RM 1

AMENDED AND RESTATED ARTICLES OF INCORPORATION OF INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

As approved by the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 9 August 2016, and filed with the California Secretary of State on 3 October 2016

The undersigned certify that:

1. They are the president and the secretary, respectively, of Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation.

2. The Articles of Incorporation of this corporation are amended and restated to read as follows:

    I. The name of this corporation is Internet Corporation for Assigned Names and Numbers (the "**Corporation**").

    II. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable and public purposes. The Corporation is organized, and will be operated, exclusively for charitable, educational, and scientific purposes within the meaning of § 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "**Code**"), or the corresponding provision of any future United States tax code. Any reference in these Articles to the Code shall include the corresponding provisions of any future United States tax code. In furtherance of the foregoing purposes, and in recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization, the Corporation shall, except as limited by Article IV hereof, pursue the

charitable and public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet by carrying out the mission set forth in the bylaws of the Corporation ("**Bylaws**"). Such global public interest may be determined from time to time. Any determination of such global public interest shall be made by the multistakeholder community through an inclusive bottom-up multistakeholder community process.

III. The Corporation shall operate in a manner consistent with these Articles and its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.

IV. Notwithstanding any other provision of these Articles:

   a. The Corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from United States income tax under § 501(c)(3) of the Code or (ii) by a corporation, contributions to which are deductible under § 170(c)(2) of the Code.

   b. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall be empowered to make the election under § 501 (h) of the Code.

   c. The Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

d. No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its directors, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II hereof.

V. To the full extent permitted by the California Nonprofit Public Benefit Corporation Law or any other applicable laws presently or hereafter in effect, no director of the Corporation shall be personally liable to the Corporation for or with respect to any acts or omissions in the performance of his or her duties as a director of the Corporation. Any repeal or modification of this Article V shall not adversely affect any right or protection of a director of the Corporation existing immediately prior to such repeal or modification.

VI. Upon the dissolution of the Corporation, the Corporation's assets shall be distributed for one or more of the exempt purposes set forth in Article II hereof and, if possible, to a § 501(c)(3) organization organized and operated exclusively to lessen the burdens of government and promote the global public interest in the operational stability of the Internet, or shall be distributed to a governmental entity for such purposes, or for such other charitable and public purposes that lessen the burdens of government by providing for the operational stability of the Internet. Any assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as such court shall determine, that are organized and operated exclusively for such purposes, unless no such corporation exists, and in such case any assets not disposed of shall be distributed to a § 501(c)(3) corporation chosen by such court.

VII. Any amendment to these Articles shall require (a) the affirmative vote of at least three-fourths of the directors of the Corporation, and (b) approval in writing by the Empowered Community, a California nonprofit association established by the Bylaws (the "**Empowered Community**"), following procedures set forth in Article 25.2 of the Bylaws.

VIII. Any transaction or series of transactions that would result in the sale or disposition of all or substantially all of ICANN (Internet Corporation for Assigned Names and Numbers)'s assets shall require (a) the affirmative vote of at least three-fourths of the directors of the Corporation, and (b) approval in writing by the Empowered Community prior to the consummation of the transaction, following procedures set forth in Article 26 of the Bylaws.

3. The foregoing amendment and restatement of Articles of Incorporation has been duly approved by the board of directors.

4. The corporation has no members.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: 30 September 2016

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Göran Marby, President

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John Jeffrey, Secretary

RM 2

BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS | A California Nonprofit Public-Benefit Corporation

As amended 28 November 2019

ARTICLE 1 MISSION, COMMITMENTS AND CORE VALUES

Section 1.1. MISSION

(a) The mission of the Internet Corporation for Assigned Names and Numbers ("**ICANN (Internet Corporation for Assigned Names and Numbers)**") is to ensure the stable and secure operation of the Internet's unique identifier systems as described in this Section 1.1(a) (the "**Mission**"). Specifically, ICANN (Internet Corporation for Assigned Names and Numbers):

> (i) Coordinates the allocation and assignment of names in the root zone of the Domain Name (Domain Name) System ("**DNS (Domain Name System)**") and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains ("**gTLDs**"). In this role, ICANN (Internet Corporation for Assigned Names and Numbers)'s scope is to coordinate the development and implementation of policies:
>
> - For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS (Domain Name System) including, with respect to gTLD (generic Top Level Domain) registrars and registries, policies in the areas described in Annex G-1 and Annex G-2; and
>
> - That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure

the stable and secure operation of the Internet's unique names systems.

The issues, policies, procedures, and principles addressed in Annex G-1 and Annex G-2 with respect to gTLD (generic Top Level Domain) registrars and registries shall be deemed to be within ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission.

(ii) Facilitates the coordination of the operation and evolution of the DNS (Domain Name System) root name server system.

(iii) Coordinates the allocation and assignment at the top-most level of Internet Protocol (Protocol) numbers and Autonomous System numbers. In service of its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) (A) provides registration services and open access for global number registries as requested by the Internet Engineering Task Force ("**IETF (Internet Engineering Task Force)**") and the Regional Internet Registries ("**RIRs**") and (B) facilitates the development of global number registry policies by the affected community and other related tasks as agreed with the RIRs.

(iv) Collaborates with other bodies as appropriate to provide registries needed for the functioning of the Internet as specified by Internet protocol standards development organizations. In service of its Mission, ICANN (Internet Corporation for Assigned Names and Numbers)'s scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

(b) ICANN (Internet Corporation for Assigned Names and Numbers) shall not act outside its Mission.

(c) ICANN (Internet Corporation for Assigned Names and Numbers) shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN (Internet Corporation for

Assigned Names and Numbers) does not hold any governmentally authorized regulatory authority.

(d) For the avoidance of doubt and notwithstanding the foregoing:

(i) the foregoing prohibitions are not intended to limit ICANN (Internet Corporation for Assigned Names and Numbers)'s authority or ability to adopt or implement policies or procedures that take into account the use of domain names as natural-language identifiers;

(ii) Notwithstanding any provision of the Bylaws to the contrary, the terms and conditions of the documents listed in subsections (A) through (C) below, and ICANN (Internet Corporation for Assigned Names and Numbers)'s performance of its obligations or duties thereunder, may not be challenged by any party in any proceeding against, or process involving, ICANN (Internet Corporation for Assigned Names and Numbers) (including a request for reconsideration or an independent review process pursuant to Article 4) on the basis that such terms and conditions conflict with, or are in violation of, ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission or otherwise exceed the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s authority or powers pursuant to these Bylaws ("**Bylaws**") or ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation ("**Articles of Incorporation**"):

(A)

(1) all registry agreements and registrar accreditation agreements between ICANN (Internet Corporation for Assigned Names and Numbers) and registry operators or registrars in force on 1 October 2016 [1], including, in each case, any terms or conditions therein that are not contained in the underlying form of registry agreement and registrar accreditation agreement;

(2) any registry agreement or registrar accreditation agreement not encompassed by (1) above to the extent

> its terms do not vary materially from the form of registry agreement or registrar accreditation agreement that existed on 1 October 2016;

(B)any renewals of agreements described in subsection (A) pursuant to their terms and conditions for renewal; and

(C)ICANN (Internet Corporation for Assigned Names and Numbers)'s Five-Year Strategic Plan and Five-Year Operating Plan (Five-Year Operating Plan) existing on 10 March 2016.

(iii) Section 1.1(d)(ii) does not limit the ability of a party to any agreement described therein to challenge any provision of such agreement on any other basis, including the other party's interpretation of the provision, in any proceeding or process involving ICANN (Internet Corporation for Assigned Names and Numbers).

(iv) ICANN (Internet Corporation for Assigned Names and Numbers) shall have the ability to negotiate, enter into and enforce agreements, including public interest commitments, with any party in service of its Mission.

Section 1.2. COMMITMENTS AND CORE VALUES

In performing its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) will act in a manner that complies with and reflects ICANN (Internet Corporation for Assigned Names and Numbers)'s Commitments and respects ICANN (Internet Corporation for Assigned Names and Numbers)'s Core Values, each as described below.

(a) **COMMITMENTS**

In performing its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law, through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically,

ICANN (Internet Corporation for Assigned Names and Numbers) commits to do the following (each, a "**Commitment**," and collectively, the "**Commitments**"):

(i) Preserve and enhance the administration of the DNS (Domain Name System) and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS (Domain Name System) and the Internet;

(ii) Maintain the capacity and ability to coordinate the DNS (Domain Name System) at the overall level and work for the maintenance of a single, interoperable Internet;

(iii) Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN (Internet Corporation for Assigned Names and Numbers)'s activities to matters that are within ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission and require or significantly benefit from global coordination;

(iv) Employ open, transparent and bottom-up, multistakeholder policy development processes that are led by the private sector (including business stakeholders, civil society, the technical community, academia, and end users), while duly taking into account the public policy advice of governments and public authorities. These processes shall (A) seek input from the public, for whose benefit ICANN (Internet Corporation for Assigned Names and Numbers) in all events shall act, (B) promote well-informed decisions based on expert advice, and (C) ensure that those entities most affected can assist in the policy development process;

(v) Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different parties); and

(vi) Remain accountable to the Internet community through mechanisms defined in these Bylaws that enhance ICANN

(Internet Corporation for Assigned Names and Numbers)'s effectiveness.

(b) **CORE VALUES**

In performing its Mission, the following "**Core Values**" should also guide the decisions and actions of ICANN (Internet Corporation for Assigned Names and Numbers):

(i) To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of, other responsible entities that reflect the interests of affected parties and the roles of bodies internal to ICANN (Internet Corporation for Assigned Names and Numbers) and relevant external expert bodies;

(ii) Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;

(iii) Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment in the DNS (Domain Name System) market;

(iv) Introducing and promoting competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process;

(v) Operating with efficiency and excellence, in a fiscally responsible and accountable manner and, where practicable and not inconsistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s other obligations under these Bylaws, at a speed that is responsive to the needs of the global Internet community;

(vi) While remaining rooted in the private sector (including

business stakeholders, civil society, the technical community, academia, and end users), recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities;

(vii) Striving to achieve a reasonable balance between the interests of different stakeholders, while also avoiding capture; and

(viii) Subject to the limitations set forth in Section 27.2, within the scope of its Mission and other Core Values, respecting internationally recognized human rights as required by applicable law. This Core Value does not create, and shall not be interpreted to create, any obligation on ICANN (Internet Corporation for Assigned Names and Numbers) outside its Mission, or beyond obligations found in applicable law. This Core Value does not obligate ICANN (Internet Corporation for Assigned Names and Numbers) to enforce its human rights obligations, or the human rights obligations of other parties, against other parties.

(c) The Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN (Internet Corporation for Assigned Names and Numbers)'s fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN (Internet Corporation for Assigned Names and Numbers)'s activities. The specific way in which Core Values are applied, individually and collectively, to any given situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. Accordingly, in any situation where one Core Value must be balanced with another, potentially competing Core Value, the result of the balancing must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission.

ARTICLE 2 POWERS

Section 2.1. GENERAL POWERS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the powers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board (as defined in Section 7.1). With respect to any matters that would fall within the provisions of Section 3.6(a)-(c), the Board may act only by a majority vote of all Directors. In all other matters, except as otherwise provided in these Bylaws or by law, the Board may act by majority vote of the Directors present at any annual, regular, or special meeting of the Board. Any references in these Bylaws to a vote of the Board shall mean the vote of only those Directors present at the meeting where a quorum is present unless otherwise specifically provided in these Bylaws by reference to "of all Directors."

Section 2.2. RESTRICTIONS

ICANN (Internet Corporation for Assigned Names and Numbers) shall not act as a Domain Name (Domain Name) System Registry or Registrar or Internet Protocol (Protocol) Address Registry in competition with entities affected by the policies of ICANN (Internet Corporation for Assigned Names and Numbers). Nothing in this Section 2.2 is intended to prevent ICANN (Internet Corporation for Assigned Names and Numbers) from taking whatever steps are necessary to protect the operational stability of the Internet in the event of financial failure of a Registry or Registrar or other emergency.

Section 2.3. NON-DISCRIMINATORY TREATMENT

ICANN (Internet Corporation for Assigned Names and Numbers) shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.

ARTICLE 3 TRANSPARENCY

Section 3.1. OPEN AND TRANSPARENT

ICANN (Internet Corporation for Assigned Names and Numbers) and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, including implementing procedures to (a) provide advance notice to facilitate stakeholder engagement in policy development decision-making and cross-community deliberations, (b) maintain responsive consultation procedures that provide detailed explanations of the basis for decisions (including how comments have influenced the development of policy considerations), and (c) encourage fact-based policy development work. ICANN (Internet Corporation for Assigned Names and Numbers) shall also implement procedures for the documentation and public disclosure of the rationale for decisions made by the Board and ICANN (Internet Corporation for Assigned Names and Numbers)'s constituent bodies (including the detailed explanations discussed above).

Section 3.2. WEBSITE

ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain a publicly-accessible Internet World Wide Web site (the "**Website**"), which may include, among other things, (a) a calendar of scheduled meetings of the Board, the EC (Empowered Community) (as defined in Section 6.1(a)), Supporting Organizations (Supporting Organizations) (as defined in Section 11.1), and Advisory Committees (Advisory Committees) (as defined in Section 12.1); (b) a docket of all pending policy development matters, including their schedule and current status; (c) specific meeting notices and agendas as described below; (d) information on the ICANN (Internet Corporation for Assigned Names and Numbers) Budget (as defined in Section 22.4(a)(i)), the IANA (Internet Assigned Numbers Authority) Budget (as defined in Section 22.4(b)(i)), annual audit, financial contributors and the amount of their contributions, and related matters; (e) information about the availability of accountability mechanisms, including reconsideration, independent review, and Ombudsman activities, as well as information about the outcome of specific requests and complaints invoking these mechanisms; (f) announcements about ICANN (Internet Corporation for Assigned Names and Numbers) activities of interest to significant segments of the ICANN (Internet Corporation for Assigned Names and Numbers) community; (g)

comments received from the community on policies being developed and other matters; (h) information about ICANN (Internet Corporation for Assigned Names and Numbers)'s physical meetings and public forums; and (i) other information of interest to the ICANN (Internet Corporation for Assigned Names and Numbers) community.

Section 3.3. MANAGER OF PUBLIC PARTICIPATION

There shall be a staff position designated as Manager of Public Participation, or such other title as shall be determined by the President, that shall be responsible, under the direction of the President, for coordinating the various aspects of public participation in ICANN (Internet Corporation for Assigned Names and Numbers), including the Website and various other means of communicating with and receiving input from the general community of Internet users.

Section 3.4. MEETING NOTICES AND AGENDAS

At least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

Section 3.5. MINUTES AND PRELIMINARY REPORTS

a. All minutes of meetings of the Board, the Advisory Committees (Advisory Committees) and Supporting Organizations (Supporting Organizations) (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary ("**Secretary**") for posting on the Website. All proceedings of the EC (Empowered Community) Administration (as defined in Section 6.3) and the EC (Empowered Community) shall be provided to the Secretary for posting on the Website.

b. No later than 11:59 p.m. on the second business day after the conclusion of each meeting (as calculated by local time at the location of ICANN (Internet Corporation for Assigned

Names and Numbers)'s principal office), any resolutions passed by the Board at that meeting shall be made publicly available on the Website; provided, however, that any actions relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN (Internet Corporation for Assigned Names and Numbers)), matters that ICANN (Internet Corporation for Assigned Names and Numbers) is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the resolutions made publicly available. The Secretary shall send notice to the Board and the Chairs of the Supporting Organizations (Supporting Organizations) (as set forth in Article 9 through Article 11) and Advisory Committees (Advisory Committees) (as set forth in Article 12) informing them that the resolutions have been posted.

c. No later than 11:59 p.m. on the seventh business days after the conclusion of each meeting (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office), any actions taken by the Board shall be made publicly available in a preliminary report on the Website, subject to the limitations on disclosure set forth in Section 3.5(b) above. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant preliminary report the reason for such nondisclosure.

d. No later than the day after the date on which they are formally approved by the Board (or, if such day is not a business day, as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office, then the next immediately following business day), the minutes of the Board shall be made publicly available on the Website; provided, however, that any minutes of the Board relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN (Internet Corporation for Assigned Names and Numbers)), matters that ICANN (Internet Corporation for

Assigned Names and Numbers) is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure.

Section 3.6. NOTICE AND COMMENT ON POLICY ACTIONS

(a) With respect to any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges, ICANN (Internet Corporation for Assigned Names and Numbers) shall:

> (i) provide public notice on the Website explaining what policies are being considered for adoption and why, at least twenty-one days (and if practical, earlier) prior to any action by the Board;
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> (ii) provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments (such comment period to be aligned with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment practices), prior to any action by the Board; and
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> (iii) in those cases where the policy action affects public policy concerns, to request the opinion of the Governmental Advisory Committee (Advisory Committee) ("**GAC (Governmental Advisory Committee)**" or "**Governmental Advisory Committee (Advisory Committee)**") and take duly into account any advice timely presented by the Governmental Advisory Committee (Advisory Committee) on its own initiative or at the Board's request.

(b) Where both practically feasible and consistent with the relevant policy development process, an in-person public forum shall also

be held for discussion of any proposed policies as described in Section 3.6(a)(ii), prior to any final Board action.

(c) After taking action on any policy subject to this Section 3.6, the Board shall publish in the meeting minutes the rationale for any resolution adopted by the Board (including the possible material effects, if any, of its decision on the global public interest, including a discussion of the material impacts to the security, stability and resiliency of the DNS (Domain Name System), financial impacts or other issues that were considered by the Board in approving such resolutions), the vote of each Director voting on the resolution, and the separate statement of any Director desiring publication of such a statement.

(d) Where a Board resolution is consistent with GAC (Governmental Advisory Committee) Consensus (Consensus) Advice (as defined in Section 12.2(a)(x)), the Board shall make a determination whether the GAC (Governmental Advisory Committee) Consensus (Consensus) Advice was a material factor in the Board's adoption of such resolution, in which case the Board shall so indicate in such resolution approving the decision (a "**GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution**") and shall cite the applicable GAC (Governmental Advisory Committee) Consensus (Consensus) Advice. To the extent practical, the Board shall ensure that GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolutions only relate to the matters that were the subject of the applicable GAC (Governmental Advisory Committee) Consensus (Consensus) Advice and not matters unrelated to the applicable GAC (Governmental Advisory Committee) Consensus (Consensus) Advice. For the avoidance of doubt: (i) a GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution shall not have the effect of making any other Board resolutions in the same set or series so designated, unless other resolutions are specifically identified as such by the Board; and (ii) a Board resolution approving an action consistent with GAC (Governmental Advisory Committee) Consensus (Consensus) Advice received during a standard engagement process in which input from all Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) has been requested shall not be considered a GAC (Governmental Advisory Committee) Consensus

(Consensus) Board Resolution based solely on that input, unless the GAC (Governmental Advisory Committee) Consensus (Consensus) Advice was a material factor in the Board's adoption of such resolution.

(e) GAC (Governmental Advisory Committee) Carve-out

(i) Where a Board resolution is consistent with GAC (Governmental Advisory Committee) Consensus (Consensus) Advice and the Board has determined that the GAC (Governmental Advisory Committee) Consensus (Consensus) Advice was a material factor in the Board's adoption of such resolution as described in the relevant GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution, the Governmental Advisory Committee (Advisory Committee) shall not participate as a decision-maker in the EC (Empowered Community)'s exercise of its right to challenge the Board's implementation of such GAC (Governmental Advisory Committee) Consensus (Consensus) Advice. In such cases, the Governmental Advisory Committee (Advisory Committee) may participate in the EC (Empowered Community) in an advisory capacity only with respect to the applicable processes described in Annex D, but its views will not count as support or an objection for purposes of the thresholds needed to convene a community forum or exercise any right of the EC (Empowered Community) ("**GAC (Governmental Advisory Committee) Carve-out**"). In the case of a Board Recall Process (as defined in Section 3.3 of Annex D), the GAC (Governmental Advisory Committee) Carve-out shall only apply if an IRP Panel has found that, in implementing GAC (Governmental Advisory Committee) Consensus (Consensus) Advice, the Board acted inconsistently with the Articles of Incorporation or these Bylaws.

(ii) When the GAC (Governmental Advisory Committee) Carve-out applies (A) any petition notice provided in accordance with Annex D or Approval Action Board Notice (as defined in Section 1.2 of Annex D) shall include a statement that cites the specific GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution and

the line item or provision that implements such specific GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution ("**GAC (Governmental Advisory Committee) Consensus (Consensus) Statement**"), (B) the Governmental Advisory Committee (Advisory Committee) shall not be eligible to support or object to any petition pursuant to Annex D or Approval Action (as defined in Section 1.1 of Annex D), and (C) any EC (Empowered Community) Decision (as defined in Section 4.1(a) of Annex D) that requires the support of four or more Decisional Participants (as defined in Section 6.1(a)) pursuant to Annex D shall instead require the support of three or more Decisional Participants with no more than one Decisional Participant objecting.

(iii) For the avoidance of doubt, the GAC (Governmental Advisory Committee) Carve-out shall not apply to the exercise of the EC (Empowered Community)'s rights where a material factor in the Board's decision was advice of the Governmental Advisory Committee (Advisory Committee) that was not GAC (Governmental Advisory Committee) Consensus (Consensus) Advice.

Section 3.7. TRANSLATION OF DOCUMENTS

As appropriate and to the extent provided in the ICANN (Internet Corporation for Assigned Names and Numbers) Budget, ICANN (Internet Corporation for Assigned Names and Numbers) shall facilitate the translation of final published documents into various appropriate languages.

ARTICLE 4 ACCOUNTABILITY AND REVIEW

Section 4.1. PURPOSE

In carrying out its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) shall be accountable to the community for operating in accordance with the Articles of Incorporation and these Bylaws, including the Mission set forth in Article 1 of these Bylaws. This Article 4 creates reconsideration and independent review processes for certain actions as set forth in these Bylaws and

procedures for periodic review of ICANN (Internet Corporation for Assigned Names and Numbers)'s structure and operations, which are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article 3 and the Board and other selection mechanisms set forth throughout these Bylaws.

Section 4.2. RECONSIDERATION

(a) ICANN (Internet Corporation for Assigned Names and Numbers) shall have in place a process by which any person or entity materially affected by an action or inaction of the ICANN (Internet Corporation for Assigned Names and Numbers) Board or Staff may request ("**Requestor**") the review or reconsideration of that action or inaction by the Board. For purposes of these Bylaws, "**Staff**" includes employees and individual long-term paid contractors serving in locations where ICANN (Internet Corporation for Assigned Names and Numbers) does not have the mechanisms to employ such contractors directly.

(b) The EC (Empowered Community) may file a Reconsideration Request (as defined in Section 4.2(c)) if approved pursuant to Section 4.3 of Annex D ("**Community Reconsideration Request**") and if the matter relates to the exercise of the powers and rights of the EC (Empowered Community) of these Bylaws. The EC (Empowered Community) Administration shall act as the Requestor for such a Community Reconsideration Request and shall act on behalf of the EC (Empowered Community) for such Community Reconsideration Request as directed by the Decisional Participants, as further described in Section 4.3 of Annex D.

(c) A Requestor may submit a request for reconsideration or review of an ICANN (Internet Corporation for Assigned Names and Numbers) action or inaction ("**Reconsideration Request**") to the extent that the Requestor has been adversely affected by:

> (i) One or more Board or Staff actions or inactions that contradict ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission, Commitments, Core Values and/or established ICANN (Internet Corporation for Assigned Names and Numbers) policy(ies);

(ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or

(iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or staff's reliance on false or inaccurate relevant information.

(d) Notwithstanding any other provision in this Section 4.2, the scope of reconsideration shall exclude the following:

(i) Disputes relating to country code top-level domain ("**ccTLD (Country Code Top Level Domain)**") delegations and re-delegations;

(ii) Disputes relating to Internet numbering resources; and

(iii) Disputes relating to protocol parameters.

(e) The Board has designated the Board Accountability Mechanisms Committee to review and consider Reconsideration Requests. The Board Accountability Mechanisms Committee shall have the authority to:

(i) Evaluate Reconsideration Requests;

(ii) Summarily dismiss insufficient or frivolous Reconsideration Requests;

(iii) Evaluate Reconsideration Requests for urgent consideration;

(iv) Conduct whatever factual investigation is deemed appropriate;

(v) Request additional written submissions from the affected party, or from other parties; and

(vi) Make a recommendation to the Board on the merits of the Reconsideration Request, if it has not been summarily dismissed.

(f) ICANN (Internet Corporation for Assigned Names and Numbers) shall absorb the normal administrative costs of the Reconsideration Request process. Except with respect to a Community Reconsideration Request, ICANN (Internet Corporation for Assigned Names and Numbers) reserves the right to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the Requestor, who shall then have the option of withdrawing the request or agreeing to bear such costs.

(g) All Reconsideration Requests must be submitted by the Requestor to an email address designated by the Board Accountability Mechanisms Committee:

(i) For Reconsideration Requests that are not Community Reconsideration Requests, such Reconsideration Requests must be submitted:

(A) for requests challenging Board actions, within 30 days after the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 30 days from the initial posting of the rationale;

(B) for requests challenging Staff actions, within 30 days after the date on which the Requestor became aware of, or reasonably should have become aware of, the challenged Staff action; or

(C) for requests challenging either Board or Staff inaction, within 30 days after the date on which the Requestor reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

(ii) For Community Reconsideration Requests, such Community Reconsideration Requests must be submitted in accordance with the timeframe set forth in Section 4.3 of Annex D.

(h) To properly initiate a Reconsideration Request, all Requestors must review, complete and follow the Reconsideration Request form posted on the Website at https://www.icann.org/resources/pages/accountability/reconsideration-en. Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing.

(i) Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request, not including exhibits. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

(j) Reconsideration Requests from different Requestors may be considered in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is substantially the same for all of the Requestors. Every Requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

(k) The Board Accountability Mechanisms Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Accountability Mechanisms Committee may summarily dismiss a Reconsideration Request if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The Board Accountability Mechanisms Committee's summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Website.

(l) For all Reconsideration Requests that are not summarily dismissed, except Reconsideration Requests described in Section 4.2(l)(iii) and Community Reconsideration Requests, the

Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request.

> (i) The Ombudsman shall be entitled to seek any outside expert assistance as the Ombudsman deems reasonably necessary to perform this task to the extent it is within the budget allocated to this task.
>
> (ii) The Ombudsman shall submit to the Board Accountability Mechanisms Committee his or her substantive evaluation of the Reconsideration Request within 15 days of the Ombudsman's receipt of the Reconsideration Request. The Board Accountability Mechanisms Committee shall thereafter promptly proceed to review and consideration.
>
> (iii) For those Reconsideration Requests involving matters for which the Ombudsman has, in advance of the filing of the Reconsideration Request, taken a position while performing his or her role as the Ombudsman pursuant to Article 5 of these Bylaws, or involving the Ombudsman's conduct in some way, the Ombudsman shall recuse himself or herself and the Board Accountability Mechanisms Committee shall review the Reconsideration Request without involvement by the Ombudsman.

(m) The Board Accountability Mechanisms Committee may ask ICANN (Internet Corporation for Assigned Names and Numbers) Staff for its views on a Reconsideration Request, which comments shall be made publicly available on the Website.

(n) The Board Accountability Mechanisms Committee may request additional information or clarifications from the Requestor, and may elect to conduct a meeting with the Requestor by telephone, email or, if acceptable to the Requestor, in person. A Requestor may also ask for an opportunity to be heard. The Board Accountability Mechanisms Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Accountability Mechanisms Committee, it shall so state in its recommendation.

(o) The Board Accountability Mechanisms Committee may also request information relevant to the Reconsideration Request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Accountability Mechanisms Committee, it shall so state in its recommendation. Any information collected by ICANN (Internet Corporation for Assigned Names and Numbers) from third parties shall be provided to the Requestor.

(p) The Board Accountability Mechanisms Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the Requestor, by the ICANN (Internet Corporation for Assigned Names and Numbers) Staff, and by any third party.

(q) The Board Accountability Mechanisms Committee shall make a final recommendation to the Board with respect to a Reconsideration Request within 30 days following its receipt of the Ombudsman's evaluation (or 30 days following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable), unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. In any event, the Board Accountability Mechanisms Committee shall endeavor to produce its final recommendation to the Board within 90 days of receipt of the Reconsideration Request. The final recommendation of the Board Accountability Mechanisms Committee shall be documented and promptly (i.e., as soon as practicable) posted on the Website and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the Board Accountability Mechanisms Committee's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the Board Accountability Mechanisms Committee's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request

that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

(r) The Board shall not be bound to follow the recommendations of the Board Accountability Mechanisms Committee. The final decision of the Board and its rationale shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Accountability Mechanisms Committee within 45 days of receipt of the Board Accountability Mechanisms Committee's recommendation or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on the Website. In any event, the Board's final decision shall be made within 135 days of initial receipt of the Reconsideration Request by the Board Accountability Mechanisms Committee. The Board's decision on the recommendation shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3 of these Bylaws. If the Requestor so requests, the Board shall post both a recording and a transcript of the substantive Board discussion from the meeting at which the Board considered the Board Accountability Mechanisms Committee's recommendation. All briefing materials supplied to the Board shall be provided to the Requestor. The Board may redact such briefing materials and the recording and transcript on the basis that such information (i) relates to confidential personnel matters, (ii) is covered by attorney-client privilege, work product doctrine or other recognized legal privilege, (iii) is subject to a legal obligation that ICANN (Internet Corporation for Assigned Names and Numbers) maintain its confidentiality, (iv) would disclose trade secrets, or (v) would present a material risk of negative impact to the security, stability or resiliency of the Internet. In the case of any redaction, ICANN (Internet Corporation for Assigned Names and Numbers) will provide the Requestor a written rationale for such redaction. If a Requestor believes that a redaction was improper, the Requestor may use an appropriate accountability mechanism to challenge the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s redaction.

(s) If the Requestor believes that the Board action or inaction for which a Reconsideration Request is submitted is so urgent that the timing requirements of the process set forth in this Section 4.2 are

too long, the Requestor may apply to the Board Accountability Mechanisms Committee for urgent consideration. Any request for urgent consideration must be made within two business days (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.

(t) The Board Accountability Mechanisms Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Accountability Mechanisms Committee agrees to consider the matter with urgency, it will cause notice to be provided to the Requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Accountability Mechanisms Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Reconsideration Request, or as soon thereafter as feasible. If the Board Accountability Mechanisms Committee does not agree to consider the matter with urgency, the Requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.

(u) The Board Accountability Mechanisms Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:

> (i) the number and general nature of Reconsideration Requests received, including an identification if the Reconsideration Requests were acted upon, summarily dismissed, or remain pending;

> (ii) for any Reconsideration Requests that remained pending at the end of the calendar year, the average length of time for which such Reconsideration Requests have been pending, and a description of the reasons for any Reconsideration Request pending for more than ninety (90) days;

> (iii) an explanation of any other mechanisms available to

ensure that ICANN (Internet Corporation for Assigned Names and Numbers) is accountable to persons materially affected by its decisions; and

(iv) whether or not, in the Board Accountability Mechanisms Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN (Internet Corporation for Assigned Names and Numbers) decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.

Section 4.3. INDEPENDENT REVIEW PROCESS FOR COVERED ACTIONS

(a) In addition to the reconsideration process described in Section 4.2, ICANN (Internet Corporation for Assigned Names and Numbers) shall have a separate process for independent third-party review of Disputes (defined in Section 4.3(b)(iii)) alleged by a Claimant (as defined in Section 4.3(b)(i)) to be within the scope of the Independent Review Process ("**IRP**"). The IRP is intended to hear and resolve Disputes for the following purposes ("**Purposes of the IRP**"):

(i) Ensure that ICANN (Internet Corporation for Assigned Names and Numbers) does not exceed the scope of its Mission and otherwise complies with its Articles of Incorporation and Bylaws.

(ii) Empower the global Internet community and Claimants to enforce compliance with the Articles of Incorporation and Bylaws through meaningful, affordable and accessible expert review of Covered Actions (as defined in Section 4.3(b)(i)).

(iii) Ensure that ICANN (Internet Corporation for Assigned Names and Numbers) is accountable to the global Internet community and Claimants.

(iv) Address claims that ICANN (Internet Corporation for Assigned Names and Numbers) has failed to enforce its rights under the IANA (Internet Assigned Numbers Authority)

Naming Function Contract (as defined in Section 16.3(a)).

(v) Provide a mechanism by which direct customers of the IANA (Internet Assigned Numbers Authority) naming functions may seek resolution of PTI (as defined in Section 16.1) service complaints that are not resolved through mediation.

(vi) Reduce Disputes by creating precedent to guide and inform the Board, Officers (as defined in Section 15.1), Staff members, Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), and the global Internet community in connection with policy development and implementation.

(vii) Secure the accessible, transparent, efficient, consistent, coherent, and just resolution of Disputes.

(viii) Lead to binding, final resolutions consistent with international arbitration norms that are enforceable in any court with proper jurisdiction.

(ix) Provide a mechanism for the resolution of Disputes, as an alternative to legal action in the civil courts of the United States or other jurisdictions.

This Section 4.3 shall be construed, implemented, and administered in a manner consistent with these Purposes of the IRP.

(b) The scope of the IRP is defined with reference to the following terms:

(i) A "**Claimant**" is any legal or natural person, group, or entity including, but not limited to the EC (Empowered Community), a Supporting Organization (Supporting Organization), or an Advisory Committee (Advisory Committee) that has been materially affected by a Dispute. To be materially affected by a Dispute, the Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.

(A)The EC (Empowered Community) is deemed to be materially affected by all Covered Actions. ICANN (Internet

Corporation for Assigned Names and Numbers) shall not assert any defenses of standing or capacity against the EC (Empowered Community) in any forum.

(B)ICANN (Internet Corporation for Assigned Names and Numbers) shall not object to the standing of the EC (Empowered Community), a Supporting Organization (Supporting Organization), or an Advisory Committee (Advisory Committee) to participate in an IRP, to compel an IRP, or to enforce an IRP decision on the basis that it is not a legal person with capacity to sue. No special pleading of a Claimant's capacity or of the legal existence of a person that is a Claimant shall be required in the IRP proceedings. No Claimant shall be allowed to proceed if the IRP Panel (as defined in Section 4.3(g)) concludes based on evidence submitted to it that the Claimant does not fairly or adequately represent the interests of those on whose behalf the Claimant purports to act.

(ii) "**Covered Actions**" are defined as any actions or failures to act by or within ICANN (Internet Corporation for Assigned Names and Numbers) committed by the Board, individual Directors, Officers, or Staff members that give rise to a Dispute.

(iii) "**Disputes**" are defined as:

(A)Claims that Covered Actions constituted an action or inaction that violated the Articles of Incorporation or Bylaws, including but not limited to any action or inaction that:

(1) exceeded the scope of the Mission;

(2) resulted from action taken in response to advice or input from any Advisory Committee (Advisory Committee) or Supporting Organization (Supporting Organization) that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;

(3) resulted from decisions of process-specific expert panels that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;

(4) resulted from a response to a DIDP (as defined in Section 22.7(d)) request that is claimed to be inconsistent with the Articles of Incorporation or Bylaws; or

(5) arose from claims involving rights of the EC (Empowered Community) as set forth in the Articles of Incorporation or Bylaws.

(B)Claims that ICANN (Internet Corporation for Assigned Names and Numbers), the Board, individual Directors, Officers or Staff members have not enforced ICANN (Internet Corporation for Assigned Names and Numbers)'s contractual rights with respect to the IANA (Internet Assigned Numbers Authority) Naming Function Contract, and

(C)Claims regarding PTI service complaints by direct customers of the IANA (Internet Assigned Numbers Authority) naming functions that are not resolved through mediation.

(c) Notwithstanding any other provision in this Section 4.3, the IRP's scope shall exclude all of the following:

> (i) EC (Empowered Community) challenges to the result(s) of a PDP (Policy Development Process), unless the Supporting Organization (Supporting Organization)(s) that approved the PDP (Policy Development Process) supports the EC (Empowered Community) bringing such a challenge;
>
> (ii) Claims relating to ccTLD (Country Code Top Level Domain) delegations and re-delegations;
>
> (iii) Claims relating to Internet numbering resources, and
>
> (iv) Claims relating to protocol parameters.

(d) An IRP shall commence with the Claimant's filing of a written statement of a Dispute (a "**Claim**") with the IRP Provider (described in Section 4.3(m) below). For the EC (Empowered Community) to commence an IRP ("**Community IRP**"), the EC (Empowered Community) shall first comply with the procedures set forth in Section 4.2 of Annex D.

(e) Cooperative Engagement Process

(i) Except for Claims brought by the EC (Empowered Community) in accordance with this Section 4.3 and Section 4.2 of Annex D, prior to the filing of a Claim, the parties are strongly encouraged to participate in a non-binding Cooperative Engagement Process ("**CEP**") for the purpose of attempting to resolve and/or narrow the Dispute. CEPs shall be conducted pursuant to the CEP Rules to be developed with community involvement, adopted by the Board, and as amended from time to time.

(ii) The CEP is voluntary. However, except for Claims brought by the EC (Empowered Community) in accordance with this Section 4.3 and Section 4.2 of Annex D, if the Claimant does not participate in good faith in the CEP and ICANN (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the IRP, the IRP Panel shall award to ICANN (Internet Corporation for Assigned Names and Numbers) all reasonable fees and costs incurred by ICANN (Internet Corporation for Assigned Names and Numbers) in the IRP, including legal fees.

(iii) Either party may terminate the CEP efforts if that party: (A) concludes in good faith that further efforts are unlikely to produce agreement; or (B) requests the inclusion of an independent dispute resolution facilitator ("**IRP Mediator**") after at least one CEP meeting.

(iv) Unless all parties agree on the selection of a particular IRP Mediator, any IRP Mediator appointed shall be selected from the members of the Standing Panel (described in Section 4.3(j) below) by its Chair, but such IRP Mediator shall not thereafter be eligible to serve as a panelist presiding over an IRP on the matter.

(f) ICANN (Internet Corporation for Assigned Names and Numbers) hereby waives any defenses that may be afforded under Section 5141 of the California Corporations Code ("**CCC**") against any Claimant, and shall not object to the standing of any such Claimant to participate in or to compel an IRP, or to enforce an IRP decision

on the basis that such Claimant may not otherwise be able to assert that a Covered Action is ultra vires.

(g) Upon the filing of a Claim, an Independent Review Process Panel ("**IRP Panel**", described in Section 4.3(k) below) shall be selected in accordance with the Rules of Procedure (as defined in Section 4.3(n)(i)). Following the selection of an IRP Panel, that IRP Panel shall be charged with hearing and resolving the Dispute, considering the Claim and ICANN (Internet Corporation for Assigned Names and Numbers)'s written response ("**Response**") in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP Panel decisions decided under the same (or an equivalent prior) version of the provision of the Articles of Incorporation and Bylaws at issue, and norms of applicable law. If no Response is timely filed by ICANN (Internet Corporation for Assigned Names and Numbers), the IRP Panel may accept the Claim as unopposed and proceed to evaluate and decide the Claim pursuant to the procedures set forth in these Bylaws.

(h) After a Claim is referred to an IRP Panel, the parties are urged to participate in conciliation discussions for the purpose of attempting to narrow the issues that are to be addressed by the IRP Panel.

(i) Each IRP Panel shall conduct an objective, de novo examination of the Dispute.

> (i) With respect to Covered Actions, the IRP Panel shall make findings of fact to determine whether the Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws.
>
> (ii) All Disputes shall be decided in compliance with the Articles of Incorporation and Bylaws, as understood in the context of the norms of applicable law and prior relevant IRP decisions.
>
> (iii) For Claims arising out of the Board's exercise of its fiduciary duties, the IRP Panel shall not replace the Board's reasonable judgment with its own so long as the Board's action or inaction is within the realm of reasonable business judgment.

(iv) With respect to claims that ICANN (Internet Corporation for Assigned Names and Numbers) has not enforced its contractual rights with respect to the IANA (Internet Assigned Numbers Authority) Naming Function Contract, the standard of review shall be whether there was a material breach of ICANN (Internet Corporation for Assigned Names and Numbers)'s obligations under the IANA (Internet Assigned Numbers Authority) Naming Function Contract, where the alleged breach has resulted in material harm to the Claimant.

(v) For avoidance of doubt, IRPs initiated through the mechanism contemplated at Section 4.3(a)(iv) above, shall be subject to a separate standard of review as defined in the IANA (Internet Assigned Numbers Authority) Naming Function Contract.

(j) Standing Panel

(i) There shall be an omnibus standing panel of at least seven members (the "**Standing Panel**") each of whom shall possess significant relevant legal expertise in one or more of the following areas: international law, corporate governance, judicial systems, alternative dispute resolution and/or arbitration. Each member of the Standing Panel shall also have knowledge, developed over time, regarding the DNS (Domain Name System) and ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission, work, policies, practices, and procedures. Members of the Standing Panel shall receive at a minimum, training provided by ICANN (Internet Corporation for Assigned Names and Numbers) on the workings and management of the Internet's unique identifiers and other appropriate training as recommended by the IRP Implementation Oversight Team (described in Section 4.3(n)(i)).

(ii) ICANN (Internet Corporation for Assigned Names and Numbers) shall, in consultation with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), initiate a four-step process to establish the Standing Panel to ensure the availability of a number of IRP panelists that is sufficient to

allow for the timely resolution of Disputes consistent with the Purposes of the IRP.

(A)ICANN (Internet Corporation for Assigned Names and Numbers), in consultation with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), shall initiate a tender process for an organization to provide administrative support for the IRP Provider (as defined in Section 4.3(m)), beginning by consulting the "**IRP Implementation Oversight Team**" (described in Section 4.3(n)(i)) on a draft tender document.

(B)ICANN (Internet Corporation for Assigned Names and Numbers) shall issue a call for expressions of interest from potential panelists, and work with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) and the Board to identify and solicit applications from well-qualified candidates, and to conduct an initial review and vetting of applications.

(C)The Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) shall nominate a slate of proposed panel members from the well-qualified candidates identified per the process set forth in Section 4.3(j)(ii)(B).

(D)Final selection shall be subject to Board confirmation, which shall not be unreasonably withheld.

(iii) Appointments to the Standing Panel shall be made for a fixed term of five years with no removal except for specified cause in the nature of corruption, misuse of position, fraud or criminal activity. The recall process shall be developed by the IRP Implementation Oversight Team.

(iv) Reasonable efforts shall be taken to achieve cultural, linguistic, gender, and legal tradition diversity, and diversity by Geographic Region (as defined in Section 7.5).

(k) IRP Panel

(i) A three-member IRP Panel shall be selected from the Standing Panel to hear a specific Dispute.

(ii) The Claimant and ICANN (Internet Corporation for Assigned Names and Numbers) shall each select one panelist from the Standing Panel, and the two panelists selected by the parties will select the third panelist from the Standing Panel. In the event that a Standing Panel is not in place when an IRP Panel must be convened for a given proceeding or is in place but does not have capacity due to other IRP commitments or the requisite diversity of skill and experience needed for a particular IRP proceeding, the Claimant and ICANN (Internet Corporation for Assigned Names and Numbers) shall each select a qualified panelist from outside the Standing Panel and the two panelists selected by the parties shall select the third panelist. In the event that no Standing Panel is in place when an IRP Panel must be convened and the two party-selected panelists cannot agree on the third panelist, the IRP Provider's rules shall apply to selection of the third panelist.

(iii) Assignment from the Standing Panel to IRP Panels shall take into consideration the Standing Panel members' individual experience and expertise in issues related to highly technical, civil society, business, diplomatic, and regulatory skills as needed by each specific proceeding, and such requests from the parties for any particular expertise.

(iv) Upon request of an IRP Panel, the IRP Panel shall have access to independent skilled technical experts at the expense of ICANN (Internet Corporation for Assigned Names and Numbers), although all substantive interactions between the IRP Panel and such experts shall be conducted on the record, except when public disclosure could materially and unduly harm participants, such as by exposing trade secrets or violating rights of personal privacy.

(v) IRP Panel decisions shall be made by a simple majority of the IRP Panel.

(l) All IRP proceedings shall be administered in English as the

primary working language, with provision of translation services for Claimants if needed.

(m) IRP Provider

(i) All IRP proceedings shall be administered by a well-respected international dispute resolution provider ("**IRP Provider**"). The IRP Provider shall receive and distribute IRP Claims, Responses, and all other submissions arising from an IRP at the direction of the IRP Panel, and shall function independently from ICANN (Internet Corporation for Assigned Names and Numbers).

(n) Rules of Procedure

(i) An IRP Implementation Oversight Team shall be established in consultation with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) and comprised of members of the global Internet community. The IRP Implementation Oversight Team, and once the Standing Panel is established the IRP Implementation Oversight Team in consultation with the Standing Panel, shall develop clear published rules for the IRP ("**Rules of Procedure**") that conform with international arbitration norms and are streamlined, easy to understand and apply fairly to all parties. Upon request, the IRP Implementation Oversight Team shall have assistance of counsel and other appropriate experts.

(ii) The Rules of Procedure shall be informed by international arbitration norms and consistent with the Purposes of the IRP. Specialized Rules of Procedure may be designed for reviews of PTI service complaints that are asserted by direct customers of the IANA (Internet Assigned Numbers Authority) naming functions and are not resolved through mediation. The Rules of Procedure shall be published and subject to a period of public comment that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), and take effect upon approval by the Board, such approval not to be unreasonably withheld.

(iii) The Standing Panel may recommend amendments to such Rules of Procedure as it deems appropriate to fulfill the Purposes of the IRP, however no such amendment shall be effective without approval by the Board after publication and a period of public comment that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers).

(iv) The Rules of Procedure are intended to ensure fundamental fairness and due process and shall at a minimum address the following elements:

(A) The time within which a Claim must be filed after a Claimant becomes aware or reasonably should have become aware of the action or inaction giving rise to the Dispute;

(B) Issues relating to joinder, intervention, and consolidation of Claims;

(C) Rules governing written submissions, including the required elements of a Claim, other requirements or limits on content, time for filing, length of statements, number of supplemental statements, if any, permitted evidentiary support (factual and expert), including its length, both in support of a Claimant's Claim and in support of ICANN (Internet Corporation for Assigned Names and Numbers)'s Response;

(D) Availability and limitations on discovery methods;

(E) Whether hearings shall be permitted, and if so what form and structure such hearings would take;

(F) Procedures if ICANN (Internet Corporation for Assigned Names and Numbers) elects not to respond to an IRP; and

(G) The standards and rules governing appeals from IRP Panel decisions, including which IRP Panel decisions may be appealed.

(o) Subject to the requirements of this Section 4.3, each IRP Panel shall have the authority to:

(i) Summarily dismiss Disputes that are brought without standing, lack substance, or are frivolous or vexatious;

(ii) Request additional written submissions from the Claimant or from other parties;

(iii) Declare whether a Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws, declare whether ICANN (Internet Corporation for Assigned Names and Numbers) failed to enforce ICANN (Internet Corporation for Assigned Names and Numbers)'s contractual rights with respect to the IANA (Internet Assigned Numbers Authority) Naming Function Contract or resolve PTI service complaints by direct customers of the IANA (Internet Assigned Numbers Authority) naming functions, as applicable;

(iv) Recommend that ICANN (Internet Corporation for Assigned Names and Numbers) stay any action or decision, or take necessary interim action, until such time as the opinion of the IRP Panel is considered;

(v) Consolidate Disputes if the facts and circumstances are sufficiently similar, and take such other actions as are necessary for the efficient resolution of Disputes;

(vi) Determine the timing for each IRP proceeding; and

(vii) Determine the shifting of IRP costs and expenses consistent with Section 4.3(r).

(p) A Claimant may request interim relief. Interim relief may include prospective relief, interlocutory relief, or declaratory or injunctive relief, and specifically may include a stay of the challenged ICANN (Internet Corporation for Assigned Names and Numbers) action or decision until such time as the opinion of the IRP Panel is considered as described in Section 4.3(o)(iv), in order to maintain the *status quo*. A single member of the Standing Panel ("**Emergency Panelist**") shall be selected to adjudicate requests for interim relief. In the event that no Standing Panel is in place when an Emergency Panelist must be selected, the IRP Provider's rules shall

apply to the selection of the Emergency Panelist. Interim relief may only be provided if the Emergency Panelist determines that the Claimant has established all of the following factors:

(i) A harm for which there will be no adequate remedy in the absence of such relief;

(ii) Either: (A) likelihood of success on the merits; or (B) sufficiently serious questions related to the merits; and

(iii) A balance of hardships tipping decidedly toward the party seeking relief.

(q) Conflicts of Interest

(i) Standing Panel members must be independent of ICANN (Internet Corporation for Assigned Names and Numbers) and its Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), and so must adhere to the following criteria:

(A)Upon consideration for the Standing Panel and on an ongoing basis, Panelists shall have an affirmative obligation to disclose any material relationship with ICANN (Internet Corporation for Assigned Names and Numbers), a Supporting Organization (Supporting Organization), an Advisory Committee (Advisory Committee), or any other participant in an IRP proceeding.

(B)Additional independence requirements to be developed by the IRP Implementation Oversight Team, including term limits and restrictions on post-term appointment to other ICANN (Internet Corporation for Assigned Names and Numbers) positions.

(ii) The IRP Provider shall disclose any material relationship with ICANN (Internet Corporation for Assigned Names and Numbers), a Supporting Organization (Supporting Organization), an Advisory Committee (Advisory Committee), or any other participant in an IRP proceeding.

(r) ICANN (Internet Corporation for Assigned Names and Numbers) shall bear all the administrative costs of maintaining the IRP mechanism, including compensation of Standing Panel members. Except as otherwise provided in Section 4.3(e)(ii), each party to an IRP proceeding shall bear its own legal expenses, except that ICANN (Internet Corporation for Assigned Names and Numbers) shall bear all costs associated with a Community IRP, including the costs of all legal counsel and technical experts. Nevertheless, except with respect to a Community IRP, the IRP Panel may shift and provide for the losing party to pay administrative costs and/or fees of the prevailing party in the event it identifies the losing party's Claim or defense as frivolous or abusive.

(s) An IRP Panel should complete an IRP proceeding expeditiously, issuing an early scheduling order and its written decision no later than six months after the filing of the Claim, except as otherwise permitted under the Rules of Procedure. The preceding sentence does not provide the basis for a Covered Action.

(t) Each IRP Panel shall make its decision based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its decision shall specifically designate the prevailing party as to each part of a Claim.

(u) All IRP Panel proceedings shall be conducted on the record, and documents filed in connection with IRP Panel proceedings shall be posted on the Website, except for settlement negotiation or other proceedings that could materially and unduly harm participants if conducted publicly. The Rules of Procedure, and all Claims, petitions, and decisions shall promptly be posted on the Website when they become available. Each IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets, but only if such confidentiality does not materially interfere with the transparency of the IRP proceeding.

(v) Subject to this Section 4.3, all IRP decisions shall be written and made public, and shall reflect a well-reasoned application of how the Dispute was resolved in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP decisions decided under the same (or an equivalent prior) version of the provision of the Articles of Incorporation and Bylaws at issue, and norms of applicable law.

(w) Subject to any limitations established through the Rules of Procedure, an IRP Panel decision may be appealed to the full Standing Panel sitting en banc within sixty (60) days of issuance of such decision.

(x) The IRP is intended as a final, binding arbitration process.

(i) IRP Panel decisions are binding final decisions to the extent allowed by law unless timely and properly appealed to the en banc Standing Panel. En banc Standing Panel decisions are binding final decisions to the extent allowed by law.

(ii) IRP Panel decisions and decisions of an en banc Standing Panel upon an appeal are intended to be enforceable in any court with jurisdiction over ICANN (Internet Corporation for Assigned Names and Numbers) without a *de novo* review of the decision of the IRP Panel or en banc Standing Panel, as applicable, with respect to factual findings or conclusions of law.

(iii) ICANN (Internet Corporation for Assigned Names and Numbers) intends, agrees, and consents to be bound by all IRP Panel decisions of Disputes of Covered Actions as a final, binding arbitration.

(A) Where feasible, the Board shall consider its response to IRP Panel decisions at the Board's next meeting, and shall affirm or reject compliance with the decision on the public record based on an expressed rationale. The decision of the IRP Panel, or en banc Standing Panel, shall be final regardless of such Board action, to the fullest extent allowed by law.

(B) If an IRP Panel decision in a Community IRP is in favor of the EC (Empowered Community), the Board shall comply within 30 days of such IRP Panel decision.

(C) If the Board rejects an IRP Panel decision without undertaking an appeal to the en banc Standing Panel or rejects an en banc Standing Panel decision upon appeal, the

Claimant or the EC (Empowered Community) may seek enforcement in a court of competent jurisdiction. In the case of the EC (Empowered Community), the EC (Empowered Community) Administration may convene as soon as possible following such rejection and consider whether to authorize commencement of such an action.

(iv) By submitting a Claim to the IRP Panel, a Claimant thereby agrees that the IRP decision is intended to be a final, binding arbitration decision with respect to such Claimant. Any Claimant that does not consent to the IRP being a final, binding arbitration may initiate a non-binding IRP if ICANN (Internet Corporation for Assigned Names and Numbers) agrees; provided that such a non-binding IRP decision is not intended to be and shall not be enforceable.

(y) ICANN (Internet Corporation for Assigned Names and Numbers) shall seek to establish means by which community, non-profit Claimants and other Claimants that would otherwise be excluded from utilizing the IRP process may meaningfully participate in and have access to the IRP process.

Section 4.4. PERIODIC REVIEW OF ICANN (Internet Corporation for Assigned Names and Numbers) STRUCTURE AND OPERATIONS

(a) The Board shall cause a periodic review of the performance and operation of each Supporting Organization (Supporting Organization), each Supporting Organization (Supporting Organization) Council, each Advisory Committee (Advisory Committee) (other than the Governmental Advisory Committee (Advisory Committee)), and the Nominating Committee (as defined in Section 8.1) by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization, council or committee has a continuing purpose in the ICANN (Internet Corporation for Assigned Names and Numbers) structure, (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness and (iii) whether that organization, council or committee is accountable to its constituencies, stakeholder

groups, organizations and other stakeholders.

These periodic reviews shall be conducted no less frequently than every five years, based on feasibility as determined by the Board. Each five-year cycle will be computed from the moment of the reception by the Board of the final report of the relevant review Working Group.

The results of such reviews shall be posted on the Website for public review and comment, and shall be considered by the Board no later than the second scheduled meeting of the Board after such results have been posted for 30 days. The consideration by the Board includes the ability to revise the structure or operation of the parts of ICANN (Internet Corporation for Assigned Names and Numbers) being reviewed by a two-thirds vote of all Directors, subject to any rights of the EC (Empowered Community) under the Articles of Incorporation and these Bylaws.

(b) The Governmental Advisory Committee (Advisory Committee) shall provide its own review mechanisms.

Section 4.5. ANNUAL REVIEW

ICANN (Internet Corporation for Assigned Names and Numbers) will produce an annual report on the state of the accountability and transparency reviews, which will discuss the status of the implementation of all review processes required by Section 4.6 and the status of ICANN (Internet Corporation for Assigned Names and Numbers)'s implementation of the recommendations set forth in the final reports issued by the review teams to the Board following the conclusion of such review ("**Annual Review Implementation Report**"). The Annual Review Implementation Report will be posted on the Website for public review and comment. Each Annual Review Implementation Report will be considered by the Board and serve as an input to the continuing process of implementing the recommendations from the review teams set forth in the final reports of such review teams required in Section 4.6.

Section 4.6. SPECIFIC REVIEWS

(a) Review Teams and Reports

(i) Review teams will be established for each applicable review, which will include both a limited number of members and an open number of observers. The chairs of the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) participating in the applicable review shall select a group of up to 21 review team members from among the prospective members nominated by the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), balanced for diversity and skill. In addition, the Board may designate one Director or Liaison to serve as a member of the review team. Specific guidance on the selection process is provided within the operating standards developed for the conduct of reviews under this Section 4.6 (the "**Operating Standards**"). The Operating Standards shall be developed through community consultation, including public comment opportunities as necessary that comply with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers). The Operating Standards must be aligned with the following guidelines:

(A)Each Supporting Organization (Supporting Organization) and Advisory Committee (Advisory Committee) participating in the applicable review may nominate up to seven prospective members for the review team;

(B)Any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) nominating at least one, two or three prospective review team members shall be entitled to have those one, two or three nominees selected as members to the review team, so long as the nominees meet any applicable criteria for service on the team; and

(C)If any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) has not nominated at least three prospective review team members, the Chairs of the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) shall be responsible for the determination of whether all 21 SO (Supporting Organization)/AC (Advisory

Committee; or Administrative Contact (of a domain registration)) member seats shall be filled and, if so, how the seats should be allocated from among those nominated.

(ii) Members and liaisons of review teams shall disclose to ICANN (Internet Corporation for Assigned Names and Numbers) and their applicable review team any conflicts of interest with a specific matter or issue under review in accordance with the most recent Board-approved practices and Operating Standards. The applicable review team may exclude from the discussion of a specific complaint or issue any member deemed by the majority of review team members to have a conflict of interest. Further details on the conflict of interest practices are included in the Operating Standards.

(iii) Review team decision-making practices shall be specified in the Operating Standards, with the expectation that review teams shall try to operate on a consensus basis. In the event a consensus cannot be found among the members of a review team, a majority vote of the members may be taken.

(iv) Review teams may also solicit and select independent experts to render advice as requested by the review team. ICANN (Internet Corporation for Assigned Names and Numbers) shall pay the reasonable fees and expenses of such experts for each review contemplated by this Section 4.6 to the extent such fees and costs are consistent with the budget assigned for such review. Guidelines on how review teams are to work with and consider independent expert advice are specified in the Operating Standards.

(v) Each review team may recommend that the applicable type of review should no longer be conducted or should be amended.

(vi) Confidential Disclosure to Review Teams

(A) To facilitate transparency and openness regarding ICANN (Internet Corporation for Assigned Names and Numbers)'s deliberations and operations, the review teams, or a subset thereof, shall have access to ICANN (Internet Corporation for Assigned Names and Numbers) internal information and

documents pursuant to the Confidential Disclosure Framework set forth in the Operating Standards (the "**Confidential Disclosure Framework**"). The Confidential Disclosure Framework must be aligned with the following guidelines:

(1) ICANN (Internet Corporation for Assigned Names and Numbers) must provide a justification for any refusal to reveal requested information. ICANN (Internet Corporation for Assigned Names and Numbers)'s refusal can be appealed to the Ombudsman and/or the ICANN (Internet Corporation for Assigned Names and Numbers) Board for a ruling on the disclosure request.

(2) ICANN (Internet Corporation for Assigned Names and Numbers) may designate certain documents and information as "for review team members only" or for a subset of the review team members based on conflict of interest. ICANN (Internet Corporation for Assigned Names and Numbers)'s designation of documents may also be appealed to the Ombudsman and/or the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

(3) ICANN (Internet Corporation for Assigned Names and Numbers) may require review team members to sign a non-disclosure agreement before accessing documents.

(vii) Reports

(A) Each report of the review team shall describe the degree of consensus or agreement reached by the review team on each recommendation contained in such report. Any member of a review team not in favor of a recommendation of its review team (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such recommendation, which shall be included in the report of the review team. The review team shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization.

(B) At least one draft report of the review team shall be posted on the Website for public review and comment. The review

team must consider the public comments received in response to any posted draft report and shall amend the report as the review team deems appropriate and in the public interest before submitting its final report to the Board. The final report should include an explanation of how public comments were considered as well as a summary of changes made in response to public comments.

(C) Each final report of a review team shall be published for public comment in advance of the Board's consideration. Within six months of receipt of a final report, the Board shall consider such final report and the public comments on the final report, and determine whether to approve the recommendations in the final report. If the Board does not approve any or all of the recommendations, the written rationale supporting the Board's decision shall include an explanation for the decision on each recommendation that was not approved. The Board shall promptly direct implementation of the recommendations that were approved.

(b) Accountability and Transparency Review

(i) The Board shall cause a periodic review of ICANN (Internet Corporation for Assigned Names and Numbers)'s execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making reflect the public interest and are accountable to the Internet community ("**Accountability and Transparency Review**").

(ii) The issues that the review team for the Accountability and Transparency Review (the "**Accountability and Transparency Review Team**") may assess include, but are not limited to, the following:

(A) assessing and improving Board governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which the Board's composition and allocation structure meets ICANN (Internet Corporation for Assigned Names and Numbers)'s present and

future needs, and the appeal mechanisms for Board decisions contained in these Bylaws;

(B) assessing the role and effectiveness of the GAC (Governmental Advisory Committee)'s interaction with the Board and with the broader ICANN (Internet Corporation for Assigned Names and Numbers) community, and making recommendations for improvement to ensure effective consideration by ICANN (Internet Corporation for Assigned Names and Numbers) of GAC (Governmental Advisory Committee) input on the public policy aspects of the technical coordination of the DNS (Domain Name System);

(C) assessing and improving the processes by which ICANN (Internet Corporation for Assigned Names and Numbers) receives public input (including adequate explanation of decisions taken and the rationale thereof);

(D) assessing the extent to which ICANN (Internet Corporation for Assigned Names and Numbers)'s decisions are supported and accepted by the Internet community;

(E) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development; and

(F) assessing and improving the Independent Review Process.

(iii) The Accountability and Transparency Review Team shall also assess the extent to which prior Accountability and Transparency Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(iv) The Accountability and Transparency Review Team may recommend to the Board the termination or amendment of other periodic reviews required by this Section 4.6, and may recommend to the Board the creation of additional periodic reviews.

(v) The Accountability and Transparency Review Team should

issue its final report within one year of convening its first meeting.

(vi) The Accountability and Transparency Review shall be conducted no less frequently than every five years measured from the date the previous Accountability and Transparency Review Team was convened.

(c) Security (Security – Security, Stability and Resiliency (SSR)), Stability (Security, Stability and Resiliency), and Resiliency (Security Stability & Resiliency (SSR)) Review

(i) The Board shall cause a periodic review of ICANN (Internet Corporation for Assigned Names and Numbers)'s execution of its commitment to enhance the operational stability, reliability, resiliency, security, and global interoperability of the systems and processes, both internal and external, that directly affect and/or are affected by the Internet's system of unique identifiers that ICANN (Internet Corporation for Assigned Names and Numbers) coordinates ("**SSR Review**").

(ii) The issues that the review team for the SSR Review ("**SSR Review Team**") may assess are the following:

(A) security, operational stability and resiliency matters, both physical and network, relating to the coordination of the Internet's system of unique identifiers;

(B) conformance with appropriate security contingency planning framework for the Internet's system of unique identifiers; and

(C) maintaining clear and globally interoperable security processes for those portions of the Internet's system of unique identifiers that ICANN (Internet Corporation for Assigned Names and Numbers) coordinates.

(iii) The SSR Review Team shall also assess the extent to which ICANN (Internet Corporation for Assigned Names and Numbers) has successfully implemented its security efforts, the effectiveness of the security efforts to deal with actual and

potential challenges and threats to the security and stability of the DNS (Domain Name System), and the extent to which the security efforts are sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the DNS (Domain Name System), consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission.

(iv) The SSR Review Team shall also assess the extent to which prior SSR Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(v) The SSR Review shall be conducted no less frequently than every five years, measured from the date the previous SSR Review Team was convened.

(d) Competition, Consumer Trust and Consumer Choice Review

(i) ICANN (Internet Corporation for Assigned Names and Numbers) will ensure that it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection prior to, or concurrent with, authorizing an increase in the number of new top-level domains in the root zone of the DNS (Domain Name System) pursuant to an application process initiated on or after the date of these Bylaws ("**New gTLD (generic Top Level Domain) Round**").

(ii) After a New gTLD (generic Top Level Domain) Round has been in operation for one year, the Board shall cause a competition, consumer trust and consumer choice review as specified in this Section 4.6(d) ("**CCT (Competition, Consumer Choice & Consumer Trust) Review**").

(iii) The review team for the CCT (Competition, Consumer Choice & Consumer Trust) Review ("**CCT (Competition, Consumer Choice & Consumer Trust) Review Team**") will examine (A) the extent to which the expansion of gTLDs has promoted competition, consumer trust and consumer choice and (B) the effectiveness of the New gTLD (generic Top Level

Domain) Round's application and evaluation process and safeguards put in place to mitigate issues arising from the New gTLD (generic Top Level Domain) Round.

(iv) For each of its recommendations, the CCT (Competition, Consumer Choice & Consumer Trust) Review Team should indicate whether the recommendation, if accepted by the Board, must be implemented before opening subsequent rounds of new generic top-level domain applications periods.

(v) The CCT (Competition, Consumer Choice & Consumer Trust) Review Team shall also assess the extent to which prior CCT (Competition, Consumer Choice & Consumer Trust) Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(e) Registration Directory Service Review

(i) Subject to applicable laws, ICANN (Internet Corporation for Assigned Names and Numbers) shall use commercially reasonable efforts to enforce its policies relating to registration directory services and shall work with Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) to explore structural changes to improve accuracy and access to generic top-level domain registration data, as well as consider safeguards for protecting such data.

(ii) The Board shall cause a periodic review to assess the effectiveness of the then current gTLD (generic Top Level Domain) registry directory service and whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data ("**Directory Service Review**").

(iii) The review team for the Directory Service Review ("**Directory Service Review Team**") will consider the Organisation for Economic Co-operation and Development ("**OECD (Organization for Economic Co-operation and Development)**") Guidelines on the Protection of Privacy and

Transborder Flows of Personal Data as defined by the OECD (Organization for Economic Co-operation and Development) in 1980 and amended in 2013 and as may be amended from time to time.

(iv) The Directory Service Review Team shall assess the extent to which prior Directory Service Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(v) The Directory Service Review shall be conducted no less frequently than every five years, measured from the date the previous Directory Service Review Team was convened, except that the first Directory Service Review to be conducted after 1 October 2016 shall be deemed to be timely if the applicable Directory Service Review Team is convened on or before 31 October 2016.

Section 4.7. COMMUNITY MEDIATION

(a) If the Board refuses or fails to comply with a duly authorized and valid EC (Empowered Community) Decision under these Bylaws, the EC (Empowered Community) Administration representative of any Decisional Participant who supported the exercise by the EC (Empowered Community) of its rights in the applicable EC (Empowered Community) Decision during the applicable decision period may request that the EC (Empowered Community) initiate a mediation process pursuant to this Section 4.7. The Board shall be deemed to have refused or failed to comply with a duly authorized and valid EC (Empowered Community) Decision if the Board has not complied with the EC (Empowered Community) Decision within 30 days of being notified of the relevant EC (Empowered Community) Decision.

(b) If a Mediation Initiation Notice (as defined in Section 4.1(a) of Annex D) is delivered to the Secretary pursuant to and in compliance with Section 4.1(a) of Annex D, as soon as reasonably practicable thereafter, the EC (Empowered Community) Administration shall designate individuals to represent the EC (Empowered Community) in the mediation ("**Mediation**

Administration") and the Board shall designate representatives for the mediation ("**Board Mediation Representatives**"). Members of the EC (Empowered Community) Administration and the Board can designate themselves as representatives. ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post the Mediation Initiation Notice on the Website.

(c) There shall be a single mediator who shall be selected by the agreement of the Mediation Administration and Board Mediation Representatives. The Mediation Administration shall propose a slate of at least five potential mediators, and the Board Mediation Representatives shall select a mediator from the slate or request a new slate until a mutually-agreed mediator is selected. The Board Mediation Representatives may recommend potential mediators for inclusion on the slates selected by the Mediation Administration. The Mediation Administration shall not unreasonably decline to include mediators recommended by the Board Mediation Representatives on proposed slates and the Board Mediation Representatives shall not unreasonably withhold consent to the selection of a mediator on slates proposed by the Mediation Administration.

(d) The mediator shall be a licensed attorney with general knowledge of contract law and general knowledge of the DNS (Domain Name System) and ICANN (Internet Corporation for Assigned Names and Numbers). The mediator may not have any ongoing business relationship with ICANN (Internet Corporation for Assigned Names and Numbers), any Supporting Organization (Supporting Organization) (or constituent thereof), any Advisory Committee (Advisory Committee) (or constituent thereof), the EC (Empowered Community) Administration or the EC (Empowered Community). The mediator must confirm in writing that he or she is not, directly or indirectly, and will not become during the term of the mediation, an employee, partner, executive officer, director, consultant or advisor of ICANN (Internet Corporation for Assigned Names and Numbers), any Supporting Organization (Supporting Organization) (or constituent thereof), any Advisory Committee (Advisory Committee) (or constituent thereof), the EC (Empowered Community) Administration or the EC (Empowered Community).

(e) The mediator shall conduct the mediation in accordance with

these Bylaws, the laws of California and the rules and procedures of a well-respected international dispute resolution provider, which may be the IRP Provider. The arbitration will be conducted in the English language consistent with the provisions relevant for mediation under the IRP Rules of Procedure and will occur in Los Angeles County, California, unless another location is mutually-agreed between the Mediation Administration and Board Mediation Representatives.

(f) The Mediation Administration and the Board Mediation Representatives shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute.

(g) ICANN (Internet Corporation for Assigned Names and Numbers) shall bear all costs of the mediator.

(h) If the Mediation Administration and the Board Mediation Representatives have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, the Mediation Administration or the Board Mediation Representatives may terminate the mediation at any time by declaring an impasse.

(i) If a resolution to the dispute is reached by the Mediation Administration and the Board Mediation Representatives, the Mediation Administration and the Board Mediation Representatives shall document such resolution including recommendations ("**Mediation Resolution**" and the date of such resolution, the "**Mediation Resolution Date**"). ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post the Mediation Resolution on the Website (in no event later than 14 days after mediation efforts are completed) and the EC (Empowered Community) Administration shall promptly notify the Decisional Participants of the Mediation Resolution.

(j) The EC (Empowered Community) shall be deemed to have accepted the Mediation Resolution if it has not delivered an EC (Empowered Community) Community IRP Initiation Notice (as defined in Section 4.2(e) of Annex D) pursuant to and in compliance with Section 4.2 of Annex D within eighty (80) days following the Mediation Resolution Date.

ARTICLE 5 OMBUDSMAN

Section 5.1. OFFICE OF OMBUDSMAN

(a) ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain an Office of Ombudsman ("**Office of Ombudsman**"), to be managed by an ombudsman ("**Ombudsman**") and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.

(b) The Ombudsman shall be appointed by the Board for an initial term of two years, subject to renewal by the Board.

(c) The Ombudsman shall be subject to dismissal by the Board only upon a three-fourths (3/4) vote of the entire Board.

(d) The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN (Internet Corporation for Assigned Names and Numbers) Budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in its entirety and without change in the general ICANN (Internet Corporation for Assigned Names and Numbers) Budget recommended by the ICANN (Internet Corporation for Assigned Names and Numbers) President to the Board. Nothing in this Section 5.1 shall prevent the President from offering separate views on the substance, size, or other features of the Ombudsman's proposed budget to the Board.

Section 5.2. CHARTER

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Independent Review Process set forth in Section 4.3 have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN (Internet Corporation for Assigned Names and Numbers) community who believe that the ICANN (Internet Corporation for Assigned Names and Numbers) staff, Board or an ICANN (Internet Corporation for Assigned Names and Numbers) constituent body has treated them unfairly. The Ombudsman shall

serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN (Internet Corporation for Assigned Names and Numbers) staff, the Board, or ICANN (Internet Corporation for Assigned Names and Numbers) constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results. With respect to the Reconsideration Request Process set forth in Section 4.2 , the Ombudsman shall serve the function expressly provided for in Section 4.2 .

Section 5.3. OPERATIONS

The Office of Ombudsman shall:

(a) facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN (Internet Corporation for Assigned Names and Numbers) community (excluding employees and vendors/suppliers of ICANN (Internet Corporation for Assigned Names and Numbers)) may have with specific actions or failures to act by the Board or ICANN (Internet Corporation for Assigned Names and Numbers) staff which have not otherwise become the subject of either a Reconsideration Request or Independent Review Process;

(b) perform the functions set forth in Section 4.2 relating to review and consideration of Reconsideration Requests;

(c) exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN (Internet Corporation for Assigned Names and Numbers)'s interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations;

(d) have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN (Internet Corporation for Assigned Names and Numbers) staff and

constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN (Internet Corporation for Assigned Names and Numbers));

(e) heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN (Internet Corporation for Assigned Names and Numbers) community and online availability;

(f) maintain neutrality and independence, and have no bias or personal stake in an outcome; and

(g) comply with all ICANN (Internet Corporation for Assigned Names and Numbers) conflicts of interest and confidentiality policies.

Section 5.4. INTERACTION WITH ICANN (Internet Corporation for Assigned Names and Numbers) AND OUTSIDE ENTITIES

(a) No ICANN (Internet Corporation for Assigned Names and Numbers) employee, Board member, or other participant in Supporting Organizations (Supporting Organizations) or Advisory Committees (Advisory Committees) shall prevent or impede the Ombudsman's contact with the ICANN (Internet Corporation for Assigned Names and Numbers) community (including employees of ICANN (Internet Corporation for Assigned Names and Numbers)). ICANN (Internet Corporation for Assigned Names and Numbers) employees and Board members shall direct members of the ICANN (Internet Corporation for Assigned Names and Numbers) community who voice problems, concerns, or complaints about ICANN (Internet Corporation for Assigned Names and Numbers) to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.

(b) ICANN (Internet Corporation for Assigned Names and Numbers) staff and other ICANN (Internet Corporation for Assigned Names and Numbers) participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.

(c) Contact with the Ombudsman shall not constitute notice to ICANN (Internet Corporation for Assigned Names and Numbers) of any particular action or cause of action.

(d) The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.

(e) The Ombudsman shall not take any actions not authorized in these Bylaws, and in particular shall not institute, join, or support in any way any legal actions challenging ICANN (Internet Corporation for Assigned Names and Numbers) structure, procedures, processes, or any conduct by the ICANN (Internet Corporation for Assigned Names and Numbers) Board, staff, or constituent bodies.

