

Expanded Summary of Changes to Base Agreement for New gTLDs Draft for Discussion

(Note: this document is an expanded version of the “Summary of Changes to Base Agreement” which was originally posted with the Draft Applicant Guidebook in October 2008 <<http://www.icann.org/en/topics/new-gtlds/comments-en.htm>>.)

During 2008, ICANN reviewed and extensively revised the form gTLD agreement for new gTLD registries. The proposed new form of agreement has been simplified and streamlined where possible, focusing on technical requirements and security and stability issues. These changes have been made after taking into consideration input from the GNSO in its recent policy development processes on new gTLDs and contractual conditions. Much of the prior details in the Registry Agreement and associated appendices have been replaced with relevant specifications and requirements, which will be maintained on ICANN’s website.

As proposed, each of the new TLD agreements will have an initial ten-year term, with an expectation of renewal, in order to allow operators of the new registries some surety in the investments necessary to build a successful registry.

ICANN has incorporated proposed mechanisms into the form of new Registry Agreement to allow ease of effecting changes and modifications during the life of the Registry Agreement. These concepts are discussed in more detail under the discussion of new Article 7 below.

It is important to note that the new draft agreement does not constitute a formal position by ICANN, and has not been approved by ICANN’s Board of Directors. The agreement has been set out for review and community discussion purposes, and we encourage comments and suggestions for improvement.

2008 gTLD Agreement	2005–2007 gTLD Agreement	Comments and Rationale
DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN		
Section 1.1 <u>Domain and Designation</u> .	Section 1.2 <u>Top Level Domain</u> and Section 1.3 <u>Designation as Registry Operator</u>	Sections 1.2 and 1.3 of the previous form of Registry Agreement have been combined in Section 1.1 in the 2008 Registry Agreement.
Section 1.2 <u>Technical Feasibility of String</u> . 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.	Not Present	The concept of technical feasibility has been added to the 2008 Registry Agreement to alert registry operators of the difficulties associated with certain new TLD strings (e.g. greater than three characters and IDNs).
Section 1.3 <u>Statements of Registry Operator</u>	Section 2.1(b) <u>Statements of Registry Operator</u>	Section 2.1(b) of the previous form of Registry Agreement has been modified slightly and moved to

Please note that 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.

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		Section 1.3 of the 2008 Registry Agreement.
Not present	<p>Section 2.1 <u>Registry Operator's Representations and Warranties</u>.</p> <p>(a) <u>Organization; Due Authorization and Execution</u>.</p> <p>(b) <u>Statements made During Negotiation Process</u>.</p> <p>Section 2.2 <u>ICANN's Representations and Warranties</u>.</p> <p>(a) <u>Organization; Due Authorization and Execution</u>.</p>	The representations and warranties for both parties related to organization, authorization and execution have been removed in order to streamline the agreement. Organizational authority matters for registry operators will be addressed in the gTLD application.
COVENANTS OF REGISTRY OPERATOR		
<p>Section 2.1 <u>Compliance with Consensus Policies and Temporary Policies</u>. See Specification 1 attached to the Draft Registry Agreement.</p>	<p>Section 3.1(b) <u>Consensus Policies</u>.</p>	To simplify the Registry Agreement, Compliance with Consensus Policies and Temporary Policies has been incorporated by reference to specifications posted on ICANN's web site. The list of topics on which consensus policies may be adopted and examples (numbered 1.2 1.3) are unchanged, the list of specific limitations (numbered 1.4) has been updated.
<p>Section 2.2 <u>Data Escrow</u>. See Specification 2 attached to the Draft Registry Agreement.</p>	<p>Section 3.1(c)(i) <u>Data Escrow</u></p>	<p>To simplify the Registry Agreement, the Data Escrow provisions have been incorporated by reference to specifications posted on ICANN's web site.</p> <p>The Data Escrow specification does not mandate an escrow provider or a form of escrow agreement. Instead, the Data Escrow specification outlines the minimum legal requirements for such agreement.</p> <p>In developing the Data Escrow technical specification, ICANN consulted heavily with the registry community to establish data escrow requirements that would be easily implemented by registries, and technically scaled to provide back-up data sufficiently comprehensive to reproduce a registry from the escrowed data and readily accessible in the event of registry failure.</p>
<p>Section 2.3 <u>Monthly Reporting</u>. See Specification 3 attached to the Draft Registry Agreement.</p>	<p>Section 3.1(c)(iv) <u>Monthly Reporting</u></p>	To simplify the Registry Agreement, the Monthly Reporting provision has been incorporated by reference to a specification to be posted on ICANN's web site. The substance has been left largely unchanged.
<p>Section 2.4 <u>Publication of Registration Data</u>. See Specification 4 attached to the Draft Registry Agreement.</p>	<p>Section 3.1(c)(v) <u>Whois Service</u> and Section 3.1(c)(iii) <u>Bulk Zone File Access</u> have been combined into Section</p>	The Publication of Registry Data requirements have been incorporated by reference to a specification to be posted

