H. Draft Registrar/Registry Contract

NeuStar will establish appropriate legal relationship's with usTLD Accredited Registrars to provide the accountability and administrative certainty required to maintain the integrity and stability of the usTLD.

As previously noted in Section G, an important part of its work to centralize and enhance the usTLD delegated space, NeuStar intends to establish comprehensive contractual arrangements with all of the usTLD Registrar Delegated Managers. The agreements will establish clear and comprehensive parameters for the management of the enhanced usTLD Registrars, as well as set basic requirements and obligations binding on NeuStar as the usTLD Administrator and the Registrars. In addition, because the usTLD Administrator will not have a direct contractual arrangement with the registrants, these contracts will include "flow through obligations", such as the Nexus requirement or the obligation to provide accurate Whois data, that the Registrar will be required to enforce in its contracts with its registrants. These legal relationships will help provide the accountability and administrative certainty necessary to maintain the stable operation of the usTLD.

HIGHLIGHTS

- **Agreement modeled after ICANN Registry – Registrar business model to encourage rapid competitive acceptance of usTLD**

- **Establishes mutual obligations of usTLD Administrators and expanded usTLD Registrars**

- **Establishes Administrator performance specifications and performance credits to ensure Administrator compliance**

Recognizing the significant and useful effort that has gone into the development of similar agreements in the ICANN context, these agreements will be patterned after the Registry-Registrar agreement developed for the new gTLDs by ICANN. As with the agreement with delegated managers, these agreements contain certain modifications necessary to address the dynamics and specific requirements of the usTLD. Such changes have, however, been kept to a minimum. Because the shared registry business model developed for the gTLD space has proven successful and given the similarity of the expanded usTLD to the gTLDs operated under the purview of ICANN, even fewer modifications are warranted The Registry-Registrar Agreement is attached hereto. This document will be a standard document signed by all usTLD registrars and is subject to further revision and final approval by the Contracting Officer.

usTLD ADMINISTRATOR-REGISTRAR AGREEMENT

This usTLD Administrator-Registrar Agreement is made and effective as of _____, 200___, by and between NeuStar, Inc., a Delaware corporation, with its principal place of business located at 1120 Vermont Avenue, Suite 400, Washington, D.C. 20005 ("usTLD Administrator"), and [Registrar's name], a [jurisdiction and type of organization], with its principal place of business located at [Registrar's location] ("Registrar").

WHEREAS, usTLD Administrator has been appointed to be the administrator of the usTLD by the U.S. Department of Commerce, National Institute of Standards and Technology to operate a shared registration system, TLD nameservers, and other equipment for the ".us" top-level domain;

WHEREAS, multiple registrars will provide Internet domain name registration services within the .us top-level domain pursuant to usTLD Administrator-Registrar Agreements substantially similar to this Agreement;

WHEREAS, Registrar wishes to act as a registrar for domain names within the .us top-level domain.

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, usTLD Administrator and Registrar, intending to be legally bound, hereby agree as follows:

1. **DEFINITIONS**

    1.1.   "Agreement" means this usTLD Administrator-Registrar Agreement between usTLD Administrator and Registrar, as such may be amended from time to time in the future.

    1.2.   The "APIs" are the application program interfaces by which Registrar may interact, through the XRP, with the usTLD System.

    1.3.   "Confidential Information" means all information and materials, including, without limitation, computer software, data, information, databases, protocols, reference implementation and documentation, and functional and interface specifications provided by one party to this Agreement (the "Disclosing Party") to the other party (the "Receiving Party") 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 fifteen (15) days of the disclosure of the confidential nature of such information.

1.4. "DNS" means the Internet domain name system.

1.5. The "Effective Date" shall be the date first set forth above.

1.6. "NIST" means the U.S. Department of Commerce, National Institute of Standards and Technology (or any successor agency or governmental unit charged with ultimate responsibility for the country code top-level domain name for the United States).

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

1.8. "Registered Name" refers to a domain name within the domain of the usTLD, about which usTLD Administrator or an affiliate engaged in providing usTLD Services maintains data in a usTLD Database, arranges for such maintenance, or derives revenue from such maintenance.

1.9. "Registrant" means the holder of a Registered Name.

1.10. The word "Registrar" when appearing with an initial capital letter, refers to [Registrar Name], a party to this Agreement.

1.11. The word "registrar" when appearing without an initial capital letter, refers to an entity that contracts with Registrants and with the usTLD Administrator to provide domain name registration services and collects registration data about the Registrants and submits registration information for entry in the usTLD Database and is party to an Accreditation Agreement with usTLD Administrator.

1.12. "Registrar Services" means services provided by a registrar in connection with the usTLD under this Agreement, and includes contracting with Registrants, collecting registration data about the Registrants, and submitting registration information for entry in the usTLD Database.

1.13. The "Registrar Tool Kit" shall mean the Tool Kit set forth in Exhibit A.

1.14. "Term" means the term of this Agreement, as set forth in Subsection 8.1.

1.15. A "TLD" means a top-level domain of the DNS.

1.16. In order to have to required "U.S. Nexus", a Registrant must be: (a) a natural person (i) who is a citizen or permanent resident of the United States of America or any of its possessions or territories, or (ii) whose primary place of domicile is in the United States of America or any of its possessions, or (b) an entity or organization that is (i) incorporated within one of the fifty (50) U.S. states, the District of Columbia, or any of the United States possessions or territories or (ii) organized or otherwise constituted under the laws of a state of the United States of America, the District of Columbia or any of its possessions or territories, or (c) an entity or organization (including a federal, state, or local government of the

United States, or a political subdivision thereof) that has a bona fide presence in the United States. "usTLD" means the .us TLD.

1.17. . "usTLD Agreement" means the usTLD Agreement between usTLD Administrator and NIST dated [date of usTLD Agreement] for the administration and operation of the usTLD.

1.18. "usTLD Database" means a database comprised of data about one or more DNS domain names within the domain of the usTLD that is used to generate either DNS resource records that are published authoritatively or responses to domain-name availability lookup requests or Whois queries, for some or all of those names.

1.19. "usTLD Policy Council" shall mean the United States Policy Advisory Council established by the usTLD Administrator under the usTLD Agreement

1.20. "usTLD Services" means services provided as an integral part of the operation of the usTLD.

1.21. The "usTLD System" means the registry system operated by usTLD Administrator for Registered Names in the usTLD.

1.22. "XRP" means the extensible registry-registrar protocol used by the usTLD System.

Other terms used in this Agreement as defined terms shall have the meanings ascribed to them in the context in which they are defined.

2.   OBLIGATIONS OF USTLD ADMINISTRATOR

2.1. **Access to usTLD System.** Throughout the Term of this Agreement, usTLD Administrator shall provide Registrar with access as a registrar to the usTLD System. Nothing in this Agreement entitles Registrar to enforce any agreement between usTLD Administrator and NIST, and Registrar shall not be deemed to be a third-party beneficiary under the usTLD Agreement.

2.2. **Maintenance of Registrations Sponsored by Registrar.** Subject to the provisions of this Agreement, and requirements under the usTLD Agreement, usTLD Administrator shall maintain the registrations of Registered Names sponsored by Registrar in the usTLD System so long as Registrar has paid the Fees required by Subsection 4.1 below and this Agreement remains in effect.

2.3. **Provision of Tool Kits; Limited License.**

2.3.1. Registrar Tool Kit. No later than five (5) business days after the Effective Date, usTLD Administrator shall provide to Registrar a copy of the Registrar Tool Kit, which shall provide sufficient technical specifications to permit registrar interface with the usTLD System and employ its

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features that are available to Registrars, <u>provided that</u>, if the Effective Date occurs prior to the date that usTLD Administrator has made the usTLD Tool Kit available to .us registrars generally ("Availability Date"), usTLD Administrator shall provide to Registrar a copy of the usTLD Tool Kit, no later than five (5) business days after the Availability Date. Subject to the terms and conditions of this Agreement, UsTLD Administrator hereby grants Registrar and Registrar accepts a non-exclusive, non-transferable, worldwide limited license to use for the Term and purposes of this Agreement, all components owned by or licensed to UsTLD Administrator in and to the RRP, APIs, any reference client software and any other intellectual property included in the Registrar Tool Kit, as well as updates and redesigns thereof, to provide domain name registration services in the usTLD only and for no other purpose.

2.3.2. <u>Limited License</u>. Subject to the terms and conditions of this Agreement, including without limitation Registrar's timely payment of all Fees, usTLD Administrator hereby grants Registrar and Registrar accepts a non-exclusive, non-transferable, worldwide limited license to use for the Term and purposes of this Agreement the XRP, APIs and any reference client software included in the Registrar Tool Kits, as well as any updates and redesigns thereof, for providing domain name Registrar Services in the usTLD only and for no other purpose.

2.4. **Changes to usTLD System.** usTLD Administrator may in its discretion from time to time make modifications to the XRP, APIs, or other software or materials licensed hereunder that will modify, revise or augment the features of the usTLD System. usTLD Administrator will use commercially reasonable efforts to provide Registrar with at least ninety (90) days notice prior to the implementation of any material changes to the XRP, APIs or software licensed hereunder. usTLD Administrator shall have no obligation under this Agreement to update, modify, maintain, or repair any XRP, APIs, or other software materials (or any updates or redesigns thereto) licensed under this Agreement to Registrar.

2.5. **Engineering and Customer Service Support; Performance Specifications.** usTLD Administrator shall provide Registrar with engineering and customer service support as set forth in <u>Exhibit B</u>.

2.6. **Handling of Personal Data.** usTLD Administrator shall notify Registrar of the purposes for which Personal Data submitted to usTLD Administrator by Registrar is collected, the intended recipients (or categories of recipients) of such Personal Data, and the mechanism for access to and correction of such Personal Data. usTLD Administrator shall take commercially reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction.

