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

During 2008, ICANN has reviewed and revised the form of gTLD agreement for new gTLD registries. The proposed new form of agreement is intended to be more simple 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 is being set out for review and community discussion purposes, and we encourage comments and suggestions for improvement.

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DELEGATION AND OPERATION OF TOP–LEVEL DOMAIN		
Section 1.1 Domain and Designation.	**Section 1.2** Top Level Domain and **Section 1.3** Designation as Registry Operator	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 Technical Feasibility of String. 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 Statements of Registry Operator	**Section 2.1(b)** Statements of Registry Operator	Section 2.1(b) of the previous form of Registry Agreement has been modified slightly and moved to Section 1.3 of the 2008 Registry Agreement.
Not present	**Section 2.1** Registry Operator's Representations and	The representations and warranties for both parties

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	Warranties. (a) Organization; Due Authorization and Execution. (b) Statements made During Negotiation Process. Section 2.2 ICANN's Representations and Warranties. (a) Organization; Due Authorization and Execution.	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		
Section 2.1 Compliance with Consensus Policies and Temporary Policies. *See* Specification 1 attached to the Draft Registry Agreement.	**Section 3.1(b)** Consensus Policies.	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 1.1 1.3) are unchanged, the list of specific limitations (numbered 1.4) has been updated.
Section 2.2 Data Escrow. *See* Specification 2 attached to the Draft Registry Agreement.	**Section 3.1(c)(i)** Data Escrow	To simplify the Registry Agreement, the Data Escrow provisions have been incorporated by reference to specifications posted on ICANN's web site. 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. 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.
Section 2.3 Monthly Reporting. *See* Specification 3 attached to the Draft Registry Agreement.	**Section 3.1(c)(iv)** Monthly Reporting	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.
Section 2.4 Publication of Registration Data. *See* Specification 4 attached to the Draft Registry Agreement.	**Section 3.1(c)(v)** Whois Service and **Section 3.1(c)(iii)** Bulk Zone File Access have been combined into Section 2.4 of the 2008 Registry Agreement.	The Publication of Registry Data requirements has been incorporated by reference to a specification to be posted on ICANN's web site. In 2008, the detailed Whois requirements have been

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		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.
Section 2.5 Registration Restrictions. *See* Specification 5 attached to the Draft Registry Agreement.	**Section 3.1(d)(i)** Registry Restrictions	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.
Section 2.6 Functional and Performance Specifications. *See* Specification 6 attached to the Draft Registry Agreement.	**Section 3.1(d)(ii)** Functional and Performance Specifications	Functional and performance requirements have been incorporated by reference to a specification to be posted on ICANN's web site. 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.
Section 2.7 Protection of Legal Rights of Third Parties. *See* Specification 7 attached to the Draft Registry Agreement.	Not Present	Protection of legal rights of third parties requirements have been incorporated by reference to a specification to be posted on ICANN's web site. 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
Section 2.8 Registrar Relations.	**Section 7.1** Registry-Registrar Agreement	*See* paper to be posted on ICANN's website discussing registry/registrar marketplace issues.
Section 2.9 Transparency of Registry Policies and Pricing. 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	Not Present, though the concepts are a modification of **Section 7.3** Pricing for Domain Name Registrations and Registry Services.	This is 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 additional administrative burden. See also the paper to be posted on ICANN's website discussing registrar

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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.		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)** Personal Data	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(iil) (Registry Services) and Section 3.1(d)(iv) (Process for Consideration of New Registry Services)**	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	**Section 3.1(f)** Traffic Data	This section has been removed as part of the streamlining of the agreement. New registry services based on traffic data will be subject to the ICANN Registry Services Evaluation Policy (AKA "the funnel").

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COVENANTS OF ICANN		
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 years to allow time for the registry operator to develop and grow its TLD community.
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.	**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),	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.

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	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 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** Changes.	This section was removed as unnecessary in light of new Article 7.
Not Present	**Section 4.4** Failure to Perform in Good Faith.	This section was removed as unnecessary.
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 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,*	**Section 6.1** Termination by ICANN. 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.

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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.		
Section 4.4 Transition of Registry upon Termination of Agreement	**Section 6.3** Transition of Registry upon Termination of Agreement	This section has been reworded but the substance has been left unchanged.
Not Present	**Section 6.2** (Bankruptcy); **Section 6.4** (Rights in Data) and **Section 6.5** (No Reimbursement)	These sections have been removed to simplify and streamline the 2008 Registry Agreement.
DISPUTE RESOLUTION		
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.	**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	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.

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	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.	
Section 5.2 <u>Arbitration</u>. 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 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.	**Section 5.1(b)** <u>Arbitration</u>. 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 ("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	The arbitration provision has been streamlined to allow for a more flexible approach to dispute resolution, while retaining the material substance.

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	arbitration panel or a court, which shall not be a waiver of this agreement to arbitrate.	
Section 5.3 <u>Limitation of Liability</u>. 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, 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.	**Section 5.3** <u>Limitation of Liability</u>. 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-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.	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.
FEES		
Section 6.1 <u>Registry-Level Fees</u>. 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	**Section 7.2(a)** Registry-Level Fees were negotiated for gTLDs on a case-by-case basis.	*See* separate discussion paper on financial considerations.

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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 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.	Not Present	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.
Section 6.3 Payment Schedule	**Section 7.2(b)** Payment Schedule	This section has been renumbered but the substance has remained unchanged.
Section 6.4 Variable Registry-Level Fee. 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	**Section 7.2(c)** Variable Registry-Level Fee. 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	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.

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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. 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.	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. 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.	
Not Present	**Section 7.3** Pricing for Domain Name Registrations and Registry Services (*ICANN's sponsored gTLD registry agreements have not included price controls.)	Price controls have been removed for 2008 in favor of the transparent pricing model outlined above.
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	Not Present	Under these proposed new sections, ICANN would be able to amend or modify the Registry Agreement and incorporated specifications; provided that ICANN posts

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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.		the proposed change and considers input from affected registry operators. One of the main goals of this version of the Registry Agreement is to create flexibility for the registry operator and ICANN to work together. This new section allows for ICANN to adjust the terms and conditions of the Registry Agreement to accommodate changes in technology, policies and process over the term of the Agreement. Incorporating this flexibility meant removal of prior Section 4.3 requiring the parties to enter into discussions to renegotiate terms every three years and the need to institute bi-lateral amendments to each Registry Agreement to address form changes.
Section 7.2 <u>Notice of Changes</u>. 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.	Not Present	
MISCELLANEOUS [changes to this Article as noted]		
Section 8.1 Indemnification of ICANN. Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively,	**Section 8.1 Indemnification of ICANN.** Registry Operator shall indemnify, defend, and hold harmless ICANN (including its directors, officers, employees, and	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

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"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.	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.	registry relationships will be cooperative and flexible.
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 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	**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 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	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 remain consistent.

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2008 gTLD Agreement	2005–2007 gTLD Agreement	Comments and Rationale
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.	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.	
Not Present	**Section 8.4** Use of ICANN Name and Logo.	This section was determined to be superfluous and has been removed to streamline the 2008 Registry Agreement.
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.	**Section 8.9** Language	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** Counterparts	This section was a restatement of general contract law has been removed to streamline the 2008 Registry Agreement.

* *Note: this version was corrected on 24 October 2008, "ICANN's unsponsored gTLD registry agreements …" on page 11 was corrected to say "sponsored."*

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