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	2.4 of the 2008 Registry Agreement.	<p>on ICANN's web site.</p> <p>In 2008, the detailed Whois requirements have been replaced with a streamlined specification that outlines the minimum required information for Domain Name Data, Registrar Data and Nameserver Data. Registries may at their option publish additional data. (Registrar WHOIS requirements are not affected by this proposed change.) This specification also includes the requirements for user access to Zone File information.</p>
<p>Section 2.5 <u>Registration Restrictions</u>. See Specification 5 attached to the Draft Registry Agreement.</p>	<p>Section 3.1(d)(i) <u>Registry Restrictions</u></p>	<p>The list of reserved strings has been incorporated by reference to a specification to be posted on ICANN's web site. This list has been simplified and reduced.</p>
<p>Section 2.6 <u>Functional and Performance Specifications</u>. See Specification 6 attached to the Draft Registry Agreement.</p>	<p>Section 3.1(d)(ii) <u>Functional and Performance Specifications</u></p>	<p>Functional and performance requirements have been incorporated by reference to a specification to be posted on ICANN's web site.</p> <p>The functional specifications have been streamlined into a set of minimum functional requirements that set forth standards compliance, registry services continuity and registration and renewal periods. The performance specification has been simplified to include only DNS service availability and registration data publication service requirements.</p>
<p>Section 2.7 <u>Protection of Legal Rights of Third Parties</u>. See Specification 7 attached to the Draft Registry Agreement.</p>	<p>Not Present</p>	<p>Protection of legal rights of third parties requirements have been incorporated by reference to a specification to be posted on ICANN's web site.</p> <p>This section requires registries to implement the rights protection mechanisms proposed in their applications, and incorporates the recommendations of the GNSO Working Group on Protecting the Rights of Others</p>
<p>Section 2.8 <u>Registrar Relations</u>.</p>	<p>Section 7.1 <u>Registry-Registrar Agreement</u></p>	<p>See paper to be posted on ICANN's website discussing registry/registrar marketplace issues.</p>
<p>Section 2.9 <u>Transparency of Registry Policies and Pricing</u>. 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</p>	<p>Not Present, though the concepts are a modification of Section 7.3 <u>Pricing for Domain Name Registrations and Registry Services</u>.</p>	<p>This section is derived from the pricing section of the previous form of Registry Agreement. This new section is designed to increase transparency and establish community confidence in the registry operator with little</p>

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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 (“Pricing 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 Pricing Policies.		additional administrative burden. See also the paper to be posted on ICANN’s website discussing registrar marketplace issues
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, conduct contractual compliance audits to assess compliance with the terms of this Agreement. As part of any contractual compliance 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 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.	Not Present	This is a new section for 2008. In order to maintain standards across all registry operators, it is important for ICANN to be able to verify compliance with the terms of the Registry Agreement.
Not Present	Section 3.1(c)(ii) <u>Personal Data</u>	This section was removed because this is a subject that can be more directly addressed in the Registry-Registrar Agreement.
Not Present – see comments	Section 3.1(iii) <u>Registry Services</u> and Section 3.1(d)(iv) <u>Process for Consideration of New Registry Services</u>	These topics are covered in a consensus policy adopted and implemented since the previous form of Registry Agreement was first entered into in 2005.
Not Present – see comments	Section 3.1(e) <u>Fees and Payments</u>	This concept is covered in Article 6 of the 2008 Registry Agreement.
Not Present	Section 3.1(f) <u>Traffic Data</u>	This section has been removed as part of the streamlining of the agreement. New registry services

