

Master Services Agreement

This MASTER SERVICES AGREEMENT, dated as of December 01, 2010 (the "Agreement"), is made by and between Internet Systems Consortium, Inc., a Delaware non-profit corporation, located at 950 Charter Street, Redwood City, CA, 94063 ("ISC"), and CAcert Inc., ("Customer"), located at P.O. Box 4107, Denistone East NSW 2112, Australia.

1. **Scope of Agreement; Purchase of Services.** The terms contained in this Agreement apply to the purchase of all services (collectively, the "Services") by Customer from ISC. Each Service shall be ordered by Customer on a Service Order or a Statement of Work in the form or forms attached hereto (referred to herein as a "Service Order"), which shall be effective when executed by both Customer and ISC.
2. **Payment.** (a) **Fees; Invoices and Payment.** Customer shall pay the fees and other charges for each Service as provided in the Service Order. Unless otherwise set forth in a Service Order, charges shall be invoiced annually and payment shall be due upon receipt of such invoice. Any payments not made within thirty (30) days shall accrue interest at the rate of one and one-half percent (1½%) per month. (b) **Taxes.** Customer shall pay all federal, state, and local sales, use, value added, excise, duty and any other taxes assessed with respect to the purchase of Services.
3. **Term and Termination.** (a) **Term; Renewals.** The term of this Agreement commences on the date the first Service Order is executed by the parties and terminates upon termination of the last Service Order in effect between the parties. Each Service Order is for a period of twelve (12) months, unless terminated earlier as provided therein, and will automatically renew for successive twelve (12) month periods thereafter, unless either party gives notice of its intent not to renew at least thirty (30) days prior to the expiration of Customer's then-current Service Order term. (b) **Termination.** ISC may terminate this Agreement at any time on written notice to Customer in the event that: (i) Customer is in breach of this Agreement, (ii) Customer shall become insolvent, make an assignment for the benefit of creditors, commence any proceeding in bankruptcy or consent to any bankruptcy or similar proceedings, or (iii) ISC determines, in its sole discretion, that such termination is necessary to prevent the breach of confidential or security-related information or to maintain the viability or integrity of ISC's operations. Following any such termination of this Agreement, Customer shall pay to ISC, within ten (10) days after termination, all amounts owing for Services. The rights and obligations of the parties pursuant to Sections 4 through 8 inclusive shall survive the termination of this Agreement.
4. **Acceptable Use.** Customer shall at all times adhere to the ISC Acceptable Use Policy located at <http://www.isc.org/about/home/aup.php>, as amended from time to time by ISC, a copy of which is attached hereto and incorporated herein by this reference. Notwithstanding anything to the contrary contained herein, ISC may terminate this Agreement or any Service Order or take any other corrective action, including disconnection or discontinuance of any and all Services, in the event of a breach by Customer of the ISC Acceptable Use Policy



which Customer has not cured within twenty (20) days of written notice from ISC.

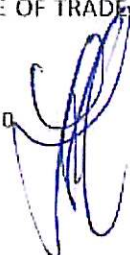
5. **Open Source; Confidentiality.** ISC has produced, contributed to and released certain software, including but not limited to BIND and DHCP, in "Open Source" versions which is intended to be and remain Open Source for all users without payment of license fees, royalties, purchase price or other fees or costs for the right to use such software. Customer agrees that Customer will not claim or accept rights of control or ownership over any Open Source works by ISC, whether used or produced, wholly or partly, in the course of delivering the Services.

"Confidential Information" means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation, documents, prototypes, samples, plant and equipment), of a confidential or proprietary nature, or that is designated as "Confidential." Confidential Information may also include information disclosed to a disclosing party by third parties. Confidential Information will not, however, include any Open Source works or any information that: (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records prior to the time of disclosure; (iv) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession. Notwithstanding anything to the contrary, either party may disclose Confidential Information as required by law, provided that the receiving party gives the disclosing party written notice of such requirement prior to such disclosure and fully cooperates to limit the disclosure of such Confidential Information to the minimum extent necessary to comply with the legal disclosure obligation.

Non-Use and Non-Disclosure. Each party agrees not to disclose any Confidential Information of the other party to third parties or to such party's employees or contractors, except to those employees or contractors of the receiving party with a need to know.

Maintenance of Confidentiality. Each party shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party.

