

Summary of Changes to Registry Agreement for New gTLDs

(Proposed Final version against v.4)

The table below sets out the proposed changes to the base registry agreement for new gTLDs. Additions are reflected in bold double underline and deletions are reflected in strike through. These changes were made in response to comments received from the community on v.4 of the draft base agreement for new gTLDs and further review of the contractual needs of the new gTLD program. It is important to note that the proposed final version of the agreement does not constitute a formal position by ICANN and has not been approved by ICANN’s Board of Directors. Also note that non-substantive and stylistic changes to the draft base agreement for new gTLDs are not reflected in the below table.

Summary of Proposed Changes to Base gTLD Agreement

Section	Change to Text	Comments and Rationale
2.1	<p>Approved Services; Additional Services. Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2 in the specification at [<i>see 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 a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at http://www.icann.org/en/registries/rsep/rsep.html, as such policy may be amended from time to time in accordance with the procedures set forth in Specification 1 <u>bylaws of ICANN (as amended from time to time, the “ICANN Bylaws”) applicable to Consensus Policies</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</p>	<p>This change was made in response to community comments in order to clarify that the RSEP procedures may only be changed in accordance with ICANN’s bylaws with respect to Consensus Policies.</p>

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	pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.	
2.6	<p>Reserved Names. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve from initial (i.e. other than renewal) comply with the restrictions on registration of character strings that appear on the Schedule of Reserved Names in the specification posted set forth at [see <i>specification 5</i>]* (“Specification 5”). Registry Operator may establish policies concerning the reservation or blocking of additional character strings within the TLD at its discretion. If Registry Operator is the registrant for any domain names in the Registry TLD (other than the Second-Level Reservations for Registry Operations from Specification 5), such registrations must be through an ICANN accredited registrar. Any such registrations will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-Level Transaction Fee to be paid to ICANN by Registry Operator pursuant to Section 6.1.</p>	The change was made in order to eliminate repetition with the lead in to Specification 5. The substantive requirements for the reservation of certain character strings are unchanged.
2.8	<p>Protection of Legal Rights of Third Parties. Registry Operator must specify, and comply with, a process and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth in the specification at [see <i>specification 7</i>]* (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all determinations and decisions made by ICANN pursuant to Section 2 of Specification 7, <u>subject to Registry</u></p>	This change was made in response to community comments in order to clarify that Registry Operator will have the benefit of the appeal and challenge mechanisms within the PDDRP, and the other rights protection mechanisms required to be implemented by Registry Operator, prior to being required to comply with any ICANN determinations under those mechanisms.

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	<p><u>Operator’s right to challenge such determinations as set forth in the applicable procedure.</u></p>	
2.9	<p><i>Use of Registrars.</i></p> <p>(a) Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator <i>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.</i> Registry Operator must provide non-discriminatory access to <i>registry services</i> <u>Registry Services</u> to all ICANN accredited registrars that enter into and are in compliance with Registry Operator’s registry-registrar agreement for the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD, provided that such agreement may set forth non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Such agreement may be revised by Registry Operator from time to time, provided, however, that any such revisions must be approved in advance by ICANN. <i>This Section 2.9 shall not preclude</i></p> <p>(b) <i>If Registry Operator from registering names within the TLD to itself through a request made</i> <u>(i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services</u> to an ICANN-accredited registrar. <i>[Registry Operator shall not engage or otherwise permit any registrar, reseller or any other form of distributor, or any of their</i> <u>respective Affiliates</u> <i>(or any person or entity acting on their behalf) to provide Registry Services for the</i></p>	<p>The provisions regarding cross ownership of registry operators and registrars have been amended as a result of a determination by the ICANN Board of Directors (the "Board") to remove restrictions on the cross-ownership of registries and registrars. The Board made this determination following confirmation from the GNSO that no consensus had been reached on this issue. The Board considered the PDP Working Group's Revised Initial Report on Vertical Integration Between Registrars and Registries (available at http://gns0.icann.org/issues/vertical-integration/revised-vi-initial-report-18aug10-en.pdf) and carefully considered input from outside legal advisors, economic experts and the community prior to coming to this determination.</p> <p>Although restrictions on cross-ownership have been removed, the Board determined that the registry agreement should contain restrictions on any inappropriate or abusive conduct arising out of registry-registrar cross ownership, including without limitations provisions protecting against:</p> <ul style="list-style-type: none"> a. misuse of data; or b. violations of a registry code of conduct. <p>The Board also directed that these provisions may</p>