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		based on traffic data will be subject to the ICANN Registry Services Evaluation Policy (AKA “the funnel”).
Not Present	Section 3.1(g) Cooperation	This section was determined to be superfluous and has been removed to streamline the 2008 Registry Agreement.
COVENANTS OF ICANN		
Not Present	<p>SECTION 3.2 Covenants of ICANN. ICANN covenants and agrees with Registry Operator as follows:</p> <p>3. 2(a) Open and Transparent. Consistent with ICANN’s expressed mission and core values, ICANN shall operate in an open and transparent manner.</p> <p>3. 2(b) 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</p>	ICANN proposed eliminating this language because it restates ICANN’s existing Bylaws obligations to act transparently and equitably. ICANN’s accountability mechanisms (Ombudsman, Reconsideration, and Independent Review) are available to any party that believes that ICANN is not acting transparently and equitably. This proposed deletion was made consistent with the approach of streamlining the agreement to remove where practical any registry or ICANN covenants, representations and warranties that are not related to TLD registry and root zone operations. Although this proposed deletion would not affect ICANN obligations with regard to existing or new registries, nor would it affect existing registry agreements, it has generated significant controversy from existing registry operators and ICANN will consider all comments and review this proposal.
Section 3.1 TLD Zone Servers and Nameservers	Section 3.2(c) TLD Zone Servers and Section 3.2(d) Nameserver Changes	Sections 3.2(c) and 3.2(d) of the previous form of Registry Agreement have been combined and simplified. Technical requirements have been included by reference to the IANA website.
Section 3.2 Root-zone Information Publication	Section 3.2(e) Root-zone Information Publication	Any changes to the contact information of the Registry Operator must be in the form specified on the IANA website.
TERM AND TERMINATION		
Section 4.1 Term. The term of this Agreement will be ten years from the Effective Date.	Section 4.1 Term. The term of recent unsponsored gTLD Registry Agreements has been six years. Sponsored gTLD agreements have had ten-year terms.	Articles 4 and 6 of the previous form of Registry Agreement have been combined for conceptual consistency. The term offered to new registry operators will be ten

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<p>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.</p>	<p>Section 4.2 Renewal. This Agreement shall be renewed upon the expiration of the term set forth in Section 4.1 above and each later term, unless the following has occurred: (i) following notice of breach to Registry Operator in accordance with Section 6.1 and failure to cure such breach within the time period prescribed in Section 6.1, an arbitrator or court has determined that Registry Operator has been in fundamental and material breach of Registry Operator’s obligations set forth in Sections 3.1(a), (b), (d) or (e); Section 5.2 and (ii) following the final decision of such arbitrator or court, Registry Operator has failed to comply within ten days with the decision of the arbitrator or court, or within such other time period as may be prescribed by the arbitrator or court. Upon renewal, in the event that the terms of this Agreement are not similar to the terms generally in effect in the Registry Agreements of the 5 most reasonably comparable gTLDs (provided however that if less than five gTLDs are reasonably comparable, then comparison shall be made with such lesser number, and .com, info, .net and .org are hereby deemed comparable), renewal shall be upon terms reasonably necessary to render the terms of this Agreement similar to such terms in the Registry Agreements for those other gTLDs. The preceding sentence, however, shall not apply to the terms of this Agreement regarding the standards for the consideration of proposed Registry Services, including the definitions of Security and Stability and the standards applied by ICANN in the consideration process; the terms or conditions for the renewal or termination of this Agreement; ICANN’s obligation to Registry Operator under Section 3.2(a), (b) and (c); the limitations on Consensus Policies or Temporary Specifications or Policies; or the definition of Registry Services. In addition, upon renewal, registry fees payable to ICANN may be reasonably modified so long as any increase in such fees</p>	<p>years to allow time for the registry operator to develop and grow its TLD community.</p> <p>The renewal process has been simplified, while retaining the concept that the registry operator can renew for additional terms so long as it has not committed an uncured material breach of the Registry Agreement.</p>