Section 5.5. ANNUAL REPORT

The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such annual report should include a description of any trends or common elements of complaints received during the period in question, as well as recommendations for steps that could be taken to minimize future complaints. The annual report shall be posted on the Website.

ARTICLE 6 EMPOWERED COMMUNITY

Section 6.1. COMPOSITION AND ORGANIZATION OF THE EMPOWERED COMMUNITY

(a) The Empowered Community ("**EC (Empowered Community)**") shall be a nonprofit association formed under the laws of the State of California consisting of the ASO (Address Supporting Organization), the ccNSO (Country Code Names Supporting Organization) (as defined in Section 10.1), the GNSO (Generic Names Supporting Organization) (as defined in Section 11.1), the ALAC (At-Large Advisory Committee) (as defined in Section 12.2(d)

(i)) and the GAC (Governmental Advisory Committee) (each a "**Decisional Participant**" or "associate," and collectively, the "**Decisional Participants**").

(b) This Article 6 shall constitute the articles of association of the EC (Empowered Community) and shall be considered the formational "governing document" (as defined in Section 18008 of the CCC) of the EC (Empowered Community), and the terms contained herein and in these Bylaws relating to the EC (Empowered Community) shall be the EC (Empowered Community)'s "governing principles" (as defined in Section 18010 of the CCC), which may only be amended as set forth in Section 25.2 . Where necessary for purposes of interpretation of these Bylaws, an "associate" shall be deemed to be a "member" of the EC (Empowered Community) as defined in Section 18015 of the CCC. Any change in the number and/or identity of Decisional Participants for any reason (including the resignation of any Decisional Participant or the addition of new Decisional Participants as a result of the creation of additional Supporting Organizations (Supporting Organizations) or Advisory Committees (Advisory Committees)), and any corresponding changes in the voting thresholds for exercise of the EC (Empowered Community)'s rights described in Annex D of these Bylaws, will only be effective following the completion of the process for amending Fundamental Bylaws described in Section 25.2 and Annex D. The EC (Empowered Community) may not be dissolved except upon the completion of the process for amending Fundamental Bylaws described in Section 25.2 and Annex D.

(c) The sole purpose of the EC (Empowered Community) is to exercise its rights and perform its obligations under ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation and these Bylaws, and the EC (Empowered Community) shall have no other powers or rights except as expressly provided therein. The EC (Empowered Community) may only act as provided in these Bylaws. Any act of the EC (Empowered Community) that is not in accordance with these Bylaws shall not be effective.

(d) The EC (Empowered Community) shall not acquire, hold, manage, encumber or transfer any interest in real or personal property, nor have any directors, officers or employees. The EC

(Empowered Community) shall not merge with or into another entity nor shall it dissolve, except with the approval of the Board and as part of a Fundamental Bylaw Amendment (as defined in Section 25.2(b)).

(e) Decisional Participants shall not transfer their right to be an associate of the EC (Empowered Community). Any attempted transfer by any Decisional Participant of its right to be an associate of the EC (Empowered Community) shall be void ab initio.

(f) The location and street address of the EC (Empowered Community) shall be the principal office of ICANN (Internet Corporation for Assigned Names and Numbers).

(g) Each Decisional Participant shall, except as otherwise provided in Annex D, adopt procedures for exercising the rights of such Decisional Participant pursuant to the procedures set forth in Annex D, including (i) who can submit a petition to such Decisional Participant, (ii) the process for an individual to submit a petition to such Decisional Participant, including whether a petition must be accompanied by a rationale, (iii) how the Decisional Participant determines whether to accept or reject a petition, (iv) how the Decisional Participant determines whether an issue subject to a petition has been resolved, (v) how the Decisional Participant determines whether to support or object to actions supported by another Decisional Participant, and (vi) the process for the Decisional Participant to notify its constituents of relevant matters.

Section 6.2. POWERS AND ACKNOWLEDGMENTS

(a) Pursuant to and in compliance with the terms and conditions of these Bylaws, the EC (Empowered Community) shall have the powers and rights, as set forth more fully elsewhere in these Bylaws, to:

> (i) Appoint and remove individual Directors (other than the President);
>
> (ii) Recall the entire Board;
>
> (iii) Reject ICANN (Internet Corporation for Assigned Names

and Numbers) Budgets, IANA (Internet Assigned Numbers Authority) Budgets, Operating Plans (as defined in Section 22.5(a)(i)) and Strategic Plans (as defined in Section 22.5(b)(i));

(iv) Reject Standard Bylaw Amendments (as defined in Section 25.1(a));

(v) Approve Fundamental Bylaw Amendments, Articles Amendments (as defined in Section 25.2(b)), and Asset Sales (as defined in Article 26(a));

(vi) Reject PTI Governance Actions (as defined in Section 16.2(d));,

(vii) Require the ICANN (Internet Corporation for Assigned Names and Numbers) Board to re-review its rejection of IFR Recommendation Decisions (as defined in Section 18.6(d)), Special IFR Recommendation Decisions (as defined in Section 18.12(e)), SCWG Creation Decisions (as defined in Section 19.1(d)) and SCWG Recommendation Decisions (as defined in Section 19.4(d));

(viii) Initiate a Community Reconsideration Request, mediation or a Community IRP; and

(ix) Take necessary and appropriate action to enforce its powers and rights, including through the community mechanism contained in Annex D or an action filed in a court of competent jurisdiction.

(b) The EC (Empowered Community) may pursue an action in any court with jurisdiction over ICANN (Internet Corporation for Assigned Names and Numbers) to enforce the EC (Empowered Community)'s rights under these Bylaws. ICANN (Internet Corporation for Assigned Names and Numbers) acknowledges the EC (Empowered Community)'s legal personhood and shall not raise the EC (Empowered Community)'s legal personhood as a defense in any proceeding between ICANN (Internet Corporation for Assigned Names and Numbers) and the EC (Empowered Community). ICANN (Internet Corporation for Assigned Names and Numbers) shall not

assert as a defense that prior filing or completion of a Reconsideration Request or an IRP Claim was a prerequisite to an action in court regarding the EC (Empowered Community)'s power to appoint or remove an individual Director or recall the Board (except to the extent an IRP Panel award is applicable pursuant to Section 3.6(e)).

(c) By nominating a Director for designation by the EC (Empowered Community) or exercising the community mechanism contained in Annex D with respect to any rights granted to the EC (Empowered Community) pursuant to these Bylaws, the EC (Empowered Community) and each of its Decisional Participants agrees and consents to the terms of these Bylaws and intends to be legally bound hereby.

Section 6.3. EC (Empowered Community) ADMINISTRATION

(a) The Decisional Participants shall act through their respective chairs or such other persons as may be designated by the Decisional Participants (collectively, such persons are the "**EC (Empowered Community) Administration**"). Each Decisional Participant shall deliver annually a written certification from its chair or co-chairs to the Secretary designating the individual who shall represent the Decisional Participant on the EC (Empowered Community) Administration.

(b) In representing a Decisional Participant on the EC (Empowered Community) Administration, the representative individual shall act solely as directed by the represented Decisional Participant and in accordance with processes developed by such Decisional Participant in accordance with Section 6.1(g).

(c) In representing the EC (Empowered Community) Administration, the individuals serving thereon shall act as required for the EC (Empowered Community) to follow the applicable procedures in Annex D, and to implement EC (Empowered Community) decisions made in accordance with such procedures.

(d) All communications and notices required or permitted to be given under these Bylaws by a Decisional Participant shall be

provided by the Decisional Participant's representative on the EC (Empowered Community) Administration. All communications and notices required or permitted to be given under these Bylaws by the EC (Empowered Community) shall be provided by any member of the EC (Empowered Community) Administration. Where a particular Bylaws notice provision does not require notice to the Secretary, the EC (Empowered Community) and the Decisional Participants shall provide a copy of the notice to the Secretary in accordance with Section 21.5, and ICANN (Internet Corporation for Assigned Names and Numbers) shall post it on the Website.

(e) ICANN (Internet Corporation for Assigned Names and Numbers) shall be entitled to rely on notices from a Decisional Participant's representative or an individual serving on the EC (Empowered Community) Administration delivered in accordance with Section 21.5 as evidence that the actions set forth therein have been approved by or are the actions of the Decisional Participant, the EC (Empowered Community) or the EC (Empowered Community) Administration, as applicable, pursuant to and in compliance with the requirements of these Bylaws (including Annex D) .

(f) No person participating in the EC (Empowered Community), the EC (Empowered Community) Administration or a Decisional Participant shall be liable for any debt, obligation or liability of ICANN (Internet Corporation for Assigned Names and Numbers) or the EC (Empowered Community), other than in the case of a fraudulent act committed by such person.

Section 6.4. CONSENT TO BOARD-INITIATED REMOVAL OF DIRECTOR WITHOUT CAUSE

In the event the EC (Empowered Community) Administration receives from the Secretary a valid notice as described in Section 7.11(a)(i)(B), indicating that the Board has voted to remove a Director without cause pursuant to Section 7.11(a)(i)(B), the EC (Empowered Community) shall without deliberation consent to such removal, and the EC (Empowered Community) Administration shall provide notice to the Secretary of such consent.

ARTICLE 7 BOARD OF DIRECTORS

Section 7.1. COMPOSITION OF THE BOARD

The ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors ("**Board**") shall consist of sixteen voting directors ("**Directors**"). In addition, four non-voting liaisons ("**Liaisons**") shall be appointed for the purposes set forth in Section 7.9. Only Directors shall be included in determining the existence of quorums, and in establishing the validity of votes taken by the Board.

Section 7.2. DIRECTORS AND THEIR SELECTION; ELECTION OF CHAIR AND VICE-CHAIR

(a) As of the effective date of the amendment and restatement of these Bylaws on 1 October 2016, the EC (Empowered Community) shall be the sole designator of ICANN (Internet Corporation for Assigned Names and Numbers) and shall designate, within the meaning of Section 5220 of the CCC, all Directors except for the President ex officio. The EC (Empowered Community) shall notify promptly the Secretary in writing of the following designations:

> (i) Eight Directors nominated by the Nominating Committee to be designated as Directors by the EC (Empowered Community). These seats on the Board are referred to in these Bylaws as Seats 1 through 8.
>
> (ii) Two Directors nominated by the ASO (Address Supporting Organization) to be designated as Directors by the EC (Empowered Community). These seats on the Board are referred to in these Bylaws as Seat 9 and Seat 10.
>
> (iii) Two Directors nominated by the ccNSO (Country Code Names Supporting Organization) to be designated as Directors by the EC (Empowered Community). These seats on the Board are referred to in these Bylaws as Seat 11 and Seat 12.
>
> (iv) Two Directors nominated by the GNSO (Generic Names Supporting Organization) to be designated as Directors by the EC (Empowered Community). These seats on the Board are referred to in these Bylaws as Seat 13 and Seat 14.

(v) One Director nominated by the At-Large Community to be designated as Directors by the EC (Empowered Community). This seat on the Board is referred to in these Bylaws as Seat 15.

In addition to the Directors designated by the EC (Empowered Community), the President shall serve ex officio as a Director. The seat held by the President on the Board is referred to in these Bylaws as Seat 16.

(b) In carrying out its responsibilities to nominate the Directors for Seats 1 through 8 for designation by the EC (Empowered Community), the Nominating Committee shall ensure that the Board is composed of Directors who, in the aggregate, display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in Section 7.3, Section 7.4 and Section 7.5. At no time when it makes its nomination shall the Nominating Committee nominate a Director to fill any vacancy or expired term whose designation would cause the total number of Directors (not including the President) from countries in any one Geographic Region to exceed five; and the Nominating Committee shall ensure when it makes its nominations that the Board includes at least one Director who is from a country in each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region ("**Diversity Calculation**"). For purposes of this Section 7.2(b), if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("**Domicile**"), that candidate may be deemed to be from either country and must select in his or her Statement of Interest the country of citizenship or Domicile that he or she wants the Nominating Committee to use for Diversity Calculation purposes. For purposes of this Section 7.2(b), a person can only have one Domicile, which shall be determined by where the candidate has a permanent residence and place of habitation.

(c) In carrying out their responsibilities to nominate Directors for Seats 9 through 15 for designation by the EC (Empowered Community), the Supporting Organizations (Supporting Organizations) and the At-Large Community shall seek to ensure that the Board is composed of Directors who, in the aggregate, display diversity in geography, culture, skills, experience, and

perspective, by applying the criteria set forth in Section 7.3, Section 7.4 and Section 7.5. The Supporting Organizations (Supporting Organizations) shall ensure that, at any given time, no two Directors nominated by a Supporting Organization (Supporting Organization) are citizens from the same country or of countries located in the same Geographic Region. For purposes of this Section 7.2(c), if any candidate for Director maintains citizenship or Domicile of more than one country, that candidate may be deemed to be from either country and must select in his or her Statement of Interest the country of citizenship or Domicile that he or she wants the Supporting Organization (Supporting Organization) or the At-Large Community, as applicable, to use for nomination purposes. For purposes of this Section 7.2(c), a person can only have one Domicile, which shall be determined by where the candidate has a permanent residence and place of habitation.

(d) The Board shall annually elect a Chair and a Vice-Chair from among the Directors, not to include the President.

(e) The EC (Empowered Community) shall designate each person nominated as a Director by the Nominating Committee, the ASO (Address Supporting Organization), the ccNSO (Country Code Names Supporting Organization), the GNSO (Generic Names Supporting Organization) and the At-Large Community in accordance with this Section 7.2.

(f) As a condition to sitting on the Board, each Director other than the President ex officio shall sign a pre-service letter pursuant to which such Director:

(i) acknowledges and agrees to the EC (Empowered Community)'s right to remove the Director at any time and for any reason following the processes set forth in these Bylaws;

(ii) acknowledges and agrees that serving as a Director shall not establish any employment or other relationship (whether to ICANN (Internet Corporation for Assigned Names and Numbers), the EC (Empowered Community), any body entitled to nominate a Director, or any of their agents) that provides any due process rights related to termination of service as a Director; and

(iii) conditionally and irrevocably resigns as a Director automatically effective upon communication to the Director or, in the case of Board recall, communication to the Board of a final determination of removal <u>following</u> the processes set forth in these Bylaws.

Section 7.3.CRITERIA FOR NOMINATION OF DIRECTORS

Directors shall be:

(a) Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making;

(b) Persons with an understanding of ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission and the potential impact of ICANN (Internet Corporation for Assigned Names and Numbers) decisions on the global Internet community, and committed to the success of ICANN (Internet Corporation for Assigned Names and Numbers);

(c) Persons who will produce the broadest cultural and geographic diversity on the Board consistent with meeting the other criteria set forth in this <u>Section 7.3</u>;

(d) Persons who, in the aggregate, have personal familiarity with the operation of gTLD (generic Top Level Domain) registries and registrars; with ccTLD (Country Code Top Level Domain) registries; with IP (Internet Protocol or Intellectual Property) address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet; and

(e) Persons who are able to work and communicate in written and spoken English.

Section 7.4. ADDITIONAL QUALIFICATIONS

(a) Notwithstanding anything herein to the contrary, no official of a

national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director. As used herein, the term "official" means a person (i) who holds an elective governmental office or (ii) who is employed by such government or multinational entity and whose primary function with such government or entity is to develop or influence governmental or public policies.

(b) No person who serves in any capacity (including as a liaison) on any Supporting Organization (Supporting Organization) Council shall simultaneously serve as a Director or Liaison to the Board. If such a person is identified by, or presents themselves to, the Supporting Organization (Supporting Organization) Council or the At-Large Community for consideration for nomination to serve as a Director, the person shall not thereafter participate in any discussion of, or vote by, the Supporting Organization (Supporting Organization) Council or the committee designated by the At-Large Community relating to the nomination of Directors by the Council or At-Large Community, until the Council or committee(s) specified by the At-Large Community has nominated the full complement of Directors it is responsible for nominating. In the event that a person serving in any capacity on a Supporting Organization (Supporting Organization) Council is considered for nomination to serve as a Director, the constituency group or other group or entity that selected the person may select a replacement for purposes of the Council's nomination process. In the event that a person serving in any capacity on the At-Large Advisory Committee (Advisory Committee) is identified as or accepts a nomination to be considered for nomination by the At-Large Community as a Director, the Regional At-Large Organization or other group or entity that selected the person may select a replacement for purposes of the At-Large Community's nomination process.

(c) Persons serving in any capacity on the Nominating Committee shall be ineligible for nomination or designation to positions on the Board as provided by Section 8.8.

(d) No person who serves on the EC (Empowered Community) Administration while serving in that capacity shall be considered for nomination or designated to the Board, nor serve simultaneously on the EC (Empowered Community) Administration and as a Director or

Liaison to the Board.

Section 7.5. INTERNATIONAL REPRESENTATION

In order to ensure broad international representation on the Board, the nomination of Directors by the Nominating Committee, each Supporting Organization (Supporting Organization) and the At-Large Community shall comply with all applicable diversity provisions of these Bylaws or of any memorandum of understanding referred to in these Bylaws concerning the Supporting Organization (Supporting Organization). One intent of these diversity provisions is to ensure that at all times each Geographic Region shall have at least one Director, and at all times no Geographic Region shall have more than five Directors on the Board (not including the President). As used in these Bylaws, each of the following is considered to be a "**Geographic Region**": (a) Europe; (b) Asia/Australia/Pacific; (c) Latin America/Caribbean islands; (d) Africa; and (e) North America. The specific countries included in each Geographic Region shall be determined by the Board, and this Section 7.5 shall be reviewed by the Board from time to time (and in any event at least once every three years) to determine whether any change is appropriate, taking account of the evolution of the Internet.

Section 7.6. DIRECTORS' CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall require a statement from each Director not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN (Internet Corporation for Assigned Names and Numbers). Each Director shall be responsible for disclosing to ICANN (Internet Corporation for Assigned Names and Numbers) any matter that could reasonably be considered to make such Director an "interested director" within the meaning of Section 5233 of the CCC. In addition, each Director shall disclose to ICANN (Internet Corporation for Assigned Names and Numbers) any relationship or other factor that could reasonably be considered to cause the Director to be considered to be an "interested person" within the meaning of Section 5227 of the CCC. The Board shall adopt policies specifically addressing Director, Officer, EC (Empowered Community) and Supporting Organization (Supporting Organization) conflicts of interest. No Director shall vote

on any matter in which he or she has a material and direct financial interest that would be affected by the outcome of the vote.

Section 7.7. DUTIES OF DIRECTORS

Directors shall serve as individuals who have the duty to act in what they reasonably believe are the best interests of ICANN (Internet Corporation for Assigned Names and Numbers) and not as representatives of the EC (Empowered Community), the Nominating Committee, Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) that nominated them, as applicable, their employers, or any other organizations or constituencies.

Section 7.8. TERMS OF DIRECTORS

(a) The regular term of office of Director Seats 1 through 15 shall begin as follows:

> (i) The regular terms of Seats 1 through 3 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2003;
>
> (ii) The regular terms of Seats 4 through 6 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2004;
>
> (iii) The regular terms of Seats 7 and 8 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2005;
>
> (iv) The terms of Seats 9 and 12 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2015;
>
> (v) The terms of Seats 10 and 13 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2013; and

> (vi) The terms of Seats 11, 14 and 15 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2014.

(b) Each Director holding any of Seats 1 through 15, including a Director nominated and designated to fill a vacancy, shall hold office for a term that lasts until the next term for that Seat commences and until a successor has been designated and qualified or until that Director resigns or is removed in accordance with these Bylaws. For the avoidance of doubt, the new governance provisions effective as of the amendment and restatement of these Bylaws on 1 October 2016 shall not have the effect of shortening or terminating the terms of any Directors serving at the time of the amendment and restatement.

(c) At least two months before the commencement of each annual meeting, the Nominating Committee shall give the EC (Empowered Community) Administration (with a copy to the Decisional Participants and Secretary) written notice of its nomination of Directors for seats with terms beginning at the conclusion of the annual meeting, and the EC (Empowered Community) Administration shall promptly provide the Secretary (with a copy to the Decisional Participants) with written notice of the designation of those Directors. All such notices shall be posted promptly to the Website.

(d) At least six months before the date specified for the commencement of the term as specified in Section 7.8(a)(iv) through Section 7.8(a)(vi) above, any Supporting Organization (Supporting Organization) or the At-Large Community entitled to nominate a Director for a Seat with a term beginning that year shall give the EC (Empowered Community) Administration (with a copy to the Secretary and the Decisional Participants) written notice of its nomination of Directors for seats with terms beginning at the conclusion of the annual meeting, and the EC (Empowered Community) Administration shall promptly provide the Secretary (with a copy to the Decisional Participants) with written notice of the designation of those Directors. All such notices shall be posted promptly to the Website.

(e) No Director may serve more than three consecutive terms. For these purposes, a person designated to fill a vacancy in a term shall not be deemed to have served that term.

(f) The term as Director of the person holding the office of President shall be for as long as, and only for as long as, such person holds the office of President.

Section 7.9. NON-VOTING LIAISONS

(a) The non-voting Liaisons shall include:

(i) One appointed by the Governmental Advisory Committee (Advisory Committee);

(ii) One appointed by the Root Server System Advisory Committee (Advisory Committee) established by Section 12.2(c);

(iii) One appointed by the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) established by Section 12.2(b); and

(iv) One appointed by the Internet Engineering Task Force.

(b) The Liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a Liaison shall give the Secretary written notice of its appointment.

(c) Each Liaison may be reappointed, and shall remain in that position until a successor has been appointed or until the Liaison resigns or is removed in accordance with these Bylaws.

(d) The Liaisons shall be entitled to attend Board meetings, participate in Board discussions and deliberations, and have access (under conditions established by the Board) to materials provided to Directors for use in Board discussions, deliberations and meetings, but shall otherwise not have any of the rights and

privileges of Directors. Liaisons shall be entitled (under conditions established by the Board) to use any materials provided to them pursuant to this Section 7.9(d) for the purpose of consulting with their respective committee or organization.

Section 7.10. RESIGNATION OF A DIRECTOR OR NON-VOTING LIAISON

Subject to Section 5226 of the CCC, any Director or Liaison may resign at any time by giving written notice thereof to the Chair of the Board, the President, the Secretary, or the Board. Such resignation shall take effect at the time specified, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.11. REMOVAL OF A DIRECTOR OR NON-VOTING LIAISON

(a) Directors

(i) Any Director designated by the EC (Empowered Community) may be removed without cause:

(A) by the EC (Empowered Community) pursuant to and in compliance with procedures in Section 3.1 or Section 3.2 of Annex D, as applicable, or

(B) following notice to that Director, by a three-fourths (3/4) majority vote of all Directors; provided, however, that (x) each vote to remove a Director shall be a separate vote on the sole question of the removal of that particular Director; and (y) such removal shall not be effective until the Secretary has provided notice to the EC (Empowered Community) Administration of the Board's removal vote and the requirements of Section 6.4 have been met.

(ii) The Board may remove any Director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order or judgment of any court to have breached any duty under Sections 5230 through 5239 of the CCC, and in the case of

such removal, the Secretary shall promptly notify the EC (Empowered Community) Administration in writing, with a copy to the body that nominated such Director, and shall promptly post such notification to the Website. The vacancies created by such removal shall be filled in accordance with Section 7.12(a).

(iii) All Directors (other than the President) may be removed at the same time by the EC (Empowered Community) by the EC (Empowered Community) Administration delivering an EC (Empowered Community) Board Recall Notice to the Secretary pursuant to and in compliance with Section 3.3 of Annex D. The vacancies created by such removal shall be filled by the EC (Empowered Community) in accordance with Section 7.12(b).

(b) With the exception of the Liaison appointed by the Governmental Advisory Committee (Advisory Committee), any Liaison may be removed following notice to that Liaison and to the organization which selected that Liaison, by a three-fourths (3/4) majority vote of all Directors if the selecting organization fails to promptly remove that Liaison following such notice. The vacancies created by such removal shall be filled in accordance with Section 7.12. The Board may request the Governmental Advisory Committee (Advisory Committee) to consider the replacement of the Governmental Advisory Committee (Advisory Committee) Liaison if the Board, by a three-fourths (3/4) majority vote of all Directors, determines that such an action is appropriate.

Section 7.12. VACANCIES

(a) This Section 7.12(a) shall apply to Board vacancies other than those occurring by recall of all Directors (other than the President). A vacancy or vacancies in the Board shall be deemed to exist in the case of the death, resignation, or removal of any Director or Interim Director (as defined in Section 7.12(b)), or if the authorized number of Directors is increased. Vacancies occurring in Seats 1 through 15 shall be filled by the EC (Empowered Community) after nomination as provided in Section 7.2 and Articles 8 through 12. A vacancy in Seat 16 shall be filled as provided in Article 15. A Director designated by the EC (Empowered Community) to fill a vacancy on

the Board shall serve for the unexpired term of his or her predecessor in office and until a successor has been designated and qualified. No reduction of the authorized number of Directors shall have the effect of removing a Director prior to the expiration of the Director's term of office.

(b) This Section 7.12(b) shall apply to Board vacancies occurring when all Directors (other than the President) are recalled as provided by Section 7.11(a)(iii). Concurrently with delivery of any EC (Empowered Community) Board Recall Notice (as defined in Section 3.3(f) of Annex D), the EC (Empowered Community) Administration shall provide written notice of the EC (Empowered Community)'s designation of individuals to fill such vacancies (each such individual, an **"Interim Director"**) to the Decisional Participants and to the Secretary, who shall cause such notice to be promptly posted to the Website. An Interim Director must meet the criteria specified in Section 7.3, Section 7.4 and Section 7.5, as applicable. An Interim Director shall hold office until the EC (Empowered Community) designates the Interim Director's successor in accordance with Section 7.12(a), and the successor's designation shall occur within 120 days of the Interim Director's designation. For avoidance of doubt, persons designated as Interim Directors may be eligible for designation as Directors as well.

(c) The organizations selecting the Liaisons identified in Section 7.9 are responsible for determining the existence of, and filling, any vacancies in those positions. Such organizations shall give the Secretary written notice of their appointments to fill any such vacancies, subject to the requirements set forth in Section 7.4, as applicable.

Section 7.13. ANNUAL MEETINGS

Annual meetings of ICANN (Internet Corporation for Assigned Names and Numbers) shall be held for the purpose of electing Officers and for the transaction of such other business as may come before the meeting. Each annual meeting of ICANN (Internet Corporation for Assigned Names and Numbers) shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers), or any other appropriate place of the Board's time and choosing, provided such annual meeting is held within 14

months of the immediately preceding annual meeting. If the Board determines that it is practical, the annual meeting should be distributed in real-time and archived video and audio formats on the Internet.

Section 7.14. REGULAR MEETINGS

Regular meetings of the Board shall be held on dates to be determined by the Board. In the absence of other designation, regular meetings shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 7.15. SPECIAL MEETINGS

Special meetings of the Board may be called by or at the request of one-quarter (1/4) of the Directors, by the Chair of the Board or the President. A call for a special meeting shall be made by the Secretary. Special meetings shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers) unless otherwise specified in the notice of the meeting.

Section 7.16. NOTICE OF MEETINGS

Notice of time and place of all meetings shall be delivered personally or by telephone or by electronic mail to each Director and Liaison, or sent by first-class mail (air mail for addresses outside the United States) or facsimile, charges prepaid, addressed to each Director and Liaison at the Director's or Liaison's address as it is shown on the records of ICANN (Internet Corporation for Assigned Names and Numbers). In case the notice is mailed, it shall be deposited in the United States mail at least fourteen (14) days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone or facsimile or electronic mail it shall be delivered personally or by telephone or facsimile or electronic mail at least forty-eight (48) hours before the time of the holding of the meeting. Notwithstanding anything in this Section 7.16 to the contrary, notice of a meeting need not be given to any Director or Liaison who signed a waiver of notice or a Director who signed a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its

commencement, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

Section 7.17. QUORUM

At all annual, regular, and special meetings of the Board, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, unless otherwise provided herein or by law. If a quorum shall not be present at any meeting of the Board, the Directors present thereat may adjourn the meeting from time to time to another place, time or date. If the meeting is adjourned for more than twenty-four (24) hours, notice shall be given to those Directors not at the meeting at the time of the adjournment.

Section 7.18. ACTIONS BY TELEPHONE MEETING OR BY OTHER COMMUNICATIONS EQUIPMENT

Directors and Liaisons may participate in a meeting of the Board or Board Committee (as defined in Section 14.1) through use of (a) conference telephone or similar communications equipment, provided that all Directors participating in such a meeting can speak to and hear one another or (b) electronic video screen communication or other communication equipment; provided that (i) all Directors participating in such a meeting can speak to and hear one another, (ii) all Directors are provided the means of fully participating in all matters before the Board or Board Committee, and (iii) ICANN (Internet Corporation for Assigned Names and Numbers) adopts and implements means of verifying that (A) a person participating in such a meeting is a Director or other person entitled to participate in the meeting and (B) all actions of, or votes by, the Board or Board Committee are taken or cast only by Directors and not persons who are not Directors. Participation in a meeting pursuant to this Section 7.18 constitutes presence in person at such meeting. ICANN (Internet Corporation for Assigned Names and Numbers) shall make available at the place of any meeting of the Board the telecommunications equipment necessary to permit Directors and Liaisons to participate by telephone.

Section 7.19. ACTION WITHOUT MEETING

Any action required or permitted to be taken by the Board or a Committee of the Board may be taken without a meeting if all of the Directors entitled to vote thereat shall individually or collectively consent in writing to such action. Such written consent shall have the same force and effect as the unanimous vote of such Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 7.20. ELECTRONIC MAIL

If permitted by applicable law, communication by electronic mail shall be considered equivalent to any communication otherwise required to be in writing. ICANN (Internet Corporation for Assigned Names and Numbers) shall take such steps as it deems appropriate under the circumstances to assure itself that communications by electronic mail are authentic.

Section 7.21. BOARD RIGHTS OF INSPECTION

(a) Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind, and to inspect the physical properties of ICANN (Internet Corporation for Assigned Names and Numbers).

(b) ICANN (Internet Corporation for Assigned Names and Numbers) shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

Section 7.22. COMPENSATION

(a) Except for the President of ICANN (Internet Corporation for Assigned Names and Numbers), who serves ex officio as a Director, each of the Directors shall be entitled to receive compensation for his or her services as a Director. The President shall receive only his or her compensation for service as President and shall not receive additional compensation for service as a Director.

(b) If the Board determines to offer a compensation arrangement to one or more Directors (other than the President) for services to

ICANN (Internet Corporation for Assigned Names and Numbers) as Directors, the Board shall follow the process that is calculated to pay an amount for service as a Director that is not an excess benefit under the standards set forth in Section 4958 of the Internal Revenue Code of 1986, as amended (the "**Code**").

(c) As part of the process, the Board shall retain an Independent Valuation Expert (as defined in Section 7.22(g)(i)) to consult with and to advise the Board regarding Director compensation arrangements and to issue to the Board a Reasoned Written Opinion (as defined in Section 7.22(g)(ii)) from such expert regarding the ranges of Reasonable Compensation (as defined in Section 7.22(g)(iii)) for any such services by a Director. The expert's opinion shall address all relevant factors affecting the level of compensation to be paid a Director, including offices held on the Board, attendance at Board and Board Committee meetings, the nature of service on the Board and on Board Committees, and appropriate data as to comparability regarding director compensation arrangements for U.S.-based, nonprofit, tax-exempt organizations possessing a global employee base.

(d) After having reviewed the Independent Valuation Expert's Reasoned Written Opinion, the Board shall meet with the expert to discuss the expert's opinion and to ask questions of the expert regarding the expert's opinion, the comparability data obtained and relied upon, and the conclusions reached by the expert.

(e) The Board shall adequately document the basis for any determination the Board makes regarding a Director compensation arrangement concurrently with making that determination.

(f) In addition to authorizing payment of compensation for services as Directors as set forth in this Section 7.22, the Board may also authorize the reimbursement of actual and necessary reasonable expenses incurred by any Director and by Liaisons performing their duties as Directors or Liaisons.

(g) As used in this Section 7.22, the following terms shall have the following meanings:

(i) An "**Independent Valuation Expert**" means a person

retained by ICANN (Internet Corporation for Assigned Names and Numbers) to value compensation arrangements that: (A) holds itself out to the public as a compensation consultant; (B) performs valuations regarding compensation arrangements on a regular basis, with a majority of its compensation consulting services performed for persons other than ICANN (Internet Corporation for Assigned Names and Numbers); (C) is qualified to make valuations of the type of services involved in any engagement by and for ICANN (Internet Corporation for Assigned Names and Numbers); (D) issues to ICANN (Internet Corporation for Assigned Names and Numbers) a Reasoned Written Opinion regarding a particular compensation arrangement; and (E) includes in its Reasoned Written Opinion a certification that it meets the requirements set forth in (A) through (D) of this definition.

(ii) A "**Reasoned Written Opinion**" means a written opinion of a valuation expert who meets the requirements of Section 7.22(g)(i)(A) through (D). To be reasoned, the opinion must be based upon a full disclosure by ICANN (Internet Corporation for Assigned Names and Numbers) to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.

(iii) "**Reasonable Compensation**" shall have the meaning set forth in §53.4958-4(b)(1)(ii) of the Regulations issued under §4958 of the Code.

(h) Each of the Liaisons, with the exception of the Governmental

Advisory Committee (Advisory Committee) Liaison, shall be entitled to receive compensation for his or her services as a Liaison. If the Board determines to offer a compensation arrangement to one or more Liaisons, the Board shall approve that arrangement by a required three-fourths (3/4) vote.

Section 7.23. PRESUMPTION OF ASSENT

A Director present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting, or unless such Director files a written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof, or forwards such dissent or abstention by registered mail to the Secretary immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of such action.

Section 7.24 INTERIM BOARD

Except in circumstances in which urgent decisions are needed to protect the security, stability or resilience of the DNS (Domain Name System) or to the extent necessary to comply with its fiduciary obligations under applicable law, a Board that consists of a majority or more of Interim Directors (an "**Interim Board**") shall (a) consult with the chairs of the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) before making major decisions and (b) consult through a community forum (in a manner consistent with the process for a Rejection Action Community Forum pursuant to Section 2.3 of Annex D) prior to taking any action that would, if implemented, materially change ICANN (Internet Corporation for Assigned Names and Numbers)'s strategy, policies or management, including replacement of the then-serving President. Interim Directors shall be entitled to compensation as provided in this Article 7.

Section 7.25 COMMUNICATION OF DESIGNATION

Upon its receipt of nominations as provided in Articles 7 through 12,

the EC (Empowered Community) Administration, on behalf of the EC (Empowered Community), shall promptly notify the Secretary of the EC (Empowered Community)'s designation of individuals to fill seats on the Board. ICANN (Internet Corporation for Assigned Names and Numbers) shall post all such designations promptly to the Website.

ARTICLE 8 NOMINATING COMMITTEE

Section 8.1. DESCRIPTION

There shall be a Nominating Committee of ICANN (Internet Corporation for Assigned Names and Numbers) ("**Nominating Committee**"), responsible for nominating all Directors except the President and those Directors nominated by Decisional Participants; for nominating two directors of PTI (in accordance with the articles of incorporation and bylaws of PTI); and for such other selections as are set forth in these Bylaws. Notification of the Nominating Committee's Director nominations shall be given by the Nominating Committee Chair in writing to the EC (Empowered Community) Administration, with a copy to the Secretary, and the EC (Empowered Community) shall promptly act on it as provided in Section 7.25. Notification of the Nominating Committee's PTI director nomination shall be given to the Secretary.

Section 8.2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

(a) A non-voting Chair, appointed by the Board;

(b) A non-voting Chair-Elect, appointed by the Board as a non-voting advisor;

(c) A non-voting liaison appointed by the Root Server System Advisory Committee (Advisory Committee) established by Section 12.2(c);

(d) A non-voting liaison appointed by the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) established by Section 12.2(b);

(e) A non-voting liaison appointed by the Governmental Advisory Committee (Advisory Committee);

(f) Five voting delegates selected by the At-Large Advisory Committee (Advisory Committee) established by Section 12.2(d);

(g) Voting delegates to the Nominating Committee shall be selected from the Generic Names Supporting Organization (Supporting Organization) established by Article 11, as follows:

> (i) One delegate from the Registries Stakeholder Group;
>
> (ii) One delegate from the Registrars Stakeholder Group;
>
> (iii) Two delegates from the Business Constituency, one representing small business users and one representing large business users;
>
> (iv) One delegate from the Internet Service Providers and Connectivity Providers Constituency (as defined in Section 11.5(a)(iii));
>
> (v) One delegate from the Intellectual Property Constituency; and
>
> (vi) One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.

(h) One voting delegate each selected by the following entities:

> (i) The Council of the Country Code Names Supporting Organization (Supporting Organization) established by Section 10.3;
>
> (ii) The Council of the Address Supporting Organization (Supporting Organization) established by Section 9.2; and
>
> (iii) The Internet Engineering Task Force.

(i) A non-voting Associate Chair, who may be appointed by the Chair, at his or her sole discretion, to serve during all or part of the

term of the Chair. The Associate Chair may not be a person who is otherwise a member of the same Nominating Committee. The Associate Chair shall assist the Chair in carrying out the duties of the Chair, but shall not serve, temporarily or otherwise, in the place of the Chair.

Section 8.3. TERMS

(a) Each voting delegate shall serve a one-year term. A delegate may serve at most two successive one-year terms, after which at least two years must elapse before the individual is eligible to serve another term.

(b) The regular term of each voting delegate shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the immediately following ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting.

(c) Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, the Chair-Elect, and any Associate Chair shall serve as such until the conclusion of the next ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting.

(d) It is anticipated that upon the conclusion of the term of the Chair-Elect, the Chair-Elect will be appointed by the Board to the position of Chair. However, the Board retains the discretion to appoint any other person to the position of Chair. At the time of appointing a Chair-Elect, if the Board determines that the person identified to serve as Chair shall be appointed as Chair for a successive term, the Chair-Elect position shall remain vacant for the term designated by the Board.

(e) Vacancies in the positions of delegate, non-voting liaison, Chair or Chair-Elect shall be filled by the entity entitled to select the delegate, non-voting liaison, Chair or Chair-Elect involved. For any term that the Chair-Elect position is vacant pursuant to Section 8.3(d), or until any other vacancy in the position of Chair-Elect can be filled, a non-voting advisor to the Chair may be appointed by the Board from among persons with prior service on the Board or a Nominating Committee, including the immediately previous Chair of

the Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 8.2(i).

(f) The existence of any vacancies shall not affect the obligation of the Nominating Committee to carry out the responsibilities assigned to it in these Bylaws.

Section 8.4. CRITERIA FOR SELECTION OF NOMINATING COMMITTEE DELEGATES

Delegates to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee shall be:

(a) Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and with experience and competence with collegial large group decision-making;

(b) Persons with wide contacts, broad experience in the Internet community, and a commitment to the success of ICANN (Internet Corporation for Assigned Names and Numbers);

(c) Persons whom the selecting body is confident will consult widely and accept input in carrying out their responsibilities;

(d) Persons who are neutral and objective, without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out their Nominating Committee responsibilities;

(e) Persons with an understanding of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and the potential impact of ICANN (Internet Corporation for Assigned Names and Numbers)'s activities on the broader Internet community who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and

(f) Persons who are able to work and communicate in written and spoken English.

Section 8.5. DIVERSITY

In carrying out its responsibilities to nominate Directors to fill Seats 1 through 8 (and selections to any other ICANN (Internet Corporation for Assigned Names and Numbers) bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the Board (and such other bodies), and seek to ensure that the persons it nominates to serve as Director and selects shall, to the extent feasible and consistent with the other criteria required to be applied by Section 8.4, be guided by Section 1.2(b)(ii).

Section 8.6. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the Nominating Committee to carry out its responsibilities.

Section 8.7. PROCEDURES

The Nominating Committee shall adopt such operating procedures as it deems necessary, which shall be published on the Website.

Section 8.8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

No person who serves on the Nominating Committee in any capacity shall be eligible for nomination by any means to any position on the Board or any other ICANN (Internet Corporation for Assigned Names and Numbers) body having one or more membership positions that the Nominating Committee is responsible for filling, until the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting that coincides with, or is after, the conclusion of that person's service on the Nominating Committee.

Section 8.9. INELIGIBILITY FOR SERVICE ON NOMINATING COMMITTEE

No person who is an employee of or paid consultant to ICANN

(Internet Corporation for Assigned Names and Numbers) (including the Ombudsman) shall simultaneously serve in any of the Nominating Committee positions described in Section 8.2.

ARTICLE 9 ADDRESS SUPPORTING ORGANIZATION

Section 9.1. DESCRIPTION

(a) The Address Supporting Organization (Supporting Organization) ("**Address Supporting Organization (Supporting Organization)**" or "**ASO (Address Supporting Organization)**") shall advise the Board with respect to policy issues relating to the operation, assignment, and management of Internet addresses.

(b) The ASO (Address Supporting Organization) shall be the entity established by the Memorandum of Understanding entered on 21 October 2004 between ICANN (Internet Corporation for Assigned Names and Numbers) and the Number Resource Organization ("**NRO (Number Resource Organization)**"), an organization of the existing RIRs.

Section 9.2. ADDRESS COUNCIL

(a) The ASO (Address Supporting Organization) shall have an Address Council, consisting of the members of the NRO (Number Resource Organization) Number Council.

(b) The Address Council shall nominate individuals to fill Seats 9 and 10 on the Board. Notification of the Address Council's nominations shall be given by the Address Council in writing to the EC (Empowered Community) Administration, with a copy to the Secretary, and the EC (Empowered Community) shall promptly act on it as provided in Section 7.25.

ARTICLE 10 COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

Section 10.1. DESCRIPTION

There shall be a policy-development body known as the Country-

Code Names Supporting Organization (Supporting Organization)
("**ccNSO (Country Code Names Supporting Organization)**"),
which shall be responsible for:

(a) developing and recommending to the Board global policies
relating to country-code top-level domains;

(b) Nurturing consensus across the ccNSO (Country Code Names
Supporting Organization)'s community, including the name-related
activities of ccTLDs;

(c) Coordinating with other ICANN (Internet Corporation for
Assigned Names and Numbers) Supporting Organizations
(Supporting Organizations), committees, and constituencies under
ICANN (Internet Corporation for Assigned Names and Numbers);

(d) Nominating individuals to fill Seats 11 and 12 on the Board; and

(e) Other responsibilities of the ccNSO (Country Code Names
Supporting Organization) as set forth in these Bylaws.

Policies that apply to ccNSO (Country Code Names Supporting
Organization) members by virtue of their membership are only those
policies developed according to Section 10.4(j) and Section 10.4(k).
However, the ccNSO (Country Code Names Supporting
Organization) may also engage in other activities authorized by its
members. Adherence to the results of these activities will be
voluntary and such activities may include: seeking to develop
voluntary best practices for ccTLD (Country Code Top Level
Domain) managers, assisting in skills building within the global
community of ccTLD (Country Code Top Level Domain) managers,
and enhancing operational and technical cooperation among ccTLD
(Country Code Top Level Domain) managers.

Section 10.2. ORGANIZATION

The ccNSO (Country Code Names Supporting Organization) shall
consist of (a) ccTLD (Country Code Top Level Domain) managers
that have agreed in writing to be members of the ccNSO (Country
Code Names Supporting Organization) (see Section 10.4(b)) and
(b) a ccNSO (Country Code Names Supporting Organization)
Council responsible for managing the policy-development process

of the ccNSO (Country Code Names Supporting Organization).

Section 10.3. ccNSO (Country Code Names Supporting Organization) COUNCIL

(a) The ccNSO (Country Code Names Supporting Organization) Council shall consist of three ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members within each of ICANN (Internet Corporation for Assigned Names and Numbers)'s Geographic Regions in the manner described in Section 10.4(g) through Section 10.4(i); (ii) three ccNSO (Country Code Names Supporting Organization) Council members selected by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee; (iii) liaisons as described in Section 10.3(b); and (iv) observers as described in Section 10.3(c).

(b) There shall also be one liaison to the ccNSO (Country Code Names Supporting Organization) Council from each of the following organizations, to the extent they choose to appoint such a liaison: (i) the Governmental Advisory Committee (Advisory Committee); (ii) the At-Large Advisory Committee (Advisory Committee); and (iii) each of the Regional Organizations described in Section 10.5. These liaisons shall not be members of or entitled to vote on the ccNSO (Country Code Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO (Country Code Names Supporting Organization) Council. Appointments of liaisons shall be made by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair, and shall be for the term designated by the appointing organization as stated in the written notice. The appointing organization may recall from office or replace its liaison at any time by providing written notice of the recall or replacement to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

(c) The ccNSO (Country Code Names Supporting Organization) Council may agree with the Council of any other ICANN (Internet

Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) to exchange observers. Such observers shall not be members of or entitled to vote on the ccNSO (Country Code Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO (Country Code Names Supporting Organization) Council. The appointing Council may designate its observer (or revoke or change the designation of its observer) on the ccNSO (Country Code Names Supporting Organization) Council at any time by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

(d) (i) the regular term of each ccNSO (Country Code Names Supporting Organization) Council member shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting thereafter; (ii) the regular terms of the three ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members within each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region shall be staggered so that one member's term begins in a year divisible by three, a second member's term begins in the first year following a year divisible by three, and the third member's term begins in the second year following a year divisible by three; and (iii) the regular terms of the three ccNSO (Country Code Names Supporting Organization) Council members selected by the Nominating Committee shall be staggered in the same manner. Each ccNSO (Country Code Names Supporting Organization) Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

(e) A ccNSO (Country Code Names Supporting Organization) Council member may resign at any time by giving written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

(f) ccNSO (Country Code Names Supporting Organization) Council members may be removed for not attending three consecutive meetings of the ccNSO (Country Code Names Supporting Organization) Council without sufficient cause or for grossly inappropriate behavior, both as determined by at least a 66% vote of all of the members of the ccNSO (Country Code Names Supporting Organization) Council.

(g) A vacancy on the ccNSO (Country Code Names Supporting Organization) Council shall be deemed to exist in the case of the death, resignation, or removal of any ccNSO (Country Code Names Supporting Organization) Council member. Vacancies in the positions of the three members selected by the Nominating Committee shall be filled for the unexpired term involved by the Nominating Committee giving the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selection, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair. Vacancies in the positions of the ccNSO (Country Code Names Supporting Organization) Council members selected by ccNSO (Country Code Names Supporting Organization) members shall be filled for the unexpired term by the procedure described in Section 10.4(g) through (i).

(h) The role of the ccNSO (Country Code Names Supporting Organization) Council is to administer and coordinate the affairs of the ccNSO (Country Code Names Supporting Organization) (including coordinating meetings, including an annual meeting, of ccNSO (Country Code Names Supporting Organization) members as described in Section 10.4(f)) and to manage the development of policy recommendations in accordance with Section 10.6(a). The ccNSO (Country Code Names Supporting Organization) Council shall also undertake such other roles as the members of the ccNSO (Country Code Names Supporting Organization) shall decide from time to time.

(i) The ccNSO (Country Code Names Supporting Organization) Council shall nominate individuals to fill Seats 11 and 12 on the Board by written ballot or by action at a meeting; any such nomination must have affirmative votes of a majority of all the members of the ccNSO (Country Code Names Supporting

Organization) Council then in office. Notification of the ccNSO (Country Code Names Supporting Organization) Council's nominations shall be given by the ccNSO (Country Code Names Supporting Organization) Council Chair in writing to the EC (Empowered Community) Administration, with a copy to the Secretary, and the EC (Empowered Community) shall promptly act on it as provided in Section 7.25.

(j) The ccNSO (Country Code Names Supporting Organization) Council shall select from among its members the ccNSO (Country Code Names Supporting Organization) Council Chair and such Vice Chair(s) as it deems appropriate. Selections of the ccNSO (Country Code Names Supporting Organization) Council Chair and Vice Chair(s) shall be by written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all the members of the ccNSO (Country Code Names Supporting Organization) Council then in office. The term of office of the ccNSO (Country Code Names Supporting Organization) Council Chair and any Vice Chair(s) shall be as specified by the ccNSO (Country Code Names Supporting Organization) Council at or before the time the selection is made. The ccNSO (Country Code Names Supporting Organization) Council Chair or any Vice Chair(s) may be recalled from office by the same procedure as used for selection.

(k) The ccNSO (Country Code Names Supporting Organization) Council, subject to direction by the ccNSO (Country Code Names Supporting Organization) members, shall adopt such rules and procedures for the ccNSO (Country Code Names Supporting Organization) as it deems necessary, provided they are consistent with these Bylaws. Rules for ccNSO (Country Code Names Supporting Organization) membership and operating procedures adopted by the ccNSO (Country Code Names Supporting Organization) Council shall be published on the Website.

(l) Except as provided by Section 10.3(i) and Section 10.3(j), the ccNSO (Country Code Names Supporting Organization) Council shall act at meetings. The ccNSO (Country Code Names Supporting Organization) Council shall meet regularly on a schedule it determines, but not fewer than four times each calendar year. At the discretion of the ccNSO (Country Code Names Supporting Organization) Council, meetings may be held in person or by other

means, provided that all ccNSO (Country Code Names Supporting Organization) Council members are permitted to participate by at least one means described in Section 10.3(n). Except where determined by a majority vote of the members of the ccNSO (Country Code Names Supporting Organization) Council present that a closed session is appropriate, physical meetings shall be open to attendance by all interested persons. To the extent practicable, ccNSO (Country Code Names Supporting Organization) Council meetings should be held in conjunction with meetings of the Board, or of one or more of ICANN (Internet Corporation for Assigned Names and Numbers)'s other Supporting Organizations (Supporting Organizations).

(m) Notice of time and place (and information about means of participation other than personal attendance) of all meetings of the ccNSO (Country Code Names Supporting Organization) Council shall be provided to each ccNSO (Country Code Names Supporting Organization) Council member, liaison, and observer by e-mail, telephone, facsimile, or a paper notice delivered personally or by postal mail. In case the notice is sent by postal mail, it shall be sent at least 21 days before the day of the meeting. In case the notice is delivered personally or by telephone, facsimile, or e-mail it shall be provided at least seven days before the day of the meeting. At least seven days in advance of each ccNSO (Country Code Names Supporting Organization) Council meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

(n) Members of the ccNSO (Country Code Names Supporting Organization) Council may participate in a meeting of the ccNSO (Country Code Names Supporting Organization) Council through personal attendance or use of electronic communication (such as telephone or video conference), provided that (i) all ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting can speak to and hear one another, (ii) all ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting are provided the means of fully participating in all matters before the ccNSO (Country Code Names Supporting Organization) Council, and (iii)there is a reasonable means of verifying the identity of ccNSO (Country Code Names Supporting Organization) Council members participating in

the meeting and their votes. A majority of the ccNSO (Country Code Names Supporting Organization) Council members (i.e. those entitled to vote) then in office shall constitute a quorum for the transaction of business, and actions by a majority vote of the ccNSO (Country Code Names Supporting Organization) Council members present at any meeting at which there is a quorum shall be actions of the ccNSO (Country Code Names Supporting Organization) Council, unless otherwise provided in these Bylaws. The ccNSO (Country Code Names Supporting Organization) Council shall transmit minutes of its meetings to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following the meeting, and no later than 21 days following the meeting.

Section 10.4. MEMBERSHIP

(a) The ccNSO (Country Code Names Supporting Organization) shall have a membership consisting of ccTLD (Country Code Top Level Domain) managers. Any ccTLD (Country Code Top Level Domain) manager that meets the membership qualifications stated in Section 10.4(b) shall be entitled to be members of the ccNSO (Country Code Names Supporting Organization). For purposes of this Article 10, a ccTLD (Country Code Top Level Domain) manager is the organization or entity responsible for managing an ISO (International Organization for Standardization) 3166 country-code top-level domain, or under any later variant, for that country-code top-level domain.

(b) Any ccTLD (Country Code Top Level Domain) manager may become a ccNSO (Country Code Names Supporting Organization) member by submitting an application to a person designated by the ccNSO (Country Code Names Supporting Organization) Council to receive applications. The application shall be in writing in a form designated by the ccNSO (Country Code Names Supporting Organization) Council. The application shall include the ccTLD (Country Code Top Level Domain) manager's recognition of the role of the ccNSO (Country Code Names Supporting Organization) within the ICANN (Internet Corporation for Assigned Names and Numbers) structure as well as the ccTLD (Country Code Top Level Domain) manager's agreement, for the duration of its membership in

the ccNSO (Country Code Names Supporting Organization), (i) to adhere to rules of the ccNSO (Country Code Names Supporting Organization), including membership rules, (ii) to abide by policies developed and recommended by the ccNSO (Country Code Names Supporting Organization) and adopted by the Board in the manner described by Section 10.4(j) and Section 10.4(k), and (ii) to pay ccNSO (Country Code Names Supporting Organization) membership fees established by the ccNSO (Country Code Names Supporting Organization) Council under Section 10.7(c). A ccNSO (Country Code Names Supporting Organization) member may resign from membership at any time by giving written notice to a person designated by the ccNSO (Country Code Names Supporting Organization) Council to receive notices of resignation. Upon resignation the ccTLD (Country Code Top Level Domain) manager ceases to agree to (A)adhere to rules of the ccNSO (Country Code Names Supporting Organization), including membership rules, (B) to abide by policies developed and recommended by the ccNSO (Country Code Names Supporting Organization) and adopted by the Board in the manner described by Section 10.4(j) and Section 10.4(k), and (C) to pay ccNSO (Country Code Names Supporting Organization) membership fees established by the ccNSO (Country Code Names Supporting Organization) Council under Section 10.7(c). In the absence of designation by the ccNSO (Country Code Names Supporting Organization) Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, who shall notify the ccNSO (Country Code Names Supporting Organization) Council of receipt of any such applications and notices.

(c) Neither membership in the ccNSO (Country Code Names Supporting Organization) nor membership in any Regional Organization described in Section 10.5 shall be a condition for access to or registration in the IANA (Internet Assigned Numbers Authority) database. Any individual relationship a ccTLD (Country Code Top Level Domain) manager has with ICANN (Internet Corporation for Assigned Names and Numbers) or the ccTLD (Country Code Top Level Domain) manager's receipt of IANA (Internet Assigned Numbers Authority) services is not in any way contingent upon membership in the ccNSO (Country Code Names Supporting Organization).

(d) The Geographic Regions of ccTLDs shall be as described in Section 7.5. For purposes of this Article 10, managers of ccTLDs within a Geographic Region that are members of the ccNSO (Country Code Names Supporting Organization) are referred to as ccNSO (Country Code Names Supporting Organization) members "within" the Geographic Region, regardless of the physical location of the ccTLD (Country Code Top Level Domain) manager. In cases where the Geographic Region of a ccNSO (Country Code Names Supporting Organization) member is unclear, the ccTLD (Country Code Top Level Domain) member should self-select according to procedures adopted by the ccNSO (Country Code Names Supporting Organization) Council.

(e) Each ccTLD (Country Code Top Level Domain) manager may designate in writing a person, organization, or entity to represent the ccTLD (Country Code Top Level Domain) manager. In the absence of such a designation, the ccTLD (Country Code Top Level Domain) manager shall be represented by the person, organization, or entity listed as the administrative contact in the IANA (Internet Assigned Numbers Authority) database.

(f) There shall be an annual meeting of ccNSO (Country Code Names Supporting Organization) members, which shall be coordinated by the ccNSO (Country Code Names Supporting Organization) Council. Annual meetings should be open for all to attend, and a reasonable opportunity shall be provided for ccTLD (Country Code Top Level Domain) managers that are not members of the ccNSO (Country Code Names Supporting Organization) as well as other non-members of the ccNSO (Country Code Names Supporting Organization) to address the meeting. To the extent practicable, annual meetings of the ccNSO (Country Code Names Supporting Organization) members shall be held in person and should be held in conjunction with meetings of the Board, or of one or more of ICANN (Internet Corporation for Assigned Names and Numbers)'s other Supporting Organizations (Supporting Organizations).

(g) The ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members from each Geographic Region (see Section 10.3(a)(i)) shall be selected through nomination, and if

necessary election, by the ccNSO (Country Code Names Supporting Organization) members within that Geographic Region. At least 90 days before the end of the regular term of any ccNSO (Country Code Names Supporting Organization)-member-selected member of the ccNSO (Country Code Names Supporting Organization) Council, or upon the occurrence of a vacancy in the seat of such a ccNSO (Country Code Names Supporting Organization) Council member, the ccNSO (Country Code Names Supporting Organization) Council shall establish a nomination and election schedule, which shall be sent to all ccNSO (Country Code Names Supporting Organization) members within the Geographic Region and posted on the Website.

(h) Any ccNSO (Country Code Names Supporting Organization) member may nominate an individual to serve as a ccNSO (Country Code Names Supporting Organization) Council member representing the ccNSO (Country Code Names Supporting Organization) member's Geographic Region. Nominations must be seconded by another ccNSO (Country Code Names Supporting Organization) member from the same Geographic Region. By accepting their nomination, individuals nominated to the ccNSO (Country Code Names Supporting Organization) Council agree to support the policies committed to by ccNSO (Country Code Names Supporting Organization) members.

(i) If at the close of nominations there are no more candidates nominated (with seconds and acceptances) in a particular Geographic Region than there are seats on the ccNSO (Country Code Names Supporting Organization) Council available for that Geographic Region, then the nominated candidates shall be selected to serve on the ccNSO (Country Code Names Supporting Organization) Council. Otherwise, an election by written ballot (which may be by e-mail) shall be held to select the ccNSO (Country Code Names Supporting Organization) Council members from among those nominated (with seconds and acceptances), with ccNSO (Country Code Names Supporting Organization) members from the Geographic Region being entitled to vote in the election through their designated representatives. In such an election, a majority of all ccNSO (Country Code Names Supporting Organization) members in the Geographic Region entitled to vote shall constitute a quorum, and the selected candidate must receive

the votes of a majority of those cast by ccNSO (Country Code Names Supporting Organization) members within the Geographic Region. The ccNSO (Country Code Names Supporting Organization) Council Chair shall provide the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary prompt written notice of the selection of ccNSO (Country Code Names Supporting Organization) Council members under this paragraph.

(j) Subject to Section 10.4(k), ICANN (Internet Corporation for Assigned Names and Numbers) policies shall apply to ccNSO (Country Code Names Supporting Organization) members by virtue of their membership to the extent, and only to the extent, that the policies (i) only address issues that are within scope of the ccNSO (Country Code Names Supporting Organization) according to Section 10.6(a) and Annex C; (ii) have been developed through the ccPDP as described in Section 10.6, and (iii) have been recommended as such by the ccNSO (Country Code Names Supporting Organization) to the Board, and (iv) are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD (Country Code Top Level Domain) manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN (Internet Corporation for Assigned Names and Numbers) in its activities concerning ccTLDs.

(k) A ccNSO (Country Code Names Supporting Organization) member shall not be bound if it provides a declaration to the ccNSO (Country Code Names Supporting Organization) Council stating that (i) implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in Section 10.4(j)), and (ii) failure to implement the policy would not impair DNS (Domain Name System) operations or interoperability, giving detailed reasons supporting its statements. After investigation, the ccNSO (Country Code Names Supporting Organization) Council will provide a response to the ccNSO (Country Code Names Supporting Organization) member's declaration. If there is a ccNSO (Country Code Names Supporting Organization) Council consensus disagreeing with the declaration, which may be demonstrated by a vote of 14 or more members of the ccNSO (Country Code Names Supporting Organization) Council, the response shall state the ccNSO (Country Code Names Supporting Organization) Council's disagreement with the

declaration and the reasons for disagreement. Otherwise, the response shall state the ccNSO (Country Code Names Supporting Organization) Council's agreement with the declaration. If the ccNSO (Country Code Names Supporting Organization) Council disagrees, the ccNSO (Country Code Names Supporting Organization) Council shall review the situation after a six-month period. At the end of that period, the ccNSO (Country Code Names Supporting Organization) Council shall make findings as to (A) whether the ccNSO (Country Code Names Supporting Organization) members' implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in Section 10.4(j)) and (B) whether failure to implement the policy would impair DNS (Domain Name System) operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO (Country Code Names Supporting Organization) Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO (Country Code Names Supporting Organization) Council.

Section 10.5. REGIONAL ORGANIZATIONS

The ccNSO (Country Code Names Supporting Organization) Council may designate a Regional Organization for each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region, provided that the Regional Organization is open to full membership by all ccNSO (Country Code Names Supporting Organization) members within the Geographic Region. Decisions to designate or de-designate a Regional Organization shall require a 66% vote of all of the members of the ccNSO (Country Code Names Supporting Organization) Council and shall be subject to review according to procedures established by the Board.

Section 10.6. ccNSO (Country Code Names Supporting Organization) POLICY-DEVELOPMENT PROCESS AND SCOPE

(a) The scope of the ccNSO (Country Code Names Supporting Organization)'s policy-development role shall be as stated in Annex C to these Bylaws; any modifications to the scope shall be recommended to the Board by the ccNSO (Country Code Names

Supporting Organization) by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

(b) In developing global policies within the scope of the ccNSO (Country Code Names Supporting Organization) and recommending them to the Board, the ccNSO (Country Code Names Supporting Organization) shall follow the ccNSO (Country Code Names Supporting Organization) Policy-Development Process ("**ccPDP**"). The ccPDP shall be as stated in Annex B to these Bylaws; modifications shall be recommended to the Board by the ccNSO (Country Code Names Supporting Organization) by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

Section 10.7. STAFF SUPPORT AND FUNDING

(a) Upon request of the ccNSO (Country Code Names Supporting Organization) Council, a member of the ICANN (Internet Corporation for Assigned Names and Numbers) staff may be assigned to support the ccNSO (Country Code Names Supporting Organization) and shall be designated as the ccNSO (Country Code Names Supporting Organization) Staff Manager. Alternatively, the ccNSO (Country Code Names Supporting Organization) Council may designate, at ccNSO (Country Code Names Supporting Organization) expense, another person to serve as ccNSO (Country Code Names Supporting Organization) Staff Manager. The work of the ccNSO (Country Code Names Supporting Organization) Staff Manager on substantive matters shall be assigned by the Chair of the ccNSO (Country Code Names Supporting Organization) Council, and may include the duties of ccPDP Issue Manager.

(b) Upon request of the ccNSO (Country Code Names Supporting Organization) Council, ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the ccNSO (Country Code Names Supporting Organization) to carry out its responsibilities. Such support shall not include an obligation for ICANN (Internet Corporation for Assigned Names and Numbers) to fund travel expenses incurred by ccNSO (Country Code Names Supporting Organization) participants for travel to any meeting of the ccNSO (Country Code Names Supporting Organization) or for any other purpose. The ccNSO

(Country Code Names Supporting Organization) Council may make provision, at ccNSO (Country Code Names Supporting Organization) expense, for administrative and operational support in addition or as an alternative to support provided by ICANN (Internet Corporation for Assigned Names and Numbers).

(c) The ccNSO (Country Code Names Supporting Organization) Council shall establish fees to be paid by ccNSO (Country Code Names Supporting Organization) members to defray ccNSO (Country Code Names Supporting Organization) expenses as described in Section 10.7(a) and Section 10.7(b), as approved by the ccNSO (Country Code Names Supporting Organization) members.

(d) Written notices given to the Secretary under this Article 10 shall be permanently retained, and shall be made available for review by the ccNSO (Country Code Names Supporting Organization) Council on request. The Secretary shall also maintain the roll of members of the ccNSO (Country Code Names Supporting Organization), which shall include the name of each ccTLD (Country Code Top Level Domain) manager's designated representative, and which shall be posted on the Website.

ARTICLE 11 GENERIC NAMES SUPPORTING ORGANIZATION

Section 11.1. DESCRIPTION

There shall be a policy-development body known as the Generic Names Supporting Organization (Supporting Organization) (the "**Generic Names Supporting Organization (Supporting Organization)**" or "**GNSO (Generic Names Supporting Organization)**", and collectively with the ASO (Address Supporting Organization) and ccNSO (Country Code Names Supporting Organization), the "**Supporting Organizations (Supporting Organizations)**")), which shall be responsible for developing and recommending to the Board substantive policies relating to generic top-level domains and other responsibilities of the GNSO (Generic Names Supporting Organization) as set forth in these Bylaws.

Section 11.2. ORGANIZATION

The GNSO (Generic Names Supporting Organization) shall consist of:

(a) A number of Constituencies, where applicable, organized within the Stakeholder Groups as described in Section 11.5;

(b) Four Stakeholder Groups organized within Houses as described in Section 11.5;

(c) Two Houses within the GNSO (Generic Names Supporting Organization) Council as described in Section 11.3(h);

(d) A GNSO (Generic Names Supporting Organization) Council responsible for managing the policy development process of the GNSO (Generic Names Supporting Organization), as described in Section 11.3; and

(e) Except as otherwise defined in these Bylaws, the four Stakeholder Groups and the Constituencies will be responsible for defining their own charters with the approval of their members and of the Board.

Section 11.3. GNSO (Generic Names Supporting Organization) COUNCIL

(a) Subject to Section 11.5, the GNSO (Generic Names Supporting Organization) Council shall consist of:

(i) three representatives selected from the Registries Stakeholder Group;

(ii) three representatives selected from the Registrars Stakeholder Group;

(iii) six representatives selected from the Commercial Stakeholder Group;

(iv) six representatives selected from the Non-Commercial Stakeholder Group; and

(v) three representatives selected by the ICANN (Internet

Corporation for Assigned Names and Numbers) Nominating Committee, one of which shall be non-voting, but otherwise entitled to participate on equal footing with other members of the GNSO (Generic Names Supporting Organization) Council including, e.g. the making and seconding of motions and of serving as Chair if elected. One Nominating Committee appointee voting representative shall be assigned to each House (as described in Section 11.3(h)) by the Nominating Committee.

No individual representative may hold more than one seat on the GNSO (Generic Names Supporting Organization) Council at the same time.

Stakeholder Groups should, in their charters, ensure their representation on the GNSO (Generic Names Supporting Organization) Council is as diverse as possible and practicable, including considerations of geography, GNSO (Generic Names Supporting Organization) Constituency, sector, ability and gender.

There may also be liaisons to the GNSO (Generic Names Supporting Organization) Council from other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and/or Advisory Committees (Advisory Committees), from time to time. The appointing organization shall designate, revoke, or change its liaison on the GNSO (Generic Names Supporting Organization) Council by providing written notice to the Chair of the GNSO (Generic Names Supporting Organization) Council and to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary. Liaisons shall not be members of or entitled to vote, to make or second motions, or to serve as an officer on the GNSO (Generic Names Supporting Organization) Council, but otherwise liaisons shall be entitled to participate on equal footing with members of the GNSO (Generic Names Supporting Organization) Council.

(b) The regular term of each GNSO (Generic Names Supporting Organization) Council member shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the second

ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting thereafter. The regular term of two representatives selected from Stakeholder Groups with three Council seats shall begin in even-numbered years and the regular term of the other representative selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of three representatives selected from Stakeholder Groups with six Council seats shall begin in even-numbered years and the regular term of the other three representatives selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of one of the three members selected by the Nominating Committee shall begin in even-numbered years and the regular term of the other two of the three members selected by the Nominating Committee shall begin in odd-numbered years. Each GNSO (Generic Names Supporting Organization) Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

Except in a "special circumstance," such as, but not limited to, meeting geographic or other diversity requirements defined in the Stakeholder Group charters, where no alternative representative is available to serve, no Council member may be selected to serve more than two consecutive terms, in such a special circumstance a Council member may serve one additional term. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. A former Council member who has served two consecutive terms must remain out of office for one full term prior to serving any subsequent term as Council member. A "special circumstance" is defined in the GNSO (Generic Names Supporting Organization) Operating Procedures.

(c) A vacancy on the GNSO (Generic Names Supporting Organization) Council shall be deemed to exist in the case of the death, resignation, or removal of any member. Vacancies shall be filled for the unexpired term by the appropriate Nominating Committee or Stakeholder Group that selected the member holding the position before the vacancy occurred by giving the GNSO (Generic Names Supporting Organization) Secretariat written notice of its selection. Procedures for handling Stakeholder Group-appointed GNSO (Generic Names Supporting Organization) Council

member vacancies, resignations, and removals are prescribed in the applicable Stakeholder Group Charter.

A GNSO (Generic Names Supporting Organization) Council member selected by the Nominating Committee may be removed for cause: (i) stated by a three-fourths (3/4) vote of all members of the applicable House to which the Nominating Committee appointee is assigned; or (ii) stated by a three-fourths (3/4) vote of all members of each House in the case of the non-voting Nominating Committee appointee (see Section 11.3(h)). Such removal shall be subject to reversal by the ICANN (Internet Corporation for Assigned Names and Numbers) Board on appeal by the affected GNSO (Generic Names Supporting Organization) Council member.

(d) The GNSO (Generic Names Supporting Organization) Council is responsible for managing the policy development process of the GNSO (Generic Names Supporting Organization). It shall adopt such procedures (the "**GNSO (Generic Names Supporting Organization) Operating Procedures**") as it sees fit to carry out that responsibility, provided that such procedures are approved by a majority vote of each House. The GNSO (Generic Names Supporting Organization) Operating Procedures shall be effective upon the expiration of a twenty-one (21) day public comment period, and shall be subject to Board oversight and review. Until any modifications are recommended by the GNSO (Generic Names Supporting Organization) Council, the applicable procedures shall be as set forth in Section 11.6.

(e) No more than one officer, director or employee of any particular corporation or other organization (including its subsidiaries and affiliates) shall serve on the GNSO (Generic Names Supporting Organization) Council at any given time.

(f) The GNSO (Generic Names Supporting Organization) shall nominate by written ballot or by action at a meeting individuals to fill Seats 13 and 14 on the Board. Each of the two voting Houses of the GNSO (Generic Names Supporting Organization), as described in Section 11.3(h), shall make a nomination to fill one of two Board seats, as outlined below; any such nomination must have affirmative votes compromising sixty percent (60%) of all the respective voting House members:

(i) the Contracted Parties House (as described in Section 11.3(h)(i)) shall select a representative to fill Seat 13; and

(ii) the Non-Contracted Parties House (as described in Section 11.3(h)(ii)) shall select a representative to fill Seat 14.

Election procedures are defined in the GNSO (Generic Names Supporting Organization) Operating Procedures.

Notification of the Board seat nominations shall be given by the GNSO (Generic Names Supporting Organization) Chair in writing to the EC (Empowered Community) Administration, with a copy to the Secretary, and the EC (Empowered Community) shall promptly act on it as provided in Section 7.25.

(g) The GNSO (Generic Names Supporting Organization) Council shall select the GNSO (Generic Names Supporting Organization) Chair for a term the GNSO (Generic Names Supporting Organization) Council specifies, but not longer than one year. Each House (as described in Section 11.3(h)) shall select a Vice-Chair, who will be a Vice-Chair of the whole of the GNSO (Generic Names Supporting Organization) Council, for a term the GNSO (Generic Names Supporting Organization) Council specifies, but not longer than one year. The procedures for selecting the Chair and any other officers are contained in the GNSO (Generic Names Supporting Organization) Operating Procedures. In the event that the GNSO (Generic Names Supporting Organization) Council has not elected a GNSO (Generic Names Supporting Organization) Chair by the end of the previous Chair's term, the Vice-Chairs will serve as Interim GNSO (Generic Names Supporting Organization) Co-Chairs until a successful election can be held.

(h) Except as otherwise required in these Bylaws, for voting purposes, the GNSO (Generic Names Supporting Organization) Council (see Section 11.3(a)) shall be organized into a bicameral House structure as described below:

(i) the Contracted Parties House includes the Registries Stakeholder Group (three members), the Registrars Stakeholder Group (three members), and one voting member appointed by the ICANN (Internet Corporation for Assigned

Names and Numbers) Nominating Committee for a total of seven voting members; and

(ii) the Non Contracted Parties House includes the Commercial Stakeholder Group (six members), the Non-Commercial Stakeholder Group (six members), and one voting member appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee to that House for a total of thirteen voting members.

Except as otherwise specified in these Bylaws, each member of a voting House is entitled to cast one vote in each separate matter before the GNSO (Generic Names Supporting Organization) Council.

(i) Except as otherwise specified in these Bylaws, Annex A, Annex A-1 or Annex A-2 hereto, or the GNSO (Generic Names Supporting Organization) Operating Procedures, the default threshold to pass a GNSO (Generic Names Supporting Organization) Council motion or other voting action requires a simple majority vote of each House. The voting thresholds described below shall apply to the following GNSO (Generic Names Supporting Organization) actions:

(i) Create an Issues Report: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.

(ii) Initiate a Policy Development Process ("**PDP (Policy Development Process)**") Within Scope (as described in Annex A): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.

(iii) Initiate a PDP (Policy Development Process) Not Within Scope: requires an affirmative vote of GNSO (Generic Names Supporting Organization) Supermajority (as defined in Section 11.3(i)(xix)).

(iv) Approve a PDP (Policy Development Process) Team Charter for a PDP (Policy Development Process) Within Scope: requires an affirmative vote of more than one-third

(1/3) of each House or more than two-thirds (2/3) of one House.

(v) Approve a PDP (Policy Development Process) Team Charter for a PDP (Policy Development Process) Not Within Scope: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(vi) Changes to an Approved PDP (Policy Development Process) Team Charter: For any PDP (Policy Development Process) Team Charter approved under (iv) or (v) above, the GNSO (Generic Names Supporting Organization) Council may approve an amendment to the Charter through a simple majority vote of each House.

(vii) Terminate a PDP (Policy Development Process): Once initiated, and prior to the publication of a Final Report, the GNSO (Generic Names Supporting Organization) Council may terminate a PDP (Policy Development Process) only for significant cause, upon a motion that passes with a GNSO (Generic Names Supporting Organization) Supermajority Vote in favor of termination.

(viii) Approve a PDP (Policy Development Process) Recommendation Without a GNSO (Generic Names Supporting Organization) Supermajority: requires an affirmative vote of a majority of each House and further requires that one GNSO (Generic Names Supporting Organization) Council member representative of at least 3 of the 4 Stakeholder Groups supports the Recommendation.

