

Date: 15 March 2016

Service Level Agreement for the IANA Numbering Services

With Revision Log and Explanatory Notes

[Public Draft v5.0 – 15 March 2016]

Revision Log

Version	Date	Description
1.0	1 May 2015	From internal document v2.6 (30 April 2015) - Added Revision Log and Explanatory Notes - Added DRAFT watermark - Otherwise unchanged.
2.0	5 August 2015	From v1.0 (1 May 2015) - Incorporated public comments up to 14 June 2015 - Updated Explanatory Notes
3.0	30 October 2015	From v2.0 (5 August 2015) - Incorporated public comments up to 31 August 2015 - Incorporated edits to operational portions of the SLA after informational meetings with ICANN staff
4.0	23 February 2016	From 3.0 (30 October 2015) - Updated based on feedback received from ICANN lawyers on 19 February 2016
5.0	15 March	From 4.0 (15 March 2015) - Updated following discussions with ICANN staff and lawyers on 10 March 2016

Explanatory Notes

On 15 January 2015, the Consolidated RIR IANA Stewardship Proposal (CRISP) Team submitted the Internet Numbers Community Proposal to the IANA Stewardship Coordination Group (ICG). One of the key elements of this proposal was to replace the current NTIA IANA agreement with a new contract, a Service Level Agreement (SLA), between the IANA Numbering Services Operator and the five RIRs.

A first draft of the SLA was produced and published for public comment at <http://www.nro.net/sla>. This second draft incorporates the comments received, and is now open for final public review and comment, to be submitted by 23:59 on 31 August 2015 UTC.

Comments can be submitted by any interested party to the ianaxfer@nro.net mailing list. Subscription to this list is open and available at: <https://www.nro.net/mailman/listinfo/ianaxfer>

Next Steps

During this final public comment period, the CRISP team is encouraged to review the draft SLA and its consistency with the principles of the Internet number community proposal.

ICANN in particular is encouraged to review the draft in detail, and to submit any and all final comments during this period.

All comments received by the deadline will be processed by the legal team of the RIRs and, as appropriate, included in a further and final draft of the SLA which will be presented to ICANN as the proposed final SLA. It is hoped that this document will be agreed by ICANN without further changes.

Contents

Article 1: Definitions and Interpretation	3
1.1 Definitions	3
1.2 Interpretation.....	3
Article 2: Separation of Policy Development and Operational Roles	5
2.1 Operational Role of the Operator.....	5
2.2 Priority of IANA Numbering Service.....	5
2.3 IANA Numbering Services Staff.....	5
Article 3: Joint obligations and rights of RIRs.....	6
3.1 Joint obligations of RIRs	6
3.2 Joint rights of RIRs.....	6
3.3 Exercise of powers	6
Article 4: Distribution of services provided to RIRs.....	7
4.1 Provision of IANA Numbering Services	7
4.2 The IANA Numbering Services.....	7
4.3 IANA Numbering Service Operational Requirements.....	7
4.4 Registry Data	8
Article 5: Fees	9
5.1 Obligation to reimburse cost	9
5.2 Reimbursement	9
Article 6: Transparency and accountability	10
6.1 Implementation of Global Policies	10
6.2 Obligation to Issue Reports	10
Article 7: Security requirements.....	11
7.1 Secure Systems.....	11
The Operator shall install and operate all computing and communications systems used to perform the IANA Numbering Services in accordance with best business and security practices. The Operator shall implement a secure system for authenticated communications between it and the RIRs when carrying out all IANA Numbering Services requirements. The Operator shall use commercially reasonable efforts to document practices and configuration of all systems.	11
7.2 Secure Systems Notification.....	11
The Operator shall implement and thereafter operate and maintain a secure notification system at a minimum, capable of notifying all relevant stakeholders of the discrete IANA Numbering Services, of such events as outages, planned maintenance, and new developments. In all cases, the Operator shall notify the RIRs of any outages.	11
7.3 Secure Data.....	11
7.4 Security Plan.....	11
Article 8: Review of IANA Numbering Services	12
8.1 Periodic Review	12
The RIRs may periodically perform a review of the IANA Numbering Services, namely the deliverables and reports articulated in Article 6.2.	12
8.2 Cooperation	12
During any review as identified in Article 8.1 above, the Operator is obligated to cooperate with and facilitate any such review.	12
Article 9: Failure to perform.....	13

9.1	Discussion period	13
9.2	Failure to Perform	13
Article 10:	Term and termination.....	14
10.1	Condition Precedent	14
10.2	Term.....	14
10.3	Right not to renew	14
10.4	Right to terminate	14
Article 11:	Continuity of operations	15
11.1	Transition framework	15
11.2	Submission of a transition plan	15
11.3	Transition to Successor Operator	15
Article 12:	Intellectual property rights and rights over data.....	16
12.1	Assignment of intellectual property rights and rights over data	16
12.2	Rights created in performance of Agreement	16
12.3	License to use intellectual property and rights over data	16
12.4	Further assurance.....	17
Article 13:	Resolution of disputes.....	18
13.1	Mediation	18
13.2	Arbitration of Disputes	18
13.3	Enforcement of arbitration award.....	20
13.4	Temporary injunctive relief.....	20
13.5	Further assurance.....	20
13.6	Final document	20
Article 14:	Governing law and jurisdiction	21
14.1	Governing law.....	21
14.2	Dispute resolution	21
Article 15:	Miscellaneous	22
15.1	Amendment	22
15.2	Entire Understanding	22
15.3	Further Assurance	22
15.4	Legal Costs and Expenses	22
15.5	Waiver and Exercise of Rights.....	22
15.6	Time of the Essence	22
15.7	Severability	22
15.8	Rule of Construction	23
15.9	Sub-Contracting	23

Service Level Agreement for the IANA Numbering Services

Date

2016

Parties

Internet Corporation for Assigned Names and Numbers

of 12025 Waterfront Drive, Suite 300, Los Angeles, CA 90094-2536, USA
("ICANN")

