

## G. Draft Delegated Managers/Administrator Contract

*The delegated Managers/Administrators contract will establish clear and comprehensive parameters for the management of the delegated subdomains*

As 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 Delegated Managers. The agreements will establish clear and comprehensive parameters for the management of the delegated subdomains, as well as basic requirements and obligations binding on NeuStar as the usTLD Administrator and the Delegated Manager. 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 Delegated Managers 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.

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. 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. Use of the existing ICANN agreements as templates will establish a sense of consistency between the usTLD and the DNS at large, as well as providing usTLD users, delegated managers, and registrars a familiar and effective system under which to operate. A template for the Delegated Manager Agreement is attached hereto. This document will be a standard document signed by all usTLD Delegated Managers and will be finalized upon completion of the compliance report described in Section B.4.5 of this Proposal.

### HIGHLIGHTS

- **Agreement establishes mutual obligations of delegated managers and usTLD Administrator**
- **Establishes mutual performance specifications and performance credits to ensure mutual compliance with minimum technical requirements**
- **Promotes greater accountability in locality-based usTLD space**

**WORKING DRAFT DATED JULY 27, 2001**

**THIS AGREEMENT IS A TEMPLATE TO SHOW THE BASIC STRUCTURE UNDER WHICH NEUSTAR EXPECTS THAT THE DELEGATED MANAGERS MIGHT OPERATE. THIS AGREEMENT WILL BE FINALIZED UPON COMPLETION OF THE COMPLIANCE REPORT DISCUSSED IN SECTION B.4.5 BASED UPON INFORMATION GATHERED IN THAT PROCESS.**

**usTLD ADMINISTRATOR-DELEGATED MANAGER AGREEMENT**

This usTLD Administrator-Delegated Manager 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 [Delegated Manager’s name], a [jurisdiction and type of organization], with its principal place of business located at [Delegated Manager’s location] (“Delegated Manager”).

**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**, the usTLD Administrator has entered a usTLD Agreement with the U.S. Department of Commerce, National Institute of Standards and Technology to administer the .us top-level domain name and to operate a shared registration system, TLD nameservers, and other equipment for the “.us” top-level domain

**WHEREAS**, historically the second, third, and in certain cases fourth level sub-domains of the usTLD were geographically and politically defined pursuant to the Internet Engineering Task Force’s RFC 1480 (titled The US Domain at [www.ietf.org/rfc/rfc1480.txt?number+1480](http://www.ietf.org/rfc/rfc1480.txt?number+1480)) (“RFC 1480”);

**WHEREAS**, pursuant to the provisions of RFC 1480 and RFC 1591 (titled Domain Name System Structure and Delegation at <http://www.isi.edu/in-notes/rfc1591.txt>) (“RFC 1591”), in each case as supplemented by the rules and procedures on the .us domain website (<http://www.nic.us>), as they may be amended from time to time (“US Domain Policies”), Registrar, along with other registrars, currently acts as a registry and registrar for certain third level and fourth-level sub-domain names within the .us top-level domain for a particular locality or localities.

**WHEREAS**, pursuant to this Agreement, Delegated Manager wishes to continue to provide services pursuant to RFC 1480 and RFC 1591, as supplemented by the policies created and administered by the usTLD Administrator.

**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 Delegated Manager, intending to be legally bound, hereby agree as follows:

## **1. DEFINITIONS**

- 1.1. “Agreement” means this usTLD Administrator-Delegated Manager Agreement between usTLD Administrator and Delegated Manager, as such may be amended from time to time in the future.
- 1.2. The “APIs” are the application program interfaces by which Delegated Manager 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. The word “Delegated Manager” when appearing with an initial capital letter, refers to [Delegated Manager Name], a party to this Agreement.
- 1.5. The word “Delegated Manager” 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.
- 1.6. "Delegated Manager Services" means services provided by a Delegated Manager 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.
- 1.7. The “Delegated Manager Tool Kit” shall mean the Tool Kit set forth in Exhibit A.
- 1.8. “DNS” means the Internet domain name system.
- 1.9. The “Effective Date” shall be the date first set forth above.
- 1.10. “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).