(ix) Approve a PDP (Policy Development Process) Recommendation With a GNSO (Generic Names Supporting Organization) Supermajority: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority,

(x) Approve a PDP (Policy Development Process) Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN (Internet Corporation for Assigned Names and Numbers) contract provision specifies that "a two-thirds vote of the council" demonstrates the

presence of a consensus, the GNSO (Generic Names Supporting Organization) Supermajority vote threshold will have to be met or exceeded.

(xi) Modification of Approved PDP (Policy Development Process) Recommendation: Prior to Final Approval by the Board, an Approved PDP (Policy Development Process) Recommendation may be modified or amended by the GNSO (Generic Names Supporting Organization) Council with a GNSO (Generic Names Supporting Organization) Supermajority vote.

(xii) Initiation of an Expedited Policy Development Process ("**EPDP**"): requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(xiii) Approve an EPDP Team Charter: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(xiv) Approval of EPDP Recommendations: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(xv) Approve an EPDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN (Internet Corporation for Assigned Names and Numbers) contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO (Generic Names Supporting Organization) Supermajority vote threshold will have to be met or exceeded.

(xvi) Initiation of a GNSO (Generic Names Supporting Organization) Guidance Process ("**GGP**"): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.

(xvii) Rejection of Initiation of a GGP Requested by the Board: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(xviii) Approval of GGP Recommendations: requires an

affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(xix) A "**GNSO (Generic Names Supporting Organization) Supermajority**" shall mean: (A) two-thirds (2/3) of the Council members of each House, or (B) three-fourths (3/4) of the Council members of one House and a majority of the Council members of the other House.

(j) The voting thresholds described below shall apply to the following GNSO (Generic Names Supporting Organization) actions as a Decisional Participant in the Empowered Community. For any action not listed, the default threshold for the GNSO (Generic Names Supporting Organization) to act as a Decisional Participant in the Empowered community requires a simple majority vote of each House:

(i) Amendment of PTI Articles of Incorporation as contemplated in Section 16.2: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(ii) GNSO (Generic Names Supporting Organization) Council Inspection Request as contemplated in Section 22.7: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.

(iii) GNSO (Generic Names Supporting Organization) Council Inspection Remedy, as contemplated in Section 22.7 - e, and Stakeholder Group / Constituency Inspection Remedy, as contemplated in Section 22.7 – e(ii) and e(iii), for an inspection requested by the GNSO (Generic Names Supporting Organization) as a Decisional Participant in the Empowered Community: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.

(iv) Amendments to Fundamental Bylaws and Article Amendments as contemplated by Section 25.2 of the Bylaws, Asset Sales, as contemplated by Article 26 of the Bylaws, amendments to ICANN (Internet Corporation for Assigned

Names and Numbers) Articles of Incorporation: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(v) Approval of a Nominating Committee Director Removal Petition as contemplated in Annex D, Article 3, Section 3.1(b) and support for a petition submitted by a Petitioning Decisional Participant as contemplated in Section 3.2(d): requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(vi) Approval of a Nominating Committee Director Removal Supported Petition as contemplated in Annex D, Article 3, Section 3.1(f): requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(vii) Approval of a petition to remove a director holding seat 13 or 14 as contemplated in Annex D, Article 3, Section 3.2(a): requires an affirmative vote of at least three-fourths (3/4) of the House that appointed that Director.

(viii) Approval of a petition notice to remove a director holding seat 13 or 14 as contemplated in Annex D, Article 3, Section 3.2(f): requires an affirmative vote of at least three-fourths (3/4) of the GNSO (Generic Names Supporting Organization) Council and at least three-fourths (3/4) of the House that appointed that Director.

(ix) Approval of a Board Recall Petition as contemplated in Annex D, Article 3, Section 3.3(b) and support for another Petitioning Decisional Participant: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(x) Approval of a Board Recall Supported Petition as contemplated in Annex D, Article 3, Section 3.3(e): requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

Section 11.4. STAFF SUPPORT AND FUNDING

(a) A member of the ICANN (Internet Corporation for Assigned Names and Numbers) staff shall be assigned to support the GNSO (Generic Names Supporting Organization), whose work on substantive matters shall be assigned by the Chair of the GNSO (Generic Names Supporting Organization) Council, and shall be designated as the GNSO (Generic Names Supporting Organization) Staff Manager ("**Staff Manager**").

(b) ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the GNSO (Generic Names Supporting Organization) to carry out its responsibilities. Such support shall not include an obligation for ICANN (Internet Corporation for Assigned Names and Numbers) to fund travel expenses incurred by GNSO (Generic Names Supporting Organization) participants for travel to any meeting of the GNSO (Generic Names Supporting Organization) or for any other purpose. ICANN (Internet Corporation for Assigned Names and Numbers) may, at its discretion, fund travel expenses for GNSO (Generic Names Supporting Organization) participants under any travel support procedures or guidelines that it may adopt from time to time.

Section 11.5. STAKEHOLDER GROUPS

(a) The following "**Stakeholder Groups**" are hereby recognized as representative of a specific group of one or more "**Constituencies**" or interest groups:

> (i) Registries Stakeholder Group representing all gTLD (generic Top Level Domain) registries under contract to ICANN (Internet Corporation for Assigned Names and Numbers);
>
> (ii) Registrars Stakeholder Group representing all registrars accredited by and under contract to ICANN (Internet Corporation for Assigned Names and Numbers);
>
> (iii) Commercial Stakeholder Group representing the full range of large and small commercial entities of the Internet ("**Commercial Stakeholder Group**"), which includes the Business Constituency ("**Business Constituency**"),

Intellectual Property Constituency ("**Intellectual Property Constituency**") and the Internet Service Providers and Connectivity Providers Constituency ("**Internet Service Providers and Connectivity Providers Constituency**"); and

(iv) Non-Commercial Stakeholder Group representing the full range of non-commercial entities of the Internet.

(b) Each Stakeholder Group is assigned a specific number of GNSO (Generic Names Supporting Organization) Council seats in accordance with Section 11.3(a).

(c) Each Stakeholder Group identified in Section 11.3(a) and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN (Internet Corporation for Assigned Names and Numbers) Board. Recognition is granted by the Board based upon the extent to which, in fact, the entity represents the global interests of the stakeholder communities it purports to represent and operates to the maximum extent feasible in an open and transparent manner consistent with procedures designed to ensure fairness. Stakeholder Group and Constituency Charters may be reviewed periodically as prescribed by the Board.

(d) Any group of individuals or entities may petition the Board for recognition as a new or separate Constituency in the Non-Contracted Parties House. Any such petition shall contain:

(i) A detailed explanation of why the addition of such a Constituency will improve the ability of the GNSO (Generic Names Supporting Organization) to carry out its policy-development responsibilities;

(ii) A detailed explanation of why the proposed new Constituency adequately represents, on a global basis, the stakeholders it seeks to represent;

(iii) A recommendation for organizational placement within a particular Stakeholder Group; and

(iv) A proposed charter that adheres to the principles and procedures contained in these Bylaws.

Any petition for the recognition of a new Constituency and the associated charter shall be posted for public comment.

(e) The Board may create new Constituencies as described in Section 11.5(c) in response to such a petition, or on its own motion, if the Board determines that such action would serve the purposes of ICANN (Internet Corporation for Assigned Names and Numbers). In the event the Board is considering acting on its own motion it shall post a detailed explanation of why such action is necessary or desirable, set a reasonable time for public comment, and not make a final decision on whether to create such new Constituency until after reviewing all comments received. Whenever the Board posts a petition or recommendation for a new Constituency for public comment, the Board shall notify the GNSO (Generic Names Supporting Organization) Council and the appropriate Stakeholder Group affected and shall consider any response to that notification prior to taking action.

Section 11.6. POLICY DEVELOPMENT PROCESS

The policy-development procedures to be followed by the GNSO (Generic Names Supporting Organization) shall be as stated in Annex A to these Bylaws. These procedures may be supplemented or revised in the manner stated in Section 11.3(d).

ARTICLE 12 ADVISORY COMMITTEES

Section 12.1. GENERAL

The Board may create one or more "**Advisory Committees (Advisory Committees)**" in addition to those set forth in this Article 12. Advisory Committee (Advisory Committee) membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. Advisory Committees (Advisory Committees) shall have no legal authority to act for ICANN (Internet Corporation for Assigned Names and Numbers), but shall report their findings and recommendations to the Board.

Section 12.2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following Advisory Committees (Advisory Committees):

(a) Governmental Advisory Committee (Advisory Committee)

> (i) The Governmental Advisory Committee (Advisory Committee) should consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers) as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN (Internet Corporation for Assigned Names and Numbers)'s policies and various laws and international agreements or where they may affect public policy issues.
>
> (ii) Membership in the Governmental Advisory Committee (Advisory Committee) shall be open to all national governments. Membership shall also be open to Distinct Economies as recognized in international fora, and multinational governmental organizations and treaty organizations, on the invitation of the Governmental Advisory Committee (Advisory Committee) through its Chair.
>
> (iii) The Governmental Advisory Committee (Advisory Committee) may adopt its own charter and internal operating principles or procedures to guide its operations, to be published on the Website.
>
> (iv) The chair of the Governmental Advisory Committee (Advisory Committee) shall be elected by the members of the Governmental Advisory Committee (Advisory Committee) pursuant to procedures adopted by such members.
>
> (v) Each member of the Governmental Advisory Committee (Advisory Committee) shall appoint one accredited representative to the Governmental Advisory Committee (Advisory Committee). The accredited representative of a member must hold a formal official position with the member's public administration. The term "official" includes a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization and whose primary

function with such government, public authority, or organization is to develop or influence governmental or public policies.

(vi) The Governmental Advisory Committee (Advisory Committee) shall annually appoint one Liaison to the Board, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee.

(vii) The Governmental Advisory Committee (Advisory Committee) may designate a non-voting liaison to each of the Supporting Organization (Supporting Organization) Councils and Advisory Committees (Advisory Committees), to the extent the Governmental Advisory Committee (Advisory Committee) deems it appropriate and useful to do so.

(viii) The Board shall notify the Chair of the Governmental Advisory Committee (Advisory Committee) in a timely manner of any proposal raising public policy issues on which it or any of the Supporting Organizations (Supporting Organizations) or Advisory Committees (Advisory Committees) seeks public comment, and shall take duly into account any timely response to that notification prior to taking action.

(ix) The Governmental Advisory Committee (Advisory Committee) may put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.

(x) The advice of the Governmental Advisory Committee (Advisory Committee) on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the Board determines to take an action that is not consistent with Governmental Advisory Committee (Advisory Committee) advice, it shall so inform the Governmental Advisory Committee (Advisory Committee) and state the reasons why it decided not to follow that advice. Any Governmental Advisory Committee (Advisory Committee) advice approved by a full Governmental Advisory Committee

(Advisory Committee) consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection ("**GAC (Governmental Advisory Committee) Consensus (Consensus) Advice**"), may only be rejected by a vote of no less than 60% of the Board, and the Governmental Advisory Committee (Advisory Committee) and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The Governmental Advisory Committee (Advisory Committee) will state whether any advice it gives to the Board is GAC (Governmental Advisory Committee) Consensus (Consensus) Advice.

(xi) If GAC (Governmental Advisory Committee) Consensus (Consensus) Advice is rejected by the Board pursuant to Section 12.2(a)(x) and if no such mutually acceptable solution can be found, the Board will state in its final decision the reasons why the Governmental Advisory Committee (Advisory Committee) advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee (Advisory Committee) members with regard to public policy issues falling within their responsibilities.

(b) Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee)

(i) The role of the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) ("**Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee)**" or "**SSAC (Security and Stability Advisory Committee)**") is to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems. It shall have the following responsibilities:

(A) To communicate on security matters with the Internet

technical community and the operators and managers of critical DNS (Domain Name System) infrastructure services, to include the root name server operator community, the top-level domain registries and registrars, the operators of the reverse delegation trees such as in-addr.arpa and ip6.arpa, and others as events and developments dictate. The SSAC (Security and Stability Advisory Committee) shall gather and articulate requirements to offer to those engaged in technical revision of the protocols related to DNS (Domain Name System) and address allocation and those engaged in operations planning.

(B) To engage in ongoing threat assessment and risk analysis of the Internet naming and address allocation services to assess where the principal threats to stability and security lie, and to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community accordingly. The SSAC (Security and Stability Advisory Committee) shall recommend any necessary audit activity to assess the current status of DNS (Domain Name System) and address allocation security in relation to identified risks and threats.

(C) To communicate with those who have direct responsibility for Internet naming and address allocation security matters (IETF (Internet Engineering Task Force), RSSAC (Root Server System Advisory Committee) (as defined in Section 12.2(c)(i)), RIRs, name registries, etc.), to ensure that its advice on security risks, issues, and priorities is properly synchronized with existing standardization, deployment, operational, and coordination activities. The SSAC (Security and Stability Advisory Committee) shall monitor these activities and inform the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on their progress, as appropriate.

(D) To report periodically to the Board on its activities.

(E) To make policy recommendations to the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board.

(ii) The SSAC (Security and Stability Advisory Committee)'s

chair and members shall be appointed by the Board. SSAC (Security and Stability Advisory Committee) membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. Members may be re-appointed, and there are no limits to the number of terms members may serve. The SSAC (Security and Stability Advisory Committee) chair may provide recommendations to the Board regarding appointments to the SSAC (Security and Stability Advisory Committee). The SSAC (Security and Stability Advisory Committee) chair shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the SSAC (Security and Stability Advisory Committee) is considered for appointment or re-appointment each year. The Board shall also have the power to remove SSAC (Security and Stability Advisory Committee) appointees as recommended by or in consultation with the SSAC (Security and Stability Advisory Committee).

(iii) The SSAC (Security and Stability Advisory Committee) shall annually appoint a Liaison to the Board according to Section 7.9.

(c) Root Server System Advisory Committee (Advisory Committee)

(i) The role of the Root Server System Advisory Committee (Advisory Committee) ("**Root Server System Advisory Committee (Advisory Committee)**" or "**RSSAC (Root Server System Advisory Committee)**") is to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on matters relating to the operation, administration, security, and integrity of the Internet's Root Server System. It shall have the following responsibilities:

(A) Communicate on matters relating to the operation of the Root Servers (Root Servers) and their multiple instances with the Internet technical community and the ICANN (Internet Corporation for Assigned Names and Numbers) community. The RSSAC (Root Server System Advisory Committee) shall gather and articulate requirements to offer to those engaged in technical revision of the protocols and best common

practices related to the operation of DNS (Domain Name System) servers.

(B) Communicate on matters relating to the administration of the Root Zone (Root Zone) with those who have direct responsibility for that administration. These matters include the processes and procedures for the production of the Root Zone (Root Zone) File.

(C) Engage in ongoing threat assessment and risk analysis of the Root Server System and recommend any necessary audit activity to assess the current status of root servers and the root zone.

(D) Respond to requests for information or opinions from the Board.

(E) Report periodically to the Board on its activities.

(F) Make policy recommendations to the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board.

(ii) The RSSAC (Root Server System Advisory Committee) shall be led by a chair. The RSSAC (Root Server System Advisory Committee) chair and members shall be appointed by the Board.

(A) RSSAC (Root Server System Advisory Committee) membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. Members may be re-appointed, and there are no limits to the number of terms the members may serve. The RSSAC (Root Server System Advisory Committee) chair shall provide recommendations to the Board regarding appointments to the RSSAC (Root Server System Advisory Committee). If the Board declines to appoint a person nominated by the RSSAC (Root Server System Advisory Committee), then it will provide the rationale for its decision. The RSSAC (Root Server System Advisory Committee) chair shall stagger appointment recommendations so that approximately one-third (1/3) of the

membership of the RSSAC (Root Server System Advisory Committee) is considered for appointment or re-appointment each year. The Board shall also have the power to remove RSSAC (Root Server System Advisory Committee) appointees as recommended by or in consultation with the RSSAC (Root Server System Advisory Committee).

(B) The RSSAC (Root Server System Advisory Committee) shall recommend the appointment of the chair to the Board following a nomination process that it devises and documents.

(iii) The RSSAC (Root Server System Advisory Committee) shall annually appoint a Liaison to the Board according to Section 7.9jm.

(d) At-Large Advisory Committee (Advisory Committee)

(i) The At-Large Advisory Committee (Advisory Committee) ("**At-Large Advisory Committee (Advisory Committee)**" or "**ALAC (At-Large Advisory Committee)**") is the primary organizational home within ICANN (Internet Corporation for Assigned Names and Numbers) for individual Internet users. The role of the ALAC (At-Large Advisory Committee) shall be to consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers), insofar as they relate to the interests of individual Internet users. This includes policies created through ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations (Supporting Organizations), as well as the many other issues for which community input and advice is appropriate. The ALAC (At-Large Advisory Committee), which plays an important role in ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability mechanisms, also coordinates some of ICANN (Internet Corporation for Assigned Names and Numbers)'s outreach to individual Internet users.

(ii) The ALAC (At-Large Advisory Committee) shall consist of (A) two members selected by each of the Regional At-Large Organizations ("**RALOs**") established according to Section

12.2(d)(vii), and (B) five members selected by the Nominating Committee. The five members selected by the Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to Section 7.5.

(iii) The regular terms of members of the ALAC (At-Large Advisory Committee) shall be as follows:

(A) The term of one member selected by each RALO shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in an even-numbered year.

(B) The term of the other member selected by each RALO shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in an odd-numbered year.

(C) The terms of three of the members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an odd-numbered year and the terms of the other two members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an even-numbered year.

(D) The regular term of each member shall end at the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the term began.

(iv) The Chair of the ALAC (At-Large Advisory Committee) shall be elected by the members of the ALAC (At-Large Advisory Committee) pursuant to procedures adopted by the ALAC (At-Large Advisory Committee).

(v) The ALAC (At-Large Advisory Committee) shall, after consultation with each RALO, annually appoint five voting delegates (no two of whom shall be citizens of countries in the same Geographic Region) to the Nominating Committee.

(vi) The At-Large Advisory Committee (Advisory Committee)

may designate non-voting liaisons to each of the ccNSO (Country Code Names Supporting Organization) Council and the GNSO (Generic Names Supporting Organization) Council.

(vii) There shall be one RALO for each Geographic Region established according to Section 7.5. Each RALO shall serve as the main forum and coordination point for public input to ICANN (Internet Corporation for Assigned Names and Numbers) in its Geographic Region and shall be a non-profit organization certified by ICANN (Internet Corporation for Assigned Names and Numbers) according to criteria and standards established by the Board based on recommendations of the At-Large Advisory Committee (Advisory Committee). An organization shall become the recognized RALO for its Geographic Region upon entering a Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers) addressing the respective roles and responsibilities of ICANN (Internet Corporation for Assigned Names and Numbers) and the RALO regarding the process for selecting ALAC (At-Large Advisory Committee) members and requirements of openness, participatory opportunities, transparency, accountability, and diversity in the RALO's structure and procedures, as well as criteria and standards for the RALO's constituent At-Large Structures ("**At-Large Structures**").

(viii) Each RALO shall be comprised of self-supporting At-Large Structures within its Geographic Region that have been certified to meet the requirements of the RALO's Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers) according to Section 12.2(d)(ix). If so provided by its Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers), a RALO may also include individual Internet users who are citizens or residents of countries within the RALO's Geographic Region.

(ix) Membership in the At-Large Community

(A) The criteria and standards for the certification of At-Large Structures within each Geographic Region shall be established by the Board based on recommendations from

the ALAC (At-Large Advisory Committee) and shall be stated in the Memorandum of Understanding between ICANN (Internet Corporation for Assigned Names and Numbers) and the RALO for each Geographic Region.

(B) The criteria and standards for the certification of At-Large Structures shall be established in such a way that participation by individual Internet users who are citizens or residents of countries within the Geographic Region of the RALO will predominate in the operation of each At-Large Structure within the RALO, while not necessarily excluding additional participation, compatible with the interests of the individual Internet users within the region, by others.

(C) Each RALO's Memorandum of Understanding shall also include provisions designed to allow, to the greatest extent possible, every individual Internet user who is a citizen of a country within the RALO's Geographic Region to participate in at least one of the RALO's At-Large Structures.

(D) To the extent compatible with these objectives, the criteria and standards should also afford to each RALO the type of structure that best fits the customs and character of its Geographic Region.

(E) Once the criteria and standards have been established as provided in this Section 12.2(d)(ix), the ALAC (At-Large Advisory Committee), with the advice and participation of the RALO where the applicant is based, shall be responsible for certifying organizations as meeting the criteria and standards for At-Large Structure accreditation.

(F) Decisions to certify or decertify an At-Large Structure shall be made as decided by the ALAC (At-Large Advisory Committee) in its rules of procedure, save always that any changes made to the rules of procedure in respect of an At-Large Structure applications shall be subject to review by the RALOs and by the Board.

(G) Decisions as to whether to accredit, not to accredit, or disaccredit an At-Large Structure shall be subject to review according to procedures established by the Board.

(H) On an ongoing basis, the ALAC (At-Large Advisory Committee) may also give advice as to whether a prospective At-Large Structure meets the applicable criteria and standards.

(x) The ALAC (At-Large Advisory Committee) is also responsible, working in conjunction with the RALOs, for coordinating the following activities:

(A) Nominating individuals to fill Seat 15 on the Board. Notification of the At-Large Community's nomination shall be given by the ALAC (At-Large Advisory Committee) Chair in writing to the EC (Empowered Community) Administration, with a copy to the Secretary, and the EC (Empowered Community) shall promptly act on it as provided in Section 7.25.

(B) Keeping the community of individual Internet users informed about the significant news from ICANN (Internet Corporation for Assigned Names and Numbers);

(C) Distributing (through posting or otherwise) an updated agenda, news about ICANN (Internet Corporation for Assigned Names and Numbers), and information about items in the ICANN (Internet Corporation for Assigned Names and Numbers) policy-development process;

(D) Promoting outreach activities in the community of individual Internet users;

(E) Developing and maintaining on-going information and education programs, regarding ICANN (Internet Corporation for Assigned Names and Numbers) and its work;

(F) Establishing an outreach strategy about ICANN (Internet Corporation for Assigned Names and Numbers) issues in each RALO's Geographic Region;

(G) Participating in the ICANN (Internet Corporation for Assigned Names and Numbers) policy development processes and providing input and advice that accurately reflects the views of individual Internet users;

(H) Making public, and analyzing, ICANN (Internet Corporation for Assigned Names and Numbers)'s proposed policies and its decisions and their (potential) regional impact and (potential) effect on individuals in the region;

(I) Offering Internet-based mechanisms that enable discussions among members of At-Large Structures; and

(xi) Establishing mechanisms and processes that enable two-way communication between members of At-Large Structures and those involved in ICANN (Internet Corporation for Assigned Names and Numbers) decision-making, so interested individuals can share their views on pending ICANN (Internet Corporation for Assigned Names and Numbers) issues.

Section 12.3. PROCEDURES

Each Advisory Committee (Advisory Committee) shall determine its own rules of procedure and quorum requirements; provided that each Advisory Committee (Advisory Committee) shall ensure that the advice provided to the Board by such Advisory Committee (Advisory Committee) is communicated in a clear and unambiguous written statement, including the rationale for such advice. The Board will respond in a timely manner to formal advice from all Advisory Committees (Advisory Committees) explaining what action it took and the rationale for doing so.

Section 12.4. TERM OF OFFICE

The chair and each member of an Advisory Committee (Advisory Committee) shall serve until his or her successor is appointed, or until such Advisory Committee (Advisory Committee) is sooner terminated, or until he or she is removed, resigns, or otherwise ceases to qualify as a member of the Advisory Committee (Advisory Committee).

Section 12.5. VACANCIES

Vacancies on any Advisory Committee (Advisory Committee) shall be filled in the same manner as provided in the case of original

appointments.

Section 12.6. COMPENSATION

Advisory Committee (Advisory Committee) members shall receive no compensation for their services as a member of such Advisory Committee (Advisory Committee). The Board may, however, authorize the reimbursement of actual and necessary expenses incurred by Advisory Committee (Advisory Committee) members, including Directors, performing their duties as Advisory Committee (Advisory Committee) members.

ARTICLE 13 OTHER ADVISORY MECHANISMS

Section 13.1. EXTERNAL EXPERT ADVICE

(a) Purpose. The purpose of seeking external expert advice is to allow the policy-development process within ICANN (Internet Corporation for Assigned Names and Numbers) to take advantage of existing expertise that resides in the public or private sector but outside of ICANN (Internet Corporation for Assigned Names and Numbers). In those cases where there are relevant public bodies with expertise, or where access to private expertise could be helpful, the Board and constituent bodies should be encouraged to seek advice from such expert bodies or individuals.

(b) Types of Expert Advisory Panels

(i) On its own initiative or at the suggestion of any ICANN (Internet Corporation for Assigned Names and Numbers) body, the Board may appoint, or authorize the President to appoint, Expert Advisory Panels consisting of public or private sector individuals or entities. If the advice sought from such Panels concerns issues of public policy, the provisions of Section 13.1(c) shall apply.

(ii) In addition, in accordance with Section 13.1(c), the Board may refer issues of public policy pertinent to matters within ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission to a multinational governmental or treaty organization.

(c) Process for Seeking Advice: Public Policy Matters

(i) The Governmental Advisory Committee (Advisory Committee) may at any time recommend that the Board seek advice concerning one or more issues of public policy from an external source, as set out above.

(ii) In the event that the Board determines, upon such a recommendation or otherwise, that external advice should be sought concerning one or more issues of public policy, the Board shall, as appropriate, consult with the Governmental Advisory Committee (Advisory Committee) regarding the appropriate source from which to seek the advice and the arrangements, including definition of scope and process, for requesting and obtaining that advice.

(iii) The Board shall, as appropriate, transmit any request for advice from a multinational governmental or treaty organization, including specific terms of reference, to the Governmental Advisory Committee (Advisory Committee), with the suggestion that the request be transmitted by the Governmental Advisory Committee (Advisory Committee) to the multinational governmental or treaty organization.

(d) Process for Seeking and Advice: Other Matters. Any reference of issues not concerning public policy to an Expert Advisory Panel by the Board or President in accordance with Section 13.1(b)(i) shall be made pursuant to terms of reference describing the issues on which input and advice is sought and the procedures and schedule to be followed.

(e) Receipt of Expert Advice and its Effect. External advice pursuant to this Section 13.1 shall be provided in written form. Such advice is advisory and not binding, and is intended to augment the information available to the Board or other ICANN (Internet Corporation for Assigned Names and Numbers) body in carrying out its responsibilities.

(f) Opportunity to Comment. The Governmental Advisory Committee (Advisory Committee), in addition to the Supporting Organizations (Supporting Organizations) and other Advisory Committees

(Advisory Committees), shall have an opportunity to comment upon any external advice received prior to any decision by the Board.

Section 13.2. TECHNICAL LIAISON GROUP

(a) Purpose. The quality of ICANN (Internet Corporation for Assigned Names and Numbers)'s work depends on access to complete and authoritative information concerning the technical standards that underlie ICANN (Internet Corporation for Assigned Names and Numbers)'s activities. ICANN (Internet Corporation for Assigned Names and Numbers)'s relationship to the organizations that produce these standards is therefore particularly important. The Technical Liaison Group ("**TLG**") shall connect the Board with appropriate sources of technical advice on specific matters pertinent to ICANN (Internet Corporation for Assigned Names and Numbers)'s activities.

(b) TLG Organizations. The TLG shall consist of four organizations: the European Telecommunications Standards Institute (ETSI (European Telecommunications Standards Institute)), the International Telecommunications Union's Telecommunication Standardization Sector (ITU (International Telecommunication Union)-T), the World Wide Web Consortium (W3C (World Wide Web Consortium)), and the Internet Architecture Board ("**IAB (Internet Architecture Board)**").

(c) Role. The role of the TLG organizations shall be to channel technical information and guidance to the Board and to other ICANN (Internet Corporation for Assigned Names and Numbers) entities. This role has both a responsive component and an active "watchdog" component, which involve the following responsibilities:

> (i) In response to a request for information, to connect the Board or other ICANN (Internet Corporation for Assigned Names and Numbers) body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which ICANN (Internet Corporation for Assigned Names and Numbers) seeks an authoritative answer to a specific technical question. Where information is requested regarding a particular technical standard for which a TLG organization is responsible, that request shall be

directed to that TLG organization.

(ii) As an ongoing "watchdog" activity, to advise the Board of the relevance and progress of technical developments in the areas covered by each organization's scope that could affect Board decisions or other ICANN (Internet Corporation for Assigned Names and Numbers) actions, and to draw attention to global technical standards issues that affect policy development within the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission. This component of the TLG role covers circumstances in which ICANN (Internet Corporation for Assigned Names and Numbers) is unaware of a new development, and would therefore otherwise not realize that a question should be asked.

(d) TLG Procedures. The TLG shall not have officers or hold meetings, nor shall it provide policy advice to the Board as a committee (although TLG organizations may individually be asked by the Board to do so as the need arises in areas relevant to their individual charters). Neither shall the TLG debate or otherwise coordinate technical issues across the TLG organizations; establish or attempt to establish unified positions; or create or attempt to create additional layers or structures within the TLG for the development of technical standards or for any other purpose.

(e) Technical Work with the IETF (Internet Engineering Task Force). The TLG shall have no involvement with ICANN (Internet Corporation for Assigned Names and Numbers)'s work for the Internet Engineering Task Force (IETF (Internet Engineering Task Force)), Internet Research Task Force, or the Internet Architecture Board (IAB (Internet Architecture Board)), as described in the IETF (Internet Engineering Task Force)-ICANN (Internet Corporation for Assigned Names and Numbers) Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority ratified by the Board on 10 March 2000 and any supplemental agreements thereto.

(f) Individual Technical Experts. Each TLG organization shall designate two individual technical experts who are familiar with the technical standards issues that are relevant to ICANN (Internet

Corporation for Assigned Names and Numbers)'s activities. These 8 experts shall be available as necessary to determine, through an exchange of e-mail messages, where to direct a technical question from ICANN (Internet Corporation for Assigned Names and Numbers) when ICANN (Internet Corporation for Assigned Names and Numbers) does not ask a specific TLG organization directly.

ARTICLE 14 BOARD AND TEMPORARY COMMITTEES

Section 14.1. BOARD COMMITTEES

The Board may establish one or more committees of the Board (each, a "**Board Committee**"), which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board; provided, that a Liaison may be appointed as a liaison to a Committee of the Board consistent with their non-voting capacity. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all Directors; provided, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all Directors.

Section 14.2. POWERS OF BOARD COMMITTEES

(a) The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:

> (i) The filling of vacancies on the Board or on any committee;
>
> (ii) The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;
>
> (iii) The amendment or repeal of any resolution of the Board

which by its express terms is not so amendable or repealable;

(iv) The appointment of committees of the Board or the members thereof;

(v) The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CCC;

(vi) The approval of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget or IANA (Internet Assigned Numbers Authority) Budget required by Section 22.4 or the Operating Plan or Strategic Plan required by Section 22.5; or

(vii) The compensation of any Officer described in Article 15.

(b) The Board shall have the power to prescribe the manner in which proceedings of any Committee of the Board shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless these Bylaws, the Board or such committee shall otherwise provide, the regular and special meetings of committees shall be governed by the provisions of Article 7 applicable to meetings and actions of the Board. Each committee shall keep regular minutes of its proceedings and shall report the same to the Board from time to time, as the Board may require.

Section 14.3. TEMPORARY COMMITTEES

The Board may establish such temporary committees as it sees fit, with membership, duties, and responsibilities as set forth in the resolutions or charters adopted by the Board in establishing such committees.

ARTICLE 15 OFFICERS

Section 15.1. OFFICERS

The officers of ICANN (Internet Corporation for Assigned Names and Numbers) (each, an "**Officer**") shall be a President (who shall

serve as Chief Executive Officer), a Secretary, and a Chief Financial Officer. ICANN (Internet Corporation for Assigned Names and Numbers) may also have, at the discretion of the Board, any additional officers that it deems appropriate. Any person, other than the President, may hold more than one office, except that no member of the Board (other than the President) shall simultaneously serve as an officer of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 15.2. ELECTION OF OFFICERS

The officers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be elected annually by the Board, pursuant to the recommendation of the President or, in the case of the President, of the Chair of the Board. Each such officer shall hold his or her office until he or she resigns, is removed, is otherwise disqualified to serve, or his or her successor is elected.

Section 15.3. REMOVAL OF OFFICERS

Any Officer may be removed, either with or without cause, by a two-thirds (2/3) majority vote of all Directors. Should any vacancy occur in any office as a result of death, resignation, removal, disqualification, or any other cause, the Board may delegate the powers and duties of such office to any Officer or to any Director until such time as a successor for the office has been elected.

Section 15.4. PRESIDENT

The President shall be the Chief Executive Officer (CEO) of ICANN (Internet Corporation for Assigned Names and Numbers) in charge of all of its activities and business. All other officers and staff shall report to the President or his or her delegate, unless stated otherwise in these Bylaws. The President shall serve as an ex officio Director, and shall have all the same rights and privileges of any Director. The President shall be empowered to call special meetings of the Board as set forth herein, and shall discharge all other duties as may be required by these Bylaws and from time to time may be assigned by the Board.

Section 15.5. SECRETARY

The Secretary shall keep or cause to be kept the minutes of the Board in one or more books provided for that purpose, shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law, and in general shall perform all duties as from time to time may be prescribed by the President or the Board.

Section 15.6. CHIEF FINANCIAL OFFICER

The Chief Financial Officer ("**CFO**") shall be the chief financial officer of ICANN (Internet Corporation for Assigned Names and Numbers). If required by the Board, the CFO shall give a bond for the faithful discharge of his or her duties in such form and with such surety or sureties as the Board shall determine. The CFO shall have charge and custody of all the funds of ICANN (Internet Corporation for Assigned Names and Numbers) and shall keep or cause to be kept, in books belonging to ICANN (Internet Corporation for Assigned Names and Numbers), full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of ICANN (Internet Corporation for Assigned Names and Numbers) in such depositories as may be designated for that purpose by the Board. The CFO shall disburse the funds of ICANN (Internet Corporation for Assigned Names and Numbers) as may be ordered by the Board or the President and, whenever requested by them, shall deliver to the Board and the President an account of all his or her transactions as CFO and of the financial condition of ICANN (Internet Corporation for Assigned Names and Numbers). The CFO shall be responsible for ICANN (Internet Corporation for Assigned Names and Numbers)'s financial planning and forecasting and shall assist the President in the preparation of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget, the IANA (Internet Assigned Numbers Authority) Budget and Operating Plan. The CFO shall coordinate and oversee ICANN (Internet Corporation for Assigned Names and Numbers)'s funding, including any audits or other reviews of ICANN (Internet Corporation for Assigned Names and Numbers) or its Supporting Organizations (Supporting Organizations). The CFO shall be responsible for all other matters relating to the financial operation of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 15.7. ADDITIONAL OFFICERS

In addition to the officers described above, any additional or assistant officers who are elected or appointed by the Board shall perform such duties as may be assigned to them by the President or the Board.

Section 15.8. COMPENSATION AND EXPENSES

The compensation of any Officer of ICANN (Internet Corporation for Assigned Names and Numbers) shall be approved by the Board. Expenses incurred in connection with performance of their officer duties may be reimbursed to Officers upon approval of the President (in the case of Officers other than the President), by another Officer designated by the Board (in the case of the President), or the Board.

Section 15.9. CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall establish a policy requiring a statement from each Officer not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN (Internet Corporation for Assigned Names and Numbers).

ARTICLE 16 POST-TRANSITION IANA (Internet Assigned Numbers Authority) ENTITY

Section 16.1. DESCRIPTION

ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain as a separate legal entity a California nonprofit public benefit corporation (["**PTI**"]) for the purpose of providing IANA (Internet Assigned Numbers Authority) services, including providing IANA (Internet Assigned Numbers Authority) naming function services pursuant to the IANA (Internet Assigned Numbers Authority) Naming Function Contract, as well as other services as determined by ICANN (Internet Corporation for Assigned Names and Numbers) in coordination with the direct and indirect customers of the IANA (Internet Assigned Numbers Authority) functions. ICANN (Internet Corporation for Assigned Names and Numbers) shall at all times be the sole member of PTI as that term is defined in Section 5056 of the CCC ("**Member**"). For the purposes of these Bylaws, the

"IANA (Internet Assigned Numbers Authority) naming function" does not include the Internet Protocol (Protocol) numbers and Autonomous System numbers services (as contemplated by Section 1.1(a)(iii)), the protocol ports and parameters services and the root zone maintainer function.

Section 16.2. PTI Governance

(a) ICANN (Internet Corporation for Assigned Names and Numbers), in its capacity as the sole Member of PTI, shall elect the directors of PTI in accordance with the articles of incorporation and bylaws of PTI and have all other powers of a sole Member under the CCC except as otherwise provided in these Bylaws.

(b) No amendment or modification of the articles of incorporation of PTI shall be effective unless approved by the EC (Empowered Community) (pursuant to the procedures applicable to Articles Amendments described in Section 25.2, as if such Article Amendment referenced therein refers to an amendment of PTI's articles of incorporation).

(c) ICANN (Internet Corporation for Assigned Names and Numbers) shall not amend or modify the bylaws of PTI in a manner that would effect any of the matters set forth in clauses (i) through (xiv) below (a "**PTI Bylaw Amendment**") if such PTI Bylaw Amendment has been rejected by the EC (Empowered Community) pursuant to the procedures described in Section 16.2(e):

> (i) any change to the corporate form of PTI to an entity that is not a California nonprofit public benefit corporation organized under the CCC or any successor statute;
>
> (ii) any change in the corporate mission of PTI that is materially inconsistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission as set forth in these Bylaws;
>
> (iii) any change to the status of PTI as a corporation with members;
>
> (iv) any change in the rights of ICANN (Internet Corporation

for Assigned Names and Numbers) as the sole Member of PTI, including voting, classes of membership, rights, privileges, preferences, restrictions and conditions;

(v) any change that would grant rights to any person or entity (other than ICANN (Internet Corporation for Assigned Names and Numbers)) with respect to PTI as designators or otherwise to: (A) elect or designate directors of PTI; or (B) approve any amendments to the articles of incorporation or bylaws of PTI;

(vi) any change in the number of directors of the board of directors of PTI (the "**PTI Board**");

(vii) any changes in the allocation of directors on the PTI Board between independent directors and employees of ICANN (Internet Corporation for Assigned Names and Numbers) or employees of PTI or to the definition of "independent" (as used in PTI's bylaws) for purposes of determining whether a director of PTI is independent;

(viii) the creation of any committee of the PTI Board with the power to exercise the authority of the PTI Board;

(ix) any change in the procedures for nominating independent PTI directors;

(x) the creation of classes of PTI directors or PTI directors with different terms or voting rights;

(xi) any change in PTI Board quorum requirements or voting requirements;

(xii) any change to the powers and responsibilities of the PTI Board or the PTI officers;

(xiii) any change to the rights to exculpation and indemnification that is adverse to the exculpated or indemnified party, including with respect to advancement of expenses and insurance, provided to directors, officers, employees or other agents of PTI; or

(xiv) any change to the requirements to amend the articles of incorporation or bylaws of PTI.

(d) ICANN (Internet Corporation for Assigned Names and Numbers) shall not take any of the following actions (together with the PTI Bylaw Amendments, "**PTI Governance Actions**") if such PTI Governance Action has been rejected by the EC (Empowered Community) pursuant to the procedures described in Section 16.2(e).

(i) Any resignation by ICANN (Internet Corporation for Assigned Names and Numbers) as sole Member of PTI or any transfer, disposition, cession, expulsion, suspension or termination by ICANN (Internet Corporation for Assigned Names and Numbers) of its membership in PTI or any transfer, disposition, cession, expulsion, suspension or termination by ICANN (Internet Corporation for Assigned Names and Numbers) of any right arising from its membership in PTI.

(ii) Any sale, transfer or other disposition of PTI's assets, other than (A) in the ordinary course of PTI's business, (B) in connection with an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process (as defined in Section 19.1(a)) that has been approved in accordance with Article 19 or (C) the disposition of obsolete, damaged, redundant or unused assets.

(iii) Any merger, consolidation, sale or reorganization of PTI.

(iv) Any dissolution, liquidation or winding-up of the business and affairs of PTI or the commencement of any other voluntary bankruptcy proceeding of PTI.

(e) Promptly after the Board approves a PTI Governance Action (a "**PTI Governance Action Approval**"), the Secretary shall provide a notice of the Board's decision to the EC (Empowered Community) Administration and the Decisional Participants ("**Board Notice**"), which Board Notice shall enclose a copy of the PTI Governance Action that is the subject of the PTI Governance Action Approval.

ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

> (i) A PTI Governance Action shall become effective upon the earliest to occur of the following:
>
> (A)(1) A Rejection Action Petition Notice (as defined in Section 2.2(c)(i) of Annex D) is not timely delivered by the Rejection Action Petitioning Decisional Participant (as defined in Section 2.2(c)(i) of Annex D) to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice (as defined in Section 2.2(c)(ii) of Annex D) is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Period (as defined in Section 2.2(b) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance Action shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;
>
> (B)(1) A Rejection Action Supported Petition (as defined in Section 2.2(d)(i) of Annex D) is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval

shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period (as defined in Section 2.2(d)(i) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance Action shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; and

(C)(1) An EC (Empowered Community) Rejection Notice (as defined in Section 2.4(b) of Annex D) is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period (as defined in Section 2.4(a) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance Action shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(ii) A PTI Governance Action that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(iii) Following receipt of an EC (Empowered Community) Rejection Notice relating to a PTI Governance Action, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the PTI Governance Action in determining whether or not to develop a new PTI Governance Action and the substance of such new PTI Governance Action, which shall be subject to the

procedures of this Section 16.2.

Section 16.3. IANA (Internet Assigned Numbers Authority) NAMING FUNCTION CONTRACT

(a) On or prior to 1 October 2016, ICANN (Internet Corporation for Assigned Names and Numbers) shall enter into a contract with PTI for the performance of the IANA (Internet Assigned Numbers Authority) naming function (as it may be amended or modified, the "**IANA (Internet Assigned Numbers Authority) Naming Function Contract**") and a related statement of work (the "**IANA (Internet Assigned Numbers Authority) Naming Function SOW**"). Except as to implement any modification, waiver or amendment to the IANA (Internet Assigned Numbers Authority) Naming Function Contract or IANA (Internet Assigned Numbers Authority) Naming Function SOW related to an IFR Recommendation or Special IFR Recommendation approved pursuant to Section 18.6 or an SCWG Recommendation approved pursuant to Section 19.4 (which, for the avoidance of doubt, shall not be subject to this Section 16.3(a)), ICANN (Internet Corporation for Assigned Names and Numbers) shall not agree to modify, amend or waive any Material Terms (as defined below) of the IANA (Internet Assigned Numbers Authority) Naming Function Contract or the IANA (Internet Assigned Numbers Authority) Naming Function SOW if a majority of each of the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) Councils reject the proposed modification, amendment or waiver. The following are the "**Material Terms**" of the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW:

(i) The parties to the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW;

(ii) The initial term and renewal provisions of the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW;

(iii) The manner in which the IANA (Internet Assigned Numbers Authority) Naming Function Contract or IANA (Internet Assigned Numbers Authority) Naming Function SOW may be terminated;

(iv) The mechanisms that are available to enforce the IANA (Internet Assigned Numbers Authority) Naming Function Contract or IANA (Internet Assigned Numbers Authority) Naming Function SOW;

(v) The role and responsibilities of the CSC (as defined in Section 17.1), escalation mechanisms and/or the IFR (as defined in Section 18.1);

(vi) The IANA (Internet Assigned Numbers Authority) Naming Function Contract's provisions requiring that fees charged by PTI be based on direct costs and resources incurred by PTI;

(vii) The IANA (Internet Assigned Numbers Authority) Naming Function Contract's prohibition against subcontracting;

(viii)The availability of the IRP as a point of escalation for claims of PTI's failure to meet defined service level expectations;

(ix) The IANA (Internet Assigned Numbers Authority) Naming Function Contract's audit requirements; and

(x) The requirements related to ICANN (Internet Corporation for Assigned Names and Numbers) funding of PTI.

(b) ICANN (Internet Corporation for Assigned Names and Numbers) shall enforce its rights under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and the IANA (Internet Assigned Numbers Authority) Naming Function SOW.

ARTICLE 17 CUSTOMER STANDING COMMITTEE

Section 17.1. DESCRIPTION

ICANN (Internet Corporation for Assigned Names and Numbers)

shall establish a Customer Standing Committee ("**CSC**") to monitor PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW.

The mission of the CSC is to ensure continued satisfactory performance of the IANA (Internet Assigned Numbers Authority) naming function for the direct customers of the naming services. The direct customers of the naming services are top-level domain registry operators as well as root server operators and other non-root zone functions.

The CSC will achieve this mission through regular monitoring of the performance of the IANA (Internet Assigned Numbers Authority) naming function against the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW and through mechanisms to engage with PTI to remedy identified areas of concern.

The CSC is not authorized to initiate a change in PTI through a Special IFR (as defined in Section 18.1), but may escalate a failure to correct an identified deficiency to the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization), which might then decide to take further action using consultation and escalation processes, which may include a Special IFR. The ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) may address matters escalated by the CSC, pursuant to their operating rules and procedures.

Section 17.2. COMPOSITION, APPOINTMENT, TERM AND REMOVAL

(a) The CSC shall consist of:

(i) Two individuals representing gTLD (generic Top Level Domain) registry operators appointed by the Registries Stakeholder Group;

(ii) Two individuals representing ccTLD (Country Code Top

Level Domain) registry operators appointed by the ccNSO (Country Code Names Supporting Organization); and

(iii) One individual liaison appointed by PTI,

each appointed in accordance with the rules and procedures of the appointing organization; provided that such individuals should have direct experience and knowledge of the IANA (Internet Assigned Numbers Authority) naming function.

(b) If so determined by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization), the CSC may, but is not required to, include one additional member: an individual representing top-level domain registry operators that are not considered a ccTLD (Country Code Top Level Domain) or gTLD (generic Top Level Domain), who shall be appointed by the ccNSO (Country Code Names Supporting Organization) and the GNSO (Generic Names Supporting Organization). Such representative shall be required to submit a letter of support from the registry operator it represents.

(c) Each of the following organizations may also appoint one liaison to the CSC in accordance with the rules and procedures of the appointing organization: (i) GNSO (Generic Names Supporting Organization) (from the Registrars Stakeholder Group or the Non-Contracted Parties House), (ii) ALAC (At-Large Advisory Committee), (iii) either the NRO (Number Resource Organization) or ASO (Address Supporting Organization) (as determined by the ASO (Address Supporting Organization)), (iv) GAC (Governmental Advisory Committee), (v) RSSAC (Root Server System Advisory Committee), (vi) SSAC (Security and Stability Advisory Committee) and (vii) any other Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) established under these Bylaws.

(d) The GNSO (Generic Names Supporting Organization) and ccNSO (Country Code Names Supporting Organization) shall approve the initial proposed members and liaisons of the CSC, and thereafter, the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) shall approve each annual slate of members and liaisons being

recommended for a new term.

(e) The CSC members and liaisons shall select from among the CSC members who will serve as the CSC's liaison to the IFRT (as defined in Section 18.1) and any Separation Cross-Community Working Group ("**SCWG**").

(f) Any CSC member or liaison may be removed and replaced at any time and for any reason or no reason by the organization that appointed such member or liaison.

(g) In addition, the Chair of the CSC may recommend that a CSC member or liaison be removed by the organization that appointed such member or liaison, upon any of the following: (i) (A) for not attending without sufficient cause a minimum of nine CSC meetings in a one-year period (or at least 75% of all CSC meetings in a one-year period if less than nine meetings were held in such one-year period) or (B) if such member or liaison has been absent for more than two consecutive meetings without sufficient cause; or (ii) for grossly inappropriate behavior.

(h) A vacancy on the CSC shall be deemed to exist in the event of the death, resignation or removal of any CSC member or liaison. Vacancies shall be filled by the organization(s) that appointed such CSC member or liaison. The appointing organization(s) shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the Chair of the CSC. The organization(s) responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 17.3.CSC CHARTER; PERIODIC REVIEW

(a) The CSC shall act in accordance with its charter (the "**CSC Charter**").

(b) The effectiveness of the CSC shall be reviewed two years after the first meeting of the CSC; and then every three years thereafter. The method of review will be determined by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) and the findings of the review will be published on the Website.

(c) The CSC Charter shall be reviewed by a committee of representatives from the ccNSO (Country Code Names Supporting Organization) and the Registries Stakeholder Group selected by such organizations. This review shall commence one year after the first meeting of the CSC. Thereafter, the CSC Charter shall be reviewed by such committee of representatives from the ccNSO (Country Code Names Supporting Organization) and the Registries Stakeholder Group selected by such organizations at the request of the CSC, ccNSO (Country Code Names Supporting Organization), GNSO (Generic Names Supporting Organization), the Board and/or the PTI Board and/or by an IFRT in connection with an IFR.

(d) Amendments to the CSC Charter shall not be effective unless ratified by the vote of a simple majority of each of the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) Councils pursuant to each such organizations' procedures. Prior to any action by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization), any recommended changes to the CSC Charter shall be subject to a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers). Notwithstanding the foregoing, to the extent any provision of an amendment to the CSC Charter conflicts with the terms of the Bylaws, the terms of the Bylaws shall control.

Section 17.4. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the CSC to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the CSC.

ARTICLE 18 IANA (Internet Assigned Numbers Authority) NAMING FUNCTION REVIEWS

Section 18.1. IANA (Internet Assigned Numbers Authority) NAMING FUNCTION REVIEW

The Board, or an appropriate committee thereof, shall cause

periodic and/or special reviews (each such review, an "**IFR**") of PTI's performance of the IANA (Internet Assigned Numbers Authority) naming function against the contractual requirements set forth in the IANA (Internet Assigned Numbers Authority) Naming Function Contract and the IANA (Internet Assigned Numbers Authority) Naming Function SOW to be carried out by an IANA (Internet Assigned Numbers Authority) Function Review Team ("**IFRT**") established in accordance with Article 18, as follows:

(a) Regularly scheduled periodic IFRs, to be conducted pursuant to Section 18.2 below ("**Periodic IFRs**"); and

(b) IFRs that are not Periodic IFRs, to be conducted pursuant to Section 18.12 below ("**Special IFRs**").

Section 18.2. FREQUENCY OF PERIODIC IFRS

(a) The first Periodic IFR shall be convened no later than [1 October 2018].

(b) Periodic IFRs after the first Periodic IFR shall be convened no less frequently than every five years, measured from the date the previous IFRT for a Periodic IFR was convened.

(c) In the event a Special IFR is ongoing at the time a Periodic IFR is required to be convened under this Section 18.2, the Board shall cause the convening of the Periodic IFR to be delayed if such delay is approved by the vote of (i) a supermajority of the ccNSO (Country Code Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO (Country Code Names Supporting Organization) Council's members) and (ii) a GNSO (Generic Names Supporting Organization) Supermajority. Any decision by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) to delay a Periodic IFR must identify the period of delay, which should generally not exceed 12 months after the completion of the Special IFR.

Section 18.3. IFR RESPONSIBILITIES

For each Periodic IFR, the IFRT shall:

(a) Review and evaluate the performance of PTI against the requirements set forth in the IANA (Internet Assigned Numbers Authority) Naming Function Contract in relation to the needs of its direct customers and the expectations of the broader ICANN (Internet Corporation for Assigned Names and Numbers) community, and determine whether to make any recommendations with respect to PTI's performance;

(b) Review and evaluate the performance of PTI against the requirements set forth in the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW;

(c) Review the IANA (Internet Assigned Numbers Authority) Naming Function SOW and determine whether to recommend any amendments to the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW to account for the needs of the direct customers of the naming services and/or the community at large;

(d) Review and evaluate the openness and transparency procedures of PTI and any oversight structures for PTI's performance, including reporting requirements and budget transparency;

(e) Review and evaluate the performance and effectiveness of the EC (Empowered Community) with respect to actions taken by the EC (Empowered Community), if any, pursuant to Section 16.2, Section 18.6, Section 18.12, Section 19.1, Section 19.4, Section 22.4(b) and Annex D;

(f) Review and evaluate the performance of the IANA (Internet Assigned Numbers Authority) naming function according to established service level expectations during the IFR period being reviewed and compared to the immediately preceding Periodic IFR period;

(g) Review and evaluate whether there are any systemic issues that are impacting PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW;

(h) Initiate public comment periods and other processes for community input on PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW (such public comment periods shall comply with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers));

(i) Consider input from the CSC and the community on PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW;

(j) Identify process or other areas for improvement in the performance of the IANA (Internet Assigned Numbers Authority) naming function under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW and the performance of the CSC and the EC (Empowered Community) as it relates to oversight of PTI; and

(k) Consider and assess any changes implemented since the immediately preceding IFR and their implications for the performance of PTI under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW.

Section 18.4. IFR REQUIRED INPUTS

In conducting an IFR, the IFRT shall review and analyze the following information:

(a) Reports provided by PTI pursuant to the IANA (Internet Assigned Numbers Authority) Naming Function Contract and/or IANA (Internet Assigned Numbers Authority) Naming Function SOW during the IFR period being reviewed, any portion of which may be redacted pursuant to the Confidential Disclosure Framework set forth in the Operating Standards in accordance with Section 4.6(a)(vi);

(b) Reports provided by the CSC in accordance with the CSC Charter during the IFR period being reviewed;

(c) Community inputs through public consultation procedures as reasonably determined by the IFRT, including, among other things, public comment periods, input provided at in-person sessions during ICANN (Internet Corporation for Assigned Names and Numbers) meetings, responses to public surveys related to PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW, and public inputs during meetings of the IFRT;

(d) Recommendations for technical, process and/or other improvements relating to the mandate of the IFR provided by the CSC or the community; and

(e) Results of any site visit conducted by the IFRT, which shall be conducted in consultation with ICANN (Internet Corporation for Assigned Names and Numbers) (i) upon reasonable notice, (ii) in a manner so as to not affect PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract or the IANA (Internet Assigned Numbers Authority) Naming Function SOW and (iii) pursuant to procedures and requirements reasonably developed by ICANN (Internet Corporation for Assigned Names and Numbers) and reasonably acceptable to the IFRT. Any such site visit shall be limited to matters reasonably related to the IFRT's responsibilities pursuant to Section 18.3.

Section 18.5. IFR RESULTS AND RECOMMENDATIONS

(a) The results of the IFR are not limited and could include a variety of recommendations or no recommendation; provided, however, that any recommendations must directly relate to the matters discussed in Section 18.3 and comply with this Section 18.5.

(b) Any IFRT recommendations should identify improvements that are supported by data and associated analysis about existing deficiencies and how they could be addressed. Each recommendation of the IFRT shall include proposed remedial procedures and describe how those procedures are expected to address such issues. The IFRT's report shall also propose timelines for implementing the IFRT's recommendations. The IFRT shall

attempt to prioritize each of its recommendations and provide a rationale for such prioritization.

(c) In any case where a recommendation of an IFRT focuses on a service specific to gTLD (generic Top Level Domain) registry operators, no such recommendation shall be made by the IFRT in any report to the community (including any report to the Board) if opposition to such recommendation is expressed by any IFRT member appointed by the Registries Stakeholder Group. In any case where a recommendation of an IFRT focuses on a service specific to ccTLD (Country Code Top Level Domain) registry operators, no such recommendation shall be made by the IFRT in any report to the community (including any report to the Board) if opposition to such recommendation is expressed by any IFRT member appointed by the ccNSO (Country Code Names Supporting Organization).

(d) Notwithstanding anything herein to the contrary, the IFRT shall not have the authority to review or make recommendations relating to policy or contracting issues that are not included in the IANA (Internet Assigned Numbers Authority) Naming Function Contract or the IANA (Internet Assigned Numbers Authority) Naming Function SOW, including, without limitation, policy development, adoption processes or contract enforcement measures between contracted registries and ICANN (Internet Corporation for Assigned Names and Numbers).

Section 18.6.Recommendations to Amend the IANA (Internet Assigned Numbers Authority) Naming Function contract, iana naming function SOW or CSC charter

(a) The IFRT may recommend, among other things to the extent reasonably related to the IFR responsibilities set forth in Section 18.3, amendments to the IANA (Internet Assigned Numbers Authority) Naming Function Contract, IANA (Internet Assigned Numbers Authority) Naming Function SOW and/or the CSC Charter. The IFRT shall, at a minimum, take the following steps before an amendment to either the IANA (Internet Assigned Numbers Authority) Naming Function Contract, IANA (Internet Assigned Numbers Authority) Naming Function SOW or CSC Charter is proposed:

(i) Consult with the Board (such consultation to be conducted in parallel with other processes set forth in this Section 18.6(a)) and PTI;

(ii) Consult with the CSC;

(iii) Conduct a public input session for ccTLD (Country Code Top Level Domain) and gTLD (generic Top Level Domain) registry operators; and

(iv) Seek public comment on the amendments that are under consideration by the IFRT through a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers).

(b) A recommendation of an IFRT for a Periodic IFR that would amend the IANA (Internet Assigned Numbers Authority) Naming Function Contract or IANA (Internet Assigned Numbers Authority) Naming Function SOW shall only become effective if, with respect to each such recommendation (each, an "**IFR Recommendation**"), each of the following occurs:

(i) The IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO (Country Code Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO (Country Code Names Supporting Organization) Council's members) and (B) a GNSO (Generic Names Supporting Organization) Supermajority;

(ii) After a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), the Board has approved the IFR Recommendation; and

(iii) The EC (Empowered Community) has not rejected the Board's approval of the IFR Recommendation pursuant to and in compliance with Section 18.6(d).

(c) If the Board (x) rejects an IFR Recommendation that was approved by the ccNSO (Country Code Names Supporting Organization) Council and GNSO (Generic Names Supporting Organization) Council pursuant to Section 18.6(b)(i) or (y) does not resolve to either accept or reject an IFR Recommendation within 45 days of the later of (1) the date that the condition in Section 18.6(b)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 18.6(b)(ii), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable IFR Recommendation. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(i) ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a Rejection Action Community Forum (as defined in Section 2.3(a) of Annex D), which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC (Empowered Community) Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants (as defined in Section 2.2(d)(i) of Annex D) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the IFR Recommendation or approve the IFR Recommendation

(either, a "**Post-Forum IFR Recommendation Decision**").

(A)If the Board resolves to approve the IFR Recommendation, such IFR Recommendation will be subject to Section 18.6(d).

(B)For the avoidance of doubt, the Board shall not be obligated to change its decision on the IFR Recommendation as a result of the Rejection Action Community Forum.

(C)The Board's Post-Forum IFR Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an IFR Recommendation (an "**IFR Recommendation Decision**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the IFR Recommendation that is the subject of the IFR Recommendation Decision. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) An IFR Recommendation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such IFR Recommendation

Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such IFR Recommendation Decision; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such IFR Recommendation Decision.

(ii) An IFR Recommendation Decision that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(e) For the avoidance of doubt, Section 18.6(d) shall not apply when the Board acts in a manner that is consistent with an IFR Recommendation unless such IFR Recommendation relates to an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process as described in Article 19.

(f) Timelines for implementing any amendments to the IANA (Internet Assigned Numbers Authority) Naming Function Contract or IANA (Internet Assigned Numbers Authority) Naming Function SOW shall be reasonably agreed between the IFRT, ICANN (Internet

Corporation for Assigned Names and Numbers) and PTI.

(g) A recommendation of an IFRT that would amend the CSC Charter shall only become effective if approved pursuant to Section 17.3(d).

Section 18.7. COMPOSITION OF IFR TEAMS

Each IFRT shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

(a) Three representatives who are associated with ccTLD (Country Code Top Level Domain) managers, appointed by the ccNSO (Country Code Names Supporting Organization) Council. Representatives need not be associated with a ccNSO (Country Code Names Supporting Organization) member. The ccNSO (Country Code Names Supporting Organization) Council should use an inclusive process, which is open to all ccTLD (Country Code Top Level Domain) managers, independent of their membership to the ccNSO (Country Code Names Supporting Organization). It is strongly recommended that the ccNSO (Country Code Names Supporting Organization) Council reaches out to all ccTLD (Country Code Top Level Domain) managers directly and or through regional ccTLD (Country Code Top Level Domain) organizations (i.e., AfTLD, APTLD (Council of the Asia Pacific country code Top Level Domains), LACTLD (Latin American and Caribbean ccTLDs), and CENTR (Council of European National Top level domain Registries)) in seeking volunteers;

(b) Two representatives appointed by the Registries Stakeholder Group;

(c) One representative appointed by the Registrars Stakeholder Group;

(d) One representative appointed by the Commercial Stakeholder Group;

(e) One representative appointed by the Non-Commercial Stakeholder Group;

(f) One representative appointed by the GAC (Governmental Advisory Committee);

(g) One representative appointed by the SSAC (Security and Stability Advisory Committee);

p>(h) One representative appointed by the RSSAC (Root Server System Advisory Committee);

(i) One representative appointed by the ALAC (At-Large Advisory Committee);

(j) One liaison appointed by the CSC;

(k) One liaison who may be appointed by the ASO (Address Supporting Organization); and

(l) One liaison who may be appointed by the IAB (Internet Architecture Board).

(m) The IFRT shall also include an unlimited number of non-member, non-liaison participants.

(n) The IFRT shall not be a standing body. A new IFRT shall be constituted for each IFR and the IFRT shall automatically dissolve following the end of the process for approving such IFRT's IFR Recommendations pursuant to Section 18.6.

Section 18.8. MEMBERSHIP; ELECTION OF CO-CHAIRS, AND LIAISONS

(a) All candidates for appointment to the IFRT as a member or liaison shall submit an expression of interest to the organization that would appoint such candidate as a member or liaison to the IFRT, which shall state: (i) why the candidate is interested in becoming involved in the IFRT, (ii) what particular skills the candidate would bring to the IFRT, (iii) the candidate's knowledge of the IANA (Internet Assigned Numbers Authority) functions, (iv) the candidate's understanding of the purpose of the IFRT, and (v) that the candidate understands the time necessary to participate in the IFR process and can commit to the role.

(b) Members, liaisons and participants of the IFRT shall disclose to

ICANN (Internet Corporation for Assigned Names and Numbers) and the IFRT any conflicts of interest with a specific complaint or issue under review. The IFRT may exclude from the discussion of a specific complaint or issue any member deemed by the majority of IFRT members to have a conflict of interest. The co-chairs of the IFRT shall record any such conflict of interest in the minutes of the IFRT.

(c) To the extent reasonably possible, the appointing organizations for the IFRT members and liaisons shall work together to achieve an IFRT that is balanced for diversity (including functional, geographic and cultural) and skill, and should seek to broaden the number of individuals participating across the various reviews; provided, that the IFRT should include members from each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region, and the ccNSO (Country Code Names Supporting Organization) and Registries Stakeholder Group shall not appoint multiple members who are citizens of countries from the same ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region.

(d) The IFRT shall be led by two co-chairs: one appointed by the GNSO (Generic Names Supporting Organization) from one of the members appointed pursuant to clauses (c)-(f) of Section 18.7 and one appointed by the ccNSO (Country Code Names Supporting Organization) from one of the members appointed pursuant to clauses (a)-(b) of Section 18.7.

(e) The PTI Board shall select a PTI staff member to serve as a point of contact to facilitate formal lines of communication between the IFRT and PTI. The Board shall select an ICANN (Internet Corporation for Assigned Names and Numbers) staff member to serve as a point of contact to facilitate formal lines of communication between the IFRT and ICANN (Internet Corporation for Assigned Names and Numbers).

(f) Liaisons to the IFRT are not members of or entitled to vote on any matters before the IFRT, but otherwise are entitled to participate on equal footing with members of the IFRT.

(g) Other participants are entitled to participate in the IFRT, but are not entitled to vote.

(h) Removal and Replacement of IFRT Members and Liaisons

> (i) The IFRT members and liaisons may be removed from the IFRT by their respective appointing organization at any time upon such organization providing written notice to the Secretary and the co-chairs of the IFRT.
>
> (ii) A vacancy on the IFRT shall be deemed to exist in the event of the death, resignation or removal of any IFRT member or liaison. Vacancies shall be filled by the organization that appointed such IFRT member or liaison. The appointing organization shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the IFRT co-chairs. The organization responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 18.9. MEETINGS

(a) All actions of the IFRT shall be taken by consensus of the IFRT, which is where a small minority may disagree, but most agree. If consensus cannot be reached with respect to a particular issue, actions by the majority of all of the members of the IFRT shall be the action of the IFRT.

(b) Any members of the IFRT not in favor of an action (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such action, which shall be included in the IFRT minutes and/or report, as applicable.

(c) IFRT meetings, deliberations and other working procedures shall be open to the public and conducted in a transparent manner to the fullest extent possible.

(d) The IFRT shall transmit minutes of its meetings to the Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following each IFRT meeting. Recordings and transcripts of meetings, as well as mailing lists, shall also be posted to the Website.

Section 18.10. COMMUNITY REVIEWS AND REPORTS

(a) The IFRT shall seek community input as to the issues relevant to the IFR through one or more public comment periods that shall comply with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers) and through discussions during ICANN (Internet Corporation for Assigned Names and Numbers)'s public meetings in developing and finalizing its recommendations and any report.

(b) The IFRT shall provide a draft report of its findings and recommendations to the community for public comment. The public comment period is required to comply with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers).

(c) After completion of the IFR, the IFRT shall submit its final report containing its findings and recommendations to the Board. ICANN (Internet Corporation for Assigned Names and Numbers) shall thereafter promptly post the IFRT's final report on the Website.

Section 18.11. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for each IFRT to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the IFRT.

Section 18.12. SPECIAL IFRS

(a) A Special IFR may be initiated outside of the cycle for the Periodic IFRs to address any deficiency, problem or other issue that has adversely affected PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW (a "**PTI Performance Issue**"), following the satisfaction of each of the following conditions:

(i) The Remedial Action Procedures of the CSC set forth in the

IANA (Internet Assigned Numbers Authority) Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such procedures shall have been reviewed by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) according to each organization's respective operating procedures;

(ii) The IANA (Internet Assigned Numbers Authority) Problem Resolution Process set forth in the IANA (Internet Assigned Numbers Authority) Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such process shall have been reviewed by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) according to each organization's respective operating procedures;

(iii) The ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) shall have considered the outcomes of the processes set forth in the preceding clauses (i) and (ii) and shall have conducted meaningful consultation with the other Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) with respect to the PTI Performance Issue and whether or not to initiate a Special IFR; and

(iv) After a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), if a public comment period is requested by the ccNSO (Country Code Names Supporting Organization) and the GNSO (Generic Names Supporting Organization), a Special IFR shall have been approved by the vote of (A) a supermajority of the ccNSO (Country Code Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or if such procedures do not define a supermajority, two-thirds (2/3) of the Council members) and (B) a GNSO (Generic Names Supporting Organization) Supermajority.

(b) Each Special IFR shall be conducted by an IFRT and shall follow the same procedures and requirements applicable to Periodic IFRs as set forth in this Section 18, except that:

(i) The scope of the Special IFR and the related inputs that are required to be reviewed by the IFRT shall be focused primarily on the PTI Performance Issue, its implications for overall IANA (Internet Assigned Numbers Authority) naming function performance by PTI and how to resolve the PTI Performance Issue;

(ii) The IFRT shall review and analyze the information that is relevant to the scope of the Special IFR; and

(iii) Each recommendation of the IFRT relating to the Special IFR, including but not limited to any recommendation to initiate an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process, must be related to remediating the PTI Performance Issue or other issue with PTI's performance that is related to the IFRT responsibilities set forth in Section 18.3, shall include proposed remedial procedures and describe how those procedures are expected to address the PTI Performance Issue or other relevant issue with PTI's performance.

(c) A recommendation of an IFRT for a Special IFR shall only become effective if, with respect to each such recommendation (each, a "**Special IFR Recommendation**"), each of the following occurs:

(i) The Special IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO (Country Code Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO (Country Code Names Supporting Organization) Council's members) and (B) a GNSO (Generic Names Supporting Organization) Supermajority;

(ii) After a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), the Board has approved the Special IFR Recommendation; and

(iii) The EC (Empowered Community) has not rejected the Board's approval of the Special IFR Recommendation pursuant to and in compliance with Section 18.12(e).

(d) If the Board (x) rejects a Special IFR Recommendation that was approved by the ccNSO (Country Code Names Supporting Organization) Council and GNSO (Generic Names Supporting Organization) Council pursuant to Section 18.12(c)(i) or (y) does not resolve to either accept or reject a Special IFR Recommendation within 45 days of the later of (1) the date that the condition in Section 18.12(c)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 18.12(c)(ii), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable Special IFR Recommendation. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(i) ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC (Empowered Community) Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum

Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the Special IFR Recommendation or approve the Special IFR Recommendation (either, a "**Post-Forum Special IFR Recommendation Decision**").

(A)If the Board resolves to approve the Special IFR Recommendation, such Special IFR Recommendation will be subject to Section 18.6(d).

(B)For the avoidance of doubt, the Board shall not be obligated to change its decision on the Special IFR Recommendation as a result of the Rejection Action Community Forum.

(C)The Board's Post-Forum Special IFR Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(e) Promptly after the Board approves a Special IFR Recommendation (a "**Special IFR Recommendation Decision**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Special IFR Recommendation that is the subject of the Special IFR Recommendation Decision. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) A Special IFR Recommendation Decision shall become

final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such Special IFR Recommendation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Special IFR Recommendation Decision; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Special IFR Recommendation Decision.

(ii) A Special IFR Recommendation Decision that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(f) For the avoidance of doubt, Section 18.12(e) shall not apply when the Board acts in a manner that is consistent with a Special IFR Recommendation unless such Special IFR Recommendation relates to an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process as described in Article 19.

Section 18.13. PROPOSED SEPARATION PROCESS

The IFRT conducting either a Special IFR or Periodic IFR may, upon conclusion of a Special IFR or Periodic IFR, as applicable, determine that an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process is necessary and, if so, it shall recommend the creation of an SCWG pursuant to Article 19.

ARTICLE 19IANA (Internet Assigned Numbers Authority) NAMING FUNCTION SEPARATION PROCESS

Section 19.1. ESTABLISHING AN SCWG

(a) An "**IANA (Internet Assigned Numbers Authority) Naming Function Separation Process**" is the process initiated in accordance with this Article 19 pursuant to which PTI may cease to perform the IANA (Internet Assigned Numbers Authority) naming function including, without limitation, the initiation of a request for proposal to select an operator to perform the IANA (Internet Assigned Numbers Authority) naming function instead of PTI ("**IANA (Internet Assigned Numbers Authority) Naming Function RFP**"), the selection of an IANA (Internet Assigned Numbers Authority) naming function operator other than PTI, termination or non-renewal of the IANA (Internet Assigned Numbers Authority) Naming Function Contract, and/or divestiture, or other reorganization of PTI by ICANN (Internet Corporation for Assigned Names and Numbers).

(b) The Board shall establish an SCWG if each of the following occurs:

> (i) The IFRT conducting either a Special IFR or Periodic IFR, upon conclusion of a Special IFR or Periodic IFR, as

applicable, has recommended that an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process is necessary and has recommended the creation of an SCWG (an "**SCWG Creation Recommendation**");

(ii) The SCWG Creation Recommendation has been approved by the vote of (A) a supermajority of the ccNSO (Country Code Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO (Country Code Names Supporting Organization) Council's members) and (B) a GNSO (Generic Names Supporting Organization) Supermajority;

(iii) After a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), the Board has approved the SCWG Creation Recommendation. A determination by the Board to not approve an SCWG Creation Recommendation, where such creation has been approved by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) Councils pursuant to Section 19.1(b)(ii), shall require a vote of at least two-thirds (2/3) of the Board and the Board shall follow the same consultation procedures set forth in Section 9 of Annex A of these Bylaws that relate to Board rejection of a PDP (Policy Development Process) recommendation that is supported by a GNSO (Generic Names Supporting Organization) Supermajority; and

(iv) The EC (Empowered Community) has not rejected the Board's approval of the SCWG Creation Recommendation pursuant to and in compliance with Section 19.1(d).

(c) If the Board (x) rejects an SCWG Creation Recommendation that was approved by the ccNSO (Country Code Names Supporting Organization) Council and GNSO (Generic Names Supporting Organization) Council pursuant to Section 19.1(b)(ii) or (y) does not resolve to either accept or reject an SCWG Creation Recommendation within 45 days of the later of (1) the date that the

condition in Section 19.1(b)(ii) is satisfied or (2) the expiration of the public comment period contemplated by Section 19.1(b)(iii), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable SCWG Creation Recommendation. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(i) ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC (Empowered Community) Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the SCWG Creation Recommendation or approve the SCWG Creation Recommendation (either, a "**Post-Forum SCWG Creation Recommendation Decision**").

(A)If the Board resolves to approve the SCWG Creation Recommendation, such SCWG Creation Recommendation will be subject to Section 19.1(d).

(B)For the avoidance of doubt, the Board shall not be

obligated to change its decision on the SCWG Creation Recommendation as a result of the Rejection Action Community Forum.

(C)The Board's Post-Forum SCWG Creation Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an SCWG Creation Recommendation (an "**SCWG Creation Decision**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the SCWG Creation Decision. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) An SCWG Creation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such SCWG Creation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered

Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such SCWG Creation Decision; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such SCWG Creation Decision.

(ii) An SCWG Creation Decision that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

Section 19.2. SCWG RESPONSIBILITIES

The responsibilities of the SCWG shall be as follows:

(a) The SCWG shall determine how to resolve the PTI Performance Issue(s) which the IFRT that conducted the Special IFR or Periodic IFR, as applicable, identified as triggering formation of this SCWG.

