

## Summary of Changes to Registry Agreement for New gTLDs

### (v.4 against v.3)

Table 1 below sets out the proposed changes to the draft base registry agreement. 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 v.3 of the draft base gTLD Agreement 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 gTLD Agreement are not reflected in Table 1.

Table 2 below sets out alternative text for certain provisions of the base registry agreement that will only be available to intergovernmental organizations and governmental agencies. The alternative provisions are based on the unique requirements of these types of entities as described in Table 2. It is important to note that these alternative provisions do not constitute a formal position by ICANN, will not be available to most applicants and have not been approved by ICANN’s Board of Directors.

**Table 1: Summary of Proposed Changes to Base gTLD Agreement**

Section	Change to Text	Comments and Rationale
2.1	<p><b>Approved Services; Additional Services.</b> Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2 in <del>Specification 6</del><b><u>the specification</u></b> at [see <i>specification 6</i>] and such other Registry Services set forth on Exhibit A (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit requests for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <a href="http://www.icann.org/en/registries/rsep/rsep.html">http://www.icann.org/en/registries/rsep/rsep.html</a>, as such policy may be amended from time to time <b><u>in accordance with the</u></b></p>	<p>The changes are meant to clarify that the RSEP can only be amended pursuant to a Consensus or Temporary Policy and not "unilaterally" by ICANN. The final change is in response to community comment and is meant to clarify that any amendment to the agreement required by ICANN for the purpose of identifying, describing or defining the parameters applicable to an Additional Service must be in a form mutually acceptable to ICANN and Registry Operator.</p>

Section	Change to Text	Comments and Rationale
	<p><u>procedures set forth in Specification 1</u> (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, <u>which amendment shall be in a form reasonably acceptable to the parties.</u></p>	
2.8	<p><b>Protection of Legal Rights of Third Parties.</b> 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, <del>which shall at a minimum include those provisions as</del> set forth <u>in the specification</u> at [see specification 7]* (<b>“Specification 7”</b>). <b><u>Registry Operator may, at its election, implement additional protections of the legal rights of third parties.</u></b> Any changes or modifications to <del>such</del><u>the</u> process and procedures <b><u>required by Specification 7</u></b> following the Effective Date must be approved in advance by ICANN in writing. <b><u>Registry Operator must comply with all determinations and decisions made by ICANN pursuant to Section 2 of Specification 7.</u></b></p>	<p>The first change to this section is meant to clarify that Registry Operator need only implement the RPMs mandated by ICANN pursuant to Specification 7. Registry Operator may implement additional protections, but this will not be required. In addition, ICANN’s prior approval is only required in the event of modification of RPMs required by Specification 7. The final sentence was inserted to make clear that Registry Operator will be required to comply with the procedures enumerated in Specification 7 (PPDRP and RRDRP) and to adhere to any determinations made by ICANN pursuant to those procedures.</p>
2.9	<p><b><u>Use of Registrars.</u></b></p> <p><b><u>(a)</u></b> Registry Operator must use only ICANN accredited registrars in registering domain names. <b><u>Registry Operator and its Affiliates (or any person or entity acting on their behalf) shall not act as a registrar, reseller or any other form of distributor with respect to the TLD or any other top-level domain.</u></b> Registry Operator must provide non-discriminatory access to registry services to all ICANN accredited registrars that enter into and are in</p>	<p>The text in this section is possible implementation language resulting from the resolutions of the ICANN Board (adopted at the ICANN Meeting in Nairobi) with respect to the separation of registry and registrar functions and ownership &lt;<a href="http://www.icann.org/en/minutes/resolutions-12mar10-en.htm#5">http://www.icann.org/en/minutes/resolutions-12mar10-en.htm#5</a>&gt;. During the recent Board Retreat in Dublin during May 2010, the board</p>

