

## Summary of Changes to Draft gTLD Registry Agreement

The table below sets forth a summary of the changes made to the draft new gTLD Registry Agreement (the “Agreement”), compared to the draft posted by ICANN in February 2013. Additions are reflected in bold double underline and deletions are reflected in strikethrough. Numerous changes were made by ICANN in response to public comments. In addition, the changes reflect requests made by the Registry Stakeholder Group’s negotiating team (on behalf of its constituency) and ICANN, and are the product of numerous negotiation sessions between ICANN and the Registries’ negotiating team. Note that non-substantive and stylistic changes to the draft Agreement are not reflected in the below table.

Section	Revised Language	Explanation
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 2.1 in the Specification 6 attached hereto (“Specification 6”) and such other Registry Services set forth on <u>Exhibit A</u> (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a <u>material</u> modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit a request 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 in accordance with the bylaws of ICANN (as amended from time to time, the “ICANN Bylaws”) applicable to Consensus Policies (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN, and, upon any such approval, such Additional Services shall be deemed Registry Services under this Agreement. 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, which amendment shall be in a form reasonably acceptable to the parties.</p>	<p>Revision provides that only material modifications to Approved Services must be submitted pursuant to RSEP.</p>
2.6	<p><b>Reserved Names.</b> Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the <del>restrictions on registration of character strings</del><u>requirements</u> set forth in Specification 5 attached hereto (“Specification 5”). Registry Operator may <u>at any time</u> establish <u>or modify</u> policies concerning Registry Operator’s ability to reserve (i.e., <u>withhold from registration or allocate to Registry Operator, but</u> not register to third parties, delegate, use, <u>activate in the DNS</u> or otherwise make available) or block additional character strings within the TLD at its discretion. <del>#</del><u>Except as specified in Specification 5, if</u> Registry Operator is the registrant for any domain names in the registry TLD <del>(other than the second-level</del></p>	<p>The revisions (along with revisions to Specification 5) clarify Registry Operator’s rights and obligations relating to reserved names.</p>

	<p><del>reservations for Registry Operator’s use pursuant to Section 4 of Specification 5), such registrations must be through an ICANN accredited registrar. Any such registrations, and 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; provided that Registry Operator may register names in its own name without the use of an ICANN accredited registrar in order to withhold such names from delegation or use in accordance with this Section 2.6, and such registrations will not be considered Transactions.</del></p>	
2.9(a)	<p>All domain name registrations in the TLD must be registered through an ICANN accredited registrar; provided, that Registry Operator need not use a registrar if it registers names in its own name in order to withhold such names from delegation or use in accordance with Section 2.6. <u>Subject to the requirements of Specification 11</u>, Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD. <del>Such (the “Registry-Registrar Agreement may be revised by”).</del> Registry Operator <u>may amend the Registry-Registrar Agreement</u> from time to time; provided, however, that any <u>such material revisions thereto</u> must be approved <u>in advance by ICANN before any such revisions become effective and binding on any registrar. Registry Operator will provide ICANN and all registrars authorized to register names in the TLD at least fifteen (15) calendar days written notice of any revisions to the Registry-Registrar Agreement before any such revisions become effective and binding on any registrar. During such period, ICANN will determine whether such proposed revisions are immaterial, potentially material or material in nature. If ICANN has not provided Registry Operator with notice of its determination within such fifteen (15) calendar-day period, ICANN shall be deemed to have determined that such proposed revisions are immaterial in nature. If ICANN determines, or is deemed to have determined under this Section 2.9(a), that such revisions are immaterial, then Registry Operator may adopt and implement such revisions. If ICANN determines such revisions are either material or potentially material, ICANN will thereafter follow its procedure regarding review and approval of changes to Registry-Registrar Agreements at &lt;<a href="http://www.icann.org/en/resources/registries/rra-amendment-procedure">http://www.icann.org/en/resources/registries/rra-amendment-procedure</a>&gt;, and such revisions may not be adopted and</u></p>	<p>The substantive revisions to Section 2.9(a) set forth a process through which ICANN will review proposed changes to Registry Operator’s registry-registrar agreement, determine whether such changes are material, and ultimately approve or reject such changes. Immaterial changes to Registry Operator’s registry-registrar agreement do not require ICANN’s consent prior to their implementation.</p>

	<a href="#">implemented until approved</a> by ICANN.	
2.9(b)	<p>If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, 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, including, if requested by ICANN, copies of any contract relating thereto; provided, that ICANN will <del>not disclose such contracts to any third party other than</del> <a href="#">treat such contract or related documents that are appropriately marked as confidential (as required by Section 7.15) as Confidential Information of Registry Operator in accordance with Section 7.15 (except that ICANN may disclose such contract and related documents to relevant competition authorities</a> <del>or as required by applicable law or legal process</del>). ICANN reserves the right, but not the obligation, to refer any such contract, <a href="#">related documents</a>, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, <a href="#">related documents</a>, transaction or other arrangement might raise <a href="#">significant</a> competition issues <a href="#">under applicable law</a>.</p>	<p>In response to public comments, Section 2.9(b) has been revised to provide for appropriate confidential treatment of materials provided to ICANN under the provision.</p> <p>The revisions also clarify ICANN’s ability to refer arrangements to relevant competition authorities in the case where the arrangement might raise significant competition issues under applicable law.</p>
2.11(a)	<p>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 representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN 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. 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> <a href="#">ten (510) business calendar</a> 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 representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. <a href="#">ICANN will treat any information obtained in connection with such audits that is appropriately marked as confidential (as required by Section</a></p>	<p>Revisions reflect a change from business days to calendar days to provide greater timing certainty, given that business days vary from jurisdiction to jurisdiction.</p> <p>Section 2.11(a) has also been revised to provide for appropriate confidential treatment of materials provided to ICANN under the provision.</p>

	<a href="#">7.15) as Confidential Information of Registry Operator in accordance with Section 7.15.</a>	
2.13	<p><b>Emergency Transition.</b> Registry Operator agrees that in the event that any of the emergency thresholds for registry functions set forth in Section 6 of Specification 10 is reached, 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 <a href="http://www.icann.org/en/resources/registries/transition-processes">http://www.icann.org/en/resources/registries/transition-processes</a>) (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, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. 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.</p>	Revision inserts the URL for ICANN’s registry transition process.
2.15	<p><b>Cooperation with Economic Studies.</b> If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall reasonably cooperate with such study, including by delivering to ICANN or its designee conducting such study all data <a href="#">related to the operation of the TLD</a> reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold <a href="#">(a)</a> any internal analyses or evaluations prepared by Registry Operator with respect to such data <a href="#">and (b) any data to the extent that the delivery of such data would be in violation of applicable law.</a> Any</p>	<p>The substantive changes to Section 2.15 provide that Registry Operator is not obligated to provide information for use in economic studies if doing so would violate applicable law.</p> <p>The revisions also provide for appropriate</p>