2.7. **NIST/usTLD Administrator Requirements.** usTLD Administrator's obligations hereunder are subject to modification at any time as the result of NIST-mandated

requirements and NeuStar policies developed by usTLD Administrator through its United States Policy Advisory Council ("usTLD Policy Council") from time to time. Notwithstanding anything in this Agreement to the contrary, Registrar shall comply with any such NIST requirements or the usTLD Policy Council (the Council) policies in accordance with the stated timelines.

3. OBLIGATIONS OF REGISTRAR

3.1. **Accredited Registrar.** On or prior to the Effective Date of this Agreement, Registrar shall enter into an accreditation agreement with usTLD Administrator ("Accreditation Agreement"), the form of which is attached hereto as Exhibit C, and during the Term of this Agreement, Registrar shall maintain in full force and effect its accreditation by usTLD Administrator as a registrar for the usTLD.

3.2. **Registrar Responsibility for Customer Support; Participation in Marketing Campaigns/Community Outreach Programs.** As provided for in the Accreditation Agreement, Registrar shall provide (i) support to accept and process orders for Registered Names from proposed Registrants and (ii) customer service (including domain name record support) and billing and technical support to Registrants. In addition, Registrar will use commercially reasonable efforts to market, either directly or through authorized re-sellers, Registered Names to potential Registrants and to solicit such potential customers to register for Registered Names, and Registrar will cooperate with usTLD Administrator in marketing campaigns or community outreach programs that usTLD Administrator may commence from time to time.

3.3. **Registrar's Registration Agreement; U.S. Nexus Requirements.** At all times during the Term of this Agreement while it is sponsoring the registration of any Registered Name within the usTLD System, Registrar shall have in effect an electronic or paper registration agreement with each Registrant (a "Registration Agreement"). Registrar shall, if so requested by usTLD Administrator from time to time, promptly furnish to usTLD Administrator a copy of each general form of Registration Agreement it uses with Registrants. Registrar shall include in each Registration Agreement those terms specifically required by this Agreement and the Accreditation Agreement and other terms that are consistent with Registrar's obligations to usTLD Administrator under this Agreement and the Accreditation Agreement and that will ensure ongoing compliance with both such agreements. Without limiting the foregoing, the Registration Agreement shall require each Registrant to certify, under penalty of perjury, that it has, and shall continue to have, a bona fide U.S. Nexus in order to qualify to register and maintain its use of a Registered Name.

3.4. **Indemnification Required of Registrants.** In its Registration Agreement with each Registrant, Registrar shall require such Registrant to indemnify, defend and hold harmless usTLD Administrator, and its directors, officers, employees, representatives, agents, affiliates, and stockholders from and against any and all claims, suits, actions, other proceedings, damages, liabilities, costs and expenses

of any kind, including without limitation reasonable legal fees and expenses, arising out of or relating to the Registrant's (i) domain name registration and (ii) use of any Registered Name. Each Registration Agreement shall further require that this indemnification obligation survive the termination or expiration of the Registration Agreement.

3.5. **Data Submission Requirements.** As part of its registration and sponsorship of Registered Names in the usTLD, Registrar shall submit complete data (and update such data) as required by technical specifications of the usTLD System that are made available to Registrar from time to time and the Accreditation Agreement. Registrar hereby grants usTLD Administrator a non-exclusive, non-transferable, limited license to such data for propagation of and the provision of authorized access to the TLD zone files and as otherwise required in usTLD Administrator's operation of the usTLD.

3.6. **Security.** Registrar agrees to develop and employ in its domain name registration business all necessary technology and restrictions to ensure that its connection to the usTLD System is secure. All data exchanged between Registrar's system and the usTLD System shall be protected to avoid unintended disclosure of information. Registrar agrees to employ the necessary measures to prevent its access to the usTLD System granted hereunder from being used to (1) allow, enable, or otherwise support, the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than its own existing customers; or (2) enable high volume, automated, electronic processes that send queries or data to the systems of usTLD Administrator, any other registry operated under an agreement with usTLD Administrator, or any other registrar, except as reasonably necessary to register domain names or modify existing registrations in compliance with this Agreement. In addition, usTLD Administrator may from time to time require other reasonable security provisions to ensure that the usTLD System is secure, and Registrar will comply with all such provisions.

3.7. **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 XRP and the APIs in conjunction with Registrar's systems. Registrar agrees that in the event of significant degradation of the usTLD System or other emergency, usTLD Administrator may, in its sole discretion, temporarily suspend access to the usTLD System. Such temporary suspensions shall be applied in a non-arbitrary manner and shall apply fairly to any registrar similarly situated, including any affiliates of usTLD Administrator that serve as registrars.

3.8. **Time of Entry of Domain Name Registration.** Registrar agrees that in the event of any dispute concerning the time of the entry of a domain name registration into the usTLD Database, the time shown in the usTLD System records shall control.

3.9. **Change in Registrar Sponsoring Domain Name.** Registrar may assume sponsorship of a Registrant's existing domain name registration from another registrar by following the policy set forth in Exhibit D. When transferring sponsorship of a Registered Name to or from another registrar, Registrar shall comply with the requirements of Exhibit D.

3.10. **Compliance with Terms and Conditions.** Registrar shall comply with, and shall include in each Registration Agreement all of the following:

3.10.1. Any NIST standards, policies, procedures, and practices for which usTLD Administrator has monitoring responsibility in accordance with the usTLD Agreement or other arrangement with NIST and/or ICANN, including without limitation ICANN policies pertaining to open county code TLDs (unless otherwise provided in the usTLD Agreement); and

3.10.2. Operational standards, policies, procedures, and practices for the usTLD as set forth in the usTLD Agreement and as established from time to time by usTLD Administrator and/or the Council in a non-arbitrary manner and applicable to all registrars generally, and consistent with NIST's standards, policies, procedures, and practices. Among usTLD Administrator's current operational standards, policies, procedures, and practices are those set forth in Exhibit E. Additional or revised usTLD Administrator operational standards, policies, procedures, and practices for the usTLD shall be effective upon thirty (30) days notice by usTLD Administrator to Registrar.

3.11. **Restrictions on Registered Names; Compliance with Law.** In addition to complying with NIST, 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. Further, Registrar shall abide by applicable laws and governmental regulations.

3.12 **Resellers.** Registrar may, in its discretion from time to time, designate one or more resellers that will be permitted to provide Registrar Services consistent with those permitted of Registrar under this Agreement. Registrar shall enter into a written agreement with each of its re-sellers (a "Reseller Agreement"), which will ensure compliance with this Agreement and the Accreditation Agreement and include sufficient terms and conditions to obligate each re-seller to abide by all terms and conditions and all Registrar obligations set forth in this Agreement (provided that re-sellers will *not* be entitled to appoint their own resellers) and the Accreditation Agreement. Registrar shall be primarily liable for all acts or omissions of its resellers, and usTLD Administrator's obligations under this Agreement and the Accreditation Agreement shall not be increased due to Registrar's appointment of re-sellers. Promptly following the end of each calendar year during the Term of this Agreement (but in no event later than January 30), Registrar shall provide to usTLD Administrator a complete written list of all of its current resellers. Further, in its Reseller Agreement with each re-

seller, Registrar shall require such reseller to indemnify, defend and hold harmless usTLD Administrator, and its directors, officers, employees, representatives, agents, affiliates, and stockholders from and against any and all claims, damages, liabilities, costs and expenses of any kind, including without limitation reasonable legal fees and expenses, arising out of or relating to any activities of such sub-registrar. Each such Reseller Agreement shall further require that this indemnification obligation survive the termination or expiration of that agreement.

4.   **FEES**

4.1.   **Amount of usTLD Administrator Fees.** Registrar agrees to pay usTLD Administrator the fees set forth in <u>Exhibit F</u> for initial and renewal registrations and other services provided by usTLD Administrator to Registrar (collectively, "Fees"). usTLD Administrator reserves the right to revise the Fees prospectively upon thirty (30) days notice to Registrar, provided that such adjustments are consistent with the usTLD Agreement.

4.2.   **Payment of usTLD Administrator Fees.** In advance of incurring Fees, Registrar shall establish a letter of credit, deposit account, or other credit facility accepted by usTLD Administrator, which acceptance will not be unreasonably withheld so long as payment is assured. All Fees are due immediately upon receipt of applications for initial and renewal registrations, or upon provision of other services provided by usTLD Administrator to Registrar. Payment shall be made via debit or draw down of the deposit account, letter of credit or other credit facility. usTLD Administrator shall provide monthly invoices to the Registrar.

4.3.   **Non-Payment of Fees.** In the event Registrar has insufficient funds deposited or available through the letter of credit or credit facility with usTLD Administrator or otherwise fails to pay Fees when due, usTLD Administrator may do any or all of the following: (a) stop accepting new initial or renewal registrations from Registrar; (b) delete the domain names associated with any negative balance incurred from the usTLD Database; and (c) pursue any other remedy permitted under this Agreement or at law or in equity.

5.   **CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

5.1.   **Use of Confidential Information.** During the Term of this Agreement, a Disclosing Party may be required (or elect) to disclose Confidential Information to the Receiving Party. Each party's use and disclosure of the Confidential Information shall be subject to the following terms and conditions:

5.1.1. The Receiving Party shall treat as strictly confidential, and use all reasonable efforts to preserve the secrecy and confidentiality of, all Confidential Information, including implementing reasonable physical security measures and operating procedures.

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5.1.2. The Receiving Party agrees that it will use any Confidential Information solely for the purpose of exercising its rights or performing its obligations under this Agreement and for no other purposes whatsoever.

5.1.3. The Receiving Party shall make no disclosures whatsoever of any Confidential Information of the Disclosing Party to others; provided, however, that if the Receiving Party is a corporation, partnership, or other organization, 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 confidentiality terms of this Agreement.

5.1.4. The Receiving Party shall not modify or remove any confidentiality legends and/or copyright notices appearing on any Confidential Information.

5.1.5. The Receiving Party agrees not to prepare, or claim any rights to, any derivative works based on the Confidential Information.

