

Summary of Changes in Version 2 of the Proposed Registry Agreement for New gTLDs

After review and consideration of public comments received in relation to the proposed form of registry agreement for new gTLDs published in October 2008, ICANN has revised the proposed draft agreement to incorporate changes in response to the comments and concerns raised by commentators. Comments on the new form of registry agreement raised a number of important issues that are expected to be the subject of continuing community discussion, and the revised v2 of the form of new gTLD agreement remains subject to further community input. For additional discussion of the rationale for changes to the draft proposed agreement, please refer to the separate summary of analysis of comments. Please note that this draft agreement does not constitute a formal position by ICANN, and has not yet been approved by ICANN's Board of Directors.

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DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN		
Section 1.1 <u>Domain and Designation.</u>	Section 1.1 <u>Domain and Designation.</u>	No change.
Section 1.2 <u>Technical Feasibility of String.</u> While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.	Section 1.2 <u>Technical Feasibility of String.</u> Certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.	This section has been reworded in response to comments in order to better reflect ICANN's support of universal acceptance of top-level domain strings across the Internet.
Section 1.3 <u>Statements of Registry Operator.</u> Registry Operator represents and warrants that all material information provided and statements made in connection with the registry TLD	Section 1.3 <u>Statements of Registry Operator.</u> Registry Operator represents and warrants that all information provided and statements made in connection with the registry TLD application and during the	This section has been reworded in response to comments in order to emphasize that the bring-down of the representations and warranties applies only to <i>material</i> information provided by

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<p>application and during the negotiations of this Agreement were true and correct in all material respects at the time made, and that such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise disclosed in writing by Registry Operator to ICANN.</p>	<p>negotiations of this Agreement were true and correct in all material respects, and that such information or statements continue to be true and correct in all material respects as of the Effective Date.</p>	<p>the Registry Operator. Further changes clarify that material information provided and statements made must be true and correct <i>at the time made</i>, and must continue to be true and correct unless updated.</p> <p>These changes allow ICANN to provide for the updating of information that changes with the passage of time. For example, financial statement data, and information that may become untrue or inaccurate during the course of the evaluation period without the intent of the applicant. Limited submission of updates to previously submitted data will be permitted under parameters set out in the Applicant Guidebook.</p>
COVENANTS OF REGISTRY OPERATOR		
<p>Section 2.1 <u>Compliance with Consensus Policies and Temporary Policies.</u> Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with ICANN's Bylaws, provided such Consensus Policies and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth at [see specification</p>	<p>Section 2.1 <u>Compliance with Consensus Policies and Temporary Policies.</u> Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies existing as of the Effective Date and adopted thereafter as set forth at <http://www.icann.org/general/consensus-policies.htm>. Consensus Policies and Temporary Policies are policies that are established in accordance with the procedure and relate to those topics and subject to those limitations set forth at [see specification 1]*.</p>	<p>ICANN has reinstated language that requires ICANN to adopt Consensus Policies and Temporary Policies in accordance with its Bylaws.</p> <p>The specification on Consensus Policies retains the concept of the picket fence and exclusions from Consensus Policy adoption. In addition, consistent with the reinstatement of ICANN's covenants relating to equitable treatment and open and transparent actions (see Sections 3.1 and 3.2), changes to ICANN's covenants</p>

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1]*.		has been added to the list of exclusions.
Section 2.2 <u>Data Escrow.</u>	Section 2.2 <u>Data Escrow.</u>	No change.
Section 2.3 <u>Monthly Reporting.</u>	Section 2.3 <u>Monthly Reporting.</u>	No change.
Section 2.4 <u>Publication of Registration Data.</u>	Section 2.4 <u>Publication of Registration Data.</u>	No change.
Section 2.5 <u>Reserved Names.</u>	Section 2.5 <u>Registration Restrictions.</u>	The section title has been changed to better reflect the content of Section 2.5.
Section 2.6 <u>Functional and Performance Specifications.</u>	Section 2.6 <u>Functional and Performance Specifications.</u>	No change.
Section 2.7 <u>Protection of Legal Rights of Third Parties.</u>	Section 2.7 <u>Protection of Legal Rights of Third Parties.</u>	No change.
Section 2.8 <u>Use of Registrars.</u> Registry Operator must use only ICANN accredited registrars in registering domain names. Affiliates of Registry Operator may be ICANN-accredited registrars authorized to register names in the TLD, provided, however, that together they may act as registrar for no more than 100,000 names registered in the TLD. Registry Operator may not itself act as an authorized registrar for the TLD through the same entity that provides registry services. Registry Operator must provide non-discriminatory access to registry services to all ICANN accredited registrars that enter into and are in compliance with Registry Operator's registry-registrar	Section 2.8 <u>Registrar Relations.</u> [TBD- See paper to be posted on ICANN's web site discussing registrar marketplace issues.]	A proposed approach to registry-registrar separation has been included in v2 of the proposed form of new gTLD agreement for community review and comment. See also the text of the comprehensive study on the effects of vertical separation, which has been posted at < http://www.icann.org/en/topics/new-gtlds/crai-report-24oct08-en.pdf >, and the additional discussion of the proposed registry-registrar model included in the separate full summary and analysis of comments on the first version of the applicant guidebook.

