



18 April 2006

VIA ELECTRONIC MAIL

Dr. Vinton G. Cerf, Chair  
Members of the ICANN Board of Directors  
4676 Admiralty Way, Suite 330  
Marina del Rey, CA 90292-6601  
USA

Dear Dr. Cerf and Members of the Board:

On 1 August 2005, ICANN posted a draft registry agreement with ICM Registry (the "Registry Agreement"), which the Board discussed on 15 September 2005. At that meeting, the ICANN Board directed staff to consider the need for additional contract provisions to (i) ensure that ICM would develop and implement policies consistent with the principles reflected in its application, and (ii) assure the community that such commitments would be honored in the event of a change of control. Subsequently, in a letter dated 21 March 2006 to GAC Chairman Sharil Tarmizi, Acting Assistant Secretary John Kneuer (the US Department of Commerce) criticized the draft for failing to specifically reference "key commitments offered by ICM Registry" in the application process. Finally, in its Wellington Communique, the GAC articulated certain concerns and sought certain assurances in connection with the Registry Agreement between ICANN and ICM Registry.

In the intervening months since the draft Registry Agreement was first posted, ICM Registry has worked with ICANN staff to address the concerns of the Board, the GAC, and the Commerce Department. I am writing now to summarize the manner in which these concerns have been addressed in the revised draft Registry Agreement now before the Board. The proposed contract modifications all appear in Appendix S, relevant portions of which are set forth in Attachment 1.

## **1. ICANN Board Meeting (15 September 2005)**

Resolution (excerpted):

*Whereas, the ICANN Board has expressed concerns regarding issues relating to the compliance with the proposed .XXX Registry Agreement (including possible proposals for codes of conduct and ongoing obligations*

*regarding potential changes in ownership) and has noted the importance of private registry agreements, in creating contractual means of affecting registries and other actors of the Internet community for the public interest.*

. . .

*Resolved (05.\_\_), that the ICANN President and General Counsel are directed to discuss possible additional contractual provisions or modifications for inclusion in the .XXX Registry Agreement, to ensure that there are effective provisions requiring development and implementation of policies consistent with the principles in the ICM application. Following such additional discussions, the President and General Counsel are requested to return to the board for additional approval, disapproval or advice.*

#### Response:

Change in Control. ICM has agreed to notify ICANN in advance of any proposed change of control. If ICANN notifies ICM that it is concerned that the proposed change in control may undermine ICM's compliance with the Registry Agreement, or ICANN's ability to enforce that agreement, ICM will not effect the change until such concerns have been resolved. (Appendix S, Part 7)

Substantive Policy Elements. The Charter (Appendix S, Part 1, §5) now explicitly obligates ICM Registry to:

- a. Verify that prospective registrants qualify as members of the sponsored community;
- b. Obligate registrants to adhere to best practices and prohibit illegal content; unfair, deceptive, or fraudulent marketing practices; the use of malware, malicious code, spoofing, phishing; practices designed to attract children or suggest the presence of child pornography; unauthenticated use of credit cards; violations of law regarding the sending of unsolicited promotional email; or misuse of personal data;
- c. Create automated tools to monitor registrant compliance with registry policies related to labeling and the prohibition of child pornography
- d. Create mechanisms for user reporting of registrant non-compliance with registry policy;
- e. Create policies and procedures for terminating the registration of non-compliant registrants.

General Policy Obligations: The agreement now requires ICM to provide regular reports on its policy development progress. (Appendix S, Part 7)

## 2. GAC Communiqué,<sup>1</sup> Wellington, New Zealand

### A. GAC Statement:

*In its application, supporting materials and presentation to the GAC in November 2005, ICM Registry promised a range of public interest benefits as part of its bid to operate the .xxx domain. To the GAC's knowledge, these undertakings have not yet been included as ICM obligations in the proposed .xxx Registry Agreement negotiated with ICANN.*

Response: First, please be assured that ICM has always intended to fulfill commitments contained in the application and supporting documentation, and believes that it was obligated to do so under the 1 August draft. Nonetheless, for the sake of clarity, we have added (in Appendix S, Part 1, §5.b) the “catch all” compliance statement requested by the GAC:

Establish registration requirements for the sTLD, which shall, in addition to the obligation to comply with all applicable law and regulation, and without limitation, include obligations related to verification of registrant eligibility, willingness to adhere to best practice guidelines containing prohibitions on: illegal content; unfair, deceptive, or fraudulent marketing practices; the use of malware, malicious code, spoofing, phishing; practices designed to attract children or suggest the presence of child pornography; unauthenticated use of credit cards; violations of law regarding the sending of unsolicited promotional email; or misuse of personal data, and other policies and procedures (the “Policy Commitments”) for the sTLD including, without limitation, Registry Operator’s policy commitments contained in the following documents submitted to ICANN by the Registry Operator:

- i. Application (Part B) dated 16 March 2004
- ii. Responses to Supplemental Questions of the Sponsorship and Other Issues Evaluation Team
- iii. ICM Letter to ICANN dated 9 October 2004
- iv. Memorandum to the Board of Directors dated 2 November 2004; revised 7 December 2004
- v. “The Sponsored .xxx TLD Proposal: Executive Summary for the ICANN Board of Directors;

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<sup>1</sup> The GAC Communiqué began by noting its dissatisfaction with the February 11 letter articulating the Board’s rationale for concluding that the application had overcome the deficiencies noted in the Evaluation Report, and requested a written explanation of this. Obviously, ICM is not in a position to respond to this concern.

- vi. Presentation to the ICANN Board of Directors (2 April 2005): “The Sponsored .xxx TLD: Promoting Online Responsibility; and
- vii. ICM Letter to ICANN dated 15 August 2005.

B. GAC Statement:

*The public policy aspects identified by members of the GAC include the degree to which .xxx application would take appropriate measures to restrict access to illegal and offensive content and support the development of tools and programs to protect vulnerable members of the community.*

Response: As amended, the proposed Charter obligates ICM to establish policies prohibiting illegal content. In addition, registrants must agree to adhere to best practices developed with the participation of the child safety and advocacy community, and must prohibit practices designed to attract children or suggest the presence of child pornography. ICM has indicated in writing, and is therefore obligated under the “catch all” commitment above, to prohibit virtual child pornography (which is legal in many jurisdictions) and to require registrants to clearly label their sites (including sites to which they redirect) using Internet Content Rating Association (ICRA) tags. Widespread adoption of ICRA labeling will enhance the effectiveness of many parental monitoring technologies already on the market.

The Charter also obligates ICM to ensure that the sponsor, the International Foundation For Online Responsibility (IFFOR), provides funding for child safety initiatives, including technology tools to enhance child safety online:

*Registry Operator will provide funding for IFFOR’s grant-making activities, to be carried out by the IFFOR Grant Advisory Committee (GAC) (the “Grant-making Commitments”), as set forth in the Application. (Appendix S, Part 1, §*

This obligation is reiterated in Appendix S, Part 7 (Additional Provisions) of the draft Registry Agreement.

C. GAC Statement:

*The public policy aspects identified by members of the GAC include the degree to which .xxx application would maintain accurate details of registrants and assist law enforcement agencies to identify and contact the owners of particular websites, if need be.*

Response: The proposed Registry Agreement obligates ICM to follow ICANN policy related to the accuracy of WHOIS data. In addition, ICM’s start-up plan requires it to authenticate and verify contact data for all prospective registrants. ICM must make this available to law enforcement in accordance with applicable law, as is required of all other registries. Beyond

this, we believe that it would be inappropriate for ICANN to dictate the circumstances under which, and the manner in which ICM will cooperate with law enforcement.

D. GAC Statement:

*The public policy aspects identified by members of the GAC include the degree to which .xxx application would act to ensure the protection of intellectual property and trademark rights, personal names, country names, names of historical, cultural and religious significance and names of geographic identifiers drawing on best practices in the development of registration and eligibility rules.*

Response: ICM's Start-Up Plan describes the Start Up Trademark Opposition Policy (STOP) designed to protect the rights of trademark holders. In addition, the Start-up Plan now includes the following additional commitments:

**Names with Cultural and/or Religious Significance.** Registry Operator shall provide a mechanism whereby, during a specified period of no less than sixty (60) days prior to the TLD's Limited Launch date (as defined in the Start-Up Plan), ICANN's Government Advisory Committee and/or the government of any country or distinct economy participating in the GAC (collectively, "Governments") may identify for reservation from registration names that match words of cultural and/or religious significance ("Culturally Significant Names").