5.1.6. Notwithstanding the foregoing, this Subsection 5.1 imposes no obligation upon the parties with respect to information that (a) is disclosed to a third party 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 (as shown by documentary records to that effect); or (d) is independently developed by the Receiving Party without use of, or reference to, the Confidential Information; or (e) is made generally available by the Disclosing Party without restriction on disclosure; or (f) Receiving Party receives in good faith from a third party who is not, directly or indirectly, under an obligation of confidentiality to Disclosing Party with respect to same.

5.1.7. In the event the Receiving Party is required by law, regulation or court order to disclose any Confidential Information, Receiving Party will promptly notify Disclosing Party in writing prior to making any such disclosure in order to facilitate Disclosing Party seeking a protective order or other appropriate remedy from the proper authority, at the Disclosing Party's expense. Receiving Party agrees to cooperate with Disclosing Party in seeking such order or other remedy. Receiving Party further agrees that if Disclosing Party is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, it will furnish only that portion of the Confidential Information which is legally required.

5.1.8. The Receiving Party's duties under this Subsection 5.1 shall expire five (5) years after the expiration or termination of this Agreement, or earlier upon written agreement of the parties.

5.2. **Intellectual Property.**

5.2.1. Each party will continue to independently own its intellectual property, including all patents, patent applications, copyrights, trademarks, trade names, service marks, know-how, trade secrets, data, proprietary processes, software, and all other forms of intellectual property, and nothing in this agreement shall confer any ownership right whatsoever to one party in the intellectual property of the other party. In addition, usTLD Administrator, or its suppliers and/or licensees, as the case may be,shall own all right, title and interest in and to the XRP, API's, Registrar Tool Kits, and any software incorporated into the usTLD System, or any component of any of the foregoing, as well as all intellectual property appurtenant thereto.

5.2.2. Subject only to the limited licenses set forth in Subsections 2.3.2, 3.5, and 5.1.2 above, no commercial use rights or any licenses of any kind under or to any patent, patent application, copyright, trademark, trade name, service mark, know-how, trade secret, data, proprietary process, software or any other intellectual proprietary rights of any kind are granted by one party to the other party by this Agreement, or by virtue of any disclosure of any Confidential Information to a Receiving Party under this Agreement.

6. **INDEMNITIES AND LIMITATION OF LIABILITY**

6.1. **Indemnification.** Registrar, at its own expense and within thirty (30) days after presentation of a demand by usTLD Administrator under this Section, will indemnify, defend and hold harmless usTLD Administrator and its directors, officers, employees, representatives, agents, affiliates, and stockholders (along with usTLD Administrator, each an "Indemnified Person"), against any claim, suit, action, other proceeding of any kind (a "Claim") brought against that Indemnified Person based on, arising from, or relating in any way to: (i) any product or service of Registrar; (ii) any agreement, including Registrar's dispute policy, with any Registrant or re-seller; or (iii) 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, or any other business conducted by Registrar; provided, however, that in any such case: (a) usTLD Administrator or any other Indemnified Person provides Registrar with reasonable prior notice of any such Claim, and (b) upon Registrar's written request, usTLD Administrator or any other Indemnified Person will provide to Registrar all available information and assistance reasonably necessary for Registrar to defend such Claim; provided further that Registrar reimburses usTLD Administrator and such other Indemnified Persons for their actual and reasonable costs incurred in connection

with providing such information and assistance. Registrar will not enter into any settlement or compromise of any such indemnifiable Claim with respect to a particular Indemnified Person without the prior written consent of such Indemnified Person, which consent shall not be unreasonably withheld. Registrar will pay any and all costs, damages, liabilities, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by usTLD Administrator and other Indemnified Persons in connection with or arising from any such indemnifiable Claim.

6.2. **Limitation of Liability.** EXCEPT WITH RESPECT TO REGISTRAR'S INDEMNIFICATION OBLIGATIONS SET FORTH IN ELSEWHERE IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES FOR ANY VIOLATIONS OF, OR CAUSES OF ACTION RELATING TO OR ARISING FROM, THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

6.3 **Performance Credits.** In the event usTLD Administrator fails to meet the performance specifications set forth in Appendix G of this Agreement, usTLD Administrator shall provide a credit to Registrar in an amount equal to its proportionate share of applicable performance credits set forth in Exhibit H of this Agreement. Such performance credits shall constitute the sole and exclusive remedy available to Registrar with regard to usTLD Administrator's failure to meet the performance specifications.

7. **DISPUTE RESOLUTION**

7.1. **Dispute Resolution; Governing Law.** Any and all disputes of any nature 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 pursuant to the rules of the American Arbitration Association ("AAA"). The arbitration shall be conducted in the English language and shall occur in the District of Columbia, Washington, D.C., USA. There shall be three (3) arbitrators: each party shall choose one arbitrator, who together will select a third; if the two arbitrators are not able to agree on a third arbitrator within fifteen (15) calendar days of the designation of the second arbitrator, the AAA shall choose the third. The parties shall bear the costs of the arbitration in equal shares, subject to the right of the arbitrators to reallocate the costs in their award as provided in the AAA rules. The parties shall bear their own attorneys' fees in connection with the arbitration, and the arbitrators may not reallocate the attorneys' fees in conjunction with their award. The arbitrators shall render their decision within ninety (90) calendar days of the selection of the third arbitrator. Any litigation brought to enforce an arbitration award shall be brought in a Commonwealth or federal court in the Eastern District of the Commonwealth of Virginia, 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 a party during the pendency of an arbitration, each party shall have the right to seek temporary or preliminary injunctive relief from the arbitration panel or any court of competent jurisdiction located in the Eastern District of the Commonwealth of Virginia, USA, which shall not be a waiver of this arbitration agreement. This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Virginia (without regard to any rules or principles of conflicts of law that might look to any jurisdiction outside Virginia).

8. TERM AND TERMINATION

8.1. **Term of the Agreement; Revisions.** The Term of this Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with the provisions of this Agreement, shall expire on the last expiration of the usTLD Agreement. In the event that revisions to usTLD Administrator's approved form of usTLD Administrator-Registrar Agreement (such as this one) are approved or adopted by NIST from time to time, Registrar will either execute an amendment substituting the revised agreement in place of this Agreement or, at its option exercised within thirty (30) days after receiving notice of such amendment, terminate this Agreement immediately by giving written notice to usTLD Administrator. In the event that usTLD Administrator does not receive such executed amendment or notice of termination from Registrar within such thirty (30) day period, Registrar shall be deemed to have accepted the provisions of such revised usTLD Administrator-Registrar Agreement, and as such, shall be bound by all the terms and conditions of such revised usTLD Administrator-Registrar Agreement. usTLD Administrator will use commercially reasonable efforts to post such revised form of usTLD Administrator-Registrar Agreement on its US website at least thirty (30) days prior to its effective date.

8.2. **Termination.** This Agreement may be terminated as follows:

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

8.2.2. Termination at Option of Registrar. Registrar may terminate this Agreement at any time by giving usTLD Administrator thirty (30) days written notice of termination.

8.2.3. Termination Upon Loss of Registrar's Accreditation. This Agreement shall immediately terminate in the event Registrar's accreditation by usTLD Administrator is terminated or expires without renewal.

8.2.4. <u>Termination in the Event of Termination of usTLD Agreement.</u> This Agreement shall immediately terminate in the event the usTLD Agreement is terminated or expires without entry of a subsequent usTLD Agreement with NIST and this Agreement is not assigned under Subsection 9.1.1 below.

8.2.5. <u>Termination in the Event of Insolvency or Bankruptcy.</u> This Agreement will automatically and immediately terminate if the Registrar is adjudged insolvent or bankrupt, or if proceedings are instituted by or against Registrar seeking relief, reorganization or arrangement under any laws relating to insolvency or bankruptcy, or seeking any assignment for the benefit of creditors, or seeking the appointment of a receiver, liquidator or trustee of Registrar's property or assets or the liquidation, dissolution or winding up of Registrar's business.

8.3. **Effect of Termination.** Upon the expiration or termination of this Agreement for any reason:

8.3.1. usTLD Administrator will complete the registration of all domain names processed by Registrar prior to the effective date of such expiration or termination, provided that all Registrar's payments to usTLD Administrator for Fees are current and timely.

8.3.2. Registrar shall immediately transfer its sponsorship of Registered Names to another registrar in compliance with any procedures established or approved by usTLD Administrator.

8.3.3. All Confidential Information in the possession of the Receiving Party shall be immediately returned to the Disclosing Party.

8.3.4. All Fees and any other amounts owing to usTLD Administrator shall become immediately due and payable.

8.4. **Survival.** In the event of termination of this Agreement, the following shall survive: (i) Subsections 2.6, 3.5, 5.1, 5.2, 6.1, 6.2, 7.1, 8.3.3, 8.3.4, 8.4, 9.2, 9.3.3, 9.5, 9.6, 9.8, 9.9, 9.10, 9.11 and 9.13 and (ii) the indemnification obligations of (a) Registrants under Subsection 3.4 and (b) resellers under Subsection 3.12. Neither party shall be liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with its terms.

9. MISCELLANEOUS

9.1. **Assignments.**

9.1.1. <u>Assignment to Successor usTLD Administrator.</u> In the event the usTLD Agreement is terminated (and such termination is deemed final under the usTLD Agreement) or expires without entry by usTLD Administrator and NIST of a subsequent registry agreement, usTLD Administrator's rights

under this Agreement may be assigned to a entity with a subsequent registry agreement covering the usTLD upon NIST's giving Registrar written notice within sixty (60) days of the termination or expiration, provided that the subsequent usTLD Administrator assumes all or substantially all of the duties of usTLD Administrator under this Agreement.

9.1.2. <u>Assignment in Connection with Assignment of usTLD Agreement with NIST</u>. In the event that the usTLD Agreement for the usTLD is validly assigned, usTLD Administrator's rights under this Agreement shall be automatically assigned to the assignee of the usTLD Agreement, provided that the assignee assumes all or substantially all of the duties of usTLD Administrator under this Agreement.