(b) If the SCWG recommends the issuance of an IANA (Internet Assigned Numbers Authority) Naming Function RFP, the SCWG shall:

(i) Develop IANA (Internet Assigned Numbers Authority) Naming Function RFP guidelines and requirements for the performance of the IANA (Internet Assigned Numbers Authority) naming function, in a manner consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s publicly available procurement guidelines (as in

effect immediately prior to the formation of the SCWG); and

(ii) Solicit input from ICANN (Internet Corporation for Assigned Names and Numbers) as well as the global Internet community (through community consultation, including public comment opportunities as necessary that comply with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers)) on requirements to plan and participate in the IANA (Internet Assigned Numbers Authority) Naming Function RFP process.

(c) If an SCWG Recommendation (as defined in Section 19.4(b)) to issue the IANA (Internet Assigned Numbers Authority) Naming Function RFP is approved pursuant to Section 19.4(b) and the EC (Empowered Community) does not reject the relevant SCWG Recommendation Decision pursuant to Section 19.4(d), the SCWG, in consultation with ICANN (Internet Corporation for Assigned Names and Numbers), shall:

(i) Issue the IANA (Internet Assigned Numbers Authority) Naming Function RFP;

(ii) Review responses from interested candidates to the IANA (Internet Assigned Numbers Authority) Naming Function RFP, which may be received from PTI and/or any other entity or person; and

(iii) Recommend the entity that ICANN (Internet Corporation for Assigned Names and Numbers) should contract with to perform the IANA (Internet Assigned Numbers Authority) naming function.

(d) If the SCWG recommends an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process other than the issuance of an IANA (Internet Assigned Numbers Authority) Naming Function RFP, the SCWG shall develop recommendations to be followed with respect to that process and its implementation consistent with the terms of this Article 19. The SCWG shall monitor and manage the implementation of such IANA (Internet Assigned

Numbers Authority) Naming Function Separation Process.

Section 19.3. COMMUNITY REVIEWS AND REPORTS

(a) The SCWG shall seek community input through one or more public comment periods (such public comment period shall comply with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers)) and may recommend discussions during ICANN (Internet Corporation for Assigned Names and Numbers)'s public meetings in developing and finalizing its recommendations and any report.

(b) The SCWG shall provide a draft report of its findings and recommendations to the community after convening of the SCWG, which such draft report will be posted for public comment on the Website. The SCWG may post additional drafts of its report for public comment until it has reached its final report.

(c) After completion of its review, the SCWG shall submit its final report containing its findings and recommendations to the Board. ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post the SCWG's final report on the Website.

Section 19.4. SCWG RECOMMENDATIONS

(a) The recommendations of the SCWG are not limited and could include a variety of recommendations or a recommendation that no action is required; provided, however, that any recommendations must directly relate to the matters discussed in Section 19.2 and comply with this Section 19.4.

(b) ICANN (Internet Corporation for Assigned Names and Numbers) shall not implement an SCWG recommendation (including an SCWG recommendation to issue an IANA (Internet Assigned Numbers Authority) Naming Function RFP) unless, with respect to each such recommendation (each, an "**SCWG Recommendation**"), each of the following occurs:

> (i) The SCWG Recommendation has been approved by the vote of (A) a supermajority of the ccNSO (Country Code

Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO (Country Code Names Supporting Organization) Council's members) and (B) a GNSO (Generic Names Supporting Organization) Supermajority;

(ii) After a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), the Board has approved the SCWG Recommendation. A determination by the Board to not approve an SCWG Recommendation, where such SCWG Recommendation has been approved by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) Councils pursuant to Section 19.4(b)(i), shall require a vote of at least two-thirds (2/3) of the Board and the Board shall follow the same consultation procedures set forth in Section 9 of Annex A of these Bylaws that relate to Board rejection of a PDP (Policy Development Process) recommendation that is supported by a GNSO (Generic Names Supporting Organization) Supermajority; and

(iii) The EC (Empowered Community) has not rejected the Board's approval of the SCWG Recommendation pursuant to and in compliance with Section 19.4(d).

(c) If the Board (x) rejects an SCWG Recommendation that was approved by the ccNSO (Country Code Names Supporting Organization) Council and GNSO (Generic Names Supporting Organization) Council pursuant to Section 19.4(b)(i) or (y) does not resolve to either accept or reject an SCWG Recommendation within 45 days of the later of (1) the date that the condition in Section 19.4(b)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 19.4(b)(ii), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable SCWG Recommendation. ICANN (Internet Corporation for Assigned Names and Numbers)

shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

> (i) ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC (Empowered Community) Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.
>
> (ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the SCWG Recommendation or approve the SCWG Recommendation (either, a "**Post-Forum SCWG Recommendation Decision**").

(A)If the Board resolves to approve the SCWG Recommendation, such SCWG Recommendation will be subject to Section 19.4(d).

(B)For the avoidance of doubt, the Board shall not be obligated to change its decision on the SCWG Recommendation as a result of the Rejection Action Community Forum.

(C)The Board's Post-Forum SCWG Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an SCWG Recommendation (an "**SCWG Recommendation Decision**"), the Secretary shall

provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the SCWG Recommendation that is the subject of the SCWG Recommendation Decision. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

> (i) An SCWG Recommendation Decision shall become final upon the earliest to occur of the following:
>
> (A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such SCWG Recommendation Decision;
>
> (B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such SCWG Recommendation Decision; and
>
> (C)(1) An EC (Empowered Community) Rejection Notice is not

timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such SCWG Recommendation Decision.

(ii) An SCWG Recommendation Decision that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(e) ICANN (Internet Corporation for Assigned Names and Numbers) shall absorb the costs relating to recommendations made by the SCWG, including, without limitation, costs related to the process of selecting or potentially selecting a new operator for the IANA (Internet Assigned Numbers Authority) naming function and the operating costs of the successor operator that are necessary for the successor operator's performance of the IANA (Internet Assigned Numbers Authority) naming function as ICANN (Internet Corporation for Assigned Names and Numbers)'s independent contractor. ICANN (Internet Corporation for Assigned Names and Numbers) shall not be authorized to raise fees from any TLD (Top Level Domain) registry operators to cover the costs associated with implementation of any SCWG Recommendations that specifically relate to the transition to a successor operator. For avoidance of doubt, this restriction shall not apply to collecting appropriate fees necessary to maintain the ongoing performance of the IANA (Internet Assigned Numbers Authority) naming function, including those relating to the operating costs of the successor operator.

(f) In the event that (i) an SCWG Recommendation that selects an entity (other than PTI) as a new operator of the IANA (Internet Assigned Numbers Authority) naming function

is approved pursuant to Section 19.4(b) and (ii) the EC (Empowered Community) does not reject the relevant SCWG Recommendation Decision pursuant to Section 19.4(d), ICANN (Internet Corporation for Assigned Names and Numbers) shall enter into a contract with the new operator on substantially the same terms recommended by the SCWG and approved as part of such SCWG Recommendation.

(g) As promptly as practical following an SCWG Recommendation Decision becoming final in accordance with this Section 19.4, ICANN (Internet Corporation for Assigned Names and Numbers) shall take all steps reasonably necessary to effect such SCWG Recommendation Decision as soon as practicable.

Section 19.5. SCWG COMPOSITION

(a) Each SCWG shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

(i) Two representatives appointed by the ccNSO (Country Code Names Supporting Organization) from its ccTLD (Country Code Top Level Domain) registry operator representatives;

(ii) One non-ccNSO (Country Code Names Supporting Organization) ccTLD (Country Code Top Level Domain) representative who is associated with a ccTLD (Country Code Top Level Domain) registry operator that is not a representative of the ccNSO (Country Code Names Supporting Organization), appointed by the ccNSO (Country Code Names Supporting Organization); it is strongly recommended that the ccNSO (Country Code Names Supporting Organization) consult with the regional ccTLD (Country Code Top Level Domain) organizations (i.e., AfTLD, APTLD (Council of the Asia Pacific country code Top Level Domains), LACTLD (Latin American and Caribbean ccTLDs) and CENTR (Council of European National Top level domain Registries)) in making its appointment;

(iii) Three representatives appointed by the Registries Stakeholder Group;

(iv) One representative appointed by the Registrars Stakeholder Group;

(v) One representative appointed by the Commercial Stakeholder Group;

(vi) One representative appointed by the Non-Commercial Stakeholder Group;

(vii) One representative appointed by the GAC (Governmental Advisory Committee);

(viii) One representative appointed by the SSAC (Security and Stability Advisory Committee);

(ix) One representative appointed by the RSSAC (Root Server System Advisory Committee);

(x) One representative appointed by the ALAC (At-Large Advisory Committee);

(xi) One liaison appointed by the CSC;

(xii) One liaison appointed by the IFRT that conducted the Special IFR or Periodic IFR, as applicable, that recommended the creation of the SCWG, who shall be named in the IFRT's recommendation to convene the Special IFR;

(xiii) One liaison who may be appointed by the ASO (Address Supporting Organization);

(xiv) One liaison who may be appointed by the IAB (Internet Architecture Board); and

(xv) One liaison who may be appointed by the Board.

(xvi) The SCWG may also include an unlimited number of non-member, non-liaison participants.

(b) All candidates for appointment to the SCWG as a member or liaison shall submit an expression of interest to the organization that would appoint such candidate as a member or liaison, which shall state (i) why the candidate is interested in becoming involved in the SCWG, (ii) what particular skills the candidate would bring to the SCWG, (iii) the candidate's knowledge of the IANA (Internet Assigned Numbers Authority) naming function, (iv) the candidate's understanding of the purpose of the SCWG, and (v)that the candidate understands the time necessary to participate in the SCWG process and can commit to the role.

(c) Members and liaisons of the SCWG shall disclose to ICANN (Internet Corporation for Assigned Names and Numbers) and the SCWG any conflicts of interest with a specific complaint or issue under review. The SCWG may exclude from the discussion of a specific complaint or issue any member, liaison or participant deemed by the majority of SCWG members to have a conflict of interest. The co-chairs of the SCWG shall record any such conflict of interest in the minutes of the SCWG.

(d) To the extent reasonably possible, the appointing organizations for SCWG members and liaisons shall work together to:

> (i) achieve an SCWG that is balanced for diversity (including functional, geographic and cultural) and skill, and should seek to broaden the number of individuals participating across the various reviews; provided, that the SCWG should include members from each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region, and the ccNSO (Country Code Names Supporting Organization) and Registries Stakeholder Group shall not appoint multiple members who are citizens of countries from the same ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region;

> (ii) ensure that the SCWG is comprised of individuals who are different from those individuals who comprised the IFRT that conducted the Special IFR or Periodic IFR, as applicable, that recommended the creation of the SCWG, other than the liaison to the IFRT appointed by the CSC; and

(iii) seek to appoint as representatives of the SCWG as many individuals as practicable with experience managing or participating in RFP processes.

(e) ICANN (Internet Corporation for Assigned Names and Numbers) shall select an ICANN (Internet Corporation for Assigned Names and Numbers) staff member and a PTI staff member to serve as points of contact to facilitate formal lines of communication between the SCWG and ICANN (Internet Corporation for Assigned Names and Numbers) and the SCWG and PTI. Communications between the SCWG and the ICANN (Internet Corporation for Assigned Names and Numbers) and PTI points of contact shall be communicated by the SCWG co-chairs.

(f) The SCWG shall not be a standing body. Each SCWG shall be constituted when and as required under these Bylaws and shall dissolve following the end of the process for approving such SCWG's SCWG Recommendations pursuant to Section 19.4(d).

Section 19.6. ELECTION OF CO-CHAIRS AND LIAISONS

(a) The SCWG shall be led by two co-chairs: one appointed by the GNSO (Generic Names Supporting Organization) from one of the members appointed pursuant to clauses (iii)-(vi) of Section 19.5(a) and one appointed by the ccNSO (Country Code Names Supporting Organization) from one of the members appointed pursuant to clauses (i)-(ii) of Section 19.5(a).

(b) Liaisons to the SCWG shall not be members of or entitled to vote on any matters before the SCWG, but otherwise shall be entitled to participate on equal footing with SCWG members.

(c) Removal and Replacement of SCWG Members and Liaisons

(i) The SCWG members and liaisons may be removed from the SCWG by their respective appointing organization at any time upon such organization providing written notice to the Secretary and the co-chairs of the SCWG.

(ii) A vacancy on the SCWG shall be deemed to exist in the

event of the death, resignation or removal of any SCWG member or liaison. Vacancies shall be filled by the organization that appointed such SCWG member or liaison. The appointing organization shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the SCWG co-chairs. The organization responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 19.7. MEETINGS

(a) The SCWG shall act by consensus, which is where a small minority may disagree, but most agree.

(b) Any members of the SCWG not in favor of an action may record a minority dissent to such action, which shall be included in the SCWG minutes and/or report, as applicable.

(c) SCWG meetings and other working procedures shall be open to the public and conducted in a transparent manner to the fullest extent possible.

(d) The SCWG shall transmit minutes of its meetings to the Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following each SCWG meeting, and no later than five business days following the meeting.

(e) Except as otherwise provided in these Bylaws, the SCWG shall follow the guidelines and procedures applicable to ICANN (Internet Corporation for Assigned Names and Numbers) Cross Community Working Groups that will be publicly available and may be amended from time to time.

Section 19.8. ADMINISTRATIVE SUPPORT

ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the SCWG to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the SCWG.

Section 19.9. CONFLICTING PROVISIONS

In the event any SCWG Recommendation that is approved in accordance with this Article 19 requires ICANN (Internet Corporation for Assigned Names and Numbers) to take any action that is inconsistent with a provision of the Bylaws (including any action taken in implementing such SCWG Recommendation), the requirements of such provision of these Bylaws shall not apply to the extent of that inconsistency.

ARTICLE 20 INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

Section 20.1. INDEMNIFICATION GENERALLY

ICANN (Internet Corporation for Assigned Names and Numbers) shall, to the maximum extent permitted by the CCC, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of ICANN (Internet Corporation for Assigned Names and Numbers), provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in ICANN (Internet Corporation for Assigned Names and Numbers)'s best interests and not criminal. For purposes of this Article 20, an "agent" of ICANN (Internet Corporation for Assigned Names and Numbers) includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (Internet Corporation for Assigned Names and Numbers) (including a member of the EC (Empowered Community), the EC (Empowered Community) Administration, any Supporting Organization (Supporting Organization), any Advisory Committee (Advisory Committee), the Nominating Committee, any other ICANN (Internet Corporation for Assigned Names and Numbers) committee, or the Technical Liaison Group) acting within the scope of his or her responsibility; or is or was serving at the request of ICANN (Internet Corporation for Assigned Names and Numbers) as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN (Internet Corporation for

Assigned Names and Numbers) against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not ICANN (Internet Corporation for Assigned Names and Numbers) would have the power to indemnify the agent against that liability under the provisions of this Article 20.

Section 20.2. INDEMNIFICATION WITH RESPECT TO DIRECTOR REMOVAL

If a Director initiates any proceeding in connection with his or her removal or recall pursuant to the Bylaws, to which a person who is a member of the leadership council (or equivalent body) of a Decisional Participant or representative of a Decisional Participant in the EC (Empowered Community) Administration is a party or is threatened to be made a party (as a party or witness) (a "**Director Removal Proceeding**"), ICANN (Internet Corporation for Assigned Names and Numbers) shall, to the maximum extent permitted by the CCC, indemnify any such person, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by such person in connection with such Director Removal Proceeding, for actions taken by such person in his or her representative capacity within his or her Decisional Participant pursuant to the processes and procedures set forth in these Bylaws, provided that all such actions were taken by such person in good faith and in a manner that such person reasonably believed to be in ICANN (Internet Corporation for Assigned Names and Numbers)'s best interests and not criminal. The actual and reasonable legal fees of a single firm of counsel and other expenses actually and reasonably incurred by such person in defending against a Director Removal Proceeding shall be paid by ICANN (Internet Corporation for Assigned Names and Numbers) in advance of the final disposition of such Director Removal Proceeding, provided, however, that such expenses shall be advanced only upon delivery to the Secretary of an undertaking (which shall be in writing and in a form provided by the Secretary) by such person to repay the amount of such expenses if it shall ultimately be determined that such person is not entitled to be indemnified by ICANN (Internet Corporation for Assigned Names and Numbers). ICANN (Internet Corporation for Assigned Names and Numbers) shall not be obligated to indemnify such person against any settlement of a

Director Removal Proceeding, unless such settlement is approved in advance by the Board in its reasonable discretion. Notwithstanding Section 20.1, the indemnification provided in this Section 20.2 shall be ICANN (Internet Corporation for Assigned Names and Numbers)'s sole indemnification obligation with respect to the subject matter set forth in this Section 20.2.

ARTICLE 21 GENERAL PROVISIONS

Section 21.1. CONTRACTS

The Board may authorize any Officer or Officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of ICANN (Internet Corporation for Assigned Names and Numbers), and such authority may be general or confined to specific instances. In the absence of a contrary Board authorization, contracts and instruments may only be executed by the following Officers: President, any Vice President, or the CFO. Unless authorized or ratified by the Board, no other Officer, agent, or employee shall have any power or authority to bind ICANN (Internet Corporation for Assigned Names and Numbers) or to render it liable for any debts or obligations.

Section 21.2. DEPOSITS

All funds of ICANN (Internet Corporation for Assigned Names and Numbers) not otherwise employed shall be deposited from time to time to the credit of ICANN (Internet Corporation for Assigned Names and Numbers) in such banks, trust companies, or other depositories as the Board, or the President under its delegation, may select.

Section 21.3. CHECKS

All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of ICANN (Internet Corporation for Assigned Names and Numbers) shall be signed by such Officer or Officers, agent or agents, of ICANN (Internet Corporation for Assigned Names and Numbers) and in such a manner as shall from time to time be determined by resolution of the Board.

Section 21.4. LOANS

No loans shall be made by or to ICANN (Internet Corporation for Assigned Names and Numbers) and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances; provided, however, that no loans shall be made by ICANN (Internet Corporation for Assigned Names and Numbers) to its Directors or Officers.

Section 21.5. NOTICES

All notices to be given to the EC (Empowered Community) Administration, the Decisional Participants, or the Secretary pursuant to any provision of these Bylaws shall be given either (a) in writing at the address of the appropriate party as set forth below or (b) via electronic mail as provided below, unless that party has given a notice of change of postal or email address, as provided in this Section 21.5. Any change in the contact information for notice below will be given by the party within 30 days of such change. Any notice required by these Bylaws 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 electronic mail, upon confirmation of receipt by the recipient's email server, provided that such notice via electronic mail shall be followed by a copy sent by regular postal mail service within three days. In the event other means of notice become practically achievable, such as notice via a secure website, the EC (Empowered Community) Administration, the Decisional Participants, and ICANN (Internet Corporation for Assigned Names and Numbers) will work together to implement such notice means.

If to ICANN (Internet Corporation for Assigned Names and Numbers), addressed to:

Internet Corporation for Assigned Names and Numbers

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094-2536

USA

Email: [___]

Attention: Secretary

If to a Decisional Participant or the EC (Empowered Community) Administration, addressed to the contact information available at [insert Website reference].

ARTICLE 22 FISCAL AND STRATEGIC MATTERS, INSPECTION AND INDEPENDENT INVESTIGATION

Section 22.1. ACCOUNTING

The fiscal year end of ICANN (Internet Corporation for Assigned Names and Numbers) shall be determined by the Board.

Section 22.2. AUDIT

At the end of the fiscal year, the books of ICANN (Internet Corporation for Assigned Names and Numbers) shall be closed and audited by certified public accountants. The appointment of the fiscal auditors shall be the responsibility of the Board.

Section 22.3. ANNUAL REPORT AND ANNUAL STATEMENT

The Board shall publish, at least annually, a report describing its activities, including an audited financial statement, a description of any payments made by ICANN (Internet Corporation for Assigned Names and Numbers) to Directors (including reimbursements of expenses) and a description of ICANN (Internet Corporation for Assigned Names and Numbers)'s progress towards the obligations imposed under the Bylaws as revised on 1 October 2016 and the Operating Plan and Strategic Plan. ICANN (Internet Corporation for Assigned Names and Numbers) shall cause the annual report and the annual statement of certain transactions as required by the CCC to be prepared and sent to each member of the Board and to such other persons as the Board may designate, no later than one hundred twenty (120) days after the close of ICANN (Internet Corporation for Assigned Names and Numbers)'s fiscal year.

Section 22.4. BUDGETS

(a) ICANN (Internet Corporation for Assigned Names and Numbers) Budget

(i) In furtherance of its Commitment to transparent and accountable budgeting processes, at least forty-five (45) days prior to the commencement of each fiscal year, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall prepare and submit to the Board a proposed annual operating plan and budget of ICANN (Internet Corporation for Assigned Names and Numbers) for the next fiscal year (the "**ICANN (Internet Corporation for Assigned Names and Numbers) Budget**"), which shall be posted on the Website. The ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall identify anticipated revenue sources and levels and shall, to the extent practical, identify anticipated material expense items by line item.

(ii) Prior to approval of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall consult with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) during the ICANN (Internet Corporation for Assigned Names and Numbers) Budget development process, and comply with the requirements of this Section 22.4(a).

(iii) Prior to approval of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget by the Board, a draft of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to post a revised draft of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget and may direct ICANN (Internet Corporation for Assigned Names and Numbers) Staff

to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(v) Promptly after the Board approves an ICANN (Internet Corporation for Assigned Names and Numbers) Budget (an "**ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget that is the subject of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the ICANN (Internet Corporation for Assigned Names and Numbers) Budget that is the subject of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date (as defined in

Section 2.2(a) of Annex D) relating to such ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval and the effectiveness of such ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the ICANN (Internet Corporation for Assigned Names and Numbers) Budget that is the subject of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval and the effectiveness of such ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the ICANN (Internet Corporation for Assigned Names and Numbers) Budget that is the subject of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such ICANN (Internet Corporation

for Assigned Names and Numbers) Budget Approval and the effectiveness of such ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(vii) An ICANN (Internet Corporation for Assigned Names and Numbers) Budget that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC (Empowered Community) Rejection Notice relating to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the ICANN (Internet Corporation for Assigned Names and Numbers) Budget in determining the substance of such new ICANN (Internet Corporation for Assigned Names and Numbers) Budget, which shall be subject to the procedures of this Section 22.4(a).

(ix) If an ICANN (Internet Corporation for Assigned Names and Numbers) Budget has not come into full force and effect pursuant to this Section 22.4(a) on or prior to the first date of any fiscal year of ICANN (Internet Corporation for Assigned Names and Numbers), the Board shall adopt a temporary budget in accordance with Annex E hereto ("**Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget**"), which Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall be effective until such time as an ICANN (Internet Corporation for Assigned Names and Numbers) Budget has been effectively approved by the Board and not rejected by the EC (Empowered Community) pursuant to this Section 22.4(a).

(b) IANA (Internet Assigned Numbers Authority) Budget

(i) At least 45 days prior to the commencement of each fiscal year, ICANN (Internet Corporation for Assigned Names and Numbers) shall prepare and submit to the Board a proposed annual operating plan and budget of PTI and the IANA (Internet Assigned Numbers Authority) department, which budget shall include itemization of the direct costs for ICANN (Internet Corporation for Assigned Names and Numbers)'s IANA (Internet Assigned Numbers Authority) department, all costs for PTI, direct costs for shared resources between ICANN (Internet Corporation for Assigned Names and Numbers) and PTI and support functions provided by ICANN (Internet Corporation for Assigned Names and Numbers) to PTI and ICANN (Internet Corporation for Assigned Names and Numbers)'s IANA (Internet Assigned Numbers Authority) department for the next fiscal year (the "**IANA (Internet Assigned Numbers Authority) Budget**"), which shall be posted on the Website. Separately and in addition to the general ICANN (Internet Corporation for Assigned Names and Numbers) planning process, ICANN (Internet Corporation for Assigned Names and Numbers) shall require PTI to prepare and submit to the PTI Board a proposed annual operating plan and budget for PTI's performance of the IANA (Internet Assigned Numbers Authority) functions for the next fiscal year ("**PTI Budget**"). ICANN (Internet Corporation for Assigned Names and Numbers) shall require PTI to consult with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), as well as the Registries Stakeholder Group, the IAB (Internet Architecture Board) and RIRs, during the PTI Budget development process, and shall seek public comment on the draft PTI Budget prior to approval of the PTI Budget by PTI. ICANN (Internet Corporation for Assigned Names and Numbers) shall require PTI to submit the PTI Budget to ICANN (Internet Corporation for Assigned Names and Numbers) as an input prior to and for the purpose of being included in the proposed Operating Plan (as defined in Section 22.5(a)) and ICANN (Internet Corporation for Assigned Names and Numbers) Budget.

(ii) Prior to approval of the IANA (Internet Assigned Numbers Authority) Budget by the Board, ICANN (Internet Corporation

for Assigned Names and Numbers) staff shall consult with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), as well as the Registries Stakeholder Group, IAB (Internet Architecture Board) and RIRs, during the IANA (Internet Assigned Numbers Authority) Budget development process, and comply with the requirements of this Section 22.4(b).

(iii) Prior to approval of the IANA (Internet Assigned Numbers Authority) Budget by the Board, a draft of the IANA (Internet Assigned Numbers Authority) Budget shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to post a revised draft of the IANA (Internet Assigned Numbers Authority) Budget and may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(v) Promptly after the Board approves an IANA (Internet Assigned Numbers Authority) Budget (an "**IANA (Internet Assigned Numbers Authority) Budget Approval**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the IANA (Internet Assigned Numbers Authority) Budget that is the subject of the IANA (Internet Assigned Numbers Authority) Budget Approval. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An IANA (Internet Assigned Numbers Authority) Budget shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the IANA (Internet Assigned Numbers Authority) Budget that is the subject of the IANA (Internet Assigned Numbers Authority) Budget Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such IANA (Internet Assigned Numbers Authority) Budget Approval and the effectiveness of such IANA (Internet Assigned Numbers Authority) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the IANA (Internet Assigned Numbers Authority) Budget that is the subject of the IANA (Internet Assigned Numbers Authority) Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such IANA (Internet Assigned Numbers Authority) Budget Approval and the effectiveness of such IANA (Internet Assigned Numbers Authority) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the IANA (Internet Assigned Numbers Authority) Budget that is the subject of the IANA (Internet Assigned Numbers Authority) Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such IANA (Internet Assigned Numbers Authority) Budget Approval and the effectiveness of such IANA (Internet Assigned Numbers Authority) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(vii) An IANA (Internet Assigned Numbers Authority) Budget that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC (Empowered Community) Rejection Notice relating to an IANA (Internet Assigned Numbers Authority) Budget, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the IANA (Internet Assigned Numbers Authority) Budget in determining the substance of such new IANA (Internet Assigned Numbers Authority) Budget, which shall be subject to the procedures of this Section 22.4(b).

(ix) If an IANA (Internet Assigned Numbers Authority) Budget has not come into full force and effect pursuant to this Section 22.4(b) on or prior to the first date of any fiscal year of ICANN (Internet Corporation for Assigned Names and Numbers), the Board shall adopt a temporary budget in accordance with

Annex F hereto ("**Caretaker IANA (Internet Assigned Numbers Authority) Budget**"), which Caretaker IANA (Internet Assigned Numbers Authority) Budget shall be effective until such time as an IANA (Internet Assigned Numbers Authority) Budget has been effectively approved by the Board and not rejected by the EC (Empowered Community) pursuant to this Section 22.4(b).

(c) If an IANA (Internet Assigned Numbers Authority) Budget does not receive an EC (Empowered Community) Rejection Notice but an ICANN (Internet Corporation for Assigned Names and Numbers) Budget receives an EC (Empowered Community) Rejection Notice, any subsequent revised ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall not alter the expenditures allocated for the IANA (Internet Assigned Numbers Authority) Budget.

(d) If an ICANN (Internet Corporation for Assigned Names and Numbers) Budget does not receive an EC (Empowered Community) Rejection Notice but an IANA (Internet Assigned Numbers Authority) Budget receives an EC (Empowered Community) Rejection Notice, any subsequent revised IANA (Internet Assigned Numbers Authority) Budget shall, once approved, be deemed to automatically modify the ICANN (Internet Corporation for Assigned Names and Numbers) Budget in a manner determined by the Board without any further right of the EC (Empowered Community) to reject the ICANN (Internet Corporation for Assigned Names and Numbers) Budget.

(e) Under all circumstances, the Board will have the ability to make out-of-budget funding decisions for unforeseen expenses necessary to maintaining ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission or to fulfilling ICANN (Internet Corporation for Assigned Names and Numbers)'s pre-existing legal obligations and protecting ICANN (Internet Corporation for Assigned Names and Numbers) from harm or waste.

(f) To maintain ongoing operational excellence and financial stability of the IANA (Internet Assigned Numbers Authority) functions (so long as they are performed by ICANN (Internet Corporation for Assigned Names and Numbers) or pursuant to contract with ICANN (Internet Corporation for Assigned Names and Numbers)) and PTI,

ICANN (Internet Corporation for Assigned Names and Numbers) shall be required to plan for and allocate funds to ICANN (Internet Corporation for Assigned Names and Numbers)'s performance of the IANA (Internet Assigned Numbers Authority) functions and to PTI, as applicable, that are sufficient to cover future expenses and contingencies to ensure that the performance of those IANA (Internet Assigned Numbers Authority) functions and PTI in the future are not interrupted due to lack of funding.

(g) The ICANN (Internet Corporation for Assigned Names and Numbers) Budget and the IANA (Internet Assigned Numbers Authority) Budget shall be published on the Website.

Section 22.5. PLANS

(a) Operating Plan

> (i) At least 45 days prior to the commencement of each fiscal year, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall prepare and submit to the Board a proposed operating plan of ICANN (Internet Corporation for Assigned Names and Numbers) for the next five fiscal years (the "**Operating Plan**"), which shall be posted on the Website.
>
> (ii) Prior to approval of the Operating Plan by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall consult with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) during the Operating Plan development process, and comply with the requirements of this Section 22.5(a).
>
> (iii) Prior to approval of the Operating Plan by the Board, a draft of the Operating Plan shall be posted on the Website and shall be subject to public comment.
>
> (iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to post a revised draft of the Operating Plan and may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff

to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(v) Promptly after the Board approves an Operating Plan (an "**Operating Plan Approval**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Operating Plan that is the subject of the Operating Plan Approval. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An Operating Plan shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional

Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(vii) An Operating Plan that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC (Empowered Community) Rejection Notice relating to an Operating Plan, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the Operating

Plan in determining the substance of such new Operating Plan, which shall be subject to the procedures of this Section 22.5(a).

(b) Strategic Plan

(i) At least 45 days prior to the commencement of each five fiscal year period, with the first such period covering fiscal years 2021 through 2025, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall prepare and submit to the Board a proposed strategic plan of ICANN (Internet Corporation for Assigned Names and Numbers) for the next five fiscal years (the "**Strategic Plan**"), which shall be posted on the Website.

(ii) Prior to approval of the Strategic Plan by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall consult with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) during the Strategic Plan development process, and comply with the requirements of this Section 22.5(b).

(iii) Prior to approval of the Strategic Plan by the Board, a draft of the Strategic Plan shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to submit a revised draft of the Strategic Plan and may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(v) Promptly after the Board approves a Strategic Plan (a "**Strategic Plan Approval**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Strategic Plan that is the

subject of the Strategic Plan Approval. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) A Strategic Plan shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Strategic Plan

Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(vii) A Strategic Plan that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC (Empowered Community) Rejection Notice relating to a Strategic Plan, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the Strategic Plan in determining the substance of such new Strategic Plan, which shall be subject to the procedures of this Section 22.5(b).

Section 22.6. FEES AND CHARGES

The Board may set fees and charges for the services and benefits provided by ICANN (Internet Corporation for Assigned Names and Numbers), with the goal of fully recovering the reasonable costs of

the operation of ICANN (Internet Corporation for Assigned Names and Numbers) and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of ICANN (Internet Corporation for Assigned Names and Numbers). Such fees and charges shall be fair and equitable, shall be published for public comment prior to adoption, and once adopted shall be published on the Website in a sufficiently detailed manner so as to be readily accessible.

Section 22.7. INSPECTION

(a) A Decisional Participant (the "**Inspecting Decisional Participant**") may request to inspect the accounting books and records of ICANN (Internet Corporation for Assigned Names and Numbers), as interpreted pursuant to the provisions of Section 6333 of the CCC, and the minutes of the Board or any Board Committee for a purpose reasonably related to such Inspecting Decisional Participant's interest as a Decisional Participant in the EC (Empowered Community). The Inspecting Decisional Participant shall make such a request by providing written notice from the chair of the Inspecting Decisional Participant to the Secretary stating the nature of the documents the Inspecting Decisional Participant seeks to inspect ("**Inspection Request**"). Any Inspection Request must be limited to the accounting books and records of ICANN (Internet Corporation for Assigned Names and Numbers) relevant to the operation of ICANN (Internet Corporation for Assigned Names and Numbers) as a whole, and shall not extend to the underlying sources of such accounting books or records or to documents only relevant to a small or isolated aspect of ICANN (Internet Corporation for Assigned Names and Numbers)'s operations or that relate to the minutiae of ICANN (Internet Corporation for Assigned Names and Numbers)'s financial records or details of its management and administration (the "**Permitted Scope**"). Unless ICANN (Internet Corporation for Assigned Names and Numbers) declines such request (as provided below), ICANN (Internet Corporation for Assigned Names and Numbers) shall make the records requested under an Inspection Request available for inspection by such Inspecting Decisional Participant within 30 days of the date the Inspection Request is received by the Secretary or as soon as reasonably practicable thereafter. All materials and information made available by ICANN (Internet Corporation for Assigned Names

and Numbers) for inspection pursuant to an Inspection Request may only be used by the Inspecting Decisional Participant for purposes reasonably related to such Inspecting Decisional Participant's interest as a Decisional Participant in the EC (Empowered Community). ICANN (Internet Corporation for Assigned Names and Numbers) shall post all Inspection Requests to the Website.

(b) ICANN (Internet Corporation for Assigned Names and Numbers) may decline an Inspection Request on the basis that such Inspection Request (i) is motivated by a Decisional Participant's financial, commercial or political interests, or those of one or more of its constituents, (ii) relates to documents that are not reasonably related to the purpose specified in the Inspection Request or the Inspecting Decisional Participant's interest as a Decisional Participant in the EC (Empowered Community), (iii) requests identical records provided in a prior request of such Decisional Participant, (iv) is not within the Permitted Scope, (v) relates to personnel records, (vi) relates to documents or communications covered by attorney-client privilege, work product doctrine or other legal privilege or (vii) relates to documents or communications that ICANN (Internet Corporation for Assigned Names and Numbers) may not make available under applicable law because such documents or communications contain confidential information that ICANN (Internet Corporation for Assigned Names and Numbers) is required to protect. If an Inspection Request is overly broad, ICANN (Internet Corporation for Assigned Names and Numbers) may request a revised Inspection Request from the Inspecting Decisional Participant.

(c) Any such inspections shall be conducted at the times and locations reasonably determined by ICANN (Internet Corporation for Assigned Names and Numbers) and shall not be conducted in a manner that unreasonably interferes with ICANN (Internet Corporation for Assigned Names and Numbers)'s operations. All such inspections shall be subject to reasonable procedures established by ICANN (Internet Corporation for Assigned Names and Numbers), including, without limitation, the number of individuals authorized to conduct any such inspection on behalf of the Inspecting Decisional Participant. ICANN (Internet Corporation for Assigned Names and Numbers) may require the inspectors to

sign a non-disclosure agreement. The Inspecting Decisional Participant may, at its own cost, copy or otherwise reproduce or make a record of materials inspected. ICANN (Internet Corporation for Assigned Names and Numbers) may redact or determine not to provide requested materials on the same basis that such information is of a category or type described in Section 22.7(b), in which case ICANN (Internet Corporation for Assigned Names and Numbers) will provide the Inspecting Decisional Participant a written rationale for such redactions or determination.

(d) The inspection rights provided to the Decisional Participants pursuant to this Section 22.7 are granted to the Decisional Participants and are not granted or available to any other person or entity. Notwithstanding the foregoing, nothing in this Section 22.7 shall be construed as limiting the accessibility of ICANN (Internet Corporation for Assigned Names and Numbers)'s document information disclosure policy ("**DIDP**").

(e) If the Inspecting Decisional Participant believes that ICANN (Internet Corporation for Assigned Names and Numbers) has violated the provisions of this Section 22.7, the Inspecting Decisional Participant may seek one or more of the following remedies: (i) appeal such matter to the Ombudsman and/or the Board for a ruling on the matter, (ii) initiate the Reconsideration Request process in accordance with Section 4.2, (iii) initiate the Independent Review Process in accordance with Section 4.3, or (iv) petition the EC (Empowered Community) to initiate (A) a Community IRP pursuant to Section 4.2 of Annex D or (B) a Board Recall Process pursuant to Section 3.3 of Annex D. Any determination by the Ombudsman is not binding on ICANN (Internet Corporation for Assigned Names and Numbers) staff, but may be submitted by the Inspecting Decisional Participant when appealing to the Board for a determination, if necessary.

Section 22.8. INDEPENDENT INVESTIGATION

If three or more Decisional Participants deliver to the Secretary a joint written certification from the respective chairs of each such Decisional Participant that the constituents of such Decisional Participants have, pursuant to the internal procedures of such Decisional Participants, determined that there is a credible

allegation that ICANN (Internet Corporation for Assigned Names and Numbers) has committed fraud or that there has been a gross mismanagement of ICANN (Internet Corporation for Assigned Names and Numbers)'s resources, ICANN (Internet Corporation for Assigned Names and Numbers) shall retain a third-party, independent firm to investigate such alleged fraudulent activity or gross mismanagement. ICANN (Internet Corporation for Assigned Names and Numbers) shall post all such certifications to the Website. The independent firm shall issue a report to the Board. The Board shall consider the recommendations and findings set forth in such report. Such report shall be posted on the Website, which may be in a redacted form as determined by the Board, in order to preserve attorney-client privilege, work product doctrine or other legal privilege or where such information is confidential, in which case ICANN (Internet Corporation for Assigned Names and Numbers) will provide the Decisional Participants that submitted the certification a written rationale for such redactions.

ARTICLE 23 MEMBERS

ICANN (Internet Corporation for Assigned Names and Numbers) shall not have members, as contemplated by Section 5310 of the CCC, notwithstanding the use of the term "member" in these Bylaws, in any ICANN (Internet Corporation for Assigned Names and Numbers) document, or in any action of the Board or staff. For the avoidance of doubt, the EC (Empowered Community) is not a member of ICANN (Internet Corporation for Assigned Names and Numbers).

ARTICLE 24 OFFICES AND SEAL

Section 24.1. OFFICES

The principal office for the transaction of the business of ICANN (Internet Corporation for Assigned Names and Numbers) shall be in the County of Los Angeles, State of California, United States of America. ICANN (Internet Corporation for Assigned Names and Numbers) may also have an additional office or offices within or outside the United States of America as it may from time to time establish.

Section 24.2. SEAL

The Board may adopt a corporate seal and use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE 25 AMENDMENTS

Section 25.1. AMENDMENTS TO THE STANDARD BYLAWS

(a) Except as otherwise provided in the Articles of Incorporation or these Bylaws, these Bylaws may be altered, amended, or repealed and new Bylaws adopted only upon approval by a two-thirds vote of all Directors and in compliance with the terms of this Section 25.1 (a "**Standard Bylaw Amendment**").

(b) Prior to approval of a Standard Bylaw Amendment by the Board, a draft of the Standard Bylaw Amendment shall be posted on the Website and shall be subject to public comment in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(c) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to post a revised draft of the Standard Bylaw Amendment and may conduct one or more additional public comment periods in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(d) Within seven days after the Board's approval of a Standard Bylaw Amendment ("**Standard Bylaw Amendment Approval**"), the Secretary shall (i) provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall contain the form of the approved amendment and the Board's rationale for adopting such amendment, and (ii) post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website. The steps contemplated in Article 2 of Annex D shall then be followed.

(e) A Standard Bylaw Amendment shall become effective upon the earliest to occur of the following:

(i) (A) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the 30th day following the Rejection Action Board Notification Date relating to such Standard Bylaw Amendment Approval and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;

(ii) (A) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Standard Bylaw Amendment and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; or

(iii) (A) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (B) a Rejection Process

Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Standard Bylaw Amendment and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(f) If an EC (Empowered Community) Rejection Notice is timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and compliance with Section 2.4 of Annex D, the Standard Bylaw Amendment contained in the Board Notice shall be deemed to have been rejected by the EC (Empowered Community). A Standard Bylaw Amendment that has been rejected by the EC (Empowered Community) shall be null and void and shall not become part of these Bylaws, notwithstanding its approval by the Board.

(g) The Secretary shall promptly inform the Board of the receipt and substance of any Rejection Action Petition, Rejection Action Supported Petition or EC (Empowered Community) Rejection Notice delivered by the Rejection Action Petitioning Decisional Participant or the EC (Empowered Community) Administration, as applicable, to the Secretary hereunder.

(h) Following receipt of an EC (Empowered Community) Rejection Notice pertaining to a Standard Bylaw Amendment, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the Standard Bylaw Amendment in determining whether or not to develop a new Standard Bylaw Amendment and the substance of such new Standard Bylaw Amendment, which shall be subject to the procedures of this Section 25.1.

Section 25.2. AMENDMENTS TO THE FUNDAMENTAL BYLAWS AND ARTICLES OF INCORPORATION

(a) Article 1; Sections 4.2, 4.3 and 4.7; Article 6; Sections 7.1 through 7.5, inclusive, and Sections 7.8, 7.11, 7.12, 7.17, 7.24 and 7.25; those portions of Sections 8.1, 9.2(b), 10.3(i), 11.3(f) and 12.2(d)(x)(A) relating to the provision to the EC (Empowered Community) of nominations of Directors by the nominating body, Articles 16, 17, 18 and 19, Sections 22.4, 22.5, 22.7 and 22.8, Article 26, Section 27.1; Annexes D, E and F; and this Article 25 are each a "**Fundamental Bylaw**" and, collectively, are the "**Fundamental Bylaws**".

(b) Notwithstanding any other provision of these Bylaws, a Fundamental Bylaw or the Articles of Incorporation may be altered, amended, or repealed (a "**Fundamental Bylaw Amendment**" or an "**Articles Amendment**"), only upon approval by a three-fourths vote of all Directors and the approval of the EC (Empowered Community) as set forth in this Section 25.2.

(c) Prior to approval of a Fundamental Bylaw Amendment, or an Articles Amendment by the Board, a draft of the Fundamental Bylaw Amendment or Articles Amendment, as applicable, shall be posted on the Website and shall be subject to public comment in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(d) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to submit a revised draft of the Fundamental Bylaw Amendment or Articles Amendment, as applicable, and may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to conduct one or more additional public comment periods in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(e) Within seven days after the Board's approval of a Fundamental Bylaw Amendment or Articles Amendment, as applicable, the Secretary shall (i) provide a Board Notice to the EC (Empowered

Community) Administration and the Decisional Participants, which Board Notice shall contain the form of the approved amendment and (ii) post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website. The steps contemplated in Article 1 of Annex D shall then be followed.

(f) If the EC (Empowered Community) Administration timely delivers an EC (Empowered Community) Approval Notice (as defined in Section 1.4(b) of Annex D), the Fundamental Bylaw Amendment or Articles Amendment, as applicable, set forth in the Board Notice shall be deemed approved by the EC (Empowered Community), and, as applicable, (i) such Fundamental Bylaw Amendment shall be in full force and effect as part of these Bylaws as of the date immediately following the Secretary's receipt of the EC (Empowered Community) Approval Notice; or (ii) the Secretary shall cause such Articles Amendment promptly to be certified by the appropriate officers of ICANN (Internet Corporation for Assigned Names and Numbers) and filed with the California Secretary of State. In the event of such approval, neither the Fundamental Bylaw Amendment nor the Articles Amendment shall be subject to any further review or approval of the EC (Empowered Community). The Secretary shall promptly inform the Board of the receipt of an EC (Empowered Community) Approval Notice.

(g) If an EC (Empowered Community) Approval Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary, the Fundamental Bylaw Amendment or Articles Amendment, as applicable, set forth in the Board Notice shall be deemed not approved by the EC (Empowered Community), shall be null and void, and, notwithstanding its approval by the Board, the Fundamental Bylaw Amendment shall not be part of these Bylaws and the Articles Amendment shall not be filed with the Secretary of State.

(h) If a Fundamental Bylaw Amendment or Articles Amendment, as applicable, is not approved by the EC (Empowered Community), ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the concerns raised by the EC (Empowered Community) in determining whether or not to develop a new Fundamental Bylaws Amendment or Articles Amendment, as

applicable, and the substance thereof, which shall be subject to the procedures of this Section 25.2.

Section 25.3. AMENDMENTS RESULTING FROM A POLICY DEVELOPMENT PROCESS

The Board shall not combine an amendment of these Bylaws that was the result of a policy development process of a Supporting Organization (Supporting Organization) (a "**PDP (Policy Development Process) Amendment**") with any other amendment. The Board shall indicate in the applicable Board Notice whether such amendment is a PDP (Policy Development Process) Amendment.

Section 25.4. OTHER AMENDMENTS

For the avoidance of doubt, these Bylaws can only be amended as set forth in this Article 25. Neither the EC (Empowered Community), the Decisional Participants, the Supporting Organizations (Supporting Organizations), the Advisory Committees (Advisory Committees) nor any other entity or person shall have the power to directly propose amendments to these Bylaws.

ARTICLE 26 SALE OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF ICANN (Internet Corporation for Assigned Names and Numbers)'S ASSETS

(a) ICANN (Internet Corporation for Assigned Names and Numbers) may consummate a transaction or series of transactions that would result in the sale or disposition of all or substantially all of ICANN (Internet Corporation for Assigned Names and Numbers)'s assets (an "**Asset Sale**") only upon approval by a three-fourths vote of all Directors and the approval of the EC (Empowered Community) as set forth in this Article 26.

(b) Prior to approval of an Asset Sale by the Board, a draft of the definitive Asset Sale agreement (an "**Asset Sale Agreement**"), shall be posted on the Website and shall be subject to public comment in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(c) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to submit a revised draft of the Asset Sale Agreement, as applicable, and may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to conduct one or more additional public comment periods in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(d) Within seven days after the Board's approval of an Asset Sale the Secretary shall (i) provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall contain the form of the Asset Sale Agreement and (ii) post the Board Notice on the Website. The steps contemplated in Article 1 of Annex D shall then be followed.

(e) If the EC (Empowered Community) Administration timely delivers an EC (Empowered Community) Approval Notice for the Asset Sale pursuant to and in compliance with the procedures and requirements of Section 1.4(b) of Annex D, the Asset Sale set forth in the Board Notice shall be deemed approved by the EC (Empowered Community), and the Asset Sale may be consummated by ICANN (Internet Corporation for Assigned Names and Numbers), but only under the terms set forth in the Asset Sale Agreement. In the event of such approval, the Asset Sale shall not be subject to any further review or approval of the EC (Empowered Community). The Secretary shall promptly inform the Board of the receipt of an EC (Empowered Community) Approval Notice.

(f) If an EC (Empowered Community) Approval Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary, the Asset Sale set forth in the Board Notice shall be deemed not approved by the EC (Empowered Community), shall be null and void, and, notwithstanding its approval by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) shall not consummate the Asset Sale.

(g) If an Asset Sale is not approved by the EC (Empowered Community), ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the concerns raised by the EC (Empowered Community) in determining whether or not to consider a new Asset Sale, and the substance thereof, which shall

be subject to the procedures of this Article 26.

ARTICLE 27 TRANSITION ARTICLE

Section 27.1. WORK STREAM 2

(a) The Cross-Community Working Group on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability ("**CCWG-Accountability**") was established pursuant to a charter dated 3 November 2014 ("**CCWG-Accountability Charter**"). The CCWG-Accountability Charter was subsequently adopted by the GNSO (Generic Names Supporting Organization), ALAC (At-Large Advisory Committee), ccNSO (Country Code Names Supporting Organization), GAC (Governmental Advisory Committee), ASO (Address Supporting Organization) and SSAC (Security and Stability Advisory Committee) ("**CCWG Chartering Organizations**"). The CCWG-Accountability Charter as in effect on 3 November 2014 shall remain in effect throughout Work Stream 2 (as defined therein).

(b) The CCWG-Accountability recommended in its Supplemental Final Proposal on Work Stream 1 Recommendations to the Board, dated 23 February 2016 ("**CCWG-Accountability Final Report**") that the below matters be reviewed and developed following the adoption date of these Bylaws ("**Work Stream 2 Matters**"), in each case, to the extent set forth in the CCWG-Accountability Final Report:

> (i) Improvements to ICANN (Internet Corporation for Assigned Names and Numbers)'s standards for diversity at all levels;
>
> (ii) ICANN (Internet Corporation for Assigned Names and Numbers) staff accountability;
>
> (iii) Supporting Organization (Supporting Organization) and Advisory Committee (Advisory Committee) accountability, including but not limited to improved processes for accountability, transparency, and participation that are helpful to prevent capture;
>
> (iv) Improvements to ICANN (Internet Corporation for

Assigned Names and Numbers)'s transparency, focusing on enhancements to ICANN (Internet Corporation for Assigned Names and Numbers)'s existing DIDP, transparency of ICANN (Internet Corporation for Assigned Names and Numbers)'s interactions with governments, improvements to ICANN (Internet Corporation for Assigned Names and Numbers)'s whistleblower policy and transparency of Board deliberations;

(v) Developing and clarifying the FOI-HR (as defined in Section 27.2);

(vi) Addressing jurisdiction-related questions, including how choice of jurisdiction and applicable laws for dispute settlement impact ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability;

(vii) Considering enhancements to the Ombudsman's role and function;

(viii) Guidelines for standards of conduct presumed to be in good faith associated with exercising removal of individual Directors; and

(ix) Reviewing the CEP (as set forth in Section 4.3).

(c) As provided in the CCWG-Accountability Charter and the Board's 2014.10.16.16 resolution, the Board shall consider consensus-based recommendations from the CCWG-Accountability on Work Stream 2 Matters ("**Work Stream 2 Recommendations**") with the same process and criteria it committed to using to consider the CCWG-Accountability recommendations in the CCWG-Accountability Final Report (**"Work Stream 1 Recommendations"**). For the avoidance of doubt, that process and criteria includes:

(i) All Work Stream 2 Recommendations must further the following principles:

(A)Support and enhance the multistakeholder model;

(B)Maintain the security, stability and resiliency of the DNS (Domain Name System);

(C)Meet the needs and expectations of the global customers and partners of the IANA (Internet Assigned Numbers Authority) services;

(D)Maintain the openness of the Internet; and

(E)Not result in ICANN (Internet Corporation for Assigned Names and Numbers) becoming a government-led or an inter-governmental organization.

(ii) If the Board determines, by a vote of a two-thirds majority of the Board, that it is not in the global public interest to implement a Work Stream 2 Recommendation, it must initiate a dialogue with the CCWG-Accountability.

(iii) The Board shall provide detailed rationale to accompany the initiation of dialogue. The Board and the CCWG-Accountability shall mutually agree upon the method (e.g., by teleconference, email or otherwise) by which the dialogue will occur. Discussions shall be held in good faith and in a timely and efficient manner in an effort to find a mutually acceptable solution.

(iv) The CCWG-Accountability shall have an opportunity to address the Board's concerns and report back to the Board on further deliberations regarding the Board's concerns. The CCWG-Accountability shall discuss the Board's concerns within 30 days of the Board's initiation of the dialogue.

If a Work Stream 2 Recommendation is modified by the CCWG-Accountability, the CCWG-Accountability shall submit the modified Work Stream 2 Recommendation to the Board for further consideration along with detailed rationale on how the modification addresses the concerns raised by the Board.

(v) If, after the CCWG-Accountability modifies a Work Stream 2 Recommendation, the Board still believes it is not in the global public interest to implement the Work Stream 2 Recommendation, the Board may, by a vote of a two-thirds majority of the Board, send the matter back to the CCWG-Accountability for further consideration. The Board shall provide detailed rationale to accompany its action. If the

> Board determines not to accept a modified version of a Work Stream 2 Recommendation, unless required by its fiduciary obligations, the Board shall not establish an alternative solution on the issue addressed by the Work Stream 2 Recommendation until such time as the CCWG-Accountability and the Board reach agreement.

(d) ICANN (Internet Corporation for Assigned Names and Numbers) shall provide adequate support for work on Work Stream 2 Matters, within budgeting processes and limitations reasonably acceptable to the CCWG-Accountability.

(e) The Work Stream 2 Matters specifically referenced in Section 27.1(b) shall be the only matters subject to this Section 27.1 and any other accountability enhancements should be developed through ICANN (Internet Corporation for Assigned Names and Numbers)'s other procedures.

(f) The outcomes of each Work Stream 2 Matter are not limited and could include a variety of recommendations or no recommendation; provided, however, that any resulting recommendations must directly relate to the matters discussed in Section 27.1(b).

Section 27.2. HUMAN RIGHTS

(a) The Core Value set forth in Section 1.2(b)(viii) shall have no force or effect unless and until a framework of interpretation for human rights ("**FOI-HR**") is (i) approved for submission to the Board by the CCWG-Accountability as a consensus recommendation in Work Stream 2, with the CCWG Chartering Organizations having the role described in the CCWG-Accountability Charter, and (ii) approved by the Board, in each case, using the same process and criteria as for Work Stream 1 Recommendations.>

(b) No person or entity shall be entitled to invoke the reconsideration process provided in Section 4.2, or the independent review process provided in Section 4.3, based solely on the inclusion of the Core Value set forth in Section 1.2(b)(viii) (i) until after the FOI-HR contemplated by Section 27.2(a) is in place or (ii) for actions of ICANN (Internet Corporation for Assigned Names and Numbers) or the Board that occurred prior to the effectiveness of the FOI-HR.

Section 27.3. EXISTING GROUPS AND TASK FORCES

Notwithstanding the adoption or effectiveness of these Bylaws, task forces and other groups in existence prior to the date of these Bylaws shall continue unchanged in membership, scope, and operation unless and until changes are made by ICANN (Internet Corporation for Assigned Names and Numbers) in compliance with the Bylaws.

Section 27.4. CONTRACTS WITH ICANN (Internet Corporation for Assigned Names and Numbers)

Notwithstanding the adoption or effectiveness of these Bylaws, all agreements, including employment and consulting agreements, entered into by ICANN (Internet Corporation for Assigned Names and Numbers) shall continue in effect according to their terms.

Annex A: GNSO (Generic Names Supporting Organization) Policy Development Process

The following process shall govern the GNSO (Generic Names Supporting Organization) policy development process ("**PDP (Policy Development Process)**") until such time as modifications are recommended to and approved by the Board. The role of the GNSO (Generic Names Supporting Organization) is outlined in Article 11 of these Bylaws. If the GNSO (Generic Names Supporting Organization) is conducting activities that are not intended to result in a Consensus (Consensus) Policy, the Council may act through other processes.

Section 1. **Required Elements of a Policy Development Process**

The following elements are required at a minimum to form Consensus (Consensus) Policies as defined within ICANN (Internet Corporation for Assigned Names and Numbers) contracts, and any other policies for which the GNSO (Generic Names Supporting Organization) Council requests application of this Annex A:

   a. Final Issue Report requested by the Board, the GNSO (Generic Names Supporting Organization) Council ("Council")

or Advisory Committee (Advisory Committee), which should include at a minimum a) the proposed issue raised for consideration, b) the identity of the party submitting the issue, and c) how that party Is affected by the issue;

b. Formal initiation of the Policy Development Process by the Council;

c. Formation of a Working Group or other designated work method;

d. Initial Report produced by a Working Group or other designated work method;

e. Final Report produced by a Working Group, or other designated work method, and forwarded to the Council for deliberation;

f. Council approval of PDP (Policy Development Process) Recommendations contained in the Final Report, by the required thresholds;

g. PDP (Policy Development Process) Recommendations and Final Report shall be forwarded to the Board through a Recommendations Report approved by the Council; and

h. Board approval of PDP (Policy Development Process) Recommendations.

Section 2. **Policy Development Process Manual**

The GNSO (Generic Names Supporting Organization) shall maintain a Policy Development Process Manual ("**PDP (Policy Development Process) Manual**") within the operating procedures of the GNSO (Generic Names Supporting Organization) maintained by the GNSO (Generic Names Supporting Organization) Council. The PDP (Policy Development Process) Manual shall contain specific additional guidance on completion of all elements of a PDP (Policy Development Process), including those elements that are not otherwise defined in these Bylaws. The PDP (Policy Development Process) Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d).

Section 3. **Requesting an Issue Report**

Board Request. The Board may request an Issue Report by instructing the GNSO (Generic Names Supporting Organization) Council ("Council") to begin the process outlined the PDP (Policy Development Process) Manual. In the event the Board makes a request for an Issue Report, the Board should provide a mechanism by which the GNSO (Generic Names Supporting Organization) Council can consult with the Board to provide information on the scope, timing, and priority of the request for an Issue Report.

Council Request. The GNSO (Generic Names Supporting Organization) Council may request an Issue Report by a vote of at least one-fourth (1/4) of the members of the Council of each House or a majority of one House.

Advisory Committee (Advisory Committee) Request. An Advisory Committee (Advisory Committee) may raise an issue for policy development by action of such committee to request an Issue Report, and transmission of that request to the Staff Manager and GNSO (Generic Names Supporting Organization) Council.

Section 4. **Creation of an Issue Report**

Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a properly supported motion from the GNSO (Generic Names Supporting Organization) Council; or (iii) a properly supported motion from an Advisory Committee (Advisory Committee), the Staff Manager will create a report (a "**Preliminary Issue Report**"). In the event the Staff Manager determines that more time is necessary to create the Preliminary Issue Report, the Staff Manager may request an extension of time for completion of the Preliminary Issue Report.

The following elements should be considered in the Issue Report:

a. The proposed issue raised for consideration;

b. The identity of the party submitting the request for the Issue Report;

c. How that party is affected by the issue, if known;

d. Support for the issue to initiate the PDP (Policy Development Process), if known;

e. The opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the Mission, policy process and more specifically the role of the GNSO (Generic Names Supporting Organization) as set forth in the Bylaws.

f. The opinion of ICANN (Internet Corporation for Assigned Names and Numbers) Staff as to whether the Council should initiate the PDP (Policy Development Process) on the issue.

Upon completion of the Preliminary Issue Report, the Preliminary Issue Report shall be posted on the Website for a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers).

The Staff Manager is responsible for drafting a summary and analysis of the public comments received on the Preliminary Issue Report and producing a Final Issue Report based upon the comments received. The Staff Manager should forward the Final Issue Report, along with any summary and analysis of the public comments received, to the Chair of the GNSO (Generic Names Supporting Organization) Council for consideration for initiation of a PDP (Policy Development Process).

Section 5. **Initiation of the PDP (Policy Development Process)**

The Council may initiate the PDP (Policy Development Process) as follows:

Board Request: If the Board requested an Issue Report, the Council, within the timeframe set forth in the PDP (Policy Development Process) Manual, shall initiate a PDP (Policy Development Process). No vote is required for such action.

GNSO (Generic Names Supporting Organization) Council or Advisory Committee (Advisory Committee) Requests: The Council

may only initiate the PDP (Policy Development Process) by a vote of the Council. Initiation of a PDP (Policy Development Process) requires a vote as set forth in Section 11.3(i)(ii) and Section 11.3(i)(iii) in favor of initiating the PDP (Policy Development Process).

Section 6. **Reports**

An Initial Report should be delivered to the GNSO (Generic Names Supporting Organization) Council and posted for a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), which time may be extended in accordance with the PDP (Policy Development Process) Manual. Following the review of the comments received and, if required, additional deliberations, a Final Report shall be produced for transmission to the Council.

Section 7. **Council Deliberation**

Upon receipt of a Final Report, whether as the result of a working group or otherwise, the Council chair will (i) distribute the Final Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP (Policy Development Process) Manual.

The Council approval process is set forth in Section 11.3(i)(iv) through Section 11.3(vii), as supplemented by the PDP (Policy Development Process) Manual.

Section 8. **Preparation of the Board Report**

If the PDP (Policy Development Process) recommendations contained in the Final Report are approved by the GNSO (Generic Names Supporting Organization) Council, a Recommendations Report shall be approved by the GNSO (Generic Names Supporting Organization) Council for delivery to the Board.

Section 9. **Board Approval Processes**

The Board will meet to discuss the GNSO (Generic Names Supporting Organization) Council recommendation as soon as feasible, but preferably not later than the second meeting after

receipt of the Board Report from the Staff Manager. Board deliberation on the PDP (Policy Development Process) Recommendations contained within the Recommendations Report shall proceed as follows:

a. Any PDP (Policy Development Process) Recommendations approved by a GNSO (Generic Names Supporting Organization) Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). If the GNSO (Generic Names Supporting Organization) Council recommendation was approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

b. In the event that the Board determines, in accordance with paragraph a above, that the policy recommended by a GNSO (Generic Names Supporting Organization) Supermajority Vote or less than a GNSO (Generic Names Supporting Organization) Supermajority vote is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers) (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "**Board Statement**"); and (ii) submit the Board Statement to the Council.

c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "**Supplemental Recommendation**") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO (Generic Names Supporting Organization) Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such policy is not in the interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). For any Supplemental Recommendation approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the policy in the Supplemental Recommendation is not in the best interest of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

Section 10. **Implementation of Approved Policies**

Upon a final decision of the Board adopting the policy, the Board shall, as appropriate, give authorization or direction to ICANN (Internet Corporation for Assigned Names and Numbers) staff to work with the GNSO (Generic Names Supporting Organization) Council to create an implementation plan based upon the implementation recommendations identified in the Final Report, and to implement the policy. The GNSO (Generic Names Supporting Organization) Council may, but is not required to, direct the creation of an implementation review team to assist in implementation of the policy.

Section 11. **Maintenance of Records**

Throughout the PDP (Policy Development Process), from policy suggestion to a final decision by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) will maintain on the Website, a status web page detailing the progress of each PDP (Policy Development Process) issue. Such status page will outline the completed and upcoming steps in the PDP (Policy Development

Process) process, and contain links to key resources (e.g. Reports, Comments Fora, WG (Working Group) Discussions, etc.).

Section 12. **Additional Definitions**

"**Comment Site**", "**Comment Forum**", "**Comments For a**" and "**Website**" refer to one or more websites designated by ICANN (Internet Corporation for Assigned Names and Numbers) on which notifications and comments regarding the PDP (Policy Development Process) will be posted.

"**Supermajority Vote**" means a vote of more than sixty-six (66) percent of the members present at a meeting of the applicable body, with the exception of the GNSO (Generic Names Supporting Organization) Council.

"**Staff Manager**" means an ICANN (Internet Corporation for Assigned Names and Numbers) staff person(s) who manages the PDP (Policy Development Process).

"**GNSO (Generic Names Supporting Organization) Supermajority Vote**" shall have the meaning set forth in the Bylaws.

Section 13. **Applicability**

The procedures of this Annex A shall be applicable to all requests for Issue Reports and PDPs initiated after 8 December 2011. For all ongoing PDPs initiated prior to 8 December 2011, the Council shall determine the feasibility of transitioning to the procedures set forth in this Annex A for all remaining steps within the PDP (Policy Development Process). If the Council determines that any ongoing PDP (Policy Development Process) cannot be feasibly transitioned to these updated procedures, the PDP (Policy Development Process) shall be concluded according to the procedures set forth in Annex A in force on 7 December 2011.

Annex A-1: GNSO (Generic Names Supporting Organization) Expedited Policy Development Process

The following process shall govern the specific instances where the

GNSO (Generic Names Supporting Organization) Council invokes the GNSO (Generic Names Supporting Organization) Expedited Policy Development Process ("**EPDP**"). The GNSO (Generic Names Supporting Organization) Council may invoke the EPDP in the following limited circumstances: (1) to address a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO (Generic Names Supporting Organization) policy recommendation by the Board or the implementation of such an adopted recommendation; or (2) to create new or additional recommendations for a specific policy issue that had been substantially scoped previously such that extensive, pertinent background information already exists, e.g. (a) in an Issue Report for a possible PDP (Policy Development Process) that was not initiated; (b) as part of a previous PDP (Policy Development Process) that was not completed; or (c) through other projects such as a GGP. The following process shall be in place until such time as modifications are recommended to and approved by the Board. Where a conflict arises in relation to an EPDP between the PDP (Policy Development Process) Manual (see Annex 2 of the GNSO (Generic Names Supporting Organization) Operating Procedures) and the procedures described in this Annex A-1, the provisions of this Annex A-1 shall prevail.

The role of the GNSO (Generic Names Supporting Organization) is outlined in Article 11 of these Bylaws. Provided the Council believes and documents via Council vote that the above-listed criteria are met, an EPDP may be initiated to recommend an amendment to an existing Consensus (Consensus) Policy; however, in all cases where the GNSO (Generic Names Supporting Organization) is conducting policy-making activities that do not meet the above criteria as documented in a Council vote, the Council should act through a Policy Development Process (see Annex A).

Section 1. **Required Elements of a GNSO (Generic Names Supporting Organization) Expedited Policy Development Process**

The following elements are required at a minimum to develop expedited GNSO (Generic Names Supporting Organization) policy recommendations, including recommendations that could result in amendments to an existing Consensus (Consensus) Policy, as part

of a GNSO (Generic Names Supporting Organization) Expedited
Policy Development Process:

a. Formal initiation of the GNSO (Generic Names Supporting
   Organization) Expedited Policy Development Process by the
   GNSO (Generic Names Supporting Organization) Council,
   including an EPDP scoping document;

b. Formation of an EPDP Team or other designated work
   method;

c. Initial Report produced by an EPDP Team or other
   designated work method;

d. Final EPDP Policy Recommendation(s) Report produced by
   an EPDP Team, or other designated work method, and
   forwarded to the Council for deliberation;

e. GNSO (Generic Names Supporting Organization) Council
   approval of EPDP Policy Recommendations contained in the
   Final EPDP Policy Recommendation(s) Report, by the
   required thresholds;

f. EPDP Recommendations and Final EPDP
   Recommendation(s) Report forwarded to the Board through a
   Recommendations Report approved by the Council; and

g. Board approval of EPDP Recommendation(s).

Section 2. **Expedited Policy Development Process Manual**

The GNSO (Generic Names Supporting Organization) shall include
a specific section(s) on the EPDP process as part of its
maintenance of the GNSO (Generic Names Supporting
Organization) Policy Development Process Manual (PDP (Policy
Development Process) Manual), described in Annex 5 of the GNSO
(Generic Names Supporting Organization) Operating Procedures.
The EPDP Manual shall contain specific additional guidance on
completion of all elements of an EPDP, including those elements that
are not otherwise defined in these Bylaws. The E PDP (Policy
Development Process) Manual and any amendments thereto are
subject to a twenty-one (21) day public comment period at
minimum, as well as Board oversight and review, as specified at

<u>Section 11.3(d)</u> .

Section 3. **Initiation of the EPDP**

The Council may initiate an EPDP as follows:

The Council may only initiate the EPDP by a vote of the Council. Initiation of an EPDP requires an affirmative Supermajority vote of the Council (as defined in <u>Section 11.3(i)(xii)</u> of these Bylaws) in favor of initiating the EPDP.

The request to initiate an EPDP must be accompanied by an EPDP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / <u>SG (Stakeholder Group)</u> / C;

2. Origin of issue (e.g. previously completed <u>PDP (Policy Development Process)</u>);

3. Scope of the effort (detailed description of the issue or question that the EPDP is expected to address);

4. Description of how this issue meets the criteria for an EPDP, i.e. how the EPDP will address either: (1) a narrowly defined policy issue that was identified and scoped after either the adoption of a <u>GNSO (Generic Names Supporting Organization)</u> policy recommendation by the Board or the implementation of such an adopted recommendation, or (2) new or additional policy recommendations on a specific <u>GNSO (Generic Names Supporting Organization)</u> policy issue that had been scoped previously as part of a <u>PDP (Policy Development Process)</u> that was not completed or other similar effort, including relevant supporting information in either case;

5. If not provided as part of item 4, the opinion of the <u>ICANN (Internet Corporation for Assigned Names and Numbers)</u> General Counsel as to whether the issue proposed for consideration is properly within the scope of the Mission, policy process and more specifically the role of the <u>GNSO (Generic Names Supporting Organization)</u>;

6. Proposed EPDP mechanism (e.g. WG (Working Group), DT (Drafting Team), individual volunteers);

7. Method of operation, if different from GNSO (Generic Names Supporting Organization) Working Group Guidelines;

8. Decision-making methodology for EPDP mechanism, if different from GNSO (Generic Names Supporting Organization) Working Group Guidelines;

9. Target completion date.

Section 4. **Council Deliberation**

Upon receipt of an EPDP Final Recommendation(s) Report, whether as the result of an EPDP Team or otherwise, the Council chair will (i) distribute the Final EPDP Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP (Policy Development Process) Manual.

Approval of EPDP Recommendation(s) requires an affirmative vote of the Council meeting the thresholds set forth in Section 11.3(i)(xiv) and (xv), as supplemented by the PDP (Policy Development Process) Manual.

Section 5. **Preparation of the Board Report**

If the EPDP Recommendation(s) contained in the Final EPDP Recommendation(s) Report are approved by the GNSO (Generic Names Supporting Organization) Council, a Recommendation(s) Report shall be approved by the GNSO (Generic Names Supporting Organization) Council for delivery to the Board.

Section 6. **Board Approval Processes**

The Board will meet to discuss the EPDP recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Recommendations Report from the Staff Manager. Board deliberation on the EPDP Recommendations contained within the Recommendations Report shall proceed as follows:

a. Any EPDP Recommendations approved by a GNSO (Generic

Names Supporting Organization) Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). If the GNSO (Generic Names Supporting Organization) Council recommendation was approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

b. In the event that the Board determines, in accordance with paragraph a above, that the proposed EPDP Recommendations are not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers) (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and co mmunicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO (Generic Names Supporting Organization) Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community

or ICANN (Internet Corporation for Assigned Names and Numbers). For any Supplemental Recommendation approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the guidance in the Supplemental Recommendation is not in the best interest of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

Section 7. **Implementation of Approved Policies**

Upon a final decision of the Board adopting the EPDP recommendations, the Board shall, as appropriate, give authorization or direction to ICANN (Internet Corporation for Assigned Names and Numbers) staff to implement the EPDP Recommendations. If deemed necessary, the Board shall direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to work with the GNSO (Generic Names Supporting Organization) Council to create a guidance implementation plan, based upon the guidance recommendations identified in the Final EPDP Recommendation(s) Report.

Section 8. **Maintenance of Records**

Throughout the EPDP, from initiation to a final decision by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) will maintain on the Website, a status web page detailing the progress of each EPDP issue. Such status page will outline the completed and upcoming steps in the EPDP process, and contain links to key resources (e.g. Reports, Comments Fora, EPDP Discussions, etc.).

Section 9. **Applicability**

The procedures of this Annex A-1 shall be applicable from 28 September 2015 onwards.

Annex A-2: GNSO (Generic Names Supporting Organization) Guidance Process

The following process shall govern the GNSO (Generic Names Supporting Organization) guidance process ("**GGP**") until such time

as modifications are recommended to and approved by the Board . The role of the GNSO (Generic Names Supporting Organization) is outlined in Article 11 of these Bylaws. If the GNSO (Generic Names Supporting Organization) is conducting activities that are intended to result in a Consensus (Consensus) Policy, the Council should act through a Policy Development Process (see Annex A).

Section 1. **Required Elements of a GNSO (Generic Names Supporting Organization) Guidance Process**

The following elements are required at a minimum to develop GNSO (Generic Names Supporting Organization) guidance:

1. Formal initiation of the GNSO (Generic Names Supporting Organization) Guidance Process by the Council, including a GGP scoping document;

2. Identification of the types of expertise needed on the GGP Team;

3. Recruiting and formation of a GGP Team or other designated work method;

4. Proposed GNSO (Generic Names Supporting Organization) Guidance Recommendation(s) Report produced by a GGP Team or other designated work method;

5. Final GNSO (Generic Names Supporting Organization) Guidance Recommendation(s) Report produced by a GGP Team, or other designated work method, and forwarded to the Council for deliberation;

6. Council approval of GGP Recommendations contained in the Final Recommendation(s) Report, by the required thresholds;

7. GGP Recommendations and Final Recommendation(s) Report shall be forwarded to the Board through a Recommendations Report approved by the Council; and

8. Board approval of GGP Recommendation(s).

Section 2. **GNSO (Generic Names Supporting Organization) Guidance Process Manual**

The GNSO (Generic Names Supporting Organization) shall maintain a GNSO (Generic Names Supporting Organization) Guidance Process (GGP Manual) within the operating procedures of the GNSO (Generic Names Supporting Organization) maintained by the GNSO (Generic Names Supporting Organization) Council. The GGP Manual shall contain specific additional guidance on completion of all elements of a GGP, including those elements that are not otherwise defined in these Bylaws. The GGP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d).

Section 3. **Initiation of the GGP**

The Council may initiate a GGP as follows:

The Council may only initiate the GGP by a vote of the Council or at the formal request of the ICANN (Internet Corporation for Assigned Names and Numbers) Board. Initiation of a GGP requires a vote as set forth in Section 11.3(i)(xvi) in favor of initiating the GGP. In the case of a GGP requested by the Board, a GGP will automatically be initiated unless the GNSO (Generic Names Supporting Organization) Council votes against the initiation of a GGP as set forth in Section 11.3(i)(xvii).

The request to initiate a GGP must be accompanied by a GGP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / SG (Stakeholder Group) / C

2. Origin of issue (e.g., board request)

3. Scope of the effort (detailed description of the issue or question that the GGP is expected to address)

4. Proposed GGP mechanism (e.g. WG (Working Group), DT (Drafting Team), individual volunteers)

5. Method of operation, if different from GNSO (Generic Names Supporting Organization) Working Group Guidelines

6. Decision-making methodology for GGP mechanism, if

different from GNSO (Generic Names Supporting Organization) Working Group Guidelines

7. Desired completion date and rationale

In the event the Board makes a request for a GGP, the Board should provide a mechanism by which the GNSO (Generic Names Supporting Organization) Council can consult with the Board to provide information on the scope, timing, and priority of the request for a GGP.