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	<p>TLD.], then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such Affiliation, reseller relationship or subcontract, as applicable. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues.</p> <p>(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 Operator's outstanding voting securities.</p> <p>For the purposes of this Section 2.9Agreement: (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, and (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,</p>	<p>be enhanced by additional enforcement mechanisms such as the use of self-auditing requirements, and the use of graduated sanctions up to and including contractual termination and punitive damages.</p> <p>As a result of this directive, the registry agreement will now require that Registry Operator comply with a code of conduct set forth in new Specification 9 (see new Section 2.14 below), which includes a self-audit requirement and is designed to prevent abuses that might result from registry-registrar cross-ownership. Violation of this requirement could result in the imposition of punitive damages pursuant to Section 5.2 or in termination of the Registry Agreement pursuant to Section 4.3(a).</p> <p>In addition, ICANN will have the ability to refer issues raised by cross-ownership to the relevant competition authorities.</p> <p>Finally, Specification 1 has been amended to provide that ICANN will have the ability to address possible cross-ownership issues through the consensus policy and temporary policy process.</p>

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	<p>whether through the ownership of securities, as trustee or executor, by serving as an employee or 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.]</p>	
2.10	<p><u>Pricing for Registry Services.</u></p> <p>(a) 2.10 Pricing for Registry Services. Except as set forth in this Section 2.10 <u>With respect to initial domain name registrations</u>, Registry Operator shall provide each ICANN accredited registrar that has executed Registry Operator’s registry-registrar agreement advance <u>written</u> notice of any price increase (including <u>as a result of</u> the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, <u>unless such refunds, rebates, discounts, product tying or other programs are of a limited duration that is clearly and conspicuously disclosed to the registrar when offered</u>) 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 <u>Registry Operator</u> shall offer registrars the option to obtain <u>initial</u> domain name registration renewals at the current price (i.e. the price in place prior to any noticed increase) <u>registrations</u> for periods of one to ten</p>	<p>The first change was made in response to community comments in order to allow Registry Operator to implement short-term marketing programs that have the effect of reducing the price of initial registrations without adhering to the general notice requirements so long as the duration of such programs are clearly disclosed at the time they are offered.</p> <p>The provisions was also reorganized and clarified with respect to the pricing of renewal registrations. Registry Operator will be required to give 180 days notice of all renewal registration price increases, including those arising as a result of the elimination of refunds, rebates, discounts, etc. However, Registry Operator may offer such refunds, rebates, discounts, etc. without giving the full 180 days notice so long as the price of renewal registrations does not increase above the highest</p>

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	<p>years at the discretion of the registrar, but no greater than ten years.</p> <p><u>(b) With respect to renewal of domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed Registry Operator’s registry-registrar agreement advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days.</u> Notwithstanding the foregoing, with respect to renewal of domain name registrations, ; <u>(i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to a price for which Registry Operator provided notice within that past twelve (12) months, and (ii) Registry Operator need not provide any notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer all domain registrars the option to obtain domain name registration renewals at the same current price, unless the (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years. Registry Operator must have uniform pricing for registration renewals (i.e. the price for each domain registration renewal must be identical to the price of all other domain name registration renewals, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs), unless the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed</u> in its registration agreement with a registrar to a higher <u>renewal</u> price at the time of the initial registration of the domain name</p>	<p>price for which Registry Operator has provided notice in the last 12 months upon the expiration of such programs.</p> <p>The provision has been further clarified to provide that Registry Operator must offer all renewal registrations at the same price as all other renewal registrations, unless it receives documentation from the registrar demonstrating that the registrant agreed to a higher renewal price at the time of the initial registration. This provision does not require Registry Operator to offer renewal registrations at the same price as the specific registration’s initial price.</p> <p>The final sentence was modified to make clear that Registry Operator may not charge additional fees for public query-based DNS lookup service (that is, for running the TLD's zone servers).</p>

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	<p>following clear and conspicuous disclosure of such renewal price to such registrant. Registry Operator shall provide public query-based DNS lookup service for the TLD at its sole expense.</p> <p><u>Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.</u></p>	
2.11	<p>Contractual and Operational Compliance Audits. ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its <u>representations and warranties contained in Article 1 of this Agreement and its covenants contained in Section Article 2 of this Agreement.</u> Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN shall <u>will (a) 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, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registry Operator.</u> 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 three <u>five (5)</u> business 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 <u>representations and warranties contained in Article 1 of this Agreement and its covenants contained in Section Article 2 of this</u></p>	<p>The first change was made in order to clarify that ICANN may engage a third party to conduct compliance audits.</p> <p>The second changes was made in response to community comments in order to expand the possible subjects of ICANN audits to the accuracy of Registry Operator’s representations and warranties in Article 1 of the Registry Agreement.</p> <p>The third change was made in response to community comment in order to provide assurances that any ICANN audit would be conducted in a reasonable manner. The number of days of notice was also increased to give Registry Operator additional time to prepare for an audit and arrange for the relevant employees of Registry Operator to be available.</p> <p>In connection with the requirement that Registry Operator comply with a new Code of Conduct (See Section 2.14 and Specification 9), the audit provision was amended to provide that Registry</p>