9.1.3. <u>Other Assignments</u>. Except as otherwise expressly provided in this Agreement, the provisions of this Agreement shall inure to the benefit of and be binding upon, the successors and permitted assigns of the parties. Neither party shall assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld; <u>provided, however</u>, that usTLD Administrator shall have the right to assign all its rights and delegate all its duties under this Agreement to an affiliated organization without such consent.

9.2. **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 (return receipt requested), by courier or express delivery service, by e-mail (against of receipt of confirmation of delivery) or by telecopier (against receipt of answerback confirming delivery) during business hours to the address or telecopier number, or e-mail address set forth beneath the name of such party below or when delivery as described above is refused by the intended recipient, unless such party has given a notice of a change of address in writing pursuant to the foregoing. Notwithstanding the foregoing, notice shall be deemed properly given from usTLD Administrator to Registrar at such time as usTLD Administrator posts any notice, update, modification or other information on its U.S. website, so long as such notice, update, modification or other information is intended for all registrars generally (e.g., NIST-mandated revisions to the form usTLD Administrator-Registrar Agreement).

If to Registrar:

_____
_____
_____
_____
_____

with copy to:

    _____
    _____
    _____
    _____
    _____
    _____

If to usTLD Administrator:

NeuStar, Inc.
1120 Vermont Avenue, N.W.
Suite 400
Washington, D.C. 20005
Attn: VP of Policy and Industry Relations
phone:_____
fax: _____

with a copy to:

NeuStar, Inc.
1120 Vermont Avenue, N.W.
Suite 400
Washington, D.C. 20005
Attn: General Counsel
phone:_____
fax: _____

9.3. **Representations and Warranties.**

9.3.1. <u>Registrar</u>. Registrar represents and warrants that: (1) it is an organization (e.g., corporation, partnership, limited liability company, government agency) duly formed, validly existing and in good standing under the laws of the _____, (2) it has all requisite 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 usTLD Administrator, (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 all its obligations under this Agreement.

9.3.2. <u>usTLD Administrator</u>. usTLD Administrator 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 usTLD Administrator, and (4) no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by usTLD Administrator in order for it to enter into and perform all its obligations under this Agreement.

9.3.3. Disclaimer of Warranties. THE XRP, APIs, REGISTRAR TOOLKIT, usTLD SYSTEM AND ANY COMPONENT THEREOF ARE PROVIDED "AS-IS" AND WITHOUT ANY WARRANTY OF ANY KIND. usTLD OPERATOR 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. usTLD OPERATOR DOES NOT WARRANT THAT THE XRP, APIs, REGISTRAR TOOLKIT, usTLD SYSTEM OR ANY COMPONENT THEREOF WILL MEET REGISTRAR'S REQUIREMENTS, OR THAT THE OPERATION OF XRP, APIs, REGISTRAR TOOLKITS, THE usTLD SYSTEM OR ANY COMPONENT THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE XRP, APIs, REGISTRAR TOOLKIT, usTLD SYSTEM OR ANY COMPONENT THEREOF WILL BE CORRECTED. FURTHERMORE, usTLD OPERATOR DOES NOT WARRANT NOR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE XRP, APIs, REGISTRAR TOOLKITS, usTLD SYSTEM OR ANY COMPONENT THEREOF OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. SHOULD THE XRP, APIs, REGISTRAR TOOLKIT, THE usTLD SYSTEM OR ANY COMPONENT THEREOF PROVE DEFECTIVE, REGISTRAR ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION OF REGISTRAR'S OWN SYSTEMS AND SOFTWARE.

In the event of any conflict in this Agreement between this Subsection 9.3.3 and any other provision, this Subsection 9.3.3 will govern and control.

9.4. **Insurance.** During the Term of this Agreement (including any renewal terms), Registrar shall have in place US$500,000 in comprehensive legal liability insurance from a reputable insurance provider with an A.M. Best rating of "A" or better. Such insurance shall be used to indemnify and hold harmless usTLD Administrator and its employees, directors, officers, representatives, agents, affiliates, and stokholders from all costs and damages (including without limitation reasonable attorneys' fees) which it may suffer by reason of Registrar's

failure to indemnify usTLD Administrator as provided above; <u>provided, however</u>, that Registrar's indemnity obligations under this Agreement shall ***not*** deemed to be limited by the amount of such insurance. Registrar shall provide a copy of the insurance policy to usTLD Administrator upon usTLD Administrator's request and shall name usTLD Administrator and the other Indemnified Persons as additional insureds under that policy.

9.5. **Third-Party Beneficiaries.** The parties expressly agree that NIST is an intended third-party beneficiary of this Agreement. Otherwise, this Agreement shall not be construed to create any obligation by either party to any non-party to this Agreement, including any Registrant or re-seller. Registrar acknowledges that nothing in this Agreement shall confer upon Registrar or any person or entity the status of an intended third-party beneficiary of the usTLD Agreement.

9.6. **Relationship of the Parties.** Nothing in this Agreement shall be construed as creating an employer-employee or agency relationship, a partnership or a joint venture between the parties.

9.7. **Force Majeure.** Except for the non-payment of Fees, neither party shall be liable to the other for any loss or damage resulting from any cause beyond its reasonable control (a "Force Majeure Event") including, but not limited to, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government or other competent authority, compliance with any statutory obligation or executive order, industrial disputes of any kind (whether or not involving either party's employees), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, equipment or facilities shortages which are being experienced by providers of telecommunications services generally, or other similar force beyond such Party's reasonable control, and acts or omissions of persons for whom neither party is responsible. Upon occurrence of a Force Majeure Event and to the extent such occurrence interferes with either party's performance of this Agreement, such party shall be excused from performance of its obligations (other than payment obligations) during the first six (6) months of such interference, provided that such party uses commercially reasonable efforts to avoid or remove such causes of nonperformance as soon as possible.

9.8. **Amendments.** Except as otherwise provided herein, no amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by authorized signatories of both parties.

9.9. **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. Neither 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.

9.10. **Attorneys' Fees.** Except as otherwise may be provided in Subsection 7.1 above, 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 a 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).

9.11. **Construction; Severability.** The parties agree that any rule of construction to the effect that ambiguities are to be resolve against the drafting party shall not be applied in the construction or interpretation of this Agreement. Unless otherwise stated in this Agreement, references to a number of days shall mean consecutive calendar days. In the event that any clause or portion thereof in this Agreement is for any reason held to be invalid, illegal or unenforceable, the same shall not affect any other portion of this Agreement, as it is the intent of the parties that this Agreement shall be construed in such fashion as to maintain its existence, validity and enforceability to the greatest extent possible. In any such event, this Agreement shall be construed as if such clause or portion thereof had never been contained in this Agreement, and there shall be deemed substituted therefore such provision as will most nearly carry out the intent of the parties as expressed in this Agreement to the fullest extent permitted by applicable law.

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

9.13. **Entire Agreement.** This Agreement (including its exhibits, which form a part of it) constitutes the entire agreement between the parties concerning the subject matter of this Agreement 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. In the event of any conflict between the terms of this usTLD Administrator-Registrar Agreement and the Accreditation Agreement, the usTLD Administrator-Registrar Agreement shall govern and control.

9.14. **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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

NeuStar, Inc.   [Name of Registrar]

By: _____   By: _____
Name: _____   Name: _____
Title: _____   Title: _____

Exhibit A

REGISTRAR TOOL KIT

usTLD Administrator-Registrar Software Development Kit includes, but is not limited to the following:

- Reference client implementations:
  - Java
  - C++
  - PERL
- Interface definition: XML Schema
- usTLD Administrator Operational Profile (our extensions)
- Authentication and Encryption guidelines
- XRP "feature freeze" drafts
- XRP test plan and coverage matrix
- Java, C++ and PERL API documentation

Exhibit B

ENGINEERING AND CUSTOMER SERVICE SUPPORT

During the Term of this Agreement, usTLD Administrator will provide reasonable telephone and electronic customer support to Registrar, not Registrants or prospective customers of Registrar, for non-technical issues solely relating to the usTLD System and its operation. usTLD Administrator will provide Registrar with a telephone number and e-mail address for such support during implementation of the XRP, APIs and any reference client software included in the Registrar Tool Kit. While e-mail and FAQs are the primary method of help, usTLD Administrator will provide support on a 7-day/24-hour basis. usTLD Administrator 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.

The usTLD Administrator provides a clear, concise and efficient deliberation of customer support responsibilities. Registrars provide support to registrants (i.e., Registrants) and registries (like usTLD Administrator) provide support for registrars. This structure allows the usTLD Administrator to focus its support on the highly technical and administratively complex issues that arise between the usTLD Administrator and the Registrar and to focus on the system operations supporting the usTLD.

Technical Help Systems

usTLD Administrator will provide its registrars with the following types of technical support:

- Web-based self-help services, including:
    - Knowledge bases
    - Frequently asked questions
    - White papers
    - Downloads of XRP client software
    - Support for email messaging
- Telephone support from a central Help Desk
- Fee-based consulting services.

Web Portal

usTLD Administrator will implement a secure Web-based multimedia portal to help support registrar operations. To obtain access to these Web-based services, a registrar must register its registrants usTLD Administrator, and must have implemented our security features, including SSL encryption, log in with user ID and password, and digital certificates for authentication. The home page of the web portal will include a notice to registrars of planned outages for database maintenance or installation of software upgrades. usTLD Administrator will use commercially reasonable effort to post this notification at least thirty (30) days prior to the event in addition to active notification including phone calls and email. usTLD Administrator will also record outage notifications in the help desk database to facilitate compliance with the performance

specifications (<u>Exhibit B-2</u>). Finally, seven (7) days and again two (2) days prior to the scheduled event, usTLD Administrator will use both an email and a Web-based notification to remind registrars of the outage.

Non-affiliated registrars and the general Internet community may obtain generic information from usTLD Administrator's public website, which will describe the TLD service offerings and list of registrars, including Registrar, providing domain-name services.