Section 4. **Council Deliberation**

Upon receipt of a Final Recommendation(s) Report, whether as the result of a GGP Team or otherwise, the Council chair will (i) distribute the Final Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the GGP Manual.

The Council approval process is set forth in Section 11.3(xviii) as supplemented by the GGP Manual.

Section 5. **Preparation of the Board Report**

If the GGP recommendations contained in the Final Recommendation(s) Report are approved by the GNSO (Generic Names Supporting Organization) Council, a Recommendations Report shall be approved by the GNSO (Generic Names Supporting Organization) Council for delivery to the Board.

Section 6. **Board Approval Processes**

The Board will meet to discuss the GNSO (Generic Names Supporting Organization) Guidance recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the GGP Recommendations contained within the Recommendations Report shall proceed as follows:

a. Any GGP Recommendations approved by a GNSO (Generic Names Supporting Organization) Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-

thirds (2/3) of the Board, the Board determines that such guidance is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

b. In the event that the Board determines, in accordance with paragraph a above, that the proposed GNSO (Generic Names Supporting Organization) Guidance recommendation(s) adopted by a GNSO (Generic Names Supporting Organization) Supermajority Vote is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers) (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO (Generic Names Supporting Organization) Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

Section 7. **Implementation of Approved GNSO (Generic Names Supporting Organization) Guidance**

Upon a final decision of the Board adopting the guidance, the Board shall, as appropriate, give authorization or direction to ICANN (Internet Corporation for Assigned Names and Numbers) staff to implement the GNSO (Generic Names Supporting Organization) Guidance. If deemed necessary, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) Staff to work with the GNSO (Generic Names Supporting Organization) Council to create a guidance implementation plan, if deemed necessary, based upon the guidance recommendations identified in the Final Recommendation(s) Report.

Section 8. **Maintenance of Records**

Throughout the GGP, from initiation to a final decision by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) will maintain on the Website, a status web page detailing the progress of each GGP issue. Such status page will outline the completed and upcoming steps in the GGP process, and contain links to key resources (e.g. Reports, Comments Fora, GGP Discussions, etc.).

Section 9. **Additional Definitions**

"**Comment Site**", "**Comment Forum**", "**Comments Fora**" and "**Website**" refer to one or more websites designated by ICANN (Internet Corporation for Assigned Names and Numbers) on which notifications and comments regarding the GGP will be posted.

"**GGP Staff Manager**" means an ICANN (Internet Corporation for Assigned Names and Numbers) staff person(s) who manages the GGP.

Annex B: ccNSO (Country Code Names Supporting Organization) Policy-Development Process (ccPDP)

The following process shall govern the ccNSO (Country Code Names Supporting Organization) policy-development process ("**PDP (Policy Development Process)**").

1. Request for an Issue Report

An Issue Report may be requested by any of the following:

a. *Council.* The ccNSO (Country Code Names Supporting Organization) Council (in this Annex B, the "**Council**") may call for the creation of an Issue Report by an affirmative vote of at least seven of the members of the Council present at any meeting or voting by e-mail.

b. *Board.* The Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process.

c. *Regional Organization.* One or more of the Regional Organizations representing ccTLDs in the ICANN (Internet Corporation for Assigned Names and Numbers) recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process.

d. *ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee).* An ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) or an ICANN (Internet Corporation for Assigned Names and Numbers) Advisory Committee (Advisory Committee) may call for creation of an Issue Report by requesting the Council to begin the policy-development process.

e. *Members of the ccNSO (Country Code Names Supporting Organization).* The members of the ccNSO (Country Code Names Supporting Organization) may call for the creation of an Issue Report by an affirmative vote of at least ten members of the ccNSO (Country Code Names Supporting Organization) present at any meeting or voting by e-mail.

Any request for an Issue Report must be in writing and must set out the issue upon which an Issue Report is requested in sufficient detail to enable the Issue Report to be prepared. It shall be open to the Council to request further information or undertake further research or investigation for the purpose of determining whether or not the requested Issue Report should be created.

2. Creation of the Issue Report and Initiation Threshold

Within seven days after an affirmative vote as outlined in Item 1(a) above or the receipt of a request as outlined in Items 1 (b), (c), or (d) above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of ICANN (Internet Corporation for Assigned Names and Numbers) (in which case the costs of the Issue Manager shall be borne by ICANN (Internet Corporation for Assigned Names and Numbers)) or such other person or persons selected by the Council (in which case the ccNSO (Country Code Names Supporting Organization) shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate), the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

a. The proposed issue raised for consideration;

b. The identity of the party submitting the issue;

c. How that party is affected by the issue;

d. Support for the issue to initiate the PDP (Policy Development Process);

e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP (Policy Development Process) for this issue (the "**Manager Recommendation**"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel regarding whether the issue is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers) policy process and within the scope of the ccNSO (Country Code Names Supporting Organization). In coming to his or her opinion, the General Counsel shall examine whether:
1) The issue is within the scope of the Mission;

2) Analysis of the relevant factors according to Section 10.6(b) and Annex C affirmatively demonstrates that the issue is within the scope of the ccNSO (Country Code Names Supporting Organization);

In the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

3) Implicates or affects an existing ICANN (Internet Corporation for Assigned Names and Numbers) policy;

4) Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this Annex B) or to the scope of the ccNSO (Country Code Names Supporting Organization) (Annex C) shall be within the scope of ICANN (Internet Corporation for Assigned Names and Numbers) and the ccNSO (Country Code Names Supporting Organization).

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO (Country Code Names Supporting Organization) Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to Section 10.6 and Annex C a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO (Country Code Names Supporting Organization) shall inform the Issue Manager accordingly. General Counsel and the ccNSO (Country Code Names Supporting Organization) Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside Scope of the ccNSO (Country Code Names Supporting Organization) then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO (Country Code Names Supporting Organization) shall inform General Counsel and the Issue Manager accordingly. The Issue Manager shall then proceed with a recommendation whether or not the Council should move to initiate the PDP (Policy Development Process) including both the opinion and analysis of General Counsel and Council in the Issues Report.

f. In the event that the Manager Recommendation is in favor of initiating the PDP (Policy Development Process), a proposed time line for conducting each of the stages of PDP (Policy Development Process) outlined herein ("**PDP (Policy Development Process) Time Line**").

g. g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP (Policy Development Process).

3. Initiation of PDP (Policy Development Process)

The Council shall decide whether to initiate the PDP (Policy Development Process) as follows:

a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP (Policy Development Process). Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur by e-mail.

b. A vote of ten or more Council members in favor of initiating the PDP (Policy Development Process) shall be required to initiate the PDP (Policy Development Process) provided that the Issue Report states that the issue is properly within the scope of the Mission and the ccNSO (Country Code Names Supporting Organization) Scope.

4. Decision Whether to Appoint Task Force; Establishment of Time Line

At the meeting of the Council where the PDP (Policy Development Process) has been initiated (or, where the Council employs a vote by e-mail, in that vote) pursuant to Item 3 above, the Council shall decide, by a majority vote of members present at the meeting (or voting by e-mail), whether or not to appoint a task force to address

the issue. If the Council votes:

a. In favor of convening a task force, it shall do so in accordance with Item 7 below.

b. Against convening a task force, then it shall collect information on the policy issue in accordance with Item 8 below.

The Council shall also, by a majority vote of members present at the meeting or voting by e-mail, approve or amend and approve the PDP (Policy Development Process) Time Line set out in the Issue Report.

5. Composition and Selection of Task Forces

a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see Section 10.5) to appoint two individuals to participate in the task force (the "**Representatives**"). Additionally, the Council may appoint up to three advisors (the "**Advisors**") from outside the ccNSO (Country Code Names Supporting Organization) and, following formal request for GAC (Governmental Advisory Committee) participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee (Advisory Committee) to sit on the task force. The Council may increase the number of Representatives that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.

b. Any Regional Organization wishing to appoint Representatives to the task force must provide the names of the Representatives to the Issue Manager within ten (10) calendar days after such request so that they are included on the task force. Such Representatives need not be members of the Council, but each must be an individual who has an interest, and ideally knowledge and expertise, in the subject matter, coupled with the ability to devote a substantial amount of time to the task force's activities.

c. The Council may also pursue other actions that it deems appropriate to assist in the PDP (Policy Development Process), including appointing a particular individual or

organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager in accordance with the PDP (Policy Development Process) Time Line.

6. Public Notification of Initiation of the PDP (Policy Development Process) and Comment Period

After initiation of the PDP (Policy Development Process), ICANN (Internet Corporation for Assigned Names and Numbers) shall post a notification of such action to the Website and to the other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees). A comment period (in accordance with the PDP (Policy Development Process) Time Line, and ordinarily at least 21 days long) shall be commenced for the issue. Comments shall be accepted from ccTLD (Country Code Top Level Domain) managers, other Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), and from the public. The Issue Manager, or some other designated Council representative shall review the comments and incorporate them into a report (the "**Comment Report**") to be included in either the Preliminary Task Force Report or the Initial Report, as applicable.

7. Task Forces

a. *Role of Task Force.* If a task force is created, its role shall be responsible for (i) gathering information documenting the positions of the ccNSO (Country Code Names Supporting Organization) members within the Geographic Regions and other parties and groups; and (ii) otherwise obtaining relevant information that shall enable the Task Force Report to be as complete and informative as possible to facilitate the Council's meaningful and informed deliberation.

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that shall document the positions of various parties or groups as specifically and comprehensively as possible, thereby enabling the Council to have a meaningful and informed deliberation on the issue.

b. *Task Force Charter or Terms of Reference.* The Council, with the assistance of the Issue Manager, shall develop a charter or terms of reference for the task force (the "**Charter**") within the time designated in the PDP (Policy Development Process) Time Line. Such Charter shall include:

1.   The issue to be addressed by the task force, as such issue was articulated for the vote before the Council that initiated the PDP (Policy Development Process);

2.   The specific time line that the task force must adhere to, as set forth below, unless the Council determines that there is a compelling reason to extend the timeline; and

3.   Any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice of outside advisors on the issue.

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of a majority of the Council members present at a meeting or voting by e-mail. The quorum requirements of Section 10.3(n) shall apply to Council actions under this Item 7(b).

c. *Appointment of Task Force Chair.* The Issue Manager shall convene the first meeting of the task force within the time designated in the PDP (Policy Development Process) Time Line. At the initial meeting, the task force members shall, among other things, vote to appoint a task force chair. The chair shall be responsible for organizing the activities of the task force, including compiling the Task Force Report. The chair of a task force need not be a member of the Council.

d. *Collection of Information*.

1. *Regional Organization Statements.* The Representatives shall each be responsible for soliciting the position of the Regional Organization for their Geographic Region, at a minimum, and may solicit other comments, as each Representative deems appropriate, including the comments of the ccNSO (Country Code Names

Supporting Organization) members in that region that are not members of the Regional Organization, regarding the issue under consideration. The position of the Regional Organization and any other comments gathered by the Representatives should be submitted in a formal statement to the task force chair (each, a "**Regional Statement**") within the time designated in the PDP (Policy Development Process) Time Line. Every Regional Statement shall include at least the following:

(i) If a Supermajority Vote (as defined by the Regional Organization) was reached, a clear statement of the Regional Organization's position on the issue;

(ii) If a Supermajority Vote was not reached, a clear statement of all positions espoused by the members of the Regional Organization;

(iii) A clear statement of how the Regional Organization arrived at its position(s). Specifically, the statement should detail specific meetings, teleconferences, or other means of deliberating an issue, and a list of all members who participated or otherwise submitted their views;

(iv) A statement of the position on the issue of any ccNSO (Country Code Names Supporting Organization) members that are not members of the Regional Organization;

(v) An analysis of how the issue would affect the Region, including any financial impact on the Region; and

(vi) An analysis of the period of time that would likely be necessary to implement the policy.

2. Outside Advisors. The task force may, in its discretion, solicit the opinions of outside advisors, experts, or other members of the public. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from outside advisors; (ii) accompanied by a detailed statement of the advisors' (a) qualifications and relevant experience and (b) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within the time designated in the PDP (Policy Development Process) Time Line.

e. *Task Force Report.* The chair of the task force, working with the Issue Manager, shall compile the Regional Statements, the Comment Report, and other information or reports, as applicable, into a single document ("**Preliminary Task Force Report**") and distribute the Preliminary Task Force Report to the full task force within the time designated in the PDP (Policy Development Process) Time Line. The task force shall have a final task force meeting to consider the issues and try and reach a Supermajority Vote. After the final task force meeting, the chair of the task force and the Issue Manager shall create the final task force report (the "**Task Force Report**") and post it on the Website and to the other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees). Each Task Force Report must include:

1. A clear statement of any Supermajority Vote (being 66% of the task force) position of the task force on the issue;

2. If a Supermajority Vote was not reached, a clear statement of all positions espoused by task force members submitted within the time line for submission of constituency reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the Regional Organizations that held the position;

3. An analysis of how the issue would affect each Region, including any financial impact on the Region;

4. An analysis of the period of time that would likely be necessary to implement the policy; and

5. The advice of any outside advisors appointed to the task force by the Council, accompanied by a detailed statement of the advisors' (i) qualifications and relevant experience and (ii) potential conflicts of interest.

8. Procedure if No Task Force is Formed

a. If the Council decides not to convene a task force, each Regional Organization shall, within the time designated in the PDP (Policy Development Process) Time Line, appoint a representative to solicit the Region's views on the issue. Each such representative shall be asked to submit a Regional

Statement to the Issue Manager within the time designated in the PDP (Policy Development Process) Time Line.

b. The Council may, in its discretion, take other steps to assist in the PDP (Policy Development Process), including, for example, appointing a particular individual or organization, to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager within the time designated in the PDP (Policy Development Process) Time Line.

c. The Council shall formally request the Chair of the GAC (Governmental Advisory Committee) to offer opinion or advice.

d. The Issue Manager shall take all Regional Statements, the Comment Report, and other information and compile (and post on the Website) an Initial Report within the time designated in the PDP (Policy Development Process) Time Line. Thereafter, the Issue Manager shall, in accordance with Item 9 below, create a Final Report.

9. Comments to the Task Force Report or Initial Report

a. A comment period (in accordance with the PDP (Policy Development Process) Time Line, and ordinarily at least 21 days long) shall be opened for comments on the Task Force Report or Initial Report. Comments shall be accepted from ccTLD (Country Code Top Level Domain) managers, other Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), and from the public. All comments shall include the author's name, relevant experience, and interest in the issue.

b. At the end of the comment period, the Issue Manager shall review the comments received and may, in the Issue Manager's reasonable discretion, add appropriate comments to the Task Force Report or Initial Report, to prepare the "**Final Report**". The Issue Manager shall not be obligated to include all comments made during the comment period, nor shall the Issue Manager be obligated to include all comments submitted by any one individual or organization.

c. The Issue Manager shall prepare the Final Report and submit it to the Council chair within the time designated in the PDP (Policy Development Process) Time Line.

10. Council Deliberation

a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair shall (i) distribute the Final Report to all Council members; (ii) call for a Council meeting within the time designated in the PDP (Policy Development Process) Time Line wherein the Council shall work towards achieving a recommendation to present to the Board; and (iii) formally send to the GAC (Governmental Advisory Committee) Chair an invitation to the GAC (Governmental Advisory Committee) to offer opinion or advice. Such meeting may be held in any manner deemed appropriate by the Council, including in person or by conference call. The Issue Manager shall be present at the meeting.

b. The Council may commence its deliberation on the issue prior to the formal meeting, including via in-person meetings, conference calls, e-mail discussions, or any other means the Council may choose.

c. The Council may, if it so chooses, solicit the opinions of outside advisors at its final meeting. The opinions of these advisors, if relied upon by the Council, shall be (i) embodied in the Council's report to the Board, (ii) specifically identified as coming from an outside advisor; and (iii) accompanied by a detailed statement of the advisor's (a) qualifications and relevant experience and (b) potential conflicts of interest.

11. Recommendation of the Council

In considering whether to make a recommendation on the issue (a "**Council Recommendation**"), the Council shall seek to act by consensus. If a minority opposes a consensus position, that minority shall prepare and circulate to the Council a statement explaining its reasons for opposition. If the Council's discussion of the statement does not result in consensus, then a recommendation supported by 14 or more of the Council members shall be deemed to reflect the

view of the Council, and shall be conveyed to the Members as the Council's Recommendation. Notwithstanding the foregoing, as outlined below, all viewpoints expressed by Council members during the PDP (Policy Development Process) must be included in the Members Report.

12. Council Report to the Members

In the event that a Council Recommendation is adopted pursuant to Item 11 then the Issue Manager shall, within seven days after the Council meeting, incorporate the Council's Recommendation together with any other viewpoints of the Council members into a Members Report to be approved by the Council and then to be submitted to the Members (the "**Members Report**"). The Members Report must contain at least the following:

a. A clear statement of the Council's recommendation;

b. The Final Report submitted to the Council; and

c. A copy of the minutes of the Council's deliberation on the policy issue (see Item 10), including all the opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

13. Members Vote

Following the submission of the Members Report and within the time designated by the PDP (Policy Development Process) Time Line, the ccNSO (Country Code Names Supporting Organization) members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP (Policy Development Process) Time Line (at least 21 days long).

In the event that at least 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes in the first round of voting, the first round will not be employed and the results

of a final, second round of voting, conducted after at least thirty days notice to the ccNSO (Country Code Names Supporting Organization) members, will be employed if at least 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favor of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO (Country Code Names Supporting Organization) Recommendation.

14. Board Report

The Issue Manager shall within seven days after a ccNSO (Country Code Names Supporting Organization) Recommendation being made in accordance with Item 13 incorporate the ccNSO (Country Code Names Supporting Organization) Recommendation into a report to be approved by the Council and then to be submitted to the Board (the "**Board Report**"). The Board Report must contain at least the following:

a. A clear statement of the ccNSO (Country Code Names Supporting Organization) recommendation;

b. The Final Report submitted to the Council; and

c. the Members' Report.

15. Board Vote

a. The Board shall meet to discuss the ccNSO (Country Code Names Supporting Organization) Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.

b. The Board shall adopt the ccNSO (Country Code Names Supporting Organization) Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN (Internet Corporation for Assigned Names and Numbers) community or of ICANN (Internet Corporation for Assigned Names and Numbers).

1. In the event that the Board determines not to act in

accordance with the ccNSO (Country Code Names
Supporting Organization) Recommendation, the Board shall
(i) state its reasons for its determination not to act in
accordance with the ccNSO (Country Code Names
Supporting Organization) Recommendation in a report to the
Council (the "**Board Statement**"); and (ii) submit the Board
Statement to the Council.

2. The Council shall discuss the Board Statement with the
    Board within thirty days after the Board Statement is
    submitted to the Council. The Board shall determine the
    method (e.g., by teleconference, e-mail, or otherwise) by
    which the Council and Board shall discuss the Board
    Statement. The discussions shall be held in good faith and in
    a timely and efficient manner, to find a mutually acceptable
    solution.

3. At the conclusion of the Council and Board discussions, the
    Council shall meet to affirm or modify its Council
    Recommendation. A recommendation supported by 14 or
    more of the Council members shall be deemed to reflect the
    view of the Council (the Council's "**Supplemental
    Recommendation**"). That Supplemental Recommendation
    shall be conveyed to the Members in a Supplemental
    Members Report, including an explanation for the
    Supplemental Recommendation. Members shall be given an
    opportunity to vote on the Supplemental Recommendation
    under the same conditions outlined in Item 13 . In the event
    that more than 66% of the votes cast by ccNSO (Country
    Code Names Supporting Organization) Members during the
    voting period are in favor of the Supplemental
    Recommendation then that recommendation shall be
    conveyed to Board as the ccNSO (Country Code Names
    Supporting Organization) Supplemental Recommendation
    and the Board shall adopt the recommendation unless by a
    vote of more than 66% of the Board determines that
    acceptance of such policy would constitute a breach of the
    fiduciary duties of the Board to the Company.

4. In the event that the Board does not accept the ccNSO
    (Country Code Names Supporting Organization)
    Supplemental Recommendation, it shall state its reasons for

doing so in its final decision ("**Supplemental Board Statement**").

5.   In the event the Board determines not to accept a ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO (Country Code Names Supporting Organization) shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

16. Implementation of the Policy

Upon adoption by the Board of a ccNSO (Country Code Names Supporting Organization) Recommendation or ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN (Internet Corporation for Assigned Names and Numbers) staff to implement the policy.

17. Maintenance of Records

With respect to each ccPDP for which an Issue Report is requested (see Item 1), ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain on the Website a status web page detailing the progress of each ccPDP, which shall provide a list of relevant dates for the ccPDP and shall also link to the following documents, to the extent they have been prepared pursuant to the ccPDP:

a. Issue Report;

b. PDP (Policy Development Process) Time Line;

c. Comment Report;

d. Regional Statement(s);

e. Preliminary Task Force Report;

f. Task Force Report;

g. Initial Report;

h. Final Report;

i. Members' Report;

j. Board Report;

k. Board Statement;

l. Supplemental Members' Report; and

m. Supplemental Board Statement.

In addition, ICANN (Internet Corporation for Assigned Names and Numbers) shall post on the Website comments received in electronic written form specifically suggesting that a ccPDP be initiated.

Annex C: The Scope of the ccNSO (Country Code Names Supporting Organization)

This annex describes the scope and the principles and method of analysis to be used in any further development of the scope of the ccNSO (Country Code Names Supporting Organization)'s policy-development role. As provided in Section 10.6(b) of the Bylaws, that scope shall be defined according to the procedures of the ccPDP.

The scope of the ccNSO (Country Code Names Supporting Organization)'s authority and responsibilities must recognize the complex relation between ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) managers/registries with regard to policy issues. This annex shall assist the ccNSO (Country Code Names Supporting Organization), the ccNSO (Country Code Names Supporting Organization) Council, and the Board and staff in delineating relevant global policy issues.

Policy areas

The ccNSO (Country Code Names Supporting Organization)'s policy role should be based on an analysis of the following functional model of the DNS (Domain Name System):

1. Data is registered/maintained to generate a zone file,

2. A zone file is in turn used in TLD (Top Level Domain) name servers.

Within a **TLD (Top Level Domain)** two functions have to be performed (these are addressed in greater detail below):

1. Entering data into a database ("**Data Entry Function**") and

2. Maintaining and ensuring upkeep of name-servers for the TLD (Top Level Domain) ("**Name Server Function**").

These two core functions must be performed at the ccTLD (Country Code Top Level Domain) registry level as well as at a higher level (IANA (Internet Assigned Numbers Authority) function and root servers) and at lower levels of the DNS (Domain Name System) hierarchy. This mechanism, as RFC (Request for Comments) 1591 points out, is recursive:

There are no requirements on sub domains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively. In particular, all sub domains shall be allowed to operate their own domain name servers, providing in them whatever information the sub domain manager sees fit (as long as it is true and correct).

The Core Functions

1. Data Entry Function (DEF):

Looking at a more detailed level, the first function (entering and maintaining data in a database) should be fully defined by a naming policy. This naming policy must specify the rules and conditions:

a. under which data will be collected and entered into a database or data changed (at the TLD (Top Level Domain) level among others, data to reflect a transfer from registrant to registrant or changing registrar) in the database.

b. for making certain data generally and publicly available (be it, for example, through Whois or nameservers).

2. The Name-Server Function (NSF (National Science Foundation (USA)))

The name-server function involves essential interoperability and stability issues at the heart of the domain name system. The importance of this function extends to nameservers at the ccTLD (Country Code Top Level Domain) level, but also to the root servers (and root-server system) and nameservers at lower levels.

On its own merit and because of interoperability and stability considerations, properly functioning nameservers are of utmost importance to the individual, as well as to the local and the global Internet communities.

With regard to the nameserver function, therefore, policies need to be defined and established. Most parties involved, including the majority of ccTLD (Country Code Top Level Domain) registries, have accepted the need for common policies in this area by adhering to the relevant RFCs, among others RFC (Request for Comments) 1591.

Respective Roles with Regard to Policy, Responsibilities, and Accountabilities

It is in the interest of ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) managers to ensure the stable and proper functioning of the domain name system. ICANN (Internet Corporation for Assigned Names and Numbers) and the ccTLD (Country Code Top Level Domain) registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO (Country Code Names Supporting Organization) cannot be established without reaching a common understanding of the allocation of authority between ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) registries.

Three roles can be distinguished as to which responsibility must be assigned on any given issue:

- Policy role: i.e. the ability and power to define a policy;

- Executive role: i.e. the ability and power to act upon and implement the policy; and

- Accountability role: i.e. the ability and power to hold the responsible entity accountable for exercising its power.

Firstly, responsibility presupposes a policy and this delineates the policy role. Depending on the issue that needs to be addressed those who are involved in defining and setting the policy need to be determined and defined. Secondly, this presupposes an executive role defining the power to implement and act within the boundaries of a policy. Finally, as a counter-balance to the executive role, the accountability role needs to defined and determined.

The information below offers an aid to:

1. delineate and identify specific policy areas;

2. define and determine roles with regard to these specific policy areas.

This annex defines the scope of the ccNSO (Country Code Names Supporting Organization) with regard to developing policies. The scope is limited to the policy role of the ccNSO (Country Code Names Supporting Organization) policy-development process for functions and levels explicitly stated below. It is anticipated that the accuracy of the assignments of policy, executive, and accountability roles shown below will be considered during a scope-definition ccPDP process.

Name Server Function (as to ccTLDs)

Level 1: Root Name Servers
Policy role: IETF (Internet Engineering Task Force), RSSAC (Root Server System Advisory Committee) (ICANN (Internet Corporation for Assigned Names and Numbers))
Executive role: Root Server System Operators
Accountability role: RSSAC (Root Server System Advisory Committee) (ICANN (Internet Corporation for Assigned Names and Numbers))

Level 2: ccTLD (Country Code Top Level Domain) Registry Name Servers in respect to interoperability
Policy role: ccNSO (Country Code Names Supporting Organization) Policy Development Process (ICANN (Internet Corporation for

Assigned Names and Numbers)), for best practices a ccNSO (Country Code Names Supporting Organization) process can be organized
Executive role: ccTLD (Country Code Top Level Domain) Manager
Accountability role: part ICANN (Internet Corporation for Assigned Names and Numbers) (IANA (Internet Assigned Numbers Authority)), part Local Internet Community, including local government

Level 3: User's Name Servers
Policy role: ccTLD (Country Code Top Level Domain) Manager, IETF (Internet Engineering Task Force) (RFC (Request for Comments))
Executive role: Registrant (Registrant)
Accountability role: ccTLD (Country Code Top Level Domain) Manager

Data Entry Function (as to ccTLDs)

Level 1: Root Level Registry
Policy role: ccNSO (Country Code Names Supporting Organization) Policy Development Process (ICANN (Internet Corporation for Assigned Names and Numbers))
Executive role: ICANN (Internet Corporation for Assigned Names and Numbers) (IANA (Internet Assigned Numbers Authority))
Accountability role: ICANN (Internet Corporation for Assigned Names and Numbers) community, ccTLD (Country Code Top Level Domain) Managers, (national authorities in some cases)

Level 2: ccTLD (Country Code Top Level Domain) Registry
Policy role: Local Internet Community, including local government, and/or ccTLD (Country Code Top Level Domain) Manager according to local structure
Executive role: ccTLD (Country Code Top Level Domain) Manager
Accountability role: Local Internet Community, including national authorities in some cases

Level 3: Second and Lower Levels
Policy role: Registrant (Registrant)
Executive role: Registrant (Registrant)
Accountability role: Registrant (Registrant), users of lower-level domain names

ANNEX D: EC (Empowered Community) MECHANISM

ARTICLE 1 PROCEDURE FOR EXERCISE OF EC (Empowered Community)'S RIGHTS TO APPROVE APPROVAL ACTIONS

Section 1.1. APPROVAL ACTIONS

The processes set forth in this Article 1 shall govern the escalation procedures for the EC (Empowered Community)'s exercise of its right to approve the following (each, an "**Approval Action**") under the Bylaws:

   a. Fundamental Bylaw Amendments, as contemplated by Section 25.2 of the Bylaws;

   b. Articles Amendments, as contemplated by Section 25.2 of the Bylaws; and

   c. Asset Sales, as contemplated by Article 26 of the Bylaws.

Section 1.2. APPROVAL PROCESS

Following the delivery of a Board Notice for an Approval Action ("**Approval Action Board Notice**") by the Secretary to the EC (Empowered Community) Administration and the Decisional Participants (which delivery date shall be referred to herein as the "**Approval Action Board Notification Date**"), the Decisional Participants shall thereafter promptly inform their constituents of the delivery of the Approval Action Board Notice. Any Approval Action Board Notice relating to a Fundamental Bylaw Amendment or Articles Amendment shall include a statement, if applicable, that the Fundamental Bylaw Amendment or Articles Amendment, as applicable, is based solely on the outcome of a PDP (Policy Development Process), citing the specific PDP (Policy Development Process) and the provision in the Fundamental Bylaw Amendment or Articles Amendment subject to the Approval Action Board Notice that implements such PDP (Policy Development Process) (as applicable, a "**PDP (Policy Development Process) Fundamental Bylaw Statement**" or "**PDP (Policy Development Process) Articles Statement**") and the name of the Supporting Organization

(Supporting Organization) that is a Decisional Participant that undertook the PDP (Policy Development Process) relating to the Fundamental Bylaw Amendment or Articles Amendment, as applicable (as applicable, the "**Fundamental Bylaw Amendment PDP (Policy Development Process) Decisional Participant**" or "**Articles Amendment PDP (Policy Development Process) Decisional Participant**"). The process set forth in this Section 1.2 of this Annex D as it relates to a particular Approval Action is referred to herein as the "**Approval Process**."

Section 1.3. APPROVAL ACTION COMMUNITY FORUM

a. ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Approval Action (an "**Approval Action Community Forum**").

b. If the EC (Empowered Community) Administration requests a publicly-available conference call by providing a notice to the Secretary, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any Approval Action Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

c. The Approval Action Community Forum shall be convened and concluded during the period beginning upon the Approval Action Board Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the Approval Action Board Notification Date ("**Approval Action Community Forum Period**"). If the EC (Empowered Community) Administration requests that the Approval Action Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the Approval Action Community Forum shall be held

during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the EC (Empowered Community) Administration. If the Approval Action Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the Approval Action Board Notification Date, the Approval Action Community Forum Period for the Approval Action shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

d. The Approval Action Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects, and/or, only if the Approval Action Community Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-to-face meetings. If the Approval Action Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of such Approval Action Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

e. The EC (Empowered Community) Administration shall manage and moderate the Approval Action Community Forum in a fair and neutral manner.

f. ICANN (Internet Corporation for Assigned Names and

Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Approval Action prior to the convening of and during the Approval Action Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

g. ICANN (Internet Corporation for Assigned Names and Numbers) staff and Directors representing the Board are expected to attend the Approval Action Community Forum in order to address any questions or concerns regarding the Approval Action.

h. For the avoidance of doubt, the Approval Action Community Forum is not a decisional body.

i. During the Approval Action Community Forum Period, an additional one or two Community Forums may be held at the discretion of the Board or the EC (Empowered Community) Administration. If the Board decides to hold an additional one or two Approval Action Community Forums, it shall provide a rationale for such decision, which rationale ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

j. ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Approval Action Community Forum and shall promptly post on the Website a public record of the Approval Action Community Forum as well as all written submissions of ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Approval Action Community Forum.

Section 1.4. DECISION WHETHER TO APPROVE AN APPROVAL ACTION

(a) Following the expiration of the Approval Action Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Approval Action Community Forum Period (such period, the "**Approval Action Decision Period**"), with respect to each Approval Action, each Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether such Decisional Participant (i) supports such Approval Action, (ii) objects to such Approval Action or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Approval Action), and each Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the foregoing prior to the expiration of the Approval Action Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community) Administration of its support or objection following the expiration of the Approval Action Decision Period).

(b) The EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Approval Action Decision Period, deliver a written notice ("**EC (Empowered Community) Approval Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Article 1 of this Annex D, the EC (Empowered Community) has approved the Approval Action if:

> (i) The Approval Action does not relate to a Fundamental Bylaw Amendment or Articles Amendment and is (A) supported by three or more Decisional Participants and (B) not objected to by more than one Decisional Participant;

> (ii) The Approval Action relates to a Fundamental Bylaw Amendment and is (A) supported by three or more Decisional Participants (including the Fundamental Bylaw Amendment PDP (Policy Development Process) Decisional Participant if the Board Notice included a PDP (Policy Development Process) Fundamental Bylaw Statement) and (B) not objected

to by more than one Decisional Participant; or

(iii) The Approval Action relates to an Articles Amendment and is (A) supported by three or more Decisional Participants (including the Articles Amendment PDP (Policy Development Process) Decisional Participant if the Board Notice included a PDP (Policy Development Process) Articles Statement) and (B) not objected to by more than one Decisional Participant.

(c) If the Approval Action does not obtain the support required by Section 1.4(b)(i), (ii) or (iii) of this Annex D, as applicable, the Approval Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Approval Action Decision Period, deliver to the Secretary a notice certifying that the Approval Process has been terminated with respect to the Approval Action ("**Approval Process Termination Notice**").

(d) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Approval Action Board Notice, (ii) EC (Empowered Community) Approval Notice, (iii) Approval Process Termination Notice, (iv) written explanation provided by the EC (Empowered Community) Administration related to any of the foregoing, and (v) other notices the Secretary receives under this Article 1.

ARTICLE 2 PROCEDURE FOR EXERCISE OF EC (Empowered Community)'S RIGHTS TO REJECT SPECIFIED ACTIONS

Section 2.1. Rejection Actions

The processes set forth in this Article 2 shall govern the escalation procedures for the EC (Empowered Community)'s exercise of its right to reject the following (each, a "**Rejection Action**") under the Bylaws:

a. PTI Governance Actions, as contemplated by Section 16.2(d) of the Bylaws;

b. IFR Recommendation Decisions, as contemplated by Section

18.6(d) of the Bylaws;

c. Special IFR Recommendation Decisions, as contemplated by Section 18.12(e) of the Bylaws;

d. SCWG Creation Decisions, as contemplated by Section 19.1(d) of the Bylaws;

e. SCWG Recommendation Decisions, as contemplated by Section 19.4(d) of the Bylaws;

f. ICANN (Internet Corporation for Assigned Names and Numbers) Budgets, as contemplated by Section 22.4(a)(v) of the Bylaws;

g. IANA (Internet Assigned Numbers Authority) Budgets, as contemplated by Section 22.4(b)(v) of the Bylaws;

h. Operating Plans, as contemplated by Section 22.5(a)(v) of the Bylaws;

i. Strategic Plans, as contemplated by Section 22.5(b)(v) of the Bylaws; and

j. Standard Bylaw Amendments, as contemplated by Section 25.1(e) of the Bylaws.

Section 2.2. PETITION PROCESS FOR SPECIFIED ACTIONS

(a) Following the delivery of a Board Notice for a Rejection Action ("**Rejection Action Board Notice**") by the Secretary to the EC (Empowered Community) Administration and Decisional Participants (which delivery date shall be referred to herein as the "**Rejection Action Board Notification Date**"), the Decisional Participants shall thereafter promptly inform their constituents of the delivery of the Rejection Action Board Notice. The process set forth in this Section 2.2 of this Annex D as it relates to a particular Rejection Action is referred to herein as the "**Rejection Process**."

(b) During the period beginning on the Rejection Action Board Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the date that is the 21st day after the Rejection Action Board Notification Date (as it relates

to a particular Rejection Action, the "**Rejection Action Petition Period**"), subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant, seeking to reject the Rejection Action and initiate the Rejection Process (a "**Rejection Action Petition**").

(c) A Decisional Participant that has received a Rejection Action Petition shall either accept or reject such Rejection Action Petition; provided that a Decisional Participant may only accept such Rejection Action Petition if it was received by such Decisional Participant during the Rejection Action Petition Period.

(i) If, in accordance with the requirements of Section 2.2(c) of this Annex D, a Decisional Participant accepts a Rejection Action Petition during the Rejection Action Petition Period, the Decisional Participant shall promptly provide to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary written notice ("**Rejection Action Petition Notice**") of such acceptance (such Decisional Participant, the "**Rejection Action Petitioning Decisional Participant**"), and ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post such Rejection Action Petition Notice on the Website. The Rejection Action Petition Notice shall also include:

(A) the rationale upon which rejection of the Rejection Action is sought. Where the Rejection Action Petition Notice relates to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget, an IANA (Internet Assigned Numbers Authority) Budget, an Operating Plan or a Strategic Plan, the Rejection Action Petition Notice shall not be valid and shall not be accepted by the EC (Empowered Community) Administration unless the rationale set forth in the Rejection Action Petition Notice is based on one or more significant issues that were specifically raised in the applicable public comment period(s) relating to perceived inconsistencies with the Mission, purpose and role set forth in ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation and Bylaws, the global public interest, the needs of ICANN (Internet Corporation for Assigned Names

and Numbers)'s stakeholders, financial stability, or other matter of concern to the community; and

(B) where the Rejection Action Petition Notice relates to a Standard Bylaw Amendment, a statement, if applicable, that the Standard Bylaw Amendment is based solely on the outcome of a PDP (Policy Development Process), citing the specific PDP (Policy Development Process) and the provision in the Standard Bylaw Amendment subject to the Board Notice that implements such PDP (Policy Development Process) ("**PDP (Policy Development Process) Standard Bylaw Statement**") and the name of the Supporting Organization (Supporting Organization) that is a Decisional Participant that undertook the PDP (Policy Development Process) relating to the Standard Bylaw Amendment ("**Standard Bylaw Amendment PDP (Policy Development Process) Decisional Participant**").

The Rejection Process shall thereafter continue pursuant to Section 2.2(d) of this Annex D.

(ii) If the EC (Empowered Community) Administration has not received a Rejection Action Petition Notice pursuant to Section 2.2(c)(i) of this Annex D during the Rejection Action Petition Period, the Rejection Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Petition Period, deliver to the Secretary a notice certifying that the Rejection Process has been terminated with respect to the Rejection Action contained in the Approval Notice ("**Rejection Process Termination Notice**"). ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post such Rejection Process Termination Notice on the Website.

(d) Following the delivery of a Rejection Action Petition Notice to the EC (Empowered Community) Administration pursuant to Section 2.2(c)(i) of this Annex D, the Rejection Action Petitioning Decisional Participant shall contact the EC (Empowered Community) Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Rejection

Action Petition. The Rejection Action Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website.

> (i) If the Rejection Action Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Rejection Action Supporting Decisional Participant**") during the period beginning upon the expiration of the Rejection Action Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 7th day after the expiration of the Rejection Action Petition Period (the "**Rejection Action Petition Support Period**"), the Rejection Action Petitioning Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary ("**Rejection Action Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Rejection Action Supporting Decisional Participant, and ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post such Rejection Action Supported Petition on the Website. Each Rejection Action Supporting Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Rejection Action Petition, and ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post each such notice on the Website. Such Rejection Action Supported Petition shall include:
>
> (A) a supporting rationale in reasonable detail;
>
> (B) contact information for at least one representative who has been designated by the Rejection Action Petitioning Decisional Participant who shall act as a liaison with respect to the Rejection Action Supported Petition;
>
> (C) a statement as to whether or not the Rejection Action Petitioning Decisional Participant and/or the Rejection Action

Supporting Decisional Participant requests that ICANN (Internet Corporation for Assigned Names and Numbers) organize a publicly-available conference call prior to the Rejection Action Community Forum (as defined in Section 2.3 of this Annex D) for the community to discuss the Rejection Action Supported Petition;

(D) a statement as to whether the Rejection Action Petitioning Decisional Participant and the Rejection Action Supporting Decisional Participant have determined to hold the Rejection Action Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, taking into account the limitation on holding such a Rejection Action Community Forum when the Rejection Action Supported Petition relates to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget or IANA (Internet Assigned Numbers Authority) Budget as described in Section 2.3(c) of this Annex D; and

(E) a PDP (Policy Development Process) Standard Bylaw Statement, if applicable.

The Rejection Process shall thereafter continue for such Rejection Action Supported Petition pursuant to Section 2.3 of this Annex D. The foregoing process may result in more than one Rejection Action Supported Petition relating to the same Rejection Action.

(ii) The Rejection Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Petition Support Period, deliver to the Secretary a Rejection Process Termination Notice, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website, if:

(A) no Rejection Action Petitioning Decisional Participant is able to obtain the support of at least one other Decisional Participant for its Rejection Action Petition during the Rejection Action Petition Support Period; or

(B) where the Rejection Action Supported Petition includes a

PDP (Policy Development Process) Standard Bylaw
Statement, the Standard Bylaw Amendment PDP (Policy
Development Process) Decisional Participant is not (x) the
Rejection Action Petitioning Decisional Participant or (y) one
of the Rejection Action Supporting Decisional Participants.

Section 2.3. REJECTION ACTION COMMUNITY FORUM

a. If the EC (Empowered Community) Administration receives a
Rejection Action Supported Petition under Section 2.2(d) of
this Annex D during the Rejection Action Petition Support
Period, ICANN (Internet Corporation for Assigned Names
and Numbers) shall, at the direction of the EC (Empowered
Community) Administration, convene a forum at which the
Decisional Participants and interested parties may discuss
the Rejection Action Supported Petition ("**Rejection Action
Community Forum**"). If the EC (Empowered Community)
Administration receives more than one Rejection Action
Supported Petition relating to the same Rejection Action, all
such Rejection Action Supported Petitions shall be discussed
at the same Rejection Action Community Forum.

b. If a publicly-available conference call has been requested in
a Rejection Action Supported Petition, ICANN (Internet
Corporation for Assigned Names and Numbers) shall, at the
direction of the EC (Empowered Community) Administration,
schedule such call prior to any Rejection Action Community
Forum relating to that Rejection Action Supported Petition,
and inform the Decisional Participants of the date, time and
participation methods of such conference call, which ICANN
(Internet Corporation for Assigned Names and Numbers)
shall promptly post on the Website. If a conference call has
been requested in relation to more than one Rejection Action
Supported Petition relating to the same Rejection Action, all
such Rejection Action Supported Petitions shall be discussed
during the same conference call.

c. The Rejection Action Community Forum shall be convened
and concluded during the period beginning upon the
expiration of the Rejection Action Petition Support Period and
ending at 11:59 p.m. (as calculated by local time at the
location of ICANN (Internet Corporation for Assigned Names

and Numbers)'s principal office) on the 21st day after the expiration of the Rejection Action Petition Support Period ("**Rejection Action Community Forum Period**") unless all Rejection Action Supported Petitions relating to the same Rejection Action requested that the Rejection Action Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, in which case the Rejection Action Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting (except as otherwise provided below with respect to a Rejection Action Supported Petition relating to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget or IANA (Internet Assigned Numbers Authority) Budget) on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the Rejection Action Petitioning Decisional Participant(s) and the Rejection Action Supporting Decisional Participant(s). If the Rejection Action Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Rejection Action Petition Support Period, the Rejection Action Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting. Notwithstanding the foregoing and notwithstanding any statement in the Rejection Action Supported Petition, a Rejection Action Community Forum to discuss a Rejection Action Supported Petition relating to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget or IANA (Internet Assigned Numbers Authority) Budget may only be held at a scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting if such Rejection Action Community Forum occurs during the Rejection Action Community Forum Period,

without any extension of such Rejection Action Community Forum Period.

d. The Rejection Action Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects, and/or, only if the Rejection Action Community Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-to-face meetings. If the Rejection Action Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of such Rejection Action Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

e. The EC (Empowered Community) Administration shall manage and moderate the Rejection Action Community Forum in a fair and neutral manner.

f. ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Rejection Action Supported Petition prior to the convening of and during the Rejection Action Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

g. ICANN (Internet Corporation for Assigned Names and Numbers) staff (including the CFO when the Rejection Action Supported Petition relates to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget, IANA (Internet Assigned Numbers Authority) Budget or Operating Plan) and

Directors representing the Board are expected to attend the Rejection Action Community Forum in order to address the concerns raised in the Rejection Action Supported Petition.

h. If the Rejection Action Petitioning Decisional Participant and each of the Rejection Action Supporting Decisional Participants for an applicable Rejection Action Supported Petition agree before, during or after the Rejection Action Community Forum that the issue raised in such Rejection Action Supported Petition has been resolved, such Rejection Action Supported Petition shall be deemed withdrawn and the Rejection Process with respect to such Rejection Action Supported Petition will be terminated. If all Rejection Action Supported Petitions relating to a Rejection Action are withdrawn, the Rejection Process will automatically be terminated. If a Rejection Process is terminated, the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Rejection Action Supported Petition, deliver to the Secretary a Rejection Process Termination Notice. For the avoidance of doubt, the Rejection Action Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Rejection Action Petitioning Decisional Participant and the Rejection Action Supporting Decisional Participant(s).

i. During the Rejection Action Community Forum Period, an additional one or two Rejection Action Community Forums may be held at the discretion of a Rejection Action Petitioning Decisional Participant and a related Rejection Action Supporting Decisional Participant, or the EC (Empowered Community) Administration.

j. ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Rejection Action Community Forum and shall promptly post on the Website a public record of the Rejection Action Community Forum as well as all written submissions of ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Rejection Action

Community Forum.

Section 2.4. DECISION WHETHER TO REJECT A REJECTION ACTION

(a) Following the expiration of the Rejection Action Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Rejection Action Community Forum Period (such period, the "**Rejection Action Decision Period**"), with respect to each Rejection Action Supported Petition, each Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether such Decisional Participant (i) supports such Rejection Action Supported Petition and has determined to reject the Rejection Action, (ii) objects to such Rejection Action Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Rejection Action Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the foregoing prior to expiration of the Rejection Action Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community) Administration of its support or objection following the expiration of the Rejection Action Decision Period).

(b) The EC (Empowered Community) Administration, within twenty-four (24) hours of the expiration of the Rejection Action Decision Period, shall promptly deliver a written notice ("**EC (Empowered Community) Rejection Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Article 2 of Annex D, the EC (Empowered Community) has resolved to reject the Rejection Action if (after accounting for any adjustments to the below as required by the GAC (Governmental Advisory Committee) Carve-out pursuant to Section 3.6(e) of the Bylaws if the Rejection Action Supported Petition included a GAC (Governmental Advisory Committee) Consensus (Consensus) Statement):

(i) A Rejection Action Supported Petition relating to a Rejection Action other than a Standard Bylaw Amendment is (A) supported by four or more Decisional Participants and (B) not objected to by more than one Decisional Participant; or

(ii) A Rejection Action Supported Petition relating to a Standard Bylaw Amendment that is (A) supported by three or more Decisional Participants (including the Standard Bylaw Amendment PDP (Policy Development Process) Decisional Participant if the Rejection Action Supported Petition included a PDP (Policy Development Process) Standard Bylaw Statement) and (B) not objected to by more than one Decisional Participant.

(c) If no Rejection Action Supported Petition obtains the support required by Section 2.4(b)(i) or (ii) of this Annex D, as applicable, the Rejection Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Decision Period, deliver to the Secretary a Rejection Process Termination Notice.

(d) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Rejection Action Board Notice, (ii) Rejection Action Petition, (iii) Rejection Action Petition Notice, (iv) Rejection Action Supported Petition, (v) EC (Empowered Community) Rejection Notice and the written explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the Rejection Action, (vi) Rejection Process Termination Notice, and (vii) other notices the Secretary receives under this Article 2.

ARTICLE 3 PROCEDURE FOR EXERCISE OF EC (Empowered Community)'S RIGHTS TO REMOVE DIRECTORS AND RECALL THE BOARD

Section 3.1. NOMINATING COMMITTEE DIRECTOR REMOVAL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a

petition to a Decisional Participant seeking to remove a Director holding Seats 1 through 8 and initiate the Nominating Committee Director Removal Process ("**Nominating Committee Director Removal Petition**"). Each Nominating Committee Director Removal Petition shall set forth the rationale upon which such individual seeks to remove such Director. The process set forth in this Section 3.1 of Annex D is referred to herein as the "**Nominating Committee Director Removal Process**."

(b) During the period beginning on the date that the Decisional Participant received the Nominating Committee Director Removal Petition (such date of receipt, the "**Nominating Committee Director Removal Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the date that is the 21st day after the Nominating Committee Director Removal Petition Date (as it relates to a particular Director, the "**Nominating Committee Director Removal Petition Period**"), the Decisional Participant that has received a Nominating Committee Director Removal Petition ("**Nominating Committee Director Removal Petitioned Decisional Participant**") shall either accept or reject such Nominating Committee Director Removal Petition; provided that a Nominating Committee Director Removal Petitioned Decisional Participant shall not accept a Nominating Committee Director Removal Petition if, during the same term, the Director who is the subject of such Nominating Committee Director Removal Petition had previously been subject to a Nominating Committee Director Removal Petition that led to a Nominating Committee Director Removal Community Forum (as discussed in Section 3.1(e) of this Annex D).

(c) During the Nominating Committee Director Removal Petition Period, the Nominating Committee Director Removal Petitioned Decisional Participant shall invite the Director subject to the Nominating Committee Director Removal Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) to a dialogue with the individual(s) bringing the Nominating Committee Director Removal Petition and the Nominating Committee Director Removal Petitioned Decisional Participant's representative on the EC (Empowered Community) Administration. The Nominating Committee Director Removal Petition may not be accepted unless

this invitation has been extended upon reasonable notice and accommodation to the affected Director's availability. If the invitation is accepted by either the Director who is the subject of the Nominating Committee Director Removal Petition or the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director), the Nominating Committee Director Removal Petitioned Decisional Participant shall not accept the Nominating Committee Director Removal Petition until the dialogue has occurred or there have been reasonable efforts to have the dialogue.

(i) If, in accordance with Section 3.1(b) of this Annex D, a Nominating Committee Director Removal Petitioned Decisional Participant accepts a Nominating Committee Director Removal Petition during the Nominating Committee Director Removal Petition Period (such Decisional Participant, the "**Nominating Committee Director Removal Petitioning Decisional Participant**"), the Nominating Committee Director Removal Petitioning Decisional Participant shall, within twenty-four (24) hours of its acceptance of the Nominating Committee Director Removal Petition, provide written notice ("**Nominating Committee Director Removal Petition Notice**") of such acceptance to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary. The Nominating Committee Director Removal Petition Notice shall include the rationale upon which removal of the affected Director is sought. The Nominating Committee Director Removal Process shall thereafter continue pursuant to Section 3.1(d) of this Annex D.

(ii) If the EC (Empowered Community) Administration has not received a Nominating Committee Director Removal Petition Notice pursuant to Section 3.1(c)(i) of this Annex D during the Nominating Committee Director Removal Petition Period, the Nominating Committee Director Removal Process shall automatically be terminated with respect to the applicable Nominating Committee Director Removal Petition and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Petition Period, deliver to the Secretary a notice certifying that the Nominating Committee Director Removal Process has been terminated with respect to the

applicable Nominating Committee Director Removal Petition ("**Nominating Committee Director Removal Process Termination Notice**").

(d) Following the delivery of a Nominating Committee Director Removal Petition Notice to the EC (Empowered Community) Administration by a Nominating Committee Director Removal Petitioning Decisional Participant pursuant to Section 3.1(c)(i) of this Annex D, the Nominating Committee Director Removal Petitioning Decisional Participant shall contact the EC (Empowered Community) Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Nominating Committee Director Removal Petition. The Nominating Committee Director Removal Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website.

(i) If the Nominating Committee Director Removal Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Nominating Committee Director Removal Supporting Decisional Participant**") during the period beginning upon the expiration of the Nominating Committee Director Removal Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 7th day after the expiration of the Nominating Committee Director Removal Petition Period (the "**Nominating Committee Director Removal Petition Support Period**"), the Nominating Committee Director Removal Petitioning Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary ("**Nominating Committee Director Removal Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Nominating Committee Director Removal Supporting Decisional Participant. Each Nominating Committee Director Removal Supporting Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional

Participants and the Secretary within twenty-four (24) hours of providing support to the Nominating Committee Director Removal Petition. Such Nominating Committee Director Removal Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Nominating Committee Director Removal Petitioning Decisional Participant who shall act as a liaison with respect to the Nominating Committee Director Removal Supported Petition;

(C) a statement as to whether or not the Nominating Committee Director Removal Petitioning Decisional Participant and/or the Nominating Committee Director Removal Supporting Decisional Participant requests that ICANN (Internet Corporation for Assigned Names and Numbers) organize a publicly-available conference call prior to the Nominating Committee Director Removal Community Forum (as defined in Section 3.1(e) of this Annex D) for the community to discuss the Nominating Committee Director Removal Supported Petition; and

(D) a statement as to whether the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant have determined to hold the Nominating Committee Director Removal Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

The Nominating Committee Director Removal Process shall thereafter continue for such Nominating Committee Director Removal Petition pursuant to Section 3.1(e) of this Annex D.

(ii) The Nominating Committee Director Removal Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Petition Support Period, deliver to the Secretary a Nominating Committee Director Removal Process Termination

Notice if the Nominating Committee Director Removal Petitioning Decisional Participant is unable to obtain the support of at least one other Decisional Participant for its Nominating Committee Director Removal Petition during the Nominating Committee Director Removal Petition Support Period.

(e) If the EC (Empowered Community) Administration receives a Nominating Committee Director Removal Supported Petition under Section 3.1(d) of this Annex D during the Nominating Committee Director Removal Petition Support Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Nominating Committee Director Removal Supported Petition ("**Nominating Committee Director Removal Community Forum**").

(i) If a publicly-available conference call has been requested in a Nominating Committee Director Removal Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any Nominating Committee Director Removal Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Director who is the subject of the Nominating Committee Director Removal Supported Petition regarding his or her availability.

(ii) The Nominating Committee Director Removal Community Forum shall be convened and concluded during the period beginning upon the expiration of the Nominating Committee Director Removal Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Petition Support

Period ("**Nominating Committee Director Removal Community Forum Period**") unless the Nominating Committee Director Removal Supported Petition requested that the Nominating Committee Director Removal Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, in which case the Nominating Committee Director Removal Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant(s); provided, that, the date and time of any Nominating Committee Director Removal Community Forum shall be determined after consultation with the Director who is the subject of the Nominating Committee Director Removal Supported Petition regarding his or her availability. If the Nominating Committee Director Removal Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Petition Support Period, the Nominating Committee Director Removal Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

(iii) The Nominating Committee Director Removal Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects, and/or, only if the Nominating Committee Director Removal Community

Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-to-face meetings. If the Nominating Committee Director Removal Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of the Nominating Committee Director Removal Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(iv) The EC (Empowered Community) Administration shall manage and moderate the Nominating Committee Director Removal Community Forum in a fair and neutral manner; provided that no individual from the Nominating Committee Director Removal Petitioning Decisional Participant or the Nominating Committee Director Removal Supporting Decisional Participant, nor the individual who initiated the Nominating Committee Director Removal Petition, shall be permitted to participate in the management or moderation of the Nominating Committee Director Removal Community Forum.

(v) The Director subject to the Nominating Committee Director Removal Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Nominating Committee Director Removal Supported Petition prior to the convening of and during the Nominating Committee Director Removal Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

(vi) The Director who is the subject of the Nominating Committee Director Removal Supported Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) are expected to attend the Nominating Committee Director Removal Community Forum in order to address the issues raised in the Nominating Committee Director Removal Supported Petition.

(vii) If the Nominating Committee Director Removal Petitioning Decisional Participant and each of the Nominating Committee Director Removal Supporting Decisional Participants for an applicable Nominating Committee Director Removal Supported Petition agree before, during or after the Nominating Committee Director Removal Community Forum that the issue raised in such Nominating Committee Director Removal Supported Petition has been resolved, such Nominating Committee Director Removal Supported Petition shall be deemed withdrawn and the Nominating Committee Director Removal Process with respect to such Nominating Committee Director Removal Supported Petition will be terminated. If a Nominating Committee Director Removal Process is terminated, the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Nominating Committee Director Removal Supported Petition, deliver to the Secretary a Nominating Committee Director Removal Process Termination Notice. For the avoidance of doubt, the Nominating Committee Director Removal Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant(s).

(viii) During the Nominating Committee Director Removal Community Forum Period, an additional one or two Nominating Committee Director Removal Community Forums may be held at the discretion of a Nominating Committee Director Removal Petitioning Decisional Participant and a related Nominating Committee Director Removal Supporting Decisional Participant, or the EC (Empowered Community)

Administration.

(ix) ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Nominating Committee Director Removal Community Forum and shall promptly post on the Website a public record of the Nominating Committee Director Removal Community Forum as well as all written submissions of the Director who is the subject of the Nominating Committee Director Removal Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Nominating Committee Director Removal Community Forum.

(f) Following the expiration of the Nominating Committee Director Removal Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Community Forum Period (such period, the "**Nominating Committee Director Removal Decision Period**"), each Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether such Decisional Participant (i) supports such Nominating Committee Director Removal Supported Petition, (ii) objects to such Nominating Committee Director Removal Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Nominating Committee Director Removal Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the foregoing prior to the expiration of the Nominating Committee Director Removal Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community) Administration of its support or objection following the expiration of the Nominating Committee Director Removal Decision Period).

(g) The EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Decision Period, deliver a written notice ("**Nominating Committee Director Removal Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of Section 3.1 of this Annex D, the EC (Empowered Community) has approved of the removal of the Director who is subject to the Nominating Committee Director Removal Process if the Nominating Committee Director Removal Supported Petition is (i) supported by three or more Decisional Participants and (ii) not objected to by more than one Decisional Participant.

(h) Upon the Secretary's receipt of a Nominating Committee Director Removal Notice, the Director subject to such Nominating Committee Director Removal Notice shall be effectively removed from office and shall no longer be a Director and such Director's vacancy shall be filled in accordance with Section 7.12 of the Bylaws.

(i) If the Nominating Committee Director Removal Supported Petition does not obtain the support required by Section 3.1(g) of this Annex D, the Nominating Committee Director Removal Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Decision Period, deliver to the Secretary a Nominating Committee Director Removal Process Termination Notice. The Director who was subject to the Nominating Committee Director Removal Process shall remain on the Board and not be subject to the Nominating Committee Director Removal Process for the remainder of the Director's current term.

(j) If neither a Nominating Committee Director Removal Notice nor a Nominating Committee Director Removal Process Termination Notice are received by the Secretary prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Community Forum Period, the Nominating Committee Director Removal Process shall automatically terminate and the Director who was subject to the Nominating Committee Director Removal Process shall remain on the Board and shall not

be subject to the Nominating Committee Director Removal Process for the remainder of the Director's current term.

(k) Notwithstanding anything in this Section 3.1 to the contrary, if, for any reason, including due to resignation, death or disability, a Director who is the subject of a Nominating Committee Director Removal Process ceases to be a Director, the Nominating Committee Director Removal Process for such Director shall automatically terminate without any further action of ICANN (Internet Corporation for Assigned Names and Numbers) or the EC (Empowered Community) Administration.

(l) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Nominating Committee Director Removal Petition, (ii) Nominating Committee Director Removal Petition Notice, (iii) Nominating Committee Director Removal Supported Petition, (iv) Nominating Committee Director Removal Notice and the written explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to remove the relevant Director, (v) Nominating Committee Director Removal Process Termination Notice, and (vi) other notices the Secretary receives under this Section 3.1.

Section 3.2. SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) DIRECTOR REMOVAL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to the ASO (Address Supporting Organization), ccNSO (Country Code Names Supporting Organization), GNSO (Generic Names Supporting Organization) or At-Large Community (as applicable, the "**Applicable Decisional Participant**") seeking to remove a Director who was nominated by that Supporting Organization (Supporting Organization) or the At-Large Community in accordance with Section 7.2(a) of the Bylaws, and initiate the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process ("**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition**"). The process set forth in

this Section 3.2 of this Annex D is referred to herein as the "**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process**."

(b) During the period beginning on the date that the Applicable Decisional Participant received the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition (such date of receipt, the "**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the date that is the 21st day after the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Date (as it relates to a particular Director, the "**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period**"), the Applicable Decisional Participant shall either accept or reject such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition pursuant to the internal procedures of the Applicable Decisional Participant for the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition; provided that the Applicable Decisional Participant shall not accept an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition if, during the same term, the Director who is the subject of such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition had previously been subject to an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition that led to an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum (as defined in Section 3.2(d) of this Annex D).

(c) During the SO (Supporting Organization)/AC (Advisory

Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, the Applicable Decisional Participant shall invite the Director subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) to a dialogue with the individual(s) bringing the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition and the Applicable Decisional Participant's representative on the EC (Empowered Community) Administration. The SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition may not be accepted unless this invitation has been extended upon reasonable notice and accommodation to the affected Director's availability. If the invitation is accepted by either the Director who is the subject of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition or the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director), the Applicable Decisional Participant shall not accept the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition until the dialogue has occurred or there have been reasonable efforts to have the dialogue.

> (i) If, in accordance with Section 3.2(b), the Applicable Decisional Participant accepts an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition during the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, the Applicable Decisional Participant shall, within twenty-four (24) hours of the Applicable Decisional Participant's acceptance of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition, provide written notice ("**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice**") of such acceptance to the EC (Empowered

Community) Administration, the other Decisional Participants and the Secretary. Such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Applicable Decisional Participant who shall act as a liaison with respect to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice;

(C) a statement as to whether or not the Applicable Decisional Participant requests that ICANN (Internet Corporation for Assigned Names and Numbers) organize a publicly-available conference call prior to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum (as defined in Section 3.2(d) of this Annex D) for the community to discuss the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition; and

(D) a statement as to whether the Applicable Decisional Participant has determined to hold the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

The SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process shall thereafter continue for such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition pursuant to Section 3.2(d) of this Annex D.

(ii) If the EC (Empowered Community) Administration has not received an SO (Supporting Organization)/AC (Advisory

Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice pursuant to Section 3.2(c)(i) during the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process shall automatically be terminated with respect to the applicable SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, deliver to the Secretary a notice certifying that the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process has been terminated with respect to the applicable SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition ("**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process Termination Notice**").

(d) If the EC (Empowered Community) Administration receives an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice under Section 3.2(c) of this Annex D during the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested parties may discuss the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice ("**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum**").

(i) If a publicly-available conference call has been requested in an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Director who is the subject of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice regarding his or her availability.

(ii) The SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum shall be convened and concluded during the period beginning upon the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period ("**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum Period**") unless the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice requested that the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum be held during the next scheduled ICANN

(Internet Corporation for Assigned Names and Numbers) public meeting, in which case the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the Applicable Decisional Participant; provided, that the date and time of any SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum shall be determined after consultation with the Director who is the subject of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice regarding his or her availability. If the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

(iii) The SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum shall be conducted via remote participation methods such as

teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects, and/or, only if the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-to-face meetings. If the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(iv) The EC (Empowered Community) Administration shall manage and moderate the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum in a fair and neutral manner; provided that no individual from the Applicable Decisional Participant, nor the individual who initiated the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition, shall be permitted to participate in the management or moderation of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum.

(v) The Director subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice, ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee)

(including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice prior to the convening of and during the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

(vi) The Director who is the subject of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) are expected to attend the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum in order to address the issues raised in the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice.

(vii) If the Applicable Decisional Participant agrees before, during or after the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum that the issue raised in such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice has been resolved, such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice shall be deemed withdrawn and the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process with respect to such SO (Supporting Organization)/AC (Advisory Committee; or

Administrative Contact (of a domain registration)) Director Removal Petition Notice will be terminated. If an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process is terminated, the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice, deliver to the Secretary an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process Termination Notice. For the avoidance of doubt, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Applicable Decisional Participant.

(viii) During the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum Period, an additional one or two SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forums may be held at the discretion of the Applicable Decisional Participant or the EC (Empowered Community) Administration.

(ix) ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum and shall promptly post on the Website a public record of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum as well as all written submissions of the Director who is the subject of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice, ICANN (Internet Corporation for Assigned Names and

Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum.

(e) Following the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the request of the EC (Empowered Community) Administration, issue a request for comments and recommendations from the community, which shall be delivered to the Secretary for prompt posting on the Website along with a means for comments and recommendations to be submitted to ICANN (Internet Corporation for Assigned Names and Numbers) on behalf of the EC (Empowered Community) Administration. This comment period shall remain open until 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 7th day after the request for comments and recommendations was posted on the Website (the "**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Comment Period**"). ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website all comments and recommendations received by ICANN (Internet Corporation for Assigned Names and Numbers) during the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Comment Period.

(f) Following the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Comment Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Comment Period (such period, the "**SO (Supporting**

Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Decision Period"), the Applicable Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether the Applicable Decisional Participant has support for the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice within the Applicable Decisional Participant of a three-quarters majority as determined pursuant to the internal procedures of the Applicable Decisional Participant ("**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice**"). The Applicable Decisional Participant shall, within twenty-four (24) hours of obtaining such support, deliver the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice to the EC (Empowered Community) Administration, the other Decisional Participants and Secretary, and ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the Applicable Decisional Participant, concurrently post on the Website an explanation provided by the Applicable Decisional Participant as to why the Applicable Decisional Participant has chosen to remove the affected Director. Upon the Secretary's receipt of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice from the EC (Empowered Community) Administration, the Director subject to such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice shall be effectively removed from office and shall no longer be a Director and such Director's vacancy shall be filled in accordance with Section 7.12 of the Bylaws.

(g) If the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice does not obtain the support required by Section 3.2(f) of this Annex D, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the failure to obtain such

support, deliver to the Secretary an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process Termination Notice. The Director who was subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process shall remain on the Board and shall not be subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process for the remainder of the Director's current term.

(h) If neither an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice nor an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process Termination Notice are received by the Secretary prior to the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Decision Period, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process shall automatically terminate and the Director who was subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process shall remain on the Board and shall not be subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process for the remainder of the Director's current term.

(i) Notwithstanding anything in this Section 3.2 to the contrary, if, for any reason, including due to resignation, death or disability, a Director who is the subject of an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process ceases to be a Director, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process for such Director shall automatically terminate without any further action of ICANN (Internet Corporation for Assigned Names and Numbers) or the EC (Empowered Community) Administration.

(j) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition, (ii) SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice, (iii) SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice and the written explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to remove the relevant Director, (iv) SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process Termination Notice, and (v) other notices the Secretary receives under this Section 3.2.

Section 3.3. BOARD RECALL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant seeking to remove all Directors (other than the President) at the same time and initiate the Board Recall Process ("**Board Recall Petition**"), provided that a Board Recall Petition cannot be submitted solely on the basis of a matter decided by a Community IRP if (i) such Community IRP was initiated in connection with the Board's implementation of GAC (Governmental Advisory Committee) Consensus (Consensus) Advice and (ii) the EC (Empowered Community) did not prevail in such Community IRP. Each Board Recall Petition shall include a rationale setting forth the reasons why such individual seeks to recall the Board. The process set forth in this Section 3.3 of this Annex D is referred to herein as the "**Board Recall Process**."

(b) A Decisional Participant that has received a Board Recall Petition shall either accept or reject such Board Recall Petition during the period beginning on the date the Decisional Participant received the Board Recall Petition ("**Board Recall Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the date that is the 21st day after the Board Recall Petition Date (the "**Board Recall Petition Period**").

(i) If, in accordance with Section 3.3(b) of this Annex D, a Decisional Participant accepts a Board Recall Petition during the Board Recall Petition Period (such Decisional Participant, the "**Board Recall Petitioning Decisional Participant**"), the Board Recall Petitioning Decisional Participant shall, within twenty-four (24) hours of the expiration of its acceptance of the Board Recall Petition, provide written notice ("**Board Recall Petition Notice**") of such acceptance to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary. The Board Recall Petition Notice shall include the rationale upon which removal of the Board is sought. The Board Recall Process shall thereafter continue pursuant to Section 3.3(c) of this Annex D.

(ii) If the EC (Empowered Community) Administration has not received a Board Recall Petition Notice pursuant to Section 3.3(b)(i) of this Annex D during the Board Recall Petition Period, the Board Recall Process shall automatically be terminated with respect to the Board Recall Petition and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Petition Period, deliver to the Secretary a notice certifying that the Board Recall Process has been terminated with respect to the Board Recall Petition ("**Board Recall Process Termination Notice**").

(c) Following the delivery of a Board Recall Petition Notice to the EC (Empowered Community) Administration by a Board Recall Petitioning Decisional Participant pursuant to Section 3.3(b)(i) of this Annex D, the Board Recall Petitioning Decisional Participant shall contact the EC (Empowered Community) Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Board Recall Petition. The Board Recall Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website.

(i) If the Board Recall Petitioning Decisional Participant obtains the support of at least two other Decisional Participants (each, a "**Board Recall Supporting Decisional**

Participant") during the period beginning upon the expiration of the Board Recall Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 7th day after the expiration of the Board Recall Petition Period (the "**Board Recall Petition Support Period**"), the Board Recall Petitioning Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary ("**Board Recall Supported Petition**") within twenty-four hours of receiving the support of at least two Board Recall Supporting Decisional Participants. Each Board Recall Supporting Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Board Recall Petition. Such Board Recall Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Board Recall Petitioning Decisional Participant who shall act as a liaison with respect to the Board Recall Supported Petition;

(C) a statement as to whether or not the Board Recall Petitioning Decisional Participant and/or the Board Recall Supporting Decisional Participants requests that ICANN (Internet Corporation for Assigned Names and Numbers) organize a publicly-available conference call prior to the Board Recall Community Forum (as defined in Section 3.3(d) of this Annex D) for the community to discuss the Board Recall Supported Petition; and

(D) a statement as to whether the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants have determined to hold the Board Recall Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

The Board Recall Process shall thereafter continue for such

Board Recall Supported Petition pursuant to Section 3.3(d) of this Annex D.

(ii) The Board Recall Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Petition Support Period, deliver to the Secretary a Board Recall Process Termination Notice if the Board Recall Petitioning Decisional Participant is unable to obtain the support of at least two other Decisional Participants for its Board Recall Petition during the Board Recall Petition Support Period.

(d) If the EC (Empowered Community) Administration receives a Board Recall Supported Petition under Section 3.3(c) of this Annex D during the Board Recall Petition Support Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Board Recall Supported Petition ("**Board Recall Community Forum**").

(i) If a publicly-available conference call has been requested in a Board Recall Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any Board Recall Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Board regarding the availability of the Directors.

(ii) The Board Recall Community Forum shall be convened and concluded during the period beginning upon the expiration of the Board Recall Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the

expiration of the Board Recall Petition Support Period ("**Board Recall Community Forum Period**") unless the Board Recall Supported Petition requested that the Board Recall Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, in which case the Board Recall Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants; provided, that, the date and time of any Board Recall Community Forum shall be determined after consultation with the Board regarding the availability of the Directors. If the Board Recall Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Board Recall Petition Support Period, the Board Recall Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

(iii) The Board Recall Community Forum shall have at least one face-to-face meeting and may also be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects. If the Board Recall Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of the

Board Recall Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(iv) The EC (Empowered Community) Administration shall manage and moderate the Board Recall Community Forum in a fair and neutral manner; provided that no individual from the Board Recall Petitioning Decisional Participant or a Board Recall Supporting Decisional Participant, nor the individual who initiated the Board Recall Petition, shall be permitted to participate in the management or moderation of the Board Recall Community Forum.

(v) ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Board Recall Supported Petition prior to the convening of and during the Board Recall Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

(vi) ICANN (Internet Corporation for Assigned Names and Numbers) staff and the full Board are expected to attend the Board Recall Community Forum in order to address the issues raised in the Board Recall Supported Petition.

(vii) If the Board Recall Petitioning Decisional Participant and each of the Board Recall Supporting Decisional Participants for the Board Recall Supported Petition agree before, during or after the Board Recall Community Forum that the issue raised in such Board Recall Supported Petition has been resolved, such Board Recall Supported Petition shall be deemed withdrawn and the Board Recall Process with respect to such Board Recall Supported Petition will be terminated. If a Board Recall Process is terminated, the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the

Board Recall Supported Petition, deliver to the Secretary a Board Recall Process Termination Notice. For the avoidance of doubt, the Board Recall Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants.

(viii) During the Board Recall Community Forum Period, an additional one or two Board Recall Community Forums may be held at the discretion of the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants, or the EC (Empowered Community) Administration.

(ix) ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Board Recall Community Forum and shall promptly post on the Website a public record of the Board Recall Community Forum as well as all written submissions of ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Board Recall Community Forum.

(e) Following the expiration of the Board Recall Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Board Recall Community Forum Period (such period, the "**Board Recall Decision Period**"), each Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether such Decisional Participant (i) supports such Board Recall Supported Petition, (ii) objects to such Board Recall Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Board Recall Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the

foregoing prior to expiration of the Board Recall Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community) Administration of its support or objection following the expiration of the Board Recall Decision Period).

(f) The EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Decision Period, deliver a written notice ("**EC (Empowered Community) Board Recall Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 3.3 of this Annex D, the EC (Empowered Community) has resolved to remove all Directors (other than the President) if (after accounting for any adjustments to the below as required by the GAC (Governmental Advisory Committee) Carve-out pursuant to Section 3.6(e) of the Bylaws if an IRP Panel found that, in implementing GAC (Governmental Advisory Committee) Consensus (Consensus) Advice, the Board acted inconsistently with the Articles or Bylaws) a Board Recall Supported Petition (i) is supported by four or more Decisional Participants, and (ii) is not objected to by more than one Decisional Participant.

(g) Upon the Secretary's receipt of an EC (Empowered Community) Board Recall Notice, all Directors (other than the President) shall be effectively removed from office and shall no longer be Directors and such vacancies shall be filled in accordance with Section 7.12 of the Bylaws.

(h) If the Board Recall Supported Petition does not obtain the support required by Section 3.3(f) of this Annex D, the Board Recall Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Decision Period, deliver to the Secretary a Board Recall Process Termination Notice. All Directors shall remain on the Board.

