS = 99.99% per calendar year.** Service Availability as it applies to the SRS refers to the ability of the SRS to respond to ICANN Accredited

Registrars that access the SRS through the EPP/RRP protocols. SRS unavailability, except for Planned Outages (as defined in Section 3 below) and Extended Planned Outages (as defined in Section 4 below), will be logged with the Registry Operator as Unplanned Outage Minutes. Unavailability will not include any events affecting individual ICANN-Accredited Registrars locally. SRS unavailability as it applies to the SRS shall mean when, as a result of a failure of systems within the VeriSign Registry's control, an ICANN-Accredited Registrar is unable to establish a session with the SRS gateway; provided, however, that SRS unavailability shall not include an ICANN-Accredited Registrars inability to establish a session with the SRS gateway that results from it exceeding its designated number of sessions. Establishing a session with the SRS gateway shall be defined as:

a) successfully complete a TCP session start,

b) successfully complete the SSL authentication handshake, and

c) successfully complete the registry registrar protocol (RRP) session command or the Extensible Provisioning Protocol (EPP) login command.

Registry Operator will log SRS unavailability once an ICANN-Accredited Registrar reports an occurrence to Registry Operator's customer service help desk in the manner required by the Registry Operator (i.e., e-mail, fax, telephone). The committed Service Availability for SRS is 99.99% per calendar

year. The SRS Service Availability metric is a Credit Level 2.

**2.3 Service Availability—DNS Name Server = 100% per Monthly Timeframe.**

Service Availability as it applies to the DNS Name Server refers to the ability of the DNS Name Server to resolve a DNS query from an Internet user. DNS Name Server unavailability will be logged with the Registry Operator as Unplanned Outage Minutes. Registry Operator will log DNS Name Server unavailability (a) when such unavailability is detected by monitoring tools, or (b) once an ICANNAccredited

Registrar reports an occurrence to Registry Operator's customer service help desk in the manner required by the Registry Operator (i.e., e-mail, fax, telephone) and Registry Operator confirms that the occurrence is not unique to the reporting registrar.

DNS Name Server unavailability shall mean less than eight (8) sites on the Registry Operator's constellation are returning answers to queries with less than 1% packet loss averaged over a Monthly Timeframe or 5% packet loss for any five minute period.

The committed Service Availability for DNS Name Server is 100% per Monthly Timeframe. The DNS Name Server Service Availability metric is a Credit Level 1.

**2.4 Service Availability—Whois = 100% per Monthly Timeframe. Service**

Availability as it applies to Whois refers to the ability of Internet users to access and use the Whois. Whois unavailability, except for Planned Outages (as defined in Section 3 below) and Extended Planned Outages (as defined in Section 4 below), will be logged with the Registry Operator as Unplanned Outage Minutes. Registry Operator will log Whois unavailability (a) when such unavailability is detected by Registry Operator's monitoring tools, or (b) once an ICANNAccredited

Registrar reports an occurrence to Registry Operator's customer service help desk in the manner required by the Registry Operator (i.e., e-mail, fax, telephone). The committed Service Availability for Whois is 100% per Monthly Timeframe. The Whois Service Availability metric is a Credit Level 2.

**3. Planned Outage.** From time to time the Registry Operator will require an outage for regular maintenance or the addition of new functions or features ("Planned Outage").

**3.1 Planned Outage Duration.** Planned Outage duration defines the maximum allowable time, in minutes, that the Registry Operator is permitted to take the System Services out of service for regularly scheduled maintenance ("Planned Outage Duration"). Planned Outages are planned in advance and the Registrar Community is provided notification prior to an outage. Effective July 1, 2005 through December 31, 2005, the Planned Outage Duration for the System Services is as follows:

(i) Planned Outage Duration - SRS = 4 hours per Monthly Timeframe;

(ii) Planned Outage Duration - DNS Name Server = no Planned Outages allowed; and

(iii) Planned Outage Duration - Whois =4 hours per Monthly Timeframe.

Effective January 1, 2006 the Planned Outage Duration for the System Services



is as follows:

(iv) Planned Outage Duration - SRS = 45 minutes per Monthly Timeframe;

(v) Planned Outage Duration - DNS Name Server = no Planned Outages allowed; and

(vi) Planned Outage Duration - Whois = no Planned Outages allowed.

The Planned Outage Duration metric is a Credit Level 6.

**3.2 Planned Outage Timeframe.** The Planned Outage Timeframe defines the hours and days in which a Planned Outage may occur (“Planned Outage Timeframe”). The Planned Outage Timeframe for the System Services is as follows:

(i) Planned Outage Timeframe - SRS = 0100-0900 UTC Sunday;

(ii) Planned Outage Timeframe - DNS Name Server = no Planned Outages allowed; and

(iii) Planned Outage Timeframe - Whois = effective July 1, 2005 through December 31, 2005, 0100-0900 UTC Sunday; effective January 1, 2006, no Planned Outages allowed.

The Planned Outage Timeframe metric is a Credit Level 5.

**3.3 Planned Outage Notification.** The Registry Operator shall notify all ICANNAccredited

Registrars of any Planned Outage (“Planned Outage Notification”).

The Planned Outage Notification shall set forth the date and time of the Planned Outage. The number of days prior to a Planned Outage that the Registry Operator shall notify the Registrar Community as as follows:

(i) Planned Outage Timeframe - SRS = 30 days for general maintenance and 90 days for Updates or Upgrades as defined in the Patch, Update and Upgrade Policy in Part 5 of this Appendix 7;

(ii) Planned Outage Timeframe - DNS Name Server = no Planned Outages allowed; and

(iii) Planned Outage Timeframe - Whois = effective July 1, 2005 through December 31, 2005, 30 days; effective January 1, 2006, no Planned Outages allowed.

The Planned Outage Notification metric is a Credit Level 5.

**4. Extended Planned Outage.** In some cases, such as major software upgrades and platform replacements, an extended maintenance timeframe is required (“Extended Planned Outage”). Extended Planned Outages will be less frequent than Planned Outages but their duration may be longer.

**4.1 Extended Planned Outage Duration.** The Extended Planned Outage duration defines the maximum allowable time, in hours and minutes that the Registry Operator is permitted to take the System Services out of service for extended maintenance (“Extended Planned Outage Duration”). Extended Planned Outages are planned in advance and the Registrar Community is provided notification in accordance with Section 4.3. Extended Planned Outage periods may not occur in the same Monthly Timeframe as a Planned Outage. Effective July 1, 2005 through December 31, 2005, Registry Operator is allowed one Extended Planned Outage Duration for SRS which may last 12 hours. Effective January 1, 2006 the Extended Planned Outage Duration for the System

Services is as follows:

(i) Extended Planned Outage Duration - SRS = 4 hours (240 minutes) per calendar year and one Extend Planned Outage of 8 hours (480) minutes every 3 years;

(ii) Extended Planned Outage Duration - DNS Name Server = no Extended Planned Outages allowed; and

(iii) Extended Planned Outage Duration - Whois = no Extended Planned Outages allowed.