(In this agreement ICANN is referred to as "**Operator**")

AND

AFRINIC Ltd

of 11th Floor, Raffles Tower, Cybercity Ebene, Mauritius
("AFRINIC")

APNIC Pty Ltd, for the Asia Pacific Network Information Centre

of 6 Cordelia Street, South Brisbane, Queensland, 4101, Australia
("APNIC")

American Registry for Internet Numbers, Ltd

of 3635 Concorde Parkway, Suite 200, Chantilly, VA 20151-1125, USA
("ARIN")

Latin American and Caribbean Internet Addresses Registry

of Rambla República de México 6125 CP 11400, Montevideo, Uruguay
("LACNIC")

Réseaux IP Européens Network Coordination Centre

of Singel 258, 1016 AB Amsterdam, The Netherlands
("RIPE NCC")

(AFRINIC, APNIC, ARIN, LACNIC and RIPE NCC are, collectively, "**RIRs**")

Background

- A. ICANN, by virtue of a contract with the US Government (“IANA Function Contract”), has since 1998 been performing the functions of the Internet Assigned Numbers Authority (IANA) which includes allocating Internet number resources to the Regional Internet Registries (“RIRs”), which is a crucial element to the continued operation of the Internet.
- B. The Parties have determined that it is important to set forth their agreements with respect to the necessity of the provision of continuous coordination of the number resource administrative function.
- C. The Parties each recognize and affirm the respective roles and responsibilities of the others, with respect to Internet addressing and number resources, in particular:
 - (i) the role of ICANN as the entity responsible for maintaining the stability and global interoperability of the root of the Internet addressing system; and
 - (ii) the role of each of the RIRs as the entity responsible for maintaining the globally unique Internet address and AS number registries for its respective region.
- D. Both the IETF and ICANN have recognized the RIRs as representing the affected community making use of number resources.
- E. The unassigned portions of the Internet number registries are administered by the IANA, which has been a function performed by ICANN pursuant to an agreement with the IETF and per the IANA Function Contract.
- F. The Parties share a set of commitments to the health and wellbeing of the Internet, including:
 - (i) Ensuring that decisions related to the global technical coordination of Internet resources, are made in the public interest and are accountable and transparent;
 - (ii) Preserving the security, stability and resiliency of the Internet;
 - (iii) Promoting trust in the system of Internet governance;
 - (iv) Facilitating international participation in the technical coordination of Internet resources; and
 - (v) Preserving the multi-stakeholder, open, transparent and bottom-up policy development model for technical coordination that acts for the benefit of global Internet users.
- G. The Parties each commit individually to abide at all times by the results of their respective Policy Development Processes, as amended from time to time, including those of the Address Supporting Organization and those of each of the regional Internet numbering communities.
- H. The Parties agree to undertake and be subject to a transparent review of their adherence to these commitments, as set out in Article 8.

Article 1: Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the context indicates a contrary intention, the following terms have the following meanings:

Business Day: Monday to Friday other than public holiday in the principle place of business of the Operator.

Commencement Date: The date on which the Condition Precedent is satisfied.

Condition Precedent: The occurrence of any event or circumstance under which (i) the Operator is released from its obligations to provide services substantially similar to the IANA Numbering Services, under its contract with the National Telecommunications and Information Administration, United States Department of Commerce (“**DOC**”), dated on or about July 2012 (or any extension thereof) and (ii) the Operator has accepted the responsibility to provide the IANA Numbering Services at the specific direction of the DOC.

Global Policies: Global Internet number resource policies adopted in accordance with the Global Policy Development Process.

Global Policy Development Process (gPDP): The RIR Community’s process for the development of policy relating to management of the global Internet number registries. The gPDP is formally defined in Attachment A of the ICANN Address Supporting Organization Memorandum of Understanding, dated October 21, 2004 (referred to as ASO MoU).

IANA Number Registries: Refers collectively to the unicast IPv4, unicast IPv6, and ASN registries (as defined in IETF RFC 7249), as well as the associated IN-ADDR.ARPA and IP6.ARPA DNS zones.

IANA Numbering Services: The administration of the IANA Number Registries in accordance with Global Policies and any applicable and mutually acceptable and agreed upon guidelines and procedures, including allocation of Internet Number Resources to RIRs, the management of returned Internet Number Resources, general IANA Number Registries maintenance, and the administration of the unicast portion of the special-purpose “IN-ADDR.ARPA” and “IP6.ARPA” DNS zones.

Internet Number Resources: IP unicast addresses (IPv4, IPv6) and Autonomous System (AS) Numbers.

Parties: The RIRs and the Operator, collectively.

Party: The RIRs (collectively) or the Operator, individually.

RIR Community: Collaborative forum operating through decision-making processes that are bottom-up, inclusive and open to all parties interested in the IANA Numbering Services as well as in the services of the five RIRs.

1.2 Interpretation

In this Agreement, unless the context indicates a contrary intention:

- 1.2.1 headings are for convenience only and do not affect interpretation;
- 1.2.2 the expression "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- 1.2.3 a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- 1.2.4 a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- 1.2.5 a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- 1.2.6 words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- 1.2.7 a reference to a party, clause, article, schedule, exhibit, attachment or annexure is a reference to a party, clause, article, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- 1.2.8 if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 1.2.9 the expression "**includes**" in any form is not a word of limitation; and
- 1.2.10 a reference to "\$" or "**dollar**" is to United States Dollars.

Article 2: Separation of Policy Development and Operational Roles¹

2.1 Operational Role of the Operator

The Operator is required to perform the IANA Numbering Services in a stable and secure manner and in accordance with the Global Policies. The IANA Numbering Services are administrative and technical in nature. The Operator shall use its best efforts to coordinate with operators of other IANA services, if any.