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<p>agreement for the TLD. Registry Operator must use a uniform agreement with all registrars authorized to register names in the TLD, which 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>Section 2.9 <u>Transparency of Pricing for Registry Services.</u> Registry Operator shall provide no less than six months notice in advance of any price increase for domain name registrations, and shall offer domain name registrations for periods of up to ten years. Registry Operator is not required to give notice of the imposition of the Variable Registry-Level Fee set forth in Section 6.4. 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. [Note: subject to continuing community discussion.]</p>	<p>Section 2.9 <u>Transparency of Pricing for Registry Services.</u> Registry Operator shall prominently post on its website an up to date listing of prices and policies relating to notice of price changes for new and renewal domain name registrations, for transferring a domain name registration from one ICANN-accredited registrar to another and for each other registry service offered by Registry Operator (“Registry Services Policies”). Registry Operator shall ensure through its Registry-Registrar Agreement that each ICANN-accredited registrar authorized to sell names in the TLD will clearly display at the time of registration a link to an ICANN-designated web page that ICANN will develop describing registrant rights and responsibilities and a link to Registry Operator’s Registry Services Policies.</p>	<p>ICANN has included a requirement of six months notice by the registry operator prior to the implementation of increases in the price of domain name registrations. As also stated in the functional and performance specification, registry operator must offer registrations for up to ten years.</p> <p>One of the main goals of the proposed Registry Agreement is to provide enough flexibility for Registry Operators to implement a variety of business models, but ICANN received numerous comments on the first draft Registry Agreement criticizing the absence of price controls (or raising concerns that if new gTLD operators aren’t subjected to mandatory price caps that existing gTLD operators might also ask to have their price caps removed and that ICANN might be compelled to agree due to provisions in other registry agreements that obligate ICANN to act equitably and to not single out registry operators for disparate treatment unless justified by substantial</p>

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		and reasonable cause). ICANN has commissioned a study on whether there should be price controls in new gTLDs, which will be posted as soon as available.
<p>Section 2.10 <u>Contractual and Operational Compliance Audits.</u> 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 by Registry Operator with its covenants contained in Section 2 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 by Registry Operator with its covenants contained in Section 2 of this Agreement.</p>	<p>Section 2.10 <u>Contractual and Operational Compliance Audits.</u> 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.</p>	<p>ICANN has reviewed and reconsidered the audit provisions in light of public comments. The scope of ICANN's audit rights has been clarified and limited accordingly to cover only the covenants of Registry Operator (which are enumerated in Article 2 of the agreement).</p>
<p>Section 2.11 (Note -- for Community-Based TLDs Only) <u>Obligations of Registry Operator to TLD Community.</u> Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i)</p>	<p>Not present.</p>	<p>Community-based TLDs will be required to establish, observe and implement registration polices and measures to oversee the defined community's participation in the TLD as set forth in their application relative to the defined</p>

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<p>naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration policies, and shall enforce such registration policies.)</p>		community.
COVENANTS OF ICANN		
<p>Section 3.1 <u>Open and Transparent.</u> Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.</p>	Not present.	In response to community concerns, ICANN has reinstated the covenants requiring ICANN to act equitably and in an open and transparent manner, consistent with its bylaws.
<p>Section 3.2 <u>Equitable Treatment.</u> ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial</p>	Not present.	