**Country Name and Geographic Designators List.** Registry Operator shall draw on domain name registry best practices to create or acquire the rights to use an initial Country and Geographic Designators Reserved List, which shall be posted no less than sixty (60) days prior to the TLD's Limited Launch date.

Appendix S, Section 7 now includes the following commitment:

**Abusive Registrations.** Registry Operator shall develop a policy prohibiting abusive registrations (e.g., registration of a first and last name by a registrant other than the named individual), and shall provide a mechanism for rapid take down of abusive registrations in appropriate circumstances.

E. GAC Statement:

*Without in any way implying an endorsement of the ICM application, the GAC would request confirmation from the Board that any contract*

*currently under negotiation between ICANN and ICM Registry would include enforceable provisions covering all of ICM Registry's commitments, and such information on the proposed contract being made available to member countries through the GAC.*

Response: The “catch all” provision is described above.

### **3. Kneuer/DOC Letter of 21 March 2006**

#### **A. DOC Statement:**

*The proposed .xxx registry agreement does not require ICM to form or maintain this non-profit entity [IFFOR] or to abide by any .xxx rules it would establish, as promised in the ICM application.*

Response: Contrary to Mr. Kneuer's suggestion, IFFOR was formed prior to March 2004 as a Canadian not-for-profit entity. In addition to the “catch-all” commitment described above, the draft Registry Agreement now says:

Registry Operator will facilitate participation of Community members and stakeholders (as defined in the Application) in the International Foundation for Online Responsibility (“IFFOR”), a non-profit self-organizing policy development body for the sTLD in accordance with the policy development process set forth in the Application, including the commitments therein to fund IFFOR (the “IFFOR Commitments”) contained in the Application.

#### **B. DOC Statement:**

*IFFOR is not a party to the proposed Registry Agreement.*

Response: ICANN has consistently elected to enter into agreements with the registry operators for the new sTLDs (for example, see the executed contracts for .cat, .jobs, .mobi, and .travel, as well as the draft agreements for .tel). ICM has, however, agreed to provide its agreement with IFFOR to ICANN for internal review, and to enter into good-faith negotiations to resolve any concerns ICANN may have prior to the commencement of the Limited Launch.

#### **C. DOC Statement:**

*The proposed registry agreement does not obligate ICM to prohibit spam, malware, phishing, spooking, fraud, and other illegal marketing practices by registrants in .xxx, or to require registrants to adhere to best practices and affix ICRA tags to their sites.*

Response: The proposed agreement, as discussed above, contains these obligations. (Appendix S, Part 1, §5)

D. DOC Statement:

*The proposed registry agreement does not obligate IFFOR to sponsor development of technology tools and educational programs for parents, to fund participation by child advocates in the IFFOR policy process or to fund programs and tools to combat child pornography. Nor does the agreement obligate ICM to provide funding to IFFOR for these initiatives.*

Response: The proposed agreement, as discussed above, contains these obligations. (Appendix S, Part 1, §5)

E. DOC Statement:

*The proposed registry agreement does not obligate ICM to implement a WHOIS compliance program.*

Response: ICM has agreed to a “catch-all” contract provision that obligates it to fulfill all undertakings contained in the application, including those with respect to WHOIS verification.

\*\*\*\*\*

This summary, along with the attached contract language, certainly demonstrates that ICM Registry has listened carefully and responded fully to the concerns of the ICANN Board, the GAC, and the US Department of Commerce. I very much look forward to the Board’s review, and to concluding the contract discussions that have now been underway since June of last year.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Stuart Lawley', with a small flourish at the end.

Stuart Lawley, CEO

# Attachment 1 (Part A)

## APPENDIX S

### PART 1. DOTXXX CHARTER

This sTLD Charter (the “Charter”) identifies (a) the purposes for which the .xxx sTLD (the “sTLD”) is delegated, and (b) the community to be served by its delegation.