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	<p>Agreement. Any such audit will be at ICANN’s expense, unless such <u>(i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and the audit relates to Registry Operator’s compliance with Section 2.14, or (ii) the</u> 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 <u>either such case of (i) or (ii) above,</u> 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. Notwithstanding the foregoing, if Registry Operator is found not to be in compliance with its <u>representations and warranties contained in Article 1 of this Agreement or its</u> covenants contained in Section <u>Article</u> 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>Registry Operator will give ICANN immediate notice of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).</u></p>	<p>Operator will pay for audits conducted for the purpose of ensuring compliance with the Code of Conduct in the event that Registry Operator is affiliated with a registrar or reseller or has subcontracted Registry Services to a registrar or reseller.</p> <p>The final sentence was added in order to ensure that ICANN will have prompt notice of any bankruptcy or insolvency related event suffered by Registry Operator or any criminal conviction or judicial proceeding of the type referenced in new Section 4.3(f).</p>
2.13	<p>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</p>	<p>This change was made in response to community comments in order to ensure that costs associated with any emergency transition that are borne by Registry Operator will be reasonable and documented.</p>

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	<p>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 for the TLD pursuant to the procedures set out in the Registry Transition Process, provided that Registry Operator pays all reasonable 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, <u>which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator.</u> 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.</p>	
2.14	<p><u>Registry Code of Conduct. Registry Operator shall comply with the Registry Code of Conduct as set forth in the specification at [see</u></p>	<p>This covenant was added to the agreement in order to ensure that Registry Operator will comply</p>

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	<u>specification 9].</u>	with a Code of Conduct designed to mitigate possible abuses that could result from the lifting of any restrictions on registry-registrar cross-ownership. See also Section 2.9 above and new Specification 9.
4.3(a)	ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure <u>(A)</u> any fundamental and material breach of Registry Operator’s <u>representations and warranties set forth in Article 1 or</u> covenants set forth in Article 2, or <u>(B)</u> any breach of its <u>Registry Operator’s</u> payment obligations set forth in Article 6 of this Agreement, each within thirty (30) calendar days after ICANN gives Registry Operator notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.	This change was made in response to community comments in order to expand the grounds under which ICANN may terminate the Registry Agreement to those situations in which Registry Operator has been found to be in fundamental and material breach of its representations and warranties contained in Article 1 of the Registry Agreement.
4.3(d)	ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator <u>and not dismissed within thirty (30) days of their commencement,</u> (iii) a trustee, receiver, liquidator or equivalent is appointed over <u>in place of</u> Registry Operator or <u>maintains control</u> over any of its <u>Registry Operator’s</u> property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against	This change was made in response to community comments in order to provide that Registry Operator may avoid termination in the event of a bankruptcy-related proceeding if such proceeding is dismissed within 30 days. The provision was also revised to cover actual bankruptcy filings.

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	<p>Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors <u>and such proceedings are not dismissed within thirty (30) days of their commencement</u>, or (vi) Registry Operator <u>files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or</u> liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.</p>	
4.3(e)	<p>ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7, <u>subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure.</u></p>	<p>This change was made in response to community comments in order to clarify that Registry Operator will have the benefit of appeal and challenge rights set forth in the applicable procedure prior to any termination under those procedures.</p>
4.3(f)	<p><u>ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator employs any officer that is convicted of a felony or of a misdemeanor related to financial activities, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN deems as the substantive equivalent of any of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a felony or of a misdemeanor related to financial activities, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN deems as the substantive equivalent of any of the foregoing.</u></p>	<p>This provision was added in order to allow ICANN to terminate the Registry Agreement in the event that Registry Operator employs an officer that is convicted of certain crimes or subject to certain judgments. The provision will also apply to directors or members of a similar governing body of Registry Operator. A similar provision exists in ICANN's Registrar Accreditation Agreement.</p>
4.6	<p>Survival. <u>Expiration</u> Effect of Termination. Upon any expiration of the Term or termination of this Agreement, <u>the obligations and</u></p>	<p>This provision was revised to clarify that all obligations of the parties cease upon expiration of</p>

