

New gTLD Agreement

Proposed Draft (v.4)

This document contains the draft registry agreement associated with the Draft Applicant Guidebook (Draft RFP) for New gTLDs.-

Successful gTLD applicants would enter into this form of registry agreement with ICANN prior to delegation of the new gTLD. ~~(Note: community-based applicants would enter substantially the same agreement, but with minor modifications to reflect the registry operator's obligation to enforce registration restrictions for the TLD consistent with the application.)~~ Background information on how this [version of the draft agreement](#) differs from [the previous registry agreements draft](#) is available ~~at~~ [in the explanatory memorandum Summary of Changes to Base Agreement](#) (see <http://www.icann.org/en/topics/new-gtld-draft-summary-changes-24oct08-en.pdf>).

It is important to note that this draft agreement does not constitute a formal position by ICANN, and has not been approved by ICANN's Board of Directors. The agreement is being set out for review and community discussion purposes, and ICANN encourages comments and suggestions for improvement. This is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of _____ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and _____ a _____ (“Registry Operator”).

1. Article 1. ~~ARTICLE 1~~ DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

1. 1.1 ~~Section 1.1~~ Domain and Designation. The Top-Level Domain to which this Agreement applies is _____ (the “TLD”). Upon the Effective Date and until the end of the ~~Term~~ (as defined in Section 4.1), ICANN designates ~~_____~~ Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone. _____

2. 1.2 ~~Section 1.2~~ Technical Feasibility of String. ~~Certain~~ While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

3. 1.3 Representations and Warranties.

a. (a) ~~Registry Operator represents and warrants to ICANN as follows:~~

i. (i) ~~Section 1.3~~ Statements of Registry Operator. ~~Registry Operator represents and warrants that~~ all material information provided and statements made in ~~connection with~~ the registry TLD application, and statements made in writing during the negotiations of this Agreement, were true and correct in all material respects at the time made, and ~~that~~ such information or statements continue to be true and correct in all material respects as of the Effective Date. except as otherwise previously disclosed in writing by Registry Operator to ICANN;

ii. (ii) ~~Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and~~

iii. (iii) ~~Each of Registry Operator and the other parties thereto has duly executed and delivered to ICANN an instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding obligation of the parties thereto, enforceable against the parties in accordance with its terms.~~

b. (b) ~~ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.~~

c. ~~Article 2.~~ **ARTICLE 2** COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

1. **2.1 Approved Services; Additional Services.** Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2 in the specification at [see specification 6] and such other Registry Services set forth on Exhibit A (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit requests for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time in accordance with the procedures set forth in Specification 1 (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.
2. **2.2 Section 2.1 — Compliance with Consensus Policies and Temporary Policies.** Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies existing as of the Effective Date and adopted thereafter as set forth found at <http://www.icann.org/general/consensus-policies.htm>. ~~Consensus Policies and Temporary Policies are policies that are established,~~ as of the Effective Date and as may in the future be developed and adopted in accordance with ICANN’s Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth at [see specification 1]* (“Specification 1”).
3. **2.3 Section 2.2 — Data Escrow.** Registry Operator shall comply with the registry data escrow procedures posted at [see specification 2]*.
4. **2.4 Section 2.3 — Monthly Reporting.** Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN a report/reports in the format posted in the specification at [see specification 3]*. ~~ICANN may audit Registry Operator’s books and records relating to data contained in monthly reports from time to time upon reasonable advance written notice, provided that such audits will not exceed one per quarter. Any such audit will be at ICANN’s cost, unless such audit is related to a discrepancy or discrepancies in the data provided by Registry Operator in excess of 5% to ICANN’s detriment. In the latter event, Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with such audit, which reimbursement will be paid together with the next Registry Level Fee payment due following the date of transmittal of the cost statement for such audit.~~
5. **2.5 Section 2.4 — Publication of Registration Data.** Registry Operator shall provide public access to registration data in accordance with the specification posted at [see specification 4]* (“Specification 4”).
6. **2.6 Section 2.5 — Registration Restrictions. Reserved Names.** Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve from initial (i.e. other than renewal) registration all character strings that appear on the Schedule of Reserved Names in the specification posted at [see specification 5]* (“Specification 5”). Registry Operator may establish policies concerning the reservation or blocking of additional character strings within the TLD at its discretion. If Registry Operator is the registrant for any domain names in the Registry TLD (other than the Second-Level Reservations for Registry Operations from Specification 5), such registrations must be

through an ICANN accredited registrar. Any such registrations will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-Level Transaction Fee to be paid to ICANN by Registry Operator pursuant to Section 6.1.