Central Help Desk

In addition to implementing the website, usTLD Administrator will provide telephone support to registrars through a central Help Desk. Access to the help desk telephone support is through an automatic call distributor that routes each call to the next available customer support specialist. usTLD Administrator will authenticate callers by using caller ID and by requesting a pre-established pass phrase that is different for each registrar. Requests for assistance may also come to the Help Desk via email, either directly or via the secure website. The Help Desk's three tiers of support are:

Tier-1 Support. Telephone support to registrars who normally are calling for help with customer domain-name problems and such other issues such as XRP implementation or billing and collection. Problems that can't be resolved at Tier 1 are escalated to Tier 2.

Tier-2 Support. Support provided by members of the technical support team, who are functional experts in all aspects of domain-name registration. In addition to resolving escalated Tier 1 problems with XRP implementation and billing and collection, Tier 2 staff provides technical support in system tuning and workload processing.

Tier 3 Support. Complex problem resolution provided by on-site maintenance technicians, third party systems and software experts, and vendors, depending on the nature of the problem.

In turn, the Help Desk uses an automated software package to collect call statistics and record service requests and trouble tickets in a help desk database. The help desk database documents the status of requests and tickets. Each customer-support and technical support specialist uses this problem management process to respond to trouble tickets with a troubleshooting, diagnosis, and resolution procedure and a root-cause analysis.

Escalation Policy

usTLD Administrator's escalation policy defines procedures and timelines for elevating problems either to functional experts or to management for resolution if they are not resolved within the escalation-policy time limits. The following table is an overview of the escalation policy.

Level	Description	Escalation Policy	Notification
I	Catastrophic outage affecting overall registry operations	Data-center manager escalates to usTLD Administrator management and Disaster-Recovery Team if not resolved in 15 minutes	Web portal and e-mail notifications to all Registrars within 15 minutes; updates every 30 minutes
II	Systems outage affecting one or two registrar sessions but not the entire system	Systems engineer escalates to data-center manager if not resolved in one hour	Web-portal notification to all registrars; hourly updates
III	Technical questions	Help Desk customer-support specialist escalates to the systems engineer if not resolved in two hours	Hourly updates to registrar via e-mail
IV	Basic questions	Help Desk customer-support specialist escalates to the systems engineer if not resolved within four hours	Hourly updates to registrar via e-mail

Staffing

Initially, usTLD Administrator will staff its Help Desk with a complement of customer service specialists. usTLD Administrator will add staff as necessary to respond to incoming requests within the performance specification guidelines. Customer-service specialists will obtain assistance from usTLD Administrator's technical staff for any problems that cannot be resolved in one (1) phone call.

Test and Evaluation Facility

usTLD Administrator will establish an operational test-and-evaluation facility that will be available for Registrars to test their client XRP system. usTLD Administrator's technical-support team, which consists of functional experts in the processes and technologies for domain-name registration, will support the registrars' testing.

Once each new registrar is satisfied that its system is compatible with the usTLD System, it will schedule a formal acceptance test that will be monitored by usTLD Administrator's system engineer. After a registrar has passed the acceptance test, usTLD Administrator will issue its user id, passwords, and digital certificates, and the registrar can then begin operations.

Customer Satisfaction Survey

To determine the satisfaction of registrars with usTLD Services, usTLD Administrator will implement a Web-based customer-satisfaction survey that will consist of a set of survey questions with responses ranging from one to five on the Likert Scale. usTLD Administrator will tabulate the results and plans to publish them on the website periodically.

To further verify the quality of usTLD Administrator's customer services, usTLD Administrator anticipates commissioning a bi-annual customer-satisfaction survey by an independent third party.

<u>**Exhibit C**</u>

ACCREDITATION AGREEMENT

[Include Signed Registrar Accreditation Agreement]

POLICY ON TRANSFER OF SPONSORSHIP OF
REGISTRATIONS BETWEEN NON-SPONSORING REGISTRARS

A. Holder-Authorized Transfers.

Registrar Requirements.

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

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

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

>> a) The specific form of the authorization is at the discretion of each gaining registrar.

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

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

>> a) A bilateral written agreement between the parties.

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

>> c) A court order.

> 3) Request, by the transmission of a "transfer" command as specified in the Registrar Tool Kit, that the usTLD Database be changed to reflect the new registrar.

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

> (1) the requisite authorization has been obtained from the Registrant listed in the database of the losing registrar, and
>
> (2) the losing registrar will be provided with a copy of the authorization if and when requested.

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

Instances when the requested change of prospective gaining registrar may be denied include, but are not limited to:

> 1) Situations described in the Domain Name Dispute Resolution Policy
>
> 2) A pending bankruptcy of the Registrant
>
> 3) Dispute over the identity of the Registrant
>
> 4) Request to transfer sponsorship occurs within the first 60 days after the initial registration with the registrar of record

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

usTLD Administrator Requirements.

Upon receipt of the "transfer" command from the gaining registrar, usTLD Administrator will transmit an e-mail notification to both registrars.

usTLD Administrator shall complete the "transfer" if either:

> 1) the losing registrar expressly "approves" the request, or
>
> 2) usTLD Administrator does not receive a response from the losing registrar within five (5) days.

When the usTLD Database has been updated to reflect the change to the gaining registrar, usTLD Administrator will transmit an email notification to both registrars.

Records of Registration.

Each Registrant shall maintain his, her or its own records appropriate to document and prove the initial domain name registration date, regardless of the number of registrars with which the Registrant enters into a contract for registration services.

Effect on Term of Registration.

The completion by usTLD Administrator of a holder-authorized transfer under this Part A shall result in a one-year extension of the existing registration, provided that in no event shall the total unexpired term of a registration exceed ten (10) years.

B. <u>Approved Transfers</u>.

Transfer of the sponsorship of all the registrations sponsored by one registrar as the result of acquisition of that registrar or its assets by another registrar may be made according to the following procedure:

>   (a)   The acquiring registrar must be accredited by usTLD Administrator for the usTLD under an Accreditation Agreement and must have in effect a usTLD Administrator-Registrar Agreement with usTLD Administrator for the usTLD.

>   (b)   usTLD Administrator shall determine, in its sole discretion, that the transfer would promote the community interest, such as the interest in stability that may be threatened by the actual or imminent business failure of a registrar.

Upon satisfaction of these two conditions, usTLD Administrator will make the necessary one-time changes in the registry database for no charge for transfers involving 50,000 name registrations or fewer; provided that the data to be transferred to usTLD Administrator is in the form specified by usTLD Administrator ("Approved Format"). If the transfer involves registrations of more than 50,000 names, and the data to be transferred to usTLD Administrator is in the Approved format, usTLD Administrator will charge the acquiring registrar a one-time flat fee of US $50,000. If the data to be transferred is not in the Approved Format, the usTLD Administrator may charge a reasonable fee, as determined by the usTLD Administrator, in connection with the cost associated with reformatting such data.

Notwithstanding anything in the <u>Exhibit E</u> above to the contrary, no transfers will be permitted from a registrar, including Registrar, to a Sponsoring Registrar.

**USTLD ADMINISTRATOR'S OPERATIONAL STANDARDS,
POLICIES, PROCEDURES, AND PRACTICES**

I.   Registration Requirements

Before the usTLD Administrator will accept applications for registration from an registrar, all domain name applicants in the .us TLD must:

> 1.   Enter into an electronic or paper registration agreement with the registrar, in accordance with the Accreditation Agreement with usTLD Administrator and this Agreement. Such electronic or paper registration agreement shall include, at a minimum, the following certifications:
>
>> a)   The data provided in the domain name registration application is true, correct, up to date and complete; and
>>
>> b)   The registrant will keep the information provided above up to date.
>
> 2.   Certify in the Registration Agreement that to the best of his, her or its knowledge the domain name registrant has the authority to enter into the Registration Agreement and meets all the US Nexus Requirement set forth below.

II.   US Nexus Requirement

Registrants in the usTLD must be either:

1. A natural person (i) who is a citizen or permanent resident of the United States of America or any of its possessions or territories, or (ii) whose primary place of domicile is in the United States of America or any of its possessions, or

2. An entity or organization that is (i) incorporated within one of the fifty (50) U.S. states, the District of Columbia, or any of the United States possessions or territories or (ii) organized or otherwise constituted under the laws of a state of the United States of America, the District of Columbia or any of its possessions or territories, or

3. An entity or organization (including a federal, state, or local government of the United States, or a political subdivision thereof) that has a bona fide presence in the United States.

Whether a prospective registrant has a "bona fide presence in the United States" will be determined on a case-by-case basis in light of all relevant facts and circumstances at the time of application for a usTLD domain name. This requirement is intended to ensure that only those individuals or organizations that have a substantive connection to the United States are permitted to register for usTLD domain names.

Factors that should be considered in determining whether an entity or organization has a bona fide presence in the United States shall include, without limitation, whether such prospective usTLD domain name registrant:

- Regularly performs activities within the United States related to the purposes for which the entity or organization is constituted (e.g., providing services to customers, conducting regular training activities, attending conferences), provided such activities are not conducted solely or primarily to permit it to register for a usTLD domain name;

- Maintains an office or other facility in the United States for a business, noncommercial, educational, or governmental purpose and not solely or primarily to permit it to register for a usTLD domain name; or

- Derives a material portion of its revenues or net income from sales to purchasers located in the United States. For these purposes, if a prospective usTLD domain name registrant's revenues from sales to purchasers located in the United States were at least 5% of such entity's or organization's total revenues or net income for its last completed fiscal year, such entity or organization will be presumed to have a bona fide presence in the United States.

For purposes of this definition, the terms United States and United States of America shall include all U.S. territories and possessions.

It shall be a continuing requirement that all usTLD domain name registrants maintain the US Nexus Requirement.

