

### Matrix on ICANN comments (19 February 2016) on draft SLA version 3

	Source	Issue	Comment/ Summary of comments	RIRs' response
1	ICANN-IANA Operator, 19 February 2016	Definitions – Condition Precedent	ICANN proposes this to be reviewed in conjunction with conditions precedent in other IANA Stewardship Transition documents.	No change to SLA required.
2	ICANN-IANA Operator, 19 February 2016	Definitions - Operator	ICANN proposes the removal of definition of “Operator” in definitions section as duplicative since the defined term “Operator” is already defined on page 1.	The text has been amended accordingly.
3	ICANN-IANA Operator, 19 February 2016	2.1 – Standard of Effort	ICANN proposes the revision to lower standard of effort from best efforts to commercially reasonable efforts.	Ensuring stable and secure IANA numbering services should be subject to best efforts standards, which is higher than commercially reasonable standards. The proposed amendment is not acceptable.
4	ICANN-IANA Operator, 19 February 2016	2.2 – Priority of IANA Numbering Service	ICANN proposes cosmetic edits to provision as well as similar to 2.1, introduction of “commercially reasonable” rather than “available” regarding obligation for leveraging efficiency and synergies.	The text has been amended accordingly regarding cosmetic edits. With regard to amending standard for obligation for leveraging efficiency and synergies, the text has been amended accordingly due to the fact that any realization of efficiency and synergies by its very nature must be “commercially reasonable.”
5	ICANN-IANA Operator, 19 February 2016	2.3 – IANA Numbering	ICANN proposes cosmetic edits to the provision.	The text has been amended accordingly regarding cosmetic edits.

	February 2016	Services Staff	<p>ICANN suggests the shifting of the Operator’s obligation to ensure IANA Numbering Services Staff do not advocate any policy development to merely agreeing to not authorize IANA Numbering Services Staff to advocate any position regarding policy development.</p> <p>Also ICANN suggests allowing for policy discussion amongst IANA Numbering Services Staff with other staff members of the Operator.</p>	<p>With regard to maintaining the separation between Policy Development and Operational Roles per Principle 1 of the CRISP Proposal and as required by NTIA Contract section C.2.4 and C.2.5, the current text as written is sufficient and consistent with the community-developed proposal and therefore no change is required.</p> <p>With regards to the permission of policy discussions within ICANN, the text has been amended and it now clarifies that it refers to the advocacy of any “public” position.</p>
6	ICANN-IANA Operator, 19 February 2016	3.3 – Exercise of powers	ICANN has suggested cosmetic and duplicative language.	The text has been amended accordingly with regard to the cosmetic language changes; however, the text is sufficient and therefore no change is required with regard to any duplicative language.
7	ICANN-IANA Operator, 19 February 2016	4.2 – IANA Numbering Services	ICANN has suggested consolidation of 4.2.2 and 4.2.1 into the definitions section identifying “IANA Numbering Services”	Article 4.2 as well as the definition of the IANA Numbering Services in Article 1 have been amended in order to provide more clarity.
8	ICANN-IANA Operator, 19 February 2016	4.3 – IANA Numbering Services Operational Requirements	<p>ICANN suggests alternative text that removes the Operator’s obligation to fulfill due to applicable law restrictions.</p> <p>Additionally it introduces the obligation of the requesting RIR to re-state the validity of the</p>	<p>ICANN has made the same point made in their prior comments which we addressed in our response on 8 December 2015:  <a href="https://www.nro.net/pipermail/ianaxfer/2015-December/000701.html">https://www.nro.net/pipermail/ianaxfer/2015-December/000701.html</a>  The Operator’s potential inability to fulfill an</p>

			<p>request and Operator’s obligation to fulfill it.</p> <p>ICANN is also proposes amendments that are associated with further proposed amendments introduced in article 9 (Failure to perform).</p> <p>Finally ICANN proposes the extension of the period of non-compliance from 20 to 30 days, cosmetic edits and clarifications.</p>	<p>RIR request due to restrictions of the applicable law is a concern shared by the RIR communities. Therefore it is not our intention to exclude inability due to applicable law restrictions. Article 9 has been amended to provide more clarity on this.</p> <p>With regards to the introduction of the additional step. we do not see the value of an additional step whereby the RIRs are obliged to repeat the content of their initial request.</p> <p>Amendments associated with proposed amendments to article 9 (Failure to perform) are not acceptable, because the proposed amendments to article 9 are not acceptable (see below #17).</p> <p>The extension of the period of non-compliance from 20 to 30 days, cosmetic edits and clarifications are acceptable and the text has been modified accordingly.</p>
9	ICANN-IANA Operator, 19 February 2016	4.4.2	ICANN suggests to replace “non proprietary” to “DNS standard zone file”.	<p>ICANN has suggested this text before and has already been addressed in our response on 8 December 2015:  <a href="https://www.nro.net/pipermail/ianaxfer/2015-December/000701.html">https://www.nro.net/pipermail/ianaxfer/2015-December/000701.html</a></p> <p>We would like to note that DNS zones are not the only information dealt with under article</p>