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	shall not exceed the average of the percentage increase in registry fees for the five most reasonably comparable TLDs (or such lesser number as provided above) during the prior three year period;	
Not Present	Section 4.3 <u>Changes</u> .	This section was removed as unnecessary in light of new Article 7.
Not Present	Section 4.4 <u>Failure to Perform in Good Faith</u> .	This section was removed as unnecessary.
Section 4.3 <u>Termination by ICANN</u> . 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. <i>Failure of Registry Operator to complete all testing and procedures necessary for delegation of the TLD into the root zone within one year 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 one year of the deadline for delegation if it can demonstrate to the satisfaction of ICANN's management that Registry Operator is working diligently and in good faith toward successful 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.</i>	Section 6.1 <u>Termination by ICANN</u> . ICANN may terminate this Agreement if and only if: (i) Registry Operator fails to cure any fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); or Section 5.2 within thirty (30) calendar days after ICANN gives Registry Operator written notice of the breach, which notice shall include with specificity the details of the alleged breach; and (ii) (a) an arbitrator or court has finally determined that Registry Operator is, or was, in fundamental and material breach and failed to cure such breach within the prescribed time period and (b) following the decision of such arbitrator or court, Registry Operator has failed to comply with the decision of the arbitrator or court.	The highlighted portion of the termination section in the 2008 column has been added to ensure that the registry operator takes active steps to begin using the TLD within one year. The Registry Operator may request an extension of this deadline for up to a year if it is making good faith efforts towards successfully completing the steps for delegation of the TLD.
Section 4.4 <u>Transition of Registry upon Termination of Agreement</u>	Section 6.3 <u>Transition of Registry upon Termination of Agreement</u>	This section has been reworded but the substance has been left unchanged.
Not Present	Section 6.2 <u>(Bankruptcy)</u> ; Section 6.4 <u>(Rights in Data)</u> and Section 6.5 <u>(No Reimbursement)</u>	These sections have been removed to simplify and streamline the 2008 Registry Agreement.
DISPUTE RESOLUTION		

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<p>Section 5.1 Cooperative Engagement. Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator must attempt to resolve the dispute by engaging in good faith communications between the parties over a period of at least fifteen (15) calendar days.</p>	<p>Section 5.1(a) Cooperative Engagement. In the event of a disagreement between Registry Operator and ICANN arising under or out of this Agreement, either party may by notice to the other invoke the dispute resolution provisions of this Article V. Provided, however, that before either party may initiate arbitration as provided in Section 5.1(b) below, ICANN and Registry Operator must attempt to resolve the dispute by cooperative engagement as set forth in this Section 5.1(a). If either party provides written notice to the other demanding cooperative engagement as set forth in this Section 5.1(a), then each party will, within seven calendar days after such written notice is deemed received in accordance with Section 8.6 hereof, designate a single executive officer as its representative under this Section 5.1(a) with full authority to act on such party's behalf to resolve the dispute. The designated representatives shall, within 2 business days after being designated, confer by telephone or in person to attempt to resolve the dispute. If they are not able to resolve the dispute during such telephone conference or meeting, they shall further meet in person at a location reasonably designated by ICANN within 7 calendar days after such initial telephone conference or meeting, at which meeting the parties shall attempt to reach a definitive resolution. The time schedule and process set forth in this Section 5.1(a) may be modified with respect to any dispute, but only if both parties agree to a revised time schedule or process in writing in advance. Settlement communications within the scope of this paragraph shall be inadmissible in any arbitration or litigation between the parties.</p>	<p>The requirements for cooperative engagement been significantly streamlined to allow for a more flexible approach to dispute resolution. Much of the formalism (e.g., number of required meetings) has been removed in favor of a less rigid process.</p>
<p>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</p>	<p>Section 5.1(b) Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, shall be resolved through binding arbitration conducted as provided in this Section 5.1(b) pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce</p>	<p>The arbitration provision has been streamlined to allow for a more flexible approach to dispute resolution, while retaining the material substance.</p>

