

Summary of Changes to Registry Agreement for New gTLDs

The table below sets out the proposed changes to the draft base registry agreement for new gTLDs. Additions are reflected in bold double underline and deletions are reflected in strike through. These changes were made in response to comments received from the community on the proposed final draft base agreement for new gTLDs and further review of the contractual needs of the new gTLD program. 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. Also note that non-substantive and stylistic changes to the draft base agreement for new gTLDs are not reflected in the below table.

Summary of Proposed Changes to Base gTLD Agreement

Section	Change to Text	Comments and Rationale
2.8	<p>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 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 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 <ins>remedies imposed</ins> by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such determinations <ins>remedies</ins> as set forth in the applicable procedure. <ins>described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports (including reports from law enforcement and governmental and quasi-governmental agencies) of illegal conduct in connection with the use of the TLD.</ins></p>	<p>The first revision is intended to clarify that Registry Operator must accept and comply with any remedies imposed by ICANN as a result of determinations made during post delegation dispute resolution procedures referenced in Specification 7.</p> <p>The additional sentence is intended to clarify that Registry Operator has an affirmative obligation to cooperate with parties (including governments) that report illegal conduct within the TLD.</p>
2.9(a)	Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator must provide non-	The revision is intended to clarify that Registry Operator may establish non-discriminatory criteria

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	<p>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. <u>provided, that 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-may establish non- discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD.</u> <u>Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the</u> 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.</p>	<p>for qualification of registrars to register names in the TLD and that such criteria may be established prior to the registry-registrar contracting process.</p>
2.10(b)	<p>With respect to renewal of domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed Registry Operator's registry-registrar agreement advance written notice of any price increase (including as a result of 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 one hundred eighty (180) calendar days. Notwithstanding the foregoing, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to <u>(A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods</u>, a price for which Registry Operator provided <u>a</u> notice <u>required by this Section 2.10(b)</u> within that past twelve (12) months; and (ii) Registry Operator need not provide notice of any</p>	<p>The revision is intended to clarify the circumstances under which renewal pricing may be raised without the required notice.</p>

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	price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3.	
2.10(c)	<p>Registry Operator 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. Registry Operator must have uniform pricing for registration renewals (i.e. <u>“Renewal Pricing”</u>). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs); unless, provided, that Registry Operator may offer discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The foregoing sentence shall not apply for purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to a higher renewal price at the time of the initial registration of the domain name following clear and conspicuous disclosure of such renewal price to such registrant. <u>The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices and this Section 2.10(c) will be interpreted broadly to prohibit such practices.</u> For purposes of this Section 2.10(c), a “Qualified Marketing Program” is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed 90</p>	<p>The additions are in response to community comment are intended to clarify that Registry Operator may offer certain marketing programs without violating renewal pricing restrictions. The revisions are also intended to clarify the purpose of this provision and to emphasize that it will be construed broadly to achieve that purpose.</p>

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	<p><u>calendar days, (ii) the programs are made available to all registrars and registrations; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations.</u></p>	
2.11(b)	<p>Any such audit <u>conducted pursuant to Section 2.11(a)</u> will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, <u>in either case of (A) or (B) above</u>, the audit relates to <u>Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to</u> Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment, <u>in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit</u>. In either such case of (i) or (ii) above, 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.</p>	<p>The revisions are in response to community comment and intended to clarify under what circumstances Registry Operator will be obligated to reimburse ICANN for costs of audits in light of the new obligations imposed by Specification 9 (Registry Operator Code of Conduct). Registry operators that are affiliated with ICANN-accredited registrars or registrar resellers will be required to cover the cost of ICANN audits with respect to the Registry Operator Code of Conduct.</p>
2.14	<p><u>In connection with the operation of the registry for the TLD,</u> Registry Operator shall comply with the Registry Code of Conduct as</p>	<p>The addition is in response to community comment and is meant to clarify that the Registry</p>

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	set forth in the specification at [see specification 9].	Operator Code of Conduct only applies to operation of the TLD and not to other business activities of Registry Operator.
2.15 (new)	<u>If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall cooperate with such study, including by delivering to ICANN or its designee conducting such study all Registry data (including confidential data of Registry Operator) requested by ICANN or its designee, provided that ICANN or its designee shall aggregate and anonymize such data prior to any public disclosure of such data.</u>	The new provision was added in order to assist ICANN with its obligation to study and report on the costs and benefits of the new gTLD program under the Affirmation of Commitments. All confidential information provided will be safeguarded and anonymized prior to any public disclosure.
2.16	<u>Registry Performance Specifications for operation of the TLD will be as set forth in the specification at [see specification 10]*. Registry Operator shall comply with such 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 each calendar year during the Term.</u>	A new Specification 10 has been added in order to separate out the Performance Specifications from the Interoperability and Continuity requirements (both items were formerly in Specification 6). ICANN technical staff, in consultation with technical experts in the community has substantially revised both Specification 6 and the Performance Specifications now set forth in new Specification 10 in order to alleviate community concerns while maintaining high performance standards.
3.5	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	The addition is intended to clarify that ICANN is not liable or responsible for the blocking or restriction of the TLD by any third party in any jurisdiction. The risk of such action will be borne by Registry Operator.