7. ~~2.7 Section 2.6~~ **Functional and Performance Specifications.** Functional and Performance Specifications for operation of the TLD will be as set forth in the specification at [see *specification 6*]*. Registry Operator shall comply with ~~and such Functional and Performance Specifications and, for a period of at least one year, shall~~ keep technical and operational records sufficient to evidence compliance with such specifications ~~for at least one year, which records ICANN may audit from time to time upon reasonable advance written notice, provided that such audits will not exceed one per quarter. Any such audit will be at ICANN's cost.~~

8. ~~2.8 Section 2.7~~ **Protection of Legal Rights of Third Parties.** Registry Operator must specify, and comply with, a process and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties (~~“Rights Protection Mechanisms”~~), ~~which shall at a minimum include those provisions~~ as set forth in the specification at [see *specification 7*]*- (~~“Specification 7”~~). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to ~~Registry Operator's Rights Protection Mechanisms~~ the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN- in writing. Registry Operator must comply with all determinations and decisions made by ICANN pursuant to Section 2 of Specification 7.

9. ~~Section 2.8 Registrar Relations. [TBD- See paper to be posted on ICANN's web site discussing registrar marketplace issues.]~~

10. ~~Section 2.9 Transparency of Pricing for Registry Services. Registry Operator shall prominently post on its website an up to date listing of prices and policies relating to notice of price changes for new and renewal domain name registrations, for transferring a domain name registration from one ICANN-accredited registrar to another and for each other registry service offered by Registry Operator (“Registry Services Policies”). Registry Operator shall ensure through its Registry Registrar Agreement that each ICANN-accredited registrar authorized to sell names in the TLD will clearly display at the time of registration a link to an ICANN-designated web page that ICANN will develop describing registrant rights and responsibilities and a link to Registry Operator's Registry Services Policies.~~

11. 2.9 [Use of Registrars.]

a. (a) Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator and its Affiliates (or any person or entity acting on their behalf) shall not act as a registrar, reseller or any other form of distributor with respect to the TLD or any other top-level domain. Registry Operator must provide non-discriminatory access to registry services to all ICANN accredited registrars that enter into and are in compliance with Registry Operator's registry-registrar agreement for the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD, provided that such agreement may set forth non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Such agreement may be revised by Registry Operator from time to time, provided however, that any such revisions must be approved in advance by ICANN. This Section 2.9 shall not preclude Registry Operator from registering names within the TLD to itself through a request made to an ICANN-accredited registrar. [Registry Operator shall not engage or otherwise permit any registrar, reseller or any other form of distributor, or any of their Affiliates (or any person or entity acting on their behalf) to provide Registry Services for the TLD.]

b. (b) Registry Operator and its Affiliates shall not, directly or indirectly: (i)

control any ICANN-accredited registrar or its Affiliates, (ii) control or acquire greater than 2% Beneficial Ownership of any class of securities of any ICANN-accredited registrar or its Affiliates, (iii) be controlled by, or be under common control with, any ICANN-accredited registrar or its Affiliates, or (iv) except as set forth below in this sub-clause (b), sell or otherwise transfer any interest in any security of Registry Operator or its Affiliates to any ICANN-accredited registrar or its Affiliates. Nothing withstanding sub-clause (b)(iv) above, Registry Operator may sell voting securities to any ICANN-accredited registrar or its Affiliates, provided that any such sale will not result in such registrar or its Affiliates owning greater than 2% of Registry Operator's outstanding voting securities.

c. (c) For the purposes of this Section 2.9: (i) "Affiliate" means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, (ii) "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise, and (iii) a person or entity that possesses "Beneficial Ownership" of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares (A) voting power which includes the power to vote, or to direct the voting of, such security; and/or (B) investment power which includes the power to dispose, or to direct the disposition of, such security.]

12. **2.10 Pricing for Registry Services.** Except as set forth in this Section 2.10, Registry Operator shall provide each ICANN accredited registrar that has executed Registry Operator's registry-registrar agreement advance notice of any price increase (including the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars) of no less than thirty (30) calendar days with respect to initial domain name registrations and one hundred eighty (180) calendar days with respect to renewal of domain name registrations, and shall offer registrars the option to obtain domain name registration renewals at the current price (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years. Notwithstanding the foregoing, with respect to renewal of domain name registrations, Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to a price for which Registry Operator provided notice within that past twelve (12) months, and need not provide any notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer all domain registration renewals at the same price, unless the registrant agrees in its registration agreement with a registrar to a higher price at the time of the initial registration of the domain name following clear and conspicuous disclosure of such renewal price to such registrant. Registry Operator shall provide public query-based DNS lookup service for the TLD at its sole expense.