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	<p>compliance with Registry Operator’s registry-registrar agreement for the TLD. Registry Operator must use a uniform <b><u>non-discriminatory</u></b> agreement with all registrars authorized to register names in the TLD, <del>which</del> <b><u>provided that such agreement may set forth non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD.</u></b> <b><u>Such agreement</u></b> may be revised by Registry Operator from time to time, provided however, that any such revisions must be approved in advance by ICANN. <b><u>This Section 2.9 shall not preclude Registry Operator from registering names within the TLD to itself through a request made to an ICANN-accredited registrar. [Registry Operator shall not engage or otherwise permit any registrar, reseller or any other form of distributor, or any of their Affiliates (or any person or entity acting on their behalf) to provide Registry Services for the TLD.]</u></b></p> <p style="padding-left: 40px;"><b><u>(b) Registry Operator and its Affiliates shall not, directly or indirectly: (i) control any ICANN-accredited registrar or its Affiliates, (ii) control or acquire greater than 2% Beneficial Ownership of any class of securities of any ICANN-accredited registrar or its Affiliates, (iii) be controlled by, or be under common control with, any ICANN-accredited registrar or its Affiliates, or (iv) except as set forth below in this sub-clause (b), sell or otherwise transfer any interest in any security of Registry Operator or its Affiliates to any ICANN-accredited registrar or its Affiliates. Nothing withstanding sub-clause (b)(iv) above, Registry Operator may sell voting securities to any ICANN-accredited registrar or its Affiliates, provided that any such sale will not result in such registrar or its Affiliates owning greater than 2% of Registry</u></b></p>	<p>reviewed possible issues that might result from a strict interpretation of the Board’s resolutions. It was the sense of the Board that: 1) the draft proposed stricter limitations on cross ownership represents a “default position” and they continue to encourage the GNSO to develop a stakeholder based policy on these issues; 2) a very strict interpretation of the resolutions might create unintended consequences; 3) staff should produce language in the agreement matching a “de minimus” acceptable approach (2% language) while remaining generally consistent with the resolutions; 4) the Board encourages community input and comment on the correct approach to these issues in the absence of GNSO policy; and 5) the Board will review this issue again if no GNSO policy results on these topics.</p>

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	<p><u>Operator’s outstanding voting securities.</u></p> <p><u>For the purposes of this Section 2.9: (i) “Affiliate” means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, (ii) “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise, and (iii) a person or entity that possesses “Beneficial Ownership” of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares (A) voting power which includes the power to vote, or to direct the voting of, such security; and/or (B) investment power which includes the power to dispose, or to direct the disposition of, such security.]</u></p>	
2.10	<p><b>Pricing for Registry Services.</b> Except as set forth in this Section 2.10, Registry Operator shall provide each ICANN accredited registrar that has executed Registry Operator’s registry-registrar agreement advance notice of any price increase <del>{(not including the elimination of <u>any</u> refunds, rebates, discounts, product tying or other programs <u>which had the effect of reducing the price charged to registrars</u>)}</del> of no less than thirty (30) calendar days with respect to initial domain name registrations and one hundred eighty (180) calendar days with respect to renewal of domain name registrations, and shall offer registrars the option to obtain domain name registration renewals at</p>	<p>The first change is meant to clarify the parenthetical. This provision prohibits registry operator from effectively raising fees without the requisite notice by way of eliminating an existing program that had the effect of reducing the stated amount of the fee even if the stated amount of the price itself does not actually increase.</p> <p>The second change was to clarify that registrant must agree in its agreement with a registrar to</p>