- 1.11. “Personal Data” refers to data about any identified or identifiable natural person.
- 1.12. “Registered Name” refers to a sub-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.
- 1.13. “Registrant” means the holder of a Registered Name.
- 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-Delegated Manager 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 Delegated Manager with access as a Delegated Manager to the usTLD System. Nothing in this Agreement entitles Delegated Manager to enforce any agreement between usTLD Administrator and NIST, and Delegated Manager shall not be deemed to be a third-party beneficiary under the usTLD Agreement.
- 2.2. **Maintenance of Registrations Sponsored by Delegated Manager.** Subject to the provisions of this Agreement, and requirements under the usTLD Agreement, and solely if requested by Delegated Manager, usTLD Administrator shall maintain the registrations of Registered Names sponsored by Delegated Manager in the usTLD System so long as Delegated Manager has paid the Fees required by Subsection 4.1 below and this Agreement remains in effect. Otherwise, Delegated Manager shall maintain the registrations of Registered Names sponsored by Delegated Manager in the usTLD System.
- 2.3. **Provision of Tool Kits; Limited License.**
  - 2.3.1. Delegated Manager Tool Kit. If the Delegated Manager requests that the usTLD Administrator maintains the registrations of Registered Names sponsored by Delegated Manager in the usTLD System, no later than five (5) business days after the Effective Date, usTLD Administrator shall provide to Delegated Manager a copy of the Delegated Manager Tool Kit, which shall provide sufficient technical specifications to permit Delegated Manager interface with the usTLD System and employ its features that are available to Delegated Managers, provided that, if the Effective Date occurs prior to the date that usTLD Administrator has made the usTLD Tool Kit available to .us Delegated Managers generally (“Availability Date”), usTLD Administrator shall provide to Delegated Manager 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 Delegated Manager and Delegated Manager 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 Delegated Manager 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. Limited License. Subject to the terms and conditions of this Agreement, including without limitation Delegated Manager’s timely payment of all

Fees owed, usTLD Administrator hereby grants Delegated Manager and Delegated Manager 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 Delegated Manager Tool Kits, as well as any updates and redesigns thereof, for providing domain name Delegated Manager 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 Delegated Manager 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 Delegated Manager.
- 2.5. **Engineering and Customer Service Support; Performance Specifications.** usTLD Administrator shall provide Delegated Manager with engineering and customer service support as set forth in Exhibit B.
- 2.6. **Handling of Personal Data.** usTLD Administrator shall notify Delegated Manager of the purposes for which Personal Data submitted to usTLD Administrator by Delegated Manager 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, Delegated Manager shall comply with any such NIST requirements or usTLD Policy Council policies in accordance with the stated timelines.

### **3. OBLIGATIONS OF DELEGATED MANAGER**

- 3.1. **Delegated Manager Responsibility for Customer Support; Participation in Marketing Campaigns/Community Outreach Programs.** Delegated Manager 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, Delegated Manager 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 Delegated Manager will cooperate with usTLD Administrator in marketing campaigns or community outreach programs that usTLD Administrator may commence from time to time.

- 3.2. **Delegated Manager'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, Delegated Manager shall have in effect an electronic or paper registration agreement with each Registrant (a "Registration Agreement"). Delegated Manager 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. Delegated Manager shall include in each Registration Agreement those terms specifically required by this Agreement and the Accreditation Agreement and other terms that are consistent with Delegated Manager'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.
- 3.3. **Indemnification Required of Registrants.** In its Registration Agreement with each Registrant, Delegated Manager 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.
- 3.4. **Data Submission Requirements.** As part of its registration and sponsorship of Registered Names in the usTLD, Delegated Manager shall submit complete data (and update such data) as required by technical specifications of the usTLD System that are made available to Delegated Manager from time to time and the Accreditation Agreement. If the Delegated Manager requests that the usTLD Administrator maintains the Registered Names in the usTLD System, Delegated Manager 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.
- 3.5. **Security.** Delegated Manager 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

Delegated Manager's system and the usTLD System shall be protected to avoid unintended disclosure of information. Delegated Manager 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 Delegated Manager, 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 Delegated Manager will comply with all such provisions.

- 3.6. **Resolution of Technical Problems.** Delegated Manager 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 Delegated Manager's systems. Delegated Manager 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 Delegated Manager similarly situated, including any affiliates of usTLD Administrator that serve as Delegated Managers.
- 3.7. **Time of Entry of Domain Name Registration.** Delegated Manager 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.
- 3.8. **Compliance with Terms and Conditions.** Delegated Manager shall comply with, and shall include in each Registration Agreement all of the following:
  - 3.8.1. 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
  - 3.8.2. 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 usTLD Policy Council in a non-arbitrary manner and applicable to all Delegated Managers 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 Delegated Manager.