13. **2.11 Section 2.10 — Contractual and Operational Compliance Audits.** ~~In addition to those audit rights set forth in Sections 2.3 and 2.6, ICANN may from time to time, at its expense, (not to exceed twice per calendar year) conduct contractual compliance audits to assess compliance with the terms of this Agreement. As part of any contractual compliance by Registry Operator with its covenants contained in Section 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN shall give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN. As part of such~~ audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than ~~five~~three (3) business days notice (unless otherwise agreed to by

Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance ~~with the terms of this Agreement.~~ by Registry Operator with its covenants contained in Section 2 of this Agreement. Any such audit will be at ICANN's expense, unless such audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment. In the latter event, Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with such audit, which reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit. Notwithstanding the foregoing, if Registry Operator is found not to be in compliance with its covenants contained in Section 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

14. **2.12 Continued Operations Instrument.** Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in the specification at [see specification 8].

15. **2.13 Emergency Transition.** Registry Operator agrees that in the event that any of the registry functions set forth in Section 5 of Specification 6 fails for a period longer than the emergency threshold for such function set forth in Section 5 of Specification 6, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at _____) (as the same may be amended from time to time, the "Registry Transition Process") until such time as Registry Operator has demonstrated to ICANN's reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process, provided that Registry Operator pays all costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

16. **2.14 [Note: For Community-Based TLDs Only] Obligations of Registry Operator to TLD Community.** Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration policies, and shall enforce such registration policies. Registry Operator agrees to be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at [insert applicable URL] with respect to disputes arising pursuant to this Section 2.14.]

17. **Article 3. ~~ARTICLE 3~~ COVENANTS OF ICANN**

ICANN covenants and agrees with Registry Operator as follows:

1. [3.1 Open and Transparent.](#) Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.
2. [3.2 Equitable Treatment.](#) ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.
3. ~~[3.3 Section 3.1](#)~~ [TLD Zone Servers and Nameservers.](#) ICANN will use commercially reasonable efforts to ensure that any changes to the TLD ~~zone server and~~ nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at <http://www.iana.org/domains/root/>) will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.
4. ~~[3.4 Section 3.2](#)~~ [Root-zone Information Publication.](#) ICANN's publication of root-zone contact information for the ~~Registry~~ TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at <http://www.iana.org/domains/root/>.
5. [3.5 Authoritative Root Database.](#) To the extent that ICANN is authorized to set policy with regard to an authoritative root server system, ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner.
6. [Article 4.](#) ~~[ARTICLE 4](#)~~ **TERM AND TERMINATION**
7. ~~[4.1 Section 4.1](#)~~ [Term.](#) The term of this Agreement will be ten years from the Effective Date (as such term may be extended pursuant to Section 4.2, the "Term").
8. [4.2 Renewal.](#)
 - a. ~~[\(a\) Section 4.2](#)~~ [Renewal.](#) ~~This Agreement will be renewed upon the expiration of the term set forth in Section 4.1 above and each successive term, unless an arbitrator or court has determined that Registry Operator has been in fundamental and material breach of this Agreement which remains uncured. This Agreement will be renewed for successive periods of ten years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:~~
 - i. [\(i\)](#) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court; or

ii. (ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) on at least three (3) separate occasions to have been in fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement.

b. (b) Upon the occurrence of the events set forth in Section 4.2(a)(i) or (ii), the Agreement shall terminate at the expiration of the then current Term.

9. 4.3 Termination by ICANN.