	<p>data delivered to ICANN or its designee pursuant to this Section 2.15 <del>shall be fully</del><u>that is appropriately marked as confidential (as required by Section 7.15) shall be treated as Confidential Information of Registry Operator in accordance with Section 7.15, provided that, if ICANN aggregates <del>s</del> and anonymized by and makes anonymous such data,</u> ICANN or its designee <del>prior to any</del><u>may</u> disclosure <del>of</del> such data to any third party. <u>Following completion of an economic study for which Registry Operator has provided data, ICANN will destroy all data provided by Registry Operator that has not been aggregated and made anonymous.</u></p>	<p>confidential treatment and destruction of materials provided to ICANN under the provision.</p>
2.19	<p><b>Obligations of Registry Operator to TLD Community.</b> Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) 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. Registry Operator agrees to implement and be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at [insert applicable URL] with respect to disputes arising pursuant to this Section 2.19. <u>Registry Operator shall implement and comply with the community registration policies set forth on Specification 12 attached hereto.</u></p>	<p>Section 2.19 has been revised to incorporate a new Specification 12, under which community-based TLD’s will set forth, and agree to comply with, the community registration policies applicable for the TLD.</p>
4.2(a)	<p><b>Renewal.</b></p> <p>(a) This Agreement will be renewed for successive periods of ten years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:</p> <p>(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator’s covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court <u>of competent jurisdiction</u> has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten</p>	<p>Revisions clarify that application of the provision will be limited to courts of competent jurisdiction.</p>

	<p>(10) calendar days or such other time period as may be determined by the arbitrator or court <a href="#">of competent jurisdiction</a>; or</p> <p>(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) <a href="#">or a court of competent jurisdiction</a> on at least three (3) separate occasions to have been in <a href="#">(A)</a> fundamental and material breach (whether or not cured) of Registry Operator’s covenants set forth in Article 2 or <a href="#">(B)</a> breach of its payment obligations under Article 6 of this Agreement.</p>	
<p>4.3(a), (c) and (g)</p>	<p><b>Termination by ICANN.</b></p> <p>(a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure (A) any fundamental and material breach of Registry Operator’s representations and warranties set forth in Article 1 or covenants set forth in Article 2, or (B) any breach of Registry Operator’s 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 <a href="#">of competent jurisdiction</a> 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 <a href="#">of competent jurisdiction</a>.</p> <p>(c) ICANN may, upon notice to Registry Operator, terminate this Agreement if (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 <a href="#">of competent jurisdiction</a> has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails to cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court <a href="#">of competent jurisdiction</a>.</p> <p><a href="#">(g) ICANN may, upon thirty (30) calendar days’ notice to Registry Operator, terminate this Agreement as specified in 7.5.</a></p>	<p>Revisions to Section 4.3(a) and (c) clarify that application of the provisions will be limited to courts of competent jurisdiction.</p> <p>New Section 4.3(g) provides that ICANN may terminate the Agreement in the event ICANN reasonably withholds its consent to a change of control of Registry Operator. As specified in the revisions to Section 7.5, a change of control that is consummated without ICANN’s consent will not be voidable by ICANN.</p>



4.4(a)	<p>(a) Registry Operator may terminate this Agreement upon notice to ICANN if, (i) ICANN fails to cure any fundamental and material breach of ICANN’s covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court <a href="#">of competent jurisdiction</a> has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN 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 <a href="#">of competent jurisdiction</a>.</p>	<p>Revisions clarify that application of the provision will be limited to courts of competent jurisdiction.</p>
4.5	<p><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, Registry Operator shall provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 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 successor registry operator. 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; provided, however, that <a href="#">(i) ICANN will take into consideration any intellectual property rights of Registry Operator (as communicated to ICANN by Registry Operator) in determining whether to transition operation of the TLD to a successor registry operator and (ii)</a> if Registry Operator demonstrates to ICANN’s reasonable satisfaction that <del>(iA)</del> all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, <del>(iiB)</del> Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and <del>(iiiC)</del> transitioning operation of the TLD is not necessary to protect the public interest, then ICANN may not transition operation of the TLD to a successor registry operator upon the expiration or termination of this Agreement without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, the foregoing sentence shall not prohibit ICANN from delegating the TLD pursuant to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may</p>	<p>Revisions to Section 4.5 provide that ICANN will take into consideration any intellectual property rights of Registry Operator when determining whether or not to transition the TLD to a successor registry operator.</p> <p>The revisions also clarify ICANN’s intent to utilize the continuing operations instrument to ensure the maintenance and operations of the TLD.</p>

	<p>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. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument <a href="#">for the maintenance and operation of the TLD</a>, regardless of the reason for termination or expiration of this Agreement.</p>	
<p>5.1</p>	<p><b>Mediation.</b> In the event of any dispute arising under or in connection with this Agreement, before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator must attempt to resolve the dispute through mediation in accordance with the following terms and conditions:</p> <p>(a) A party shall submit a dispute to mediation by written notice to the other party. The mediation shall be conducted by a single mediator selected by the parties. If the parties cannot agree on a mediator within fifteen (15) calendar days of delivery of written notice pursuant to this Section 5.1, the parties will promptly select a mutually acceptable mediation provider entity, which entity shall, as soon as practicable following such entity's selection, designate a mediator, who is a licensed attorney with general knowledge of contract law <a href="#">and, to the extent necessary to mediate the particular dispute, general knowledge of the domain name system</a>. Any mediator must confirm in writing that he or she is not, and will not become during the term of the mediation, an employee, partner, executive officer, director, or security holder of ICANN or Registry Operator. If such confirmation is not provided by the appointed mediator, then a replacement mediator shall be appointed pursuant to this Section 5.1(a).</p> <p>(b) The mediator shall conduct the mediation in accordance with the rules and procedures that he or she determines <a href="#">following consultation with the parties</a>. The parties shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute. The mediation shall be treated as a settlement discussion and shall therefore be confidential and may not be used against either party in any later proceeding relating to the dispute, including any arbitration pursuant to Section 5.2. The mediator may not testify for either party in any later proceeding relating to the dispute.</p> <p>(c) Each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator. <a href="#">Each party shall treat information received from the other party pursuant to the mediation that is appropriately</a></p>	<p>Section 5.1 has been revised to provide that, to the extent necessary to mediate a dispute, the designated mediator should have general knowledge of the DNS.</p> <p>The revision to clause (b) provides that the mediator will consult with the parties prior to establishing the rules and procedures for the mediation.</p> <p>Clause (c) has been revised to provide for appropriate confidential treatment of materials provided under the provision.</p>