- 3.9. **Restrictions on Registered Names; Compliance with Law.** In addition to complying with NIST, policies, procedures, and practices limiting domain names that may be registered, Delegated Manager agrees to comply with applicable statutes and regulations limiting the domain names that may be registered. Further, Delegated Manager shall abide by applicable laws and governmental regulations.
- 3.12 **Resellers/Sub-Delegated Manager.** Delegated Manager may, in its discretion from time to time, designate one or more resellers/Sub-Delegated Managers (“Reseller”) that will be permitted to provide Delegated Manager Services consistent with those permitted of Delegated Manager under this Agreement. Delegated Manager 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 Reseller to abide by all terms and conditions and all Delegated Manager obligations set forth in this Agreement (provided that re-sellers will *not* be entitled to appoint their own resellers) and the Accreditation Agreement. Delegated Manager 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 Delegated Manager’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), Delegated Manager shall provide to usTLD Administrator a complete written list of all of its current resellers. Further, in its Reseller Agreement with each reseller, Delegated Manager 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-Delegated Manager. 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.** In the event that the Delegated Manager requests that Registered Names are maintained by the usTLD Administrator, Delegated Manager agrees to pay usTLD Administrator the fees set forth in Exhibit F for initial and renewal registrations and other services provided by usTLD Administrator to Delegated Manager (collectively, “Fees”). usTLD Administrator reserves the right to revise the Fees prospectively upon thirty (30) days notice to Delegated Manager, provided that such adjustments are consistent with the usTLD Agreement.

- 4.2. **Payment of usTLD Administrator Fees.** In advance of incurring Fees, Delegated Manager 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 Delegated Manager. 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 Delegated Manager.
- 4.3. **Non-Payment of Fees.** In the event Delegated Manager 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 Delegated Manager; (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.
- 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, Delegated Manager 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.** Delegated Manager, 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 Delegated Manager; (ii) any agreement, including Delegated Manager’s dispute policy, with any Registrant or re-seller; or (iii) Delegated Manager’s domain name registration business, including, but not limited to, Delegated Manager’s advertising, domain name application process, systems and other processes, fees charged, billing practices and customer service, or any other business conducted by Delegated Manager; provided, however, that in any such case: (a) usTLD Administrator or any other Indemnified Person provides Delegated Manager with reasonable prior notice of any such Claim, and (b) upon Delegated Manager’s written request, usTLD Administrator or any other Indemnified Person will provide to Delegated Manager all available information and assistance reasonably necessary for Delegated Manager to defend such Claim; provided further that Delegated Manager reimburses usTLD Administrator and such other Indemnified Persons for their actual and reasonable costs incurred in connection with providing such information and assistance. Delegated Manager 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. Delegated Manager 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 DELEGATED MANAGER’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.

## 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-Delegated Manager Agreement (such as this one) are approved or adopted by NIST from time to time, Delegated Manager 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 Delegated

Manager within such thirty (30) day period, Delegated Manager shall be deemed to have accepted the provisions of such revised usTLD Administrator-Delegated Manager Agreement, and as such, shall be bound by all the terms and conditions of such revised usTLD Administrator-Delegated Manager Agreement. usTLD Administrator will use commercially reasonable efforts to post such revised form of usTLD Administrator-Delegated Manager 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 Delegated Manager. Delegated Manager 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 Delegated Manager's Accreditation. This Agreement shall immediately terminate in the event Delegated Manager's accreditation by usTLD Administrator is terminated or expires without renewal.

8.2.4. Termination in the Event of Termination of usTLD Agreement. 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. Termination in the Event of Insolvency or Bankruptcy. This Agreement will automatically and immediately terminate if the Delegated Manager is adjudged insolvent or bankrupt, or if proceedings are instituted by or against Delegated Manager 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 Delegated Manager's property or assets or the liquidation, dissolution or winding up of Delegated Manager'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 Delegated Manager prior to the effective date of such

expiration or termination, provided that all Delegated Manager's payments to usTLD Administrator for Fees are current and timely.

- 8.3.2. Delegated Manager shall immediately transfer its sponsorship of Registered Names to another Delegated Manager 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. Assignment to Successor usTLD Administrator. 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 Delegated Manager 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. Assignment in Connection with Assignment of usTLD Agreement with NIST. 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. Other Assignments. 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; provided, however, 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 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 Delegated Manager 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 Delegated Managers generally (e.g., NIST-mandated revisions to the form usTLD Administrator-Delegated Manager Agreement).