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	<p><u>rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement</u> shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition Article 5 and Article 7, Section 2.12, Section 4.5, and this Section 4.6 shall survive the expiration or termination of this Agreement. <u>For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.</u></p>	<p>the Term or termination of the agreement, except for obligations arising prior to such termination or expiration, and the specific provisions referenced. For avoidance of any doubt, the final sentence was added to further provide that Registry Operator's right to operate the registry for the TLD terminates upon the termination or expiration of the Registry Agreement. In the event of a termination or expiration of the Registry Agreement, ICANN will retain the right to re-delegate the registry as set forth in Section 4.5.</p>
5.2	<p>Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce (“ICC”). The arbitration will be conducted in the English language <u>and will occur in Los Angeles County, California. Any arbitration will be</u> in front of a single arbitrator, unless <u>(i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii)</u> the parties agree in writing to a greater number of arbitrators and will occur in Los Angeles County, California. <u>In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator.</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(s) determine that a hearing is necessary, the hearing shall be limited to one <u>(1) calendar day, provided that in any arbitration</u></p>	<p>This change was made in response to community comments and discussion held with the registry stakeholders group in order to provide for a three-arbitrator panel and a potentially longer hearing period in the event of an arbitration dispute in which ICANN is seeking certain remedies.</p> <p>Conforming changes were made to the alternative arbitration provision for use with intergovernmental organizations, governmental entities or under other special circumstances.</p>

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	<p><u>in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for an additional number of days if agreed upon by the parties.</u> 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<u>the</u> awards. In any proceeding, ICANN may request the appointed arbitrator(s)<u>arbitrators</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(s) determines<u>arbitrators determine</u> that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 and/or 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; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.</p>	
6.3(a)	<p>If the ICANN accredited registrars (as a group) do not approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay to ICANN a Variable Registry-Level Fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year. The fee will be calculated and invoiced by ICANN on a quarterly basis, and shall be paid by Registry Operator within sixty (60) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty (20) calendar days with respect</p>	<p>This change was made in response to community comments in order to clarify that Registry Operator may pass the Variable Registry-Level Fee, if any, through to registrars as part of its standard registry-registrar agreement.</p>

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	<p>to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the Variable Registry-Level Fees from the registrars who are party to a Registry-Registrar Agreement <u>registry-registrar agreement</u> with Registry Operator <u>(which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3)</u>, provided that the fees shall be invoiced to all ICANN accredited registrars if invoiced to any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator’s ability to seek and obtain reimbursement of such fee from registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably determined by ICANN. If the ICANN accredited registrars (as a group) do approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.</p>	
7.5	<p>Change in Control; Assignment and Subcontracting. 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 <u>in the</u></p>	<p>This change was made in response to community comments in order to clarify that any ICANN reorganization not requiring consent of Registry Operator will be in the same jurisdiction in which ICANN is currently organized.</p>

Section	Change to Text	Comments and Rationale
	<p><u>same legal jurisdiction in which ICANN is currently organized</u> for the same or substantially the same purposes. 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, 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. Without limiting the foregoing, Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of ownership or control of Registry Operator. Such 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</p>	<p>The term “ownership” has been deleted in order to clarify that this provision is meant to apply only to changes in control of Registry Operator or material subcontracting arrangements and not to changes in the ownership of individual or small blocks of Registry Operator’s securities.</p> <p>The final sentence was added in response to community comment in order to impose an outside limit on the time for ICANN’s review of any change in control or material subcontracting arrangement.</p>

Section	Change to Text	Comments and Rationale
	<p>which case Registry Operator must supply the requested information within fifteen (15) calendar days. <u>If ICANN fails to expressly provide or withhold its consent to any direct or indirect change of control of Registry Operator or any material subcontracting arrangement within sixty (60) calendar days of the receipt of written notice of such transaction from Registry Operator, ICANN shall be deemed to have consented to such transaction.</u></p>	
7.6(d)	<p>Except as set forth <u>in</u> this Section 7.6, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 7.6 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. <u>For the avoidance of doubt, nothing in this Section 7.6(d) shall be deemed to limit Registry Operator’s obligation to comply with Section 2.2.</u></p>	<p>This provision was modified to clarify that it will not limit Registry Operator’s obligations to comply with Consensus and Temporary Policies pursuant to Section 2.2 of the Registry Agreement.</p>
7.12	<p><u>Severability. This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall</u></p>	<p>This provision was added to clarify that the agreement will continue in effect in the event that individual provisions are found to be invalid or unenforceable.</p>

Section	Change to Text	Comments and Rationale
	<p><u>negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.</u></p>	
7.13	<p><u>Government Support. In the event that the TLD was delegated to Registry Operator pursuant to the consent of a governmental entity to use a geographic name related to the jurisdiction of such governmental entity, the parties agree that, notwithstanding any provision contained in this Agreement, in the event of a dispute between such governmental entity and Registry Operator, ICANN may implement the order of any court sitting in such jurisdiction in favor of such governmental entity related to the TLD.</u></p>	<p>This provision was added to address concerns from governments. Registry operators that obtain a TLD as a result of government approval using a TLD string with geographic significance will be required to be subject to any court orders in such government’s jurisdiction in favor of such government, and ICANN will be permitted to implement such orders.</p>