a. (a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure any fundamental and material breach of Registry Operator's covenants set forth in Article 2 or any breach of its payment obligations set forth in this Agreement Article 6 of this Agreement, each Agreement within thirty (30) calendar days after ICANN gives Registry Operator notice of such notice of the breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally and an arbitrator or court has determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

b. (b) ~~Section 4.3 — Termination by ICANN. ICANN may terminate this Agreement if Registry Operator fails to cure any fundamental and material breach of Registry Operator's obligations set forth in this Agreement within thirty (30) calendar days after ICANN gives Registry Operator written notice of the breach, which notice will include with specificity the details of the alleged breach and an arbitrator or court has determined that Registry Operator is, in fundamental and material breach and has failed to cure such breach. Failure of Registry Operator~~ ICANN may, upon notice to Registry Operator, terminate this Agreement, if Registry Operator fails to complete all testing and procedures necessary (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within 12 months of the Effective Date shall be considered a material and fundamental breach of Registry Operator's obligations hereunder and shall entitle ICANN, in its sole discretion, to terminate the Agreement with no further obligations of either party. Registry Operator may request an extension for up to additional 12 months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.-

c. (c) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator fails to cure a material breach of Registry Operator's obligations set forth in Section 2.12 of this Agreement within thirty (30) calendar days of delivery of notice of such breach by ICANN, or if the Continued Operations Instrument is not in effect for greater than sixty (60) consecutive calendar days at any time following the Effective Date, (ii) an arbitrator or court has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

d. (d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, (iii) a trustee, receiver, liquidator or equivalent is appointed over Registry Operator or over any of its property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against

Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors, or (vi) Registry Operator liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

e. (e) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7.

f. (f) [Applicable to intergovernmental organizations or governmental entities only.] ICANN may terminate this Agreement pursuant to Section 7.12.

10. 4.4 Termination by Registry Operator.

a. (a) Registry Operator may terminate this Agreement upon notice to ICANN if, (i) ICANN fails to cure any fundamental and material breach of ICANN's covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

b. (b) Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

11. **4.5** ~~Section 4.4~~ **Transition of Registry upon Termination of Agreement.** ~~Upon~~ Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement, pursuant to Section 4.3 or Section 4.4, Registry Operator shall ~~agree to~~ provide ICANN or any successor registry ~~authority operator~~ that may be designated by ICANN for the TLD with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and ~~critical~~ registry functions that may be reasonably requested ~~in addition to that data escrowed in accordance with Section 2.2~~ by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. Registry Operator agrees that ICANN may make any changes in deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.

[Alternative Section 4.5 Transition of Registry upon Termination of Agreement text for intergovernmental organizations or governmental entities or other special circumstances:

“Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, in connection with ICANN's designation of a successor registry operator for the TLD, Registry Operator and ICANN agree to consult each other and work cooperatively to facilitate and implement the transition of the TLD in accordance with this Section 4.5. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. In the event ICANN determines to transition operation of the TLD to a successor registry operator, upon Registry Operator's consent (which shall not be unreasonably withheld, conditioned or delayed), Registry

Operator shall provide ICANN or such successor registry operator for the TLD with any data regarding operations of the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator in addition to data escrowed in accordance with Section 2.3 hereof. In the event that Registry Operator does not consent to provide such data, any registry data related to the TLD shall be returned to Registry Operator, unless otherwise agreed upon by the parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5.”]

1. **4.6 Survival.** Expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition Article 5 and Article 7, Section 2.12, Section 4.5, and this Section 4.6 shall survive the expiration or termination of this Agreement.

2. **Article 5. ~~ARTICLE 5~~ DISPUTE RESOLUTION**

3. **5.1 ~~Section 5.1~~ Cooperative Engagement.** Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator, following initiation of communications by either party, must attempt to resolve the dispute by engaging in good faith ~~communications between the parties~~ discussion over a period of at least fifteen (15) calendar days.-

4. **5.2 ~~Section 5.2~~ Arbitration.** Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce (“ICC”). The arbitration will be conducted in the English language in front of a single arbitrator (unless the parties agree in writing to a greater number of arbitrators) and will occur in Los Angeles County, California, ~~USA~~. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties’ filings in conjunction with the arbitration, and should the arbitrator determine that a hearing is necessary, the hearing shall be limited to one day. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys’ fees, which the ~~arbitrators~~ arbitrator(s) shall include in ~~their~~ its awards. In any proceeding, ICANN may request the appointed arbitrator(s) award punitive or exemplary damages ~~in the event Registry Operator shall be shown to have, or operational sanctions (including without limitation an order temporarily restricting Registry Operator’s right to sell new registrations) in the event the arbitrator(s) determines that Registry Operator~~ has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 and Section 5.4 of this Agreement. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California, ~~USA~~; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.-

[Alternative **Section 5.2 Arbitration** text for intergovernmental organizations or governmental entities or other special circumstances:

“**Arbitration.** Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce (“ICC”). The arbitration will be conducted in the English language in front of a single arbitrator (unless the parties shall agree in writing to a greater number of arbitrators) and will occur in Geneva, Switzerland, unless another

location is mutually agreed upon by Registry Operator and ICANN. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator determine that a hearing is necessary, the hearing shall be limited to one day. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in its awards. In any proceeding, ICANN may request the appointed arbitrator(s) award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations) in the event the arbitrator(s) determines that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 and Section 5.4 of this Agreement. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Geneva, Switzerland, unless an another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.”]