The Extended Planned Outage Notification metric is a Credit Level 6.

**4.2 Extended Planned Outage Timeframe.** The Extended Planned Outage Timeframe defines the hours and days in which the Extended Planned Outage may occur (“Extended Planned Outage Timeframe”). The Extended Planned Outage Timeframe for the System Services is as follows:

(i) Extended Planned Outage Timeframe - SRS = 0100 - 1300 UTC Sunday;

(ii) Extended Planned Outage Timeframe - DNS Name Server = no Extended Planned Outages allowed; and

(iii) Extended Planned Outage Timeframe - Whois = no Extended Planned Outages allowed.

The Extended Planned Outage Notification metric is a Credit Level 5.

**4.3 Extended Planned Outage Notification.** The Registry Operator must notify the Registrar Community of any Extended Planned Outage (“Extended Planned Outage Notification”). The Extended Planned Outage Notification shall set forth the date and time of the Extended Planned Outage. The number of days prior to an Extended Planned Outage that the Registry Operator must notify

ICANN Accredited

Registrars is as follows:

(i) Extended Planned Outage Timeframe - SRS = 90 Days;

(ii) Extended Planned Outage Timeframe – DNS Name Server =no Extended Planned Outages allowed; and

(iii) Extended Planned Outage Timeframe - Whois = no Extended Planned Outages allowed.

The Extended Planned Outage Notification metric is a Credit Level 5.

**5. Processing Time.** Processing time is a measurement of Service Availability and equals the Round-trip for the System Services (“Processing Time”). The Registry Operator will log the Processing Time for all of the protocol transactions (i.e. Check, Add/Create, Modify/Update and Delete). Processing Time will be measured in a Monthly Timeframe and reported on a monthly basis to ICANN in accordance with Appendix 4. Should the total volume of protocol transactions (measured individually) added by all ICANN-Accredited Registrars for a Monthly Timeframe exceed Registry Operator's actual volume of protocol transactions for the previous Monthly Timeframe by more than 20%, then ICANN-Accredited Registrars shall not be eligible for any SLA credit, and Registry Operator shall have no liability to ICANN, if Registry Operator fails to meet a Processing Time Performance Specification set forth in this Section 5.

**5.1 Processing Time—Check Domain = 25 milliseconds for 95%.**

(i) The Processing Time for Check Domain is applicable to the SRS as accessed

through the defined protocol (EPP/RRP) for registry-registrar interaction and measures the Processing Time for an availability check of a specific domain name.

(ii) The performance specification for Check Domain is 25 milliseconds Roundtrip for 95% of the transactions during a Monthly Timeframe.

The Processing Time for Check Domain metric is a Credit Level 3.

### **5.2 Processing Time—Add/Create = 50 milliseconds for 95%.**

(i) The Processing Time for Add/Create is applicable to the SRS as accessed through the defined protocol (EPP/RRP) for registry-registrar interaction and measures the Processing Time for add/create transactions associated with domain names.

(ii) The Performance Specification for ADD/Create is 50 milliseconds for Roundtrip

for 95% of the transactions processed during a Monthly Timeframe.

The Processing Time for Add/Create metric is a Credit Level 3.

### **5.3 Processing Time—Modify/Update and Delete Domain = 100 milliseconds for 95%.**

(i) The Processing Time for Modify/Update and Delete is applicable to the SRS as accessed through the defined protocol (EPP/RRP) for registry-registrar interaction and measures the Processing Time for Modify/Update and Delete transactions associated with domain names.

(ii) The Performance Specification for Modify/Update and Delete is 100 milliseconds Round-trip for 95% of the transactions processed during a Monthly Timeframe.

The Processing Time for Modify/Update and Delete metric is a Credit Level 3

### **5.4 Processing Time—Whois Query = 5 milliseconds for 95%.**

(i) The Processing Time for Whois query is applicable to the Whois and measures the Processing Time for a Whois query.

(ii) The Performance Specification for a Whois query is 5 milliseconds for 95% of the transactions during a Monthly Timeframes. That is, 95% of the transactions during a Monthly Timeframe will take 5 milliseconds or less from the time the Whois receives a query to the time it responds.

The Processing Time for Whois Query metric is a Credit Level 3.

### **5.5 Processing Time—DNS Name Server Resolution = 100 milliseconds for 95%.**

(i) The Processing Time for DNS Name Server Resolution is applicable to the DNS Name Server and measures the processing time for a DNS query.

(ii) The Performance Specification for DNS Name Server Resolution is 100 milliseconds for 95% of the transactions during a Monthly Timeframe. That is, 95% of the transactions during a Monthly Timeframe will take 100 milliseconds or less from the time the name server receives the DNS query to the time it provides a response.

The Processing Time for the DNS Name Server metric is a Credit Level 3.

**6. Update Frequency.** The Registry Operator makes timely updates to the data on the DNS Name Servers and Whois. ICANN-Accredited Registrars record these updates through the SRS. The SRS then updates the DNS Name Server

and the Whois. Registry Operator processes this updates on a near real time basis.

The committed performance specification with regards to Update frequency for both the DNS Name Server and the Whois is 3 minutes for 95% of the transactions during a Monthly Timeframe. That is, 95% of the updates to the DNS Name Servers and Whois during a Monthly Timeframe will be completed within 3 minutes. Update frequency is measured from the time that the Registry Operator confirms the update to the time the update appears in the DNS Name Server and Whois. Update frequency performance will be reported on a monthly basis to ICANN in accordance with Appendix 4.

#### **6.1 Update Frequency—DNS Name Server = 3 minutes for 95% during a Monthly Timeframe.**

The Update frequency metric for DNS Name Server is Credit Level 4.

#### **6.2 Update Frequency—Whois**

(i) Effective July 1, 2005 through March 31, 2006, Update Frequency-Whois = 1 time per 24 hours.

(ii) Effective April 1, 2006, Update Frequency-Whois = 3 minutes for 95% during a Monthly Timeframe.

The Update frequency metric for Whois is Credit Level 4.

**7. Cross-Network Name Server Performance Requirements.** DNS Name Server Round-trip and packet loss from the Internet are important elements of the quality of service provided by the Registry Operator. These characteristics, however, are affected by Internet performance and, therefore, cannot be closely controlled by Registry Operator. Accordingly, these requirements are not matters subject to SLA Credits under the Service Level Agreement set forth on Appendix 10 or obligations upon which a breach by Registry Operator of the Registry Agreement may be asserted.