	<p><a href="#">marked as confidential (as required by Section 7.15) as Confidential Information of such other party in accordance with Section 7.15.</a></p>	
<p>5.2</p>	<p><b>Arbitration.</b> Disputes arising under or in connection with this Agreement that are not resolved pursuant to Section 5.1, 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. The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, <del>or</del> (ii) the parties agree in writing to a greater number of arbitrators. <del>In either, or (iii) the dispute arises under Section 7.6 or 7.7. In the</del> case of clauses (i) <del>or</del> (ii) <u>or (iii)</u> 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. 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 (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. 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 the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator’s right to sell new registrations). <a href="#">Each party shall treat information received from the other party pursuant to the arbitration that is appropriately marked as confidential (as required by Section 7.15) as Confidential Information of such other party in accordance with Section 7.15.</a> 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> <p>[Alternative <b>Section 5.2 Arbitration</b> text for</p>	<p>Section 5.2 has been modified to be consistent with the terms specified in Sections 7.6 and 7.7, which provide that a three person arbitration panel will be utilized to resolve disputes under these sections.</p> <p>Section 5.2 has also been also been revised to provide for appropriate confidential treatment of materials provided under the provision.</p>

intergovernmental organizations or governmental entities or other special circumstances:

**“Arbitration.** Disputes arising under or in connection with this Agreement that are not resolved pursuant to Section 5.1, 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. The arbitration will be conducted in the English language and will occur in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, ~~or~~ (ii) the parties agree in writing to a greater number of arbitrators. ~~In either, or (iii) the dispute arises under Section 7.6 or 7.7. In the~~ case of clauses (i) ~~or~~, (ii) ~~or~~ (iii) 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. 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 (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. 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 the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator’s right to sell new registrations). Each party shall treat information received from the other party pursuant to the arbitration that is appropriately marked as confidential (as required by Section 7.15) as Confidential Information of such other party in accordance with Section 7.15. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Geneva, Switzerland, unless 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.”]

5.3	<p><b>Limitation of Liability.</b> ICANN’s aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the 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 breaches of this Agreement will be limited to an amount equal to the 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, <u>except with respect to Registry Operator’s indemnification obligations pursuant to Section 7.1 and Section 7.2.</u> 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. 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.</p>	<p>The revisions to Section 5.3 were reflected in the draft posted on the ICANN blog on 1 April 2013  <a href="http://blog.icann.org/2013/04/revised-registry-agreement-posted-for-review/">http://blog.icann.org/2013/04/revised-registry-agreement-posted-for-review/</a></p>
5.4	<p><b>Specific Performance.</b> Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator or court <u>of competent jurisdiction</u> specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).</p>	<p>Revisions clarify that application of the provision will be limited to courts of competent jurisdiction.</p>
6.1	<p><b>Registry-Level Fees.</b></p> <p>(a) Registry Operator shall pay ICANN a <u>R<sub>registry-level</sub></u> fee equal to (i) the <u>R<sub>registry</sub></u> fixed fee of US\$6,250 per calendar quarter and (ii) the <u>R<sub>registry-level</sub></u> transaction fee <u>(collectively, the “Registry-Level Fees”).</u> The <u>R<sub>registry-level</sub></u> 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 <u>R<sub>registry-level</sub></u> transaction fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any consecutive four calendar quarter period in the aggregate (the “Transaction Threshold”) and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply</p>	<p>The substantive revisions to Section 6.1 relate to the timing of payment of the fees specified in Section 6.1. In recognition of the potential time lapse between signing of the Agreement and delegation of the TLD, ICANN agreed to postpone the effectiveness of the per quarter fee until delegation.</p> <p>In addition, ICANN has</p>

	<p>to each quarter in which the Transaction Threshold has not been met. Registry Operator's <del>shall</del><u>obligation to</u> pay <del>the Registry-level fees on a</del><u>the</u> quarterly <del>basis by the 20th day following the end of each</del><u>registry-level fixed fee will begin on the date on which the TLD is delegated in the DNS to Registry Operator. The first quarterly payment of the registry-level fixed fee will be prorated based on the number of</u> calendar <del>quarter (i.e., on April 20, July 20, October 20 and January 20 for the</del><u>days between the delegation date and the end of the</u> calendar <del>quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN</del><u>in which the delegation date falls.</u></p> <p><u>(b) Subject to Section 6.1(a), Registry Operator shall pay the Registry-Level Fees on a quarterly basis to an account designated by ICANN within thirty (30) calendar days following the date of the invoice provided by ICANN.</u></p>	<p>agreed to provide greater certainty around the timing of payment of the quarterly fees by agreeing to invoice such fees and allow for a 30 calendar days for Registry Operator to pay the fees.</p>
6.2	<p><b>Cost Recovery for RSTEP.</b> Requests by Registry Operator for the approval of Additional Services pursuant to Section 2.1 may be referred by ICANN to the Registry Services Technical Evaluation Panel ("RSTEP") pursuant to that process at <a href="http://www.icann.org/en/registries/rsep/">http://www.icann.org/en/registries/rsep/</a>. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within <del>ten</del><u>fourteen</u> (<del>10</del><u>14</u>) <del>business</del><u>calendar</u> days of receipt of a copy of the RSTEP invoice from ICANN, unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.</p>	<p>Revisions reflect a change from business days to calendar days to provide greater timing certainty, given that business days vary from jurisdiction to jurisdiction.</p>
6.3(a)	<p>(a) If the ICANN accredited registrars (accounting, in the aggregate, for payment of two-thirds of all registrar-level fees (or such portion of ICANN accredited registrars necessary to approve variable accreditation fees under the then current registrar accreditation agreement) 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 <del>V</del><u>variable</u> <del>R</del><u>registry-L</u><del>e</del><u>l</u> <del>F</del><u>fee</u>, 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 (<u>the "Variable Registry-Level Fee"</u>). 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 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-</p>	<p>Revisions reflect the creation of a new defined term.</p>

	<p>registrar agreement with Registry Operator (which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3); 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>	
<p>6.4 (new)</p>	<p><u><a href="#">Pass Through Fees. Registry Operator shall pay to ICANN (i) a one time fee equal to US\$5,000 for access to and use of the Trademark Clearinghouse as described in Specification 7 (the “RPM Access Fee”) and (ii) US\$0.25<sup>1</sup> per Sunrise Registration and Claims Registration (as such terms are used in Trademark Clearinghouse RPMs incorporated herein pursuant to Specification 7) (the “RPM Registration Fee”). The RPM Access Fee will be invoiced as of the Effective Date of this Agreement, and Registry Operator shall pay such fee to an account specified by ICANN within thirty (30) calendar days following the date of the invoice. ICANN will invoice Registry Operator quarterly for the RPM Registration Fee, which shall be due in accordance with the invoicing and payment procedure specified in Section 6.1.</a></u></p>	<p>New Section 6.4 specifies the fees that will be payable by Registry Operator to ICANN for access to the trademark clearinghouse database services. These fees will be passed through by ICANN to its contracting party providing the service.</p>
<p>7.1(a)</p>	<p><b>Indemnification of ICANN.</b></p> <p>(a) 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 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</p>	<p>Revisions clarify that application of the provision will be limited to courts of competent jurisdiction.</p>