**Subject to Registry Operator’s compliance with this Registry Agreement, including all attachments and appendices thereto (the “Agreement”) and any Temporary Specifications or Policies or Consensus Policy as defined in the Agreement:**

1. The sTLD will serve the responsible global online adult-entertainment community (“Community”), generally defined as:
  - a. Those individuals, businesses, and entities that provide online, sexually-oriented adult entertainment (“Online Adult Entertainment”) intended for consenting adults or for other community members (“Providers”),
  - b. Organizations that represent Providers (“Representatives”), and
  - c. Their vendors, service providers, and contractors (“Service Providers”).

The term "Adult-Entertainment" is intended to be understood broadly for a global medium, to include those websites that provide Adult Entertainment (as defined above), operated by webmasters who have voluntarily determined that a system of self-identification would be beneficial.

2. The sTLD will be managed in accordance with the provisions of the Agreement.
3. Registry Operator will facilitate participation of Community members and stakeholders (as defined in the Application) in the International Foundation for Online Responsibility (“IFFOR”), a non-profit self-organizing policy development body for the sTLD in accordance with the policy development process set forth in the Application, including the commitments therein to fund IFFOR (the “IFFOR Commitments”) contained in the Application.

4. Registry Operator will provide funding for IFFOR’s grant-making activities, to be carried out by the IFFOR Grant Advisory Committee (GAC) (the “Grant-making Commitments”), as set forth in the Application.

4.5. Registry Operator will directly or, as appropriate and as set forth in the Application, in conjunction with IFFOR:

- a. Establish policies and procedures for the sTLD, including specifically but without limitation: policies for the use of automated tools to monitor proactively registrant compliance with registry policies related to labeling and the prohibition of child pornography; mechanisms for user reporting of registrant non-compliance with registry policy; procedures for providing notice to non-compliant registrants and an opportunity to cure that is reasonable in light of the nature of such non-compliance; and the circumstances under which Registry Operator will terminate the registration of a non-compliant registrant;
- b. Establish registration requirements for the sTLD, which may shall, in addition to the obligation to comply with all applicable law and regulation, and without limitation, include

obligations related to verification of registrant eligibility, willingness to adhere to best practice guidelines containing prohibitions on: illegal content; unfair, deceptive, or fraudulent marketing practices; the use of malware, malicious code, spoofing, phishing; practices designed to attract children or suggest the presence of child pornography; unauthenticated use of credit cards; violations of law regarding the sending of unsolicited promotional email; or misuse of personal data, and other policies and procedures (the "Policy Commitments") for the sTLD including, without limitation, Registry Operator's policy commitments contained in the following documents submitted to ICANN by the Registry Operator:

- i. Application (Part B) dated 16 March 2004
  - ii. Responses to Supplemental Questions of the Sponsorship and Other Issues Evaluation Team
  - iii. ICM Letter to ICANN dated 9 October 2004
  - iv. Memorandum to the Board of Directors dated 2 November 2004; revised 7 December 2004
  - v. "The Sponsored .xxx TLD Proposal: Executive Summary for the ICANN Board of Directors;
  - vi. Presentation to the ICANN Board of Directors (2 April 2005): "The Sponsored .xxx TLD: Promoting Online Responsibility; and
  - vii. ICM Letter to ICANN dated 15 August 2005.
- c. Permit members of the Community to register names within the sTLD in accordance with the sTLD policies;
  - d. Operate a web site located [www.about.xxx](http://www.about.xxx) to inform prospective registrants about registration policies and procedures;
  - e. Post on [www.about.xxx](http://www.about.xxx) or [www.iffor.org](http://www.iffor.org) or [www.icmregistry.com](http://www.icmregistry.com) relevant information about its activities, procedures and policies, along with meeting minutes and information about decisions taken by IFFOR or ICM so that interested members of the Community, registrars and others will have an opportunity to be aware of and respond to Registry Operator's actions and understand how to participate in the sTLD.†

# Attachment 1 (Part B)

## APPENDIX S

### PART 4. START-UP PLAN

**Subject to Registry Operator’s compliance with this Registry Agreement, including all attachments and appendices thereto (the “Agreement”) and any Temporary Specifications or Policies or Consensus Policy as defined in the Agreement, and provided the scope of the Charter is not exceeded:**

Registry Operator will implement the start-up plan shown in 4.1 below. In doing so, Registry Operator will provide for the introduction of the sTLD in an orderly, transparent and logical way, ensuring competition, fairness and reliability for ICANN Accredited Registrars, registrants the Community and other stakeholders.