1. **5.3** ~~Section 5.3~~ **Limitation of Liability.** ICANN's aggregate monetary liability for violations of this Agreement will not exceed the amount of Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section ~~6.4, 6.3~~, if any). Registry Operator's aggregate monetary liability to ICANN for ~~violations~~**breaches** of this Agreement will be limited to the amount of fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section ~~6.4, 6.3~~, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

2. **5.4** **Specific Performance.** Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

3. Article 6. ~~ARTICLE 6~~ FEES

4. **6.1** ~~Section 6.1~~ **Registry-Level Fees.** Registry Operator shall pay ICANN a Registry-Level Fee equal to ~~the greater of~~ (i) the Registry Fixed Fee of US\$~~18,750~~6,250 per calendar quarter ~~or~~and (ii) the Registry-Level Transaction Fee ~~calculated per calendar quarter as follows. For any quarter in which the Registry Level Transaction Fee as calculated in this Section 6.1 exceeds the Fixed Fee, then the Registry Level Transaction Fee shall be paid.~~ The Registry-Level Transaction Fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another), each a “Transaction”, during the applicable calendar quarter multiplied by US\$~~0.25~~ (the “Transaction Fee”) ~~for calendar quarters during which the average annual price of registrations (including all bundled products or services that may be offered by Registry Operator and include or are offered in conjunction with a domain name registration) is equal to US\$5.00. For calendar quarters during which the average annual price of registrations is less than US\$5.00, the Transaction Fee will be decreased by US \$0.01 for each US\$0.20 decrease in the average annual price of registrations below \$5.00, down to a minimum of US\$0.01 per transaction. For calendar quarters during which the average annual price of registrations is greater than US\$5.00, the Transaction Fee will be increased by US \$0.01~~

~~for each US\$0.20 increment in the average annual price of registrations above \$5.00.~~

~~Section 6.2 — Cost Recovery for RSTEP. Requests by Registry Operator for the approval of new or modifications to existing registry services are reviewed by ICANN and referred as appropriate to the registry services Technical Evaluation Panel (“RSTEP”) pursuant to that process at <http://www.icann.org/en/registries/rsep/>. Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review for new or modified registry services that are referred to the RSTEP within ten (10) business days of receipt of a copy of the RSTEP invoice from ICANN.~~
~~Section 6.3 — Payment Schedule. 0.25, provided, however that the Registry-Level Transaction Fee shall not apply until and unless more than 50,000 domain names are registered in the TLD and shall apply thereafter to each Transaction.~~ Registry Operator shall pay the Registry-Level Fees ~~specified in Section 6.1 and Section 6.4, if applicable,~~ on a quarterly basis comprised of four equal payments by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.-

1. [6.2 Cost Recovery for RSTEP. Requests by Registry Operator for the approval of Additional Services pursuant to Section 2.1 may be referred by ICANN to the Registry Services Technical Evaluation Panel \(“RSTEP” “RSTEP”\) pursuant to that process at <http://www.icann.org/en/registries/rsep/>. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within ten \(10\) business days of receipt of a copy of the RSTEP invoice from ICANN, unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.](#)

2. [6.3 Variable Registry-Level Fee.](#)

a. [\(a\) Section 6.4 — Variable Registry Level Fee. For fiscal quarters in which ICANN does not collect a](#)
[If the ICANN accredited registrars \(as a group\) do not approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fee from all registrars, upon receipt of written fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay ICANN a Variable Registry Level Fee to ICANN a Variable Registry-Level Fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year. The fee will be calculated and invoiced by ICANN, on a quarterly basis, and shall be paid to ICANN by the Registry Operator in accordance with the Payment Schedule in Section 6.2, and the Registry Operator will by Registry Operator within sixty \(60\) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty \(20\) calendar days with respect to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the fees Variable Registry-Level Fees from the registrars who are party to a Registry-Registrar Agreement with Registry Operator. The fee will be specified on a per-registrar basis, and will be required to be collected from, provided that the fees shall be invoiced to all ICANN accredited registrars if collected from any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator’s ability to seek and obtain reimbursement of such fee from registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably determined by ICANN. If the ICANN accredited registrars \(as a group\) do approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.](#)

b. (b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US\$0.25 per domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) per year.