<sup>1</sup> [Subject to further approvals.](#)

	<p>indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. 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 <a href="#">of competent jurisdiction</a> or arbitrator.</p> <p>[Alternative <b>Section 7.1(a)</b> text for intergovernmental organizations or governmental entities:</p> <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 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 <a href="#">of competent jurisdiction</a> or arbitrator.”]</p>	
7.5	<p><b>Change <del>in</del>of Control; Assignment and Subcontracting.</b>  Except as set forth in this Section 7.5, neither party may assign <a href="#">any of its rights and obligations under</a> this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any</p>	<p>The substantive revisions to Section 7.5 provide greater flexibility for Registry Operator to assign the agreement to affiliated</p>



<p><del>material</del> subcontracting arrangement <del>with respect to the operation of the registry that relates to any Critical Function (as identified in Section 6 of Specification 10)</del> for the TLD (<u>a “Material Subcontracting Arrangement”</u>) shall be deemed an assignment.</p> <p><u>(a)</u> Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any <u>assignment or Material Subcontracting Arrangements</u>, and any agreement to <u>assign or subcontract any</u> portions of the operations of the TLD (<u>whether or not a Material Subcontracting Arrangement</u>) must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. 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 control of Registry Operator. <del>Such change of control notification shall include a statement that affirms that the party acquiring such control and the ultimate parent entity of the party acquiring such 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.</del></p> <p><u>(b)</u> Within thirty (30) calendar days of either such notification <u>pursuant to Section 7.5(a)</u>, ICANN may request additional information from Registry Operator establishing <u>(a)</u> compliance with this Agreement and <u>(b)</u> that the party acquiring such control or entering into such <u>assignment or Material Subcontracting Arrangement</u> (<del>in either in any</del> case, the “Contracting Party”) and the ultimate parent entity of the Contracting Party meets the ICANN-adopted specification or policy on registry operator criteria then in effect (<u>including with respect to financial resources and operational and technical capabilities</u>), in which case Registry Operator must supply the requested information within fifteen (15) calendar days. <del>In connection with ICANN’s consideration of any such transaction, ICANN may request</del></p> <p><del>(and Registry Operator shall provide and shall cause the Contracting Party to provide</del> <u>(c)</u> additional information that will allow ICANN to evaluate whether the proposed Contracting Party (or its ultimate parent entity) meets such specification or policy, <u>including with respect to financial resources and operational and technical capabilities</u>. Registry Operator agrees that ICANN’s consent to any <u>proposed transaction assignment, change of control or Material Subcontracting Arrangement</u> will also be subject to background checks on any proposed Contracting Party (and such</p>	<p>parties and enter into subcontracting arrangements under the Agreement, and undertake a change of control transaction without the possibility of ICANN seeking to void such transaction.</p> <p>Other revisions were made at the request of the Registry’s negotiating team in an effort to streamline the approval processes and timelines.</p>
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Contracting Party's Affiliates). ~~Following such review, ICANN shall be deemed to have reasonably withheld its consent to any direct or indirect change in control or subcontracting arrangement in the event that ICANN reasonably determines that the Contracting Party or the ultimate parent entity of the Contracting Party does not meet the ICANN-adopted specification or policy on registry operator criteria then in effect.~~

(d) If ICANN fails to expressly provide or withhold its consent to any assignment, direct or indirect change of control of Registry Operator or any ~~m~~Material ~~s~~Subcontracting ~~a~~Arrangement within thirty (30) calendar days of ICANN's receipt of notice of such transaction (or, if ICANN has requested additional information from Registry Operator as set forth above, ~~sixty~~thirty (~~60~~30) calendar days of the receipt of all requested written information regarding such transaction) from Registry Operator, ICANN shall be deemed to have consented to such transaction.

(e) In connection with any such ~~transaction~~assignment, change of control or Material Subcontracting Arrangement, Registry Operator shall comply with the Registry Transition Process.

(f) Notwithstanding the foregoing, (i) any consummated change of control shall not be voidable by ICANN; provided, however, that, if ICANN reasonably determines to withhold its consent to such transaction, ICANN may terminate this Agreement pursuant to Section 4.3(g), (ii) ICANN may assign this Agreement without the consent of Registry Operator upon approval of the ICANN Board of Directors in conjunction with a reorganization, reconstitution or re-incorporation of ICANN upon such assignee's express assumption of the terms and conditions of this Agreement, (iii) Registry Operator may assign this Agreement without the consent of ICANN directly to a wholly-owned subsidiary of Registry Operator, or, if Registry Operator is a wholly-owned subsidiary, to its direct parent or to another wholly-owned subsidiary of its direct parent, upon such subsidiary's or parent's, as applicable, express assumption of the terms and conditions of this Agreement, and (iv) ICANN shall be deemed to have consented to any assignment, m~~M~~aterial ~~s~~Subcontracting ~~a~~Arrangement or change of control transaction in which the Contracting Party is an existing operator of a generic top-level domain pursuant to a registry agreement between such Contracting Party and ICANN (provided that such Contracting Party is then in compliance with the terms and conditions of such registry agreement in all material respects), unless ICANN provides to Registry Operator a written objection to such transaction within ten (10) calendar days of ICANN's receipt of notice of such