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and reasonable cause.		
<p>Section 3.3 <u>TLD Nameservers.</u> ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at http://www.iana.org/domains/root/ will be implemented by ICANN within seven days or as promptly as feasible following technical verifications.</p>	<p>Section 3.1 <u>TLD Zone Servers and Nameservers.</u> ICANN will use commercially reasonable efforts to ensure that any changes to the TLD zone server and nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at http://www.iana.org/domains/root/ will be implemented by ICANN as promptly as feasible following technical verifications.</p>	<p>ICANN has revised this section to state that ICANN will implement changes within seven days, or as promptly as feasible.</p> <p>ICANN understands that timely implementation of changes is an important matter and is constantly looking for ways to improve its efficiency, however, ICANN also sees the need for some flexibility regarding this requirement because it does not always have control over the receipt of necessary information from third parties. For these reasons a firm requirement to implement nameserver changes within 7 calendar days of submission may not be sustainable as the gTLD name space rapidly expands. Apart from actions required by ICANN, ICANN must receive confirmation of certain changes from third parties, the timing of which might be outside of ICANN's control.</p>
<p>Section 3.4 <u>Root-zone Information Publication.</u></p>	<p>Section 3.2 <u>Root-zone Information Publication.</u></p>	<p>No change.</p>
<p>TERM AND TERMINATION</p>		
<p>Section 4.1 <u>Term.</u></p>	<p>Section 4.1 <u>Term.</u></p>	<p>No change.</p>
<p>Section 4.2 <u>Renewal.</u> 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</p>	<p>Section 4.2 <u>Renewal.</u> 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</p>	<p>This section has been revised to provide more specificity: Registry Operator must be in fundamental and material breach of particular sections of the Agreement</p>

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<p>or court has determined that Registry Operator has been in fundamental and material breach of its covenants set forth in Article 2 of this Agreement, or in default of its payment obligations under Article 6, and such breach or breaches remain uncured following notice by ICANN to Registry Operator.</p>	<p>or court has determined that Registry Operator has been in fundamental and material breach of this Agreement which remains uncured.</p>	<p>(Article 2 covenants of Registry Operator, Article 6 payment obligations) in order to avoid renewal of the Agreement. The updated version also clarifies that ICANN must provide notice to Registry Operator to allow Registry Operator opportunity to cure the breach.</p>
<p>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 covenants set forth in Article 2 or its payment obligations set forth in Article 6 of 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 12 months of the Effective Date shall be considered a material and fundamental breach of Registry Operator’s obligations hereunder and shall entitle ICANN, in its sole discretion, to terminate the Agreement with no further obligations of either party. Registry Operator may request an</p>	<p>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 12 months of the Effective Date shall be considered a material and fundamental breach of Registry Operator’s obligations hereunder and shall entitle ICANN, in its sole discretion, to terminate the Agreement with no further obligations of either party. Registry Operator may request an extension for up to additional 12 months for delegation if it can</p>	<p>This section has been revised to provide more specificity: Registry Operator must be in fundamental and material breach of particular sections of the Agreement (Article 2 covenants of Registry Operator, Article 6 payment obligations) in order for ICANN to terminate the Agreement.</p>

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<p>extension for up to additional 12 months for delegation if it can demonstrate 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.</p>	<p>demonstrate 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.</p>	
<p>Section 4.4 <u>Transition of Registry upon Termination of Agreement.</u></p>	<p>Section 4.4 <u>Transition of Registry upon Termination of Agreement.</u></p>	<p>No change.</p>
<p>DISPUTE RESOLUTION</p>		
<p>Section 5.1 <u>Cooperative Engagement.</u> Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator, following initiation of good faith communications by either party, must attempt to resolve the dispute by engaging in good faith discussion over a period of at least fifteen (15) calendar days.</p>	<p>Section 5.1 <u>Cooperative Engagement.</u> Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator must attempt to resolve the dispute by engaging in good faith communications between the parties over a period of at least fifteen (15) calendar days.</p>	<p>In response to comments, the revised version of the agreement has been modified to make it clearer that either party may initiate good-faith communications concerning any dispute.</p>
<p>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</p>	<p>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</p>	<p>In response to comments regarding compliance and sanctions, ICANN has inserted language to provide that ICANN may request that an arbitrator sanction the Registry Operator for noncompliance issues, including operational sanctions such as an order temporarily restricting a Registry Operator’s right to sell new registrations if appropriate.</p>

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<p>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, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations) in the event Registry Operator shall be shown to have been repeatedly and willfully in fundamental and material breach of this Agreement. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California, USA; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.</p>	<p>of a single arbitrator and will occur in Los Angeles County, California, USA. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrators shall include in their awards. In any proceeding, ICANN may request the appointed arbitrator award punitive or exemplary damages in the event Registry Operator shall be shown to have been repeatedly and willfully in fundamental and material breach of this Agreement. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California, USA; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.</p>	
<p>Section 5.3 <u>Limitation of Liability.</u></p>	<p>Section 5.3 <u>Limitation of Liability.</u></p>	<p>No change.</p>
<p>FEES</p>		
<p>Section 6.1 <u>Registry-Level Fees.</u> Registry Operator shall pay ICANN a Registry-Level Fee equal to (i) the Registry Fixed Fee of US\$6,250 per calendar quarter and (ii) the Registry-Level Transaction Fee.</p>	<p>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</p>	<p>The revised model for registry-level fees is discussed in more detail in the financial model supporting papers being posted concurrently with v2 of the applicant guidebook.</p>