3. **6.4 Adjustments to Fees.** Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then current fees set forth in Section 6.1 and Section 6.3 may be adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.4 shall be effective as of the first day of the year in which the above calculation is made.

4. **6.5 Section 6.5 Additional Fee on Late Payments.** For any payments thirty (30) calendar days or more overdue pursuant to Section 6.2, under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

~~ARTICLE 7 CHANGES AND MODIFICATIONS~~

~~Section 7.1 Evolution of Terms and Specifications. During the term of this Agreement, certain provisions of the Agreement and the specifications incorporated into this Agreement may be amended, modified, supplemented or updated in accordance with changing standards, policies and requirements pursuant to the process set forth in this Article 7.~~

~~Section 7.2 Notice of Changes. ICANN will publicly post on its web site for no less than thirty (30) days notice of any proposed changes, modifications or amendments to this form of registry agreement. Following such public notice period during which ICANN will consider input from affected Registry Operators, Registry Operator will be provided notice of the final terms of any changes, modifications or amendments to the terms of this Agreement, and/or the requirements, specifications, or processes incorporated into this Agreement at least ninety (90) days prior to the effectiveness thereof by the posting of a notice of effectiveness on ICANN's web site. Any such proposed changes, modifications or amendments may be disapproved within sixty (60) days from the date of notice of effectiveness of the change by either (i) two thirds in number of the registry operators subject to the change or (ii) a two-thirds vote by the council of the ICANN Generic Names Supporting Organization (GNSO) pursuant to the GNSO's procedures (as the same may be modified from time to time) followed with respect to the review and consideration of new Consensus Policies. In the event that such modification or amendment is disapproved pursuant to the process set forth herein, the ICANN Board shall have thirty (30) days to override such disapproval if it can show that the modification or amendment is justified by a substantial and compelling need related to the security or stability of the Internet or the Domain Name System.~~

1. **Article 7. ARTICLE 8 MISCELLANEOUS**

2. **7.1 Section 8.1 Indemnification of ICANN.**

a. ~~(a) Section 8.1 — Indemnification of ICANN.~~ Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, “Indemnitees”) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator’s operation of the registry for the TLD or Registry Operator’s provision of Registry Services; provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost, or expense arose due to a breach by ICANN of any obligation contained in this Agreement ~~or any willful misconduct by ICANN.~~ This section will not apply to any request for attorneys’ fees in connection with any litigation or arbitration between or among the parties. ~~This section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties’ respective obligations hereunder. Further, this Section shall not apply to any request for attorney’s fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.~~

[Alternative Section 7.1(a) text for intergovernmental organizations or governmental entities:

“Registry Operator shall use its best efforts to cooperate with ICANN in order to ensure that ICANN does not incur any costs associated with claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator’s operation of the registry for the TLD or Registry Operator’s provision of Registry Services; provided that Registry Operator shall not be obligated to provide such cooperation to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any of its obligations contained in this Agreement or any willful misconduct by ICANN. This section will not apply to any request for attorneys’ fees in connection with any litigation or arbitration between or among the parties. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties’ respective obligations hereunder. Further, this Section shall not apply to any request for attorney’s fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.”]

a. ~~(b)~~ For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator’s aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN’s total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof that are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator’s liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN’s reasonable satisfaction, such other registry operators’ culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence. [Note: This Section 7.1(b) is inapplicable to

[intergovernmental organizations or governmental entities.](#)

2. ~~7.2~~ ~~Section 8.2~~ **Indemnification Procedures.** If any third-party claim is commenced that is indemnified under Section ~~8.1~~7.1 above, ~~the party against which such claim is commenced~~ICANN shall provide ~~written~~ notice thereof to ~~the other party~~Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator's sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN policies or conduct. ICANN shall cooperate, at Registry Operator's cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section, 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator. [Note: This Section 7.2 is inapplicable to intergovernmental organizations or governmental entities.]