				4.4.2. While DNS zone file format is fine for DNS zones, we also require the other information to be in non-proprietary formats.
10	ICANN-IANA Operator, 19 February 2016	5.1 – Obligation to Reimburse Cost	ICANN suggests alternative language to clarify the basis for reimbursement of cost.	The text has been amended accordingly.
11	ICANN-IANA Operator, 19 February 2016	5.2 – Maximum Reimbursement	Suggested addition of language to clarify relationship, or lack thereof, between the obligation of the RIRs to reimburse for Operator cost and any other commitments of the RIRs, ASO, or NRO to contribute funds to ICANN.	The agreement is between ICANN and the RIRs, so any rights and obligations of the ASO or the NRO are out of the scope.  With regards to the clarification of the RIRs’ obligations, Article 5.1 has been amended accordingly.
12	ICANN-IANA Operator, 19 February 2016	6.2.2 – Numbering Services Survey	Edit with suggested language to lower the firm obligation to agree to a “commercially reasonable efforts to agree” standard.	The text has been amended accordingly.
13	ICANN-IANA Operator, 19 February 2016	6.2.3 – Requests for security and systems audit.	Edit to add a standard of reasonableness regarding the RIRs’ requests for specific audit data.	The RIRs have an absolute right to request specific audit data; and therefore the text as written is sufficient and clear and no change to the text is necessary.
14	ICANN-IANA Operator, 19 February 2016	7.1 – documentation of practices and configuration of all systems	ICANN suggests lowering of the standard from an absolute standard to one of commercially reasonable efforts with regard to documentation of practices and configuration of all systems.	The text has been amended accordingly.

15	ICANN-IANA Operator, 19 February 2016	8.1-Periodic Review	ICANN wishes to restrict the reviews to no more than once per calendar year.	This proposed edit is inconsistent with Principle 5 of the CRISP proposal, according to which “The RIRs will perform reviews to assess whether the IANA Numbering Services Operator complies with all requirements described in the agreement whenever they deem appropriate. Accordingly this amendment is not acceptable.
16	ICANN-IANA Operator, 19 February 2016	8.2 – Cooperation with review.	ICANN proposes lowering standard to commercially reasonable efforts for commitment to cooperate	This proposed edit is inconsistent with Principle 5 of the CRISP proposal, according to which “The IANA Numbering Services Operator will be obliged to facilitate this review.” Accordingly this amendment is not acceptable.
17	ICANN-IANA Operator, 19 February 2016	9 – Failure to Perform	ICANN suggests a new qualification that limits this section to only fundamental issues that adversely affect the performance of the Services by ICANN.	This proposed edit is inconsistent with Principle 6 of the CRISP proposal, according to which “If the IANA Numbering Services Operator fails to perform as agreed, there will be specific consequences. One of these consequences may be termination of the agreement”.
19	ICANN-IANA Operator, 19 February 2016	10.1.2 – Condition Precedent	ICANN proposes to change reference to both parties to “all” parties.	This agreement has only two parties – the Operator on one side and the RIRs acting collectively on the other side albeit with 5 signatories. Therefore no change to the text is necessary.
20	ICANN-IANA Operator, 19	10.3 – Right not to renew.	ICANN proposes including a more complicated mechanism for exercise of the right of non-	This edit is inconsistent with Principle 7 of the CRISP proposal (“RIRs will be able to

	February 2016		renewal as well as an additional initial step for non-renewal. Also adds in a failure point resulting in auto-renewal. Moreover, requires earlier engagement in the non-renewal process to more than one year prior to the expiration date.	periodically review the agreement and evaluate whether they want to renew the agreement. Either party may terminate the agreement with reasonable prior notice”) whereby RIRs’ right not to renew the agreement is unconditional Accordingly the amendment is not acceptable.
21	ICANN-IANA Operator, 19 February 2016	10.4 – Right to Terminate	ICANN proposes revisions for specific statement of arbitration decision mechanism, definition of a “Cure Period”, increase of the “Cure Period” from 15 to 30 days, and a qualification on the right to terminate.	<p>With regard to the specific statement of the arbitration mechanism, definition of a “Cure Period” and increase of duration of the “Cure Period” from 15 to 30 days, the text has been changed accordingly.</p> <p>With regard to the qualification on the right to terminate, this amendment creates an unnecessary obligation for the RIRs to ICANN and therefore, the amendment is not acceptable.</p>
22	ICANN-IANA Operator, 19 February 2016	11.1 – Submission of a Plan	<p>ICANN proposes the development of a transition plan after they are informed of the successor.</p> <p>ICANN also propose the termination of the agreement as precondition for the submission of the transition plan.</p>	<p>With regards to the development of a transition plan after the selection of the successor, the text has been amended accordingly.</p> <p>With regards to the termination of the agreement as a precondition for the submission of the transition plan, this amendment is not acceptable. For continuity purposes the transition plan must be in place before the termination of the agreement and must be complete shortly after the termination (Article 11.2.2 (a) provides that the transition should be</p>