The committed performance specification for cross-network name server performance is a measured Round-trip of under 100 milliseconds and measured packet loss of under 1% averaged over the course of a Monthly Timeframe and no greater than 5% for any five (5) minute period over the course of a Monthly Timeframe. Cross-network name server performance measurements may be conducted by ICANN at times of its choosing, in the following manner:

7.1 The measurements may be conducted by sending strings of DNS request packets from each of four measuring locations to each of the .net DNS Name Servers and observing the responses from the .net DNS Name Servers. (These strings of requests and responses are referred to as a "CNNP Test".) The measuring locations will be four root name server locations on the US East Coast, US West Coast, Asia, and Europe.

7.2 Each string of request packets will consist of 100 UDP packets at 10 second intervals requesting nameserver (NS) records for arbitrarily selected .net secondlevel

domains, preselected to ensure that the names exist in the Registry TLD and are resolvable. The packet loss (i.e. the percentage of response packets not received) and the average Round-trip time for response packets received may be noted.

7.3 To meet the packet loss and Round-trip requirements for a particular CNNP Test, all three of the following must be true:

7.3.1 The Round-trip and packet loss from each measurement location to at least one .net name server must not exceed the required values:

7.3.2 The packet loss to each of the .net name servers from at least one of the measurement locations must not exceed the required value; and

7.3.3 Any failing CNNP Test result obtained during an identified Core Internet Service Failure shall not be considered.

7.4 To ensure a properly diverse testing sample, ICANN will conduct the CNNP Tests at varying times (i.e. at different times of the day, as well as on different days of the week). Registry Operator may only be deemed to have persistently failed to meet the cross-network name server performance requirement only if the .net DNS Name Servers fail the CNNP Tests (see Section 7.3 above) with no less than three consecutive failed CNNP Tests.

7.5 In the event of persistent failure of the CNNP Tests, ICANN will give Registry Operator written notice of the failures (with backup data) and Registry Operator will have sixty days to cure the failure.

7.6 Sixty days prior to the commencement of testing under this provision, ICANN will provide Registry Operator with the opportunity to evaluate the testing tools, root name server locations and procedures to be used by ICANN. In the event that Registry Operator does not approve of such tools and procedures, ICANN will work directly with Registry Operator to make necessary modifications.

#### **8. Responsibilities of the Parties.**

8.1 Except in the case of DNS Name Server performance measurements, Registry Operator will perform monitoring from internally located systems as a means to verify that the availability and performance measurements in this document are being met.

8.2 The Registry Operator will provide system performance and availability reports monthly to the Registrar Community via e-mail and to ICANN according to Appendix 4.

8.3 The Registry Operator will provide the Whois Service as specified in Appendix 5.

8.4 The Registry Operator will use commercially reasonable efforts to restore the critical systems of the System Services within 24 hours after the termination of a force majeure event and restore full system functionality within 48 hours after the termination of a force majeure event. Outages due to a force majeure will not be considered service unavailability for purposes of this Appendix 7 or the SLA.

8.5 Registry Operator shall not be liable to ICANN or ICANN-Accredited Registrars for any credits or penalties or be deemed to be in breach of any of its obligations under the Registry Agreement if it fails to meet a Performance Specification as a result of its compliance with any Consensus Policy established after the Effective Date to the extent and for so long as the failure to meet a Performance Specification is unavoidable by commercially reasonable efforts due to Registry Operator's compliance with such Consensus Policy.

### **.NET Agreement Appendix 8** **Registry-Registrar Agreement**

(Note: the following revised Registry-Registrar Agreement implements and conforms to the new .NET Registry Agreement, and updates the Registry-Registrar Agreement by incorporating appropriate provisions from the registry-registrar agreements of other gTLD registries. The provisions of the following revised Registry-Registrar Agreement will be implemented following a 30-day period, which will commence on the Effective Date of the Registry Agreement, for review and comment by registrars.)

This Registry-Registrar Agreement (the "Agreement") is dated as of \_\_\_\_\_ ("Effective Date") by and between VeriSign, Inc., a Delaware corporation, with a place of business located at 21345 Ridgetop Circle, Dulles, , Virginia 20166 ("VNDS"), and \_\_\_\_\_, a \_\_\_\_\_ corporation, with its principal place of business located at \_\_\_\_\_ ("Registrar"). VNDS and Registrar

may be referred to individually as a "Party" and collectively as the "Parties."  
WHEREAS, multiple registrars provide Internet domain name registration services within the .NET top-level domain wherein VNDS operates and maintains certain TLD servers and zone files;

WHEREAS, Registrar wishes to register second-level domain names in the multiple registrar system for the .NET TLD.

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, VNDS 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. "ICANN" refers to the Internet Corporation for Assigned Names and Numbers.

1.3. "IP" means Internet Protocol.

1.4. "Registered Name" refers to a domain name within the domain of the Registry TLD, whether consisting of two or more (e.g., john.smith.name) levels, about which VNDS or an affiliate engaged in providing registry services maintains data in a registry database, arranges for such maintenance, or derives revenue from such maintenance. A name in a registry database may be a Registered Name even though it does not appear in a TLD zone file (e.g., a registered but inactive name).

1.5. "Registry TLD" means the .NET TLD.

1.6. The "System" refers to the multiple registrar system operated by VNDS for registration of Registered Names in the Registry TLD.

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

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

1.9. "EPP" means the Extensible Provisioning Protocol.

1.10. "RRP" means the Registry Registrar Protocol.

1.11. "Supported Protocol" means RRP, EPP or any successor protocols supported by the System.

## 2. OBLIGATIONS OF THE PARTIES

**2.1. System Operation and Access.** Throughout the Term of this Agreement, VNDS shall operate the System and provide Registrar with access to the System to transmit domain name registration information for the Registry TLD to the System.

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

**2.3. 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 "Registered Name Holder") orders.

**2.4. Data Submission Requirements.** As part of its registration and sponsorship of Registered Names in the Registry TLD, Registrar shall submit complete data as required by technical specifications of the System that are made available to Registrar from time to time.

**2.5. License.** Registrar grants VNDS as Registry a non-exclusive nontransferable worldwide limited license to the data elements consisting of the Registered Name, 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 or as otherwise required or permitted by VNDS's Registry Agreement with ICANN concerning the operation of the Registry TLD, as may be amended from time to time.

**2.6. Registrar's Registration Agreement and Domain Name Dispute Policy.** Registrar shall have in effect an electronic or paper registration agreement with the Registered Name Holder. The initial form of Registrar's registration agreement is attached as Exhibit A (which may contain multiple alternative forms of the registration agreement). Registrar may from time to time amend its form(s) of registration agreement or add alternative forms of registration agreement, provided a copy of the amended or alternative registration agreement is furnished to VNDS fourteen (14) calendar days in advance of the use of such amended registration agreement. Registrar shall include in its registration agreement those terms required by this Agreement and other terms that are consistent with Registrar's obligations to VNDS under this Agreement. Registrar shall have developed and employ in its domain name registration business a domain name dispute policy, a copy of which is attached to this Agreement as Exhibit B (which may be amended from time to time by Registrar, provided a copy is furnished to VNDS three (3) business days in advance of any such amendment).