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<p>The Registry-Level Transaction Fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a “Transaction”), during the applicable calendar quarter multiplied by US\$0.25, provided, however that the Registry-Level Transaction Fee shall not apply until and unless more than 50,000 domain names are registered in the TLD and shall apply thereafter to each Transaction.</p>	<p>Transaction Fee calculated per calendar quarter as follows. For any quarter in which the Registry-Level Transaction Fee as calculated in this Section 6.1 exceeds the Fixed Fee, then the Registry-Level Transaction Fee shall be paid. The Registry-Level Transaction Fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another) during the applicable calendar quarter multiplied by US\$0.25 (the “Transaction Fee”) for calendar quarters during which the 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</p>	<p>As revised, this provision would set registry fees at US\$25,000 per year, plus US\$0.25 per transaction for registries with over 50,000 names under management.</p>

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	annual price of registrations above \$5.00.	
Section 6.2 <u>Cost Recovery for RSTEP.</u>	Section 6.2 <u>Cost Recovery for RSTEP.</u>	No change.
Section 6.3 <u>Payment Schedule.</u>	Section 6.3 <u>Payment Schedule.</u>	No change.
<p>Section 6.4 <u>Variable Registry-Level Fee.</u> For fiscal quarters in which ICANN does not collect a variable accreditation fee from all registrars, upon receipt of written notice from ICANN, Registry Operator shall pay ICANN a Variable Registry-Level Fee. The fee will be calculated by ICANN, paid to ICANN by the Registry Operator in accordance with the Payment Schedule in Section 6.2, and the Registry Operator will invoice and collect the fees from the registrars who are party to a Registry-Registrar Agreement with Registry Operator. The fee will be required to be collected from all ICANN accredited registrars if collected from any. The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board for each ICANN fiscal year but shall not exceed US \$0.25.</p>	<p>Section 6.4 <u>Variable Registry-Level Fee.</u> For fiscal quarters in which ICANN does not collect a variable accreditation fee from all registrars, upon receipt of written notice from ICANN, Registry Operator shall pay ICANN a Variable Registry-Level Fee. The fee will be calculated by ICANN, paid to ICANN by the Registry Operator in accordance with the Payment Schedule in Section 6.2, and the Registry Operator will invoice and collect the fees from the registrars who are party to a Registry-Registrar Agreement with Registry Operator. The fee will be specified on a per-registrar basis, and will be required to be collected from all ICANN accredited registrars if collected from any.</p>	<p>In response to community comment, ICANN will cap the transactional component of the Variable Registry-Level Fee. Registries will have the flexibility to include a provision in the registry-registrar agreement that gives them assurance on the ability to collect the registrar fees on a timely basis.</p>
Section 6.5 <u>Additional Fee on Late</u>	Section 6.5 <u>Additional Fee on Late</u>	No change.

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<u>Payments.</u>	<u>Payments.</u>	
CHANGES AND MODIFICATIONS		
<p>Section 7.1 <u>Evolution of Terms and Specifications.</u> During the term of this Agreement, certain provisions of the Agreement and the specifications incorporated into this Agreement may be amended, modified, supplemented or updated in accordance with changing standards, policies and requirements pursuant to the process set forth in this Article 7, provided, however, that ICANN may not utilize this Article 7 to implement changes, modifications or amendments to Article 3 or Section 2.1 of the agreement or specification 1, or to change the process for adoption and implementation of new or modified Consensus Policies or Temporary Policies generally.</p>	<p>Section 7.1 <u>Evolution of Terms and Specifications.</u> During the term of this Agreement, certain provisions of the Agreement and the specifications incorporated into this Agreement may be amended, modified, supplemented or updated in accordance with changing standards, policies and requirements pursuant to the process set forth in this Article 7.</p>	<p>The revised text of Article 7 for v2 of the proposed new gTLD agreement includes new features intended to address concerns raised by the community and the registries constituency, particularly, including: 1) a new preliminary 30-day consultation period prior to posting a notice of any proposed change, 2) a new requirement that any proposed changes could be vetoed by a majority of affected registry operators (instead of providing that a two-thirds' vote of either the registries or the GNSO Council could veto any change), and 3) a prohibition on using the amendment process to modify ICANN's covenants in the agreement or provisions on Consensus Policies.</p>
<p>Section 7.2 <u>Process for Changes.</u> The process for any changes, modifications or amendments to this form of registry agreement permitted by Section 7.1 shall be as follows:</p> <p>i. ICANN will provide an opportunity of no less than thirty (30) days for consultation with and consideration of input from registry operators that would be</p>	<p>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</p>	<p>Section 7.2 i. has been added to allow a "pre-consultation" period with gTLD registries, a 30-day period during which affected Registry Operators have a chance to provide input to ICANN.</p> <p>Section 7.2 iii clarifies that Board Approval is required for any material changes.</p> <p>Sections 7.2 iv and 7.2 v reflect ICANN's recognition of some of the Registry</p>