2.2 Priority of IANA Numbering Service

Without reducing the Operator's obligations to meet the specifications for the provision of IANA Numbering Services under this Agreement, the Operator shall treat the IANA Numbering Services with equal priority as the other IANA functions that the Operator services, if any, and process all IANA Numbering Services requests as described in Article 4. Notwithstanding the foregoing, it is the RIRs expectation and Operator's obligation for Operator to leverage efficiencies and synergies, to the extent commercially reasonable, by virtue of Operator providing services to IANA functions other than the IANA Numbering Services.

2.3 IANA Numbering Services Staff

The Operator shall ensure that staff performing the IANA Numbering Services will not advocate any public position regarding policy development related to the IANA Numbering Services. Notwithstanding the foregoing, the Operator's staff may (a) communicate with interested and affected parties to inform ongoing policy discussions and may (b) request guidance or clarification as necessary for the performance of the IANA Numbering Services.

Article 3: Joint obligations and rights of RIRs

3.1 Joint obligations of RIRs

An obligation or a liability assumed by the RIRs in this Agreement binds the RIRs jointly, and each of them severally.

3.2 Joint rights of RIRs

Subject to Article 3.3 below, a right conferred on the RIRs in this Agreement benefits the RIRs jointly, and each of them severally.

3.3 Exercise of powers

The RIRs can only exercise their rights and/or powers under this Agreement by acting collectively and unanimously.

Article 4: Distribution of services provided to RIRs²

4.1 Provision of IANA Numbering Services

The Operator shall perform the IANA Numbering Services in accordance with the terms of this Agreement. By way of example and demonstrating the general expectation of the RIRs for the IANA Numbering Services, an outline and synopsis representing the current IANA business interaction with the RIRs is found in Annex ## of this Agreement. For clarity, in the event of any conflict between this Agreement and Annex ##, the terms of this Agreement shall prevail.

4.2 The IANA Numbering Services

The Operator shall operate the IANA Numbering Services as defined in Article 1 of this Agreement and in accordance with Article 2 of this Agreement.

4.3 IANA Numbering Service Operational Requirements

The Operator shall perform the IANA Numbering Service in accordance with the following requirements:

Process for handling of requests to the Operator by an RIR:

- (a) A requesting RIR will submit an initial request to the Operator by electronic mail (e-mail), or in a format mutually agreed upon in writing by all Parties. The request of an individual RIR under this Section 4.3 shall be held in confidence by ICANN and not disclosed to third parties (including the other RIRs) without the prior written consent of the requesting RIR, provided that ICANN may disclose such requests without the consent of the requesting RIR (i) to the extent disclosure thereof is required by applicable law or legal process and (ii) to a successor operator in connection with the transition of the IANA Numbering Services to such successor operator.
- (b) The Operator shall acknowledge receipt of the initial request within two (2) Business Days by return e-mail, or in a format mutually agreed upon in writing by all Parties. The date on which the Operator acknowledges the receipt of the initial requests will be referred to as the "Operator Acknowledgement Date". If, after its initial assessment, the Operator believes additional information is needed, the Operator shall send a specific and complete request for any additional required information to the requesting RIR within four (4) Business Days following the Operator Acknowledgement Date.
- (c) Following receipt of the initial request or additional information, whichever is later, the Operator shall take the following steps if it determines that it will fulfill the request:
 - (i) update the registry in accordance with the request within four (4) Business Days following the Operator Acknowledgement Date, or receipt of the additional information if requested, whichever is later;
 - (ii) send a detailed announcement to the requesting RIR as well as a simultaneous announcement to the other RIRs, informing them of the action taken;

- (iii) make modifications to the appropriate pages of the Operator's website and such other places from which the IANA Number Registries are accessible, may make announcements as provided for per Annex##.
- (d) If the Operator is for any reason unable or unwilling to fulfill a request within ten (10) Business Days following the Operator Acknowledgement Date or the receipt of the additional information if requested, whichever is later, the Operator shall provide the requesting RIR in writing, with a copy to the other RIRs (both of which notices may be transmitted simply by e-mail), a report apprising them of the status of the open request, and the reason the Operator is unable or unwilling to comply with the request. The Operator shall be obligated to provide updates to this RIR and the other RIRs periodically thereafter, including, but not limited to, when requested to do so by this RIR or the other RIRs, until the request has been satisfied. If the valid request in conformance with an applicable Global Policy is not satisfied thirty (30) Business Days following the Operator Acknowledgement Date or the receipt of the additional information if requested, whichever is later, the RIRs may assert this as a failure to perform if the requirements of Article 9 are satisfied.

4.4 Registry Data

The Operator acknowledges and agrees that any public registry data is, and shall remain, in the public domain. The Operator must make available to the RIRs upon request:

- 4.4.1 copies of, or links to, the publicly available text for all processes, performance standards, request templates and other pages used to support operations or provide context to reporting;
- 4.4.2 a copy of all registry data for IANA Number Registries, including copies of the IP6.ARPA and IN-ADDR.ARPA zone files, in a non-proprietary format;
- 4.4.3 a copy of all information about open requests and requests in progress in a non-proprietary format;
- 4.4.4 copies of any published reports and paper records it holds supporting the request histories in a non-proprietary format; and
- 4.4.5 other non-proprietary information necessary and essential for the provision of the IANA Numbering Services.

Article 5: Fees³

5.1 Obligation to reimburse cost

The RIRs shall reimburse the Operator for the cost of performing the IANA Numbering Services, including costs relating to staff, equipment and other matters incurred in the performance of the IANA Numbering Services. Parties acknowledge that the RIRs intend to continue the contribution to ICANN contemplated by the exchange of letters between ICANN and the NRO in 2007 and 2009 but reduce it by this reimbursement amount.

5.2 Reimbursement

The amount the RIRs shall reimburse the Operator pursuant to Article 5.1 above shall be Six Hundred Fifty Thousand U.S. Dollars (\$650,000.00 USD) per calendar year unless otherwise agreed to in writing by all Parties.