3. 7.3 **Defined Terms.** For purposes of this Agreement, Security and Stability shall be defined as follows:

a. (a) For purposes of this Agreement, an effect on "Security" shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

b. (b) For purposes of this Agreement, an effect on "Stability" shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments ("RFCs") sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

4. 7.4 ~~Section 8.3~~ **No Offset.** All payments due under this Agreement will be made in a timely manner throughout the ~~term of this Agreement~~Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.-

5. 7.5 ~~Section 8.4~~ **Change in Control; Assignment and Subcontracting.** ~~Registry Operator will provide no less than ten (10) days advance notice to ICANN in accordance with Section 8.8 of any event or change of circumstance anticipated to result in a direct or indirect change of ownership or control of Registry Operator.~~ Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN, to another nonprofit corporation or similar entity organized for the same or substantially the same purposes. For

purposes of this Section 7.5, a direct or indirect change of ownership or control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of ownership or control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring ownership or control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. In addition, without limiting the foregoing, Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any material subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder. Without limiting the foregoing, Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of ownership or control of Registry Operator. Such change of ownership or control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such ownership or control meets the ICANN-adopted specification or policy on registry operator criteria then in effect, and affirms that Registry Operator is in compliance with its obligations under this Agreement. Within thirty (30) calendar days of such notification, ICANN may request additional information from Registry Operator establishing compliance with this Agreement, in which case Registry Operator must supply the requested information within fifteen (15) calendar days.

6. **7.6 Amendments and Waivers.**

a. (a) If ICANN determines that an amendment to this Agreement (including to the specifications referred to herein) and all other registry agreements between ICANN and the Applicable Registry Operators (the “Applicable Registry Agreements”) is desirable (each, a “Special Amendment”), ICANN may submit a Special Amendment for approval by the Applicable Registry Operators pursuant to the process set forth in this Section 7.6, provided that a Special Amendment is not a Restricted Amendment (as defined below). Prior to submitting a Special Amendment for such approval, ICANN shall first consult in good faith with the Working Group (as defined below) regarding the form and substance of a Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the “Posting Period”) and notice of such amendment by ICANN to the Applicable Registry Operators in accordance with Section 7.8. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

b. (b) If, within two (2) calendar years of the expiration of the Posting Period (the “Approval Period”), (i) the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment) and (ii) such Special Amendment receives Registry Operator Approval (as defined below), such Special Amendment shall be deemed approved (an “Approved Amendment”) by the Applicable Registry Operators (the last date on which such approvals are obtained is herein referred to as the “Amendment Approval Date”) and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator (the “Amendment Effective Date”). In the event that a Special Amendment is not approved by the ICANN Board of Directors or does not receive Registry Operator Approval within the Approval Period, the Special Amendment will have no effect. The procedure used by ICANN to obtain Registry Operator Approval shall be designed to document the written approval of the Applicable Registry Operators, which

may be in electronic form.

c. (c) During the thirty (30) calendar day period following the Amendment Approval Date, Registry Operator (so long as it did not vote in favor of the Approved Amendment) may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an “Exemption Request”). Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN’s receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial); provided, that Registry Operator may, within thirty (30) calendar days following receipt of ICANN’s determination, appeal ICANN’s decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(c) or through an arbitration decision pursuant to Article 5 shall exempt Registry Operator from any Approved Amendment, and no exemption request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

d. (d) ~~Section 8.5 — Amendments and Waivers.~~ Except as set forth in Article 7, this Section 7.6, no amendment, supplement, or modification of this Agreement or any provision hereof will shall be binding unless executed in writing by both parties. Irrespective of the provisions of Article 7, and nothing in this Section 7.6 shall restrict ICANN and Registry Operator may at any time and from time to time enter entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement will shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof will shall be deemed or will shall constitute a waiver of any other provision hereof, nor will shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

e. (e) For purposes of this Agreement, the following terms shall have the following meanings:

i. (i) “Applicable Registry Operators” means, collectively, the registry operators of the top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

ii. (ii) “Registry Operator Approval” means the receipt of each of the

following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

iii. (iii) “Restricted Amendment” means the following: (i) an amendment of Specification 1, (ii) except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (iii) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2 of Specification 6, or (iv) an amendment to the length of the Term.

iv. (iv) “Working Group” means representatives of the Applicable Registry Operators and other members of the community that ICANN appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(d)).