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<p>subject to the change;</p> <p>ii. ICANN will publicly post on its web site for no less than thirty (30) days formal notice of any proposed changes, modifications or amendments to this form of registry agreement;</p> <p>iii. Following such public notice period and ICANN Board approval with respect to material changes to the Agreement, 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;</p> <p>iv. 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 a vote of more than half of the registry operators subject to the change;</p> <p>v. In the event that such change, modification or amendment is disapproved by affected registry operators pursuant to the process set forth herein, the ICANN Board by a two-thirds vote shall have thirty (30) days to override such disapproval if the modification or amendment is justified</p>	<p>of this Agreement, and/or the requirements, specifications, or processes incorporated into this Agreement at least ninety (90) days prior to the effectiveness thereof by the posting of a notice of effectiveness on ICANN's web site. Any such proposed changes, modifications or amendments may be disapproved within sixty (60) days from the date of notice of effectiveness of the change by either (i) two-thirds in number of the registry operators subject to the change or (ii) a two-thirds vote by the council of the ICANN Generic Names Supporting Organization (GNSO) pursuant to the GNSO's procedures (as the same may be modified from time to time) followed with respect to the review and consideration of new Consensus Policies. In the event that such modification or amendment is disapproved pursuant to the process set forth herein, the ICANN Board shall have thirty (30) days to override such disapproval if it can show that the modification or amendment is justified by a substantial and compelling need related to the security or stability of the Internet or the Domain Name System.</p>	<p>community's specific concerns with the originally proposed amendment procedure, and would represent a compromise along the lines proposed in some of the comments: these sections would allow a veto by a majority vote (reduced from 2/3) of Registry Operators that would be subject to an amendment, which could only be overridden by a 2/3 vote of ICANN's Board (increased from a simple majority) and only when justified by a compelling need related to the stability of the DNS.</p> <p>ICANN understands the concerns the Registry community has with proposed Article 7 and believes that a compromise is possible. Community discussions on how to reach a compromise model for approval of global amendments to the form of the Registry Agreement will continue. A mechanism is sought to amend the agreement in a timely manner with appropriate safeguards such as notice, a registry constituency check & balance, and Board approval. .</p>

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by a substantial and compelling need related to the security or stability of the Internet or the Domain Name System.		
MISCELLANEOUS [changes to this Article as noted]		
Section 8.1 <u>Indemnification of ICANN.</u>	Section 8.1 <u>Indemnification of ICANN.</u>	No change.
Section 8.2 <u>Indemnification Procedures.</u>	Section 8.2 <u>Indemnification Procedures.</u>	No change.
Section 8.3 <u>No Offset.</u>	Section 8.3 <u>No Offset.</u>	No change.
<p>Section 8.4 <u>Change in 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 nonprofit corporation organized for the same or substantially the same purposes. Registry Operator must provide notice to ICANN of any material subcontracting arrangements, and any agreement to subcontract portions of the</p>	<p>Section 8.4 <u>Change in 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 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</p>	<p>This section has been reworded to clarify that Registry Operators need only notify ICANN of <i>material</i> subcontracting arrangements.</p>

2009 Draft gTLD Agreement	2008 Draft gTLD Agreement	Comments and Rationale
operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder.	operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder.	
Section 8.5 <u>Amendments and Waivers.</u>	Section 8.5 <u>Amendments and Waivers.</u>	No change.
Section 8.6 <u>No Third-Party Beneficiaries.</u>	Section 8.6 <u>No Third-Party Beneficiaries.</u>	No change.
Section 8.7 <u>General Notices.</u>	Section 8.7 <u>General Notices.</u>	No change.
Section 8.8 <u>Entire Agreement.</u>	Section 8.8 <u>Entire Agreement.</u>	No change.
Section 8.9 <u>English Language Controls.</u>	Section 8.9 <u>English Language Controls.</u>	No change.