If to Delegated Manager:

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with copy to:

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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. Delegated Manager. Delegated Manager 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 Delegated Manager, (5) no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by Delegated Manager in order for it to enter into and perform all its obligations under this Agreement.
- 9.3.2. usTLD Administrator. 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, DELEGATED MANAGER 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,

DELEGATED MANAGER TOOLKIT, usTLD SYSTEM OR ANY COMPONENT THEREOF WILL MEET DELEGATED MANAGER'S REQUIREMENTS, OR THAT THE OPERATION OF XRP, APIs, DELEGATED MANAGER TOOLKITS, THE usTLD SYSTEM OR ANY COMPONENT THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE XRP, APIs, DELEGATED MANAGER 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, DELEGATED MANAGER TOOLKITS, usTLD SYSTEM OR ANY COMPONENT THEREOF OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. SHOULD THE XRP, APIs, DELEGATED MANAGER TOOLKIT, THE usTLD SYSTEM OR ANY COMPONENT THEREOF PROVE DEFECTIVE, DELEGATED MANAGER ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION OF DELEGATED MANAGER'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), Delegated Manager 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 stockholders from all costs and damages (including without limitation reasonable attorneys' fees) which it may suffer by reason of Delegated Manager's failure to indemnify usTLD Administrator as provided above; provided, however, that Delegated Manager's indemnity obligations under this Agreement shall *not* deemed to be limited by the amount of such insurance. Delegated Manager 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. Delegated Manager acknowledges that nothing in this Agreement shall confer upon Delegated Manager 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 resolved 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 therefor 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 reasonably 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-Delegated Manager Agreement and the Accreditation Agreement, the usTLD Administrator-Delegated Manager 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 Delegated Manager]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## Exhibit A

### **DELEGATED MANAGER TOOL KIT**

usTLD Administrator-Delegated Manager 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 Delegated Manager, not Registrants or prospective customers of Delegated Manager, for non-technical issues solely relating to the usTLD System and its operation. usTLD Administrator will provide Delegated Manager 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 Delegated Manager 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 Delegated Manager at such time.

The usTLD Administrator provides a clear, concise and efficient deliberation of customer support responsibilities. Delegated Managers provide support to registrants (i.e., Registrants) and registries (like usTLD Administrator) provide support for Delegated Managers. 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 Delegated Manager and to focus on the system operations supporting the usTLD.

#### ***Technical Help Systems***

usTLD Administrator will provide its Delegated Managers 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 Delegated Manager operations. To obtain access to these Web-based services, a Delegated Manager 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 Delegated Managers 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. 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 Delegated Managers of the outage.

Non-affiliated Delegated Managers 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 Delegated Managers, including Delegated Manager, providing domain-name services.

### ***Central Help Desk***

In addition to implementing the website, usTLD Administrator will provide telephone support to Delegated Managers 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 Delegated Manager. 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 Delegated Managers 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.

<b>Level</b>	<b>Description</b>	<b>Escalation Policy</b>	<b>Notification</b>
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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 Delegated Managers within 15 minutes; updates every 30 minutes
II	Systems outage affecting one or two Delegated Manager sessions but not the entire system	Systems engineer escalates to data-center manager if not resolved in one hour	Web-portal notification to all Delegated Managers; hourly updates
III	Technical questions	Help Desk customer-support specialist escalates to the systems engineer if not resolved in two hours	Hourly updates to Delegated Manager 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 Delegated Manager 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 Delegated Managers 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 Delegated Managers' testing.

Once each new Delegated Manager 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 Delegated Manager has passed the acceptance test, usTLD Administrator will issue its user id, passwords, and digital certificates, and the Delegated Manager can then begin operations.

### *Customer Satisfaction Survey*

To determine the satisfaction of Delegated Managers 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.

## Exhibit C

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

#### **I. Registration Requirements**

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

1. Enter into an electronic or paper registration agreement with the Delegated Manager, 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 Delegated Manager'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 Delegated Manager in

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

## **Exhibit D**

### **REGISTRATION FEES**

- **Initial Registration.** *The initial registration fee shall be determined by usTLD Administrator pursuant to the Locality-based usTLD Compliance Report.*
- **Renewal Fees.** *The renewal registration fee shall be determined by usTLD Administrator pursuant to the Locality-based usTLD Compliance Report.*
- **Enhanced Whois Service.** Delegated Manager 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 Delegated Manager, provided that such adjustments are consistent with the usTLD Agreement.