#### 4.1 Start-up Plan

Date	Event
Date Contract Signed (DCS)	<ul style="list-style-type: none"><li>• Contract execution by ICANN, Registry Operator</li><li>• IFFOR Board creation process begins</li><li>• Back end provider contract signed</li><li>• System build begins</li></ul>
DCS + 30 Days	<ul style="list-style-type: none"><li>• Procedures for registering .xxx names published</li><li>• <u>IFFOR CEO Named</u></li><li>• <u>IFFOR Board Named</u></li></ul>
DCS + 60 Days	<ul style="list-style-type: none"><li>• Start Up Trademark Opposition Process (STOP) commences</li><li>• <u>IFFOR Board Meets</u></li><li>• <u>“Town Hall” meetings - IFFOR Board/CEO to meet with stakeholders groups</u><ul style="list-style-type: none"><li>○ <u>gather policy input</u></li><li>○ <u>initiate SO formation</u></li></ul></li><li>• <u>Stakeholders’ views statement developed</u></li><li>• <u>Mechanism for Governmental identification of Culturally Significant Names published and offered</u></li><li>• <u>Country names and geographic designator reserved list issued</u></li><li>• Policy for Premium Names and names allocated on other than first come/first served basis published and offered.</li><li>• Registrar agreements published and offered</li></ul>

	<ul style="list-style-type: none"> <li>• Pre-launch authentication of registrants begins</li> </ul>
DCS + 90 Days	<ul style="list-style-type: none"> <li>• <del>IFFOR Board in place</del></li> <li>• <u>IFFOR Board representative(s) and CEO round table with interested GAC members</u></li> <li>• <u>Draft Statement of Initial Registrant Requirements (SIRR) completed</u></li> <li>• <u>Stakeholder review of draft SIRR</u></li> <li>• System Test (OT&amp;E) begins</li> <li>• Registrar integration begins</li> </ul>
DCS + 120 Days	<ul style="list-style-type: none"> <li>• <u>SIRR adopted by Board</u></li> <li>• IFFOR registration policies announced and published</li> <li>• Registrant agreements (with requirements) published</li> </ul>
DCS + 150 Days	<ul style="list-style-type: none"> <li>• System Testing complete</li> <li>• <u>STOP ends</u></li> <li>• Premium Name Auction/Allocation on other than first come/first served basis begins</li> <li>• <u>Contract with 3rd party provider of child pornography monitoring service in place</u></li> <li>• Limited Launch Registrations begin (60 day window) through ICANN Accredited Registrars</li> </ul>
DCS + 210 Days	<ul style="list-style-type: none"> <li>• General registration begins through ICANN Accredited Registrars</li> <li>• <u>SO formation completed</u></li> </ul>
DCS + 240 Days	<ul style="list-style-type: none"> <li>• Further product and services launch schedule published</li> </ul>

## **IFFOR**

The population of the IFFOR Board and supporting organizations will commence on the signing of this contract. The constituencies substantially exist, but they need to be coordinated into the IFFOR structure.

The IFFOR Board will be responsible for developing and approving the initial baseline registration criteria, However, the IFFOR TLD Supporting Organization (TLDSO) will then develop the ongoing policies in conjunction with the other Supporting Organizations and Constituencies and propose the policies to the Board for acceptance.

### **System Build**

Registry Operator and IFFOR will work with the designated back-end registry provider to provide the back-end Registry system and services related to providing and maintaining the system (e.g., registrar help desk and billing). The system will integrate with databases that record and manage the authentication data.

### **System test**

Registry Operator and designated back end provider will conduct comprehensive testing of the registry system and registration procedures (including the interfaces with Registrars and the Authentication Services provider(s)). This testing will occur in cooperation with a select group of ICANN accredited registrars (the "Testbed Registrars") with in put from sTLD Community members as appropriate. The goal of OT&E testing is the confirmation that all entities involved in the registration process are prepared for the commencement of full operations and that escalation, support and reporting processes are in place and ready

### **Set and promote procedures**

ICM will ensure that the processes and procedures for registrars and registrants are clearly established and published in time to meet the above schedules.