	transaction pursuant to this Section 7.5.	
7.6	<p style="text-align: center;"><b>Amendments and Waivers.</b></p> <p>(a) If <u>the ICANN Board of Directors</u> determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable Registry Operators (the “Applicable Registry Agreements”) is desirable (each, a “Special Amendment”), ICANN may <del>submit</del><u>adopt</u> a Special Amendment <del>for approval by the Applicable Registry Operators</del> pursuant to the <u>requirements of and process set forth in this Section 7.6</u>; provided that a Special Amendment <del>is</del><u>may</u> not <del>be</del> a Restricted Amendment.</p> <p><del>(as defined below)</del>:- Prior to submitting a Special Amendment for <del>such</del><u>Registry Operator</u> <del>a</del>Approval, ICANN shall first consult in good faith with the Working Group <del>(as defined below)</del> regarding the form and substance of <del>a</del><u>such</u> Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the “Posting Period”) and providing notice of such <u>proposed</u> amendment <del>by ICANN</del> to the Applicable Registry Operators in accordance with Section <del>7.8</del><u>7.9</u>. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).</p> <p><del>(b)</del> If, within <del>two one hundred eighty (2180)</del> calendar <del>years of days following</del> the expiration of the Posting Period (the “Approval Period”), <del>(i)</del> the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment) <del>and (ii), but must address the subject to Section 7.6 (matter of the Special Amendment posted for public comment, as modified to reflect and/or address input from the Working Group and public comments), ICANN shall provide notice of, and submit, such Special Amendment for approval or disapproval by the Applicable Registry Operators. If, during the sixty (60) calendar day period following the date ICANN provides such notice to the Applicable Registry Operators, such Special Amendment receives Registry Operator Approval (as defined below), such Special Amendment shall be deemed approved (an “Approved Amendment”) by the Applicable Registry Operators (the last date on which such approvals are obtained is herein referred to as the “Amendment Approval Date”).</del> and shall be effective and deemed an amendment to this Agreement <del>upon</del><u>on the date that is</u> sixty (60) calendar days <u>following the date ICANN provided notice from ICANN of the approval of such Approved Amendment</u> to Registry Operator (the “Amendment Effective Date”). In the event that a Special Amendment <del>is not approved by the ICANN Board of Directors or</del> does not receive</p>	<p>Sections 7.6 has been substantially revised based on the input received by the community, including registries. Section 7.6 provides for a mechanism to amend the Agreement via a Special Amendment process, whereby ICANN and the registry operators can approve amendments that will apply to all registries. In the event registry operators reject a Special Amendment, the ICANN Board of Directors may proceed with such amendment if certain requirements are satisfied. The provision also provides registry operators with the ability to propose alternative amendments, which may, unless rejected by the ICANN Board of Directors, amend the Agreement. In addition, Registry Operator may apply for an exemption from the enforcement of any amendment pursuant to Section 7.6. Disputes under the amendment provision will be subject to arbitration.</p>

Registry Operator Approval ~~within the Approval Period, subject to Section 7.6(c)~~, the Special [Amendment shall be deemed not approved by the Applicable Registry Operators \(a “Rejected Amendment”\)](#). ~~A Rejected Amendment will have no effect. The procedure used by ICANN to obtain Registry Operator Approval shall be designed to document the written approval of the Applicable Registry Operators on the terms and conditions of this Agreement, which may be in electronic form except as set forth below.~~

[\(d\) If the ICANN Board of Directors reasonably determines that a Rejected Amendment falls within the subject matter categories set forth in Section 1.2 of Specification 1, the ICANN Board of Directors may adopt a resolution \(the date such resolution is adopted is referred to herein as the “Resolution Adoption Date”\) requesting an Issue Report \(as such term is defined in ICANN’s Bylaws\) by the Generic Names Supporting Organization \(the “GNSO”\) regarding the substance of such Rejected Amendment. The policy development process undertaken by the GNSO pursuant to such requested Issue Report is referred to herein as a “PDP.” If such PDP results in a Final Report supported by a GNSO Supermajority \(as defined in ICANN’s Bylaws\) that either \(i\) recommends adoption of the Rejected Amendment as Consensus Policy or \(ii\) recommends against adoption of the Rejected Amendment as Consensus Policy, and, in the case of \(i\) above, the Board adopts such Consensus Policy, Registry Operator shall comply with its obligations pursuant to Section 2.2 of this Agreement. In either case, ICANN will abandon the Rejected Amendment and it will have no effect on the terms and conditions of this Agreement. Notwithstanding the foregoing provisions of this Section 7.6\(d\), the ICANN Board of Directors shall not be required to initiate a PDP with respect to a Rejected Amendment if, at any time in the twelve \(12\) month period preceding the submission of such Rejected Amendment for Registry Operator Approval pursuant to Section 7.6\(c\), the subject matter of such Rejected Amendment was the subject of a concluded or otherwise abandoned or terminated PDP that did not result in a GNSO Supermajority recommendation.](#)

[\(e\) If \(a\) a Rejected Amendment does not fall within the subject matter categories set forth in Section 1.2 of Specification 1, \(b\) the subject matter of a Rejected Amendment was, at any time in the twelve \(12\) month period preceding the submission of such Rejected Amendment for Registry Operator Approval pursuant to Section 7.6\(c\), the subject of a concluded or otherwise abandoned or terminated PDP that did not result in a GNSO Supermajority recommendation, or \(c\) a PDP does not result in a Final Report supported by a GNSO Supermajority that either \(A\) recommends adoption of the Rejected Amendment as Consensus Policy or \(B\) recommends against adoption of the Rejected Amendment as Consensus Policy \(or such PDP has otherwise been abandoned or terminated for any reason\), then, in any such case, such Rejected Amendment may still be adopted and become](#)

effective in the manner described below. In order for the Rejected Amendment to be adopted, the following requirements must be satisfied:

(i) the subject matter of the Rejected Amendment must be within the scope of ICANN's mission and consistent with a balanced application of its core values (as described in ICANN's Bylaws);

(ii) the Rejected Amendment must be justified by a Substantial and Compelling Reason in the Public Interest, must be likely to promote such interest, taking into account competing public and private interests that are likely to be affected by the Rejected Amendment, and must be narrowly tailored and no broader than reasonably necessary to address such Substantial and Compelling Reason in the Public Interest;

(iii) to the extent the Rejected Amendment prohibits or requires conduct or activities, imposes material costs on the Applicable Registry Operators, and/or materially reduces public access to domain name services, the Rejected Amendment must be the least restrictive means reasonably available to address the Substantial and Compelling Reason in the Public Interest;

(iv) the ICANN Board of Directors must submit the Rejected Amendment, along with a written explanation of the reasoning related to its determination that the Rejected Amendment meets the requirements set out in subclauses (i) through (iii) above, for public comment for a period of no less than thirty (30) calendar days; and

(v) following such public comment period, the ICANN Board of Directors must (a) engage in consultation (or direct ICANN management to engage in consultation) with the Working Group, subject matter experts, members of the GNSO, relevant advisory committees and other interested stakeholders with respect to such Rejected Amendment for a period of no less than sixty (60) calendar days; and (b) following such consultation, reapprove the Rejected Amendment (which may be in a form different than submitted for Registry Operator Approval, but must address the subject matter of the Rejected Amendment, as modified to reflect and/or address input from the Working Group and public comments) by the affirmative vote of at least two-thirds of the members of the ICANN Board of Directors eligible to vote on such matter, taking into account any ICANN policy affecting such eligibility, including ICANN's Conflict of Interest Policy (a "Board Amendment").

Such Board Amendment shall, subject to Section 7.6(f), be deemed an Approved Amendment, and shall be effective and deemed an

amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice of the approval of such Board Amendment to Registry Operator (which effective date shall be deemed the Amendment Effective Date hereunder). Notwithstanding the foregoing, a Board Amendment may not amend the registry fees charged by ICANN hereunder, or amend this Section 7.6.