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	<p>the current price (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years. Notwithstanding the foregoing, with respect to renewal of domain name registrations, Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to a price for which Registry Operator provided notice within that past twelve (12) months, and need not provide any notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. <del>Registry Operator shall offer all domain registration renewals at the same price, unless the registrant agrees <u>in its registration agreement with a registrar</u> to a higher price at the time of the initial registration of the domain name following clear and conspicuous disclosure of such renewal price <u>by to such registrant.</u> Registry Operator.]</del> Registry Operator shall provide public query-based DNS lookup service for the TLD at its sole expense.</p>	<p>higher renewal prices. This clarification was needed because registry operator ordinarily would not have contractual privity with registrants. Registry Operator would presumably have to implement this contractual requirement through its agreement with its registrars.</p>
2.11	<p><b>Contractual and Operational Compliance Audits.</b> ICANN may from time to time (not to exceed <del>once</del><u>twice</u> per calendar <del>quarter</del><u>year</u>) conduct contractual compliance audits to assess compliance by Registry Operator with its covenants contained in Section 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN shall give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information necessary to demonstrate Registry Operator’s compliance with this Agreement. Upon no less than <del>five</del><u>three (53)</u> calendar<del> </del><u>business</u> days notice</p>	<p>The audit covenant was revised in response to community comment that one audit per calendar quarter would put an undue burden on registry operators. The notice period was clarified to ensure that it would not run on weekends and holidays. Pursuant to the final change, if registry operator is found not to be in compliance with its covenants during a regular audit, ICANN may increase the frequency of its audits to ensure compliance.</p>

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	<p>(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 by Registry Operator with its covenants contained in Section 2 of this Agreement. Any such audit will be at ICANN’s expense, unless such audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN’s detriment. In the latter event, Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with such audit, which reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.</p> <p><b><u>Notwithstanding the foregoing, if Registry Operator is found not to be in compliance with its covenants contained in Section 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.</u></b></p>	
2.13	<p><b><u>Emergency Transition. Registry Operator agrees that in the event that any of the registry functions set forth in Section 5 of Specification 6 fails for a period longer than the emergency threshold for such function set forth in Section 5 of Specification 6, ICANN may designate an emergency interim registry operator of the registry for the TLD (an “Emergency Operator”) in accordance with ICANN’s registry transition process (available at _____) (as the same may be amended from time to time, the “Registry Transition Process”) until such time as Registry Operator has demonstrated to ICANN’s reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry</u></b></p>	<p>This provision was added to the registry agreement to provide a mechanism for ICANN to safeguard registrants and the security and stability of the DNS in the event that a registry operator experiences prolonged and serious technical failures. The Registry Transition Process under development by ICANN will provide further clarification around the process for transitioning TLDs, including in emergency situations.</p>

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	<p><u>for the TLD pursuant to the procedures set out in the Registry Transition Process, provided that Registry Operator pays all costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.</u></p>	
3.5	<p><u>Authoritative Root Database. To the extent that ICANN is authorized to set policy with regard to an authoritative root server system, ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is</u></p>	<p>This covenant of ICANN was added in response to community comment that ICANN should continue (as it is in some current agreements) to be contractually committed to fulfill its role with respect to authoritative root. Note that the first portion of the covenant was moved from Section 3.3 of version 3 of the registry agreement.</p>

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	<u>operated and maintained in a stable and secure manner.</u>	
4.3(b)	ICANN may, upon notice to Registry Operator, terminate this Agreement, if Registry Operator fails to complete all testing and procedures <del>necessary</del> <u>(identified by ICANN in writing to Registry Operator prior to the date hereof)</u> for delegation of the TLD into the root zone within 12 months of the Effective Date. Registry Operator may request an extension for up to additional 12 months for delegation if it can demonstrate, to ICANN’s reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.	This revision was made in response to community comment in order to clarify that ICANN will have to describe the testing and procedures that registry operator must complete prior to delegation so that registry operator is on notice of such requirements.
4.3(c)	ICANN may, upon notice to Registry Operator, terminate this <del>agreement</del> <u>Agreement</u> if <u>(i) Registry Operator fails to cure a material breach of Registry Operator’s obligations set forth in Section 2.12 of this Agreement within thirty (30) calendar days of delivery of notice of such breach by ICANN, or if the Continued Operations Instrument is not in effect for greater than sixty (60) consecutive calendar days at any time following the Effective Date., (ii) an arbitrator or court has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.</u>	This provision was revised to require additional procedural requirements in connection with a termination of the registry agreement in the event of a failure to maintain a Continuing Operations Instrument. This termination right now requires an adverse finding by an arbitrator and a cure period following such adverse finding.
4.3(d)	<u>ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, (iii)</u>	This provision is consistent with termination provisions in existing registry agreements and in commercial contracts generally. In order to protect registrants in the TLD and ensure the stability and