(i) If neither an EC (Empowered Community) Board Recall Notice nor a Board Recall Process Termination Notice are received by the Secretary prior to the expiration of the Board Recall Decision Period, the Board Recall Process shall automatically terminate and all Directors shall remain on the Board.

(j) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Board Recall Petition, (ii) Board Recall Petition Notice, (iii) Board Recall Supported Petition, (iv) EC (Empowered Community) Board Recall Notice and the written explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to recall the Board, (v) Board Recall Process Termination Notice, and (vi) other notices the Secretary receives under this Section 3.3.

Article 4 PROCEDURE FOR EXERCISE OF EC (Empowered Community)'S RIGHTS TO INITIATE MEDIATION, A COMMUNITY IRP OR RECONSIDERATION REQUEST

Section 4.1. MEDIATION INITIATION

(a) If the Board refuses or fails to comply with a decision by the EC (Empowered Community) delivered to the Secretary pursuant to an EC (Empowered Community) Approval Notice, EC (Empowered Community) Rejection Notice, Nominating Committee Director Removal Notice, SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice or EC (Empowered Community) Board Recall Notice pursuant to and in compliance with Article 1, Article 2 or Article 3 of this Annex D, or rejects or otherwise does not take action that is consistent with a final IFR Recommendation, Special IFR Recommendation, SCWG Creation Recommendation or SCWG Recommendation, as applicable (each, an "**EC (Empowered Community) Decision**"), the EC (Empowered Community) Administration representative of any Decisional Participant who supported the exercise by the EC (Empowered Community) of its rights in the applicable EC (Empowered Community) Decision during the applicable decision period may request that the EC (Empowered Community) initiate mediation with the Board in relation to that EC (Empowered Community) Decision as contemplated by Section 4.7 of the Bylaws, by delivering a notice to the EC (Empowered Community) Administration, the Decisional Participants and the Secretary requesting the initiation of a mediation ("**Mediation Initiation Notice**"). ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website

any Mediation Initiation Notice.

(b) As soon as practicable after receiving a Mediation Initiation Notice, the EC (Empowered Community) Administration and the Secretary shall initiate mediation, which shall proceed in accordance with Section 4.7 of the Bylaws.

Section 4.2. COMMUNITY IRP

(a) After completion of a mediation under Section 4.7 of the Bylaws, the EC (Empowered Community) Administration representative of any Decisional Participant who supported the exercise by the EC (Empowered Community) of its rights in the applicable EC (Empowered Community) Decision during the applicable decision period may request that the EC (Empowered Community) initiate a Community IRP (a "**Community IRP Petitioning Decisional Participant**"), as contemplated by Section 4.3 of the Bylaws, by delivering a notice to the EC (Empowered Community) Administration and the Decisional Participants requesting the initiation of a Community IRP ("**Community IRP Petition**"). The Community IRP Petitioning Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. The process set forth in this Section 4.2 of this Annex D as it relates to a particular Community IRP Petition is referred to herein as the "**Community IRP Initiation Process**."

(b) Following the delivery of a Community IRP Petition to the EC (Empowered Community) Administration by a Community IRP Petitioning Decisional Participant pursuant to Section 4.2(a) of this Annex D (which delivery date shall be referred to herein as the "**Community IRP Notification Date**"), the Community IRP Petitioning Decisional Participant shall contact the EC (Empowered Community) Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Community IRP Petition. The Community IRP Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website.

> (i) If the Community IRP Petitioning Decisional Participant

obtains the support of at least one other Decisional Participant (a "**Community IRP Supporting Decisional Participant**") during the period beginning on the Community IRP Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the Community IRP Notification Date (the "**Community IRP Petition Support Period**"), the Community IRP Petitioning Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary ("**Community IRP Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Community IRP Supporting Decisional Participant. Each Community IRP Supporting Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Community IRP Petition. Such Community IRP Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Community IRP Petitioning Decisional Participant who shall act as a liaison with respect to the Community IRP Supported Petition;

(C) a statement as to whether or not the Community IRP Petitioning Decisional Participant and/or the Community IRP Supporting Decisional Participant requests that ICANN (Internet Corporation for Assigned Names and Numbers) organize a publicly-available conference call prior to the Community IRP Community Forum (as defined in Section 4.2(c) of this Annex D) for the community to discuss the Community IRP Supported Petition;

(D) a statement as to whether the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant have determined to hold the Community IRP Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and

Numbers) public meeting;

(E) where the Community IRP Supported Petition relates to a Fundamental Bylaw Amendment, a PDP (Policy Development Process) Fundamental Bylaw Statement if applicable and, if so, the name of the Fundamental Bylaw Amendment PDP (Policy Development Process) Decisional Participant;

(F) where the Community IRP Supported Petition relates to an Articles Amendment, a PDP (Policy Development Process) Articles Statement if applicable and, if so, the name of the Articles Amendment PDP (Policy Development Process) Decisional Participant;

(G) where the Community IRP Supported Petition relates to a Standard Bylaw Amendment, a PDP (Policy Development Process) Standard Bylaw Statement if applicable and, if so, the name of the Standard Bylaw Amendment PDP (Policy Development Process) Decisional Participant; and

(H) where the Community IRP Supported Petition relates to a policy recommendation of a cross community working group chartered by more than one Supporting Organization (Supporting Organization) ("**CCWG Policy Recommendation**"), a statement citing the specific CCWG Policy Recommendation and related provision in the Community IRP Supported Petition ("**CCWG Policy Recommendation Statement**"), and, if so, the name of any Supporting Organization (Supporting Organization) that is a Decisional Participant that approved the CCWG Policy Recommendation ("**CCWG Policy Recommendation Decisional Participant**").

The Community IRP Initiation Process shall thereafter continue for such Community IRP Supported Petition pursuant to Section 4.2(c) of this Annex D.

(ii) The Community IRP Initiation Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Community IRP Petition Support Period, deliver to the Secretary a notice certifying that the Community

IRP Initiation Process has been terminated with respect to the Community IRP included in the Community IRP Petition ("**Community IRP Termination Notice**") if:

(A) no Community IRP Petitioning Decisional Participant is able to obtain the support of at least one other Decisional Participant for its Community IRP Petition during the Community IRP Petition Support Period;

(B) where the Community IRP Supported Petition includes a PDP (Policy Development Process) Fundamental Bylaw Statement, the Fundamental Bylaw Amendment PDP (Policy Development Process) Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants;

(C) where the Community IRP Supported Petition includes a PDP (Policy Development Process) Articles Statement, the Articles Amendment PDP (Policy Development Process) Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants;

(D) where the Community IRP Supported Petition includes a PDP (Policy Development Process) Standard Bylaw Statement, the Standard Bylaw Amendment PDP (Policy Development Process) Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants; or

(E) where the Community IRP Supported Petition includes a CCWG Policy Recommendation Statement, the CCWG Policy Recommendation Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants.

(c) If the EC (Empowered Community) Administration receives a Community IRP Supported Petition under Section 4.2(b) of this Annex D during the Community IRP Petition Support Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration,

convene a forum at which the Decisional Participants and interested third parties may discuss the Community IRP Supported Petition ("**Community IRP Community Forum**").

(i) If a publicly-available conference call has been requested in a Community IRP Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any Community IRP Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(ii) The Community IRP Community Forum shall be convened and concluded during the period beginning on the expiration of the Community IRP Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the expiration of the Community IRP Petition Support Period ("**Community IRP Community Forum Period**") unless the Community IRP Supported Petition requested that the Community IRP Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, in which case the Community IRP Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant(s). If the Community IRP Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the expiration of the Community IRP Petition Support Period, the Community IRP Community Forum Period shall

expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

(iii) The Community IRP Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects and/or, only if the Community IRP Community Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-to-face meetings. If the Community IRP Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of such Community IRP Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(iv) The EC (Empowered Community) Administration shall manage and moderate the Community IRP Community Forum in a fair and neutral manner.

(v) ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Community IRP Supported Petition prior to the convening of and during the Community IRP Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

(vi) ICANN (Internet Corporation for Assigned Names and Numbers) staff and Directors representing the Board are

expected to attend the Community IRP Community Forum in order to discuss the Community IRP Supported Petition.

(vii) If the Community IRP Petitioning Decisional Participant and each of the Community IRP Supporting Decisional Participants for the Community IRP Supported Petition agree before, during or after a Community IRP Community Forum that the issue raised in such Community IRP Supported Petition has been resolved, such Community IRP Supported Petition shall be deemed withdrawn and the Community IRP Initiation Process with respect to such Community IRP Supported Petition will be terminated. If a Community IRP Initiation Process is terminated, the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Community IRP Supported Petition, deliver to the Secretary a Community IRP Termination Notice. For the avoidance of doubt, the Community IRP Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant(s).

(viii) During the Community IRP Community Forum Period, an additional one or two Community IRP Community Forums may be held at the discretion of a Community IRP Petitioning Decisional Participant and a related Community IRP Supporting Decisional Participant, or the EC (Empowered Community) Administration.

(ix) ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Community IRP Community Forum and shall promptly post on the Website a public record of the Community IRP Community Forum as well as all written submissions of ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Community IRP Community Forum.

(d) Following the expiration of the Community IRP Community Forum

Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Community IRP Community Forum Period (such period, the "**Community IRP Decision Period**"), each Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether such Decisional Participant (i) supports such Community IRP Supported Petition, (ii) objects to such Community IRP Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Community IRP Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the foregoing prior to the expiration of the Community IRP Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community) Administration of its support or objection following the expiration of the Community IRP Decision Period).

(e) The EC (Empowered Community) Administration, within twenty-four (24) hours of the expiration of the Community IRP Decision Period, shall promptly deliver a written notice ("**EC (Empowered Community) Community IRP Initiation Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 4.2 of this Annex D, the EC (Empowered Community) has resolved to accept the Community IRP Supported Petition if:

> (i) A Community IRP Supported Petition that does not include a PDP (Policy Development Process) Fundamental Bylaw Statement, a PDP (Policy Development Process) Articles Statement, a PDP (Policy Development Process) Standard Bylaw Statement or a CCWG Policy Recommendation Statement (A) is supported by three or more Decisional Participants, and (B) is not objected to by more than one Decisional Participant;

> (ii) A Community IRP Supported Petition that (A) includes a

PDP (Policy Development Process) Fundamental Bylaw Statement, (B) is supported by three or more Decisional Participants (including the Fundamental Bylaw Amendment PDP (Policy Development Process) Decisional Participant), and (C) is not objected to by more than one Decisional Participant;

(iii) A Community IRP Supported Petition that (A) includes a PDP (Policy Development Process) Articles Statement, (B) is supported by three or more Decisional Participants (including the Articles Amendment PDP (Policy Development Process) Decisional Participant), and (C) is not objected to by more than one Decisional Participant;

(iv) A Community IRP Supported Petition that (A) includes a PDP (Policy Development Process) Standard Bylaw Statement, (B) is supported by three or more Decisional Participants (including the Standard Bylaw Amendment PDP (Policy Development Process) Decisional Participant), and (C) is not objected to by more than one Decisional Participant; or

(v) A Community IRP Supported Petition that (A) includes a CCWG Policy Recommendation Statement, (B) is supported by three or more Decisional Participants (including the CCWG Policy Recommendation Decisional Participant), and (C) is not objected to by more than one Decisional Participant.

(f) If the Community IRP Supported Petition does not obtain the support required by Section 4.2(e) of this Annex D, the Community IRP Initiation Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Community IRP Decision Period, deliver to the Secretary a Community IRP Termination Notice.

(g) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Community IRP Petition, (ii) Community IRP Supported Petition, (iii) EC (Empowered Community) Community IRP Initiation Notice, (iv) Community IRP Termination Notice, (v) written explanation provided by the EC (Empowered Community) Administration related to any of the foregoing, and (vi) other notices the Secretary receives under this

<u>Section 4.2</u>.

Section 4.3. COMMUNITY RECONSIDERATION REQUEST

(a) Any Decisional Participant may request that the <u>EC (Empowered Community)</u> initiate a Reconsideration Request (a "**Community Reconsideration Petitioning Decisional Participant**"), as contemplated by <u>Section 4.2(b)</u> of the Bylaws, by delivering a notice to the <u>EC (Empowered Community)</u> Administration and the other Decisional Participants, with a copy to the Secretary for <u>ICANN (Internet Corporation for Assigned Names and Numbers)</u> to promptly post on the Website, requesting the review or reconsideration of an action or inaction of the <u>ICANN (Internet Corporation for Assigned Names and Numbers)</u> Board or staff ("**Community Reconsideration Petition**"). A Community Reconsideration Petition must be delivered within 30 days after the occurrence of any of the conditions set forth in <u>Section 4.2(g)(i)(A)</u>, <u>(B)</u> or <u>(C)</u> of the Bylaws. In that instance, the Community Reconsideration Petition must be delivered within 30 days from the initial posting of the rationale. The process set forth in this <u>Section 4.3</u> of this <u>Annex D</u> as it relates to a particular Community Reconsideration Petition is referred to herein as the "**Community Reconsideration Initiation Process**."

(b) Following the delivery of a Community Reconsideration Petition to the <u>EC (Empowered Community)</u> Administration by a Community Reconsideration Petitioning Decisional Participant pursuant to <u>Section 4.3(a)</u> of this <u>Annex D</u> (which delivery date shall be referred to herein as the "**Community Reconsideration Notification Date**"), the Community Reconsideration Petitioning Decisional Participant shall contact the <u>EC (Empowered Community)</u> Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Community Reconsideration Petition. The Community Reconsideration Petitioning Decisional Participant shall forward such communication to the Secretary for <u>ICANN (Internet Corporation for Assigned Names and Numbers)</u> to promptly post on the Website.

> (i) If the Community Reconsideration Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Community Reconsideration**

Supporting Decisional Participant") during the period beginning on the Community Reconsideration Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the Community Reconsideration Notification Date (the "**Community Reconsideration Petition Support Period**"), the Community Reconsideration Petitioning Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary ("**Community Reconsideration Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Community Reconsideration Supporting Decisional Participant. Each Community Reconsideration Supporting Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Community Reconsideration Petition. Such Community Reconsideration Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Community Reconsideration Petitioning Decisional Participant who shall act as a liaison with respect to the Community Reconsideration Supported Petition;

(C) a statement as to whether or not the Community Reconsideration Petitioning Decisional Participant and/or the Community Reconsideration Supporting Decisional Participant requests that ICANN (Internet Corporation for Assigned Names and Numbers) organize a publicly-available conference call prior to the Community Reconsideration Community Forum (as defined in Section 4.3(c) of this Annex D) for the community to discuss the Community Reconsideration Supported Petition; and

(D) a statement as to whether the Community Reconsideration Petitioning Decisional Participant and the Community

Reconsideration Supporting Decisional Participant have determined to hold the Community Reconsideration Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

The Community Reconsideration Initiation Process shall thereafter continue for such Community Reconsideration Supported Petition pursuant to Section 4.3(c) of this Annex D.

(ii) The Community Reconsideration Initiation Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Community Reconsideration Petition Support Period, deliver to the Secretary a notice certifying that the Community Reconsideration Initiation Process has been terminated with respect to the Reconsideration Request included in the Community Reconsideration Petition ("**Community Reconsideration Termination Notice**") if the Community Reconsideration Petitioning Decisional Participant is unable to obtain the support of at least one other Decisional Participant for its Community Reconsideration Petition during the Community Reconsideration Petition Support Period.

(c) If the EC (Empowered Community) Administration receives a Community Reconsideration Supported Petition under Section 4.3(b) of this Annex D during the Community Reconsideration Petition Support Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested third parties may discuss the Community Reconsideration Supported Petition ("**Community Reconsideration Community Forum**").

(i) If a publicly-available conference call has been requested in a Community Reconsideration Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any Community Reconsideration Community Forum, and inform the Decisional Participants of the date, time and participation methods of

such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(ii) The Community Reconsideration Community Forum shall be convened and concluded during the period beginning on the expiration of the Community Reconsideration Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the expiration of the Community Reconsideration Petition Support Period ("**Community Reconsideration Forum Period**") unless the Community Reconsideration Supported Petition requested that the Community Reconsideration Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, in which case the Community Reconsideration Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the Community Reconsideration Petitioning Decisional Participant and the Community Reconsideration Supporting Decisional Participant(s). If the Community Reconsideration Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the expiration of the Community Reconsideration Petition Support Period, the Community Reconsideration Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

(iii) The Community Reconsideration Community Forum shall be conducted via remote participation methods such as

teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects and/or, only if the Community Reconsideration Community Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-to-face meetings. If the Community Reconsideration Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of such Community Reconsideration Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(iv) The EC (Empowered Community) Administration shall manage and moderate the Community Reconsideration Community Forum in a fair and neutral manner.

(v) ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Community Reconsideration Supported Petition prior to the convening of and during the Community Reconsideration Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

(vi) ICANN (Internet Corporation for Assigned Names and Numbers) staff and Directors representing the Board are expected to attend the Community Reconsideration Community Forum in order to discuss the Community Reconsideration Supported Petition.

(vii) If the Community Reconsideration Petitioning Decisional Participant and each of the Community Reconsideration Supporting Decisional Participants for a Community

Reconsideration Supported Petition agree before, during or after the Community Reconsideration Community Forum that the issue raised in such Community Reconsideration Supported Petition has been resolved, such Community Reconsideration Supported Petition shall be deemed withdrawn and the Community Reconsideration Initiation Process with respect to such Community Reconsideration Supported Petition will be terminated. If a Community Reconsideration Initiation Process is terminated, the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Community Reconsideration Supported Petition, deliver to the Secretary a Community Reconsideration Termination Notice. For the avoidance of doubt, the Community Reconsideration Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Community Reconsideration Petitioning Decisional Participant and the Community Reconsideration Supporting Decisional Participant(s).

(viii) During the Community Reconsideration Community Forum Period, an additional one or two Community Reconsideration Community Forums may be held at the discretion of a Community Reconsideration Petitioning Decisional Participant and a related Community Reconsideration Supporting Decisional Participant, or the EC (Empowered Community) Administration.

(ix) ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Community Reconsideration Community Forum and shall promptly post on the Website a public record of the Community Reconsideration Community Forum as well as all written submissions of ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Community Reconsideration Community Forum.

(d) Following the expiration of the Community Reconsideration Community Forum Period, at any time or date prior to 11:59 p.m. (as

calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Community Reconsideration Community Forum Period (such period, the "**Community Reconsideration Decision Period**"), each Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether such Decisional Participant (i) supports such Community Reconsideration Supported Petition, (ii) objects to such Community Reconsideration Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Community Reconsideration Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the foregoing prior to the expiration of the Community Reconsideration Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community) Administration of its support or objection following the expiration of the Community Reconsideration Decision Period).

(e) If (i) three or more Decisional Participants support the Community Reconsideration Supported Petition and (ii) no more than one Decisional Participant objects to the Community Reconsideration Supported Petition, then the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Community Reconsideration Decision Period, deliver a notice to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 4.3 of this Annex D, the EC (Empowered Community) has resolved to accept the Community Reconsideration Supported Petition ("**EC (Empowered Community) Reconsideration Initiation Notice**"). The Reconsideration Request shall then proceed in accordance with Section 4.2 of the Bylaws.

(f) If the Community Reconsideration Supported Petition does not obtain the support required by Section 4.3(e) of this Annex D, the Community Reconsideration Initiation Process will automatically be terminated and the EC (Empowered Community) Administration

shall, within twenty-four (24) hours of the expiration of the Community Reconsideration Decision Period, deliver to the Secretary a Community Reconsideration Termination Notice.

(g) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Community Reconsideration Petition, (ii) Community Reconsideration Supported Petition, (iii) EC (Empowered Community) Reconsideration Initiation Notice, (iv) Community Reconsideration Termination Notice, (v) written explanation provided by the EC (Empowered Community) Administration related to any of the foregoing, and (vi) other notices the Secretary receives under this Section 4.3.

Annex E: Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles

1. Principles

The caretaker ICANN (Internet Corporation for Assigned Names and Numbers) budget (the "**Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget**") is defined as an annual operating plan and budget that is established by the CFO in accordance with the following principles (the "**Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles**"):

a. It is based on then-current ICANN (Internet Corporation for Assigned Names and Numbers) operations;

b. It allows ICANN (Internet Corporation for Assigned Names and Numbers) to "take good care" and not expose itself to additional enterprise risk(s) as a result of the rejection of an ICANN (Internet Corporation for Assigned Names and Numbers) Budget by the EC (Empowered Community) pursuant to the Bylaws;

c. It allows ICANN (Internet Corporation for Assigned Names and Numbers) to react to emergency situations in a fashion that preserves the continuation of its operations;

d. It allows ICANN (Internet Corporation for Assigned

Names and Numbers) to abide by its existing obligations (including Articles of Incorporation, Bylaws, and contracts, as well as those imposed under law);

e. It enables ICANN (Internet Corporation for Assigned Names and Numbers) to avoid waste of its resources during the rejection period (i.e., the period between when an ICANN (Internet Corporation for Assigned Names and Numbers) Budget is rejected by the EC (Empowered Community) pursuant to the Bylaws and when an ICANN (Internet Corporation for Assigned Names and Numbers) Budget becomes effective in accordance with the Bylaws) or immediately thereafter, by being able to continue activities during the rejection period that would otherwise need to be restarted at a materially incremental cost; and

f. Notwithstanding any other principle listed above, it prevents ICANN (Internet Corporation for Assigned Names and Numbers) from initiating activities that remains subject to community consideration (or for which that community consideration has not concluded) with respect to the applicable ICANN (Internet Corporation for Assigned Names and Numbers) Budget, including without limitation, preventing implementation of any expenditure or undertaking any action that was the subject of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget that was rejected by the EC (Empowered Community) that triggered the need for the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget.

1. Examples

Below is a non-exhaustive list of examples, to assist with the interpretation of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles, of what a Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget would logically include:

i. the functioning of the EC (Empowered Community), the Decisional Participants, and any Supporting Organizations (Supporting

Organizations) or Advisory Committees (Advisory Committees) that are not Decisional Participants;

ii. the functioning of all redress mechanisms, including without limitation the office of the Ombudsman, the IRP, and mediation;

iii. employment of staff (i.e., employees and individual long term paid contractors serving in locations where ICANN (Internet Corporation for Assigned Names and Numbers) does not have the mechanisms to employ such contractors) across all locations, including all related compensation, benefits, social security, pension, and other employment costs;

iv. hiring staff (i.e., employees and individual long term paid contractors serving in locations where ICANN (Internet Corporation for Assigned Names and Numbers) does not have the mechanisms to employ such contractors) in the normal course of business;

v. necessary or time-sensitive travel costs for staff (i.e., employees and individual long term paid contractors serving in locations where ICANN (Internet Corporation for Assigned Names and Numbers) does not have the mechanisms to employ such contractors) or vendors as needed in the normal course of business;

vi. operating all existing ICANN (Internet Corporation for Assigned Names and Numbers) offices, and continuing to assume obligations relative to rent, utilities, maintenance, and similar matters;

vii. contracting with vendors as needed in the normal course of business;

viii. conducting ICANN (Internet Corporation for Assigned Names and Numbers) meetings and ICANN (Internet Corporation for Assigned Names and Numbers) intercessional meetings previously contemplated; and

ix. participating in engagement activities in furtherance of the approved Strategic Plan.

      b. Below is a non-limitative list of examples, to assist with the interpretation of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget

Principles, of what a Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget would logically exclude:

i. hiring staff (i.e., employees and individual long term paid contractors serving in locations where ICANN (Internet Corporation for Assigned Names and Numbers) does not have the mechanisms to employ such contractors) or entering into new agreements in relation to activities that are the subject of the rejection of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget by the EC (Empowered Community) pursuant to the Bylaws, unless excluding these actions would violate any of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles;

ii. in the normal course of business, travel not deemed indispensable during the rejection period, unless the lack of travel would violate any of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles;

iii. entering into new agreements in relation to opening or operating new ICANN (Internet Corporation for Assigned Names and Numbers) locations/offices, unless the lack of commitment would violate any of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles;

iv. entering into new agreements with governments (or their affiliates), unless the lack of commitment would violate any of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles; and

v. the proposed expenditure that was the basis for the rejection by the EC (Empowered Community) that triggered the need for the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget.

Annex F: Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles

1. Principles

The caretaker IANA (Internet Assigned Numbers Authority) Budget

(the "**Caretaker IANA (Internet Assigned Numbers Authority) Budget**") is defined as an annual operating plan and budget that is established by the CFO in accordance with the following principles (the "**Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles**"):

a. It is based on then-current operations of the IANA (Internet Assigned Numbers Authority) functions;

b. It allows ICANN (Internet Corporation for Assigned Names and Numbers), in its responsibility to fund the operations of the IANA (Internet Assigned Numbers Authority) functions, to "take good care" and not expose itself to additional enterprise risk(s) as a result of the rejection of an IANA (Internet Assigned Numbers Authority) Budget by the EC (Empowered Community) pursuant to the Bylaws;

c. It allows ICANN (Internet Corporation for Assigned Names and Numbers), in its responsibility to fund the operations of the IANA (Internet Assigned Numbers Authority) functions, to react to emergency situations in a fashion that preserves the continuation of its operations;

d. It allows ICANN (Internet Corporation for Assigned Names and Numbers), in its responsibility to fund the operations of the IANA (Internet Assigned Numbers Authority) functions, to abide by its existing obligations (including Articles of Incorporation, Bylaws, and contracts, as well as those imposed under law);

e. It allows ICANN (Internet Corporation for Assigned Names and Numbers), in its responsibility to fund the operations of the IANA (Internet Assigned Numbers Authority) functions, to avoid waste of its resources during the rejection period (i.e., the period between when an IANA (Internet Assigned Numbers Authority) Budget is rejected by the EC (Empowered Community) pursuant to the Bylaws and when an IANA (Internet Assigned Numbers Authority) Budget becomes effective in accordance with the Bylaws) or immediately thereafter, by being able to continue activities during the rejection period that would have otherwise need to be restarted at

an incremental cost; and

f. Notwithstanding any other principle listed above, it prevents ICANN (Internet Corporation for Assigned Names and Numbers), in its responsibility to fund the operations of the IANA (Internet Assigned Numbers Authority) functions, from initiating activities that remain subject to community consideration (or for which that community consultation has not concluded) with respect to the applicable IANA (Internet Assigned Numbers Authority) Budget, including without limitation, preventing implementation of any expenditure or undertaking any action that was the subject of the IANA (Internet Assigned Numbers Authority) Budget that was rejected by the EC (Empowered Community) that triggered the need for the Caretaker IANA (Internet Assigned Numbers Authority) Budget.

1. Examples

a. Below is a non-exhaustive list of examples, to assist with the interpretation of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles, of what a Caretaker IANA (Internet Assigned Numbers Authority) Budget would logically include:

i. employment of staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA (Internet Assigned Numbers Authority) functions does not have the mechanisms to employ such contractors) across all locations, including all related compensation, benefits, social security, pension, and other employment costs;

ii. hiring staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA (Internet Assigned Numbers Authority) functions does not have the mechanisms to employ such contractors) in the normal course of business;

iii. necessary or time-sensitive travel costs for staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA (Internet Assigned

Numbers Authority) functions does not have the mechanisms to employ such contractors) or vendors as needed in the normal course of business;

iv. operating all existing offices used in the performance of the IANA (Internet Assigned Numbers Authority) functions, and continuing to assume obligations relative to rent, utilities, maintenance, and similar matters;

v. contracting with vendors as needed in the normal course of business;

vi. participating in meetings and conferences previously contemplated;

vii. participating in engagement activities with ICANN (Internet Corporation for Assigned Names and Numbers)'s Customer Standing Committee or the customers of the IANA (Internet Assigned Numbers Authority) functions;

viii. fulfilling obligations (including financial obligations under agreements and memoranda of understanding to which ICANN (Internet Corporation for Assigned Names and Numbers) or its affiliates is a party that relate to the IANA (Internet Assigned Numbers Authority) functions; and

ix. participating in engagement activities in furtherance of the approved Strategic Plan.

b. Below is a non-limitative list of examples, to assist with the interpretation of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles, of what a Caretaker IANA (Internet Assigned Numbers Authority) Budget would logically exclude:

i. hiring staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA (Internet Assigned Numbers Authority) functions does not have the mechanisms to employ such contractors) or entering into new agreements in relation to activities that are the subject of the rejection of the IANA (Internet Assigned Numbers Authority) Budget by the EC (Empowered Community)

pursuant to the Bylaws, unless excluding these actions would violate any of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles;

ii. in the normal course of business, travel not deemed indispensable during the rejection period, unless the lack of travel would violate any of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles;

iii. entering into new agreements in relation to opening or operating new locations/offices where the IANA (Internet Assigned Numbers Authority) functions shall be performed, unless the lack of commitment would violate any of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles;

iv. entering into new agreements with governments (or their affiliates), unless the lack of commitment would violate any of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles; and

v. the proposed expenditure that was the basis for the rejection by the EC (Empowered Community) that triggered the need for the Caretaker IANA (Internet Assigned Numbers Authority) Budget.

ANNEX G-1

The topics, issues, policies, procedures and principles referenced in Section 1.1(a)(i) with respect to gTLD (generic Top Level Domain) registrars are:

- issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet, registrar services, registry services, or the DNS (Domain Name System);

- functional and performance specifications for the provision of registrar services;

- registrar policies reasonably necessary to implement Consensus (Consensus) Policies relating to a gTLD (generic Top Level Domain) registry;

- resolution of disputes regarding the registration of domain

names (as opposed to the use of such domain names, but including where such policies take into account use of the domain names); or

- restrictions on cross-ownership of registry operators and registrars or resellers and regulations and restrictions with respect to registrar and registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or reseller are affiliated.

Examples of the above include, without limitation:

- principles for allocation of registered names in a TLD (Top Level Domain) (e.g., first-come/first-served, timely renewal, holding period after expiration);

- prohibitions on warehousing of or speculation in domain names by registries or registrars;

- reservation of registered names in a TLD (Top Level Domain) that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS (Domain Name System) or the Internet (e.g., establishment of reservations of names from registration);

- maintenance of and access to accurate and up-to-date information concerning registered names and name servers;

- procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility among continuing registrars of the registered names sponsored in a TLD (Top Level Domain) by a registrar losing accreditation; and

- the transfer of registration data upon a change in registrar sponsoring one or more registered names.

ANNEX G-2

The topics, issues, policies, procedures and principles referenced

in Section 1.1(a)(i) with respect to gTLD (generic Top Level Domain)
registries are:

- issues for which uniform or coordinated resolution is
  reasonably necessary to facilitate interoperability, security
  and/or stability of the Internet or DNS (Domain Name System);

- functional and performance specifications for the provision of
  registry services;

- security and stability of the registry database for a TLD (Top
  Level Domain);

- registry policies reasonably necessary to implement
  Consensus (Consensus) Policies relating to registry operations
  or registrars;

- resolution of disputes regarding the registration of domain
  names (as opposed to the use of such domain names); or

- restrictions on cross-ownership of registry operators and
  registrars or registrar resellers and regulations and restrictions
  with respect to registry operations and the use of registry and
  registrar data in the event that a registry operator and a
  registrar or registrar reseller are affiliated.

Examples of the above include, without limitation:

- principles for allocation of registered names in a TLD (Top
  Level Domain) (e.g., first-come/first-served, timely renewal,
  holding period after expiration);

- prohibitions on warehousing of or speculation in domain
  names by registries or registrars;

- reservation of registered names in the TLD (Top Level Domain)
  that may not be registered initially or that may not be renewed
  due to reasons reasonably related to (i) avoidance of
  confusion among or misleading of users, (ii) intellectual
  property, or (iii) the technical management of the DNS (Domain
  Name System) or the Internet (e.g., establishment of
  reservations of names from registration);

- maintenance of and access to accurate and up-to-date

information concerning domain name registrations; and

- procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD (Top Level Domain) affected by such a suspension or termination.

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[1] When "1 October 2016" is used, that signals that the date that will be used is the effective date of the Bylaws.

RM 3

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

ICDR Case No. 50 117 T 00224 08

In the Matter of an Independent Review Process:

ICM REGISTRY, LLC,

       Claimant,

       v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS ("ICANN"),

       Respondent

DECLARATION OF THE INDEPENDENT REVIEW PANEL

       Judge Stephen M. Schwebel, *Presiding*
       Mr. Jan Paulsson
       Judge Dickran Tevrizian

February 19, 2010

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PART ONE: INTRODUCTION

1. From its beginning in 1965, an exchange over a telephone line between a computer at the Massachusetts Institute of Technology and a computer in California, to the communications colossus that the Internet has become, the Internet has constituted a transformative technology. Its protocols and domain name system standards and software were invented, perfected, and for some 25 years before the formation of the Internet Corporation for Assigned Names and Numbers (ICANN), essentially overseen, by a small group of researchers working under contracts financed by agencies of the Government of the United States of America, most notably by the late Professor Jon Postel of the Information Sciences Institute of the University of Southern California and Dr. Vinton Cerf, founder of the Internet Society. Dr. Cerf, later the distinguished leader of ICANN, played a major role in the early development of the Internet and has continued to do so. European research centers also contributed. From the origin of the Internet domain name system in 1980 until the incorporation of ICANN in 1998, a small community of American computer scientists controlled the management of Internet identifiers. However the utility, reach, influence and exponential growth of the Internet quickly became quintessentially international. In 1998, in recognition of that fact, but at the same time determined to keep that management within the private sector rather than to subject it to the ponderous and politicized processes of international governmental control, the U.S. Department of Commerce, which then contracted on behalf of the U.S. Government with the managers of the Internet, transferred operational responsibility over the protocol and domain names system of the Internet to the newly formed Internet Corporation for Assigned Names and Numbers ("ICANN").

2.   ICANN, according to Article 3 of its Articles of Incorporation of November 21, 1998, is a nonprofit public benefit corporation organized under the California Nonprofit Public Benefit Corporation Law "in recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization..." ICANN is charged with

> "promoting the global public interest in the operational stability of the Internet by (i) coordinating the assignment of Internet technical parameters as needed to maintain universal connectivity on the Internet; (ii) performing and overseeing functions related to the coordination of the Internet Protocol ("IP") address space; (iii) performing and overseeing functions related to the coordination of the Internet domain name system ("DNS"), including the development of

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policies for determining the circumstances under which new top-level domains are added to the DNS root system; (iv) overseeing operation of the authoritative Internet DNS root server system…" (Claimant's Exhibits, hereafter "C", at C-4.)

ICANN was formed as a California corporation apparently because early proposals for it were prepared at the instance of Professor Postel, who lived and worked in Marina del Rey, California, which became the site of ICANN's headquarters.

3. ICANN, Article 4 of its Articles of Incorporation provides,

"shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations."

4. ICANN's Bylaws, as amended effective May 29, 2008, in Section 1, define the mission of ICANN as that of coordination of the allocation and assignment

"of the three sets of unique identifiers for the Internet, …(a) domain names forming a system referred to as "DNS", (b) …Internet protocol ("IP") addresses and autonomous system ("AS") numbers and (c) Protocol port and parameter numbers". ICANN "coordinates the operation and evolution of the DNS root server system" as well as "policy development reasonably and appropriately related to these technical functions." (C-5.)

5. Section 2 of ICANN's Bylaws provides that, in performing its mission, core values shall apply, among them:

"1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.

"2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.

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"3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interest of affected parties.

"4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

...

"6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

...

"8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

...

"11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations." (C-5.)

6. The Bylaws provide in Article II that the powers of ICANN shall be exercised and controlled by its Board, whose international composition, representative of various stakeholders, is otherwise detailed in the Bylaws. Article VI, Section 4.1 of the Bylaws provides that "no official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director". They specify that "ICANN shall not apply its standards, policies, procedures, or practices inequitably, or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition." ICANN is to operate in an open and transparent manner "and consistent with procedures designed to ensure fairness" (Article III, Section 1.) In those cases "where the policy action affects public policy concerns," ICANN shall "request the opinion of the Governmental Advisory Committee and take duly into account any advice timely presented by the Governmental Advisory Committee on its own initiative or at the Board's request" (Article III, Section 6).

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7.   Article IV of the Bylaws, Section 3, provides that: "ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws." Any person materially affected by a decision or action of the Board that he or she asserts "is inconsistent" with those Articles and Bylaws may submit a request for independent review which shall be referred to an Independent Review Panel ("IRP"). That Panel "shall be charged with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws". "The IRP shall be operated by an international arbitration provider appointed from time to time by ICANN...using arbitrators...nominated by that provider." The IRP shall have the authority to "declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or the Bylaws" and "recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP". Section 3 further specifies that declarations of the IRP shall be in writing, based solely on the documentation and arguments of the parties, and shall "specifically designate the prevailing party." The Section concludes by providing that, "Where feasible, the Board shall consider the IRP declaration at the Board's next meeting."

8.   The international arbitration provider appointed by ICANN is the International Centre for Dispute Resolution ("ICDR") of the American Arbitration Association. It appointed the members of the instant Independent Review Panel in September 2008. Thereafter exchanges of written pleadings and extensive exhibits took place, followed by five days of oral hearings in Washington, D.C. September 21-25, 2009.

9.   Article XI of ICANN's Bylaws provides, *inter alia,* for a Governmental Advisory Committee ("GAC") to "consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues". It further provides that the Board shall notify the Chair of the GAC in a timely manner of any proposal raising public policy issues. "The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually

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acceptable solution." If no such solution can be found, the Board will state in its final decision the reasons why the GAC's advice was not followed.

PART TWO: FACTUAL BACKGROUND OF THE DISPUTE

10. The Domain Name System ("DNS"), a hierarchical name system, is at the heart of the Internet. At its summit is the so-called "root", managed by ICANN, although the U.S. Department of Commerce retains the ultimate capacity of implementing decisions of ICANN to insert new top-level domains into the root. The "root zone file" is the list of top-level domains. Top-level domains ("TLDs"), are identified by readable, comprehensible, "user-friendly" addresses, such as ".com", ".org", and ".net". There are "country-code TLDs" (ccTLDs), two letter codes that identify countries, such as .uk (United Kingdom), .jp (Japan), etc. There are generic TLDs ("gTLDs), which are subdivided into sponsored TLDs ("sTLDs") and unsponsored TLDs ("gTLDs"). An unsponsored TLD operates under policies established by the global Internet community directly through ICANN, while a sponsored TLD is a specialized TLD that has a sponsor representing the narrower community that is most affected by the TLD. The sponsor is delegated, and carries out, policy-formulation responsibilities over matters concerning the TLD. Thus, under the root, top-level domains are divided into gTLDs such as .com, .net, and .info, and sTLDs such as .aero, .coop, and .museum. And there are ccTLDs, such as .fr (France). Second level domains, under the top-level domains, are legion; e.g., Microsoft.com, dassault.fr. While the global network of computers communicate with one another through a decentralized data routing mechanism, the Internet is centralized in its naming and numbering system. This system matches the unique Internet Protocol address of each computer in the world –- a string of numbers – with a recognizable domain name. Computers around the world can communicate with one another through the Internet because their Internet Protocol addresses uniquely and reliably correlate with domain names.

11. When ICANN was formed in 1998, there were three generic TLDs: .com, .org. and .net. They were complemented by a few limited-use TLDs, .edu, .gov, .mil, and .int. Since its formation, ICANN has endeavored to introduce new TLDs. In 2000, ICANN opened an application process for the introduction of new gTLDs. This initial round was a preliminary effort to test a "proof of concept" in respect of new gTLDs. ICANN received forty-seven applications for both sponsored and unsponsored TLDs.

12. Among them was an application by the Claimant in these proceedings, ICM Registry (then under another ownership), for an unsponsored .XXX TLD,

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which would responsibly present "adult" entertainment (*i.e.*, pornographic entertainment). ICANN staff recommended that the Board not select .XXX during the "proof of concept" round because "it did not appear to meet unmet needs", there was "controversy" surrounding the application, and the definition of benefits of .XXX was "poor". It observed that, "at this early 'proof of concept' stage with a limited number of new TLDs contemplated, other proposed TLDs without the controversy of an adult TLD would better serve the goals of this initial introduction of new TLDs." (C-127, p. 230.) In the event, the ICANN Board authorized ICANN's President and General Counsel to commence contract negotiations with seven applicants including three sponsored TLDs, .museum, .aero and .coop. Agreements were "subject to further Board approval or ratification." (Minutes of the Second Annual Meeting of the Board, November 16, 2000, ICANN Exhibit G.)

13. In 2003, the ICANN Board passed resolutions for the introduction of new sponsored TLDs in another Round. The Board resolved that "upon the successful completion of the sTLD selection process, an agreement reflecting the commercial and technical terms shall be negotiated." (C-78.) It posted a "Request for Proposals" ("RFP"), which included an application form setting out the selection criteria that would be used to evaluate proposals. The RFP's explanatory notes provided that the sponsorship criteria required "the proposed sTLD [to] address the needs and interest of a 'clearly defined community'...which can benefit from the establishment of a TLD operating in a policy formulation environment in which the community would participate." Applicants had to show that the Sponsored TLD Community was (a) "Precisely defined, so it can readily be determined which persons or entities make up that community" and (b) "Comprised of persons that have needs and interests in common but which are differentiated from those of the general global Internet community". (ICANN, New gTLD Program, ICANN Exhibit N.) The sponsorship criteria further required applicants to provide an explanation of the Sponsoring Organization's policy-formulation procedures. They additionally required the applicant to demonstrate "broad-based support" from the sponsored TLD community. None of the criteria explicitly addressed "morality" issues or the content of websites to be registered in the new sponsored domains.

14. ICANN in 2004 received ten sTLD applications, including that of ICM Registry of March 16, 2004 for a .XXX sTLD. ICM's application was posted on ICANN's website. Its application stated that it was to ████████████

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████████ **and who are interested in the** ████████
████████ ” (C-Confidential Exh. B.)   The
International Foundation for Online Responsibility ("IFFOR"), a Canadian
organization whose creation by ICM was in process, was proposed to be
ICM's sponsoring organization. The President of ICM Registry, Stuart Lawley,
a British entrepreneur, was to explain that the XXX sTLD is a

> "significant step towards the goal of protecting children from adult
> content, and [to] facilitate the efforts of anyone who wishes to identify,
> filter or avoid adult content. Thus, the presence of ".XXX" in a web
> address would serve a dual role: both indicating to users that the
> website contained adult content, thereby allowing users to choose to
> avoid it, and also indicating to potential adult-entertainment
> consumers that the websites could be trusted to avoid questionable
> business practices." (Lawley Witness Statement, para. 15.)

15.   ICANN constituted an independent panel of experts (the "Evaluation
Panel") to review and recommend those sTLD applications that met the
selection criteria. That Panel found that two of the ten applicants met all the
selection criteria; that three met some of the criteria; and that four had
deficiencies that could not be remedied within the applicant's proposed
framework. As for .XXX, the Evaluation Panel found that ICM was among the
latter four; it fully met the technical and financial criteria but not some of the
sponsorship criteria. The three-member Evaluation Panel, headed by Ms.
Elizabeth Williams of Australia, that analyzed sponsorship and community
questions did not believe that the .XXX application represented "a clearly
defined community"; it found that "the extreme variability of definitions of
what constitutes the content which defines this community makes it difficult
to establish which content and associated persons or services would be in or
out of the community". The Evaluation Panel further found that the lack of
cohesion in the community and the planned involvement of child advocates
and free expression interest groups would preclude effective formulation of
policy for the community; it was unconvinced of sufficient support outside of
North America; and "did not agree that the application added new value to
the Internet name space". Its critical evaluation of ICM's application
concluded that it fell into the category of those "whose deficiencies cannot
be remedied with the applicant's proposed framework" (C-110.)

16. Because only two of ten applicants were recommended by the
Evaluation Panel, and because the Board remained desirous of expanding the
number of sTLDs, the ICANN Board resolved to give the other sTLD
applicants further opportunity to address deficiencies found by the

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Evaluation Panel. ICM Registry responded with an application revised as of December 7, 2004. It noted that the independent teams that evaluated the technical merits and business soundness of ICM's application had unreservedly recommended its approval. It submitted, contrary to the analysis of the Evaluation Panel, that ICM and IFFOR also met the sponsorship criteria. "Nonetheless, the Applicants fully understand that the topic of adult entertainment on the Internet is controversial. The Applicants also understand that the Board might be criticized whether it approves or disapproves the Proposal." (C-127, p. 176.) In accordance with ICANN's practice, ICM's application again was publicly posted on ICANN's website.

17. Following discussion of its application in the Board, ICM was invited to give a presentation to the Board, which it did in April 2005, in Mar del Plata, Argentina. Child protection and free speech advocates were among the representatives of ICM Registry. The Chairman of the Governmental Advisory Committee, Mohamed Sharil Tarmizi, was in attendance for part of the meeting as well as other meetings of the Board. ICM offered then and at ICANN meetings in Capetown (December 2004) and Luxembourg (July 2005) to discuss its proposal with the GAC or any of its members, a proposal that was not taken up (C-127, p. 231; C-170, p.2). In a letter of April 3, 2005, the GAC Chairman informed the ICANN President and CEO, Paul Twomey, that: "No GAC members have expressed specific reservations or comments, in the GAC, about applications for sTLDs in the current round." (C-158, p.1.) ICM's Mar del Plata presentation to the ICANN Board included the results of a poll conducted by XBiz in February 2005 of "adult" websites that asked: "What do you think of Internet suffixes (.sex, .xxx) to designate adult sites?" 22% of the responders checked, "A Horrible Idea"; 57% checked, "A Good Idea"; 21% checked, "It's No Big Deal Either Way". ICM, while recognizing that its proposal aroused some opposition in the adult entertainment community, maintained throughout that it fully met the RFP requirement of demonstrating that it had "broad-based support from the community to be represented". (C-45.)

18. The ICANN Board held a special meeting by teleconference on May 3, 2005, the Chairman of the ICANN Board, Dr. Vinton G. Cerf, presiding. The minutes record, in respect of the .XXX sTLD application, that there was broad discussion of whether ICM's application met the RFP criteria, "particularly relating to whether or not there was a 'sponsored community'". It was agreed to "discuss this issue" at the next Board meeting. (C-134.)

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19. On June 1, 2005, the Board met by teleconference and after considerable discussion adopted the following resolutions, with a 6-3 vote in favor, 2 abstentions and 4 Board members absent:

> "Resolved...the Board authorizes the President and General Counsel to enter into negotiations relating to proposed commercial and technical terms for the .XXX sponsored top-level domain (sTLD) with the applicant."

> "Resolved...if after entering into negotiations with the .XXX sTLD applicant the President and General Counsel are able to negotiate a set of proposed commercial and technical terms for a contractual arrangement, the President shall present such proposed terms to this board, for approval and authorization to enter into an agreement relating to the delegation of the sTLD." (C-120.)

20. While a few of the other applications that were similarly cleared to enter into negotiations relating to proposed commercial and technical terms, e.g., those of .JOBS, and .MOBI, contained conditions, the foregoing resolutions relating to ICM Registry contained no conditions. The .JOBS resolution, for example, specified that

> "the board authorizes the President and General Counsel to enter into negotiations relating to proposed commercial and technical terms for the .JOBS sponsored top-level domain (sTLD) with the applicant. During these negotiations, the board requests that special consideration be taken as to how broad-based policy-making would be created for the sponsored community, and how this sTLD would be differentiated in the name space."

In contrast, the .XXX resolutions do not refer to further negotiations concerning sponsorship, nor do the resolutions refer to further consideration by the Board of the matter of sponsorship. Upon the successful conclusion of the negotiation, the terms of an agreement with ICM Registry were to be presented to the Board "for approval and authorization to enter into an agreement relating to the delegation of the sTLD".

21. At the meeting of the Governmental Advisory Committee in Luxembourg July 11-12, 2005, under the chairmanship of Mr. Tarmizi, the foregoing resolutions gave rise to comment. The minutes contain the following summary reports:

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"The Netherlands, supported by several members, including Brazil, EC and Egypt, raised the point about what appears to be a change in policy as regards the evaluation for the *.xxx* TLD.

"On that issue, the Chair stressed that the Board came to a decision after a very difficult and intense debate which has included the moral aspects. He wondered what the GAC could have done in this context.

"Brazil asked clarification about the process to provide GAC advice to the ICANN Board and to consult relevant communities on matter such as the creation of new gTLDs. The general public was likely to assume that GAC had discussed and approved the proposal; otherwise GAC might be perceived as failing to address the matter. This is a public policy issue rather than a moral issue.

"Denmark commented on the fact that the issue of the creation of the *.xxx* extension should have been presented to the GAC as a public policy issue. EC drew attention to the 2000 Evaluation report on *.xxx* that had concluded negatively.

"France asked about the methodology to be followed for the evaluation of new gTLDs in future and if an early warning system could be put in place. Egypt wished to clarify whether the issue was the approval by ICANN or the apparent change in policy.

"USA remarked that GAC had several opportunities to raise questions, notably at Working Group level, as the process had been open for several years. In addition there are not currently sufficient resources in the WGI to put sufficient attention to it. We should be working on an adequate methodology for the future. Netherlands commented that the ICANN decision making process was not sufficiently transparent for GAC to know in time when to reach [sic; react] to proposals.

"The Chair thanked the GAC for these comments which will be given to the attention of the ICANN Board." (C-139, p. 3.)

22. There followed a meeting of the GAC with the ICANN Board, at which the following statements are recorded in the summary minutes:

"Netherlands asked about the new criteria to be retained for new TLDs as it seems there was a shift in policy during the evaluation process.

"Mr. Twomey replied that there might be key policy differences due to learning experiences, for example it is now accepted not to put a limit on the number of new TLDs. He also noted that no comments had been received from governments regarding *.xxx.*

"Dr. Cerf added, taking the example of *.xxx* that there was a variety of proposals for TLDs before, including for this extension, but this time the way to cope with the selection was different. The proposal this time met the three main criteria, financial, technical and sponsorship. They [sic: There] were doubts expressed about the last criteria [sic] which were discussed extensively and the Board reached a positive decision considering that ICANN should not be involved in content matters.

"France remarked that there might be cases where the TLD string did infer the content matter. Therefore the GAC could be involved if public policies issues are to be raised.

"Dr. Cerf replied that in practice there is no correlation between the TLD string and the content. The TLD system is neutral, although filtering systems could be solutions promoted by governments. However, to the extent the governments do have concerns they relate to the issues across TLDs. Furthermore one could not slip into censorship.

"Chile and Denmark asked about the availability of the evaluation Report for *.xxx* and wondered if the process was in compliance with the ICANN Bylaws.

"Brazil asserted that content issues are relevant when ICANN is creating a space linked to pornography. He considered the matter as a public policy issue in the Brazilian context and repeated that the outside world would assume that GAC had been fully cognizant of the decision-making process.

"Mr. Twomey referred to the procedure for attention for GAC in the ICANN Bylaws that could be initiated if needed. The bylaws could work both ways: GAC could bring matters to ICANN's attention. Dr. Cerf invited GAC to comment in the context of the ICANN public

comments process. Spain suggested that ICANN should formally request GAC advice in such cases.

"The Chair [Dr. Cerf] noted in conclusion that it is not always clear what the public policy issues are and that an early warning mechanism is called for." (C-139, P. 5.)

23. When it came to drafting the GAC Communique, the following further exchanges were summarized:

"Brazil referred to the decision taken for the creation of *.xxx* and asked if anything could be done at this stage...

"On *.xxx,* USA thought that it would be very difficult to express some views at this late stage. The process had been public since the beginning, and the matter could have been raised before at Plenary or Working group level...

"Italy would be in favour of inserting the process for the creation of new TLDs in the Communique as GAC failed in some way to examine in good time the current set of proposal [sic] for questions of methodology and lack of resources.

"Malaysia recalled the difficult situation in which governments are faced with the evolution of the DNS system and the ICANN environment. ICANN and GAC should be more responsive to common issues...

"Canada raise [sic] the point of the advisory role of the GAC vis-à-vis ICANN and it would be difficult to go beyond this function for the time being.

"Denmark agreed with Canada but considered that the matter could have been raised before within the framework of the GAC; if necessary issues could be raised directly in Plenary.

"France though [sic] that the matter should be referred to in the Communique. Since ICANN was apparently limiting its consideration to financial, technical and sponsorship aspects, the content aspects should be treated as a problem for the GAC from the point of view of the general public interest."

> "The Chair took note of the comments that had been made. He mentioned that the issues of new gTLDs...would be mentioned in the Communique." (C-139, p. 7.)

24. Finally, in respect of "New Top Level Domains"

> "...the Chair recalled that members had made comments during the consultation period regarding the *.tel* and *.mobi* proposals, but not regarding other sTLD proposals.

> "The GAC has requested ICANN to provide the Evaluation Report on the basis of which the application for *.xxx* was approved. GAC considered that some aspects of content related to top level extensions might give rise of [sic] public policies [sic] issues.

> "The Chair confirmed that, having consulted the ICANN Legal Counsel, GAC could still advise ICANN about the *.xxx* proposal, should it decide to do so. However, no member has yet raised this as an issue for formal comments to be given to ICANN in the Communique." (C-139, p. 13.)

25. The Luxembourg Communique of the GAC as adopted made no express reference to the application of ICM Registry nor to the June 1, 2005 ICANN Board resolutions adopted in response to it. In respect of "New Top Level Domains", the Communique stated:

> "The GAC notes from recent experience that the introduction of new TLDs can give rise to significant public policy issues, including content. Accordingly, the GAC welcomes the initiative of ICANN to hold consultations with respect to the implementation of the new Top Level Domains strategy. The GAC looks forward to providing advice to the process." (C-159, p. 1.)

26. Negotiations on commercial and technical terms for a contract between ICANN's General Counsel, John Jeffrey, and the counsel of ICM Registry, Ms. J. Beckwith Burr, in pursuance of the ICANN Board's resolutions of June 1, 2005, progressed smoothly, resulting in the posting in early August 2005 of the First Draft Registry Agreement. It was expected that the Board would vote on the contract at its meeting of August 16, 2005.

27. This expectation was overturned by ICANN's receipt of two letters. On August 11, 2005, Michael D. Gallagher, Assistant Secretary for

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Communications and Information of the U.S. Department of Commerce, wrote Dr. Cerf, with a copy to Mr. Twomey, as follows:

> "I understand that the Board of Directors of the Internet Corporation for Assigned Names and Numbers (ICANN) is scheduled to consider approval of an agreement with the ICM Registry to operate the .xxx top level domain (TLD) on August 16, 2005. I am writing to urge the Board to ensure that the concerns of all members of the Internet community on this issue have been adequately heard and resolved before the Board takes action on this application.
>
> "Since the ICANN Board voted to negotiate a contract with ICM Registry for the .xxx TLD in June 2005, this issue has garnered widespread public attention and concern outside of the ICANN community. The Department of Commerce has received nearly 6000 letters and emails from individuals expressing concern about the impact of pornography on families and children and opposing the creation of a new top level domain devoted to adult content. We also understand that other countries have significant reservations regarding the creation of a .xxx TLD. I believe that ICANN has also received many of these concerned comments. The volume of correspondence opposed to the creation of a .xxx TLD is unprecedented. Given the extent of the negative reaction, I request that the Board will provide a proper process and adequate additional time for these concerns to be voiced and addressed before any additional action takes place on this issue.
>
> "It is of paramount importance that the Board ensure the best interests of the Internet community as a whole are fully considered as it evaluates the addition to this new top level domain..." (C-162, p. 1.)

28. On August 12, 2005, Mohamed Sharil Tarmizi, Chairman, GAC, wrote to the ICANN Board of Directors, in his personal capacity and not on behalf of the GAC, with a copy to the GAC, as follows:

> "As you know, the Board is scheduled to consider approval of a contract for a new top level domain intended to be used for adult content...
>
> "You may recall that during the session between the GAC and the Board in Luxembourg that some countries had expressed strong positions to the Board on this issue. In other GAC sessions, a number of other governments also expressed some concern with the potential

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introduction of this TLD. The views are diverse and wide ranging. Although not necessarily well articulated in Luxembourg, as Chairman, I believe there remains a strong sense of discomfort in the GAC about the TLD, notwithstanding the explanations to date.

"I have been approached by some of these governments and I have advised them that apart from the advice given in relation to the creation of new TLDs in the Luxembourg Communique that implicitly refers to the proposed TLD, sovereign governments are also free to write directly to ICANN about their specific concerns.

"In this regard, I would like to bring to the Board's attention the possibility that several governments will choose to take this course of action. I would like to request that in any further debate that we may have with regard to this TLD that we keep this background in mind.

"Based on the foregoing, I believe that the Board should allow time for additional governmental and public policy concerns to be expressed before reaching a final decision on this TLD."

29. The *volte face* in the position of the United States Government evidenced by the letter of Mr. Gallagher appeared to have been stimulated by a cascade of protests by American domestic organizations such as the Family Research Council and Focus on the Family. Thousands of email messages of identical text poured into the Department of Commerce demanding that .XXX be stopped. Copies of messages obtained by ICM under the Freedom of Information Act show that while officials of the Department of Commerce concerned with Internet questions earlier did not oppose and indeed apparently favored ICANN's approval of the application of ICM, the Department of Commerce was galvanized into opposition by the generated torrent of negative demands, and by representations by leading figures of the so-called "religious right", such as Jim Dobson, who had influential access to high level officials of the U.S. Administration. There was even indication in the Department of Commerce that, if ICANN were to approve a top level domain for adult material, it would not be entered into the root if the United States Government did not approve (C-165, C-166.) The intervention of the United States came at a singularly delicate juncture, in the run-up to a United Nations sponsored conference on the Internet, the World Summit on the Information Society, which was anticipated to be the forum for concentration of criticism of the continuing influence of the United States over the Internet. The *Congressional Quarterly Weekly* ran a story entitled, "Web Neutrality vs. Morality" which said: "The flap over .xxx has put ICANN

in an almost impossible position. It is facing mounting pressure from within the United States and other countries to reject the domain. But if it goes back on its earlier decision, many countries will see that as evidence of its allegiance to and lack of independence from the U.S. government. 'The politics of this are amazing,' said Cerf. 'We're damned if we do and damned if we don't.' (C-284.)

30.   Doubt about the desirability of allocating a top-level domain to ICM Registry, or opposition to so doing, was not confined to the U.S. Department of Commerce, as illustrated by the proceedings at Luxembourg quoted above. A number of other governments also expressed reservations or raised questions about ICM's application on various grounds, including, at a later stage, those of Australia (letter from the Minister for Communications, Information Technology and the Arts of February 28, 2007 expressing Australia's "strong opposition to the creation of a .XXX sTLD"), Canada (comment expressing concern that ICANN may be drawn into becoming a global Internet content regulator, Exhibit DJ) and the United Kingdom (letter of May 4, 2006 stressing the importance of ICM's monitoring all .XXX content from "day one", C-182). The EC expressed the view that consultation with the GAC had been inadequate. The Deputy Director-General of the European Commission on September 16, 2005 wrote Dr. Cerf stating that the June 1, 2005 resolutions were adopted without the benefit of such consultation and added:

> "Moreover, while the *.xxx* TLD raises obvious and predictable public policy issues, the fact that a similar application from the same applicants had been rejected in 2000 (following a negative evaluation) had, not surprisingly, led many GAC representatives to expect that a similar decision would have been reached on this occasion...such a change in approach would benefit from an explanation to the GAC.

> "I would therefore ask ICANN to reconsider the decision to proceed with this application until the GAC have had an opportunity to review the evaluation report." (C-172, p. 1.)

31. The State Secretary for Communications and Regional Policy of the Government of Sweden, Jonas Bjelfvenstam, wrote Dr. Twomey a letter carrying the date of November 23, 2005, as follows:

> "I have followed recent discussions by the Board of Directors of ...ICANN concerning the proposed top level domain (TLD) *.xxx.* I appreciate that the Board has deferred further discussions on the

subject...taking account of requests from the applicant ICM, as well as the ...GAC Chairman's and the US Department of Commerce's request to allow for additional time for comments by interested parties.

"Sweden strongly supports the ICANN mission and the process making ICANN an organization independent of the US Government. We appreciate the achievements of ICANN in the outstanding technical and innovative development of the Internet, an ICANN exercising open, transparent and multilateral procedures.

"The Swedish line on pornography is that it is not compatible with gender equality goals. The constant exposure of pornography and degrading pictures in our everyday lives normalizes the exploitation of women and children and the pornography industry profits on the documentation.

"A TLD dedicated for pornography might increase the volume of pornography on the Internet at the same time as foreseen advantages with a dedicated TLD might not materialize. These and other comments have been made in the many comments made directly to ICANN through the ICANN web site. There are a considerable number of negative reactions within and outside the Internet community.

"I know that all TLD applications are dealt with in procedures open to everyone for comment. However, in a case like this, where public interests clearly are involved, we feel it could have been appropriate for ICANN to request advice from GAC. Admittedly, GAC could have given advice to ICANN anyway at any point in time in the process and to my knowledge, no GAC members have raised the question before the GAC meeting July 9-12 in Luxembourg. However, we all probably rested assure that ICANN's negative opinion on *.xxx* , expressed in 2000, would stand.

"From the ICANN decision on June 1, 2005, there was too little time for GAC to have an informed discussion on the subject at its Luxembourg summer meeting. ..

"Therefore we would ask ICANN to postpone conclusive discussions on *.xxx* until after the upcoming GAC meeting in November 29-30 in Vancouver...In due time before that meeting, it would be helpful if ICANN could present in detail how it means that *.xxx* fulfils the criteria set in advance..." (C-168, p. 1.)

32. At its meeting by teleconference of September 15, 2005, the Board, "after lengthy discussion involving nearly all of the directors regarding the sponsorship criteria, the application, and additional supplemental materials, and the specific terms of the proposed agreement," adopted a resolution providing that:

> " ...
>
> "Whereas the ICANN Board has expressed concerns regarding issues relating to the compliance with the proposed .XXX Registry Agreement (including possible proposals for codes of conduct and ongoing obligations regarding potential changes in ownership)...
>
> "Whereas, ICANN has received significant levels of correspondence from the Internet community users over recent weeks, as well as inquiries from a number of governments,
>
> "Resolved...that the ICANN President and General Counsel are directed to discuss possible additional contractual provisions or modifications for inclusion in the XXX Registry Agreement, to ensure that there are effective provisions requiring development and implementation of policies consistent with the principles in the ICM application. Following such additional discussions, the President and General Counsel are requested to return to the board for additional approval, disapproval or advice." (C-119, p. 1.)

33. At the Vancouver meeting of the Board in December 2005, the GAC requested an explanation of the processes that led to the adoption of the Board's resolutions of June 1. Dr. Twomey replied with a lengthy and detailed letter of February 11, 2006. The following extracts are of interest:

> "Where an applicant passed all three sets of criteria and there were no other issues associated with the application, the Board was briefed and the application was allowed to move on to the stage of technical and commercial negotiations designed to establish a new sTLD. One application – POST – was in this category. In other cases – where an evaluation team indicated that a set of criteria was not met, or there were other issues to be examined – each applicant was provided an opportunity to submit clarifying or additional documentation before presenting the evaluation panel's recommendation to the Board for a decision on whether the applicant could proceed to the next stage. The other nine applications, including .XXX, were in this category.

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"Because of the more subjective nature of the sponsorship/community value issues being reviewed, it was decided to ask the Board to review these issues directly.

...

"It should be noted that, consistent with Article II, Section 1 of the Bylaws, it is the ICANN Board that has the authority to decide, upon the conclusion of technical and commercial negotiations, whether or not to approve the creation of a new sTLD...Responsibility for resolving issues relating to an applicant's readiness to proceed to technical and commercial negotiations and, subsequently, whether or not to approve delegation of a new sTLD, rests with the Board.

...

"Extensive Review of ICM Application

...

"On 3 May 2005, the Board held a 'broad discussion...regarding whether or not there was a 'sponsored community' . The Board agreed that it would discuss this issue again at the next Board Meeting.'

"Based on the extensive public comments received, the independent evaluation panel's recommendations, the responses of ICM and the proposed Sponsoring Organization (IFFOR) to those evaluations, ...at its teleconference on June 1, 2005, the Board authorized the President and General Counsel to enter into negotiations relating to proposed commercial and technical terms with ICM. It also requested the President to present any such negotiated agreement to the Board for approval and authorization..." (C-175.)

34. Subsequent draft registry agreements of ICM were produced in response to specific requests of ICANN staff for amendments, to which requests ICM responded positively. In particular, a provision was included stating that all requirements for registration would be "in addition to the obligation to comply with all applicable law[s] and regulation[s]". (Claimant's Memorial on the Merits, pp. 128-129.)

35. Just before the Board met in Wellington, New Zealand in March 2006, the GAC convened and, among other matters, discussed the above letter of the

ICANN President of February 11, 2006. Its Communique of March 28 states that the GAC

> "does not believe that the February 11 letter provides sufficient detail regarding the rationale for the Board determination that the application [of ICM Registry] had overcome the deficiencies noted in the Evaluation Report. The Board would request a written explanation of the Board decision, particularly with regard to the sponsored community and public interest criteria outlined in the sponsored top level domain selection criteria.

> "...ICM promised a range of public interest benefits as part of its bid to operate the .xxx domain. To the GAC's knowledge, these undertakings have not yet been included as ICM obligations in the proposed .xxx Registry Agreement negotiated with ICANN.`

> "The public policy aspects identified by members of the GAC include the degree to which the .xxx application would:

>   -Take appropriate measures to restrict access to illegal and offensive content;

>   - Support the development of tools and programs to protect vulnerable members of the community;

>   -Maintain accurate details of registrants and assist law enforcement agencies to identify and contact the owners of particular websites, if need be; and

> "Without in any way implying an endorsement of the ICM application, the GAC would request confirmation from the Board that any contract currently under negotiation between ICANN and ICM Registry would include enforceable provisions covering all of ICM Registry's commitments, and such information on the proposed contract being made available to member countries through the GAC.

> "Nevertheless without prejudice to the above, several members of the GAC are emphatically opposed from a public policy perspective to the introduction of a .xxx sTLD."

36. At the Board's meeting in Wellington of March 31, 2006, a resolution was adopted by which it was:

> "Resolved, the President and General Counsel are directed to analyze all publicly received inputs, to continue negotiations with ICM Registry, and to return to the Board with any recommendations regarding amendments to the proposed sTLD registry agreement, particularly to ensure that the TLD sponsor will have in place adequate mechanisms to address any potential registrant violations of the sponsor's policies." (C-184, p. 1.)

37. On May 4, 2006, Dr. Twomey sent a further letter to the Chairman and members of the GAC in response to the GAC's request for information regarding the decision of the ICANN Board to proceed with several sTLD applications, notwithstanding negative reports from one or more evaluation teams. The following extracts are of interest:

> "It is important to note that the Board decision as to the .XXX application is still pending. The decision by the ICANN Board during its 1 June 2005 Special Board Meeting reviewed the criteria against the materials supplied and the results of the independent evaluations. ...the board voted to authorize staff to enter into contractual negotiations without prejudicing the Board's right to evaluate the resulting contract and to decide whether it meets all the criteria before the Board including public policy advice such as might be offered by the GAC. The final conclusion on the Board's decision to accept or reject the .XXX application has not been made and will not be made until such time as the Board either approves or rejects the registry agreement relating to the .XXX application. In fact, it is important to note that the Board has reviewed previous proposed agreements with ICM for the .XXX registry and has expressed concerns regarding the compliance structures established in those drafts.
>
> ...
>
> In some instances, such as with .XXX, while the additional materials provided sufficient clarification to proceed with contractual discussions, the Board still expressed concerns about whether the applicant met all of the criteria, but took the view that such concerns could possibly be addressed by contractual obligations to be stated in a registry agreement." (C-188, pp. 1, 2.)

38. On May 10, 2006, the Board held a telephonic special meeting and addressed ICM's by now Third Draft Registry Agreement. After a roll call, there were 9 votes against accepting the agreement and 5 in favor. Those

who voted against (including Board Chairman Cerf and President Twomey), in brief explanations of vote, indicated that they so voted because the undertakings of ICM could not in their view be fulfilled; because the conditions required by the GAC could not be met; because doubts about sponsorship remained and had magnified as a result of opposition from elements of the adult entertainment community; because the agreement's reference to "all applicable law" raised a wide and variable test of compliance and enforcement; and because guaranty of compliance with obligations of the contract was lacking. Those who voted in favor indicated that changing ICANN's position after an extended process weakens ICANN and encourages the exertions of pressure groups; found that there was sufficient support of the sponsoring community, while invariable support was not required; held it unfair to impose on ICM a complete compliance model before it is allowed to start, a requirement imposed on no other applicant; maintained that ICANN is not in the business and should not be in the business of judging content which rather is the province of each country, that ICANN should not be a "choke-point for content limitations of governments"; and contended that ICANN should avoid applying subjective and arbitrary criteria and should concern itself with the technical merits of applications. (C-189.) The vote of May 10, 2006 was not to approve the agreement as proposed "but it did not reject the application" of ICM (C-197.)

39. ICM Registry filed a Request for Reconsideration of Board Action on May 21, 2006, pursuant to Article IV, Section 2 of ICANN's Bylaws providing for reconsideration requests. (C-190.) However, after being informed by ICANN's general counsel that the Board would be prepared to consider still another revised draft agreement, ICM withdrew that request on October 29, 2006. Working as she had throughout in consultation with ICANN's staff, particularly its general counsel, Ms. Burr, on behalf of ICM, engaged in further negotiations with ICANN endeavoring to accommodate its requirements, demonstrate that the concerns raised by the GAC had been met to the extent possible, and provide ICANN with additional support for ICM's commitment to abide by the provisions of the proposed agreement. Among the materials provided, earlier and then, were a list of persons within the child safety community willing to serve on the board of IFFOR, commitments to enter into agreements with rating associations to provide tags for filtering .XXX websites and to monitor compliance with rules for the suppression of child pornography provisions, and data about a "pre-reservation service" for reservations for .XXX from webmasters operating adult sites on other ICANN-recognized top level domains. ICANN claimed to have registered more than 75,000 pre-reservations in the first six months that this service was publicly available.   (Claimant's Memorial on the Merits,

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pp. 138-139.) The proposed agreement was revised to include, *inter alia,* provision for imposing certain requirements on registrants; develop mechanisms for compliance with those requirements; create dispute resolution mechanisms; and engage independent monitors. ICM agreed to enter into a contract with the Family Online Safety Institute. The clause regarding registrants' obligations to comply with "all applicable law" was deleted because, in ICM's view, it had given rise to misunderstanding about whether ICANN would become involved in monitoring content. ICM maintains that, in the course of exchanges about making these revisions and preparing its Fourth Draft Registry Agreement, "ICANN never sought to have ICM attempt to re-define the sponsored community or otherwise demonstrate that it met any of the RFP criteria". (*Id.,* p. 141.)

40. On February 2, 2007, the Chairman and Chairman-Elect of the GAC wrote the Chairman of the ICANN Board, speaking for themselves and not necessarily for the GAC, as follows:

> "We note that the Wellington Communique...requested clarification from the ICANN Board regarding its decision of 1 June 2005 authorising staff to enter into contractual negotiations with ICM Registry, despite deficiencies identified by the Sponsorship...Panel...we reiterate the GAC's request for a clear explanation of why the ICANN Board is satisfied that the *.xxx* application has overcome the deficiencies relating to the proposed sponsorship community.
>
> "In Wellington, the GAC also requested confirmation from the ICANN Board that the proposed *.xxx* agreement would include enforceable provisions covering all of ICM Registry's commitments...
>
> "...GAC members would urge the Board to defer any final decision on this application until the Lisbon meeting." (C-198.)

41. A special meeting of the ICANN Board on February 12, 2007, was held by teleconference. Consideration of the proposed .XXX Registry Agreement was introduced by Mr. Jeffrey, who asked the Board to consider (a) public comment on the proposed agreement (which had been posted by ICANN on its website) (b) advice proferred by the GAC and (c) "how ICM measures up against the RFP criteria" (C-199, p.1). He noted in relation to community input that since the initial ICM application over 200,000 pertinent emails had been sent to ICANN.

42. Rita Rodin, a new Board member, noted that she had not been on the Board at previous discussions of the ICM application, but based on her

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review of the papers "she had some concerns about whether the proposal met the criteria set forth in the RFP. For example, she noted that it was not clear to her whether the sponsoring community seeking to run the domain genuinely could be said to represent the adult on-line community. However Rita requested that John Jeffrey and Paul Twomey confirm that this sort of discussion should take place during this meeting. She said that she did not want to reopen issues if they had already been decided by the Board." (*Id.,* pp. 2-3.)

43. While there was no direct response to the foregoing request of Ms. Rodin, Dr. Cerf noted "that had been the subject of debate by the Board in earlier discussions in 2006...over the last six months, there seem to have been a more negative reaction from members of the online community to the proposal."   Rita Rodin agreed; "there seems to be a 'splintering of support in the adult on-line community." She was also concerned "that approval of this domain in these circumstances would cause ICM to become a de facto arbiter of policies for pornography on the Internet...she was not comfortable with ICANN saying to a self-defined group that they could define policy around pornography on the internet. This was not part of ICANN's technical decision-making remit..." *(Id.,* p. 3) Dr. Twomey said that the Board needed to focus on whether there was a need for further public comment on the new version, the GAC comments, "and whether ICM had demonstrated to the Board's satisfaction that it had met criteria against the RFP for sTLDs." Dr. Cerf agreed that "the sponsorship grouping for a new TLD was difficult to define."

44. Susan Crawford expressed the view that "no group can demonstrate in advance that they will meet the interests and concerns of all members in their community and that this was an unrealistic expectation to place on any applicant....if that test was applied to any sponsor group for a new sTLD, none would ever be approved."

45. The Acting Chair conducted a "straw poll" of the Board as to whether members held "serious concerns" about the level of support for the creation of the domain from this sponsoring community. A majority indicated that they did, while a minority indicated that "it was an inappropriate burden to place on ICM to ensure that the entire adult online community was supportive of the proposed domain". (*Id.)*   The following resolution was unanimously adopted:

"Whereas a majority of the Board has serious concerns about whether the proposed .XXX domain has the support of a clearly-defined sponsored community as per the criteria for sponsored TLDs;

"Whereas a minority of the Board believed that the self-described community of sponsorship made known by the proponent of the .XXX domain, ICM Registry, was sufficient to meet the criteria for an sTLD.