~~(ef)~~ Notwithstanding the provisions of Section 7.6~~(be)~~, ~~in the event that a Special Amendment does not receive Registry Operator Approval, such Special~~ a Board Amendment shall ~~still not~~ be deemed an “Approved Amendment” if, during the thirty (30) calendar day period following the ~~failure to receive Registry Operator Approval, by~~ the ICANN Board of Directors ~~reapproves such Special~~ of the Board Amendment ~~(which may be in a form different than submitted for approval by, the Working Group, on the behalf of~~ the Applicable Registry Operators, ~~including any revisions thereto based on comments from the Applicable Registry Operators) by a two-thirds vote (a “Supermajority submits to the ICANN Board Approval”) and such Special~~ of Directors an alternative to the Board Amendment ~~is justified by a substantial and compelling need. The~~ (an “Alternative Amendment Effective Date” of any such Approved Amendment shall be the date that is ninety (90) calendar days that meets the following the date on which ICANN provides notice to Registry Operator of the ~~Supermajority Board Approval requirements:~~

(i) sets forth the precise text proposed by the Working Group to amend this Agreement in lieu of the Board Amendment;

(ii) addresses the Substantial and Compelling Reason in the Public Interest identified by the ICANN Board of Directors as the justification for the Board Amendment; and

(iii) compared to the Board Amendment is: (a) more narrowly tailored to address such Substantial and Compelling Reason in the Public Interest, and (b) to the extent the Alternative Amendment prohibits or requires conduct or activities, imposes material costs on Affected Registry Operators, or materially reduces access to domain name services, is a less restrictive means to address the Substantial and Compelling Reason in the Public Interest.

Any proposed amendment that does not meet the requirements of subclauses (i) through (iii) in the immediately preceding sentence shall not be considered an Alternative Amendment hereunder and therefore shall not supersede or delay the effectiveness of the Board Amendment. If, following the submission of the Alternative Amendment to the ICANN Board of Directors, the Alternative Amendment receives Registry Operator Approval, the Alternative Amendment shall supersede the Board



Amendment and shall be deemed an Approved Amendment hereunder (and shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice of the approval of such Alternative Amendment to Registry Operator, which effective date shall be deemed the Amendment Effective Date hereunder), unless, within a period of sixty (60) calendar days following the date that the Working Group notifies the ICANN Board of Directors of Registry Operator Approval of such Alternative Amendment (during which time ICANN shall engage with the Working Group with respect to the Alternative Amendment), the ICANN Board of Directors by the affirmative vote of at least two-thirds of the members of the ICANN Board of Directors eligible to vote on such matter, taking into account any ICANN policy affecting such eligibility, including ICANN's Conflict of Interest Policy, rejects the Alternative Amendment. If (A) the Alternative Amendment does not receive Registry Operator Approval within thirty (30) days of submission of such Alternative Amendment to the Applicable Registry Operators (and the Working Group shall notify ICANN of the date of such submission), or (B) the ICANN Board of Directors rejects the Alternative Amendment by such two-thirds vote, the Board Amendment (and not the Alternative Amendment) shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice to Registry Operator (which effective date shall be deemed the Amendment Effective Date hereunder). If the ICANN Board of Directors rejects an Alternative Amendment, the board shall publish a written rationale setting forth its analysis of the criteria set forth in Sections 7.6(f)(i) through 7.6(f)(iii). The ability of the ICANN Board of Directors to reject an Alternative Amendment hereunder does not relieve the Board of the obligation to ensure that any Board Amendment meets the criteria set forth in Section 7.6(e)(i) through 7.6(e)(v).

(g) In the event that Registry Operator believes an Approved Amendment does not meet the substantive requirements set out in this Section 7.6 or has been adopted in contravention of any of the procedural provisions of this Section 7.6, Registry Operator may challenge the adoption of such Special Amendment pursuant to the dispute resolution provisions set forth in Article 5, except that such arbitration shall be conducted by a three-person arbitration panel. Any such challenge must be brought within sixty (60) calendar days following the date ICANN provided notice to Registry Operator of the Approved Amendment, and ICANN may consolidate all challenges brought by registry operators (including Registry Operator) into a single proceeding. The Approved Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process.

~~(d)~~ Registry Operator ~~(so long as it did not vote in favor of the Approved Amendment)~~ may apply in writing to ICANN for an exemption from the Approved Amendment (each such request

submitted by Registry Operator hereunder, an “Exemption Request”) during the thirty (30) calendar day period following ~~either the Amendment Approval Date or the date on which ICANN provided notice to~~ Registry Operator ~~received notice of the Supermajority Board of such Approved~~, as applicable ~~Amendment~~. Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN’s receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement; provided, that any conditions, alternatives or variations of the Approved Amendment required by ICANN shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN’s determination, appeal ICANN’s decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(dj), agreed to by ICANN following mediation pursuant to Section 5.1 or through an arbitration decision pursuant to Section 5.2 shall exempt Registry Operator from any Approved Amendment, and no ~~e~~Exemption ~~R~~Request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

(ej) Except as set forth in this Section 7.6, Section 7.7 and as otherwise set forth in this Agreement and the Specifications hereto, 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 [or Section 7.7](#) 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. For the avoidance of doubt, nothing in this Sections [7.6](#) [or 7.7](#) shall be deemed to limit Registry Operator’s obligation to comply with Section 2.2.

(fj) For purposes of this Section 7.6, the following terms shall have the following meanings:

(i) “Applicable Registry Operators” means, collectively, the registry operators of ~~the~~ top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) “Registry Operator Approval” means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For ~~the~~ avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

(iii) “Restricted Amendment” means the following: ~~(iA)~~ an amendment of Specification 1, ~~(iiB)~~ except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, ~~(iiiC)~~ an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or ~~(ivD)~~ an amendment to the length of the Term.

(iv) “Substantial and Compelling Reason in the Public Interest” means a reason that is justified by an important, specific, and articulated public interest goal that is within ICANN's mission and consistent with a balanced application of ICANN's core values as defined in ICANN's Bylaws.