### **Names with Cultural and/or Religious Significance.**

Registry Operator shall provide a mechanism whereby, during a specified period of no less than sixty (60) days prior to the TLD's Limited Launch date (as defined in the Start-Up Plan), ICANN's Government Advisory Committee and/or the government of any country or distinct economy participating in the GAC (collectively, "Governments") may identify for reservation from registration names that match words of cultural and/or religious significance ("Culturally Significant Names").

**Country Name and Geographic Designators List.** Registry Operator shall draw on domain name registry best practices to create or acquire the rights to use an initial Country and Geographic Designators Reserved List, which shall be posted no less than sixty (60) days prior to the TLD's Limited Launch date.

### **Start Up Trademark Opposition Proceeding (STOP)**

Intellectual Property ('IP') holders will have an extended period in which they can make an IP Claim prior to the Limited-launch of .xxx names. Once registrations begin, if a registrant attempts to register a name that has an IP claim against it, the prospective registrant will be notified of the existence of IP Claim(s) and the identity of the claimant(s) before the registration is confirmed and once registration is confirmed, the IP Claimant(s) will be notified the name has been registered. The IP claimant may challenge the registrant's rights to the name within a set timescale, during which time the challenged name will be designated not to resolve. Likewise, the domain holder may also initiate a dispute resolution process to challenge the IP claim(s) and obtain a resolving name. If a proceeding is initiated during the allotted time the challenged name will continue not to resolve until the dispute

resolution provider makes a decision. In order to further discourage bad faith registrations and frivolous IP claims, in the event that a proceeding is initiated, the parties will each be required to submit 50% of the dispute resolution fee in advance, pending the decision. Failure to respond by the non-initiating party would result in default judgment for the initiating party.

### **Authentication**

All prospective registrants must be verified members of the Community before being permitted to register a name in the sTLD. The verification process will be in operation at least 60 days before Limited-Launch, and will be available thereafter on an ongoing basis. The verification process is designed to establish that a prospective registrant meets the registration criteria.

A variety of automated and manual procedures will be utilized for verification, including pre-authentication by designated Authentication Providers (for example, Representative organizations), or a cross check of registration against information held by designated Authentication Providers.

### **Limited-Launch**

Registrations will be accepted-through ICANN accredited registrars only from members of the Community who have already been pre-authenticated.

### **General Registration**

During the General Registration phase, registrations will be accepted through ICANN accredited registrars-from prospective registrants who may or may not have already been authenticated as members of the Community. For those who have not been pre-authenticated, the requested domains will be placed on registry hold and will not resolve until the registrant has been successfully authenticated. In the event that a prospective registrant cannot be verified as a member of the community, the registration will not be completed and the name will be reallocated.

### **IP Holders who didn't participate in STOP or later acquire IP rights**

When general registrations commence, Registry Operator will begin accepting applications on a first come first served basis through ICANN accredited registrars from non-members of the Community to register non-resolving names that protect their Intellectual Property Rights. There will be strict guidelines governing these "non-resolving names" and any potential future changes to their status to discourage abuse of non-resolving names for purposes of speculation. Non-resolving names corresponding to trade or service marks held by community members will be subject to challenge under ordinary domain dispute procedures,

### **Products and services**

Registry Operator intends to make the products and services described in **Attachment 1** hereto available to registrants.

In accordance with the Agreement, Registry Operator may offer additional or modified Registry Services (as defined in the Agreement).

Registry Operator reserves the right to introduce mini start-up plans for new products and services similar to the above-described initial Start-up Plan. These plans will include appropriate testing periods and service validation for the interface with Registrars and registration process.

### **Registry reserved names**

Registry Operator intends to reserve certain names, to be permanently reserved or allocated on an other-than first-come, first-served basis.

# Attachment 1 (Part C)

## APPENDIX S

### PART 7 ADDITIONAL PROVISIONS

#### Interpretation

For purposes of this Agreement, and for the avoidance of doubt, Registry Operator and ICANN agree that a material failure by ICANN to comply with the provisions of Section 3.1(d) in accordance with its specific terms shall entitle Registry Operator to pursue all remedies under the Agreement otherwise available to it.