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	<p>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.; <u>provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.</u></p>	
4.3(d)	<p>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, <u>which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are</u> not dismissed within <u>thirtysixty</u> (<u>3060</u>) days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's 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 and such proceedings are not dismissed within thirty (30) days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.</p>	<p>The revision is in response to community comment and is meant to require a showing that attachment, garnishment or similar proceedings materially threaten the operation of the registry prior to ICANN terminating the agreement pursuant to this provision.</p>
4.3(f)	<p>ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator <u>knowingly</u> employs any officer</p>	<p>The revision is made in response to community</p>

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	<p>that is convicted of a felony or of a misdemeanor related to financial activities <u>or of any felony</u>, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN <u>reasonably</u> deems as the substantive equivalent of any <u>of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge</u> of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a felony or of a misdemeanor related to financial activities <u>or of any felony</u>, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN <u>reasonably</u> deems as the substantive equivalent of any of the foregoing <u>and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing</u>.</p>	<p>comment and is intended to allow Registry Operator to cure a situation that could give rise to a termination of the agreement in the event that an officer or director of Registry Operator is convicted of the referenced criminal acts.</p>
4.5	<p>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 provide ICANN or any successor registry operator that may be designated by ICANN for the TLD <u>in accordance with this Section 4.5</u> 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 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; <u>provided, however, that if all sub-domains in the registry for the TLD are registered or licensed to</u></p>	<p>The revision is in response to community comment and is intended to allow single registrant/single user (e.g. dot-brand) TLDs to have a consent right to the transition of the TLD in the event of a termination or expiration of the agreement.</p>

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	<p><u>and used exclusively by Registry Operator or individuals or entities that are Affiliates of Registry Operator, then ICANN may not transition operation of the TLD to a successor registry operator without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed).</u> Registry Operator agrees that ICANN may make any changes in 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. 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.</p>	
5.2	<p>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. The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. 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(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or</p>	<p>The first revision is in response to community comment and is intended to allow for an additional day of arbitration hearings in the event that one of the parties makes a reasonable request for such additional day.</p> <p>The second revision is meant to clarify the circumstances under which ICANN may seek extraordinary remedies.</p> <p>In addition, ICANN invites community comment regarding whether or not the additional compliance provisions set forth in the recently executed ICM registry agreement for the .xxx TLD would be appropriate for inclusion in the registry agreement for new TLDs. Information regarding the ICM registry agreement is available here:</p>

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	<p>exemplary damages, or operational sanctions, the hearing may be extended for an<ins>one (1)</ins> additional number of days calendar day if agreed upon by the parties <ins>or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto</ins>. 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 the awards. In any proceeding, ICANN may request the appointed arbitrators 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 arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, <ins>ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations)</ins>. 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; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.</p>	<p>http://blog.icann.org/2011/04/agreement-with-icm-on-xxx-registry/</p>
7.1(a)	<p>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</p>	<p>The revision was made in response to community comment in order to clarify that Registry Operator is not required to indemnify ICANN for claims arising as a result of ICANN's or its affiliated party's actions or omissions during the application process, unless such actions or omissions were</p>

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	<p>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: <u>(i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii)</u> due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This section<u>Section</u> 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.</p>	<p>undertaken or refrained from at the request of registry operator, or were for the benefit of registry operator.</p>
7.2	<p>If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to 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<u>ICANN's</u> policies, <u>Bylaws</u> or conduct. ICANN shall cooperate, at Registry Operator's cost and expense, in all reasonable respects with Registry Operator</p>	<p>The first revision is intended to clarify that ICANN may control proceedings, at its election, that concern the validity or interpretation of ICANN's Bylaws.</p> <p>The second revision is intended to clarify that Registry Operator must cooperate in any proceeding it has elected not to control.</p>

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	<p>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 <u>and Registry Operator shall cooperate in such defense.</u></p>	
7.3	<p>For purposes of this Agreement, <u>unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy,</u> Security and Stability shall be defined as follows:</p>	<p>This revision is intended to allow for alterations to the definition of Security and Stability in connection with future Consensus Policy making.</p>
7.5	<p>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 in the same legal jurisdiction in which ICANN is currently organized for the same or substantially the same purposes. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an</p>	<p>This revision was made in response to community comment to limit the time period afforded to ICANN to review and provide consent to change in control or material subcontracting arrangements. The final addition was intended to clarify that Registry Operator must comply with ICANN's Registry Transition Process (currently in draft form) in connection with any change in control or material subcontracting arrangement.</p>

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	<p>assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring 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, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. 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 control of Registry Operator. Such change of control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such 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. If ICANN fails to expressly provide or withhold its consent to any direct or indirect change of control of Registry Operator or any material</p>	

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	<p>subcontracting arrangement within <u>thirty (30) (or, if ICANN has requested additional information from Registry Operator as set forth above,</u> sixty (60)) calendar days of the receipt of written notice of such transaction from Registry Operator, ICANN shall be deemed to have consented to such transaction. <u>In connection with any such transaction, Registry Operator shall comply with the Registry Transition Process.</u></p>	
7.13	<p>In the event that the TLD was delegated to Registry Operator pursuant to the consent of a governmental entity to use a geographic name related to the jurisdiction of such governmental entity, the parties agree that, notwithstanding any provision contained in this Agreement, in the event of a dispute between such governmental entity and Registry Operator, ICANN may implement the order of any court sitting in such jurisdiction in favor of such governmental entity related to the TLD. ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this agreement, ICANN's implementation of any such order will not be a breach of this Agreement.</p>	<p>This revision was made in conjunction with discussions between the ICANN Board of Directors and the GAC and is intended to correspond to the notice to applicants in the Applicant Guidebook that ICANN has committed to governments that it will implement court orders in cases where a TLD was delegated based on the required consent (or non-objection) of a government.</p>