Article 6: Transparency and accountability⁴

6.1 Implementation of Global Policies

6.1.1 The Operator, in collaboration with the RIRs, shall:

- (a) post the existing Global Policies on its website; and
- (b) document the procedures, according to which it will apply these existing Global Policies and post them on its website.

6.1.2 Additionally the Operator, in collaboration with the RIRs shall:

- (a) post any new or amended Global Policy on its website within thirty (30) calendar days of the adoption of a new Global Policy or the amendment of an existing Global Policy; and
- (b) document the procedures, according to which it will implement a new Global Policy or the amendment of an existing Global Policy and post them on its website within thirty (30) calendar days from the adoption of this Global Policy or from the submission of any clarification needed by the Address Supporting Organization Address Council, whichever happens later.

6.2 Obligation to Issue Reports

6.2.1 Public Informational Performance Standards Reports – The Operator shall collaborate with the RIRs to develop informational reports for the IANA Numbering Services. The Performance Standards Metric Reports will be published by the Operator via the Operator's web site every month (no later than fifteen (15) calendar days following the end of each month) starting no later than six (6) months after the Commencement Date.

6.2.2 Numbering Service Survey (NSS) – The Operator shall collaborate with the RIRs to develop and conduct an annual service survey consistent with the performance standards for the IANA Numbering Services. No later than thirty (30) calendar days after conducting the survey, the Operator and the RIRs shall use commercially reasonable efforts to mutually agree on what, if any, actions should be taken based on the outcome of the survey.

6.2.3 Security and Systems Audit – The Operator shall conduct an annual audit of the systems used by the Operator in the implementation of the IANA Numbering Services (Article 4) for the previous year and provide an annual report to the RIRs. The Operator shall retain these records and shall provide specific audit record data to the RIRs upon request.

Article 7: Security requirements⁵

7.1 Secure Systems

The Operator shall install and operate all computing and communications systems used to perform the IANA Numbering Services in accordance with best business and security practices. The Operator shall implement a secure system for authenticated communications between it and the RIRs when carrying out all IANA Numbering Services requirements. The Operator shall use commercially reasonable efforts to document practices and configuration of all systems.

7.2 Secure Systems Notification

The Operator shall implement and thereafter operate and maintain a secure notification system at a minimum, capable of notifying all relevant stakeholders of the discrete IANA Numbering Services, of such events as outages, planned maintenance, and new developments. In all cases, the Operator shall notify the RIRs of any outages.

7.3 Secure Data

The Operator shall ensure the authentication, integrity, and reliability of the data in performing the IANA Numbering Services.

7.4 Security Plan

The Operator shall develop and execute a security plan that meets the requirements of this Agreement and Article 7. The Operator shall document in the security plan the process used to ensure information systems including hardware, software, applications, and general support systems have effective security safeguards, which have been implemented, planned for, and documented. The Operator shall deliver a copy of the plan to the RIRs after each annual update.

Article 8: Review of IANA Numbering Services⁶

8.1 Periodic Review

The RIRs may periodically perform a review of the IANA Numbering Services, namely the deliverables and reports articulated in Article 6.2.

8.2 Cooperation

During any review as identified in Article 8.1 above, the Operator is obligated to cooperate with and facilitate any such review.

Article 9: Failure to perform⁷

9.1 Discussion period

- 9.1.1 The resolution of any dispute between the Operator and the RIRs, arising out of or relating to this Agreement, whether arising before or after termination of this Agreement, shall include the following steps. If the RIRs believe that a Failure to Perform pursuant to the requirements of Article 9.2 has occurred, the RIRs and ICANN shall undertake the following steps prior to the RIRs asserting a Failure to Perform under Article 9.
- 9.1.2 An aggrieved Party must set out the dispute in writing ("**Dispute Notice**") and deliver it to the other Party, utilizing its reasonable efforts to deliver the Dispute Notice within thirty (30) calendar days after the aggrieved Party learns, or with reasonable efforts should have learned, of the cause for the dispute. If a Dispute Notice is not delivered within one (1) year after the aggrieved Party learns, or with reasonable efforts should have learned, of the cause for dispute, the aggrieved Party shall be deemed to have waived all of its rights under this Agreement relating to such dispute.
- 9.1.3 Following a Party's receipt of a Dispute Notice, the Parties shall attempt to reach a mutually agreeable resolution to the dispute through discussions. If the Parties are unable to resolve the dispute within sixty (60) calendar days after the date the Parties first meeting (whether in person or remotely), the dispute shall be brought to mediation pursuant to Article 13.1 below. If the RIRs are the aggrieved Party, the RIRs may assert a Failure to Perform pursuant to Article 9.2 below.

9.2 Failure to Perform

If, following the discussion period according to Article 9.1 the RIRs still determine that the Operator has materially failed to perform the IANA Numbering Services as required by this Agreement, including but not limited to those described in Articles 4, 6 and 8, or otherwise has materially breached the terms of this Agreement, then the RIRs may invoke the Resolution of Disputes procedures set forth in Article 13 of this Agreement. If, pursuant to Article 13, a determination is made that the Operator has materially failed to perform the IANA Numbering Services as required by this Agreement or otherwise has materially breached the terms of this Agreement, this Agreement may be terminated pursuant to Article 10 of this Agreement. For clarity the RIRs may invoke Resolution of Dispute procedures if the Operator has failed to perform due to restrictions of applicable law.

Article 10: Term and termination⁸

10.1 Condition Precedent

- 10.1.1 This Agreement has no force or effect unless the Condition Precedent is satisfied on or before 1 October 2017.
- 10.1.2 If the Condition Precedent is not satisfied on or before 1 October 2017, then this Agreement automatically comes to an end on that date, and both Parties are released from all obligations under this Agreement.

10.2 Term

The term of this Agreement shall commence as of the Commencement Date and unless earlier terminated in accordance with this Article 10 of this Agreement, the term of this Agreement shall continue for five (5) years after the Commencement Date. This Agreement shall renew automatically for consecutive five (5) year term unless earlier terminated or not renewed in accordance with this Article 10 of this Agreement.