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	<p><u><b>a trustee, receiver, liquidator or equivalent is appointed over Registry Operator or over any of its property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors, or (vi) Registry Operator liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.</b></u></p>	<p>security of the DNS, this provision would allow ICANN to terminate the agreement if registry operator takes certain bankruptcy related actions.</p>
<p>4.3(e)</p>	<p><u><b>ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7.</b></u></p>	<p>This termination right was added in order to make the registry agreement consistent with the Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registry Restrictions Dispute Resolution Procedure (RRDRP), which will allow ICANN to terminate the agreement in some circumstances if registry operator is found to be in violation of the rights of third parties by a panel formed pursuant to either procedure.</p>
<p>4.4(b)</p>	<p><del>(b) Registry Operator may terminate this Agreement upon notice to ICANN if, (i) within the notice period provided for in Section 7.2(d), Registry Operator provides ICANN notice of its objection to a proposed material amendment of this Agreement pursuant to Article 7, which notice will include with specificity the details of such objection, and (ii) such amendment thereafter becomes effective in the form objected to by Registry Operator; provided, however, that Registry Operator may only terminate this Agreement pursuant to this Section 4.4(b) if the required notice of termination has been provided to ICANN within thirty (30) calendar days following the effective date of such amendment; provided, further, that the termination of this Agreement pursuant to this Section 4.4(b) shall</del></p>	<p>This termination right of Registry Operator was deleted in connection with the deletion of the proposed amendment process located in Article VII of version 3 of the registry agreement.</p>

Section	Change to Text	Comments and Rationale
	<p><del>be effective on the date that is the one hundred twenty (120) calendar day following the date upon which Registry Operator delivered the notice of termination to ICANN.</del></p>	
4.5	<p><b>Transition of Registry upon Termination of Agreement.</b> Upon expiration of the Term <del>and</del> <u>pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4,</u> Registry Operator shall <del>agree to</del> provide ICANN or any successor registry <del>authority</del> <u>operator</u> that may be designated by ICANN for the TLD with all data (including <del>that the</del> 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 <del>authority</del> <u>operator</u>. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry <del>authority</del> <u>operator</u> in its sole discretion and in conformance with the <del>ICANN gTLD-Registry Continuity Plan, dated April 25, 2009, as the same may be amended from time to time</del> <u>Transition Process. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5.</u> 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>	<p>The first change is in response to community comment.</p> <p>The second revision was inserted to make clear that registry operator is authorizing ICANN to make necessary changes to the IANA database and DNS and WHOIS records in order to properly transition the TLD in the event of the expiration or termination of the agreement and subsequent re-delegation.</p> <p>See Table 2 below for alternative text to be used in registry agreements with intergovernmental organizations and governmental entities.</p>
5.2	<p><b>Arbitration.</b> 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</p>	<p>The first revision was made to allow for the parties to elect to utilize more than one arbitrator if both parties agree. The remaining revisions were made</p>