				complete 90 days after the termination of the Agreement).
24	ICANN-IANA Operator, 19 February 2016	11.2.1 – Transition to Successor Operator	<p>ICANN proposes lowering the standard of best efforts and cooperation for the transition to commercially reasonable standards.</p> <p>ICANN also added expense reimbursement obligation for the RIRs.</p>	<p>Lowering the best effort standards for the transition is inconsistent with Principle 8 of the CRISP proposal, according to which “...the previous IANA Numbering Services Operator will be obliged to ensure an orderly transition of the function while maintaining continuity and security of operations.” Therefore this amendment is not acceptable.</p> <p>With regard to the reimbursement of reasonable and necessary expenses, the RIRs can only accept this addition provided that such expenses are pre-approved in writing. The text has been changed accordingly in line with the comments herein.</p>
25	ICANN-IANA Operator, 19 February 2016	11.2.2 – Transition to Successor Operator	ICANN proposed to revise the standard of best efforts to commercially reasonable with regard to effecting an orderly transition.	Lowering the best effort standards for the transition is inconsistent with Principle 8 of the CRISP proposal, according to which “...the previous IANA Numbering Services Operator will be obliged to ensure an orderly transition of the function while maintaining continuity and security of operations.” Therefore this amendment is not acceptable.
26	ICANN-IANA Operator, 19	12.1 – Assignment of	ICANN suggests simplifying the clauses to a basic IPR clause.	The proposed language is not consistent with Principle 9 of the CRISP Proposal. The RIRs

	February 2016	IPR and rights to Data		propose alternative language to remain consistent with Principle 9 of the CRISP Proposal. The text in Articles 12 and 4.1 has been amended accordingly.
27	ICANN-IANA Operator, 19 February 2016	13.1, 13.2 - Mediation	<p>ICANN adds a completely new mediation provision that does not allow simultaneous arbitration and mediation and instead requires first the completion of the mediation phase prior to entering into arbitration.</p> <p>Also specifies which individuals from the Parties must take part in the mediation for certain periods of time in order.</p>	<p>Text in 13.1 has been revised accordingly; however, references to certain individuals from the Parties to take part in the attempts to resolve the dispute have been removed as unnecessary. Accordingly 13.1.4 has not been accepted as duplicate, however the timeline in 13.1.3 has been extended.</p> <p>Text in 13.2 has been revised accordingly to incorporate the non-binding mediation step prior to arbitration.</p>
28	ICANN-IANA Operator, 19 February 2016	13.3 - Arbitration of Disputes	<p>Arbitration provision is proposed to be amended with regard to the process of selecting arbiters.</p> <p>Agreement regarding possible conflict of interests are proposed to be in writing.</p> <p>Also the location of the arbitration is proposed to be changed from Paris to California.</p>	<p>With regards to the selection of the arbiters, the text has been modified accordingly.</p> <p>With regards to having agreement regarding possible conflict of interests in writing, the text has been modified accordingly.</p> <p>With regards to the location of the arbitration, a neutral venue was desired by the community (i.e. Paris, France). California as the venue is more favorable to ICANN and therefore, the text as written reflects the sentiment from the community.</p>



29	ICANN-IANA Operator, 19 February 2016	15.7.2 - Severability	ICANN proposes commercially reasonable efforts standard instead of best endeavours.	In the event of severability, the standard of best endeavours makes logical sense over a commercially reasonable standard. Therefore no change to the text is required.
30	ICANN-IANA Operator, 19 February 2016	15.8 and 15.9 – Survivability of Indemnification Provisions	ICANN proposes to remove these provisions.	There are no indemnification provisions so no need for these provisions. The text has been revised accordingly.
31	ICANN-IANA Operator, 19 February 2016	New 15.9.1 (15.11.1) and 15.9.2 - Subcontracting	ICANN suggests making these provisions mutual.	With regard to proposed 15.9.1, given the nature of the obligations involved, it does not make sense to revise this provision to make it mutual. No change to the text is required.  With regard to proposed 15.9.2, the text has been revised accordingly to make the provision mutual.
32	ICANN-IANA Operator, 19 February 2016	15.11.3 - Subcontracting	ICANN has deleted this provision.	The text has been revised accordingly.