**2.7. 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 or EPP session shall be authenticated and encrypted using two-way secure socket layer ("SSL") protocol. Registrar agrees to authenticate every RRP or EPP 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.

**2.7.1 Authorization Codes.** At such time as Registrar employs EPP, Registrar shall not provide identical Registrar-generated authorization <authinfo> codes for domain names registered by different registrants with the same Registrar. VNDS in its sole discretion may choose to modify <authinfo> codes for a given domain and shall notify the sponsoring registrar of such modifications via EPP compliant mechanisms (i.e. EPP<poll> or EPP<domain:Info>). Documentation of these mechanisms shall be made available to Registrar by VNDS. The Registrar shall provide the Registered Name Holder with timely access to the authorization code along with the ability to modify the authorization code. Registrar shall respond to any inquiry by a Registered Name Holder regarding access to and/or modification of an authorization code within ten (10) calendar days.

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

**2.9. Transfer of Sponsorship of Registrations.** Registrar agrees to implement transfers of Registered Name registrations from another registrar to Registrar and vice versa pursuant to the Policy on Transfer of Registrations Between Registrars as may be amended from time to time by ICANN (the "Transfer Policy").

**2.10. 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 VNDS records shall control.

**2.11. Compliance with Operational Requirements.** Registrar agrees to comply with, and shall include in its registration agreement with each Registered Name Holder as appropriate, operational standards, policies, procedures, and practices for the Registry TLD established from time to time by VNDS in a non-arbitrary manner and applicable to all registrars ("Operational Requirements"), including affiliates of VNDS, and consistent with VNDS's Cooperative Agreement with the United States Government or VNDS's Registry Agreement with ICANN, as applicable, upon VNDS's notification to Registrar of the establishment of those terms and conditions.

**2.12. 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 Supported Protocol and the APIs in conjunction with Registrar's systems. Registrar agrees that in the event of significant degradation of the System or other emergency, or upon Registrar's violation of Operational Requirements, VNDS may, in its sole discretion, temporarily suspend or restrict access to the System. Such temporary suspensions or restrictions shall be applied in a nonarbitrary manner and shall apply fairly to any registrar similarly situated, including affiliates of VNDS.

**2.13. Surety Instrument.** During the Initial Term and any Renewal Terms, Registrar shall have in place a performance bond, letter of credit, general liability insurance policy or equivalent instrument (the "Surety Instrument") from a surety acceptable to VNDS, in the amount of \$100,000 U.S. dollars. (A single such Surety Instrument shall satisfy this obligation and Registrar's obligations under similar provisions of other Registry-Registrar Agreements between Registrar and VGRS.) The terms of the Surety Instrument shall indemnify and hold harmless VNDS 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 VNDS as provided in Section 6.16 by making payment(s) up to the full amount of the bond within ten (10) days of VNDS's having notified the surety of its claim(s) of damages, having identified the basis for any such claim. VNDS 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.

**2.14. Prohibited Domain Name Registrations.** In addition to complying with ICANN standards, policies, procedures, and practices limiting domain names that may be registered, Registrar agrees to comply with applicable statutes and regulations limiting the domain names that may be registered.

**2.15. Indemnification Required of Registered Name Holders.** In its registration agreement with each Registered Name Holder, Registrar shall require each Registered Name holder to indemnify, defend and hold harmless VNDS, and its directors, officers, employees, agents, and affiliates 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 Registered Name holder's domain name registration.

**2.16. ICANN Requirements.** VNDS's obligations hereunder are subject to modification at any time as a result of ICANN-mandated requirements and consensus policies. Notwithstanding anything in this Agreement to the contrary, Registrar shall comply with any such ICANN requirements in accordance with the timeline defined by ICANN.

### **3. LICENSE**

**3.1. License Grant.** Subject to the terms and conditions of this Agreement, VNDS hereby grants Registrar and Registrar accepts a non-exclusive, nontransferable, worldwide limited license to use for the Term and purposes of this

Agreement the Supported Protocol, APIs and Software, as well as updates and redesigns thereof, to provide domain name registration services in the Registry TLD only and for no other purpose. The Supported Protocol, APIs and Software, as well as updates and redesigns thereof, will enable Registrar to register domain names in the Registry TLD with the Registry on behalf of its Registered Name Holders. Registrar, using the Supported Protocol, 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 VNDS, Registrar shall not: (i) sublicense the Supported Protocol, APIs or Software or otherwise permit any use of the Supported Protocol, APIs or Software by or for the benefit of any party other than Registrar, (ii) publish, distribute or permit disclosure of the Supported Protocol, 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 Supported Protocol, APIs or Software for any unauthorized purpose, (iv) use or permit use of the Supported Protocol, 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 to (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than Registrar's customers; or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of VNDS or any ICANN-Accredited Registrar, except as reasonably necessary to register domain names or modify existing registrations.

**3.3. Changes to Licensed Materials.** VNDS may from time to time replace or make modifications to the Supported Protocol, APIs or Software licensed hereunder. In the event of a change in the Supported Protocol from RRP to EPP, Registrar shall migrate to, or implement, such Supported Protocols within eighteen (18) months of notice of such modification. For all other changes, VNDS will provide Registrar with at least ninety (90) days notice prior to the implementation of any material changes to the Supported Protocol, APIs or software licensed hereunder.

#### **4. SUPPORT SERVICES**

**4.1. Engineering Support.** VNDS agrees to provide Registrar with reasonable engineering telephone support (between the hours of 9 a.m. to 5 p.m. EST 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, VNDS will provide reasonable telephone and e-mail customer service support to Registrar, not Registered Name Holder or prospective customers of Registrar, for nontechnical issues solely relating to the System and its operation. VNDS will provide Registrar with a telephone number and e-mail address for such support during implementation of the Supported Protocol, APIs and Software. First-level telephone support will be available on a 7-day/24-hour basis. VNDS 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. Registration Fees.**

(a) Registrar agrees to pay VNDS the non-refundable fees set forth in Exhibit D for initial and renewal registrations and other services provided by VNDS(collectively, the "Registration Fees").

(b) VNDS reserves the right to adjust the Registration Fees, provided that any price increase shall be made only upon six (6) months prior notice to Registrar, and provided that such adjustments are consistent with VNDS's Cooperative Agreement with the United States Government or its Registry Agreement with ICANN, as applicable.