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	<p>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 <u>(unless the parties agree in writing to a greater number of arbitrators)</u> and will occur in Los Angeles County, California, <del>USA</del>. <u>In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties’ filings in conjunction with the arbitration, and should the arbitrator determine that a hearing is necessary, the hearing shall be limited to one day.</u> The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys’ fees, which the arbitrator<u>(s)</u> shall include in its awards. In any proceeding, ICANN may request the appointed arbitrator<u>(s)</u> award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator’s right to sell new registrations) in the event the arbitrator<u>(s)</u> determines that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 and Section 5.4 of this Agreement. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California, <del>USA</del>; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.</p>	<p>to reduce the costs of the parties in arbitration by allowing for a reasonable imposition of page limits in arbitration filings and limiting any arbitration hearings to a single day.</p> <p>See Table 2 below for alternative text to be used in registry agreements with intergovernmental organizations and governmental entities.</p>
5.3	<p><b>Limitation of Liability.</b> 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 6.3, if any). Registry Operator’s aggregate monetary liability to ICANN for</p>	<p>The final sentence was added in response to community comment. This provision appears in a number of existing registry agreements and has the effect of disclaiming certain warranties that under limited circumstances can be implied by law.</p>

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	<p><del>violations</del><b>breaches</b> 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 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. <b><u>Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.</u></b></p>	
6.4	<p><b>Adjustments to Fees.</b> Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then current fees set forth in Section 6.1 and Section 6.3 may be <del>increased</del><b>adjusted</b>, at ICANN’s discretion, by a percentage equal to the percentage <del>increase</del><b>change</b>, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the “CPI”) for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such <del>increase</del><b>adjustment</b>. Any fee <del>increase</del><b>adjustment</b> under this Section</p>	<p>This change was made in response to community comment and allows the ICANN Board of Directors to adjust fees up or down based on movements of the consumer price index.</p>

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	6.4 shall be effective as of the first day of the year in which the above calculation is made.	
Art VII	The amendment process set forth in Article VII of version 3 of the registry agreement has been deleted in its entirety.	The new amendment process is set forth in new Section 7.6. See separate comment summary and analysis explanatory memorandum on the new Amendment mechanism for the form gTLD Registry Agreement.
7.1	<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 <u>reasonable</u> legal fees and expenses, arising out of or relating to <u>intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator</u>. Registry Operator’s operation of the registry for the TLD or Registry Operator’s provision of Registry Services; provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This section will not apply to any request for attorneys’ fees in connection with any litigation or arbitration between or among the parties. This section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties’ respective obligations hereunder. Further, this Section shall not apply to any request for attorney’s fees in connection with any litigation or arbitration between or among the parties, which shall be governed</p>	<p>This revision was made to make clear that ICANN will be indemnified against any claims made against it with respect to the intellectual property rights associated with the TLD and with respect to claims against ICANN in connection with the delegation of the TLD. The risk of these types of claims is properly borne by Registry Operator who will have the economic benefit of the use of the TLD.</p> <p>See Table 2 below for alternative text to be used in registry agreements with intergovernmental organizations and governmental entities.</p>

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	by Article 5 or otherwise awarded by a court or arbitrator.	
7.5	<p><b>Change in Control; Assignment and Subcontracting.</b> Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN to another nonprofit corporation or similar entity organized for the same or substantially the same purposes. <b><u>For purposes of this Section 7.5, a direct or indirect change of ownership or control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of ownership or control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring ownership or control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. In addition, without limiting the foregoing,</u></b> 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. <b><u>Without limiting the foregoing,</u></b> Registry Operator <del>will</del><b>must also</b> provide no less than <del>ten</del><b>thirty (30)</b> calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of ownership or control of Registry Operator. Such</p>	<p>This change was made in response to community comment. In order to protect registrants and maintain the security and stability of the DNS, this provision was inserted to give ICANN a right to consent to any transaction in which a unrelated third party that was not vetted as a result of the application process will gain control of the registry.</p>