7. 7.7 Section 8.6 ~~Section 8.6~~ **No Third-Party Beneficiaries.** This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

8. 7.8 Section 8.7 ~~Section 8.7~~ **General Notices.** ~~All~~ Except for notices pursuant to Section 7.6, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail, as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. ~~All notices under Section 7.6 shall be given by both posting of the applicable information on ICANN’s web site and transmission of such information to Registry Operator by electronic mail.~~ Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Notices, designations, determinations, and specifications made under this Agreement will be in the English language. ~~Any Other than notices under Section 7.6, any~~ notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient’s facsimile machine or email server. ~~Whenever this Agreement specifies a URL address for certain information or notice provided by ICANN, Registry Operator, provided, that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within two (2) business days. Any notice required by Section 7.6 will be deemed to have been given notice of any such information when electronically posted at the designated URL on ICANN’s website and upon confirmation of receipt by the email server.~~ In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.-

If to ICANN, addressed to: Internet Corporation for Assigned Names and Numbers 4676 Admiralty Way, Suite 330 Marina Del Rey, California 90292 Telephone: 1-310-823-9358 Facsimile: 1-310-823-8649 Attention: President and CEO With a Required Copy to: General Counsel Email: (As specified from time to time.)

If to Registry Operator, addressed to:[_____][_____]

[_____]Telephone:-_Facsimile:-_Attention:_With a Required Copy to:-_Email:_ (As specified from time to time.)

1. **7.9 ~~Section 8.8~~ Entire Agreement.** This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

2. **7.10 ~~Section 8.9~~ English Language Controls.** Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

3. **7.11 Ownership Rights.** Nothing contained in this Agreement shall be construed as establishing or granting to Registry Operator any property ownership rights or interests in the TLD or the letters, words, symbols or other characters making up the TLD string.

[Note: The following section is applicable to intergovernmental organizations or governmental entities only.]

1. **7.12 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.**

a. (a) ICANN acknowledges that Registry Operator is an entity subject to public international law, including international treaties applicable to Registry Operator (such public international law and treaties, collectively hereinafter the “Applicable Laws”). Nothing in this Agreement and its related specifications shall be construed or interpreted to require Registry Operator to violate Applicable Laws or prevent compliance therewith. The Parties agree that Registry Operator’s compliance with Applicable Laws shall not constitute a breach of this Agreement.

b. (b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, “ICANN Requirements”), may conflict with or violate Applicable Law (hereinafter, a “Potential Conflict”), Registry Operator shall provide detailed notice (a “Notice”) of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

c. (c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by cooperative engagement pursuant to the procedures set forth in Section 5.1. In addition, Registry Operator shall use its best efforts to eliminate or minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such cooperative engagement, Registry Operator determines that the Potential Conflict constitutes an actual conflict between any ICANN Requirement, on the one hand, and Applicable Laws, on the other hand, then ICANN shall waive compliance with such ICANN Requirement (provided that the parties shall negotiate in good faith on a continuous basis thereafter to mitigate or eliminate the effects of such non-compliance on ICANN), unless ICANN reasonably and objectively determines that the failure of Registry Operator to comply with such ICANN Requirement would constitute a threat to the Security and Stability of Registry Services, the Internet or the DNS (hereinafter, an “ICANN Determination”). Following receipt of notice by Registry Operator of such ICANN Determination, Registry Operator shall be afforded a period of ninety (90) calendar days to resolve such conflict with an Applicable Law. If the conflict with an Applicable Law is not resolved to ICANN’s complete satisfaction during such period, Registry Operator shall have the option to submit, within ten (10) calendar days thereafter, the matter to binding arbitration as defined in subsection (d) below. If during such period, Sponsor does not submit the matter to arbitration pursuant to subsection (d) below, ICANN may, upon notice to Registry Operator, terminate this Agreement with immediate effect.

d. (d) If Registry Operator disagrees with an ICANN Determination, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2, except that the sole issue presented to the arbitrator for determination will be whether or not ICANN reasonably and objectively reached the ICANN Determination. For the purposes of such arbitration, ICANN shall present evidence to the arbitrator supporting the ICANN Determination. If the arbitrator determines that ICANN did not reasonably and objectively reach the ICANN Determination, then ICANN shall waive Registry Operator’s compliance with the subject ICANN Requirement. If the arbitrators or pre-arbitral referee, as applicable, determine that ICANN did reasonably and objectively reach the ICANN Determination, then, upon notice to Registry Operator, ICANN may terminate this Agreement with immediate effect.

e. (e) Registry Operator hereby represents and warrants that, to the best of its knowledge as of the date of execution of this Agreement, no existing ICANN Requirement conflicts with or violates any Applicable Law.

f. (f) Notwithstanding any other provision of this Section 7.12, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.12(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.12(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
[]
President and CEO

Date:

[Registry Operator]

By: _____
[]
[]

Date:

EXHIBIT A

Approved Services

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