(c) Registrars shall provide VNDS a payment security comprised of an irrevocable letter of credit, cash deposit account or other acceptable credit terms agreed by the Parties (the "Payment Security"). VNDS will invoice Registrar monthly in arrears for each month's Registration Fees. All Registration Fees are due immediately upon receipt of VNDS's invoice and shall be secured by the Payment Security. If Registrar's Payment Security is depleted, registration of domain names for the Registrar will be suspended and new registrations will not be accepted until the Payment Security is replenished.

**5.2. Change in Registrar Sponsoring Domain Name.** Registrar may assume sponsorship of a Registered Name Holder's existing domain name registration from another registrar by following the Transfer Policy.

(a) For each transfer of the sponsorship of a domain-name registration under the Transfer Policy, Registrar agrees to pay VNDS the renewal registration fee associated with a one-year extension, as set forth above. The losing registrar's Registration Fees will not be refunded as a result of any such transfer.

(b) For a transfer approved by ICANN under Part B of the Transfer Policy, Registrar agrees to pay VNDS US \$0 (for transfers of 50,000 names or fewer) or US \$50,000 (for transfers of more than 50,000 names).

Fees under this Section 5.2 shall be due immediately upon receipt of VNDS's invoice pursuant to the Payment Security.

**5.3. Charges for ICANN Fees.** Registrar agrees to pay to VNDS, within ten (10) days of VNDS's invoice, any variable registry-level fees paid by VNDS to ICANN, which fees shall be secured by the Payment Security. The fee will consist of two components; each component will be calculated by ICANN for each registrar:

(a) The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year but shall not exceed eighty percent (80%) of the registrar level transaction fee as established pursuant to the approved 2004-2005 ICANN Budget.

(b) The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year, but the sum of the perregistrar fees calculated for all registrars shall not exceed the total Per-Registrar Variable funding established pursuant to the approved 2004-2005 ICANN Budget.

**5.4. Non-Payment of Fees.** Timely payment of fees owing under this Section 5 is a material condition of performance under this Agreement. In the event that Registrar fails to pay its fees within five (5) days of the date when due, VNDS may: (i) stop accepting new initial or renewal registrations from Registrar; (ii) delete the domain names associated with invoices not paid in full from the Registry database; (iii) give written notice of termination of this Agreement pursuant to Section 6.1(b) below; and (iv) pursue any other remedy under this Agreement.

## **6. MISCELLANEOUS**

### **6.1. Term of Agreement and Termination.**

**(a) Term of the Agreement; Revisions.** 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 VNDS ceases to operate the registry for the Registry TLD. In the event that revisions to VNDS's Registry-Registrar Agreement are approved or adopted by the U.S. Department of Commerce, and/or ICANN, as appropriate, Registrar shall execute an amendment substituting the revised agreement in place of this Agreement, or Registrar may, at its option exercised within fifteen (15) days of the date of the notice, terminate this Agreement immediately by giving written notice to VNDS; provided, however, that in the event VNDS does not receive such executed amendment or notice of termination from Registrar within such fifteen (15) day period of the date of the notice, Registrar shall be deemed to have executed such amendment as of the sixteenth (16th) day after the date of the notice.

**(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 nonbreaching 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 VNDS thirty (30) days notice of termination.  
**(d) Termination Upon Loss of Registrar's Accreditation.** This Agreement shall terminate in the event Registrar's accreditation for the Registry TLD by ICANN, or its successor, is terminated or expires without renewal.

**(e) Termination in the Event that Successor Registry Operator is Named.** This Agreement shall terminate in the event that the U.S. Department of Commerce or ICANN, as appropriate, designates another entity to operate the registry for the Registry TLD.

**(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, VNDS will, to the extent it has the authority to do so, 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 VNDS for Registration Fees are current and timely. Immediately upon any expiration or termination of this Agreement, Registrar shall (i) transfer its sponsorship of Registered Name registrations to another licensed registrar(s) of the Registry, in compliance with Part B of the Transfer Policy, or any other procedures established or approved by the U.S. Department of Commerce or ICANN, as appropriate, and (ii) either return to VNDS or certify to VNDS 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 2.5, 2.6, 2.15, 6.1(g), 6.2, 6.6, 6.7, 6.10, 6.12, 6.13, 6.14, and 6.16; (ii) the Registered Name Holder's obligations to indemnify, defend, and hold harmless VNDS, as stated in Section 2.15; (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 with respect to fees incurred 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 Registered Name 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.** Except as otherwise provided in this Agreement, any amendment or supplement to this Agreement shall be in writing and duly executed by both Parties. Any new services approved by ICANN and purchased by Registrar will be subject to such terms and conditions as may be established by VNDS through an appendix to this Agreement executed by Registrar and VNDS.

**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, by e-mail 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 VNDS:

General Counsel

VeriSign, Inc.

487 E. Middlefield Road

Mountain View, California 94043

Telephone: 1/650/961/7500

Facsimile: 1/650/426/5113; and

General Manager

VeriSign Naming and Directory Services

21345 Ridgetop Circle

Dulles, Virginia 20166

Telephone: 1/703/948/3200

Facsimile: 1/703/421/4873; and

Associate General Counsel

VeriSign, Inc.

21355 Ridgetop Circle

Dulles, VA 20166

Telephone: 1/703/948/3200

Facsimile: 1/703/450/7492

**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 VNDS.

**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 VNDS.

**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 VNDS 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 VNDS 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 2.5 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 4, 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) VNDS.** VNDS 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 VNDS, and (4) no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by VNDS in order for it to enter into and perform its obligations under this Agreement.

**(c) Disclaimer of Warranties.** The RRP, EPP, APIs and Software are provided "as-is" and without any warranty of any kind. VNDS 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. VNDS 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, VNDS 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 VNDS under this paragraph, will indemnify, defend and hold harmless VNDS and its employees, directors, officers, representatives, agents and affiliates, against any claim, suit, action, or other proceeding brought against VNDS or any affiliate of VNDS 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 Registered Name 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) VNDS provides Registrar with prompt notice of any such claim, and (b) upon Registrar's written request, VNDS will provide to Registrar all available information and assistance reasonably necessary for Registrar to defend such claim, provided that Registrar reimburses VNDS for its actual and reasonable costs. Registrar will not enter into any settlement or compromise of any such indemnifiable claim without VNDS'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 VNDS 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, C, and D 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.

VeriSign, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Registrar]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A**

**Registrar's Registration Agreement**

**[To be supplied from time to time by Registrar]**

**Exhibit B**

**Registrar's Dispute Policy**

**[To be supplied from time to time by Registrar]**

**Exhibit C**

**Confidentiality Agreement**

THIS CONFIDENTIALITY AGREEMENT is entered into by and between VeriSign, Inc., a Delaware corporation, with a place of business located at 21345 Ridgetop Circle, Dulles, , Virginia 20166 ("VNDS"), 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 VNDS 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 VNDS 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 VNDS and Registrar have executed this Confidentiality Agreement in Virginia on the dates indicated below.