#### TLD Differentiation

ICANN and Registry Operator acknowledge that criteria included in the application process in which the .xxx TLD was selected, and in the previous TLD application expansion round, was that a new TLD be “clearly differentiated from existing TLDs.” ICANN, when undertaking to effect the delegation of new TLDs, shall take into consideration Internet community input received, including any objections interested third parties may have under policy considerations or applicable law or otherwise, regarding the creation of new TLD strings.

#### Change in Control Transactions

ICANN shall have the right to review in advance any change in Control of Registry Operator resulting in the Control of Registry Operator by any party not originally a member of Registry Operator as of the date of the Registry Agreement. Registry Operator shall provide notice of any proposed transaction or series of transactions (a “Change in Control Transaction”) that may have the effect of a change in Control no less than 20 calendar days in advance of such Change in Control Transaction. ICANN shall have [ ] calendar days to review such Change in Control Transaction, during which period Registry Operator shall provide additional data or information reasonably requested by ICANN. At any time within such [ ] day period, ICANN may notify Registry Operator that it is concerned that the proposed Change in Control Transaction may materially undermine (i) Registry Operator’s compliance with its obligations under the Registry Agreement as amended from time to time, including, without limitation, the Charter and other appendices; or (ii) ICANN’s ability to enforce such obligations, or otherwise fulfill its technical oversight and coordination obligations and responsibilities, in which case Registry Operator shall not effect the Change in Control Transaction until such concerns have been resolved. Disputes regarding the reasonableness of ICANN’s disapproval shall be resolved in accordance with Article V of this Agreement.

“Control” in this clause shall mean in respect of any person or entity, (a) direct or indirect control of at least fifty percent (50%) of the voting rights eligible in the election of directors, or (b) the power directly or indirectly (i) to elect a majority of its directors or (ii) to cause the direction of its management, whether through share ownership, contract or otherwise, or (c) the direct or indirect ownership or control of all or substantially all of its assets reasonably required for the performance of the Agreement.

## **IFFOR Contract**

Registry Operator shall submit, within thirty (30) days of the Effective Date of this Agreement, a draft contract between Registry Operator and IFFOR, under which IFFOR will fulfill the Policy Commitments and the Grant-making Commitments (as defined in the Charter) and Registry Operator will fulfill its Funding Commitments (as defined in the Charter). ICANN shall have [ ] calendar days to review the IFFOR Agreement, during which period Registry Operator shall provide additional data or information reasonably requested by ICANN. At any time within such [ ] day period, ICANN may notify Registry Operator of its reasonable concern that the IFFOR Agreement (i) creates a material risk that Registry Operator will not fulfill its Policy, Grant-making, or IFFOR Commitments or (ii) materially undermines ICANN's ability to enforce such Commitments. Registry Operator, IFFOR, and ICANN shall negotiate in good faith to resolve such concerns prior to the commencement of the Limited Launch (as defined in the Start Up Plan). Disputes regarding the reasonableness of ICANN's concerns shall be resolved in accordance with Article V of this Agreement.

## **Policy Development Reports**

Quarterly for one year following the Effective Date of this Agreement, and as reasonably requested by ICANN thereafter, Registry Operator shall submit a written progress report describing its activities relating to and demonstrating reasonable progress towards fulfillment of the Policy, Grant-making, and IFFOR Commitments.

## **Abusive Registrations**

Registry Operator shall develop a policy prohibiting abusive registrations (e.g., registration of a first and last name by a registrant other than the named individual), and shall provide a mechanism for rapid take down of abusive registrations in appropriate circumstances.

## **Prohibition of Registration Activities by Affiliated Registrar**

The ICANN accredited registrar, A Technology Company, Inc., dba namesystem.com ("namesystem.com") (<https://secure.namesystem.com/website/home.jsp>) is wholly owned by Jason Hendeles of Toronto, Canada. Mr. Hendeles is associated with Hawthorn Corporation, a private holding company owned and operated by the Hendeles family and a shareholder of Registry Operator.

For so long as Jason Hendeles and/or any other entity affiliated with Registry Operator maintains an ownership interest in namesystem.com, Registry Operator agrees that namesystem.com shall not be permitted to act as a registrar for the TLD.