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<p>conducted in the English language in front of a single arbitrator and will occur in Los Angeles County, California, USA. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrators shall include in their awards. In any proceeding, ICANN may request the appointed arbitrator award punitive or exemplary damages in the event Registry Operator shall be shown to have been repeatedly and willfully in fundamental and material breach 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.</p>	<p>("ICC"). The arbitration shall be conducted in the English language and shall occur in Los Angeles County, California, USA only following the failure to resolve the dispute pursuant to cooperative engagement discussions as set forth in Section 5.1(a) above. There shall be three arbitrators: each party shall choose one arbitrator and, if the two arbitrators are not able to agree on a third arbitrator, the third shall be chosen by the ICC. The prevailing party in the arbitration shall have the right to recover its costs and reasonable attorneys' fees, which the arbitrators shall include in their awards. Any party that seeks to confirm or vacate an arbitration award issued under this Section 5.1(b) may do so only pursuant to the applicable arbitration statutes. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles County, California, USA; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction. For the purpose of aiding the arbitration and/or preserving the rights of the parties during the pendency of arbitration, the parties shall have the right to seek a temporary stay or injunctive relief from the arbitration panel or a court, which shall not be a waiver of this agreement to arbitrate.</p>	
<p>Not Present</p>	<p>Section 5.2 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 arbitrators specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).</p>	<p>This section was removed but the concepts remain in section 5.2.</p>
<p>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-</p>	<p>Section 5.3 Limitation of Liability. ICANN's aggregate monetary liability for violations of this Agreement shall not exceed the amount of Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-</p>	<p>The cap on liability has not significantly changed, however, the 2008 Registry Agreement has removed the express waiver of warranties as unnecessary given the subject matter of the agreement.</p>

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<p>month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.4, if any). Registry Operator’s aggregate monetary liability to ICANN for violations 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, if any), and punitive and exemplary damages, if any, in accordance with Section 5.2.</p>	<p>month period pursuant to this Agreement. Registry Operator’s aggregate monetary liability to ICANN for violations of this Agreement shall be limited to fees, and monetary sanctions under Section 4.4, if any, due and owing to ICANN under this Agreement within the preceding twelve-month period. In no event shall either party be liable for special, indirect, incidental, 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 pursuant to Section 4.4 of this Agreement. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, REGISTRY OPERATOR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED BY ITSELF, ITS SERVANTS, OR ITS AGENTS OR THE RESULTS OBTAINED FROM THEIR WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.</p>	
FEES		
<p>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 per calendar quarter or (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) during the applicable calendar quarter multiplied by US\$0.25 (the “Transaction Fee”) for calendar quarters during which the</p>	<p>Section 7.2(a) Registry-Level Fees were negotiated for gTLDs on a case-by-case basis.</p>	<p>See separate discussion paper on financial considerations.</p>

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<p>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.</p>		
<p>Section 6.2 <u>Cost Recovery for RSTEP</u>. 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.</p>	Not Present	<p>Since the institution of the RSTEP in 2005 ICANN has born the entire financial burden associated with the RSTEP program. Beginning with the 2008 Registry Agreements, the cost of the RSTEP review for new registry services will be passed through to the registry operator.</p>
<p>Section 6.3 <u>Payment Schedule</u></p>	<p>Section 7.2(b) <u>Payment Schedule</u></p>	<p>This section has been renumbered but the substance has remained unchanged.</p>
<p>Section 6.4 <u>Variable Registry-Level Fee</u>. For fiscal quarters in which ICANN does not collect a variable accreditation fee from all registrars, upon receipt of written notice from ICANN, Registry Operator shall pay ICANN a Variable Registry-Level Fee. The fee will be calculated by ICANN, paid to ICANN by the Registry Operator in accordance with the Payment Schedule in Section 6.2, and the Registry Operator will invoice and collect the fees from the registrars who are party to a Registry-Registrar Agreement with Registry Operator.</p>	<p>Section 7.2(c) <u>Variable Registry-Level Fee</u>. For fiscal quarters in which ICANN does not collect a variable accreditation fee from all registrars, upon receipt of written notice from ICANN, Registry Operator shall pay ICANN a Variable Registry-Level Fee. The fee will be calculated by ICANN, paid to ICANN by the Registry Operator in accordance with the Payment Schedule in Section 7.2(b), and the Registry Operator will invoice and collect the fees from the registrars who are party to a Registry-Registrar Agreement with Registry Operator.</p>	<p>This section has been simplified in the 2008 Registry Agreement. It does not include the rigid formulation of the variable registry-level fee as was present in the previous form of Registry Agreement.</p>