("Registrar")

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

VeriSign, Inc. ("VNDS")

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit D**

**REGISTRATION FEES**

**1. Domain-Name Initial Registration Fee**

Registrar agrees to pay US \$3.50, plus a US \$0.75 ICANN fee, per annual increment of an initial domain name registration

**2. Domain-Name Renewal Fee**

Registrar agrees to pay US \$3.50, plus a US \$0.75 ICANN fee, per annual increment of a domain name registration renewal.

**3. Domain Name Transfer**

Registrar agrees to pay US \$3.50, plus a US \$0.75 ICANN fee, per domain name that is transferred to Registrar from another ICANN-Accredited Registrar.

**4. Restore or Update**

Registrar agrees to pay US \$40.00 per use of the RRP Restore or EPP Update command for a domain name.

**5. Sync**

Registrar agrees to pay US \$2.00, plus \$1.00 per month of the sync, for each use of the Supported Protocol Sync command.

**.NET Agreement: Appendix 9**

**Approved Services**

The Registry Agreement specifies a "Process for Consideration of Proposed Registry

Services." The following services are specifically identified as having been approved by

ICANN prior to the effective date of the Registry Agreement. As such, notwithstanding

any other provisions of the Registry Agreement, VeriSign shall be free to deploy the

following services:

• ConsoliDate, in accordance with VeriSign's Registrar Reference Manual (v2.2) Section 2.14 to 2.14.3;

• Internationalized Domain Names, in accordance with the Letter from Rusty Lewis

to Paul Twomey dated 13 October 2003;

• Redemption Grace Period, in accordance with VeriSign's Registrar Reference Manual (v2.2) Section 2.5.1.1-2.5.1.3; and

• Wait Listing Service, in accordance with the letter from John O. Jeffrey to Russell

Lewis dated 26 January 2004.

**.NET Agreement Appendix 10**

**Service Level Agreement (SLA)**

The VeriSign, Inc. ("Registry Operator") registry strives to provide a world-class level of service to its customers. This Service Level Agreement ("SLA") provides remedies in the form of SLA Credits (as defined in Section 2 below) should the operational performance of Registry Operator fall below certain Performance Specifications identified in Appendix 7.

## **1. Definitions.**

Capitalized terms used herein and not otherwise defined shall have the definitions ascribed to them in the Registry Agreement, including, but not limited to Appendix 7.

## **2. SLA Credits.**

If the Registry Operator fails to meet the Performance Specifications defined in Appendix 7, Part 7 thereof, to which Credit Levels apply, the Registry Operator shall pay credits to ICANN-Accredited Registrar(s) in accordance with the identified Credit Level for such failed Performance Specifications metrics, calculated in accordance with the Credit Level tables set forth in this Section 2 ("SLA Credit"). The SLA Credit due to each ICANN-Accredited Registrar shall be paid as an offset to registrations and other fees owed to Registry Operator by the ICANN-Accredited Registrar. SLA Credits represent the total credits, penalties and/or liabilities that may be assessed to the Registry Operator for a breach of the Performance Specifications set forth in Appendix 7. All SLA Credits shall be paid in U.S. Dollars. The Credit Level Table (Refer to Table SLA Credits) indicates the corresponding Credit Level for each Performance Specification to which Credit Levels apply. This SLA will be reconciled on a quarterly basis and unless otherwise specified in this SLA, SLA Credits will be issued on a quarterly basis.

### **TABLE SLA Credits**

#### **App. 10**

#### **Reference Performance Specification SRS Name**

#### **Server Whois**

2.2, 2.3,

2.4 Service Availability Level 2 Level 1 Level 2

3.1 Planned Outage – Duration Level 6 NA NA

3.2 Planned Outage – Timeframe Level 5 NA NA

3.3 Planned Outage – Notification Level 5 NA NA

4.1 Extended Planned Outage – Duration Level 6 NA NA

4.2 Extended Planned Outage –

Timeframe Level 5 NA NA

4.3 Extended Planned Outage – Level 5 NA NA

#### **Notification**

5.1 Processing Time – Check Domain Level 3 NA NA

5.2 Processing Time – Add/Create

Domain Level 3 NA NA

5.3 Processing Time – Modify/Update

and Delete Domain Level 3 NA NA

5.4 Processing Time – Whois Query NA NA Level 3

5.5 Processing Time – DNS Name Server

Resolution NA Level 3 NA

6.1 Update Frequency – DNS Name

Server NA Level 4 NA

6.2 Update Frequency – Whois NA NA Level 4

2.1 Credit Level 1 – Credit Level 1 is assessed for DNS Name Server Service

Availability less than 100% per Monthly Timeframe. If the DNS Name Server Service Availability Performance Specification is not met, the SLA Credit for Credit Level 1 shall be payable to active ICANN-Accredited Registrars 30 days after the applicable calendar month in which the Service Availability Performance Specification was not met. For purposes of this Appendix 10, an "active" ICANN-Accredited

Registrar is one who has registered greater than 150 net new .net domain names in the previous Monthly Timeframe.

Each active ICANN-Accredited Registrar that meets the requirements of Section 3 below would be credited an amount equal to such active ICANN-Accredited Registrars net new .net domain name registrations during the applicable Monthly Timeframe divided by the net amount of new .net domain name registrations for all active ICANN-Accredited Registrars within the applicable Monthly Timeframe times the Monthly Credit Amount set forth in Table Credit Level 1.

**Table Credit Level 1**

< 30 sec.'s

30-60

sec.'s 1-2 min.'s

2-10

min.'s

10-30

min.'s

over 30

min.'s

SLA Credit

Amount \$ 100,000 \$ 175,000 \$250,000 \$400,000 \$750,000 \$1,000,000

2.2 Credit Level 2 – Credit Level 2 is assessed for SRS Service Availability less than 99.99% per calendar year and for Whois Service Availability less than 100% per Monthly Timeframe. If a Service Availability Performance Specifications metrics are not met, the SLA Credit for Credit Level 2 shall be credited directly to active ICANN-Accredited Registrar(s) that meet the requirements of Section 3 below in an amount equal to the duration of the outage times (OT) times the average daily number of .net registrations over the previous three (3) months (NRAvg) times the .net wholesale fee divided by the number of minutes per day (1,440 minutes).

Active ICANN-Accredited Registrar would be credited:

(.net Registry Fee)\*(OT)\*(NRAvg)

(1,440 minutes)

Additionally, for any month where the total combined Unplanned Outage of SRS and Whois is greater than 30 minutes, Registry Operator will credit active ICANN-Accredited Registrars that meet the requirements of Section 3 below One Thousand Dollars (\$1,000).