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	<p>change of ownership or control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such ownership or control meets the ICANN-adopted specification or policy on registry operator criteria then in effect, and affirms that Registry Operator is in compliance with its obligations under this Agreement. Within thirty (30) calendar days of such notification, ICANN may request additional information from Registry Operator establishing compliance with this Agreement, in which case Registry Operator must supply the requested information within fifteen (15) calendar days.</p>	
7.6	<p>See separate comment summary and analysis explanatory memorandum on the new amendment mechanism for the form gTLD Registry Agreement.</p>	<p>The revised proposed amendment process included in this draft is based on consultation with registries and other interested stakeholders. This proposed "hybrid" amendment process allows future amendments to registry agreements when supported by both ICANN and affected registries (by simple majority and representing two-thirds of the fees paid to ICANN). An exemption process will be available. The proposed process is intended to allow for the protection of registrants while respecting unique business models and ensuring compliance with local laws. For additional details, please see the separate summary and analysis of comments on the process for amendments to the form gTLD Registry Agreement.</p>
7.11	<p><b><u>Ownership Rights. Nothing contained in this Agreement shall be construed as establishing or granting to Registry Operator any property ownership rights or interests in the TLD or the letters.</u></b></p>	<p>This provision was included in order to make it clear that the registry agreement by itself does not grant the Registry Operator ownership rights to the</p>

Section	Change to Text	Comments and Rationale
	<u>words, symbols or other characters making up the TLD string.</u>	TLD string.

**Table 2: Alternative Provisions Available to Intergovernmental Organizations and Governmental Entities**

Section	Alternative Text	Comments and Rationale
4.3(f)	ICANN may terminate this Agreement pursuant to Section 7.12.	See Alternative Text for Section 7.12 below
4.5	<b>Transition of Registry upon Termination of Agreement.</b> Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, in connection with ICANN’s designation of a successor registry operator for the TLD, Registry Operator and ICANN agree to consult each other and work cooperatively to facilitate and implement the transition of the TLD in accordance with this Section 4.5. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. In the event ICANN determines to transition operation of the TLD to a successor registry operator, upon Registry Operator’s consent (which shall not be unreasonably withheld, conditioned or delayed), Registry Operator shall provide ICANN or such successor registry operator for the TLD with any data regarding operations of the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator in addition to data escrowed in accordance with Section 2.3 hereof. In the	This provision differs from the base registry agreement in that it allows registry operator to withhold consent to transfer registry data. This change is to accommodate intergovernmental organizations and governmental entities that are uniquely situated to operate the TLD and wish to protect registry data from delegation to an inappropriate entity.



	<p>event that Registry Operator does not consent to provide such data, any registry data related to the TLD shall be returned to Registry Operator, unless otherwise agreed upon by the parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5.</p>	
<p>5.2</p>	<p><b>Arbitration.</b> Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce (“ICC”). The arbitration will be conducted in the English language in front of a single arbitrator (unless the parties shall agree in writing to a greater number of arbitrators) and will occur in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties’ filings in conjunction with the arbitration, and should the arbitrator determine that a hearing is necessary, the hearing shall be limited to one day. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys’ fees, which the arbitrator(s) shall include in its awards. In any proceeding, ICANN may request the appointed arbitrator(s) award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator’s right to sell new registrations) in the event the arbitrator(s) determines that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 and Section 5.4 of this Agreement. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will</p>	<p>This provision differs from the base registry agreement in that it allows for venue in Geneva (instead of Los Angeles).</p>

	<p>be in a court located in Geneva, Switzerland, unless an another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.</p>	
7.1	<p>Registry Operator shall use its best efforts to cooperate with ICANN in order to ensure that ICANN does not incur any costs associated with claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator’s operation of the registry for the TLD or Registry Operator’s provision of Registry Services; provided that Registry Operator shall not be obligated to provide such cooperation to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any of its obligations contained in this Agreement or any willful misconduct by ICANN. This section will not apply to any request for attorneys’ fees in connection with any litigation or arbitration between or among the parties. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties’ respective obligations hereunder. Further, this Section shall not apply to any request for attorney’s fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.</p>	<p>Because certain intergovernmental organizations and governmental entities will generally have special privileges and immunities, ICANN may not be able to bring direct indemnification claims against them. However, such entities will be required to cooperate with ICANN in the event of a claim in order to ensure that ICANN does not incur any costs or damages associated with such claim.</p> <p>Note that Sections 7.1(b) and (c) in the base registry agreement will be inapplicable to intergovernmental organizations and governmental entities. These provisions relate to indemnity obligation that are not imposed pursuant to the alternative language for Section 7.1.</p>
7.12	<p><b>Special Provision Relating to Intergovernmental Organizations or Governmental Entities.</b></p> <p>(a) ICANN acknowledges that Registry Operator is an entity</p>	<p>This provision is modeled on a similar provision in the .POST registry agreement and is intended to create a mechanism for the resolution of conflicts between international public laws and treaties that</p>