10.3 Right not to renew

Either Party may elect not to renew this Agreement by providing a notice of non-renewal to the other Party at least twelve (12) months prior to the expiration of the then-current term (a “**Non-Renewal Notice**”). Any Party that delivers a Non-Renewal Notice may, in its discretion, withdraw such notice at any time prior to the expiration of the then-current term, in which case this Agreement shall renew in accordance with Section 10.2, provided that any such withdrawal shall be by mutual agreement of the Parties and occur in a timely manner that insures the continuity and security of operations.

10.4 Right to terminate

Notwithstanding the foregoing, if at any time during the term of this Agreement the Operator is deemed to have failed to perform pursuant to Article 9 above, then the Operator shall have thirty (30) calendar days from the date of the decision of a majority of the arbitrators as described in Article 13.2.8 to remedy any such failure to perform (referred to as “Cure Period”). If, in the sole judgment of the RIRs, the Operator has failed to remedy any such failure to perform following the conclusion of the Cure Period, the RIRs may, in their sole discretion, immediately terminate this Agreement.

Article 11: Continuity of operations⁹

11.1 Transition framework

The Operator shall develop a transition framework for the transition of the IANA Numbering Services to the successor operator pursuant to Section 11.3 while maintaining continuity and security of operations. This transition framework shall be presented by the Operator to the RIRs within one hundred eighty (180) calendar days following the Commencement Date.

11.2 Submission of a transition plan

Upon notice of non-renewal or upon commencement of arbitration process in accordance with Article 13.2 the RIRs may notify ICANN of their selection of a successor operator. Following such notification (if any), the Operator shall work cooperatively with the RIRs and the selected successor operator to develop a detailed plan (based on the transition framework) for transitioning the IANA Numbering Services to the successor operator while maintaining continuity and security of operations. This detailed plan shall be presented by the Operator to the RIRs and the successor operator within ninety (90) calendar days after RIRs have informed the Operator of the selected successor.

11.3 Transition to Successor Operator

11.3.1 The Operator recognizes that the IANA Numbering Services are vital to the RIRs and must be continued without interruption and that, upon the termination of this Agreement, a successor operator shall continue them. The Operator agrees to exercise best efforts and cooperation to effect an orderly and efficient transition to a successor operator and, notwithstanding Article 5.2, the RIRs shall reimburse the Operator for all pre-approved in writing expenses reasonably incurred by the Operator in connection therewith.

11.3.2 The Operator shall, upon the RIRs' written notice,

- (a) exercise best efforts to effect an orderly transition for up to ninety (90) calendar days after this Agreement terminates; and
- (b) negotiate in good faith a plan with a successor operator to determine an orderly transition.

Article 12: Intellectual property rights and rights over data¹⁰

12.1 Assignment of intellectual property rights and rights over data

- 12.1.1 Except as otherwise provided in this Article 12, each of ICANN and the RIRs shall own and retain, respectively, all intellectual property rights owned or controlled by such Party, and all rights, title and interest in and to any and all discoveries, inventions and other subject matter (whether patentable or not) conceived, reduced to practice or otherwise discovered by its or its affiliates' employees, consultants or agents.
- 12.1.2 To the extent that the Operator possesses rights in and to the IANA Number Registries or other intellectual property rights used exclusively in the performance of the IANA Numbering Services by the Operator in accordance with this Agreement, Operator hereby agrees to not assert any such rights against any lawful use of such rights by a third party.
- 12.1.3 To the extent that the Operator possesses any rights over published IANA Number Registry data necessary for the performance of the IANA Numbering Services by the Operator in accordance with this Agreement, Operator hereby releases and dedicates any and all right, title, and interest in and to such IANA Number Registry data to the public domain.
- 12.1.4 To the extent that the Operator possesses any non-proprietary rights over unpublished IANA Number Registry data necessary for the performance of the IANA Numbering Services by the Operator in accordance with this Agreement, Operator hereby releases and dedicates any and all right, title, and interest in and to such IANA Number Registry data rights to the RIRs.

If requested by the RIRs in connection with transitioning the IANA Numbering Services to a successor operator pursuant to the terms of this Agreement, the Operator shall cooperate with the RIRs to identify and transfer to the successor operator any non-proprietary and unpublished IANA Number Registry data necessary for the performance of the IANA Numbering Services.

12.2 Rights created in performance of Agreement

To the extent the Operator, in the performance of its obligations under this Agreement, creates any IANA Number Registry data necessary for the performance of the IANA Numbering Services over which there are rights, such creation shall be deemed to be on behalf of the RIRs and shall be a "work for hire" as defined under applicable law.

12.3 License to use intellectual property and rights over data

- 12.3.1 In the performance of this Agreement and in order to meet its obligations under this Agreement, the Operator may be provided the use of intellectual property or rights over data through a license from the holder of such intellectual property assets. Except as expressly stated herein, this Agreement does not grant the Operator any other intellectual property rights or data rights in such intellectual property assets.
- 12.3.2 In the performance of this Agreement, and in order to meet its obligations under this Agreement, the Operator may create intellectual property in certain works. Notwithstanding the Operator's rights in any such intellectual property, Operator shall maintain all records, metadata, request data, historical information,

correspondence and any other information essential and necessary to the successful performance of the IANA Numbering Services in a non-proprietary format and shall hold no intellectual property rights in such data and information.

12.4 Further assurance

The Operator shall execute such further documents and do any and all such further things as may be necessary to implement and give effect to this Article 12.