"Resolved that:

I.   The revised version [now the fifth version of the draft agreement] be exposed to a public comment period of no less than 21 days, and

II.   ICANN staff consult with ICM and provide further information to the Board prior to its next meeting, so as to inform a decision by the Board about whether sponsorship criteria is [sic] met for the creation of a new .XXX sTLD." (*Id.,* p. 4.)

46. The Governmental Advisory Committee met in Lisbon on March 28, 2007 and issued "formal advice to the Board". It reaffirmed the Wellington Communique as "a valid and important expression of the GAC's views on .xxx. The GAC does not consider the information provided by the Board to have answered the GAC concerns as to whether the ICM application meets the sponsorship criteria." It called attention to an expression of concern by Canada that, with the revised proposed ICANN-ICM Registry agreement, "the Corporation could be moving towards assuming an ongoing management and oversight role regarding Internet content, which would be inconsistent with its technical mandate." (C-200, pp. 4, 5.) It also adopted "Principles Regarding New TLDs" which contain the following provision in respect of delegation of new gTLDs:

"2.5 The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process." *(Id.,* p. 12.)

47.   The climactic meeting of the ICANN Board took place in Lisbon, Portugal, on March 30, 2007. A resolution was adopted by a vote of nine to five, with one abstention (that of Dr. Twomey), whose operative paragraphs provide that:

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"…the board has determined that

"ICM's application and the revised agreement failed to meet, among other things, the sponsored community criteria of the RFP specification.

"Based on the extensive public comment and from the GAC's communiqués, that this agreement raises public policy issues.

"Approval of the ICM application and revised agreement is not appropriate, as they do not resolve the issues raised in the GAC communiqués, and ICM's response does not address the GAC's concern for offensive content and similarly avoids the GAC's concern for the protection of vulnerable members of the community. The board does not believe these public policy concerns can be credibly resolved with the mechanisms proposed by the applicant.

"The ICM application raises significant law enforcement compliance issues because of countries' varying laws relating to content and practices that define the nature of the application, therefore obligating ICANN to acquire responsibility related to content and conduct.

"The board agrees with the reference in the GAC communiqué from Lisbon that under the revised agreement, there are credible scenarios that lead to circumstances in which ICANN would be forced to assume an ongoing management and oversight role regarding Internet content, which is inconsistent with its technical mandate.

"Accordingly, it is resolved…that the proposed agreement with ICM concerning the .xxx sTLD is rejected and the application request for delegation of the .XXX sTLD is hereby denied."

48.   Debate in the Board over adoption of the resolution was intense. Dr. Cerf, who was to vote in favor of the resolution (and hence against the ICM application) observed that he had voted in favor of proceeding to negotiate a contract.

"Part of the reason for that was to try to understand more deeply exactly how this proposal would be implemented, and seeing the contractual terms…would put much more meat on the bones of the initial proposal. I have been concerned about the definition of 'responsible'…there's uncertainty in my mind about what behavioral

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patterns to expect...over time, the two years that we've considered this, there has been a growing disagreement within the adult content community as to the advisability of this proposal. As I looked at the contract...the mechanisms for assuring the behavior of the registrants in this top-level domain seemed, to me, uncertain. And I was persuaded ... that there were very credible scenarios in which the operation of IFFOR and ICM might still lead to ICANN being propelled into responding to complaints that some content on some of the registered .xxx sites didn't somehow meet the expectations of the general public this would propel ICANN and its staff into making decisions or having to examine content to decide whether or not it met the IFFOR criteria ... I would also point out that the GAC has raised public policy concerns about this particular top level domain." (C-201, p. 6.)

49. Rita Rodin said that she did not believe

"that this is an appropriate sponsored community...it's inappropriate to allow an applicant in any sTLD to simply define out ...any people that are not in in favor of this TLD..as irresponsible...this will be an enforcement headache...for ICANN..way beyond the technical oversight role of ICANN's mandate...there's porn all over the Internet and...there isn't a mechanism with this TLD to have it all exclusively within one string to actually effect some of the purposes of the TLD...to be responsible with respect to the distribution of pornography, to prevent child pornography on the Internet..." *(id.,* p. 7.)

50. Peter Dengate Thrush, who favored acceptance of the ICM contract, voted against the resolution. On the issue of the sponsored community,

"there is on the evidence a sufficiently identifiable, distinct community which the TLD could serve. It's the adult content providers wanting to differentiate themselves by voluntary adoption of this labeling system. It's not affected ... by the fact that that's a self-selecting community...or impermanence of that community...This is the first time in any of these sTLD applications that we have had active opposition. And we have no metrics...to establish what level of opposition by members of the potential community might have caused us concern...the resolution I am voting against is particularly weak on this issue. On why the board thinks this community is not sufficiently identified. No fact or real rationale are provided in the resolution, and...given the considerable importance that the board has placed on this...and the cost and effort that the applicant has gone to answer the

board's concern demonstrating the existence of a sponsored community...this silence is disrespectful to the applicant and does a disservice to the community...I've also been concerned ... about the scale of the obligations accepted by the applicant...some of those have been forced upon them by the process..in the end I am satisfied that the compliance rules raise no new issues in kind from previous contracts. And I say that if ICANN is going to raise this kind of objection, then it better think seriously of getting out of the business of introducing new TLDs ... I do not think that this contract would make ICANN a content regulator..." (*Id.,* pp. 7-8.)

51. Njeri Ronge stated that, in addition to the reasons stated in the resolution, "the ICM proposal will not protect the relevant or interested community from the adult entertainment Web sites by a significant percentage; ... the ICM proposal focuses on content management which is not in ICANN's technical mandate." *(Id.,* p. 8.)

52. Susan Crawford dissented from the resolution, which she found "not only weak but unprincipled".

"I am troubled by the path the board has followed on this issue...ICANN only creates problems for itself when it acts in an ad hoc fashion in response to political pressures. ICANN...should resist efforts by governments to veto what it does...The most fundamental value of the global Internet community is that people who propose to use the Internet protocols and infrastructures for otherwise lawful purposes, without threatening the operational stability or security of the Internet, should be presumed to be entitled to do so. In a nutshell, everything not prohibited is permitted. This understanding...has led directly to the striking success of the Internet around the world. ICANN's role in gTLD policy development is to seek to assess and articulate the broadly shared values of the Internet community. We have very limited authority. I am personally not aware that any global consensus against the creation of a triple X domain exists. In the absence of such a prohibition, and given our mandate to create TLD competition, we have no authority to block the addition of this TLD to the root. It is very clear that we do not have a global shared set of values about content on line, save for the global norm against child pornography. But the global Internet community clearly does share the core value that no centralized authority should set itself up as the arbiter of what people may do together on line, absent a demonstration that most of those affected by the proposed activity agree that it should be banned...the

fact is that ICANN evaluated the strength of the sponsorship of triple X, the relationship between the applicant and the community behind the TLD, and...concluded that this criteria [sic] had been met as of June 2005. ICANN then went on to negotiate specific contractual terms with the applicant. Since then, real and AstroTurf comments – that's an Americanism meaning filed comments claiming to be grass roots opposition that have actually been generated by organized campaigns – have come into ICANN that reflect opposition to this application.   I do not find these recent comments sufficient to warrant revisiting the question of the sponsorship strength of this TLD which I personally believe to be closed. No applicant for any sponsored TLD could ever demonstrate unanimous, cheering approval for its application. We have no metric against which to measure this opposition....We will only get in the way of useful innovation if we take the view that every new TLD must prove itself to us before it can be added to the root...what is meant by sponsorship...is that there is enough interest in a particular TLD that it will be viable. We also have the idea that registrants should participate in and be bound by the creation of policies for a particular string. Both of these requirements have been met by this applicant. There is clearly enough interest, including more than 70,000 preregistrations from a thousand or more unique registrants who are member of the adult industry, and the applicant has undertaken to us that it will require adherence to its self-regulatory policies by all of its registrants...Many of my fellow board members are undoubtedly uncomfortable with the subject of adult entertainment material. Discomfort may have been sparked anew by first the letter from individual GAC members...and second the letter from the Australian Government. But the entire point of ICANN's creation was to avoid the operation of chokepoint control over the domain name system by individual or collective governments. The idea was the U.S. would serve as a good steward for other governmental concerns by staying in the background and...not engaging in content-related control. Australia's letter and concerns expressed...by Brazil and other countries about triple X are explicitly content-based and, thus, inappropriate...If after the creation of a triple X TLD certain governments of the world want to ensure that their citizens do not see triple X content, it is within their prerogative as sovereigns to instruct Internet access providers physically located within their territory to block such content...But content-related censorship should not be ICANN's concern...To the extent there are public policy concerns with this TLD, they can be dealt with through local laws." (*Id.,* pp. 9-11.)

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53. Demi Getschko declared that her vote in favor of the resolution was her own decision "without any kind of pressure". (*Id.,* p. 12.) Alejandro Pisanty denied that "the board has been swayed by political pressure of any kind" and affirmed that, "ICANN has acted carefully and strictly within the rules." He accepted "that there is no universal set of values regarding adult content other than those related to child pornography...the resolution voted is based precisely on that view, not on any view of content itself." (*Id.*

PART THREE: THE ARGUMENTS OF THE PARTIES

The Contentions of ICM Registry

54. ICM Registry contends that (a) the Independent Review Process is an arbitration; (b) that Process does not afford the ICANN Board a "deferential standard of review"; (c) the law to be applied by that Process comprises the relevant principles of international law and local law, *i.e.,* California law, and that the particularly relevant principle is good faith; (d) in its treatment and rejection of the application of ICM Registry, ICANN did not act consistently with its Articles of Incorporation and Bylaws.

The Nature of the Independent Review Process

55. In respect of the nature of the Independent Review Process, ICM, noting that these proceedings are the first such Process brought under ICANN's Bylaws, maintains that they are arbitral and not advisory in character. It observes that the current provisions governing the Independent Review Process were added to the Bylaws in December 2002 partly as a result of international and domestic concern about ICANN's lack of accountability. It recalls that ICANN's then President, Stuart Lynn, announced in a U.S. Senate hearing in 2002 that ICANN planned to "strengthen ... confidence in the fairness of ICANN decision-making through... creating a workable mechanism for speedy independent review of ICANN Board actions by experienced arbitrators..." (Claimant's Memorial on the Merits, p. 162). His successor, Dr. Twomey, stated to a committee of the U.S. House of Representatives in 2006 that, "ICANN does have well-established principles and processes for accountability in its decision-making and in its bylaws...there is ability for appeal to...independent arbitration." *(Id.,* p. 163.) Article IV, Section 3, of ICANN's Bylaws provides that: "The IRP shall be operated by an international arbitration provider appointed from time to time by ICANN...using arbitrators...nominated by that provider." Pursuant to that provision, ICANN appointed the International Centre for Dispute Resolution ("ICDR") of the American Arbitration Association as the international arbitration provider

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(which in turn appointed the members of the instant Independent Review Panel). The term "arbitration" imports the binding resolution of a dispute. Courts in the United States – including the Supreme Court of California – have held that the term "arbitration" connotes a binding award. *(Id.,* pp. 168-169.) Article 27(1) of the ICDR Rules provides that "[a]wards...shall be final and binding on the parties. The parties undertake to carry out any such award without delay." (C-11.) The Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process specify that "the ICDR's International Arbitration Rules...will govern the Process in combination with these Supplementary Procedures." They provide that the "Independent Review Panel (IRP) refers to the neutral(s) appointed to decide the issue(s) presented." "The Declaration shall specifically designate the prevailing party." (C-12.) In view of all of the foregoing, ICM maintains that the IRP is an arbitral process designed to produce a decision on the issues that is binding on the parties.

The Standard of Review is Not Deferential

56. ICM also maintains that, contrary to the position now advanced by counsel for ICANN, ICANN's assertion that the Panel must afford the ICANN Board "a deferential standard of review" has no support in the instruments governing this proceeding. The term "independent review" connotes a review that is not deferential. Both Federal law and California law treat provision for an independent review as the equivalent of *de novo* review. In California law, when an appellate court employs independent, *de novo* review, it generally gives no special deference to the findings or conclusions of the court from which appeal is taken. (Claimant's Memorial on the Merits, with citations, pp. 173-174.) ICANN's reliance on the "business judgment rule" and the related doctrine of "judicial deference" under California law is misplaced, because under California law the business judgment rule is employed to protect directors from personal liability (typically in shareholder suits) when the directors have made good faith business decisions on behalf of the corporation. The IRP is not a court action seeking to impose individual liability on the ICANN board of directors. Rather, this is an Independent Review Process with the specific purpose of declaring "whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws." As California courts have explicitly stated, "the rule of judicial deference to board decision-making can be limited ... by the association's governing documents." The IRP, to quote Dr. Twomey's testimony before Congress, is a process meant to establish a "final method of accountability."

The notion now advanced on behalf of ICANN, that this Panel should afford the Board "a deferential standard of review" and only "question" the Board's actions upon "a showing of bad faith" is at odds with that purpose as well as with the plain meaning of "independent review". (*Id.,* pp. 176-177.)

The Applicable Law of this Proceeding

57. Article 4 of ICANN's Articles of Incorporation provides that, "The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with the relevant principles of international law and applicable international conventions and local law..." (C-4). The prior version of the draft Articles had provided for ICANN's "carrying out its activities with due regard for applicable local and international law". This language was regarded as inadequate, and was revised, as the then Interim Chairman of ICANN explained, "to mak[e] it clear that ICANN will comply with relevant and applicable international and local law". *(Id.,* p. 180.) As ICANN's President testified in the U.S. Congress in 2003, the International Review Process was put in place so that disputes could "be referred to an independent review panel operated by an international arbitration provider with an appreciation for and understanding of applicable international laws, as well as California not-for-profit corporation law." (*Id.,* p. 182.) According to the Expert Report of Professor Jack Goldsmith, on which ICM relies:

> "...in an attempt to bring accountability and thus legitimacy to its decisions, ICANN (a) assumed in its Articles of Incorporation an obligation to act in conformity with 'relevant principles of international law' and (b) in its Bylaws extended to adversely affected third parties a novel right of independent review in this arbitration proceeding for consistency with ICANN's Articles and Bylaws. The parties have agreed to international arbitration in this forum to determine consistency with the international law standards set forth in Article 4 of the Articles of Incorporation. California law allows a California non-profit corporation to bind itself in this way." (*Id.,* p. 11.)

In ICM's view, Article 4 of ICANN's Articles of Incorporation acts as a choice-of-law provision. It notes that Article 28 of the ICDR Arbitration Rules specifically provides that "the Tribunal shall apply the substantive law(s) or rules of law designated by the parties as applicable to this dispute." (C-11.) It points out that the choice of a concurrent law clause – as in ICANN's Articles providing for the application of relevant principles of both

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international and domestic law – is not unusual, especially in transactions involving a public resource.

58. Professor Goldsmith observes that: "... "principles of international law and applicable international conventions and local law" refers to three types of law. Local law means the law of California. Applicable international conventions refers to treaties. "The term 'principles of international law' includes general principles of law. Given that the canonical reference to the sources of international law is Article 38 of the Statute of the International Court of Justice, which lists international conventions, customary international law, and "the general principles of law recognized by civilized nations", the reference to "principles of international law" in ICANN's Articles must refer to customary international law and to the general principles of law. (Expert Report, p. 12.) Professor Goldsmith notes that the Iran-United States Claims Tribunal has interpreted the "principles of commercial and international law" to include the general principles of law. ICSID tribunals similarly have interpreted "the rules of international law" to include general principles of law.

> "It is perfectly appropriate to apply general principles in this IRP even though ICANN is technically a non-profit corporation and ICM is a private corporation. ICANN voluntarily subjected itself to these general principles in its Articles of Incorporation, something that both California law permits and that is typical in international arbitrations, especially when public goods are at stake. The 'international' nature of this arbitration – ... is evidenced by the global impact of ICANN's decisions...ICANN is only nominally a private corporation. It exercises extraordinary authority, delegated from the U.S. Government, over one of the globe's most important resources...its control over the Internet naming and numbering system does make sense of its embrace of the 'general principles' standard. While there is no doubt that ICANN can and has bound itself to general principles of law as that phrase is understood in international law... the general principles relevant here complement, amplify and give detail to the requirements of independence, transparency and due process that ICANN has otherwise assumed in its Articles and Bylaws and under California law. General principles thus play their classic supplementary role in this proceeding." *(Id.,* pp. 15-16.)

59. Professor Goldsmith continues: "The general principle of good faith is 'the foundation of all law and all conventions'" (quoting the seminal work of Bin Cheng, *General Principles of Law as Applied by International Courts and*

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Tribunals, p. 105). "As the International Court of Justice has noted, 'the principle of good faith is a well established principle of international law'". (*Case concerning the Land and Maritime Boundary between Cameroon and Nigeria, Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 296, with many citations.) Applications of the principle are "the requirement of good faith in complying with legal restrictions" and "the requirement of good faith in the exercise of discretion, also known as the doctrine of non-abuse of rights..." as well as the requirement of good faith in contractual negotiations. (*Id.,* pp. 17-18.) The principle is "equally applicable to relations between individuals and to relations between nations." (Cheng, *loc. cit.*).

60. Professor Goldsmith maintains that the abuse of right alleged by ICM that is

> "most obvious is the clearly fictitious basis ICANN gave for denying ICM's application...the concern about 'law enforcement compliance issues because of countries' varying laws relating to content and practices that define the nature of the application' applies to many top-level domains besides .XXX. The website 'pornography.com' would be no less subject to various differing laws around the world than the website 'pornography.xxx.' ...a website on the .XXX domain is *easier* for nations to regulate and exclude from computers in their countries because they can block all sites on the .XXX domain with relative ease but have to look at the content, or make guesses based on domain names, to block unwanted pornography on .COM and other top level domains. In short, this reason for ICANN's denial, if genuine, would extend to many top-level domains and would certainly apply to all generic top-level domains (like .COM, .INFO, .NET and .ORG) where pornographic sites can be found. But ICANN has only applied this reason for denial to the .XXX domain. This strongly suggests that the reasons for the denial are pretextual and thus the denial is an abuse of right..."

61. Professor Goldsmith further argues that "similarly pretextual is ICANN's claim that 'there are credible scenarios that leads to circumstances in which ICANN would be forced to assume an ongoing management and oversight role regarding Internet content.'" He contends that the scenario is "unlikely", but, more importantly, *"the same logic applies to generic top level domains* like .COM. The identical scenario could arise if a national court ordered...the registry operator for .COM...to shut down one of the hundreds of thousands of pornography sites on .COM. But ICANN has only expressed concern about ICM..."

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62. ICM Registry contends that ICANN failed to act consistently with its Articles of Incorporation and Bylaws in the following respects.

63. ICANN, ICM maintains, conducted the 2004 Round of applications for top-level domains as a two-step process, in which it was first determined whether or not each applicant met the RFP criteria. If the criteria were met, "upon the successful completion of the sTLD process" (ICANN Board resolution of October 31, 2003, C-78), the applicant then would proceed to negotiate the commercial and technical terms of a registry agreement. (This Declaration, paras. 13-16, *supra*.) The RFP included detailed description of the criteria to be met to enable the applicant to proceed to contract negotiations, and specified that the selection criteria would be applied "based on principles of objectivity, non-discrimination and transparency". (C-45.) On June 1, 2005, the ICANN Board concluded that ICM had met all of the RFP criteria - - financial, technical and sponsorship – and authorized ICANN's President and General Counsel to enter into negotiations over the "commercial and technical terms" of a registry agreement with ICM. "The record evidence in this case demonstrates overwhelmingly that when the Board approved ICM to proceed to contract negotiations on 1 June 2005, the Board concluded that ICM had met all of the RFP criteria – including, specifically, sponsorship." (Claimant's Post-Hearing Submission, p. 11.) While ICANN now claims that the sponsorship criterion remained open, and that the Board's resolution of June 1, 2005, authorized negotiations in which whether ICM met sponsorship requirements could be more fully tested, ICM argues that no credible evidence, in particular, no contemporary documentary evidence, supports these contentions. To the contrary, ICM:

- (a) recalls that ICANN's written announcement of applications received provided: "The applications will be reviewed by independent evaluation teams beginning in May 2004. The criteria for evaluation were posted with the RFP. All applicants that are found to satisfy the posted criteria will be eligible to enter into technical and commercial negotiations with ICANN for agreements for the allocation and sponsorship of the requested TLDs." (C-82.)

- (b) emphasizes that ICANN's Chairman of the Board, Dr. Cerf, is recorded in the GAC's Luxembourg minutes as stating, shortly after the adoption of the June 1, 2005, resolution, that the application of .xxx "this time met the three main criteria, financial, technical and sponsorship". Sponsorship was

extensively discussed "and the Board reached a positive decision considering that ICANN should not be involved in content matters." (C-139; *supra,* para. 22.)

- (c) notes that a letter of ICANN's President of February 11, 2006. states that: "...it is the ICANN Board that has the authority to decide, upon the conclusion of technical and commercial negotiations, whether or not to approve the creation of a new sTLD...Responsibility for resolving issues relating to an applicant's readiness to proceed to technical and commercial negotiations...rests with the Board." *(Supra,* paragraph 33.)

- (d) notes that the GAC's Wellington Communique states, in respect of a letter of February 11, 2006 of ICANN's President, that the GAC "does not believe that the February 11 letter provides sufficient detail regarding the rationale for the Board determination" that ICM's application "had overcome the deficiencies noted in the Evaluation Report". (*Supra,* paragraph 35.)

- (e) stresses that the ICANN Vice President in charge of the Round, Kurt Pritz, whom ICANN chose not to call as a witness in the hearing, stated in a public forum meeting in April 2005 that: "If it was determined that an application met those three baseline criteria, technical, commercial and sponsorship community, they, then, were informed that they would enter into a phase of commercial and technical negotiation with ICANN, the culmination of those negotiations is and was intended to result in the designation of the new top-level domain. At the conclusion of that, we would sign agreements that would be forwarded to the Board for their approval." (C-88.)

- (f) recalls that Dr. Pritz stated in Luxembourg that ICM was among the "applicants that have been found to satisfy the baseline criteria and they're presently in negotiation for the designation of registries..." (C-140, p. 28).

- (g) observes that the General Counsel of ICANN, Mr. Jeffery, in an exchange with Ms. Burr acting as counsel of ICM, accepted a draft press release in respect of the June 1, 2005 resolution stating that, "ICANN's board of directors today determined that the proposal for a new top level domain submitted by ICM Registry meets the criteria established by ICANN." (C-221.)

- (h) reproduces a Fox News Internet story of June 2, 2005, captioned, "Internet Group OKs New Suffix for Porn Sites," which cites ICANN spokesman Kieran Baker as saying that adult oriented sites, a $12 billion industry, "could begin buying .xxx addresses as early as fall or winter depending on ICM's plans." (C-283.)

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- (i) recalls that a member of the Board when the June 1, 2005 resolution was adopted, Joicho Ito, posted on his blog the next day that "the .XXX proposal, in my opinion, has met the criteria set out in the RFP. Our approval of .XXX is a decision based on whether .XXX met the criteria and does not endorse or condone any particular type of content or moral belief." (Burr Exhibit 35.)

ICM argues that ICANN's witnesses had no response to the foregoing evidence, other than to say that they could not remember or had not seen it (testimony of Dr. Cerf, Tr. 615:18-21, 660:9-12, 675:3-16; Testimony of Dr. Twomey, 914: 4-11, 915:2-11).

64. Dr. Cerf testified at the hearing that,

> "At the point where the question arose whether we should proceed or could proceed to contract negotiation, in the absence of having decided that the sponsorship criteria had been met, the board consulted with counsel [the General Counsel, Mr. Jeffery] and my recollection of this discussion is that we could leave undetermined and undecided the question of sponsorship and could use the discussions with regard to the contract as a means of exposing and understanding more deeply whether the sponsorship criteria had been or could be adequately met...prior to the board vote on the question, should we proceed to contract, this question was raised, and it was my understanding that we were not deciding the question of sponsorship. We were using the contract negotiations as a means of clarifying whether or not...the sponsorship criteria could be or had been met or would be met..." (Tr. 600:6-18, 601: 1-8).

65. ICM however claims that Dr. Cerf's testimony "is flatly contradicted by the numerous contemporaneous statements of ICANN Board members and officials that ICM had, in fact, met the criteria, including Dr. Cerf's own contemporaneous statement to the GAC in Luxembourg..." (Claimant's Post-Hearing Submissions, p. 14.) ICM maintains that there is no contemporary documentary evidence that sustains Dr. Cerf's recollection. Nor did ICANN present Mr. Jeffery as a witness, despite his presence in the hearing room. No mention of reservations about sponsorship is to be found in the June 1, 2005 resolution; it contains no caveats, unlike the resolutions adopted in respect of the applications for .JOBS and .MOBI adopted by the Board in 2004.

66. ICANN further argues, ICM observes, that the June 1, 2005, resolution provides that the contract would be entered into "if" the parties were able to negotiate "commercial and technical terms"; therefore ICM should have known that all other issues also remained open. But, responds ICM, "Complete silence on an issue -- when other issues are specifically mentioned – does not create ambiguity on the missing issue. It means that the missing issue is no longer an issue." *(Id.,* pp. 15-16.)

67. Shortly after adoption of the June 1, 2005 resolution, contract negotiations commenced. As predicted by Mr. Jeffrey in a June 13, 2005, email to Ms. Burr, the negotiations were "quick" and "straightforward". (C-150.) Agreement on the terms of a registry contract was reached between them by August 1, 2005. That draft registry agreement was posted on the ICANN website on August 9, 2005. The Board was scheduled to discuss it at a meeting to be held on August 16.

68. But then came the intervention of the U.S. Department of Commerce described *supra,* paragraphs 27 and 29. ICM argues that it is remarkable that the U.S. Government responded in the way it did to a lobbying campaign largely generated by the website of the Family Research Council. "What is even more remarkable is the extent to which ICANN altered its course of conduct with respect to ICM in response to the U.S. government's intervention." ICM contends that: "The unilateral intervention by the U.S. government was entirely inappropriate and ICANN knew it. But rather than adhere to the principles of its Articles and Bylaws, ICANN quickly bowed to the U.S. intervention, and, at the same time tried to conceal it." (Claimant's Post-Hearing Submission, p. 27.) The charge of concealment relates to Dr. Twomey's having "suggested" to the Chairman of the GAC that he write to ICANN requesting delay in considering the draft contract with ICM (*supra,* paragraph 28). Dr. Twomey acknowledged at the hearing that he so suggested but explained that the letter was nothing more than a confirmation of what Board members had heard weeks before from the GAC in Luxembourg. (Tr. 856:8-19, 859:1-12, 861:10-20, and s*upra,* paragraphs 21-25.)

69. ICM invokes the witness statement provided by the chair of the Sponsorship Evaluation Team, Dr. Williams, who, as a fellow Australian, had a close working relationship with Dr. Twomey. She wrote that:

> "The June 2005 vote should have marked the completion of the substantive discussions of the .XXX application, especially in light of the Board resolution that approved the .XXX application with no

reservations or caveats. Instead, following the vote, the ICANN Governmental Advisory Committee 'woke up' to the .XXX application, and ICANN began to feel pressure from a number of governments, especially from the United States and Australia…An open dispute with the United States would have been very damaging to ICANN's credibility, and it was therefore very difficult to resist pressure from the United States…Dr. Twomey expressed to me his anxiety about the .XXX registry agreement as a result of this [Gallagher] intervention. This concern went to the heart of ICANN's legitimacy as a quasi-independent technical regulatory organization with the power to establish the process by which new TLDs could be created and put on the root. If the United States Government disagreed with ICANN's process or decision at any point and did not enter a TLD accepted by ICANN to the root, it would call into question ICANN's authority, competence, and entire reason for existence." (Witness Statement of Elizabeth Williams, pp. 26-28.)

70. ICM points out that the Wellington Communique of the GAC *(supra,* paragraph 35) referred to "the Board determination that the [ICM] application had overcome the deficiencies noted in the Evaluation Report." ICM maintains that, at ICANN's staff prompting, ICM responded to all of the concerns raised in the GAC's Wellington Communique. Thus, the Third Draft Registry Agreement of April 18, 2006, included commitments of ICM to establish policies and procedures to label the sites on the domain, to use automated tools to detect and prevent child pornography, to maintain accurate lists of registrants and assist law enforcement agencies to identify and contact the owners of particular sites, and to ensure the intellectual property and trademark rights, personal names, country names, names of historical, cultural and religious significance and names of geographic identifiers, drawing on domain name registry best practices (C-171).

71. ICM construes a statement of Dr. Cerf at the hearing as indicating that the reason, or a reason, why ICM ultimately did not obtain a registry agreement was that ICM could not provide adequate solutions "to deal with the problem of pornography on the Net". It counters that ICM had never undertaken to "deal with" or solve "the problem of pornography on the Net". "The purpose of .XXX was to create an sTLD where responsible adult content providers would agree, *inter alia,* to submit to technological tools to help tag and filter their sites; allow their sites to be 'crawled' for indicia of child pornography (real or virtual); and otherwise adhere to best practices for responsible members of the industry (including practices to prevent credit card fraud, spam, misuse of personal data, the sending of unsolicited

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promotional email, the 'capture' of visitors to their sites, *etc.).*" (Claimant's Post-Hearing Submission, p. 42.) However, Dr. Twomey seized on a phrase in the Wellington Communique "in order to impose an impossible burden on ICM." According to ICM, Dr. Twomey asserted that "the GAC was now insisting that ICM be responsible for 'enforcing restrictions' around the world on access to illegal and offensive content." (*Id.,* pp. 42-43.) But, ICM argues, to the extent that the GAC was requesting ICM to enforce restrictions on illegal and offensive content, ICANN was

> "not merely acting outside its mission. It was also imposing a requirement on ICM that had never been imposed on any other registrant for any other top level domain, and that, indeed, no registrant could possibly fulfil. .COM, for example, is unquestionably filled with content that is considered 'illegal and offensive' in many countries. Some of its content is considered 'illegal and offensive' in all countries. Adult content can be found on numerous other TLDs...Dr. Cerf had told the GAC in Luxembourg in July 2005, when he was explaining the Board's determination that ICM had met the RFP criteria: 'to the extent that governments do have concerns they relate to the issues across TLDs.' ICANN has never suggested that the registries for those other TLDs must 'enforce' restrictions on access to illegal or offensive content for sites on their TLDs." (*Id.,* pp. 43-44.)

72. ICM adds that if "the GAC was in fact asking ICANN to impose such an absurd requirement on ICM, then ICANN should have told the GAC that it could not do so." The GAC is no more than an advisory body supposed to provide "advice" on a "timely" basis. "ICANN is by no means under any obligation to do whatever the GAC tells it to do." Indeed, ICANN's Bylaws specifically contemplate that the Board may decide not to follow the GAC's advice. *(Id.,* p. 44.)

73. ICM invokes the terms of the Bylaws, Section 2(1)(j), which provide that:

> "The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. If no such solution can be found, the ICANN Board will state

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in its final decision the reasons why the Governmental Advisory Committee's advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities." (C-5, and *supra,* paragraph 9.)

74. ICM further argues however that Dr. Twomey's reading of the Wellington Communique was not a reasonable one. The Wellington Communique recalls that "ICM promised a range of public interest benefits as part of its bid to operate the .xxx domain...The public policy aspects identified by members of the GAC include the degree to which .xxx application would: Take appropriate measures to restrict access to illegal and offensive content..." (*Id.* p. 45; C-181). As promised in its application, ICM in fact proposed numerous measures to restrict access to illegal and offensive content. But nowhere did the GAC state that ICM should be responsible for "enforcing" the restrictions of countries on access to illegal and offensive content.   ICM argues that the very fact that the GAC wanted ICM to "maintain accurate details of registrants and assist law enforcement agencies to identify and contact the owners of particular websites" (C-181, p. 3) demonstrates that the GAC did *not* expect ICM to enforce various national restrictions on access to illegal and offensive content.

75. The numerous measures that ICM set out in its revised draft registry agreement in consultation with the staff of ICANN did not constitute an agreement or "representation to enforce the laws of the world on pornography" (testimony of Ms. Burr, Tr. 1044: 8-9). Actually the activation of an .XXX TLD would make it far easier for governments to restrict access to content that they deemed illegal or offensive. Indeed, as Dr. Cerf told the GAC in Luxembourg in July 2005 in defending ICANN's agreeing to enter into contract negotiations with ICM, "The TLD system is neutral, although filtering systems could be solutions promoted by governments." (C-139, p. 5.) "In other words," ICM argues, "the appropriate place for restricting access to content deemed illegal or offensive by any particular country is within that particular country. ICM offered far more tools for countries to effectuate such restrictions than have ever existed before. Thus, ICM provided 'appropriate measures to restrict access to illegal and offensive content.'" (Claimant's Post-Hearing Submission, p. 47.)

76. ICM alleges that, "Nonetheless, on 10 May 2006, the ICANN Board proceeded to reject ICM's registry agreement because, in Dr. Twomey's words, ICM had not demonstrated how it would 'ensure enforcement of these contractual terms' as they relate to various countries' individual laws

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'concerning pornographic content' [citing C-189, p.6]. In other words, ICM's draft registry agreement was rejected on the basis of its inability to comply with a contractual undertaking to which it had never agreed in the first place." (*Id.,* p. 48.)

77. At that same meeting of the Board, Dr. Twomey drew attention to a letter of May 4, 2006 from Martin Boyle, UK Representative to the GAC, which read as follows:

> "The discussions held by the Governmental Advisory Committee in Wellington in March have highlighted some of the key concerns, and strong opposition by some administrations, to the application for a new top-level domain for pornographic content, dot.xxx. I thought that it would be helpful to follow up those discussions by submitting directly to the ICANN Board the views of the UK Government. In preparing these views, we have consulted a number of stakeholders in the UK, including Internet safety groups...

> "Having examined the proposal in detail, and recognizing ICANN's authority to grant such domain names, the UK expresses its firm view that if the dot .xxx domain name is to be authorized, it would be important that ICANN ensures that the benefits and safeguards proposed by the registry, ICM, including the monitoring of all dot.xxx content and rating of content on all servers pointed to by .xxx, are genuinely achieved from day one. Furthermore, it will be important to the integrity of ICANN's position as final approving authority for the dot.xxx domain name, to be seen as able to intervene promptly and effectively if for any reason failure on the part of ICM in any of these fundamental safeguards becomes apparent. It would also in our view be essential that ICM liase with the relevant bodies in charge of policing illegal Internet content at national level, such as the Internet Watch Foundation (IWF) in the UK, so as to ensure the effectiveness of the solutions it proposes to avoid the further propagation of illegal content. Specifically, ICM should undertake to monitor all dot.xxx content as it proposed and cooperate closely with IWF and equivalent agencies.

> "This is an important decision that the ICANN Board has to take and whatever you decide will probably attract criticism from one quarter or another. This makes it all the more important that in making a decision, you reach a clear view on the extent to which the benefits which ICM claim are likely to be sustainable and reliable." (C-182.)

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78. Dr. Twomey said this about Mr. Boyle's position:

> "...the contractual terms put forward by ICM to meet the sorts of public-policy concerns raised by the Governmental Advisory Committee in my view are very difficult to implement, and I retain concerns about their ability to actually be implemented in an international environment where the important phrase, 'all applicable law', would raise a very wide and variable test for enforcement and compliance. And I can't see how that will actually be achieved under the contract. The letter from the UK is an indication of the expectations of the international governmental community to ensure enforcement of these contractual terms as they individually interpret them against their own law concerning pornographic content. This will put ICANN in an untenable position." (C-189, p. 6.)

79. ICM contends that "it is impossible to reconcile the points made in Mr. Boyle's letter – *i.e.,* that ICANN should ensure that ICM delivered from "day one" on the 'benefits and safeguards' promised in its contract, and that ICM should liase with the IWF – as a requirement 'to ensure enforcement of the contractual terms as they each individually interpret them against their own law concerning pornographic content'. And even if Mr. Boyle had been making such a demand, it would have been entirely outside ICANN's mandate to impose it on ICM, and would have imposed a requirement on ICM that it has never imposed on any other registry." (Claimant's Post-Hearing Submission, p. 50.)

80. ICM however acknowledges that other members of the Board shared Dr. Twomey's analysis. It concludes that:

> "...the ICANN Board was now imposing a requirement that was outside the mission of ICANN; that had never been imposed on any other registry; and that – had it been included in the RFP – would have kept any applicant from applying for an sTLD dealing with adult content." *(Id.,* p. 51.)

81. ICM observes that, following the ICANN Board's rejection of the ICM registry agreement on May 10, 2006, and then its renewed consideration of it after ICM withdrew its request for reconsideration (*supra,* paragraph 39), ICM responded to further requests of ICANN staff. It agreed to conclude a contract with what is now known as the Family Online Safety Institute ("FOSI") specifying that FOSI was "to use an automated tool to scan" the .XXX domain and develop other ways to monitor ICM's compliance with its

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commitments. ICM notes that, throughout the entire negotiation process, the ICANN staff never asked ICM to change the definition of the sponsored community, which remained the same though each of the five renderings of the draft registry agreement.

82. At the Board's meeting of February 12, 2007, the question of the solidity of ICM's sponsorship was re-opened – in ICM's view, inappropriately --- as described above (*supra,* paragraphs 41-45 and C-199). ICM argues that the data that it responsively submitted to the ICANN Board in March 2007 demonstrated that its application met the RFP standard of "broad-based support from the community". 76,723 adult website names had been pre-reserved in .XXX since June 1, 2005; 1,217 adult webmasters from over 70 countries had registered on the ICM Registry website, saying that they supported .XXX. But, ICM observes, none of the Board members voting against acceptance of ICM's application at the dispositive meeting of March 30, 2007, mentioned the extensive evidence provided by ICM in support of sponsorship.

83. For the reasons set forth above in paragraphs 63-82, ICM contends that the Board's rejection of its application was not consistent with ICANN's Articles of Incorporation and Bylaws. As regards the five specific reasons for rejection set forth in the Board's resolution of March 30, 2007 (*supra,* paragraph 47), ICM makes the following allegations of inconsistency.

84. Reason 1: ICM's application and revised agreement fail to meet the sponsored community criteria of the RFP specification. ICM responds that the Board concluded by its resolution of June 1, 2005, that ICM had met the RFP's sponsorship criteria; and that the Board's abandonment of the two-step process and its reopening of sponsorship at the eleventh hour, and only in respect of ICM's application, violated ICANN's Articles and Bylaws. The manner in which it then "reapplied" the sponsorship criteria to ICM was "incoherent, discriminatory and pretextual". (Claimant's Post-Hearing Submission, pp. 61-62.) There was no evidence before the Board that ICM's support in the community was eroding. No other applicant was held to a similar standard of demonstrating community support. ICM produced sufficient evidence of what was required by the RFP: "broad-based support from the community".

85. ICANN also complained that ICM's community definition was self-identifying but that was true of numerous sTLDs; as Dr. Twomey acknowledged in a letter of May 6, 2006, "(m)embers of both .TEL and .MOBI communities are self-identified". Both sTLDs are now in the root.

86. ICANN further complained that the sponsored community as defined by ICM was not sufficiently differentiated from other adult entertainment providers. But, besides the fact that ICM had set forth numerous criteria by which members of its community would differentiate themselves from others providers of the adult community, this too could be said to apply to other TLDs. Thus .TRAVEL, much like .XXX, is designed to provide an sTLD for certain members of the industry that wish to follow the rules of a particular charter.

87. ICANN further complained that .XXX would merely duplicate content found elsewhere on the Internet. But again, the same was true for virtually all of the other sTLDs.

88. In sum "ICANN's reopening of the sponsorship criteria – which it did *only* for ICM – was unfair, discriminatory and pretextual, and a departure from transparent, fair and well documented policies...not done neutrally and objectively, with integrity and fairness...[it] singled out ICM for disparate treatment, without substantial and reasonable cause." *(Id.,* p. 65.)

89. Reason 2: based on the extensive comment and from the GAC's Communiques, ICM's agreement raises public policy issues. ICANN never precisely identified the "public policy" issues raised nor does it explain why they warrant rejection of the application. But, ICM argues, Reasons 2-5 all arise from the same flawed interpretation of the Wellington Communique and other governmental comments, namely, that ICM was to be responsible for enforcing the world's various and different laws and standards concerning pornography. That interpretation "was sufficiently absurd as to have been made in bad faith"; in any event it holds ICM to an "impossible standard", and is one never imposed on any other registrant and that no registrant could possibly perform. It led to further flawed conclusions, *viz.,* that if ICM could not meet its responsibility (and no one could) then ICANN would have to take it over, and, if it did so, ICANN would be taking on an oversight role regarding Internet content, which was beyond its technical mandate.   ICANN's imposition of this impossible requirement on ICM alone was discriminatory. It rejected ICM's application on grounds that were not applied neutrally and objectively, which were suggestive of a "pretextual basis to 'cover' the real reason for rejecting .XXX, *i.e.,* that the U.S. government and several other powerful governments objected to its proposed content." *(Id.,* pp. 66-67.)

90. Reason 3: the ICM application and revised agreement do not resolve GAC's issues, its concern for offensive content and protection of the vulnerable; the Board finds that these public policy concerns cannot be

credibly resolved with the mechanisms proposed by the applicant.   ICM responds that this is merely an elaboration of Reason 2. ICM's proposed agreement contained detailed provisions to address child pornography issues and detailed mechanisms that would permit the identification and filtration of content deemed to be illegal or offensive.

91. Reason 4: the ICM application raises significant law enforcement compliance issues because of countries' varying laws relating to content and practices that define the nature of the application, therefore obligating ICANN to acquire a responsibility related to content and conduct. ICM responds that this builds on the fallacy of Reasons 2 and 3: according to the Board's apparent reasoning, the GAC was requiring ICM to enforce local restrictions on access to illegal and offensive content and if proved unable to do so, ICANN would have to do so. ICM responds that ICANN could not properly require ICM to undertake such enforcement obligations, whether or not the GAC actually so requested. Given that it would have been discriminatory and unfeasible to require ICM to enforce varying national laws regarding adult content, ICANN would not have been obligated to take over that responsibility if ICANN were unable to fulfill it.

92. Reason 5: there are credible scenarios in which ICANN would be forced to assume an ongoing management and oversight role regarding Internet content, inconsistent with its technical mandate.   ICM responds that this largely restates Reason 4. ICANN interpreted the GAC's advice to require ICM to be responsible for regulating content on the Internet – a task plainly outside ICANN's mandate. ICANN then criticized ICM for taking on that task and complained that it would have to undertake the task if ICM were unable to fulfil it. But ICANN could not properly require ICM to regulate content on the Internet and ICM did not undertake to do so.

93. The above exposition of the contentions of ICM, while long, does not exhaust the full range of its arguments, which were developed at length and in detail in its Memorial and in oral argument. It does not, for example, fully set out its contentions on the effect of international law and the local law on these proceedings. The essence of that argument is that ICANN is bound to act in good faith, an argument that the Panel does not find it necessary to expound since the conclusion is not open to challenge and is not challenged by counsel for ICANN. ICANN does not accept ICM's reliance on principles of international law but it agrees that the principle of good faith is found in the corporate law of California and hence is applicable in the instant dispute.

94. The "Relief Requested" by ICM Registry consists, *inter alia,* of requesting that the Panel declare that its Declaration is binding upon ICM and ICANN; and that ICANN acted inconsistently with its Articles of Incorporation and Bylaws by:

> "i. Failing to conduct negotiations in good faith and to conclude an agreement with ICM to serve as registry operator for the .XXX sTLD;

> "ii. Rejecting ICM's proposed agreement to serve as registry operator...

> "iii. Rejecting ICM's application on 30 March 2007, after having previously concluded that it met the RFP criteria on 1 June 2005;

> "iv. Rejecting ICM's application on 30 March 2007 on the basis of the five grounds set forth...none of which were based on criteria set forth in the RFP criteria...

> "v. Rejecting ICM's application after ICANN had approved ICM to proceed to contract negotiations..." (Claimant's Memorial on the Merits, pp. 265-267.)

The Contentions of ICANN

95. ICANN maintains that (a) the Independent Review Process is advisory, not arbitral; (b) the judgments of the ICANN Board are to be deferentially appraised; (c) the governing law is that of the State of California, not the principles of international law; and (d) in its treatment and disposition of the application of ICM Registry, ICANN acted consistently with its Articles of Incorporation and Bylaws.

The Nature of the Independent Review Process

96. ICANN invokes the provisions of the Bylaws that govern the IRP process, entitled, "Independent Review of Board Actions". Article IV, Section 3, provides that:

> "1. ...ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.

> "2. Any person materially affected by a decision or action of the Board that he or she asserts is inconsistent with the Articles of

Incorporation or Bylaws may submit a request for independent review of that decision or action.

"3. Requests for such independent review shall be referred to an Independent Review Panel ("IRP") which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles and Bylaws.

"4. The IRP shall be operated by an international arbitration provider appointed from time to time by ICANN ("the IRP Provider") using arbitrators ...nominated by that provider.

"5. Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures, which shall implement and be consistent with this Section 3.

...

"8. The IRP shall have the authority to:

...

b. declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and

c. recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP.

...

"12. Declarations of the IRP shall be in writing. The IRP shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party. The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.

"13. The IRP operating procedures, and all petitions, claims and declarations, shall be posted on the Website when they become available.

...

"15. Where feasible, the Board shall consider the IRP declaration at the Board's next meeting." (C-5.)

97. ICANN contends that the foregoing terms make it clear that the IRP's declarations are advisory and not binding. The IRP provisions commit the Board to review and consideration of declarations of the Panel. The Bylaws direct the Board to "consider" the declaration. "The direction to 'consider' the Panel's declaration necessarily means that the Board has discretion whether and how to implement it; if the declaration were binding such as with a court judgment or binding arbitration ruling, there would be nothing to consider, only an order to implement." (ICANN's Response to Claimant's Memorial on the Merits, p. 32.) ICANN's Board is specifically directed to "review" the Panel's declarations, not to implement them. Moreover, the Board is "not even required to review or consider the declaration immediately, or at any particular time," but is encouraged to do so at the next Board meeting, where "feasible", reinforcing the fact that the Board's review and consideration of the Panel's declaration does not require its acceptance. The Panel may "recommend", but not require, interim action. If final Panel declarations were binding, it would make no sense for interim remedies to be merely recommended to the Board. *(Id.,* p. 33.)

98. ICANN maintains that the preparatory work of the Bylaws demonstrates that the Independent Review Process was designed to be advisory. The Draft Principles for Independent Review state that the IRP's authority would be persuasive, "rest[ing] on its independence, on the prestige and professional standing of its members, and on the persuasiveness of its reasoned opinions". But "the ICANN Board should retain ultimate authority over ICANN's affairs – after all, it is the Board…that will be chosen by (and is directly accountable to) the membership and supporting organizations". (*Id.,* p. 34.) The primary pertinent document, "ICANN: A Blueprint for Reform," calls for the creation of "a process to require non-binding arbitration by an international arbitration body to review any allegation that the Board has acted in conflict with ICANN's Bylaws". ICM Registry's counsel in its negotiations with ICANN for a top-level domain, Ms. Burr, who as a senior official of the U.S. Department of Commerce was the principal official figure immediately involved in the creation and launching of ICANN, in addressing

the independent review process, observed that "decisions will be nonbinding, because the Board will retain final decision-making authority". *(Ibid.,* p. 36.) In accepting recommendations for an independent review process that expressly disclaimed creation of a "Supreme Court" for ICANN, the Board changed the reference to "decisions" of the IRP to "declarations" precisely to avoid any inference that IRP determinations are binding decisions akin to those of a judicial or arbitral tribunal. (*Ibid.,* p. 38.)

99. ICANN further points out that, while the IRP Provider selected by it is the American Arbitration Association's International Centre for Dispute Resolution, and while its Rules apply to IRP proceedings, those Rules in their application to IRP were amended to omit provision for the binding effect of an award.

The Standard of Review is Deferential

100. ICANN contends that the actions of the ICANN Board are entitled to substantial deference from this Panel. It maintains that that conclusion follows from the terms of Article 1, Section 2 of the Bylaws that set out the core values of ICANN (*supra,* paragraph 5). Article 1, Section 2 of the Bylaws provides that, "In performing its mission, the following core values should guide the decisions and actions of ICANN"; and the core values referred to in paragraph 5 of this Declaration are then spelled out. Section 2 concludes:

> "These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand and to determine, if necessary, an appropriate and defensible balance among competing values." (C-5.)

101. ICANN argues that since, pursuant to the foregoing provision, the ICANN Board "shall exercise its judgment" in the application of competing core values, and since those core values embrace the neutral, objective and fair decision-making at issue in these proceedings, "the deference expressly

accorded to the Board in implementing the core values applies…" ICANN continues:

> "Thus, by its terms, the Bylaws' conferral of discretionary authority makes clear that any reasonable decision of the ICANN Board is, *ipso facto,* not inconsistent with the Bylaws and consequently must be upheld. Indeed, the Bylaws even go so far as to provide that outright departure from a core value is permissible in the judgment of the Board, so long as the Board reasonably 'exercise[s] its judgment' in determining that other relevant principles outweighed that value in the particular circumstances at hand."

While in the instant case, in ICANN's view, there was not even an arguable departure from the Articles of Incorporation or Bylaws, "…because such substantial deference is in fact due, there is no basis whatsoever for a declaration in ICM's favor because the Board's decisions in this matter were, at a minimum, clearly justified and within the range of reasonable conduct." (ICANN's Response to Claimant's Memorial on the Merits, pp. 45-47.)

102. ICANN further argues that the Bylaws governing the independent review process sustain this conclusion. Article 4, Section 3, "strictly limits the scope of independent review proceedings to the narrow question of whether ICANN acted in a manner 'inconsistent with' the Articles of Incorporation and the Bylaws. In confining the inquiry into whether ICANN's conduct was *inconsistent with* its governing documents, the presumption is one of consistency so that inconsistency must be established, rather than the reverse…independent review is not to be used as a mechanism to upset arguable or reasonable actions of the Board." (*Ibid.,* p. 48.)

103. ICANN contends, moreover, that,

> "Basic principles of corporate law supply an independent basis for the deference due to the reasonable judgments of the ICANN Board in this matter. It is black-letter law that 'there is a presumption that directors of a corporation have acted in good faith and to the best interest of the corporation'…In California…these principles require deference to actions of a corporate board of directors so long as the board acted 'upon reasonable investigation, in good faith and with regard for the best interests' of the corporation and 'exercised discretion within the scope of its authority'". This includes the boards of not-for-profit corporations." (*Ibid.,* pp. 49-50.)

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The Applicable Law of This Proceeding

104. ICANN contests ICM's invocation of principles of international law, in particular the principle of good faith, and allied principles, estoppel, legitimate expectations and abuse of right. It notes that ICM's invocation of international law depends upon a two-step argument: first, ICM interprets Article 4 of the Articles of Incorporation, providing that ICANN will operate for the benefit of the Internet community "in conformity with relevant principles of international law", as a "choice-of-law" provision; second, ICM infers that "any violation of any principles of international law" constitutes a violation of Article 4 (thus allegedly falling within the Panel's jurisdiction to evaluate the consistency of ICANN's actions with its Articles and Bylaws).

105. ICANN contends that that two-step argument contravenes the plain language of the governing provisions as well as their drafting history. Article 4 of the Articles does not operate as a "choice-of-law" provision for the IRP processes prescribed in the Bylaws. Rather the provisions of the Bylaws and Articles, as construed in the light of the law of California, govern the claims before the Panel. Nor are the particular principles of international law invoked by ICM relevant to the circumstances at issue in these proceedings.

106. Article 4 is quoted in full in paragraph 3 of this Declaration. The specific activities that ICANN must carry out "in conformity with the relevant principles of international law and applicable international conventions and local law" are specified in Article 3 (*supra,* paragraph 2). Thus "relevant" in Article 4 means only principles of international law relevant to the activities specified in Article 3. "ICANN did not adopt principles of international law indiscriminately, but rather to ensure consistency between its policies developed for the world-wide Internet community and well-established substantive international law on matters relevant to various stakeholders in the global Internet community, such as general principles on trademark law and freedom of expression relevant to intellectual property constituencies and governments." (ICANN's Response to Claimant's Memorial on the Merits, pp. 59-60.) The principles of international law relied upon by ICM in this proceeding – the requirement of good faith and related doctrines – are principles of general applicability, and are not specially directed to concerns relating to the Internet, such as freedom of expression or trademark law. Therefore, ICANN argues, they are not "relevant". (*Ibid.)* Article 4 does not operate as a choice-of-law provision requiring ICANN to adapt its conduct to any and all principles of international law. It is not worded as choice-of-law clauses are. As ICANN's expert, Professor David D. Caron notes, it is unlikely that a choice-of-law clause would designate three sources of law on the

same level. It is the law of California, the place of ICANN's incorporation, that – by reason of ICANN's incorporation under the law of California -- governs how ICANN runs its business and interacts with another U.S. corporation regarding a contract to be performed within the United States. The IRP provisions of the Bylaws, drafted years after the Articles of Incorporation, and their drafting history, do not even mention Article 4 of the Articles.

107. Moreover, the specification of "relevant" principles of international law in Article 4 "must mean principles of international law that apply to a private entity such as ICANN" (*id.,* p. 66.) As a private party, ICANN is not subject to law governing sovereigns. International legal principles do not apply to a dispute between private entities located in the same nation because the dispute may have global effects.

108. Furthermore, ICM's cited general principles perform no clarifying role in this proceeding. The applicable rules set forth in ICANN's Bylaws and Articles as well as California law render resort to general principles unnecessary. In any event, California law and the Bylaws and Articles themselves provide sufficient guidance for the Panel's analysis.

ICANN Acted Consistently with its Articles of Incorporation and Bylaws

109. ICANN contends that each of ICM's key factual assertions is wrong. In view of the deference that should be accorded to the judgments of the ICANN Board, the Panel should declare that ICANN's conduct was not inconsistent with its Bylaws and Articles even if ICM's treatment of the facts were largely correct (as it is not). The issues presented to the ICANN Board by ICM's .XXX sTLD application were "difficult", ICANN's Board addressed them with "great care", and devoted "an enormous amount of time trying to determine the right course of action". ICM was fully heard; the Board deliberated openly and transparently. ICANN is unaware of a corporate deliberative process more open and transparent than its own. After this intensive process, the Board twice concluded that ICM's proposal should be rejected, "with no hint whatsoever of the 'bad faith' ICM alleges." (ICANN's Response to Claimant's Memorial on the Merits, pp. 79-80.)

110. ICM's claims "begin with the notion that ICANN adopted, and was bound by, an inflexible, two-step procedure for evaluating sTLD applications. First, according to ICM, applications would be reviewed by the Evaluation Panel for the baseline selection criteria. Second, only after applications were finally and irrevocably approved by the ICANN Board would the applications

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proceed to contract negotiations with ICANN staff with no ability by the Board to address any of the issues that the Board had previously raised in conjunction with the sTLD application." But the RFP refutes this contention. It does not suggest that the Board's "allowance for an application to proceed to contract negotiations confirms the close of the evaluation process." ICANN recalls the public statement of Mr. Pritz in Kuala Lumpur in 2004: "Upon completion of the technical and commercial negotiations, successful applicants will be presented to the ICANN Board with *all* the associated information, so the Board can independently review the findings along with the information and make their own adjustments. *And then* final decisions will be made by the Board, and they'll authorize staff to complete or execute the agreements with the sponsoring organizations..." *(Ibid.,* pp. 81-82.) It observes that Dr. Cerf affirmed that: "ICANN never intended that this would be a formal, 'two-step' process, where proceeding to contract negotiations automatically constituted a *de facto* final and irrevocable approval with respect to the baseline selection criteria, including sponsorship." (At p. 82, quoting V. Cerf Witness Statement, para. 15.) ICANN maintains that there were "two overlapping phases in the evaluation of the sTLDS" and the Board always retained the right "to vote against a proposed sTLD should the Board find deficiencies in the proposed registry agreement or in the sTLD proposal as a whole". (P. 83.) There was a two-stage process but the two phases could and often did overlap in time. This is confirmed not only by Dr. Cerf but by Dr. Twomey and the then Vice-Chairman of the Board, Alejandro Pisanty. Each explains that the ICANN Board retained the authority to review and assess the baseline RFP selection criteria even after an applicant was allowed to proceed to contract negotiations. After the June 1, 2005, vote, members supporting ICM's application did not argue that the Board had already approved the .XXX sTLD. The following exchange with Dr. Cerf took place in the course of the hearing:

> "Q. Now, ICM's position in this proceeding is that if the board voted to proceed to contract negotiations, the board was at that time making a finding that a particular applicant had satisfied the technical, financial and sponsorship criteria and that that issue was closed. Is that consistent with your understanding of how the process worked?

> "A. Not, it's not. The matter was discussed very explicitly during our consideration of the ICM proposal. We were using the contract negotiations as a means of clarifying whether or not...the sponsorship criteria could be or had been met...this was not a decision that all three of the criteria had been met." (Tr. 601:4:13.)

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111. ICM's evidence is not to the contrary. That evidence shows that there were two major steps in the evaluation process. It does not show that those steps could not be overlapping. The relevant question, not answered by ICM, is whether ICANN's Bylaws required these steps to be non-overlapping. "such that contract negotiations could not commence until the satisfaction of the RFP criteria was finally and irrevocably determined..." *(Ibid.,* p. 84.)

112. ICM's claims are also based on the argument that, by its terms, the Board's resolutions of June 1, 2005 gave "unconditional" approval of the .XXX sTLD application. (The June 1, 2005 resolutions are set out *supra,* paragraph 19.) But nothing in the resolutions actually says that ICM's application satisfied the RFP criteria, including sponsorship. In fact, nothing in the resolutions expresses approval at all because it provides that "if", after entering negotiations, the applicant is able to negotiate commercial and technical terms for a contractual arrangement, those terms shall be presented to the Board for approval and authorization to enter into an agreement relating to the delegation of the sTLD. "The plain language of the resolutions makes clear that they did not themselves constitute approval of the .XXX sTLD application. The resolutions thus track the RFP, which makes clear that a 'final decision will be made by the Board' only *after* 'completion of the technical and commercial negotiations'". (*Ibid.,* p. 86.)

113. ICANN maintains that as of June 2005, there remained numerous unanswered questions and concerns regarding ICM's ability to satisfy the baseline sponsorship criteria set forth in the RFP. An important purpose of the June 1 resolutions was to permit ICM to proceed to contract negotiations in an effort to determine whether ICM's sponsorship shortcomings could be resolved in the contract.

114. The ICANN Board also permitted other applicants for sTLDs -- .JOBS and .MOBI – to proceed to contract negotiations despite open questions relating to the initial RFP criteria. However, ICM was unique among the field of sTLD applicants due to "the extremely controversial nature of the proposed sTLD, and concerns as to whether ICM had identified a 'community' that existed and actually supported the proposed sTLD...there was a significant negative response to ICM's proposed .XXX sTLD by many adult entertainment providers, the very individuals and entities who logically would be in ICM's proposed community." *(Ibid.,* p. 87.)

115. ICM's position is further refuted by continued discussion by the Board of sponsorship criteria at meetings subsequent to June 1, 2005. The fact that most Board members expressed concern about sponsorship

shortcomings after the June 1, 2005, resolutions negates any notion that the Board had conclusively determined the sponsorship issue.

116. A member of the Board elected after the June 1, 2005, vote, Rita Rodin, expressed "some concerns about whether the [ICM] proposal met the criteria set forth in the RFP..." She said that she did not want to re-open issues if they had already been decided by the Board (*supra,* paragraphs 42-43).   In response to her query, no one stated that the sponsorship issue had already been decided by the Board. (ICANN'S Response to Claimant's Memorial on the Merits, p. 90.)

117. ICANN also draws attention to Dr. Twomey's letter of May 4, 2006 (*supra,* paragraph 37) in which he wrote that the Board's decision of June 1, 2005, was without prejudice to the Board's right to decide whether the contract reached with ICM meets all the criteria before the Board.

118. ICANN recalls that within days of the posting of the June 1, 2005, resolutions, GAC Chairman Tarmizi wrote Dr. Cerf expressing the GAC's "diverse and wide-ranging concerns" with the .XXX sTLD. The ICANN Board was required by the ICANN Bylaws to take account of the views of the GAC. Nor could ICANN have ignored concerns expressed by the U.S. Government and other governments. ICANN recalls the concerns expressed thereafter, in the Wellington Communique and otherwise. It observes that "some countries were concerned that, because the .XXX application would not require all pornography to be located within the .XXX domain, a new .XXX sTLD would simply result in the expansion of the number of domain names that involved pornography." (*Ibid.,* p. 102.)

119.   ICANN points out that:

> "In revising its proposed registry agreement to address the GAC's concerns...ICM took the position that it would install 'appropriate measures to restrict access to illegal and offensive content,' including monitoring such content globally. This was immediately controversial among many ICANN Board members because complaints about ICM's 'monitoring' would inevitably be sent to ICANN, which is neither equipped nor authorized to monitor (much less resolve) 'content-based' objections to Internet sites." (*Ibid.,* pp. 103-104.)

120. ICANN recalls Board concerns that were canvassed at its meetings of May 10, 2006, (*supra,* paragraph 38) and February 12, 2007, (*supra,* paragraphs 41-45). Board members increasingly were concluding that the results promised by ICM were unachievable. Whether their conclusions were

or were not incorrect is "irrelevant for purposes of determining whether the Board violated its Bylaws or Articles in rejecting ICM's application." *(Ibid.,* p. 105.) Board doubts were accentuated by growing opposition to the .XXX sTLD from elements of the online adult entertainment industry (*ibid.).*

121. The Board's May 10, 2006 vote (*supra,* paragraph 38) rejected ICM's then current draft, but provided ICM "yet another opportunity to attempt to revise the agreement to conform to the RFP specifications. Notably, the Board's decision to allow ICM to continue to work the problem is directly at odds with ICM's position that the Board decided 'for political reasons' to reject ICM's application; if so, it would have been much easier for the Board to reject ICM's application in its entirety in 2006." *(Ibid.,* p. 106.)

122. At its meeting of February 12, 2007, (*supra,* paragraphs 41-45), concerns in the Board about whether ICM's application enjoyed the support of the community it purported to represent were amplified.

123. At the meeting of March 30, 2007 at which ICM's application and agreement were definitively rejected, the majority was, first, concerned by ICM's definition of its community to include only those members of the industry who supported the creation of .XXX sTLD and its exclusion from the sponsored community of all online adult entertainment industry members who opposed ICM's application.

> "Such self-selection and extreme subjectivity regarding what constituted the content that defined the .XXX community made it nearly impossible to determine which persons or services would be in or out of the community...without a precisely defined Sponsored TLD Community, the Board could not approve ICM's sTLD application." *(Ibid.,* pp. 108-109.)

124. Second, ICM's proposed community was not adequately differentiated; ICM failed to demonstrate that excluded providers had separate needs or interests from the community it sought to represent. As contract negotiations progressed, it became increasingly evident that ICM was actually proposing an unsponsored TLD for adult entertainment, "a uTLD, disguised as an sTLD, just as ICM had proposed in 2000." *(Ibid.,* p. 209.)

125. Third, whatever community support ICM may have had at one time, it had "fallen apart by early 2007" (*ibid.).* During the final public comment period in 2007, "a vast majority of the comments posted to the public forum and sent to ICANN staff opposed ICM's .XXX sTLD..." (p. 110). "Broad-based support" was lacking. (P. 111.) 75,000 pre-registrations for .XXX... "Out of

the over 4.2 million adult content websites in operation" hardly represents broad-based support. (P. 115.)

126. Fourth, ICM could not demonstrate that it was adding new and valuable space to the Internet name space, as required by the RFP. "In fact, the existence of industry opposition to the .XXX sTLD demonstrated that the needs of online adult entertainment industry members were met via existing TLDs without any need for a new TLD." (P. 112.)

127. Fifth and finally, ICM and its supporting organization, IFFOR, proposed to "proactively reach out to governments and international organizations to provide information about IFFOR's activities and solicit input and participation". But such measures "diluted the possibility that their policies would be 'primarily in the interests of the Sponsored TLD Community' as required by the sponsorship selection criteria." (Pp. 112-113.)

128. ICANN concludes that, "despite the good-faith efforts of both ICANN and ICM over a lengthy period of time, the majority of the Board determined that ICM could not satisfy, among other things, the sponsorship requirements of the RFP." Reasonable people might disagree – as did a minority of the Board – "but that disagreement does not even approach a violation of a Bylaw or Article of Incorporation." (P. 113.)

 129. The treatment of ICM's application was procedurally fair. It was not the object of discrimination. Applications for .JOBS and .MOBI were also allowed to proceed to contractual negotiations despite open questions relating to selection criteria. ICANN applied documented policies neutrally and objectively, with integrity and fairness. ICM was provided with every opportunity to address the concerns of the Board and the GAC. ICANN did not reject ICM's application only for reasons of public policy (although they were important). ICM's application was rejected because of its inability to show how the sTLD would meet sponsorship criteria. The Board ultimately rejected ICM's application for "many of the same sponsorship concerns noted in the initial recommendation of the Evaluation Panel." (*Ibid.,* p. 124.) It also rejected the application because ICM's proposed registry agreement "would have required ICANN to manage the content of the .XXX sTLD" (p. 126). The Board took into account the views of the GAC in arriving at its independent judgment. "Had the ICANN Board taken the view that the GAC's views must in every case be followed without independent judgment, the Board presumably would have rejected ICM's application in late 2005 or early 2006, rather than waiting another full year for the parties to try to identify a resolution that would have allowed the sTLD to proceed." *(Ibid.)*

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130. As to whether ICM was treated unfairly and was the object of discrimination, ICANN relies on the following statement of Dr. Cerf at the hearing:

> "…I am surprised at an assertion that ICM was treated unfairly…the board could have simply accepted the recommendations of the evaluation teams and rejected the proposal at the outset…the board went out of its way to try to work with ICM through the staff to achieve a satisfactory agreement. We spent more time on this particular proposal than any other…We repeatedly defended our continued consideration of this proposal…If…ICM believes that it was treated in a singular way, I would agree that we spent more time and effort on this than any other proposal that came to the board with regard to sponsored TLDs." (Tr. 654:3-655:7.)

PART FOUR: THE ANALYSIS OF THE INDEPENDENT REVIEW PANEL

The Nature of the Independent Review Panel Process

131. ICM and ICANN differ on the question of whether the Declaration to be issued by the Independent Review Panel is binding upon the parties or advisory. The conflicting considerations advanced by them are summarized above at paragraphs 51 and 91-94. In the light of them, the Panel acknowledges that there is a measure of ambiguity in the pertinent provisions of the Bylaws and in their preparatory work.

132. ICANN's officers testified before committees of the U.S. Congress that ICANN had installed provision for appeal to "independent arbitration" (*supra,* paragraph 55). Article IV, Section 3 of ICANN's Bylaws specifies that, "The IRP shall be operated by an international arbitration provider appointed from time to time by ICANN…using arbitrators…nominated by that provider". The provider so chosen is the American Arbitration Association's International Centre for Dispute Resolution ("ICDR"), whose Rules (at C-11) in Article 27 provide for the making of arbitral awards which "shall be final and binding on the parties. The parties undertake to carry out any such award without delay." The Rules of the ICDR "govern the arbitration" (Article 1). It is unquestioned that the term, "arbitration" imports production of a binding award (in contrast to conciliation and mediation). Federal and California courts have so held. The Supplementary Procedures adopted to supplement the independent review procedures set forth in ICANN's Bylaws provide that the ICDR's "International Arbitration Rules…will govern the process in combination with these Supplementary Procedures". (C-12.) They specify

that the Independent Review Panel refers to the neutrals "appointed to decide the issue(s) presented" and further specify that, "DECLARATION refers to the decisions/opinions of the IRP". "The DECLARATION shall specifically designate the prevailing party." All of these elements are suggestive of an arbitral process that produces a binding award.

133. But there are other indicia that cut the other way, and more deeply. The authority of the IRP is "to declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws" – to "declare", not to "decide" or to "determine". Section 3(8) of the Bylaws continues that the IRP shall have the authority to "recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP". The IRP cannot "order" interim measures but do no more than "recommend" them, and this until the Board "reviews" and "acts upon the opinion" of the IRP. A board charged with reviewing an opinion is not charged with implementing a binding decision. Moreover, Section 3(15) provides that, "Where feasible, the Board shall consider the IRP declaration at the Board's next meeting." This relaxed temporal proviso to do no more than "consider" the IRP declaration, and to do so at the next meeting of the Board "where feasible", emphasizes that it is not binding. If the IRP's Declaration were binding, there would be nothing to consider but rather a determination or decision to implement in a timely manner. The Supplementary Procedures adopted for IRP, in the article on "Form and Effect of an IRP Declaration", significantly omit the provision of Article 27 of the ICDR Rules specifying that award "shall be final and binding on the parties". (C-12.) Moreover, the preparatory work of the IRP provisions summarized above in paragraph 93 confirms that the intention of the drafters of the IRP process was to put in place a process that produced declarations that would not be binding and that left ultimate decision-making authority in the hands of the Board.

134. In the light of the foregoing considerations, it is concluded that the Panel's Declaration is not binding, but rather advisory in effect.

The Standard of Review Applied by the Independent Review Process

135. For the reasons summarized above in paragraph 56, ICM maintains that this is a *de novo* review in which the decisions of the ICANN Board do not enjoy a deferential standard of review. For the reasons summarized above in paragraphs 100-103, ICANN maintains that the decisions of the Board are entitled to deference by the IRP.

136. The Internet Corporation for Assigned Names and Numbers is a not-for-profit corporation established under the law of the State of California. That law embodies the "business judgment rule". Section 309 of the California Corporations Code provides that a director must act "in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders..." and shields from liability directors who follow its provisions.   However ICANN is no ordinary non-profit California corporation. The Government of the United States vested regulatory authority of vast dimension and pervasive global reach in ICANN. In "recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization" – including ICANN -- ICANN is charged with "promoting the global public interest in the operational stability of the Internet..." ICANN "shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law..." Thus, while a California corporation, it is governed particularly by the terms of its Articles of Incorporation and Bylaws, as the law of California allows. Those Articles and Bylaws, which require ICANN to carry out its activities in conformity with relevant principles of international law, do not specify or imply that the International Review Process provided for shall (or shall not) accord deference to the decisions of the ICANN Board. The fact that the Board is empowered to exercise its judgment in the application of ICANN's sometimes competing core values does not necessarily import that that judgment must be treated deferentially by the IRP. In the view of the Panel, the judgments of the ICANN Board are to be reviewed and appraised by the Panel objectively, not deferentially. The business judgment rule of the law of California, applicable to directors of California corporations, profit and non-profit, in the case of ICANN is to be treated as a default rule that might be called upon in the absence of relevant provisions of ICANN's Articles and Bylaws and of specific representations of ICANN – as in the RFP – that bear on the propriety of its conduct. In the instant case, it is those Articles and Bylaws, and those representations, measured against the facts as the Panel finds them, which are determinative.

The Applicable Law of this Proceeding

137. The contrasting positions of the parties on the applicable law of this proceeding are summarized above at paragraphs 59-62 and 104-109. Both parties agree that the "local law" referred to in the provision of Article 4 of the Articles of Incorporation – "The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international

conventions and local law" – is the law of California. But they differ on what are "relevant principles of international law" and their applicability to the instant dispute.

138. In the view of ICM Registry, principles of international law are applicable; that straightforwardly follows from their specification in the foregoing phrase of Article 4 of the Articles, and from the reasons given in introducing that specification. (*Supra,* paragraphs 53-54.) Principles of international law in ICM's analysis include the general principles of law recognized as a source of international law in Article 38 of the Statute of the International Court of Justice. Those principles are not confined, as ICANN argues, to the few principles that may be relevant to the interests of Internet stakeholders, such as principles relating to trademark law and freedom of expression. Rather they include international legal principles of general applicability, such as the fundamental principle of good faith and allied principles such as estoppel and abuse of right. ICM's expert, Professor Goldsmith, observes that there is ample precedent in international contracts and in the holdings of international tribunals for the proposition that non-sovereigns may choose to apply principles of international law to the determination of their rights and to the disposition of their disputes.

139. ICANN and its expert, Professor David Caron, maintain that international law essentially governs relations among sovereign States; and that to the extent that such principles are "relevant" in this case, it is those few principles that are applicable to a private non-profit corporation that bear on the activities of ICANN described in Article 3 of its Articles of Incorporation (*supra,* paragraph 2). General principles of law, such as that of good faith, are not imported by Article 4 of ICANN's Articles of Incorporation; still less are principles derived from treaties that protect legitimate expectations. Nor is Article 4 of the Articles a choice-of-law provision; in fact, no governing law has been specified by the disputing parties in this case. If ICANN, by reason of its functions, is to be treated as analogous to public international organizations established by treaty (which it clearly is not), then a relevant principle to be extracted and applied from the jurisprudence of their administrative tribunals is that of deference to the discretionary authority of executive organs and of bodies whose decisions are subject to review.

140. In the view of the Panel, ICANN, in carrying out its activities "in conformity with the relevant principles of international law," is charged with acting consistently with relevant principles of international law, including the general principles of law recognized as a source of international law.

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That follows from the terms of Article 4 of its Articles of Incorporation and from the intentions that animated their inclusion in the Articles, an intention that the Panel understands to have been to subject ICANN to relevant international legal principles because of its governance of an intrinsically international resource of immense importance to global communications and economies.   Those intentions might not be realized were Article 4 interpreted to exclude the applicability of general principles of law.

141. That said, the differences between the parties on the place of principles of international law in these proceedings are not of material moment to the conclusions that the Panel will reach. The paramount principle in play is agreed by both parties to be that of good faith, which is found in international law, in the general principles that are a source of international law, and in the corporate law of California.