	<p>(iv) “Working Group” means representatives of the Applicable Registry Operators and other members of the community that <del>ICANN</del> <u>the Registry Stakeholders Group</u> appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(d)).</p> <p>(k) <u>Notwithstanding anything in this Section 7.6 to the contrary, (a) if Registry Operator provides evidence to ICANN's reasonable satisfaction that the Approved Amendment would materially increase the cost of providing Registry Services, then ICANN will allow up to one-hundred eighty (180) calendar days for Approved Amendment to become effective with respect to Registry Operator, and (b) no Approved Amendment adopted pursuant to Section 7.6 shall become effective with respect to Registry Operator if Registry Operator provides ICANN with an irrevocable notice of termination pursuant to Section 4.4(b).</u></p>	
7.7	<p><b><u>Negotiation Process.</u></b></p> <p>(a) <u>If either the Chief Executive Officer of ICANN (“CEO”) or the Chairperson of the Registry Stakeholder Group (“Chair”) desires to discuss any revision(s) to this Agreement, the CEO or Chair, as applicable, shall provide written notice to the other person, which shall set forth in reasonable detail the proposed revisions to this Agreement (a “Negotiation Notice”). Notwithstanding the foregoing, neither the CEO nor the Chair may (i) propose revisions to this Agreement that modify any Consensus Policy then existing, (ii) propose revisions to this Agreement pursuant to this Section 7.7 on or before June 30, 2014, or (iii) propose revisions or submit a Negotiation Notice more than once during any twelve (12) month period beginning on July 1, 2014.</u></p> <p>(b) <u>Following receipt of the Negotiation Notice by either the CEO or the Chair, ICANN and the Working Group (as defined in Section 7.6) shall consult in good faith negotiations regarding the form and substance of the proposed revisions to this Agreement, which shall be in the form of a proposed amendment to this Agreement (the “Proposed Revisions”), for a period of at least ninety (90) calendar days (unless a resolution is earlier reached) and attempt to reach a mutually acceptable agreement relating to the Proposed Revisions (the “Discussion Period”).</u></p> <p>(c) <u>If, following the conclusion of the Discussion Period, an agreement is reached on the Proposed Revisions, ICANN shall post the mutually agreed Proposed Revisions on its website for public comment for no less than thirty (30) calendar days (the</u></p>	<p>Revisions reflect a new provision pursuant to which ICANN or the Registry Stakeholder Group may propose a path towards negotiation of amendments to the Agreement. Under certain circumstances, disputes regarding any proposed amendment(s) may be submitted for arbitration.</p> <p>The effectiveness of some types of amendments may be delayed under certain circumstances.</p>

“Posting Period”) and provide notice of such revisions to all Applicable Registry Operators in accordance with Section 7.9. ICANN and the Working Group will consider the public comments submitted on the Proposed Revisions during the Posting Period (including comments submitted by the Applicable Registry Operators). Following the conclusion of the Posting Period, the Proposed Revisions shall be submitted for Registry Operator Approval (as defined in Section 7.6) and approval by the ICANN Board of Directors. If such approvals are obtained, the Proposed Revisions shall be deemed an Approved Amendment (as defined in Section 7.6) by the Applicable Registry Operators and ICANN, and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator.

(d) If, following the conclusion of the Discussion Period, an agreement is not reached between ICANN and the Working Group on the Proposed Revisions, either the CEO or the Chair may provide the other person written notice (the “Mediation Notice”) requiring each party to attempt to resolve the disagreements related to the Proposed Revisions through impartial, facilitative (non-evaluative) mediation in accordance with the terms and conditions set forth below. In the event that a Mediation Notice is provided, ICANN and the Working Group shall, within fifteen (15) calendar days thereof, simultaneously post the text of their desired version of the Proposed Revisions and a position paper with respect thereto on ICANN’s website.

(i) The mediation shall be conducted by a single mediator selected by the parties. If the parties cannot agree on a mediator within fifteen (15) calendar days following receipt by the CEO or Chair, as applicable, of the Mediation Notice, the parties will promptly select a mutually acceptable mediation provider entity, which entity shall, as soon as practicable following such entity’s selection, designate a mediator, who is a licensed attorney with general knowledge of contract law and, to the extent necessary to mediate the particular dispute, general knowledge of the domain name system. Any mediator must confirm in writing that he or she is not, and will not become during the term of the mediation, an employee, partner, executive officer, director, or security holder of ICANN or an Applicable Registry Operator. If such confirmation is not provided by the appointed mediator, then a replacement mediator shall be appointed pursuant to this Section 7.7(d)(i).

(ii) The mediator shall conduct the mediation in accordance with the rules and procedures for facilitative

mediation that he or she determines following consultation with the parties. The parties shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute.

(iii) Each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator.

(iv) If an agreement is reached during the mediation, ICANN shall post the mutually agreed Proposed Revisions on its website for the Posting Period and provide notice to all Applicable Registry Operators in accordance with Section 7.9. ICANN and the Working Group will consider the public comments submitted on the agreed Proposed Revisions during the Posting Period (including comments submitted by the Applicable Registry Operators). Following the conclusion of the Posting Period, the Proposed Revisions shall be submitted for Registry Operator Approval and approval by the ICANN Board of Directors. If such approvals are obtained, the Proposed Revisions shall be deemed an Approved Amendment (as defined in Section 7.6) by the Applicable Registry Operators and ICANN, and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator.

(v) If the parties have not resolved the dispute for any reason by the date that is ninety (90) calendar days following receipt by the CEO or Chair, as applicable, of the Mediation Notice, the mediation shall automatically terminate (unless extended by agreement of the parties). The mediator shall deliver to the parties a definition of the issues that could be considered in future arbitration, if invoked. Those issues are subject to the limitations set forth in Section 7.7(e)(ii) below.

(e) If, following mediation, ICANN and the Working Group have not reached an agreement on the Proposed Revisions, either the CEO or the Chair may provide the other person written notice (an "Arbitration Notice") requiring ICANN and the Applicable Registry Operators to resolve the dispute through binding arbitration in accordance with the arbitration provisions of Section 5.2, subject to the requirements and limitations of this Section 7.7(e).

(i) If an Arbitration Notice is sent, the mediator's definition of issues, along with the Proposed



Revisions (be those from ICANN, the Working Group or both) shall be posted for public comment on ICANN’s website for a period of no less than thirty (30) calendar days. ICANN and the Working Group will consider the public comments submitted on the Proposed Revisions during the Posting Period (including comments submitted by the Applicable Registry Operators), and information regarding such comments and consideration shall be provided to a three (3) person arbitrator panel. Each party may modify its Proposed Revisions before and after the Posting Period. The arbitration proceeding may not commence prior to the closing of such public comment period, and ICANN may consolidate all challenges brought by registry operators (including Registry Operator) into a single proceeding. Except as set forth in this Section 7.7, the arbitration shall be conducted pursuant to Section 5.2.

(ii) No dispute regarding the Proposed Revisions may be submitted for arbitration to the extent the subject matter of the Proposed Revisions (i) relates to Consensus Policy, (ii) falls within the subject matter categories set forth in Section 1.2 of Specification 1, or (iii) seeks to amend any of the following provisions or Specifications of this Agreement: Articles 1, 3 and 6; Sections 2.1, 2.1, 2.5, 2.7, 2.9, 2.10, 2.16, 2.17, 2.19, 4.1, 4.2, 7.3, 7.6, 7.7, 7.8, 7.10, 7.11, 7.12, 7.13, 7.14, 7.16; Section 2.8 and Specification 7 (but only to the extent such Proposed Revisions seek to implement an RPM not contemplated by Sections 2.8 and Specification 7); Exhibit A; and Specifications 1, 4, 6, 10 and 11.

(iii) The mediator will brief the arbitrator panel regarding ICANN and the Working Group’s respective proposals relating to the Proposed Revisions.