Article 13: Resolution of disputes¹¹

13.1 Mediation

- 13.1.1 If a dispute is not resolved pursuant to Article 9.1, the Parties shall attempt to resolve the dispute through mediation in accordance with this Article 13.1.
- 13.1.2 A Party shall submit a dispute to mediation by written notice to the other Party ("**Mediation Notice**" and the date that the Dispute Notice is delivered to the aggrieving Party, the "**Mediation Notice Date**"). The mediation shall be conducted by a single mediator selected by the Parties. If the Parties cannot agree on a mediator within twenty (20) calendar days of the Mediation Notice Date, the Parties will promptly select a mutually acceptable mediation provider entity, which entity shall, as soon as practicable following such entity's selection, designate a mediator who has a technical and legal or judicial background, familiarity with application of California contract law and experience with the Internet industry and Internet governance. The mediator must confirm in writing that he or she is not, and will not become during the term of the mediation, an employee, partner, executive officer, director, consultant, advisor or security holder of any of the Parties. If such confirmation is not provided by the appointed mediator, then a replacement mediator shall be appointed pursuant to this Article 13.1.2.
- 13.1.3 The mediator shall conduct the mediation in accordance with the rules and procedures that the mediator determines following consultation with the Parties. The Parties shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach a mutually agreeable resolution of the dispute. The mediation shall be treated as a settlement discussion and shall therefore be confidential and may not be used against either Party in any later proceeding relating to the dispute, including any arbitration pursuant to Article 13.2. The mediator shall not testify for either Party in any later proceeding relating to the dispute.
- 13.1.4 Each Party shall bear its own costs in the mediation. The Parties shall share equally the fees and expenses of the mediator. Each Party shall treat information received from the other Party pursuant to the mediation that is appropriately marked as confidential as confidential information of such other Party.
- 13.1.5 If the Parties have not resolved the dispute for any reason by the date that is sixty (60) calendar days following the date the mediator is selected pursuant to Article 13.1.2, the dispute may then proceed to arbitration pursuant to Article 13.2 below.

13.2 Arbitration of Disputes

- 13.2.1 The Parties agree that if any dispute arising in respect of this Agreement cannot be resolved under Article 13.1, then the dispute shall be referred, at the election of either Party, to arbitration. All disputes arising out of or in connection with this Agreement shall be finally settled under the International Chamber of Commerce's Rules of Arbitration ("Arbitration Rules") by arbitrators appointed in accordance with this Agreement and those Arbitration Rules, or such other rules as all Parties agree in writing shall be utilized. The Parties will carry out

arbitrations subject to the terms of this Article 13.2:

- 13.2.2 There shall be three (3) arbitrators (referred to as the “Arbitral Tribunal”), each of whom must permanently reside in a different RIR region, selected as follows:
- (a) The Parties shall first attempt to mutually agree upon the selection of three (3) arbitrators. In the event that the parties are unable to mutually agree upon the selection of three (3) arbitrators, then the International Chamber of Commerce shall be asked to provide a list of potential arbitrators, with at least nine (9) potential arbitrators, with no more than three (3) from a single RIR region (referred to as the “Arbitrator List”). The International Chamber of Commerce shall only place on the Arbitrator List, arbitrators who have technical and legal or judicial backgrounds, familiarity with application of California contract law, and experience with the Internet industry and Internet governance.
 - (b) Each Party shall propose three (3) persons from the International Chamber of Commerce’s nominees that they would like to serve as arbitrators (“**Proposed Arbitrators**”). If both Parties propose the same three (3) Proposed Arbitrators, then those Proposed Arbitrators shall constitute the Arbitral Tribunal. If the Parties propose two (2) of the same Proposed Arbitrators, then those Proposed Arbitrators shall be named to the Arbitral Tribunal and shall select a third person from the Arbitrator List who was not a Proposed Arbitrator to be the third member of the Arbitral Tribunal. If the Parties propose one (1) of the same Proposed Arbitrators, then that Proposed Arbitrator shall be named to the Arbitral Tribunal and each Party shall select one (1) of its other Proposed Arbitrators to be named to the Arbitral Tribunal. If the Parties Propose none of the same Arbitrators, then each Party will be able to strike arbitrator candidates from the Arbitrator List in alternating order so that, after both Parties have exercised their strikes, three (3) arbitrators from three (3) different RIR regions remain on the list and will constitute the Arbitral Tribunal.
 - (c) The members of the Arbitral Tribunal shall elect their chairperson
- 13.2.3 The members of the Arbitral Tribunal must confirm in writing that they are not, and will not become during the term of the arbitration, an employee, partner, executive officer, director, consultant, advisor or security holder of any of the Parties. If such confirmation is not provided by an arbitrator, then a replacement arbitrator shall be appointed pursuant to Article 13.3.2.
- 13.2.4 The arbitration shall be conducted in accordance with the Arbitration Rules, except to the extent that the Arbitration Rules are supplemented by the terms of this Agreement;
- 13.2.5 The arbitration shall take place in Geneva, Switzerland, or such other location as is agreed by the Parties (the “Arbitration Location”); the arbitrator and the Parties shall use electronic communication wherever reasonably possible;
- 13.2.6 The language of the arbitration will be English;
- 13.2.7 The arbitrators shall make a decision based upon the Parties' rights and obligations under this Agreement and any rules and principles of the Governing Law of this Agreement, as defined in Article 14.1;
- 13.2.8 Subject to the timing requirements of the Arbitral Tribunal and the Arbitration Rules, the Parties shall use commercially reasonable efforts to ensure that the

arbitration is completed and an award is rendered within one-hundred twenty (120) calendar days after the sooner of:

- (a) the last signature by a Party or the Arbitral Tribunal to the Terms of Reference in accordance with Article 23(2) of the Arbitration Rules or
- (b) notification of the Parties that the Terms of Reference have been approved by the International Court of Arbitration of the International Chamber of Commerce in accordance with Article 23(3) of the Arbitration Rules;

13.2.9 A decision of a majority of the arbitrators will be final and binding on the disputing Parties.

13.2.10 All Parties are to bear their own legal costs in connection with the arbitration. The remaining costs of the arbitration are to be paid as determined by the Arbitral Tribunal, bearing in mind the result of the arbitration and the Arbitration Rules.