6. **Disclaimer of Warranties.** ALL INFORMATION, SERVICES, GOODS AND SOFTWARE, IF ANY, WHICH IS PROVIDED BY ISC IN CONNECTION WITH THIS AGREEMENT, IS PROVIDED SOLELY ON AN AS-IS BASIS, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY ARISING OUT OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE, WARRANTIES OF MERCHANTABILITY, FITNESS



FOR A PARTICULAR PURPOSE, NON-INTERFERENCE AND NON-INFRINGEMENT. ISC DOES NOT WARRANT THAT ANY SOFTWARE, FIXES, PATCHES, REVISIONS, UPDATES OR MODULES, IF ANY, PROVIDED BY ISC IN CONNECTION WITH THIS AGREEMENT, WILL BE BUG-FREE OR ERROR-FREE OR THAT ANY CORRECTIONS WILL BE EFFECTIVE.

7. **Indemnification.** Customer agrees to indemnify, protect, hold harmless and defend ISC from and against any claim, action, loss, liability, expense, demand, damage or judgment, including costs and attorneys' fees, which arise as a result of or in connection with (i) any actions or inactions by Customer or its agents, employees, consultants or representatives, including a breach of this Agreement, (ii) the delivery or receipt of Services under this Agreement, or (iii) Customer's use of any Service, software or any patch, fix, enhancement or modification of such software in connection with the Services, in each case whether or not based on a claim of any defect in such software or the Services.

8. **Limitation of Liability.** THE REMEDIES OF CUSTOMER IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, SHALL BE EXCLUSIVELY AS SET FORTH HEREIN. IN NO EVENT UNDER ANY THEORY SHALL ISC BE RESPONSIBLE WITH RESPECT TO ANY SERVICES (OR THE CONSEQUENCES OF SUCH SERVICES) DELIVERED PURSUANT TO THIS AGREEMENT FOR ANY DAMAGES OF ANY TYPE IN AN AMOUNT IN EXCESS OF THE FEES FOR THE SERVICES FOR THE TWELVE MONTHS IMMEDIATELY PRECEDING THE ACT, OMISSION, ERROR OR BREACH GIVING RISE TO SUCH LIABILITY. IN NO EVENT UNDER ANY THEORY SHALL ISC BE LIABLE TO CUSTOMER FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGE FOR LOSS OF PROPERTY OR SOFTWARE, LOSS OF PROFITS OR REVENUE, LOSS OF USE, COST OF CAPITAL, LOSS OF DATA, OR ANY OTHER ECONOMIC LOSS, NOTWITHSTANDING THAT ISC MAY HAVE BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. UNDER NO CIRCUMSTANCES SHALL ANY FAILURE OF ANY REMEDY OF ITS ESSENTIAL PURPOSE AFFECT THE FOREGOING DISCLAIMER OF DAMAGES. ISC SHALL NOT BE LIABLE FOR ANY CLAIM OR DEMAND AGAINST CUSTOMER BY ANY OTHER PARTY. IN NO EVENT MAY A CAUSE OF ACTION BE ASSERTED AGAINST ISC UNDER THIS AGREEMENT WHICH ARISES OUT OF OR RELATES TO ANY EVENT OCCURRING MORE THAN ONE YEAR PRIOR TO THE FILING OF SUCH CAUSE OF ACTION.

9. **Force Majeure.** ISC shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, interruption or delay in telecommunications services or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Services described in the Service Orders.

10. **Insurance.** Each party shall be responsible for assessing its own need for property, casualty, liability or other insurance and shall obtain such insurance covering its risks as it sees fit.



11. **Notices.** All notices pursuant to this Agreement shall be in writing and shall be addressed to the parties at their addresses set forth above, or such other address as either party may notify the other of in accordance with this Section; and shall be deemed given upon delivery if personally delivered, or three (3) days after mailing for domestic mail and five (5) days after mailing for international air mail.
12. **Mediation.** No action or proceeding with respect to any dispute, claim or controversy arising out of or relating to this Agreement or the breach thereof may be commenced until the parties attempt in good faith, for a period of sixty (60) days, to settle their dispute by mediation. The cost of any such mediation shall be shared equally by the parties.
13. **Miscellaneous.** This Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be subject to the exclusive jurisdiction and venue of the California state courts and/or the United States District Court of the Northern District of California, and Customer and ISC hereby agree to the personal and exclusive jurisdiction and venue of these courts. This Agreement and the Service Order(s) contain the entire agreement between the parties, supersede all prior agreements (oral and written) relating to the subject matter hereof, and may not be amended except in writing and signed by both parties. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided however, that this Agreement shall not be assignable by Customer without ISC's prior written consent. The failure to enforce any provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect a party's enforcement rights thereafter. Nothing in this Agreement shall be construed to create a partnership, joint venture, affiliate, employer-employee or principal-agent relationship, but rather the relationship of the parties shall be that of independent parties. If any provision of this Agreement shall be held invalid or unenforceable, the remaining provisions shall not be affected thereby. If any action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to recover the costs and expenses of such action, including attorneys' fees. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first written above.