2.3 Credit Level 3 – Credit Level 3 is assessed for failure to meet the Performance Specifications for the Processing Time for check domain, add/create, modify/update and delete domain commands, and DNS Name Server Resolution and Whois queries. If the Processing Time Performance

Specifications metrics are not met, the SLA Credit for Credit Level 3 (Refer to Table Credit Level 3) shall be payable to active ICANN-Accredited Registrars in an amount based upon the % of time that the Processing Time exceeds the applicable Performance Specifications metric.

Each active ICANN-Accredited Registrar that meets the requirements of Section 3 below would be credited an amount equal to such active ICANN-Accredited Registrars net new .net domain name registrations during the applicable Monthly Timeframe divided by the net amount of net new .net domain name registrations for all active ICANN-Accredited Registrars within the applicable Monthly Timeframe times the SLA Credit Amount set forth in Table Credit Level 3 within 30 days after the applicable calendar month.

**Table Credit Level 3**

5 – 10% 10 – 25% 25 - 50% > 50%

SLA Credit

Amount \$500 \$1,000 \$2,000 \$5,000

2.4 Credit Level 4 – Credit Level 4 is assessed for failure to meet the Performance Specifications for Update frequencies for DNS Name Server and Whois. If the Update frequency Performance Specifications metrics are not met, the SLA Credit for Credit Level 4 (Refer to Table Credit Level 4) shall be payable to active ICANN-Accredited Registrars in an amount based upon the % of time that the Update frequency exceeds the applicable Performance Specifications metric; provided, however, that SLA Credits shall not be available for Whois Update frequency until after March 31, 2006.

Each active ICANN-Accredited Registrar that meets the requirements of Section 3 below would be credited an amount equal to such active ICANN-Accredited Registrar's net new .net domain name registrations during the applicable Monthly Timeframe divided by the net amount of new .net domain name registrations for all active ICANN-Accredited Registrars within the applicable Monthly Timeframe times the SLA Credit Amount set forth in Table Credit Level 4.

**Table Credit Level 4**

Up to 15

minutes

over

15

minutes to

1 hour

1 hour to

12 hours > 12 hours

SLA Credit

Amount \$500 \$1,000 \$2,000 \$5,000

2.5 Credit Level 5 - Credit Level 5 is assessed for failure to meet the Performance Specifications for Planned Outage Timeframe, Planned Outage Notification, Extended Planned Outage Timeframe and Extended Planned Outage Notification. If the Performance Specifications metrics are not met, the SLA Credit for Credit Level 5 shall be payable to each active ICANN-Accredited Registrar that meets the requirements of Section 3 below in an amount equal to



such active ICANN-Accredited Registrar's net new .net domain name registrations during the applicable Monthly Timeframe divided by the net amount of new .net domain name registrations for all active ICANN-Accredited Registrars within the applicable Monthly Timeframe times One Thousand Dollars (\$1,000).

2.6 Credit Level 6 – Credit Level 6 is assessed for failure to meet the Performance Specifications for Planned Outage Duration and Extended Planned Outage Duration. If the Performance Specifications are not met, the SLA Credit for Credit Level 6 shall be payable directly to active ICANN-Accredited Registrar(s) that meet the requirements of Section 3 below in an amount equal to the Average Daily Volume (ADM) of net .net new adds as averaged over the course of the previous three months times the Planned Duration Overage (PDO) in minutes times the SLA Credit graduated financial penalty set forth in Table Credit Level 6. For purposes of this Appendix 10, PDO is calculated by subtracting the maximum allowable time in hours and minutes for an Planned Outage Duration or Extended Planned Outage Duration, as applicable, from the total outage in hours and minutes.

**Table Credit Level 6**

1 to 15 minutes

15 minutes to

1 hour 1 to 3 hours 3 – 6 hours > 6 hours

SLA

Credit ADM\*PDO\*\$.25 ADM\*PDO\*\$.5 ADM\*PDO\*\$1 ADM\*PDO\*\$1.50

ADM\*PDO\*\$2

**3. Registrar Responsibilities.**

In order for ICANN-Accredited Registrars to claim SLA Credits outlined in this Appendix 10, the procedures of this Section 3 must be strictly followed.

3.1 The affected ICANN-Accredited Registrar must report each occurrence of alleged failure by Registry Operator to meet a Performance Specification and make a request for SLA Credit to the Registry Operator's customer service help desk in the manner required by the Registry Operator (i.e., e-mail, fax, telephone) in order to be eligible for a SLA Credit.

3.2 Each ICANN-Accredited Registrar must inform the Registry Operator any time its estimated volume of transactions (excluding check domain commands) is expected to exceed the ICANN-Accredited Registrar's previous month's volume by more than 25%. In the event that an ICANN-Accredited Registrar fails to inform Registry Operator of a forecasted increase of volume of transactions of 25% or more and the ICANN-Accredited Registrar's volume increases 25% or more over the previous month, and should the total volume of transactions for the Registry Operator for all ICANN-Accredited Registrars for that month exceed the Registry Operator's actual volume of the previous month's transactions by more than 20%, then the ICANN-Accredited Registrar will not be eligible for any SLA Credits outlined in this SLA in that Monthly Timeframe. An ICANN-Accredited Registrar shall provide such forecast at least 30 days prior to the first day of the applicable calendar month. Registry Operator agrees to provide monthly transaction summary reports to ICANN-Accredited Registrars via e-mail.

3.3 The affected ICANN-Accredited Registrar must provide documentation to

support its claim for a SLA Credit. An ICANN-Accredited Registrar shall provide documentation in the form of either:

a) ICANN-Accredited Registrar initiated notification(s) to the Registry Operator of a Performance Specification that exceeded SLA limits or failed to meet SLA requirements, including the trouble ticket number issued by the Registry Operator. The closing ticket(s) should be included as well in order to determine the total downtime (unless the trouble ticket includes this); or  
b) Notification from the Registry Operator (with trouble ticket number attached) of a Performance Specification that exceeded SLA limits or failed to meet SLA requirements. The closing ticket(s) should be included as well in order to determine the total downtime (unless the trouble ticket includes this).

3.4 In order to calculate credits, the affected ICANN-Accredited Registrar must include volume figures for the past three (3) calendar months (or, if less, such amount of time that the ICANN-Accredited Registrar has been authorized to register names in the .net registry) and a certification that these numbers accurately reflect the minimum number of registrations that would be covered during the affected period.

3.5 Registry Operator shall perform the required measurements in order to corroborate the total SLA Credits requested by ICANN-Accredited Registrar. Such measurements and associated documentation shall be delivered by e-mail to each of the ICANN-Accredited Registrars requesting a SLA Credit.

3.6 When the above steps have been accurately completed, Registry Operator shall provide notification of the number of SLA Credits that will be entered in the affected ICANN-Accredited Registrar's account that can be used immediately toward .net domain name registrations and other fees owed to Registry Operator by the ICANN-Accredited Registrar.