13.3 Enforcement of arbitration award

Any Party shall have the right to institute litigation in a court to enforce an arbitration award under this Agreement. Such litigation may be filed in a court located in the Arbitration Location, but the Parties shall also have the right to enforce any judgment arising from such litigation in any court of competent jurisdiction.

13.4 Temporary injunctive relief

Any party to this Agreement shall have the right to seek, either prior to the dispute being committed to arbitration under this Article 13 or during the pendency of an arbitration, temporary or preliminary injunctive relief from a court for the purpose of preserving its rights pending completion of arbitration proceedings, which shall not be a waiver of the arbitration agreement in Paragraph 13.3. Any court action under this Article 13.5 shall occur in a court of the Arbitration Location, subject to the right of the parties to mutually agree to a different court.

13.5 Further assurance

Except as provided in paragraph 13.4, and litigation to require a Party to cooperate in the arbitration or interim relief, the Parties shall not pursue litigation against one another concerning any dispute arising in respect of this Agreement.

13.6 Final document

Each Party shall be given the opportunity to file a final document with the Arbitral Tribunal before the close of arbitration in support of its factual and legal contentions.

Article 14: Governing law and jurisdiction

14.1 Governing law

This Agreement shall be governed by and construed in accordance with the State and Federal laws of the jurisdiction in which Operator's principal office is located as of the Commencement Date, which for clarity, is the State of California, United States of America.

14.2 Dispute resolution

The Parties shall submit all their disputes arising out of or in connection with this Agreement in accordance with Article 13 above.

Article 15: Miscellaneous

15.1 Amendment

This Agreement may only be varied or replaced by a document duly executed by the Parties.

15.2 Entire Understanding

This Agreement contains the entire understanding between the Parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect; provided, however, that this Agreement does not supersede the ASO MoU or the letters exchanged between the Operator and the Number Resource Organization in 2007 and 2009.

15.3 Further Assurance

Each Party must promptly execute and deliver all documents and take all other action necessary or desirable to give effect to, perfect or complete the transactions contemplated by this Agreement.

15.4 Legal Costs and Expenses

Each Party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

15.5 Waiver and Exercise of Rights

15.5.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

15.5.2 No Party will be liable for any loss or expenses incurred by the other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

15.6 Time of the Essence

Time is of the essence as regards all dates, periods of time and times specified in this Agreement.

15.7 Severability

If any of the provisions of this Agreement is invalid or unenforceable:

15.7.1 the invalidity or unenforceability does not affect the operation, construction or interpretation of any other provision of this Agreement;

15.7.2 the Parties must negotiate in good faith and use their best endeavours to reach agreement on the substitution for any such provisions which will result in equity between the parties being restored so that, as nearly as may be practicable, the Parties will in all respects be in no different position from that which would have been obtained had there been no such invalidity or unenforceability; and

- 15.7.3 for all purposes, the invalid or unenforceable provisions are treated as being severed from this agreement.

15.8 Rule of Construction

In the interpretation of this Agreement, no rule of construction applies to the disadvantage of the Party preparing the document on the basis that it put forward this Agreement or any part of it.

15.9 Sub-Contracting

- 15.9.1 Operator shall not sub-contract or delegate to a third party entity for its provision of the IANA Numbering Services under this Agreement without the prior written consent of the RIRs, such consent not to be unreasonably withheld.
- 15.9.2 Notwithstanding the foregoing, any sub-contracting or delegation approved by a Party shall not release to other Party from, or diminish, its contractual obligations under this Agreement and the sub-contracting or delegating Party shall remain fully liable to the RIRs under this Agreement.

Signing Page

EXECUTED by the parties as an agreement.

SIGNED for and on behalf of the)
INTERNET CORPORATION FOR)
ASSIGNED NAMES AND NUMBERS by)
###, its ### :)

SIGNED for and on behalf of **AFRINIC**)
LTD by ###, its ### :)
)
)

SIGNED for and on behalf of the **APNIC**)
PTY LTD, FOR THE ASIA PACIFIC)
NETWORK INFORMATION CENTRE by)
###, its ### :)

SIGNED for and on behalf of the)
AMERICAN REGISTRY FOR INTERNET)
NUMBERS, LTD by ###, its ### :)
)

SIGNED for and on behalf of the **LATIN**)
AMERICAN AND CARIBBEAN)
INTERNET ADDRESSES REGISTRY by)
###, its ### :)

SIGNED for and on behalf of the)
RÉSEAUX IP EUROPÉENS NETWORK)
COORDINATION CENTRE by ###, its)
:)

ANNEX ## - CURRENT IANA BUSINESS PROCESSES

¹ **Principle 1 from CRISP proposal**

Separation of Policy Development and Operational Roles

The IANA Numbering Services Operator will merely execute the global policies adopted according to the global Policy Development Process defined in the ASO MoU.

Relevant section(s) in the NTIA contract: C.2.4, C.2.5

C.2.4 The Contractor is required to perform the IANA functions, which are critical for the operation of the Internet's core infrastructure, in a stable and secure manner. The IANA functions are administrative and technical in nature based on established policies developed by interested and affected parties, as enumerated in Section C.1.3. The Contractor shall treat each of the IANA functions with equal priority and process all requests promptly and efficiently.

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

² **Principle 2 from CRISP proposal**

Description of Services Provided to RIRs

The IANA Numbering Services Operator will maintain the IANA Number Registries and provide IANA Numbering Services to the RIRs in accordance with the specific processes and timelines described in this section of the agreement.

Relevant section(s) in the NTIA contract: C.2.9.3

C.2.9.3 Allocate Internet Numbering Resources --The Contractor shall have responsibility for allocated and unallocated IPv4 and IPv6 address space and Autonomous System Number (ASN) space based on established guidelines and policies as developed by interested and affected parties as enumerated in Section C.1.3. The Contractor shall delegate IP address blocks to Regional Internet Registries for routine allocation typically through downstream providers to Internet end-users within the regions served by those registries. The Contractor shall also reserve and direct allocation of space for special purposes, such as multicast addressing, addresses for private networks as described in RFC 1918-Address Allocation for Private Internets, and globally specified applications.