The Nexus Requirement will be enforced through an initial screening of the contact information provided by the registrant, as well as a challenge process permitted through the Nexus Dispute Policy discussed below. The screening by usTLD Administrator will verify that selected field, within the contact information provided, on its face, meets the Nexus Requirement and that the registrant has certified compliance with the requirement, as well as certified that the nameservers identified are located within the United States. In the event that the contact information provided does not meet the above requirement, the name requested will be placed on hold within the registry and the registrant will be given an opportunity to correct any mistake or demonstrate compliance with the Nexus requirement. If no action is taken by the registrant within the 30-day period, the registration will be cancelled and the name will be returned to available status. If, on the other hand, the registrant is able to demonstrate compliance with the requirement, the name will be registered.

III. Nexus Dispute Policy

Although the Nexus Requirement will initially be enforced through a usTLD Registrar's screening of the contact information provided by the registrant, and the registrant will certify that it meets at least one of the Nexus requirements set forth above, usTLD Administrator understands that disputes may arise as to the authenticity, veracity or accuracy of the registrant's Nexus certification. Therefore, usTLD Administrator, as administrator of the usTLD has devised a Nexus Dispute Policy ("NDP") which will be administered solely by the usTLD Administrator,

or its designated representative. The NDP will provide interested parties with an opportunity to challenge a registration not complying with the Nexus Requirement.

In the event that a third party wishes to challenge the authenticity or veracity of a .US registrant's United States Nexus, that party may submit a "Nexus Challenge" to the usTLD Administrator or its authorized representative. The challenger must submit a written statement to the usTLD Administrator via first class mail alleging in specificity evidence to support its allegation that the registrant fails to meet any of the Nexus Requirements set forth above.

Once a challenge is received by the usTLD Administrator the domain name shall be "locked" by the usTLD Administrator until the matter is resolved. While in a "locked" position, the registrant may not (i) change any of the contact information for that particular domain name or (ii) transfer the domain name to any third party.

In the event that the usTLD Administrator finds that the challenger has established a prima facie case that the registrant has not met any of the Nexus Requirements, the usTLD Administrator shall issue a letter to the registrant to submit evidence of compliance with the Nexus Requirements ("Letter"). The registrant shall have a period of thirty (30) days from the date of the Letter to submit evidence of compliance. If, within the thirty (30) days, the registrant submits evidence establishing any of the Nexus Requirements, the registrant shall be permitted to keep the domain name.

If, however, the registrant either (i) does not respond within the thirty days, or (ii) is unable to demonstrate through documentary evidence that it met any of the Nexus Requirements prior to the date the NDP was invoked, the usTLD Administrator shall issue a finding that the registrant has failed to meet the Nexus Requirements. Upon such a finding, the registrant shall be given a total of thirty (30) days to cure the US Nexus deficiency. If the registrant is able to demonstrate within (30) days that it has cured such deficiency, the registrant shall be allowed to keep the domain name. If the registrant either (i) does not respond within the thirty (30) days, or (ii) is unable to proffer evidence demonstrating compliance with the Nexus Requirements, the domain name registration shall be deleted from the registry database and the domain name will be placed into the list of available domain names. This process represents the exclusive remedy for an NDP challenger.

usTLD Administrator reserves the right to modify this NDP at any time with the permission of COTR. usTLD Administrator will post its revised NDP on its Website at least thirty (30) calendar days before it becomes effective.

IV.   Reservation

usTLD Administrator reserves the right to deny, cancel or transfer any registration that it deems necessary, in its discretion; (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, in compliance with any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of usTLD Administrator, as well as its affiliates, subsidiaries, officers, directors, representatives, employees, and stockholders; (4) for violations of this Agreement (including its Exhibits); or (5) to correct mistakes made by usTLD Administrator or any registrar in connection

with a domain name registration. usTLD Administrator also reserves the right to freeze a domain name during resolution of a dispute.

Exhibit F

REGISTRATION FEES

- <u>Sunrise Registration</u>. Registrar agrees to pay the non-refundable fee of $10.00 per domain name for the first year of registration. For each subsequent year of registration, Registrar shall pay $5.50 per domain name per year.

- <u>Initial Registration</u>. Registrar agrees to pay the non-refundable fee of $5.50 per year of registration.

- <u>Renewal Fees</u>. Registrar agrees to pay the non-refundable fee of $5.50 per domain name per year for renewals.

- <u>Fees for Transfers of Sponsorship of Domain-Name Registrations</u>

  Where the sponsorship of a domain name is transferred from one registrar to another, usTLD Administrator may require the registrar receiving the sponsorship to request a renewal of one year for the name. In connection with that extension, usTLD Administrator may charge a Renewal Fee for the requested extension as provided in the renewal schedule set forth above. The transfer shall result in an extension according to the renewal request, subject to a ten-year maximum on the future term of any domain-name registration. The Renewal Fee shall be paid in full at the time of the transfer by the   registrar receiving sponsorship of the domain name.

- <u>Enhanced Whois Service</u>. Registrar agrees to pay the non-refundable amounts as set forth below:

  > To be provided with at least 30 days advance notice: Yearly Subscription Fee Rate, One time Usage Fee

NOTE: usTLD Administrator reserves the right to revise the Fees prospectively upon thirty (30) days notice to Registrar, provided that such adjustments are consistent with the usTLD Agreement.

<u>Exhibit G</u>

PERFORMANCE SPECIFICATIONS

1.   Introduction. The attached Performance Specification Matrix ("Matrix") provides a list of performance specifications as they apply to the three Core Services provided by the usTLD Administrator–SRS, Nameserver, and Whois services.

2.   Definitions. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Agreement.

2.1   "Core Services" refers to the three core services provided by the usTLD System–SRS, Nameserver, and Whois Services.

2.2   "Performance Specification" refers to the specific committed performance service levels as specified herein.

2.3   "Performance Specification Priority" refers to the usTLD Administrator's rating system for Performance Specifications. Some Performance Specifications are more critical to the operations of the usTLD Administrator than others. Each of the Performance Specifications is rated as C1-mission critical, C2-mission important, C3-mission beneficial, or C4-mission maintenance.

2.4   "Registrar Community" refers to all the registrars accredited by usTLD Administrator that have executed usTLD Administrator-Registrar Agreements with usTLD Administrator for the usTLD.

2.5   "SRS" refers to the Shared Registration System; the service that the usTLD System provides to the Registrar Community. Specifically, it refers to the ability of registrars to add, modify, and delete information associated with domain names, nameserver, contacts, and registrar profile information. This service is provided by systems and software maintained in coactive redundant data centers. The service is available to registrars via an Internet connection.

2.6   "Nameserver" refers to the nameserver function of the usTLD System and the nameservers that resolve DNS queries from Internet users. This service is performed by multiple nameserver sites that host DNS resource records. The customers of the nameserver service are users of the Internet. The nameservers receive a DNS query, resolve it to the appropriate address, and provide a response.

2.7   "Service Level Measurement Period" refers to the period of time for which a Performance Specification is measured. Monthly periods are based on calendar months, quarterly periods are based on calendar quarters, and annual periods are based on calendar years.

2.8   "Whois" refers to the usTLD Administrator's Whois service. The usTLD Administrator will provide contact information related to registered domain names and nameserver through a Whois service. Any person with access to the Internet can query the usTLD Administrator's Whois service directly (via the usTLD Administrator website) or through a registrar.

3.   **Performance Specifications.** usTLD Administrator shall use commercially reasonable efforts to provide usTLD Services for the usTLD.

3.1   **Service Availability.** Service Availability is defined as the time, in minutes, that the usTLD System's Core Services are responding to its users. Service is unavailable when a service listed in the Matrix is unavailable to all users, that is, when no user can initiate a session with or receive a response from the usTLD System ("Unavailability"). Service Availability is a C1 priority level.

3.1.1   Service Availability is measured as follows:

Service Availability % = {[(TM - POM) - UOM] / (TM - POM)}*100 where:

TM = Total Minutes in the Service Level Measurement Period (#days*24 hours*60 minutes).

POM = Planned Outage Minutes (sum of (i) Planned Outages and (ii) Extended Planned Outages during the Service Level Measurement Period).

UOM = Unplanned Outage Minutes (Difference between the total number of minutes of Unavailability during the Service Level Measurement Period minus POM).

Upon written request, and at the sole expense of the requesting registrar(s), usTLD Administrator will retain an independent third party (to be selected by usTLD Administrator to perform an independent calculation of the UOM). The frequency of this audit will be no more than once yearly during the term of the Agreement between usTLD Administrator and the Registrar.

[This calculation is performed and the results reported for each calendar month for SRS and Whois availability and for each calendar year for Nameserver availability. Results will be reported periodically to the Registrar Community via e-mail.]

3.1.2   Service Availability–SRS = 99.9% per calendar month. Service Availability as it applies to the SRS refers to the ability of the SRS to respond to registrars that access and use the SRS through the XRP protocol. SRS Unavailability will be logged with the usTLD Administrator as Unplanned Outage Minutes. The committed Service Availability for SRS is 99.9% and the Service Level Measurement Period is monthly.

3.1.3   Service Availability–Nameserver = 99.999% per calendar year. Service Availability as it applies to the Nameserver refers to the ability of the Nameserver to resolve a DNS query from an Internet user. Nameserver Unavailability will be logged with the usTLD Administrator as Unplanned Outage Minutes. The committed Service Availability for Nameserver is 99.999% and the Service Level Measurement Period is annually.

3.1.4   Service Availability–Whois = 99.95% per calendar month. Service Availability as it applies to Whois refers to the ability of all users to access and use the usTLD Administrator's Whois service. Whois Unavailability will be logged with the usTLD Administrator as Unplanned Outage Minutes. The committed Service Availability for Whois is 99.95% and the Service Level Measurement Period is monthly.

3.2   **Planned Outage.** High volume data centers like that used in the usTLD System require downtime for regular maintenance. Allowing for regular maintenance ("Planned Outage") ensures a high level of service for the usTLD System. Planned Outage Performance Specifications are a C4 priority level.