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<p>The fee will be specified on a per-registrar basis, and will be required to be collected from all ICANN accredited registrars if collected from any.</p>	<p>The fee will consist of two components; each component will be calculated by ICANN for each registrar: 7.2 (c)(i) 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 fiscal year but shall not exceed US \$0.25. 7.2 (c)(ii) 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 fiscal year, but the sum of the per-registrar fees calculated for all registrars shall not exceed the total Per- Registrar Variable funding established pursuant to the approved 2004- 2005 ICANN Budget. Provided, however, that Registry Operator shall only be required to pay the fees set forth in paragraph (c) above, in the event that ICANN elects to collect the Variable Registry-Level Fee from all ICANN-Accredited Registrars. For the avoidance of doubt, Registry Operator shall not be required to collect the per-registrar component of the Variable Registry-Level Fee from any registrar unless it is required to do so for all registrars.</p>	
<p>Section 6.2 <u>Additional Fee on Late Payments.</u> For any payments thirty days or more overdue pursuant to Section 6.2, 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.</p>	<p>Section 7.2(d) <u>Interest on Late Payments.</u> For any payments thirty days or more overdue pursuant to Section 7.2(a), Registry Operator shall pay interest on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.</p>	<p>This section was reworded but the substance remains unchanged.</p>
<p>Not Present</p>	<p>Section 7.3 <u>Pricing for Domain Name Registrations and Registry Services</u> (ICANN's sponsored gTLD registry agreements have not included price controls.)</p>	<p>Price controls have been removed for 2008 in favor of the transparent pricing model outlined above.</p>
<p>CHANGES AND MODIFICATIONS</p>		
<p>Section 7.1 <u>Evolution of Terms and Specifications.</u> During the term of this Agreement, certain provisions of the Agreement and the specifications incorporated into this Agreement may be amended, modified,</p>	<p>Not Present</p>	<p>This proposed new process for amending the Registry Agreement would give ICANN and the registry operators the ability to change the form of agreement when generally mutually beneficial without individually</p>

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<p>supplemented or updated in accordance with changing standards, policies and requirements pursuant to the process set forth in this Article 7.</p>		<p>renegotiating hundreds of agreements.</p> <p>Although this proposed mechanism would not directly impact existing registry agreements, it has generated significant controversy from existing registry operators and ICANN will consider comments and review this proposal.</p>
<p>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 Polices. 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.</p>	<p>Not Present</p>	<p>This proposed mechanism was developed in anticipation of the changing gTLD landscape where 16 individually negotiated agreements will be replaced by those 16 agreements plus uniform agreements with hundreds of new registries. Some mechanism will be required to address changes in the marketplace that would affect the "even playing field" for all registries or potential stability/security issues. The proposed gTLD process is similar to that employed for Registry-Registrar Agreement amendments with the added safeguard that a vote of the registries or GNSO could veto the changes – proposed changes would have to be broadly acceptable to the registries and the GNSO community.</p> <p>ICANN's proposal included in the draft agreement provides that ICANN would first consult with registry operators and the public for at least thirty days on any proposed changes to the agreement. Any material changes to the Registry Agreement would continue to be subject to ICANN Board approval. ICANN would give registry operators notice 90 days before any changes would take effect. During the 90-day notice period the proposed changes would be subject to veto by either the gTLD community as represented by the GNSO Council, or by the affected registry operators.</p> <p>It is important to note that this is just one such mechanism for effecting such changes, and ICANN is soliciting input on other possible proposed amendment mechanisms that will scale effectively across possibly hundreds of gTLDs.</p>