<p>subject to public international law, including international treaties applicable to Registry Operator (such public international law and treaties, collectively hereinafter the “Applicable Laws”). Nothing in this Agreement and its related specifications shall be construed or interpreted to require Registry Operator to violate Applicable Laws or prevent compliance therewith. The Parties agree that Registry Operator’s compliance with Applicable Laws shall not constitute a breach of this Agreement.</p> <p>(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, “ICANN Requirements”), may conflict with or violate Applicable Law (hereinafter, a “Potential Conflict”), Registry Operator shall provide detailed notice (a “Notice”) of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.</p> <p>(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by cooperative engagement pursuant to the procedures set forth in Section 5.1. In addition, Registry Operator shall use its best efforts to eliminate or</p>	<p>may bind certain intergovernmental organizations and governmental entities and Consensus Policies, Temporary Policies and other obligations imposed by the registry agreement. This mechanism will allow intergovernmental organizations and governmental entities to be exempt from certain ICANN policies in the event that a conflict is demonstrated. However, in the event that registry operator does not comply with an ICANN policy, ICANN will retain ultimate authority to take technical measures necessary for the preservation of the security and stability of registry services, the Internet, and the DNS, and registry operator will be responsible for the costs of such measures. ICANN may also terminate the registry agreement in the event that that arbitrator finds in its favor.</p>
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minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such cooperative engagement, Registry Operator determines that the Potential Conflict constitutes an actual conflict between any ICANN Requirement, on the one hand, and Applicable Laws, on the other hand, then ICANN shall waive compliance with such ICANN Requirement (provided that the parties shall negotiate in good faith on a continuous basis thereafter to mitigate or eliminate the effects of such non-compliance on ICANN), unless ICANN reasonably and objectively determines that the failure of Registry Operator to comply with such ICANN Requirement would constitute a threat to the Security and Stability of Registry Services, the Internet or the DNS (hereinafter, an "ICANN Determination"). Following receipt of notice by Registry Operator of such ICANN Determination, Registry Operator shall be afforded a period of ninety (90) calendar days to resolve such conflict with an Applicable Law. If the conflict with an Applicable Law is not resolved to ICANN's complete satisfaction during such period, Registry Operator shall have the option to submit, within ten (10) calendar days thereafter, the matter to binding arbitration as defined in subsection (d) below. If during such period, Sponsor does not submit the matter to arbitration pursuant to subsection (d) below, ICANN may, upon notice to Registry Operator, terminate this Agreement with immediate effect.

(d) If Registry Operator disagrees with an ICANN Determination, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2, except that the sole issue presented to the arbitrator for determination will be whether or not ICANN reasonably and objectively reached the ICANN Determination. For the purposes of such arbitration, ICANN shall present evidence to the arbitrator supporting the ICANN

Determination. If the arbitrator determines that ICANN did not reasonably and objectively reach the ICANN Determination, then ICANN shall waive Registry Operator's compliance with the subject ICANN Requirement. If the arbitrators or pre-arbitral referee, as applicable, determine that ICANN did reasonably and objectively reach the ICANN Determination, then, upon notice to Registry Operator, ICANN may terminate this Agreement with immediate effect.

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

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

	Continued Operations Instrument and Alternative Instrument, as applicable.	
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