3.2.1   Planned Outage Duration. The Planned Outage Duration defines the maximum allowable time, in hours and minutes, that the usTLD Administrator is allowed to take the usTLD Services out of service for regular maintenance. Planned Outages are planned in advance and the Registrar Community is provided warning ahead of time. This Performance Specification, where applicable, has a monthly Service Level Measurement Period. The Planned Outage Duration for the Core Services is as follows:

3.2.1.1   Planned Outage Duration–SRS = 8 hours (480 minutes) per month;

3.2.1.2   Planned Outage Duration–Nameserver = (no planned outages allowed); and

3.2.1.3   Planned Outage Duration–Whois = 8 hours (480 minutes) per month.

3.2.2   Planned Outage Timeframe. The Planned Outage Timeframe defines the hours and days in which the Planned Outage can occur. The Planned Outage Timeframe for the Core Services is as follows:

3.2.2.1   Planned Outage Timeframe–SRS = 1201-0800 UTC Sunday;

3.2.2.2   Planned Outage Timeframe–Nameserver =(no planned outages allowed); and

3.2.2.3   Planned Outage Timeframe–Whois = 0600-1400 UTC Sunday.

3.2.3 <u>Planned Outage Notification.</u> The usTLD Administrator will notify all of its registrars of any Planned Outage. The Planned Outage Notification Performance Specification defines the number of days prior to a Planned Outage that the usTLD Administrator will notify its registrars. The Planned Outage Notification for the Core Services is as follows:

3.2.3.1 Planned Outage Timeframe–SRS = 3 days;

3.2.3.2 Planned Outage Timeframe–Nameserver =(no planned outages allowed); and

3.2.3.3 Planned Outage Timeframe–Whois = 3 days.

3.3 **Extended Planned Outage.** In some cases such as software upgrades and platform replacements an extended maintenance timeframe is required. Extended Planned Outages will be less frequent than regular Planned Outages but their duration will be longer. Extended Planned Outage Performance Specifications are a C4 priority level.

3.3.1 <u>Extended Planned Outage Duration</u>. The Extended Planned Outage Duration defines the maximum allowable time, in hours and minutes, that the usTLD Administrator is allowed to take the usTLD Services out of service for extended maintenance. Extended Planned Outages are planned in advance and the Registrar Community is provided warning ahead of time. Extended Planned Outage periods are in addition to any Planned Outages during any Service Level Measurement Period. This Performance Specification, where applicable, has a Service Level Measurement Period based on a calendar quarter. The Extended Planned Outage Duration for the Core Services is as follows:

3.3.1.1 Extended Planned Outage Duration–SRS = 18 hours (1080 minutes) per calendar quarter;

3.3.1.2 Extended Planned Outage Duration–Nameserver =(no planned outages allowed); and

3.3.1.3 Extended Planned Outage Duration–Whois = 18 hours (1080 minutes) per calendar quarter.

3.3.2 <u>Extended Planned Outage Timeframe.</u> The Extended Planned Outage Timeframe defines the hours and days in which the Extended Planned Outage can occur. The Extended Planned Outage Timeframe for the Core Services is as follows:

3.3.2.1 Extended Planned Outage Timeframe–SRS = 1201-0800 UTC Saturday or Sunday;

3.3.2.2   Extended Planned Outage Timeframe–Nameserver =(no planned outages allowed); and

3.3.2.3   Extended Planned Outage Timeframe–Whois = 1201-0800 UTC Saturday or Sunday.

3.3.3   <u>Extended Planned Outage Notification.</u> The usTLD Administrator will notify all of its registrars of any Extended Planned Outage. The Extended Planned Outage Notification Performance Specification defines the number of days prior to an Extended Planned Outage that the usTLD Administrator will notify its registrars. The Extended Planned Outage Notification for the Core Services is as follows:

3.3.3.1   Extended Planned Outage Timeframe–SRS = 4 weeks;

3.3.3.2   Extended Planned Outage Timeframe–Nameserver =(no planned outages allowed); and

3.3.3.3   Extended Planned Outage Timeframe–Whois = 4 weeks.

3.4   **Processing Time.** Processing Time is an important measurement of transaction-based services like those provided by the usTLD System. The first three Performance Specifications, Service Availability, Planned Outages and Extended Planned Outages, measure the amount of time that the service is available to its users. Processing Time measures the quality of that service.

Processing Time refers to the time that the usTLD Administrator receives a request and sends a response to that request. Since each of the usTLD Services has a unique function the Performance Specifications for Processing Time are unique to each of the usTLD Services. For example, a Performance Specification for the Nameserver is not applicable to the SRS and Whois, etc. Processing Time Performance Specifications are a C2 priority level.

Processing Time Performance Specifications have a monthly Service Level Measurement Period and will be reported on a monthly basis. The usTLD Administrator will log the processing time for all of the related transactions, measured from the time it receives the request to the time that it returns a response.

3.4.1   Processing Time–Add, Modify, Delete = 3 seconds for 95%

3.4.1.1   Processing Time–Add, Modify, and Delete is applicable to the SRS as accessed through the XRP protocol. It measures the processing time for add, modify, and delete transactions associated with domain names, nameserver, contacts, and registrar profile information.

3.4.1.2   The Performance Specification is 3 seconds for 95% of the transactions processed. That is, 95% of the transactions will

take 3 seconds or less from the time the usTLD Administrator receives the request to the time it provides a response.

3.4.2 Processing Time–Query Domain = 1.5 seconds for 95%

3.4.2.1 Processing Time–Query Domain is applicable to the SRS as accessed through the XRP protocol **[**defined in Appendix ___ of the usTLD Agreement**]**. It measures the processing time for an availability query of a specific domain name.

3.4.2.2 The performance specification is 1.5 seconds for 95% of the transactions. That is, 95% of the transactions will take 1.5 seconds or less from the time the usTLD Administrator receives the query to the time it provides a response as to the domain name's availability.

3.4.3 Processing Time–Whois Query = 1.5 seconds for 95%

3.4.3.1 Processing Time–Whois Query is only applicable to the Whois. It measures the processing time for a Whois Query.

3.4.3.2 The Performance Specification is 1.5 seconds for 95% of the transactions. That is, 95% of the transactions will take 1.5 seconds or less from the time the Whois receives a query to the time it responds.

3.4.4 Processing Time–Nameserver Resolution = 1.5 seconds for 95%

3.4.4.1 Processing Time–Nameserver Resolution is only applicable to the Nameserver. It measures the processing time for a DNS query.

3.4.4.2 The Performance Specification is 1.5 seconds for 95% of the transactions. That is, 95% of the transactions will take 1.5 seconds or less from the time Nameserver receives the DNS query to the time it provides a response.

3.5 **Update Frequency.** There are two important elements of the usTLD System that are updated frequently and are used by the general public: Nameserver and Whois. Registrars generate these updates through the SRS. The SRS then updates the Nameserver and the Whois. These will be done on a batch basis. Update Frequency Performance Specifications are a C3 priority level.

The committed Performance Specification with regard to Update Frequency for both the Nameserver and the Whois is 15 minutes for 95% of the transactions. That is, 95% of the updates to the Nameserver and Whois will be effectuated within 15 minutes. This is measured from the time that the registry confirms the update to the registrar to the time the update appears in the Nameserver and Whois. Update Frequency Performance

Specifications have a monthly Service Level Measurement Period and will be reported on a monthly basis.

> **3.5.1** <u>Update Frequency–Nameserver</u> = 15 minutes for 95%.
>
> **3.5.2** <u>Update Frequency–Whois</u> = 15 minutes for 95%.

	Performance Specification Description	**SRS**	**Nameserver**	**Whois**
1	Service Availability	99.9% per calendar month	99.999% per calendar year	99.95% per calendar month
2	Processing Time–Add, Modify, Delete	3 sec for 95%	NA	NA
3	Processing Time–Query Domain	1.5 sec for 95%	NA	NA
4	Processing Time–Whois	NA	NA	1.5 sec for 95%
5	Processing Time–Nameserver Resolution	NA	1.5 sec for 95%	NA
6	Update Frequency	NA	15 min for 95%	15 min for 95%
7	Planned Outage–Duration	8 hrs per calendar month	not allowed	8 hrs per calendar month
8	Planned Outage–Timeframe	1201 – 0800 EST Sun	not allowed	1201 – 0800 EST Sun
9	Planned Outage–Notification	3 days	not allowed	3 days
10	Extended Planned Outage–Duration	18 hrs per calendar quarter	not allowed	18 hrs per calendar quarter
11	Extended Planned Outage–Timeframe	1201 – 0800 ETC Sat or Sun	not allowed	1201 – 0800 ETC Sat or Sun
12	Extended Planned Outage–Notification	28 days	not allowed	28 days

Exhibit H

SERVICE LEVEL AGREEMENT

1.   Definitions. Capitalized terms used herein and not otherwise defined shall have the definitions ascribed to them in Exhibit G to the usTLD Administrator-Registrar Agreement.

2.   Credits. If usTLD Administrator fails to meet the Performance Specifications defined in Exhibit G ("Service Level Exception" or "SLE"), usTLD Administrator shall pay in the aggregate to the Registrar Community a credit according to the tables provided below ("Applicable Credit"). Each Registrar shall only be entitled to a fraction of the Applicable Credit. Such fractions of the credit specified in the tables to be paid to any individual Registrar will be calculated based upon the number of domain names that such Registrar added to the usTLD Administrator during the Service Level Measurement Period compared to the total number of domain names added to the usTLD Administrator by all Registrars during the Service Level Measurement Period in which the SLE occurred. The credit due to Registrar may be paid as an offset to registrations and other fees owed to usTLD Administrator by Registrar. All credits shall be paid in U.S. Dollars. The following Credit Lookup Matrix indicates the corresponding credit table for which the credits defined in this Appendix will be levied.