#### **4. Obligations.**

4.1 Except in the case of cross-network name server performance (which is not a subject of this Service Level Agreement), Registry Operator will perform monitoring from at least two external locations and a minimum of one internal location as a means to verify that a) sessions can effectively be established and b) RRP and/or EPP commands can be successfully completed.

4.2 In the event that all ICANN-Accredited Registrars are affected by a SRS unavailability, the Registry Operator is responsible for opening a blanket trouble ticket and immediately notifying all ICANN-Accredited Registrar of the trouble ticket number and details.

4.3 In the event that the System Services are unavailable to an individual ICANN Accredited

Registrar, Registry Operator will use commercially reasonable efforts to re-establish the affected System Services for such ICANN-Accredited Registrar as soon as reasonably practicable. Any System Services unavailability attributable to any individual ICANN-Accredited Registrar that does not represent a System Services outage will not result in SLA Credits or be subject to this SLA.

4.4 ICANN-Accredited Registrar(s) and the Registry Operator agree to use reasonable commercial good faith efforts to establish the cause of any alleged System Services unavailability. If it is mutually determined to be a Registry

Operator problem, the System Services unavailability will be subject to this SLA.  
4.5 The Registry Operator will use commercially reasonable efforts to restore any System Services within 24 hours after the termination of a force majeure event and restore full system functionality within 48 hours after the termination of a force majeure event. Outages due to a force majeure will not be considered System Services unavailability, impact the Performance Specifications set forth in Appendix 7, or be subject to this SLA.

4.6 The Registry Operator will open incident trouble tickets within a commercially reasonable period of time and will treat all system performance problems in order of decreasing severity and fix them within a commercially reasonable period of time. Incidents flagged by the measurement system will also qualify as ticketed events and will be subject to this SLA.

4.7 The Registry Operator will publish monthly system performance and Service Availability reports.

## **5. Miscellaneous.**

5.1 This SLA is independent of any rights, obligations or duties set forth in the Registry Agreement. In the event of any conflict between the terms and conditions of this SLA and the Registry Agreement, the Registry Agreement shall control.

5.2 As an addendum to the Registry-Registrar Agreement (“RRA”), no provision in this SLA is intended to replace any term or condition in the RRA.

5.3 Dispute Resolution will be handled per RRA Section 6.7.

5.4 Any interruption of System Services that occurs, as a direct result of RRA Sections 2.12, 5.4, or 6.3, any other applicable provision within the RRA, or Registry Operator’s compliance with any Consensus Policy established after the Effective Date, will not be subject to this SLA, but only to the extent and for so long as such interruption of System Services is unavoidable by commercially reasonable efforts due to Registry Operator’s compliance with such provisions within the RRA or any Consensus Policy established after the Effective Date.

Document comparison done by DeltaView on Monday, July 04, 2005 10:42:25 PM

<b>Input:</b>	
Document 1	file://C:/Documents and Settings/jneuman/Desktop/Old Agreement.doc
Document 2	file://C:/Documents and Settings/jneuman/Desktop/New Agreement.doc
Rendering set	Standard

<b>Legend:</b>	
<u>Insertion</u>	
<u>Deletion</u>	
<u>Moved from</u>	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	2875
Deletions	129
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	3008

# EXHIBIT E

## Summary of Important Differences Between 2001 and 2005 .com Agreements

<u>Provision</u>	<u>2001 .com Agreement</u>	<u>2005 .com Agreement</u>
Fees	\$6.00 per domain name registration per year. In addition, registrars pay a \$0.25 fee per transaction to ICANN. (Section 7; Appendix G)	Escalates the maximum price each year beginning in 2007 by multiplying either the maximum price or the highest price charged during the previous year by 1.07 (a 7% yearly increase). (Section 7.3(d)) Excludes the registry-level transaction fee from the maximum price. (Section 7.3(g)) Results in a price increase (including the transaction fee) from \$6.25 to \$6.52 as of January 1, 2006 (\$6.00 + \$0.37 + \$0.15), and further increases as both the maximum price and the registry-level transaction fee increase. (Section 7.2 (d), (e); Section 7.3(g))
Expiration	November 10, 2007 (Section 4)	November 30, 2012 (Section 4.1)
Renewal	Awards VeriSign a four-year renewal term unless ICANN demonstrates that VeriSign is in material breach of the agreement or if the maximum price offered in the renewal proposal exceeds the price allowed under Section 22 of the agreement. Provides that a section on the procedure for subsequent agreement be included in the registry agreement for the renewal term. (Section 25)	Requires renewal upon expiration of the original term and "each later term" unless a court or arbitrator has made a final decision that VeriSign is in material breach of the agreement <u>and</u> VeriSign fails to comply with the decision of the court or arbitrator within 10 days. Does not include a provision allowing ICANN to require competitive bids if VeriSign seeks to increase prices in a renewal proposal. (Section 4.2)

<u>Provision</u>	<u>2001 .com Agreement</u>	<u>2005 .com Agreement</u>
Consensus Policies	Provides procedures for establishing consensus policies with which VeriSign would have to comply. Provides a procedure for VeriSign to challenge the presence of consensus. (Section 1)	Adds new limitations to what policies can be consensus policies. (Section 3.1(b)(v))
Registry Services	Defines registry services as "services provided as an integral part" of the registry, including, among other things, services required by consensus policies. (Section 9)	Redefines registry services. Creates a new category of registry services for "any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator." Excludes certain registry services including the category mentioned above from the agreement's maximum price provisions. (Section 3.1(d)) Provides a new process for considering proposed registry services. (Section 3.1(d)(iv)) Explicitly authorizes services that ICANN previously challenged as breaches of the 2001 .com agreement. (Appendix 9)
Traffic Data	No provision.	Allows VeriSign to make commercial use of traffic data regarding domain names, including for the purpose of promoting the sale of domain names. (Section 3.1(f))
Research and Development	Requires VeriSign to expend \$200 million for research, development, and infrastructure improvements to the .com, .net, and .org registries. Requires a substantial portion of the expenditures occur before November 10, 2007. Requires annual reports of spending. (Appendix W)	No provision.

<u>Provision</u>	<u>2001 .com Agreement</u>	<u>2005 .com Agreement</u>
Code of Conduct	<p>Prohibits VeriSign from showing any preference to any ICANN-accredited registrar. Requires registrars be given equivalent access to registry services. Prohibits VeriSign from registering domain names without using a registrar. Prohibits VeriSign from sharing certain information with its affiliated registrar. (Appendix I)</p>	<p>Prohibits VeriSign from acting as its own registrar. (Section 7.1(b)) Prohibits VeriSign from owning more than 15% of an ICANN-accredited registrar. (Section 7.1(c)) Does not include a separate Code of Conduct.</p>