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MISCELLANEOUS [changes to this Article as noted]		
<p>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 legal fees and expenses, arising out of or relating to 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. This section will not apply to any request for attorneys’ fees in connection with any litigation or arbitration between or among the parties.</p>	<p>Section 8.1 Indemnification of ICANN. Registry Operator shall indemnify, defend, and hold harmless ICANN (including its directors, officers, employees, and agents) 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: (a) ICANN’s reliance, in connection with its decision to delegate the TLD to Registry Operator or to enter into this Agreement, on information provided by Registry Operator in its application for the TLD; (b) Registry Operator’s establishment or operation of the registry for the TLD; (c) Registry Operator’s provision of Registry Services; (d) collection or handling of Personal Data by Registry Operator; (e) any dispute concerning registration of a domain name within the domain of the TLD for the registry; and (f) duties and obligations of Registry Operator in operating the registry for the TLD; provided that Registry Operator shall not be obligated to indemnify, defend, or hold harmless ICANN to the extent the claim, damage, liability, cost, or expense arose due to a breach by ICANN of any obligation contained in this Agreement. For avoidance of doubt, nothing in this Section 8.1 shall be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for the costs associated with the negotiation or execution of this Agreement, or with the monitoring or management of the parties’ respective obligations under this Agreement. 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.</p>	<p>ICANN’s indemnification rights in Section 8.1 were simplified and appropriately scaled to reflect the nature of the revised agreement and the expectation that new registry relationships will be cooperative and flexible.</p>
<p>Section 8.2 <u>Indemnification Procedures.</u></p>	<p>Section 8.2 <u>Indemnification Procedures.</u></p>	<p>This section was reworded but the substance remains unchanged.</p>
<p>Section 8.4 <u>Change of Control; Assignment and Subcontracting.</u> 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</p>	<p>Section 8.5 <u>Assignment and Subcontracting.</u> Any assignment of this Agreement shall be effective only upon written agreement by the assignee with the other party to assume the assigning party’s obligations under</p>	<p>As revised, registry operators are required to provide advance notice to ICANN in the event of a change in control. However, ICANN’s consent is not required. Requirements for assignment of the registry agreement</p>

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<p>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 organized for the same or substantially the same purposes. Registry Operator must provide notice to ICANN of any 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.</p>	<p>this Agreement. Moreover, neither party may assign this Agreement without the prior written approval of the other party, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement (i) in conjunction with a reorganization or re-incorporation of ICANN, to another nonprofit corporation organized for the same or substantially the same purposes, or (ii) as may be required pursuant to the terms of that certain Memorandum of Understanding between ICANN and the U.S. Department of Commerce, as the same may be amended from time to time. Registry Operator must provide notice to ICANN of any 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. Any subcontracting of technical operations shall provide that the subcontracted entity become party to the data escrow agreement mandated by Section 3.1(c)(i) hereof.</p>	<p>remain consistent.</p>
<p>Not Present</p>	<p>Section 8.4 <u>Use of ICANN Name and Logo.</u></p>	<p>This section was determined to be superfluous and has been removed to streamline the 2008 Registry Agreement.</p>
<p>Section 8.5 <u>Amendments and Waivers.</u> Except as set forth in Article 7, no amendment, supplement, or modification of this Agreement or any provision hereof will be binding unless executed in writing by both parties. Irrespective of the provisions of Article 7, ICANN and Registry Operator may at any time and from time to time enter into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement will 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 be deemed or will constitute a waiver of any other provision hereof, nor will any such waiver constitute a continuing waiver unless</p>	<p>Section 8.6 <u>Amendments and Waivers.</u> Amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties. No waiver of any provision of this Agreement 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 shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.</p>	<p>This section was modified to include the change process of Article 7.</p>

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otherwise expressly provided.		
Section 8.7 <u>General Notices</u> .	Section 8.8 <u>Notices, Designations and Specifications</u>	This section was reworded and the concept of English language notices was inserted to coincide with the English Language Controls section (Section 8.9).
Section 8.8 <u>Entire Agreement</u> . 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.	Section 8.11 <u>Entire Agreement</u> . This Agreement (including its Appendices, 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. In the event of a conflict between the provisions in the body of this Agreement and any provision in its Appendices, the provisions in the body of the Agreement shall control.	This section was reworded to reflect the inclusion of specifications and URLs but the concept was left unchanged.
Section 8.9 <u>English Language Controls</u> . 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.	Section 8.9 <u>Language</u>	Section 8.9 of the 2008 Registry Agreement clarifies that all translations are for convenience only, and also includes the statement from Section 8.9 of the previous form of Registry Agreement that all notices, designations, determinations, and specifications made under the Agreement shall be in the English language.
Not Present	Section 8.10 <u>Counterparts</u>	This section was a restatement of general contract law has been removed to streamline the 2008 Registry Agreement.

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