CREDIT LOOKUP MATRIX

	Performance Specification Description	SRS	Nameserver	Whois
1	Service Availability	Table C1a	Table C1b	Table C1a
2	Processing Time - Add, Modify, Delete	Table C2	NA	NA
3	Processing Time - Query Domain	Table C2	NA	NA
4	Processing Time – Whois	NA	NA	Table C2
5	Processing Time – Nameserver Resolution	NA	Table C2	NA
6	Update Frequency	NA	Table C3	Table C3
7	Planned Outage – Duration	Table C4b	NA	Table C4b
8	Planned Outage – Timeframe	Table C4a	NA	Table C4a
9	Planned Outage – Notification	Table C4a	NA	Table C4a
10	Extended Planned Outage – Duration	Table C4b	NA	Table C4b
11	Extended Planned Outage – Timeframe	Table C4a	NA	Table C4a
12	Extended Planned Outage – Notification	Table C4a	NA	Table C4a

If one or more SLEs occurs as the direct result of a failure to meet a Performance Specification in a single credit class, usTLD Administrator shall be responsible only for the credit assessed for the credit class which is the proximate cause for all directly related failures.

The following tables identify total Registrar Community credits due for SLEs in the four credit classes C1 - C4. Notwithstanding the credit levels contained in these tables, the total credits owed by usTLD Administrator under this Agreement shall not exceed $30,000 USD monthly and $360,000 USD annually. The credits contained in Tables C1a-C4 represent the total credits that may be assessed in a given SLR category in one Service Level Measurement Period.

2.1 C1 Credit Class–If availability of C1 Credit Class components or systems does not meet C1 Performance Specifications in any given Service Level Measurement Period described in the Performance Specification Matrix in Exhibit G, usTLD Administrator will credit the Registrar Community according to the tables (which amount will be credited to the Registrar on a proportional basis as set forth above).

Table C1a

SLE	< 30 sec.'s	30-60 sec.'s	1-2 min.'s	2-10 min.'s	10-30 min.'s	over 30 min.'s
Monthly Credit to Registrar Community	$ 750	$ 1,500	$ 2,500	$ 3,750	$ 5,000	$ 6,000

C1a Availability Example: In a given measurement period, the SRS Availability is 99.87%, which equates to 52 minutes of unplanned downtime. The usTLD Administrator's Performance Specification for SRS Availability is 99.9%, or 43 minutes of downtime. The Service Level Exception, therefore, is 9 minutes (52-43 minutes), the difference between the Performance Specification and the actual measured performance. From the Credit Lookup Matrix, we see the relevant SLA is found in Table C1a. In Table C1a, the time interval (2-10 minutes) has a corresponding credit of $3,750 USD to be paid to the Registrar Community.

Table C1b

SLE	< 10 min.'s	10-30 min.'s	30-60 min.'s	1-2 hours	2-4 hours	over 4 hours
Annual Credit to Registrar Community	$ 7,500	$ 15,000	$ 25,000	$ 35,000	$ 50,000	$ 75,000

C1b Availability Example: In a given Service Level Measurement Period, the measured Nameserver Availability is 99.990% over a twelve (12) month period, which equates to 52 minutes of downtime. The usTLD Administrator's Performance Specification for Nameserver Availability is 99.999%, or 5 minutes of downtime per calendar year. The Service Level Exception, therefore, is 47 minutes (52-5 minutes), the difference between the Performance Specification and the actual measured performance. From the Credit Lookup Matrix, we see the relevant SLA is found in Table C1b. In Table C1b, the time interval (30-60 minutes) has a corresponding credit of $25,000 USD to be paid to the Registrar Community.

2.2 C2 Credit Class–If processing time for C2 Credit Class services does not meet C2 Service Levels in any given Service Level Measurement Period, usTLD Administrator will credit the Registrar Community according to the following table (which amount will be credited to the Registrars on a proportional basis as set forth above).

Table C2

SLE	< 2 sec.'s	2-5 sec.'s	5-10 sec.'s	10-20 sec.'s	20-30 sec.'s	over 30 sec.'s
Monthly Credit to Registrar Community	$ 375	$ 750	$ 1,500	$ 3,500	$ 4,000	$ 7,500

C2 Processing Example: The Performance Specification for Processing Time for Add, Modify, and Delete is 3 seconds or less for 95% of the transactions. In a given Service Level Measurement Period 7% of the transactions are greater than 3 seconds. The 5% of those transactions with the longest processing times are not subject to the SLE calculation (3 seconds for 95%). The SLE is calculated using the average processing time for the 2% of the transactions that are subject to the SLE. If there were 1,000 transactions and they took a total of 4,000 seconds the average is 4 seconds. That generates an SLE of 1 second (4 seconds - 3 seconds). From the Credit Lookup Matrix, we see the relevant SLA is found in Table C2. In Table C2, the SLE time interval (< 2 seconds) has a corresponding credit $375 USD to be paid to the Registrar Community.

2.3 C3 Credit Class–If update frequency measurements of C3 Credit Class components or systems do not meet C3 Service Levels in any given Service Level Measurement Period as described in the Performance Specification Matrix in Exhibit G, usTLD Administrator will credit the Registrar Community according to the following tables (which amount will be credited to the Registrars on a proportional basis as set forth above).

Table C3

SLE	< 30 sec.'s	30-60 sec.'s	1-2 min.'s	2-10 min.'s	10-30 min.'s	over 30 min.'s
Monthly Credit to Registrar Community	$ 188	$ 375	$ 625	$ 938	$ 1,250	$ 1,500

C3 Update Frequency Example: In a given Service Level Measurement Period, 95% of the updates to the Nameserver take 24 minutes or less to complete. The corresponding usTLD Administrator's Performance Specification is 15 minutes for 95% of the updates. The SLE, therefore, is 9 minutes. From the Credit Lookup Matrix, we see the relevant SLA is found in Table C3. The SLE time interval (2-10 minutes) has a corresponding credit of $938 USD to be paid to the Registrar Community.

2.4 C4 Credit Class–If usTLD Administrator fails to comply with C4 Credit Class category Performance Specifications, usTLD Administrator will credit the Registrar Community according to the following tables (C4a and C4b) (which amount will be credited to the Registrars on a proportional basis as set forth above).

Table C4a

SLE	Any
Monthly Credit to Registrar Community	$ 500

C4a Planned Outage Notification Example: In each instance the usTLD Administrator fails to meet the Performance Specifications for Notification and Timeframe related to Planned Outages and Extended Planned Outages, the usTLD Administrator is subject to the credit in Table C4a. For example, the usTLD Administrator informs the Registrar Community that it will initiate a Planned Outage of the SRS on the next calendar Sunday (five (5) days advance notice). The corresponding usTLD Administrator's Performance Specification is 28 days notice. From the Credit Lookup Matrix, we see the relevant SLA is found in Table C4a. This results in a credit of $500 USD to be paid to the Registrar Community.

Table C4b

SLE	< 1 hour	1-2 hours	2-4 hours	4-6 hours	6-10 hours	over 10 hours
Monthly Credit to Registrar Community	$ 300	$ 750	$ 1,200	$ 2,500	$ 3,500	$ 4,000

C4b Planned Outage Example: In a given Service Level Measurement Period, the actual duration of a planned outage is 11 hours and 20 minutes for the SRS. The corresponding usTLD Administrator's Performance Specification is 8 hours per month for the SRS. The SLE, therefore, is 3 hours and 20 minutes. From the Credit Lookup Matrix the relevant SLA is found in Table C4b. The SLE time interval (2-4 hours) has a corresponding credit of $1,200 USD to be paid to the Registrar Community.

3. Receipt of Credits. In order for Registrars to claim credits, the following procedure must be followed:

3.1 usTLD Administrator shall perform the required measurements in order to obtain the total credits associated with the applicable Service Level Measurement Period. Such measurements and associated documentation shall be delivered by e-mail to each of the Registrars in the Registrar Community. Such notice shall also include the total credit (if any) to be paid to the Registrar Community as a result of any outages.

3.2 Receipt of Credit - When the above steps have been completed, the usTLD Administrator shall enter in each Registrar's account balance the amount of credit (if applicable) that can be used immediately toward registrations in the Registry.

4. Obligations.

4.1 Except in the case of cross-network nameserver performance (which is not a subject of this Service Level Agreement), usTLD Administrator will perform monitoring from internally located systems as a means to verify that the conditions of the SLA are being met.

4.2 Upon written request, and at the sole expense of the requesting Registrar(s), usTLD Administrator will retain an independent third party to be selected by usTLD Administrator with the consent of the Registrar(s). The Registrar may, under reasonable terms and conditions, audit the reconciliation records for the purposes of verifying measurements of the Performance Specifications. The frequency of these audits will be no more than once yearly during the term of the agreement between usTLD Administrator and the Registrar.

4.3 usTLD Administrator's obligations under this SLA are waived during the first 120 days after the date that the expanded space of the usTLD goes "live." ("Commencement of Service Date").

4.4 A Registrar must report each occurrence of alleged occasion of Unavailability of Core Services to the usTLD Administrator customer service help desk in the manner required by the usTLD Administrator (i.e., e-mail, fax, telephone) in order for an occurrence to be treated as Unavailable for purposes of the SLE.

4.5 In the event that the Core Services are Unavailable to an individual Registrar, usTLD Administrator will use commercially reasonable efforts to re-establish the affected Core Services for such Registrar as soon as reasonably practicable. In the event that the Unavailability of Core Services affects all Registrars, the usTLD Administrator is responsible for opening a blanket trouble ticket and immediately notifying all Registrars of the trouble ticket number and details.

4.6 Both Registrar and the usTLD Administrator agree to use reasonable commercial good faith efforts to establish the cause of any alleged Core Services Unavailability. If it is mutually determined to be a usTLD Administrator problem, the issue will become part of the Unplanned Outage minutes.

4.7 The usTLD Administrator will use commercially reasonable efforts to restore the critical systems of the Core 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.

4.9 Incident trouble tickets must be opened within a commercially reasonable period of time.

5.   Miscellaneous.

5.1   This Service Level Agreement is independent of any rights, obligations or duties set forth in the usTLD Administrator Agreement. In the event of any conflict between the terms and conditions of this Agreement and the usTLD Administrator Agreement, the usTLD Administrator Agreement shall control.