(iv) No amendment to this Agreement relating to the Proposed Revisions may be submitted for arbitration by either the Working Group or ICANN, unless, in the case of the Working Group, the proposed amendment has received Registry Operator Approval and, in the case of ICANN, the proposed amendment has been approved by the ICANN Board of Directors.

(v) In order for the arbitrator panel to approve either ICANN or the Working Group’s proposed amendment relating to the Proposed Revisions, the arbitrator panel must conclude that such proposed amendment is consistent with a balanced application of ICANN’s core values (as described

	<p><u>in ICANN's Bylaws) and reasonable in light of the balancing of the costs and benefits to the business interests of the Applicable Registry Operators and ICANN (as applicable), and the public benefit sought to be achieved by the Proposed Revisions as set forth in such amendment. If the arbitrator panel concludes that either ICANN or the Working Group's proposed amendment relating to the Proposed Revisions meets the foregoing standard, such amendment shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator and deemed an Approved Amendment hereunder.</u></p> <p><u>(f) With respect to an Approved Amendment relating to an amendment proposed by ICANN, Registry may apply in writing to ICANN for an exemption from such amendment pursuant to the provisions of Section 7.6.</u></p> <p><u>(g) Notwithstanding anything in this Section 7.7 to the contrary, (a) if Registry Operator provides evidence to ICANN's reasonable satisfaction that the Approved Amendment would materially increase the cost of providing Registry Services, then ICANN will allow up to one-hundred eighty (180) calendar days for the Approved Amendment to become effective with respect to Registry Operator, and (b) no Approved Amendment adopted pursuant to Section 7.7 shall become effective with respect to Registry Operator if Registry Operator provides ICANN with an irrevocable notice of termination pursuant to Section 4.4(b).</u></p>	
7.9	<p><b>General Notices.</b> Except for notices pursuant to <del>Section</del><u>Sections 7.6 and 7.7</u>, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. All notices under <del>Section</del><u>Sections 7.6 and 7.7</u> shall be given by both posting of the applicable information on ICANN's web site and transmission of such information to Registry Operator by electronic mail. Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Notices, designations, determinations, and specifications made under this Agreement will be in the English language. Other than notices under <del>Section</del><u>Sections 7.6 or 7.7</u>, any notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or</p>	<p>Revisions reflects new Section 7.7.</p> <p>Revisions also reflect a change from business days to calendar days to provide greater timing certainty, given that business days vary from jurisdiction to jurisdiction.</p>

	<p>electronic mail shall be followed by a copy sent by regular postal mail service within <del>two</del><u>three (23)</u> <del>business</del><u>calendar</u> days. Any notice required by <del>Section</del><u>Sections</u> 7.6 <del>or 7.7</del> will be deemed to have been given when electronically posted on ICANN’s website and upon confirmation of receipt by the email server. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.</p>	
7.12	<p><b>Ownership Rights.</b> Nothing contained in this Agreement shall be construed as <u>(a) establishing or granting to Registry Operator any property ownership rights or interests of Registry Operator in the TLD or the letters, words, symbols or other characters making up the TLD string, or (b) affecting any existing intellectual property or ownership rights of Registry Operator.</u></p>	<p>Revisions clarify that the Agreement is not intending to alter existing intellectual property rights of Registry Operator.</p>
7.13	<p><b>Severability; Conflicts with Laws.</b> 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 negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible. <u>ICANN and the Working Group will mutually cooperate to develop an ICANN procedure for ICANN’s review and consideration of alleged conflicts between applicable laws and non-WHOIS related provisions of this Agreement. Until such procedure is developed and implemented by ICANN, ICANN will review and consider alleged conflicts between applicable laws and non-WHOIS related provisions of this Agreement in a manner similar to ICANN’s Procedure For Handling WHOIS Conflicts with Privacy Law.</u></p>	<p>Section 7.13 has been revised to provide that ICANN and the registry stakeholder working group will work together to develop an ICANN procedure for reviewing alleged conflicts between provision of the Agreement and laws.</p>
7.15	<p><b><u>Confidentiality</u></b></p> <p><u>(a) Subject to Section 7.15(c), during the Term and for a period of two (2) years thereafter, each party shall, and shall cause its and its Affiliates’ officers, directors, employees and agents to, keep confidential and not publish or otherwise disclose to any third party, directly or indirectly, any information that is, and the disclosing party has marked as, or has otherwise designated in writing to the receiving party as, “confidential trade secret,” “confidential commercial information” or “confidential financial information” (collectively, “Confidential Information”), except to the extent such disclosure is permitted by the terms of this Agreement.</u></p>	<p>A new confidentiality provision was inserted in response to public comments, providing for appropriate treatment of confidential information provided by a party to the other under the Agreement.</p>

	<p><u>(b) The confidentiality obligations under Section 7.15(a) shall not apply to any Confidential Information that (i) is or hereafter becomes part of the public domain by public use, publication, general knowledge or the like through no fault of the receiving party in breach of this Agreement, (ii) can be demonstrated by documentation or other competent proof to have been in the receiving party’s possession prior to disclosure by the disclosing party without any obligation of confidentiality with respect to such information, (iii) is subsequently received by the receiving party from a third party who is not bound by any obligation of confidentiality with respect to such information, (iv) has been published by a third party or otherwise enters the public domain through no fault of the receiving party, or (v) can be demonstrated by documentation or other competent evidence to have been independently developed by or for the receiving party without reference to the disclosing party’s Confidential Information.</u></p> <p><u>(c) Each party shall have the right to disclose Confidential Information to the extent that such disclosure is (i) made in response to a valid order of a court of competent jurisdiction or, if in the reasonable opinion of the receiving party’s legal counsel, such disclosure is otherwise required by applicable law; provided, however, that the receiving party shall first have given notice to the disclosing party and given the disclosing party a reasonable opportunity to quash such order or to obtain a protective order or confidential treatment order requiring that the Confidential Information that is the subject of such order or other applicable law be held in confidence by such court or other third party recipient, unless the receiving party is not permitted to provide such notice under such order or applicable law, or (ii) made by the receiving party or any of its Affiliates to its or their attorneys, auditors, advisors, consultants, contractors or other third parties for use by such person or entity as may be necessary or useful in connection with the performance of the activities under this Agreement, provided that such third party is bound by confidentiality obligations at least as stringent as those set forth herein, either by written agreement or through professional responsibility standards.</u></p>	
7.16(c)	As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by <del>cooperative engagement</del> mediation pursuant to the procedures set forth in Section 5.1. In addition, Registry Operator shall use its best efforts to eliminate or minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such <del>cooperative engagement</del> mediation, Registry Operator determines that the Potential Conflict constitutes an	Changes reflect the revision of the dispute resolution procedures to provide for mediation.

	<p>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 noncompliance 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, Registry Operator 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.</p>	
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