
New gTLD Agreement

Proposed Draft (v.3)

This document contains the draft registry agreement associated with the Draft Applicant Guidebook (Draft RFP) for New gTLDs.

Successful gTLD applicants would enter into this form of registry agreement with ICANN prior to delegation of the new gTLD. Background information on how this version of the draft agreement differs from the previous draft (see <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-18feb09-en.pdf>) is available in the explanatory memorandum *Summary of Changes to Base Agreement*.

It is important to note that this draft agreement does not constitute a formal position by ICANN, and has not been approved by ICANN's Board of Directors. The agreement is being set out for review and community discussion purposes, and ICANN encourages comments and suggestions for improvement. This is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of _____ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and _____ a _____ (“Registry Operator”).

ARTICLE 1.

DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

1.1 Domain and Designation. The Top-Level Domain to which this Agreement applies is _____ (the “TLD”). Upon the Effective Date and until the end of the Term (as defined in Section 4.1), ICANN designates _____ as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

1.2 Technical Feasibility of String. 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.

1.3 Representations and Warranties.

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is a _____, duly organized, validly existing and in good standing under the laws of _____, and Registry Operator has all requisite power and authority and obtained all necessary _____ approvals to enter into and duly execute and deliver this Agreement; and

(iii) Each of Registry Operator and the other parties thereto has duly executed and delivered to ICANN an instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding obligation of the parties thereto, enforceable against the parties in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

ARTICLE 2.

COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

2.1 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 Specification 6 at [*see specification 6*] 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 <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time (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.

2.2 Compliance with Consensus Policies and Temporary Policies. 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 future 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 1*]*.

2.3 Data Escrow. Registry Operator shall comply with the registry data escrow procedures posted at [*see specification 2*]*.

2.4 Monthly Reporting. Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format posted at [*see specification 3*]*.

2.5 Publication of Registration Data. Registry Operator shall provide public access to registration data in accordance with the specification posted at [*see specification 4*]*.

2.6 Reserved Names. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve from initial (i.e. other than renewal) registration all character strings that appear on the Schedule of Reserved Names posted at [*see 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.

2.7 Functional and Performance Specifications. Functional and Performance Specifications for operation of the TLD will be as set forth at [*see specification 6*]*. Registry Operator shall comply with such Functional and Performance Specifications and, for a period of at least one year, shall keep technical and operational records sufficient to evidence compliance with such specifications.

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2.8 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, which shall at a minimum include those provisions set forth at [see specification 7]*. Any changes or modifications to such process and procedures following the Effective Date must be approved in advance by ICANN in writing.

2.9 Use of Registrars. Registry Operator must use only ICANN accredited registrars in registering domain names. 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 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.

[There are four options for community discussion and consideration with respect to registry/registrar separation:

- (a) No cross-ownership restrictions except where there is market power and/or registry price caps (regulation needs, if any, left to regulating authorities)
- (b) No cross-ownership restrictions for new registries, existing restrictions for existing registries.
- (c) Limited lifting with enhanced structural separation:
 - (i) The registrar cannot sell names in the co-owned registry, or
 - (ii) The registrar can sell a very limited number of names in the co-owned registry.
- (d) Complete restrictions:
 - (i) Registries cannot have ownership percentages in registrars, and vice versa.
 - (ii) Registrars prohibited from providing back-end services (this might be accompanied by reciprocal restrictions, i.e., that registries cannot provide back-end services for other registries and registries cannot own resellers).]

2.10 Pricing for Registry Services. 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 [(net of refunds, rebates, discounts, product tying or other programs)] 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 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. [Registry

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