³ **Principle 11 from CRISP proposal**

Fee

The fee is based on costs incurred by the IANA Numbering Services Operator in providing the IANA Numbering Service.

Relevant section(s) in the NTIA contract: B.2

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

⁴ **Principle 3 from CRISP proposal**

Obligation to Issue Reports on Transparency and Accountability

The IANA Numbering Services Operator will commit to certain obligations so as to perform the function as expected by the Internet Number Community and will be obliged to periodically issue reports illustrating its compliance with the Internet Number Community's expectations.

Relevant section(s) in the NTIA contract: C.2.6, C.2.7, C.2.8

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

C.2.7 Responsibility and Respect for Stakeholders -- Within six (6) months of award, the Contractor shall, in collaboration with all interested and affected parties as enumerated in Section C.1.3, develop for each of the

IANA functions a process for documenting the source of the policies and procedures and how it will apply the relevant policies and procedures for the corresponding IANA function and post via a website.

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

⁵ **Principle 4 from CRISP proposal**

Security, Performance, and Audit Requirements

The IANA Numbering Services Operator will commit to specific security standards, metric requirements, and audit requirements and will be obliged to periodically issue reports illustrating its compliance with them.

Relevant section(s) in the NTIA contract: C.3, C.4, C.5

C.3 SECURITY REQUIREMENTS

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

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

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

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

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

C.4 PERFORMANCE METRIC REQUIREMENTS

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

C.4.2 Monthly Performance Progress Report -- The Contractor shall prepare and submit to the COR a performance progress report every month (no later than 15 calendar days following the end of each month) that contains statistical and narrative information on the performance of the IANA functions (i.e., assignment of technical protocol parameters; administrative functions associated with root zone management; and allocation of Internet numbering resources) during the previous calendar month. The report shall include a narrative summary of the work performed for each of the functions with appropriate details and particularity. The report shall also describe major events, problems encountered, and any projected significant changes, if any, related to the performance of requirements set forth in C.2.9 to C.2.9.4.

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

C.4.4 Performance Standards Reports -- The Contractor shall develop and publish reports for each discrete IANA function consistent with Section C.2.8. The Performance Standards Metric Reports will be published via a website every month (no later than 15 calendar days following the end of each month) starting no later than six (6) months after date of contract award.

C.4.5 Customer Service Survey (CSS) -- The Contractor shall collaborate with NTIA to develop and conduct an annual customer service survey consistent with the performance standards for each of the discrete IANA functions. The survey shall include a feedback section for each discrete IANA function. No later than 30 days after conducting the survey, the Contractor shall submit the CSS Report to the COR.

C.4.6 Final Report -- The Contractor shall prepare and submit a final report on the performance of the IANA functions that documents standard operating procedures, including a description of the techniques, methods, software, and tools employed in the performance of the IANA functions. The Contractor shall submit the report to the CO and the COR no later than 30 days after expiration of the contract.

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

C.5 AUDIT REQUIREMENTS

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

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

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

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

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

⁶ Principle 5 from CRISP proposal

Review of the IANA Operations

The RIRs will perform reviews to assess whether the IANA Numbering Services Operator complies with all requirements described in the agreement whenever they deem appropriate. The IANA Numbering Services Operator will be obliged to facilitate this review.

⁷ Principle 6 from CRISP proposal

Failure to Perform

If the IANA Numbering Services Operator fails to perform as agreed, there will be specific consequences. One of these consequences may be termination of the agreement.

Relevant section(s) in the NTIA contract: E.2, I.67

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

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

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

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

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

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

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

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

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

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

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

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

(f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (h) of this clause, the cost of replacement or correction shall be determined under the Payments Under Time-and-Materials and Labor-Hour Contracts clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Contractor shall not tender for

acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g)

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

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

(ii) Terminate this contract for default.

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

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

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

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

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

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

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

1.67 1352.237-71 SECURITY PROCESSING REQUIREMENTS - LOW RISK CONTRACTS (APR 2010)

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

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

(1) Contracts more than 180 days – National Agency Check and Inquiries (NACI) (2) Contracts less than 180 days – Special Agency Check (SAC)

(c) Investigative requirements for IT Service Contracts are:

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

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

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

(1) Official legal status in the United States;

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

(3) Obtained advance approval from the servicing Security Officer in consultation with the Office of Security headquarters.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁸ Principle 7 from CRISP proposal

Term and Termination

RIRs will be able to periodically review the agreement and evaluate whether they want to renew the agreement. Either party may terminate the agreement with reasonable prior notice. Relevant section(s) in the **NTIA contract: Page 2 of Award, I.51, I.52, I.53**

⁹ Principle 8 from CRISP proposal

Continuity of Operations

If, at the end of the term, the RIRs decide to sign an agreement for provision of IANA Numbering Services by a different party, the previous IANA Numbering Services Operator will be obliged to ensure an orderly transition of the function while maintaining continuity and security of operations. Relevant section(s) in the **NTIA contract: C.7.3 and I.61**

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

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

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

(1) Furnish phase-in training; and

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

(b) The Contractor shall, upon the Contracting Officer's written notice,
(1) furnish phase-in, phase-out services for up to 90 days after this contract expires and
(2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

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

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

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

¹⁰ **Principle 9 from CRISP proposal**

Intellectual Property Rights and Rights Over Data

The contract will implement the RIR community expectations as described in section III.A.2.

Relevant section(s) in the NTIA contract: H.4, H.5

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

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

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

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

(b) Allocation of Rights.

(1) The Government shall have—

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

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

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

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

(c) Copyright—

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

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

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

(2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause.

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

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

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

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

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

¹¹ Principle 10 from CRISP proposal

Resolution of Disputes

Disputes between the parties related to the SLA will be resolved through arbitration.