Internet Systems Consortium, Inc., a Delaware non-profit corporation	Customer: CAcert Inc.,
By: <i>L. Hendriksen</i>	Signature: <i>Lambert Hofstra</i>
Name: <u>Laura Hendriksen</u>	Name: <u>Lambert Hofstra</u>
Title: <u>Director of Business Operations</u>	Title: <u>President CAcert Inc.</u>

Attachment: Service Order(s) and/or Statement(s) of Work

SNS-PB Service Order

This Service Order to the Master Services Agreement dated as of December 01, 2010 between Internet Systems Consortium, Inc. ("ISC") and CAcert Inc., ("Customer") sets forth the Services that ISC will supply to Customer at the location (if applicable) specified below. Capitalized terms used and not defined herein have the meanings given to them in the Master Services Agreement.

1. DEFINITIONS.

- 1.1. Secondary Name Service ("SNS") – Public Benefit refers to the ISC secondary DNS hosting service offered on the ISC Public Benefit platform comprised on donated equipment, collocation space and bandwidth supporting our communal good programs and projects. This service is offered to qualifying institutions at no charge or as part of a discounted SNS support contract.
- 1.2. SNS Nameserver Infrastructure refers to the group of systems (servers, hardware, and associated software) that are responsible for delivering the Services. The SNS Nameserver Infrastructure is not defined as including web-based user interfaces, zone transfer mechanisms, update systems, or other Customer-accessible data access or manipulation methods.

2. ISC SERVICES:

- 2.1. **SNS Service Level Agreement.** This SNS Service Order (the "Service Order") covers only the SNS services (the "Services") provided by ISC to Customer. This Service Order shall become effective fourteen (14) days after the commencement of the Services, to allow ISC and Customer time to properly configure and test the Services.
- 2.2. **SNS Data Access Availability.** ISC will make available to Customer a web-based user interface, zone/data transfer mechanisms, applications programming interfaces (API) or other Customer-accessible data access or manipulation software. For purposes of this Service Order, a "Data Access Outage" is an instance if any of the previously listed services are unavailable for one or more consecutive hours in any calendar month, thereby preventing Customer (or Customer's applications) from being able to reasonably add, delete or modify their DNS or other directory data as committed to in the published functional specifications for such Services.
- 2.3. **SNS Incident Response Time.** For each event, Customer will receive communication from a representative of our customer service department within the specified time. All commitment times are measured from the time the request was received by ISC. In most cases, various issues can be resolved immediately upon receipt of the service request. The table below lists the response levels and incident descriptions. Response times are a committed time to acknowledgement and not a committed resolution time. NOC and support availability are provided 12x5 (9-9 ET).



Incident Description	Response Time
Critical –customer experiencing a <i>disruption of DNS services – i.e. unable to query customer zones on SNS platform for 10 minutes</i>	Same Day
Medium - customer experiencing an infrequent DNS lookup failure	Next business day
Informational - customer requests for information related to SNS configuration	Within 5 business days

3. **LOCATION:** SNS hubs at: SNS-PB Global Anycast
4. **CUSTOMER TECHNICAL CONTACT:** dns-admin@cacert.org
5. **ISC TECHNICAL CONTACT:** Hostmaster@isc.org
6. **FEES AND PAYMENT:** SNS-PB shall be provided at no-charge on a best effort basis with the expectation of participation in marketing efforts either as a reference or publicity.
7. **CONTRACT TERM:** Twelve (12) months with automatic renewal unless either party cancels in writing 30 days prior to the end of the current term.
8. **Miscellaneous:** ISC reserves the right to provide anonymous query streams created by ISC from customer's data on SNS-PB servers for research purposes only by qualifying organization under NDA. A list of qualifying research organizations is available upon request

Customer has read and understands this Service Order and understands that the Services described herein are provided subject to the terms and conditions set forth in the Master Services Agreement.

Agreed to on this 1st day of December, 2010.

ISC:

By: 

Name: Laura Hendriksen

Print

Title: Director of Business Operations

Customer: CACert Inc.,

By: 

Signature

Name: Lambert Hofstra

Print

Title: President CACert Inc.