The Consistency of the Action of the ICANN Board with the Articles of Incorporation and Bylaws

142. The principal – and difficult – issue that the Panel must resolve is whether the rejection by the ICANN Board of the proposed agreement with ICM Registry and its denial of the application's request for delegation of the .XXX sTLD was or was not consistent with ICANN's Articles of Incorporation and Bylaws. The conflicting contentions of the parties on this central issue have been set forth above (paragraphs 63-93, 109-131).

143. The Panel will initially consider the primary questions of whether by adopting the resolutions of June 1, 2005, the ICANN Board determined that the application of ICM Registry met the sponsorship criteria, and, if so, whether that determination was definitive and irrevocable.

144. The parties agree that, pursuant to the RFP, applications for sTLDs were to be dealt with in two stages. First, the Evaluation Panel was to review applications and recommend those that met the selection criteria. Second, those applicants that did meet the selection criteria were to proceed to negotiate commercial and technical terms of a contract with ICANN's President and General Counsel. If and when those terms were agreed upon, the resultant draft contract was to be submitted to the Board for approval. As it turned out, the Board was not content with the fact that the Evaluation Panel positively recommended only a few applications. Accordingly the Board itself undertook to consider and decide whether the other applications met the selection criteria.

145. In the view of the Panel, which has weighed the diverse evidence with care, the Board did decide by adopting its resolutions of June 1, 2005, that the application of ICM Registry for a sTLD met the selection criteria, in particular the sponsorship criteria. ICM contends that that decision was definitive and irrevocable. ICANN contends that, while negotiating commercial and technical terms of the contract, its Board continued to consider whether or not ICM's application met sponsorship criteria, that it was entitled to do so, and that, in the course of that process, further questions about ICM's application arose that were not limited to matters of sponsorship, which the Board also ultimately determined adversely to ICM's application.

146. The considerations that militate in favor of ICM's position are considerable. They are summarized above in paragraphs 63, 65 and 66. ICM argues that these considerations must prevail because they are sustained by contemporary documentary evidence, whereas the contrary arguments of ICANN are not.

147. The Panel accepts the force of the foregoing argument of ICM insofar as it establishes that the June 1, 2005, resolutions accepted that ICM's application met the sponsorship criteria. The points summarized in subparagraphs (a) through (i) of paragraph 63 above are in the view of the Panel not adequately refuted by the recollections of ICANN's witnesses, distinguished as they are and candid as they were. Their current recollection, the sincerity of which the Panel does not doubt, is that it was their understanding in adopting the June 1, 2005 resolution that the Board was entitled to continue to examine whether ICM's application met the sponsorship criteria, even if it had by adopting that resolution found those criteria to have been provisionally met (which they challenge). While that understanding is not supported by factors (a) through (i) of paragraph 63, it nevertheless can muster substantial support on the question of whether any determination that sponsorship criteria had been met was subject to reconsideration.

148. Support on that aspect of the matter consists of the following:

- (a) The resolutions of June 1, 2005 (*supra,* paragraph 19) make no reference to the satisfaction of sponsorship criteria or to whether that question is definitively resolved.

- (b) Those resolutions however expressly provide that the approval and authorization of the Board is required to enter into an agreement relating to

the delegation of the sTLD; that being so, the Board viewed itself to be entitled to review all elements of the agreement before approving and authorizing it, including whether sponsorship criteria were met.

- (c) At the meeting of the GAC in July, 2005, some six weeks after the adoption by the Board of its resolutions of June 1, in the course of preparing the GAC Communique, the GAC Chair "confirmed that, having consulted the ICANN Legal Counsel, GAC could still advise ICANN about the *.xxx* proposal, should it decide to do so." (*Supra,* paragraph 24.) Since on the advice of counsel the GAC could still advise ICANN about the .XXX proposal, and since questions had been raised in the GAC about whether ICM's application met sponsorship criteria in the light of the appraisal of the Evaluation Panel, it may seem to follow that that advice could embrace the question of whether sponsorship criteria had been met and whether any such determination was subject to reconsideration. In point of fact, after June 1, 2005, a number of members of the GAC challenged or questioned the desirability of approving the ICM application on a variety of grounds, including sponsorship (*supra,* paragraphs 21-25, 40).

- (d) At its teleconference of September 15, 2005, there was "lengthy discussion involving nearly all of the directors regarding the sponsorship criteria..." *(supra,* paragraph 32). That imports that the members of the Board did not regard the question of sponsorship criteria to have been closed by the adoption of the resolutions of June 1, 2005.

- (e) In a letter of May 4, 2006, the President Twomey wrote the Chairman and Members of the GAC noting

> "that the Board decision as to the .XXX application is still pending...the Board voted to authorize staff to enter into contractual negotiations without prejudicing the Board's right to evaluate the resulting contract and to decide whether it meets all of the criteria before the Board including public policy advice such as might be offered by the GAC... Due to the subjective nature of the sponsorship related criteria that were reviewed by the Sponsorship Evaluation Team, additional materials were requested from each applicant to be supplied directly for Board review and consideration...In some instances, such as with .XXX, while the additional materials provided sufficient clarification to proceed with contractual discussions, the Board still expressed concerns about whether the applicant met all of the criteria, but took the view that such concerns could possibly be

addressed by contractual obligations to be stated in a registry agreement." (C-188, and *supra,* paragraph 37.)

- (f) At a Board teleconference of February 12, 2007, ICANN's General Counsel asked the Board to consider "how ICM measures up against the RFP criteria," a request that implies that questions about whether such criteria had been met were not foreclosed. *(Supra,* paragraph 41.)

- (g) ICM provided data to ICANN staff, in the course of the preparation of its successive draft registry agreements, that bore on sponsorship. It has not placed in evidence contemporaneous statements that in its view such data was not relevant to continued consideration of its application on the ground that it had met sponsorship criteria or that the Board's June 1, 2005 resolutions foreclosed further consideration of sponsorship criteria. It Is understandable that it did not do so, because it was in the process of endeavoring to respond positively to every request of the ICANN Board and staff that it could meet in the hope of promoting final approval of its application; but nevertheless that ICM took part in a continuing dialogue on sponsorship criteria suggests that it too did not regard, or at any rate, treat, that question as definitively resolved by adopted of the June 1, 2005 resolutions.

- (h) When Rita Rodin, a new member of the Board, raised concerns about ICM's meeting of sponsorship criteria at the Board's teleconference of February 12, 2007, she said that she did "not wish to reopen issues if they have already been decided by the Board" and asked the President and General Counsel to confirm that the question was open for discussion. There was no direct reply but the tenor of the subsequent discussion indicates that the Board did not view the question as closed. (During the Board's debate over adoption of its climactic resolution of March 30, 2007, Susan Crawford said that opposition to ICM's application was not sufficient "to warrant revisiting the question of the sponsorship strength of this TLD which I personally believe to be closed.") *(Supra,* paragraph 52.)

149. While the Panel has concluded that by adopting its resolutions of June 1, 2005, the Board found that ICM's application met financial, technical and sponsorship criteria, less clear is whether that determination was subject to reconsideration. The record is inconclusive, for the conflicting reasons set forth above in paragraphs 63, 65 and 66 (on behalf of ICM) and paragraph 149 (on behalf of ICANN). The Panel nevertheless is charged with arriving at a conclusion on the question. In appraising whether ICANN on this issue "applied documented policies, neutrally and objectively, with integrity and

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fairness" (Bylaws, Section 2(8), the Panel finds instructive the documented policy stated in the Board's Carthage resolution of October 31, 2003 on "Finalization of New sTLD RFP," namely, that an agreement "reflecting the commercial and technical terms shall be negotiated upon the successful completion of the sTLD selection process." (C-78, p. 4.) In the Panel's view, the sTLD process was "successfully completed", as that term is used in the Carthage RFP resolution, in the case of ICM Registry with the adoption of the June 1, 2005, resolutions. ICANN should, pursuant to the Carthage documented policy, then have proceeded to conclude an agreement with ICM on commercial and technical terms, without reopening whether ICM's application met sponsorship criteria. As Dr. Williams, chair of the Evaluation Panel, testified, the RFP process did not contemplate that new criteria could be added after the [original] criteria had been satisfied. (Tr. 374: 1719). It is pertinent to observe that the GAC's proposals for new TLDs generally exclude consideration of new criteria (*supra,* paragraph 46).

150. In so concluding, the Panel does not question the integrity of the ICANN Board's disposition of the ICM Registry application, still less that of any of the Board's members. It does find that reconsideration of sponsorship criteria, once the Board had found them to have been met, was not in accord with documented policy. If, by way of analogy, there was a construction contract at issue, the party contracting with the builder could not be heard to argue that specifications and criteria defined in invitations to tender can be freely modified once past the qualification stage; the conditions of any such modifications are carefully circumscribed. Admittedly in the instant case the Board was not operating in a context of established business practice. That fact is extenuating, as are other considerations set out above. The majority of the Board appears to have believed that was acting appropriately in reconsidering the question of sponsorship (although a substantial minority vigorously differed). The Board was pressed to do so by the Government of the United States and by quite a number of other influential governments, and ICANN was bound to "duly take into account" the views of those governments. It is not at fault because it did so. It is not possible to estimate just how influential expressions of governmental positions were. They were undoubtedly very influential but it is not clear that they were decisive. If the Board simply had yielded to governmental pressure, it would have disposed of the ICM application much earlier. The Panel does not conclude that the Board, absent the expression of those governmental positions, would necessarily have arrived at a conclusion favorable to ICM. It accepts the affirmation of members of the Board that they did not vote against acceptance of ICM's application because of governmental pressure. Certainly there are those, including Board members,

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who understandably react negatively to pornography, and, in some cases, their reactions may be more visceral than rational. But they may also have had doubts, as did the Board, that ICM would be able successfully to achieve what it claimed .XXX would achieve.

151. The Board's resolution of March 30, 2007, rejecting ICM's proposed agreement and denying its request for delegation of the .XXX sTLD lists four grounds for so holding in addition to failure to meet sponsored community criteria (*supra,* paragraph 47). The essence of these grounds appears to be the Board's understanding that the ICM application "raises significant law enforcement compliance issues ... therefore obligating ICANN to acquire responsibility related to content and conduct ... there are credible scenarios that lead to circumstances in which ICANN would be forced to assume an ongoing management and oversight role regarding Internet content, which is inconsistent with its technical mandate." ICM interprets these grounds, and statements of Dr. Twomey and Dr. Cerf, as seeking to impose on ICM responsibility for "enforcing restrictions around the world on access to illegal and offensive content" (*supra,* paragraph 66-67). ICM avers that it never undertook "to enforce the laws of the world on pornography", an undertaking that it could never discharge. It did undertake, in the event of the approval and activation of .XXX, to install tools that would make it far easier for governments to restrict access to content that they deemed illegal and offensive.   ICM argues that its application was rejected in part because of its inability to comply with a contractual undertaking to which it never had agreed in the first place *(supra,* paragraphs 66-71). To the extent that this is so – and the facts and the conclusions drawn from the facts by the ICANN Board in its resolution of March 30, 2007, in this regard are not fully coherent – the Panel finds ground for questioning the neutral and objective performance of the Board, and the consistency of its so doing with its obligation not to single out ICM Registry for disparate treatment.

PART FIVE: CONCLUSIONS OF THE INDEPENDENT REVIEW PANEL

152. The Panel concludes, for the reasons stated above, that:

First, the holdings of the Independent Review Panel are advisory in nature; they do not constitute a binding arbitral award.

Second, the actions and decisions of the ICANN Board are not entitled to deference whether by application of the "business judgment" rule or otherwise; they are to be appraised not deferentially but objectively.
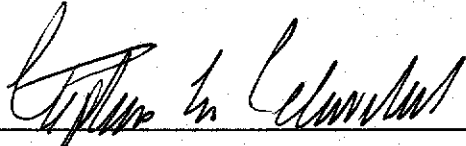
Third, the provision of Article 4 of ICANN's Articles of Incorporation prescribing that ICANN "shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law," requires ICANN to operate in conformity with relevant general principles of law (such as good faith) as well as relevant principles of international law, applicable international conventions, and the law of the State of California.

Fourth, the Board of ICANN in adopting its resolutions of June 1, 2005, found that the application of ICM Registry for the .XXX sTLD met the required sponsorship criteria.

Fifth, the Board's reconsideration of that finding was not consistent with the application of neutral, objective and fair documented policy.
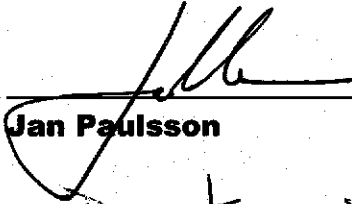
Sixth, in respect of the first foregoing holding, ICANN prevails; in respect of the second foregoing holding, ICM Registry prevails; in respect of the third foregoing holding, ICM Registry prevails; in respect of the fourth foregoing holding, ICM Registry prevails; and in respect of the fifth foregoing holding, ICM Registry prevails. Accordingly, the prevailing party is ICM Registry. It follows that, in pursuance of Article IV, Section 3(12) of the Bylaws, ICANN shall be responsible for bearing all costs of the IRP Provider. Each party shall bear its own attorneys' fees. Therefore, the administrative fees and expenses of the International Centre for Dispute Resolution, totaling $4,500.00, shall be borne entirely by ICANN, and the compensation and expenses of the Independent Review Panel, totaling $473,744.91, shall be borne entirely by ICANN. ICANN shall accordingly reimburse ICM Registry with the sum of $241,372.46, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by ICM Registry.

Judge Tevrizian is in agreement with the first foregoing conclusion but not the subsequent conclusions. His opinion follows.

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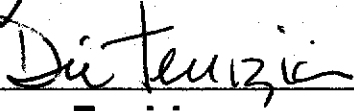
_____ Date: February 19, 2010
Stephen M. Schwebel

_____ Date: 16 February 2010
Jan Paulsson

_____ Date: February 18, 2010
Dickran Tevrizian

CONCURRING AND DISSENTING OPINION

I concur and expressly join in the Panel's conclusion that the holdings of the Independent Review Panel are advisory in nature and do not constitute a binding arbitral award. I adopt the rationale and the reasons stated by the Panel on this issue only.

However, I must respectfully dissent from my learned colleagues as to the remainder of their findings. I am afraid that the majority opinion will undermine the governance of the internet community by permitting any disgruntled person, organization or governmental entity to second guess the administration of one of the world's most important technological resources.

I

INTRODUCTION

The Internet Corporation for Assigned Names and Numbers (hereinafter "ICANN") is a uniquely created institution: a global, private, not-for-profit organization incorporated under the laws of the State of California (Calif. Corp. Code 5100, et seq.) exercising plenary control over one of the world's most important technological resources: the Internet Domain Name System or "DNS." The DNS is the gateway to the nearly infinite universe of names and numbers that allow the Internet to function.

ICANN is a public benefit, non-profit corporation that was established under the law of the State of California on September 30, 1998. ICANN's Articles of Incorporation were finalized and adopted on November 21, 1998, and its By-Laws were finalized and adopted on the same day as its Articles of Incorporation.

Article 4 of ICANN's Articles of Incorporation sets forth the standard of conduct under which ICANN is required to carry out its activities and mission to protect the stability, integrity and utility of the Internet Domain Name System on behalf of the global Internet community pursuant to a series of agreements with the United States Department of Commerce. ICANN is headquartered in Marina del Rey, California, U.S.A.

Article 4 of ICANN's Articles of Incorporation specifically provide:

> "The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations."

ICANN serves the function as the DNS root zone administrator to ensure and is required by its Articles of Incorporation to be a neutral and open facilitator of Internet coordination. ICANN's function and purpose was never meant to be content driven in any respect.

The Articles of Incorporation provide that ICANN is managed by a Board of Directors ("Board"). The Board consists of 15 voting directors and 6 non-voting liaisons from around the world, "who in the aggregate [are to] display diversity in geography, culture, skills, experience and perspective." (Article VI, § 2). The voting directors are composed of: (1) six representatives of ICANN's Supporting Organizations, which are sub-groups dealing with specific sections of the policies under ICANN's purview; (2) eight independent representatives of the general public interest, currently selected through ICANN's Nominating Committee, in which all the constituencies of ICANN are represented; and (3) the President and CEO, who is appointed by the rest of the Board. Consistent with ICANN's mandate to provide private sector technical leadership in the management of the DNS, "no official of a national government" may serve as a director. (Article VI, § 4). In carrying out its functions, it is obvious that ICANN is expected to solicit and will receive input from a wide variety of Internet stakeholders and participants.

ICANN operates through its Board of Directors, a Staff, An Ombudsman, a Nominating Committee for Directors, three Supporting Organizations, four Advisory Committees and numerous other stakeholders that participate in the unique ICANN process. (By-Laws Articles V through XI).

As was stated earlier, ICANN was formed under the laws of the State of California as a public benefit, non-profit corporation. As such, it would appear that California Corporations Code Section 5100, et seq., together with ICANN's Articles of Incorporation and By-Laws, control its governance and accountability.

In general, a non-profit director's fiduciary duties include the duty of care, which includes an obligation of due inquiry and the duty of loyalty among others. The term "fiduciary" refers to anyone who holds a position requiring trust, confidence and scrupulous exercise of good faith and candor. It includes anyone who has a duty, created by a particular undertaking, to act primarily for the benefit of others in matters connected with the undertaking. A fiduciary relationship is one in which one person reposes trust and confidence in another person, who "must exercise a corresponding degree of fairness and good faith." (Blacks Law Dictionary). The type of persons who are commonly referred to as fiduciaries include corporate directors. The California Corporation's Code makes no distinction between

directors chosen by election and directors chosen by selection or designation in the application of fiduciary duties.

Directors of non-profit corporations in California owe a fiduciary duty to the corporation they serve and to its members, if any. See <u>Raven's Cove Townhomes, Inc. v. Knuppe Dev. Co.</u>, (1981) 114 CA3d 783, 799; <u>Burt v. Irvine Co.</u>, (1965) 237 CA2nd 828, 852. *See also,* <u>Harvey v. Landing Homeowners Assn.</u>, (2008) 162 CA4th 809, 821-822.

The "business judgment rule" is the standard the California courts apply in deciding whether a director, acting without a financial interest in the decision, satisfied the requirements of careful conduct imposed by the California Corporations Code. *See* <u>Gaillard v. Natomas Co.</u>, (1989) 208 CA3d 1250, 1264. The rule remains a creature of common law. Some California courts define it as a standard of reasonable conduct. *See* <u>Burt v. Irvine Co.</u>, (1965) 237 CA2d 828, while others speak of actions taken in good faith. *See* <u>Marble v. Latchford Glass Co.</u>, (1962) 205 CA2d 171. While, still others examine whether the director "rationally believes that the business judgment is in the best interests of the corporation." *See* <u>Lee v. Interinsurance Exch.</u>, (1996) 50 CA4th 694.

The business judgment rule is codified in Section 309 of the California Corporations Code, which provides that a director must act "in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances." Cal. Corp. Code § 309(a); *see also* <u>Lee v. Interinsurance Exch.</u>, (1996) 50 CA4th 694, 714. Section 309 shields from liability directors who follow its provisions: "A person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge the person's obligations as a director." Cal. Corp. Code § 309 (c).

II
THE ACTIONS OF THE ICANN BOARD OF DIRECTORS ARE ENTITLED TO SUBSTANTIAL DEFERENCE FROM THE INDEPENDENT REVIEW PANEL

ICANN's By-Laws, specifically Article I, § 2, sets forth 11 core values and concludes as follows:

> "These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new

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situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values."

The By-Laws make it clear that the core values must not be construed in a "narrowly prescriptive"manner. To the contrary, Article I, § 2, provides that the ICANN Board is vested with board discretion in implementing its responsibility such as is mentioned in the business judgment rule.

III
PRINCIPLES OF INTERNATIONAL LAW DO NOT APPLY

Article 4 of the ICANN Articles of Incorporation does not preempt the California Corporations Code as a "choice-of-law provision" importing international law into the independent review process. Rather, the substantive provisions of the By-Laws and Articles of Incorporation, as construed in light of the law of California, where ICANN is incorporated as a non-profit entity, should govern the claims before the Independent Review Panel (hereinafter "IRP").

Professor Caron opined that principles of international law do not apply because, as a private entity, ICANN is not subject to that body of law governing sovereigns. To adopt a more expansive view is tantamount to judicial legislation or mischief.

IV
THE ICANN BOARD OF DIRECTORS DID NOT ACT
INCONSISTENTLY WITH ICANN'S ARTICLES
OF INCORPORATION AND BY-LAWS IN
CONSIDERING AND ULTIMATELY DENYING
ICM REGISTRY, LLC'S APPLICATION FOR
A SPONSORED TOP LEVEL DOMAIN NAME

On March 30, 2007, the ICANN Board of Directors approved a resolution rejecting the proposed registry agreement and denying the application submitted by ICM Registry, LLC for a sponsored top level domain name. The findings of the Board was that the application was deficient in that the applicant, ICM Registry, LLC, (hereinafter "ICM"), failed to satisfy the

Request For Proposal ("hereinafter "RFP") posted June 24, 2003, in the following manner:

> "1.   ICM's definition of its sponsored TLD community was not capable of precise or clear definition;
> 2.   ICM's policies were not primarily in the interests of the sponsored TLD community;
> 3.   ICM's proposed community did not have needs and interests which are differentiated from those of the general global Internet community;
> 4.   ICM could not demonstrate that it had the requisite community support; and,
> 5.   ICM was not adding new and valuable space to the Internet name space."

On December 15, 2003, ICANN posted a final RFP for a new round of sponsored Top Level Domain Names (hereinafter "STLD"). On March 16, 2004, ICM submitted its application for the .XXX STLD name. From the inception, ICM knew that its .XXX application would be controversial. From the time that ICM submitted its applications until the application was finally denied on March 30, 2007, ICM never was able to clearly define what the interests of the .XXX community would be or that ICM had adequate support from the community it sought to represent.

ICM has claimed during these proceedings that the RFP posted by ICANN established a non-overlapping two-step procedure for approving new STLDs, under which applications would first be tested for baseline criteria, and only after the applications were finally and irrevocably approved by the ICANN Board could the applications proceed to technical and commercial contract negotiations with ICANN staff. ICM forcefully argues that on June 1, 2005, the ICANN Board irrevocably approved the ICM .XXX STLD application so as to be granted vested rights to enter into registry agreement negotiations dealing with economic issues only. The evidence introduced at the independent review procedure refutes this contention. Nothing contained in the ICANN RFP permits this interpretation.

Before the ICANN Board could approve a STLD application, applicants had to satisfy the baseline selection criteria set forth in the RFP, including the technical, business, financial and sponsorship criteria, and also negotiate an acceptable registry contract with ICANN staff. A review of the relevant documents and testimony admitted into evidence established that the two phases could overlap in time.

The fact that most ICANN Board members expressed significant concerns about ICM's sponsorship shortcomings after the June 1, 2005,

resolutions negates any notion that the June 1, 2005, resolutions (which do not say that the Board is approving anything and, to the contrary, state clearly that the ICANN Board is not doing so) conclusively determined the sponsorship issue.

The sponsorship issues and shortcomings in ICM's application were also raised by ICANN Board members who joined the ICANN Board after the June 1, 2005, resolutions. Between the June 2005 and February 2007 ICANN Board meetings, there were a total of six new voting Board members (out of a total of fifteen) considering ICM's application.

Both Dr. Cerf and Dr. Pisanty testified during the evidentiary hearing that the ICANN Board's vote on June 1, 2005, made clear that the Board's vote was intended only to permit ICM to proceed with contract negotiations. Under no circumstances was ICANN bound by the vote to award the .XXX STLD to ICM because the resolution that the ICANN Board adopted was not a finding that ICM had satisfied the sponsorship criteria set forth in the Request for Proposal.

By August 9, 2005, ICM's first draft of the proposed .XXX STLD registry agreement was posted on ICANN's website and submitted to the ICANN Board for approval. ICANN's next Board meeting was scheduled for August 16, 2005, at which time the ICANN Board had planned on discussing the proposed agreement.

Within days of ICANN posting the proposed registry agreement, the Government Advisory Committee (hereinafter "GAC") Chairman wrote Dr. Cerf a letter expressing the GAC's diverse and wide ranging" concerns with the .XXX STLD and requesting that the ICANN Board provide additional time for governments to express their public policy concerns before the ICANN Board reached a final decision on the proposed registry agreement.

The GAC's input was significant and proper because the ICANN By-Laws require the ICANN Board to take into account advice from the GAC on public policy matters, both in formulation and adoption of policies. ICANN By-Laws Article XI, § 2.1 (j), provides: "The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies." Where the ICANN Board seeks to take actions that are inconsistent with the GAC's advice, the Board must tell the GAC why. Thus, it was perfectly acceptable, appropriate and fully consistent with the ICANN Articles of Incorporation and By-Laws for the ICANN Board to consider and to address the GAC's concerns.

Further, throughout 2005 and up to the ICANN Board's denial of the ICM .XXX STLD on March 30, 2007, a number of additional continuing concerns and issues appeared beyond those originally voiced by the evaluation panel at the beginning of the review process. Despite the best efforts of many and

numerous opportunities, ICM could not satisfy these additional concerns and, most importantly, could not cure the continuing sponsorship defects.

In all respects, ICANN operated in a fair, transparent and reasoned manner in accordance with its Articles of Incorporation and By-Laws.

V

CONCLUSION

For the reasons stated above, I would give substantial deference to the actions of the ICANN Board of Directors taken on March 30, 2007, in approving a resolution rejecting the proposed registry agreement and denying the application submitted by ICM Registry, LLC for a sponsored top level domain name. I specifically reject any notion that there was any sinister motive by any ICANN Director, governmental entity or religious organization to undermine ICM Registry, LLC's application. In my opinion, the application was rejected on the merits in an open and transparent forum. On the basis of that, ICM Registry, LLC never satisfied the sponsorship requirements and criteria for a top level domain name.

The rejection of the business judgment rule will open the floodgates to increased collateral attacks on the decisions of the ICANN Board of Directors and undermine its authority to provide a reliable point of reference to exercise plenary control over the Internet Domain Name System. In addition, it will leave the ICANN Board in a very vulnerable position for politicization of its activities.

The business judgment rule establishes a presumption that the directors' and officers' decisions are based on sound business judgment, and it prohibits courts from interfering in business decisions made by the management in good faith and in the absence of a conflict of interest. *Katz v. Chevron Corp.*, 22 Cal.App.4th 1352. In most cases, "the presumption created by the business judgment rule can be rebutted only by affirmative allegations of facts which, if proven, would establish fraud, bad faith, overreaching or an unreasonable failure to investigate material facts." The record in this case does not support such findings. In addition, interference with the discretion of the directors is not warranted in doubtful cases such as is present here. *Lee v. Interinsurance Exch.*, 50 Cal.App.4th 694.

In *Marble v. Latchford Glass Co.*, 205 Cal.App.2nd 171, the court stated that it would "not substitute its judgment for the business judgment of the board of directors made in good faith." Similarly, in *Eldridge v. Tymshare, Inc.*, 186 Cal.App.3rd 767, the court stated that the business judgment rule "sets up a presumption that directors' decisions are based on sound business judgment. This presumption can be rebutted only by a factual showing of fraud, bad faith or gross overreaching." ICM Registry, LLC has not met the standard articulated by established law.

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In the present case, regardless of how ICM Registry, LLC stylizes its allegations, the business judgment rule poses a substantial hurdle for ICM's effort which I submit was never met by the evidence presented. The evidence presented at the hearing held in this matter disclosed that at every step the decisions made by the ICANN Board were made in good faith, and for the benefit of the continued operation of ICANN in its role as exercising plenary control over one of the world's most important technological resources: the Internet Domain Name System.

Simply stated, as long as ICANN is incorporated and domiciled within the State of California, U.S.A., it is the undersigned's opinion that the standard of review to be used by the Independent Review Panel in judging the conduct of the ICANN board, is the abuse of discretion standard, based upon the business judgment rule, and not a de novo review of the evidence.

JUDGE DICKRAN TEVRIZIAN (Retired)

February 18, 2010

RM 4

IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS BEFORE THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

Between:)
)
Vistaprint Limited   )
)
Claimant   )
)
v.   )   **ICDR Case No. 01-14-0000-6505**
)
INTERNET CORPORATION FOR   )
ASSIGNED NAMES AND NUMBERS   )
)
Respondent   )
_____   )

FINAL DECLARATION OF THE INDEPENDENT REVIEW PANEL

IRP Panel:

Geert Glas
Siegfried H. Elsing
Christopher S. Gibson (Chair)

I.   Introduction

1.   This Final Declaration ("Declaration") is issued in this Independent Review Process ("IRP") pursuant to Article IV, § 3 of the Bylaws of the Internet Corporation for Assigned Names and Numbers ("Bylaws"; "ICANN"). In accordance with the Bylaws, the conduct of this IPR is governed by the International Centre for Dispute Resolution's ("ICDR") International Dispute Resolution Procedures, amended and effective June 1, 2014 ("ICDR Rules"), as supplemented by the Supplementary Procedures for Internet Corporation for Assigned Names and Numbers Independent Review Process, dated December 21, 2011 ("Supplementary Procedures").

2.   Claimant, Vistaprint Limited ("Vistaprint"), is a limited company established under the laws of Bermuda. Vistaprint describes itself as "an Intellectual Property holding company of the publicly traded company, Vistaprint NV, a large online supplier of printed and promotional material as well as marketing services to micro businesses and consumers. It offers business and consumer marketing and identity products and services worldwide."[1]

3.   Respondent, ICANN, is a California not-for-profit public benefit corporation. As stated in its Bylaws, ICANN's mission "is to coordinate, at the overall level, the global Internet's system of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems."[2] In its online Glossary, ICANN describes itself as "an internationally organized, non-profit corporation that has responsibility for Internet Protocol (IP) address space allocation, protocol identifier assignment, generic (gTLD) and country code (ccTLD) Top-Level Domain name system management, and root server system management functions."[3]

4.   As part of this mission, ICANN's responsibilities include introducing new top-level domains ("TLDs") to promote consumer choice and competition, while maintaining the stability and security of the domain name system ("DNS").[4] ICANN has gradually expanded the DNS from the original six generic top-level domains ("gTLDs")[5] to include 22 gTLDs and over 250 country-code TLDs.[6] However, in June 2008, in a significant step ICANN's Board of Directors ("Board") adopted recommendations developed by one of its policy development bodies, the Generic Names Supporting Organization ("GNSO"), for

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[1] Request for Independent Review Process by Vistaprint Limited dated June 11, 2014 ("Request"), ¶ 12.
[2] ICANN's Response to Claimant Vistaprint Limited's Request for Independent Review Process dated July 21, 2014 ("Response"), ¶ 13; Bylaws, Art. I, § 1.
[3] Glossary of commonly used ICANN Terms, at https://www.icann.org/resources/pages/glossary-2014-02-03-en#i (last accessed on Sept. 15, 2015).
[4] Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers ("Affirmation of Commitments"), Article 9.3 (Sept. 30, 2009), available at https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en (last accessed on Sept. 15, 2015).
[5] The original six gTLDs consisted of .com; .edu; .gov; .mil; .net; and .org.
[6] Request, ¶ 14.

introducing additional new gTLDs.[7] Following further work, ICANN's Board in June 2011 approved the "New gTLD Program" and a corresponding set of guidelines for implementing the Program – the gTLD Applicant Guidebook ("Guidebook").[8] ICANN states that "[t]he New gTLD Program constitutes by far ICANN's most ambitious expansion of the Internet's naming system."[9] The Guidebook is a foundational document providing the terms and conditions for new gTLD applicants, as well as step-by-step instructions and setting out the basis for ICANN's evaluation of these gTLD applications.[10] As described below, it also provides dispute resolution processes for objections relating to new gTLD applications, including the String Confusion Objection procedure ("String Confusion Objection" or "SCO") .[11] The window for submitting new gTLD applications opened on January 12, 2012 and closed on May 30, 2012, with ICANN receiving 1930 new gTLD applications.[12] The final version of the Guidebook was made available on June 4, 2012.[13]

5.   This dispute concerns alleged conduct by ICANN's Board in relation to Vistaprint's two applications for a new gTLD string, ".WEBS", which were submitted to ICANN under the New gTLD Program. Vistaprint contends that ICANN's Board, through its acts or omissions in relation to Vistaprint's applications, acted in a manner inconsistent with applicable policies, procedures and rules as set out in ICANN's Articles of Incorporation ("Articles") and Bylaws, both of which should be interpreted in light of the Affirmation of Commitments between ICANN and the United States Department of Commerce ("Affirmation of Commitments").[14] Vistaprint also states that because ICANN's Bylaws require ICANN to apply established policies neutrally and fairly, the Panel must consider other ICANN policies relevant to the dispute, in particular, the policies in Module 3 of the Guidebook regarding ICANN's SCO procedures, which Vistaprint claims were violated.[15]

6.   Vistaprint requests that the IRP Panel provide the following relief:

   ▪   Find that ICANN breached its Articles, Bylaws, and the Guidebook;

   ▪   Require that ICANN reject the determination of the Third Expert in the String

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[7] ICANN Board Resolution 2008.06.26.02, at http://www.icann.org/en/groups/board/documents/resolutions-26jun08-en.htm (last accessed on Sept. 11, 2015).

[8] ICANN Board Resolution 2011.06.20.01, at http://www.icann.org/en/groups/board/documents/resolutions-20jun11-en.htm (last accessed on Sept. 11, 2015). ICANN states that the "Program's goals include enhancing competition and consumer choice, and enabling the benefits of innovation via the introduction of new gTLDs." Response, ¶ 16. The Guidebook is available at http://newgtlds.icann.org/en/applicants/agb (last accessed on Sept. 13, 2015).

[9] Response, ¶ 16.

[10] Response, ¶ 16.

[11] The Guidebook is organized into Modules. Module 3 (Objection Procedures) is of primary relevance to this IRP case.

[12] Response, ¶ 5; New gTLD Update (May 30, 2012) on the close of the TLD Application system, at http://newgtlds.icann.org/en/announcements-and-media/announcement-3-30may12-en (last accessed on Sept. 11, 2015).

[13] gTLD Applicant Guidebook, Version 2012-06-04.

[14] Affirmation of Commitments.

[15] Request, ¶ 58; Vistaprint's First Additional Submission, ¶ 34.

Confusion Objection proceedings involving Vistaprint ("*Vistaprint SCO*")[16], which found that the two proposed gTLD strings – .WEBS and .WEB – are confusingly similar, disregard the resulting "Contention Set", and allow Vistaprint's applications for .WEBS to proceed on their own merits;

- In the alterative, require that ICANN reject the *Vistaprint SCO* determination and organize a new independent and impartial SCO procedure, according to which a three-member panel re-evaluates the Expert Determination in the *Vistaprint SCO* taking into account (i) the ICANN Board's resolutions on singular and plural gTLDs[17], as well as the Board's resolutions on the DERCars SCO Determination, the United TLD Determination, and the Onlineshopping SCO Determination[18], and (ii) ICANN's decisions to delegate the .CAR and .CARS gTLDs, the .AUTO and .AUTOS gTLDs, the .ACCOUNTANT and ACCOUNTANTS gTLDs, the .FAN and .FANS gTLDs, the .GIFT and .GIFTS gTLDs, the .LOAN and .LOANS gTLDs, the .NEW and .NEWS gTLDs and the .WORK and .WORKS gTLDs;

- Award Vistaprint its costs in this proceeding; and

- Award such other relief as the Panel may find appropriate or Vistaprint may request.

7.   ICANN, on the other hand, contends that it followed its policies and processes at every turn in regards to Vistaprint's .WEBS gTLD applications, which is all that it is required to do. ICANN states its conduct with respect to Vistaprint's applications was fully consistent with ICANN's Articles and Bylaws, and it also followed the procedures in the Guidebook. ICANN stresses that Vistaprint's IRP Request should be denied.

II.   Factual and Procedural Background

8.   This section summarizes basic factual and procedural background in this case, while leaving additional treatment of the facts, arguments and analysis to be addressed in sections III (ICANN's Articles, Bylaws, and Affirmation of Commitments), IV (Summary of Parties' Contentions) and V (Analysis and Findings).

A.   Vistaprint's Application for .WEBS and the String Confusion Objection

9.   Vistaprint's submitted two applications for the .WEBS gTLD string, one a standard application and the other a community-based application.[19] Vistaprint states that it applied to operate the .WEBS gTLD with a view to reinforcing the reputation of its website

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[16] Request, Annex 24 (Expert Determination in the SCO case *Web.com Group, Inc. v. Vistaprint Limited*, ICDR Consolidated Case Nos. 50 504 T 00221 13 and 50 504 T 00246 13 (Jan. 24, 2014) ("*Vistaprint SCO*").
[17] ICANN Board Resolution 2013.06.25.NG07.
[18] ICANN Board Resolution 2014.10.12.NG02.
[19] Request, Annex 1 (Application IDs: 1-1033-22687 and 1-1033-73917). A community-based gTLD is a gTLD that is operated for the benefit of a clearly delineated community. An applicant designating its application as community-based must be prepared to substantiate its status as representative of the community it names in the application. A standard application is one that has not been designated as community-based. Response, ¶ 22 n. 22; *see also* Glossary of commonly used terms in the Guidebook, at http://newgtlds.icann.org/en/applicants /glossary (last accessed on Sept. 13, 2015).

creation tools and hosting services, known under the identifier "Webs", and to represent the "Webs" community.[20] The .WEBS gTLD would identify Vistaprint as the Registry Operator, and the products and services under the .WEBS gTLD would be offered by and for the Webs community.[21]

10. Seven other applicants applied for the .WEB gTLD string.[22] Solely from the perspective of spelling, Vistaprint's proposed .WEBS string differs by the addition of the letter "s" from the .WEB string chosen by these other applicants. On March 13, 2013, one of these applicants, Web.com Group, Inc. (the "Objector"), filed two identical String Confusion Objections as permitted under the Guidebook against Vistaprint's two applications.[23] The Objector was the only .WEB applicant to file a SCO against Vistaprint's applications. The Objector argued that the .WEBS and .WEB strings were confusingly similar from a visual, aural and conceptual perspective.[24] Vistaprint claims that the Objector's "sole motive in filing the objection was to prevent a potential competitor from entering the gTLD market."[25]

11. As noted above, Module 3 of the Guidebook is relevant to this IRP because it provides the objection procedures for new gTLD applications. Module 3 describes "the purpose of the objection and dispute resolution mechanisms, the grounds for lodging a formal objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted."[26] The module also discusses the guiding principles, or standards, that each dispute resolution panel will apply in reaching its expert determination. The Module states that

> *"All applicants should be aware of the possibility that a formal objection may be filed against any application, and of the procedures and options available in the event of such an objection."[27]*

12. Module 3, § 3.2 (Public Objection and Dispute Resolution Process) provides that

> *In filing an application for a gTLD, the applicant agrees to accept the applicability of this gTLD dispute resolution process. Similarly, an objector accepts the applicability of this gTLD dispute resolution process by filing its objection.*

13. A formal objection may be filed on any one of four grounds, of which the SCO procedure is relevant to this case:

> *String Confusion Objection – The applied-for gTLD string is confusingly similar to an existing TLD*

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[20] Request, ¶ 5.
[21] Request, ¶ 17. Vistaprint states that the Webs community is predominantly comprised of non-US clients (54% non-US, 46% US).
[22] Request, ¶ 5.
[23] Request, ¶ 32.
[24] Request, ¶ 32.
[25] Request, ¶ 80.
[26] Guidebook, Module 3, p. 3-2. Module 3 also contains an attachment, the New gTLD Dispute Resolution Procedure ("New gTLD Objections Procedure"), which sets out the procedural rules for String Confusion Objections.
[27] Guidebook, Module 3, p. 3-2.

or to another applied-for gTLD string in the same round of applications.[28]

14. According to the Guidebook, the ICDR agreed to serve as the dispute resolution service provider ("DRSP") to hear String Confusion Objections.[29] On May 6, 2013, the ICDR consolidated the handling of the two SCOs filed by the Objector against Vistaprint's two .WEBS applications.[30]

15. Section 3.5 (Dispute Resolution Principles) of the Guidebook provides that the "objector bears the burden of proof in each case"[31] and sets out the relevant evaluation criteria to be applied to SCOs:

> *3.5.1 String Confusion Objection*
>
> *A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.*

16. On May 23, 2013, Vistaprint filed its responses to the Objector's String Confusion Objections.

17. On June 28, 2013, the ICDR appointed Steve Y. Koh as the expert to consider the Objections (the "First Expert"). In this IRP Vistaprint objects that this appointment was untimely.[32]

18. On 19 July 2013, the Objector submitted an unsolicited supplemental filing replying to Vistaprint's response, to which Vistaprint objected.[33] Vistaprint claims that the supplemental submission should not have been accepted by the First Expert as it did not comply the New gTLD Objections Procedure.[34] The First Expert accepted the Objector's submission and permitted Vistaprint to submit a sur-reply, which Vistaprint claims was subject to unfair conditions imposed by the First Expert.[35] Vistaprint filed its sur-reply on

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[28] Guidebook, § 3.2.1.

[29] Guidebook, § 3.2.3.

[30] Request, ¶ 23, n. 24. The ICDR consolidated the handling of cases nos. 50 504 T 00221 13 and 50 504 T 00246 13. The Guidebook provides in § 3.4.2 that "[o]nce the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections."

[31] Guidebook, § 3.5. This standard is repeated in Article 20 of the Objection Procedure, which provides that "[t]he Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards."

[32] Request, ¶ 33.

[33] Response, ¶ 26.

[34] Request, ¶ 42. Article 17 provides that *"[t]he Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response."* Article 18 states that *"[i]n order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence."*

[35] Vistaprint states that "this surreply was not to exceed 5 pages and was to be submitted within 29 days. This page limit and deadline are in stark contrast with the 58 day period taken by [the Objector] to submit a 6-page

(Continued...)

August 29, 2013.

19. On September 18, 2013 the ICDR informed the parties that the expert determination for the SCO case would be issued on or about October 4, 2013.[36] Vistaprint claims that this extension imposed an unjustified delay beyond the 45-day deadline for rendering a determination.[37]

20. On October 1, 2013, the ICDR removed the First Expert due to a conflict that arose. On October 14, 2013, the ICDR appointed Bruce W. Belding as the new expert (the "Second Expert").[38] Vistaprint claims that the New gTLD Objections Procedure was violated when the First Expert did not maintain his independence and impartiality and the ICDR failed to react to Vistaprint's concerns in this regard.[39]

21. On October 24, 2013, the Objector challenged the appointment of the Second Expert, to which Vistaprint responded on October 30, 2013. The challenge was based on the fact that the Second Expert had served as the expert in an unrelated prior string confusion objection, which Vistaprint maintained was not a reason for doubting the impartiality or independence of the Second Expert or accepting the challenge his appointment.[40] On November 4, 2013, the ICDR removed the Second Expert in response to the Objector's challenge.[41] On November 5, 2013, Vistaprint requested that the ICDR reconsider its decision to accept the challenge to the appointment of the Second Expert. On November 8, 2013, the ICDR denied this request.[42] Vistaprint claims that the unfounded acceptance of the challenge to the Second Expert was a violation of the New gTLD Objections Procedure and the ICDR's rules. The challenge was either unfounded and the ICDR should have rejected it, or it was founded, which would mean that the ICDR appointed the Second Expert knowing that justifiable doubts existed as to the Expert's impartiality and independence.[43]

22. On November 20, 2013, the ICDR appointed Professor Ilhyung Lee to serve as the expert (the "Third Expert") to consider the Objector's string confusion objection. No party objected to the appointment of Professor Lee.[44]

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reply with no less than 25 additional annexes. Vistaprint considers that the principle of equality of arms was not respected by this decision." Request, ¶ 42.
[36] Request, Annex 14.
[37] Request, ¶ 33; *see* New Objections Procedure, Art. 21(a).
[38] Response, ¶ 27; Request, Annexes 15 and 16.
[39] Request, ¶¶ 36 and 43. New Objections Procedure, Art. 13(c).
[40] Request, ¶ 37.
[41] Response, ¶ 28; Request, ¶ 39, Annex 19.
[42] Request, ¶ 39, Annex 21.
[43] Request, ¶¶ 37-40. Vistaprint states that the Objector's challenge was "based solely on the fact that Mr. Belding had served as the Panel in an unrelated string confusion objection" administered by ICDR. Request, ¶ 37. ICDR "was necessarily aware" that Mr. Belding had served as the Panel in the string confusion objection proceedings. "If [ICDR] was of the opinion that the fact that Mr. Belding served as the Panel in previous proceedings could give rise to justifiable doubts as to the impartiality and independence of the Panel, it should never have appointed him in the case between Web.com and Vistaprint."
[44] Response, ¶ 28; Request, ¶ 39, Annex 22.

23. On 24 January 2014, the Third Expert issued its determination in favor of the Objector, deciding that the String Confusion Objection should be sustained.[45] The Expert concluded that

> *" the <.webs> string so nearly resembles <.web> – visually, aurally and in meaning – that it is likely to cause confusion. A contrary conclusion, the Panel is simply unable to reach."*[46]

24. Moreover, the Expert found that

> *"given the similarity of <.webs> and <.web>…, it is probable, and not merely possible, that confusion will arise in the mind of the average, reasonable Internet user. This is not a case of 'mere association'."*[47]

25. Vistaprint claims that the Third Expert failed to comply with ICANN's policies by (i) unjustifiably accepting additional submissions without making an independent assessment, (ii) making an incorrect application of the burden of proof, and (iii) making an incorrect application of the substantive standard set by ICANN for String Confusion Objections.[48] In particular, Vistaprint claims that ICANN has set a high standard for a finding of confusing similarity between two gTLD strings, and the Third Expert's determination did not apply this standard and was arbitrary and baseless.[49]

26. Vistaprint concludes that "[i]n sum, the cursory nature of the Decision and the arbitrary and selective discussion of the parties' arguments by the [Third Expert] show a lack of either independence and impartiality or appropriate qualification."[50] Vistaprint further states that it took 216 days for the Third Expert to render a decision in a procedure that should have taken a maximum of 45 days.[51]

27. The Guidebook § 3.4.6 provides that:

> *The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.*[52]

28. Vistaprint objects that ICANN simply accepted the Third Expert's ruling on the String Confusion Objection, without performing any analysis as to whether the ICDR and the Third Expert complied with ICANN's policies and fundamental principles, and without

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[45] Request, ¶ 39, Annex 24 (Expert Determination, *Web.com Group, Inc. v. Vistaprint Limited,* ICDR Case Nos. 50 504 221 13 and 50 504 246 13 (Consolidated) (Jan. 24, 2014)..
[46] Request, Annex 24, p. 10.
[47] Request, Annex 24, p. 11.
[48] Request, ¶¶ 44-49.
[49] Vistaprint's First Additional Submission, ¶¶ 1-2.
[50] Request, ¶ 49.
[51] Request, ¶ 41; *see* New gTLD Objections Procedure, Art. 21(a).
[52] Guidebook, § 3.4.6. The New gTLD Objections Procedure further provides in Article 2(d) that:

> *The 'Expert Determination' is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).*

giving any rationale for doing so.[53]

29. Vistaprint contends that ICANN's Board remains its ultimate decision-making body and that the Board should have intervened and "cannot blindly accept advice by third parties or expert determinations."[54] In this respect, Vistaprint highlights the Guidebook, which provides in Module 5 (Transition to Delegation) § 1 that:

> *ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result … the use of an ICANN accountability mechanism.[55]*

> *[Underlining added]*

30. As a result of the Third Expert sustaining the Objector's SCO, Vistaprint's application was placed in a "Contention Set". The Guidebook in § 3.2.2.1 explains this result:

> *In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4, String Contention Procedures). If an objection by one gTLD applicant to another gTLD application is unsuccessful, the applicants may both move forward in the process without being considered in direct contention with one another.[56]*

B. Request for Reconsideration and Cooperative Engagement Process

31. On February 6, 2014 Vistaprint filed a Request for Reconsideration ("Request for Reconsideration" or "RFR").[57] According to ICANN's Bylaws, a RFR is an accountability mechanism which involves a review conducted by the Board Governance Committee ("BGC"), a sub-committee designated by ICANN's Board to review and consider Reconsideration Requests.[58] A RFR can be submitted by a person or entity that has been "adversely affected" by one or more staff actions or inactions that contradict established ICANN policies.[59]

32. Article IV, §2.15 of ICANN's Bylaws sets forth the BGC's authority and powers for handling Reconsideration Requests. The BGC, at its own option, may make a final determination on the RFR or it may make a recommendation to ICANN's Board for

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[53] Request, ¶ 50.
[54] Vistaprint's First Additional Submission, ¶¶ 29-30.
[55] Guidebook, § 5.1.
[56] Guidebook, § 3.2.2.1. Module 4 (String Contention Procedures) provides that "*Contention sets are groups of applications containing identical or similar applied-for gTLD strings.*" Guidebook, § 4.1.1. Parties that are identified as being in contention are encouraged to reach settlement among. Guidebook, § 4.1.3. It is expected that most cases of contention will be resolved through voluntary agreement among the involved applicants or by the community priority evaluation mechanism. Conducting an auction is a tie-breaker mechanism of last resort for resolving string contention, if the contention has not been resolved by other means. Guidebook, § 4.3.
[57] Request, Annex 25.
[58] Response, ¶ 29; Bylaws, Art. IV, § 2.
[59] Bylaws, Art. IV, § 2.2.a.

consideration and action:

> *For all Reconsideration Requests brought regarding staff action or inaction, the Board Governance Committee shall be delegated the authority by the Board of Directors to make a final determination and recommendation on the matter. Board consideration of the recommendation is not required. As the Board Governance Committee deems necessary, it may make recommendation to the Board for consideration and action. The Board Governance Committee's determination on staff action or inaction shall be posted on the Website. The Board Governance Committee's determination is final and establishes precedential value.*

33. ICANN has determined that the reconsideration process can be invoked for challenges to expert determinations rendered by panels formed by third party dispute resolution service providers, such as the ICDR, where it can be stated that the panel failed to follow the established policies or processes in reaching the expert determination, or that staff failed to follow its policies or processes in accepting that determination.[60]

34. In its RFR, Vistaprint asked ICANN to reject the Third Expert's decision and to instruct a new expert panel to issue a new decision "that applies the standards defined by ICANN."[61] Vistaprint sought reconsideration of the "various actions and inactions of ICANN staff related to the Expert Determination," claiming that "the decision fails to follow ICANN process for determining string confusion in many aspects."[62] In particular, Vistaprint asserted that the ICDR and the Third Expert violated the applicable New gTLD Objection Procedures concerning:

(i) the timely appointment of an expert panel;
(ii) the acceptance of additional written submissions;
(iii) the timely issuance of an expert determination;
(iv) an expert's duty to remain impartial and independent;
(v) challenges to experts;
(vi) the Objector's burden of proof; and
(vii) the standards governing the evaluation of a String Confusion Objection.

35. Vistaprint also argued that the decision was unfair, and accepting it creates disparate treatment without justified cause.[63]

36. The Bylaws provide in Article IV, § 2.3, that the BGC "shall have the authority to":

> *a. evaluate requests for review or reconsideration;*
> *b. summarily dismiss insufficient requests;*
> *c. evaluate requests for urgent consideration;*
> *d. conduct whatever factual investigation is deemed appropriate;*
> *e. request additional written submissions from the affected party, or from other parties;*
> *f. make a final determination on Reconsideration Requests regarding staff action or inaction, without*

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[60] *See* BGC Recommendation on Reconsideration Request 14-5 dated February 27, 2014 ("BGC Determination"), at p. 7, n. 7, Request, Annex 26, and available at https://www.icann.org/en/system/files/files/determination-vistaprint-27feb14-en.pdf (last accessed on Sept. 14, 2015).
[61] Request, ¶ 51; Annex 25, p.7.
[62] Request, Annex 25, p.2.
[63] Request, Annex 25, p.6.

reference to the Board of Directors; and

g. make a recommendation to the Board of Directors on the merits of the request, as necessary.

37. On February 27, 2014 the BGC issued its detailed Recommendation on Reconsideration Request, in which it denied Vistaprint's reconsideration request finding "no indication that the ICDR or the [Third Expert] violated any policy or process in reaching the Determination."[64] The BGC concluded that:

> *With respect to each claim asserted by the Requester concerning the ICDR's alleged violations of applicable ICDR procedures concerning experts, there is no evidence that the ICDR deviated from the standards set forth in the Applicant Guidebook, the New gTLD Dispute Resolution Procedure, or the ICDR's Supplementary Procedures for String Confusion Objections (Rules). The Requester has likewise failed to demonstrate that the Panel applied the wrong standard in contravention of established policy or procedure. Therefore, the BGC concludes that Request 14-5 be denied.[65]*

38. The BGC explained what it considered to be the scope of its review:

> *In the context of the New gTLD Program, the reconsideration process does not call for the BGC to perform a substantive review of expert determinations. Accordingly, the BGC is not to evaluate the Panel's substantive conclusion that the Requester's applications for .WEBS are confusingly similar to the Requester's application for .WEB. Rather, the BGC's review is limited to whether the Panel violated any established policy or process in reaching that Determination.[66]*

39. The BGC also stated that its determination on Vistaprint's RFR was final:

> *In accordance with Article IV, Section 2.15 of the Bylaws, the BGC's determination on Request 14-5 shall be final and does not require Board (or NGPC[67]) consideration. The Bylaws provide that the BGC is authorized to make a final determination for all Reconsideration Requests brought regarding staff action or inaction and that the BGC's determination on such matters is final. (Bylaws, Art. IV, § 2.15.) As discussed above, Request 14-5 seeks reconsideration of a staff action or inaction. After consideration of this Request, the BGC concludes that this determination is final and that no further consideration by the Board is warranted.[68]*

40. On March 17, 2014, Vistaprint filed a request for a Cooperative Engagement Process

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[64] BGC Determination, p. 18, Request, Annex 26.

[65] BGC Determination, p. 2, Request, Annex 26.

[66] BGC Determination, p. 7, Request, Annex 26.

[67] The "NGPC" refers to the New gTLD Program Committee, which is a sub-committee of the Board and "has all the powers of the Board." *See* New gTLD Program Committee Charter | As Approved by the ICANN Board of Directors on 10 April 2012, at https://www.icann.org/resources/pages/charter-2012-04-12-en (last accessed Sept. 15, 2015).

[68] BGC Determination, p. 19, Request, Annex 26. As noted, the BGC concluded that its determination on Vistaprint's RFR was final and made no recommendation to ICANN's Board for consideration and action. Article IV, §2.17 of ICANN's Bylaws sets out the scope of the Board's authority for matters in which the BGC decides to make a recommendation to ICANN's Board:

> *The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on ICANN's website. The Board's decision on the recommendation is final.*

("CEP") with ICANN.[69] Vistaprint stated in its letter:

> *Vistaprint is of the opinion that the Board of Governance Committee's rejection of Reconsideration Request 14-5 is in violation of various provisions of ICANN's Bylaws and Articles of Incorporation. In particular, Vistaprint considers this is in violation of Articles I, II(3), III and IV of the ICANN Bylaws as well as Article 4 of ICANN's Articles of Incorporation. In addition, Vistaprint considers that ICANN has acted in violation of Articles 3, 7 and 9 of ICANN's Affirmation of Commitment.[70]*

41. The CEP did not lead to a resolution and Vistaprint thereafter commenced this IRP. In this regard, Module 6.6 of the Guidebook provides that an applicant for a new gTLD:

> *MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION.[71]*

C. Procedures in this Case

42. On June 11, 2014, Vistaprint submitted its Request for Independent Review Process ("Request") in respect of ICANN's treatment of Vistaprint's application for the .WEBS gTLD. On July 21, 2014, ICANN submitted its Response to Vistaprint's Request ("Response").

43. On January 13, 2015, the ICDR confirmed that there were no objections to the constitution of the present IRP Panel ("IRP Panel" or "Panel"). The Panel convened a telephonic preliminary hearing with the parties on January 26, 2015 to discuss background and organizational matters in the case. Having heard the parties, the Panel issued Procedural Order No. 1 permitting an additional round of submissions from the parties. The Panel received Vistaprint's additional submission on March 2, 2015 (Vistaprint's "First Additional Submission") and ICANN's response on April 2, 2015 (ICANN's "First Additional Response").

44. The Panel then received further email correspondence from the parties. In particular, Vistaprint requested that the case be suspended pending an upcoming meeting of ICANN's Board of Directors, which Vistaprint contended would be addressing matters informative for this IRP. Vistaprint also requested that it be permitted to respond to arguments and information submitted by ICANN in ICANN's First Additional Response . In particular, Vistaprint stated that ICANN had referenced the Final Declaration of March 3, 2015 in the IRP case involving *Booking.com v. ICANN* (the "*Booking.com Final Declaration*").[72] The *Booking.com Final Declaration* was issued one day after Vistaprint had submitted its First Additional Submission in this case. ICANN objected to Vistaprint's requests, urging that there was no need for additional briefing and no justification for suspending the case.

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[69] Request, Annex 27.
[70] Request, Annex 27.
[71] Guidebook, § 6.6.
[72] *Booking.com B.V. v. ICANN,* ICDR Case No. 50-2014-000247 (March 3, 2015) ("*Booking.com Final Declaration*") , at https://www.icann.org/en/system/files/files/final-declaration-03mar15-en.pdf (last accessed on Sept. 15, 2015)

45. On April 19, 2015, the Panel issued Procedural Order No. 2, which denied Vistaprint's request that the case be suspended and permitted Vistaprint and ICANN to submit another round of supplemental submissions. Procedural Order No. 2 also proposed two dates for a telephonic hearing with the parties on the substantive issues and the date of May 13, 2015 was subsequently selected. The Panel received Vistaprint's second additional submission on April 24, 2015 (Vistaprint's "Second Additional Submission") and ICANN's response to that submission on May 1, 2015 (ICANN's "Second Additional Response").

46. The Panel then received a letter from Vistaprint dated April 30, 2015 and ICANN's reply of the same date. In its letter, Vistaprint referred to two new developments that it stated were relevant for this IRP case: (i) the Third Declaration on the IRP Procedure, issued April 20, 2015, in the IRP involving *DotConnectAfrica Trust v. ICANN*[73], and (ii) the ICANN Board of Director's resolution of April 26, 2015 concerning the *Booking.com Final Declaration*. Vistaprint requested that more time be permitted to consider and respond to these new developments, while ICANN responded that the proceedings should not be delayed.

47. Following further communications with the parties, May 28, 2015 was confirmed as the date for a telephonic hearing to receive the parties' oral submissions on the substantive issues in this case. On that date, counsel for the parties were provided with the opportunity to make extensive oral submissions in connection with all of the facts and issues raised in this case and to answer questions from the Panel.[74]

48. Following the May 28, 2015 hear, the Panel held deliberations to consider the issues in this IRP, with further deliberations taking place on subsequent dates. This Final Declaration was provided to the ICDR in draft form on October 5, 2015 for non-substantive comments on the text; it was returned to the Panel on October 8, 2015.

III. ICANN's Articles, Bylaws, and Affirmation of Commitments

49. Vistaprint states that the applicable law for these IRP proceedings is found in ICANN's Articles of Incorporation and Bylaws. Both Vistaprint and ICANN make numerous references to these instruments. This section sets out a number of the key provisions of

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[73] Third Declaration on the IRP Procedure, *DotConnectAfrica Trust v. ICANN*, ICDR Case No. 50-2013-001083 (April 20, 2015) ("*DCA Third Declaration on IRP Procedure*"), at https://www.icann.org/en/system/files/files/irp-procedure-declaration-20apr15-en.pdf (last accessed on Sept. 15, 2015)

[74] The Panel conducted these IRP proceedings relying on email and telephonic communications, with no objections to this approach from either party and in view of ICANN's Bylaws, Article IV, § 3.12 ("*In order to keep the costs and burdens of independent review as low as possible, the IRP Panel should conduct its proceedings by email and otherwise via the Internet to the maximum extent feasible. Where necessary, the IRP Panel may hold meetings by telephone.*").

the Articles and the Bylaws, as they are relied upon by the parties in this IRP.[75] Vistaprint also references the Affirmation of Commitments – relevant provisions of this document are also provided below.

A. Articles of Incorporation

50.   Vistaprint refers to the Articles of Incorporation, highlighting Article IV's references to "relevant principles of international law" and "open and transparent processes". Article 4 of the Articles provides in relevant part:

> *The Corporation shall operate for the benefit of the Internet community as a whole, <u>carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law</u> and, <u>to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes</u> that enable competition and open entry in Internet-related markets.*
>
> *[Underlining added]*

51.   Vistaprint states that general principles of international law – and in particular the obligation of good faith – serve as a prism through which the various obligations imposed on ICANN under its Articles of Incorporation and Bylaws must be interpreted.[76] The general principle of good faith is one of the most basic principles governing the creation and performance of legal obligations, and rules involving transparency, fairness and non-discrimination arise from it.[77] Vistaprint also emphasizes that the principle of good faith includes an obligation to ensure procedural fairness by adhering to substantive and procedural rules, avoiding arbitrary action, and recognizing legitimate expectations.[78] The core elements of transparency include clarity of procedures, the publication and notification of guidelines and applicable rules, and the duty to provide reasons for actions taken.[79]

B. Bylaws

a. Directives to ICANN and its Board

52.   The Bylaws contain provisions that address the role, core values and accountability of ICANN and its Board.

53.   Article IV, § 3.2 specifies the right of "any person materially affected" to seek independent review (through the IRP) of a Board action alleged to be a violation of the

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[75] ICANN's Articles are available at https://www.icann.org/resources/pages/governance/articles-en (last accessed on Sept. 15, 2015). ICANN's Bylaws are available at https://www.icann.org/resources/pages/governance/bylaws-en (last accessed on Sept. 15, 2015).

[76] Request, ¶ 55. Vistaprint also states that "*U.S. and California law, like almost all jurisdictions, recognize obligations to act in good faith and ensure procedural fairness. The requirement of procedural fairness has been an established part of the California common law since before the turn of the 19th century.*" Request, ¶ 60, n.8.

[77] Request, ¶ 59.

[78] Request, ¶ 60.

[79] Request, ¶ 66.

Articles or Bylaws:

Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation, and not as a result of third parties acting in line with the Board's action.

54. Vistaprint has relied on certain of ICANN's core values set forth in Article I, § 2 (Core Values) of the Bylaws. The sub-sections underlined below are invoked by Vistaprint as they relate to principles of promoting competition and innovation (Article I § 2.2, 2.5 and 2.6); openness and transparency (Article I § 2.7); neutrality, fairness, integrity and non-discrimination (Article I § 2.8); and accountability (Article I § 2.10). Article I § 2 provides in full:

Section 2. Core Values

In performing its mission, the following core values should guide the decisions and actions of ICANN:

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.

2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.

3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.

4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.

6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.

8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.[80]

9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.

10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.

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[80] Vistaprint states that "[t]his requirement is also found in applicable California law, which requires that decisions be made according to procedures that are 'fair and applied uniformly', and not in an 'arbitrary and capricious manner.'" Request, ¶ 62, n.9.

11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

[Underlining added]

55. Vistaprint refers to Article II, § 3 in support of its arguments that the Board failed to act fairly and without discrimination as it considered Vistaprint's two .WEBS applications and the outcome of the *Vistaprint SCO* case. Article II, § 3 provides:

Section 3 (Non-Discriminatory Treatment)

ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.

[Underlining added]

56. Vistaprint refers to Article III (Transparency), § 1 of the Bylaws in reference to the principle of transparency:

Section 1. PURPOSE

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

[Underlining added]

57. Vistaprint also refers Article IV (Accountability and Review), § 1 as it relates to ICANN's accountability and core values, providing in relevant part:

In carrying out its mission as set out in these Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws, and with due regard for the core values set forth in Article I of these Bylaws.

[Underlining added]

b. **Directives for the IRP Panel**

58. ICANN's Bylaws also contain provisions that speak directly to the role and authority of the Panel in this IRP case. In particular, Articles IV of the Bylaws creates the IRP as an accountability mechanism, along with two others mechanisms: (i) the RFR process, described above and on which Vistaprint relied, and (ii) an unrelated periodic review of

ICANN's structure and procedures.[81]

59.   Article IV, § 1 of the Bylaws emphasizes that the IRP is a mechanism designed to ensure ICANN's accountability:

> *The provisions of this Article, creating processes for reconsideration and independent review of ICANN actions and periodic review of ICANN's structure and procedures, are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article III and the Board and other selection mechanisms set forth throughout these Bylaws.*
>
> *[Underlining added]*

60.   In this respect, the IRP Panel provides an independent review and accountability mechanism for ICANN and its Board. Vistaprint urges that IRP is the *only* method established by ICANN for holding itself accountable through independent third-party review of its decisions.[82]   The Bylaws in Article IV, § 3.1 provides:

> *In addition to the reconsideration process described in Section 2 of this Article, ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.*

61.   ICANN states in its Response that "[t]he IRP Panel is tasked with determining whether the Board's actions are consistent with ICANN's Articles and Bylaws."[83]   ICANN also maintains that while the IRP is intended to address challenges to conduct undertaken by ICANN's Board, it is not available as a mechanism to challenge the actions or inactions of ICANN staff or third parties that may be involved with ICANN's activities.[84]

62.   In line with ICANN's statement, the Bylaws provide in Article IV, § 3.4, that:

> *Requests for such independent review shall be referred to an Independent Review Process Panel ("IRP Panel"), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws.*[85]
>
> *[Underlining added]*

63.   The Bylaws also include a standard of review in Article IV, § 3.4, providing that the Panel:

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[81] Note that Article V (Ombudsman) of the Bylaws also establishes the Office of Ombudsman to facilitate the fair, impartial, and timely resolution of problems and complaints for those matters where the procedures of the RFR or the IRP have not been invoked.

[82] Request, ¶ 57.

[83] Response, ¶ 33.

[84] Response, ¶ 4.

[85] Bylaws, Art. IV, § 3.4. The reference to "actions" of ICANN's Board should be read to refer to both "actions or inactions" of the Board. *See* Bylaws, Art. IV, § 3.11(c) ("The IRP Panel shall have the authority to:…(c) declare whether an *action or inaction* of the Board was inconsistent with the Articles of Incorporation or Bylaws"); *see also* Supplementary Procedures, which define "Independent Review" as referring

> "*to the procedure that takes place upon the filing of a request to review ICANN Board actions or inactions alleged to be inconsistent with ICANN's Bylaws or Articles of Incorporation.*

"must apply a defined standard of review to the IRP request, focusing on:

     a. did the Board act without conflict of interest in taking its decision?;
     b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
     c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?[86]

64. The Bylaws in Article IV, § 3.11 set out the IRP Panel's authority in terms of alternative actions that it may take once it is has an IRP case before it:

The IRP Panel shall have the authority to:

     a. summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious;
     b. request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties;
     c. declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and
     d. recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP;
     e. consolidate requests for independent review if the facts and circumstances are sufficiently similar; and
     f. determine the timing for each proceeding.[87]

65. Further, the Bylaws in Article IV, § 3.18 state that

"[t]he IRP Panel shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, <u>and in its declaration shall specifically designate the prevailing party</u>."[88]

[Underlining added]

66. The Bylaws address the steps to be taken after the Panel issues a determination in the IRP. Article IV, § 3.21[89] states that "declarations of the IRP Panel, and the Board's subsequent action on those declarations, are final and have precedential value":

Where feasible, the Board shall consider the IRP Panel declaration at the Board's next meeting. <u>The declarations of the IRP Panel, and the Board's subsequent action on those declarations, are final and have precedential value.</u>

[Underlining added]

C. Affirmation of Commitments

67. Vistaprint claims that ICANN violated the ICANN's Affirmation of Commitments, in particular Articles 3, 7 and 9. This Affirmation of Commitments is instructive, as it explains ICANN's obligations in light of its role as regulator of the DNS. Article 3, 7 and 9 are set forth below in relevant part:

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[86] Bylaws, Art. IV, § 3.4.
[87] Bylaws, Art. IV, § 3.11.
[88] Bylaws, Art. IV, § 3.18.
[89] This section was added by the amendments to the Bylaws on April 11, 2013.

3. This document affirms key commitments by DOC and ICANN, including commitments to: (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination.

*   *   *   *

7. ICANN commits to adhere to transparent and accountable budgeting processes, fact-based policy development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's bylaws, responsibilities, and strategic and operating plans. In addition, ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.

9. Recognizing that ICANN will evolve and adapt to fulfill its limited, but important technical mission of coordinating the DNS, ICANN further commits to take the following specific actions together with ongoing commitment reviews specified below:

9.1 Ensuring accountability, transparency and the interests of global Internet users: ICANN commits to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by: (a) continually assessing and improving ICANN Board of Directors (Board) governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions; (b) assessing the role and effectiveness of the GAC and its interaction with the Board and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS; (c) continually assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof); (d) continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development. ICANN will organize a review of its execution of the above commitments no less frequently than every three years, ... Each of the foregoing reviews shall consider the extent to which the assessments and actions undertaken by ICANN have been successful in ensuring that ICANN is acting transparently, is accountable for its decision-making, and acts in the public interest. Integral to the foregoing reviews will be assessments of the extent to which the Board and staff have implemented the recommendations arising out of the other commitment reviews enumerated below.

*   *   *   *

9.3 Promoting competition, consumer trust, and consumer choice: ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation. If and when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN will organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion. ICANN will organize a further review of its execution of the above commitments two years after the first review, and then no less frequently than every four years.... Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

{Underlining added}

IV.   Summary of Parties' Contentions

68.   This presentation of the parties' contentions is intended to provide a summary to aid in understanding this Final Declaration. It is not an exhaustive recitation of the entirety of the parties' allegations and arguments. Additional references to the parties' assertions are included in sections II   (Factual and Procedural Background), III (ICANN's Articles, Bylaws and Affirmation of Commitments) and V (Analysis and Findings).

69.   The IRP Panel has organized the parties' contentions into <u>three</u> categories, based on the areas of claim and dispute that have emerged through the exchange of three rounds of submissions between the parties and the Panel. The *first* section relates to the authority of the Panel, while the *second* and *third* sections address the allegations asserted by Vistaprint, which fall into two general areas of claim. In this regard, Vistaprint claims that the ICDR and Third Expert made numerous errors of procedure and substance during the String Confusion Objection proceedings, which resulted in Vistaprint being denied a fair hearing and due process. As a result of the flawed SCO proceedings, Vistaprint alleged that ICANN through its Board (and the BGC), in turn: (i) violated its Articles, Bylaws and the Guidebook (e.g., failed to act in good faith, fairly, non-arbitrarily, with accountability, due diligence, and independent judgment) by accepting the determination in the *Vistaprint SCO* and failing to redress and remedy the numerous alleged process and substantive errors in the SCO proceedings, and (ii) discriminated against Vistaprint, in violation of its Articles and Bylaws, by delaying Vistaprint's .WEBS gTLD applications and putting them into a Contention Set, while allowing other gTLD applications with equally serious string similarity concerns to proceed to delegation, or permitting still other applications that were subject to an adverse SCO determination to go through a separate additional review mechanism.

70.   Thus, the three primary areas of contention between the parties are as follows:

   - <u>IRP Panel' Authority</u>: The parties have focused on the authority of the IRP Panel, including the *standard of review* to be applied by the Panel, whether the Panel's IRP declaration is *binding* or *non-binding* on ICANN, and, on a very closely related point, whether the Panel has authority to award any *affirmative relief* (as compared to issuing only a declaration as to whether or not ICANN has acted in a manner that is consistent or not with its Articles and Bylaws).

   - <u>SCO Proceedings Claim</u>: Vistaprint claims ICANN's failed to comply with the obligations under its Articles and Bylaws by accepting the Third Expert's SCO determination and failing to provide a remedy or redress in response to numerous alleged errors of process and substance in the *Vistaprint SCO* proceedings. As noted above, Vistaprint claims there were process and substantive violations, which resulted in Vistaprint not being accorded a fair hearing and due process. Vistaprint states that because ICANN's Bylaws require ICANN to apply established policies neutrally and fairly, therefore, the Panel should also consider the policies in Module 3 of the

Guidebook concerning the String Confusion Objection procedures. Vistaprint objects to the policies themselves as well as their implementation through the ICDR and the Third Expert. Vistaprint claims that ICANN's Board, acting through the BGC or otherwise, should have acted to address these deficiencies and its choice not to intervene violated the Articles and Bylaws.

▪ Disparate Treatment Claim: Vistaprint claims ICANN discriminated against Vistaprint through ICANN's (and the BGC's) acceptance of the Third Expert's allegedly baseless and arbitrary determination in *Vistaprint SCO*, while allowing other gTLD applications with equally serious string similarity concerns to proceed to delegation, or permitting still other applications that were subject to an adverse SCO determination to go through a separate additional review mechanism.

A. Vistaprint's Position

a. IRP Panel's Authority

71. Standard of review: Vistaprint emphasizes that ICANN is accountable to the community for operating in a manner that is consistent with the Article and Bylaws, and with due regard for the core values set forth in Article I of the Bylaws. To achieve this required accountability, the IRP Panel is "charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws."[90] Vistaprint states that the IRP Panel's fulfillment of this core obligation is crucial to ICANN's commitment to accountability. The IRP is the only method established by ICANN for holding itself accountable through third-party review of its decisions.[91]

72. Vistaprint contends that ICANN is wrong in stating (in its Response[92]) that a deferential standard of review applies in this case.[93] No such specification is made in ICANN's Bylaws or elsewhere, and a restrictive interpretation of the standard of review would be inappropriate. It would fail to ensure accountability on the part of ICANN and would be incompatible with ICANN's commitment to maintain and improve robust mechanisms for accountability, as required by Article 9.1 of ICANN's Affirmation of Commitments and ICANN's core values, which require ICANN to "remain accountable to the Internet community through mechanisms that enhance ICANN's effectiveness".[94]

73. Vistaprint states further that the most recent version of ICANN's Bylaws, amended on

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[90] Request, ¶ 55-56 (citing Bylaws, Art. IV, §§1 & 3.4).
[91] Request, ¶ 57.
[92] Response, ¶ 33.
[93] Vistaprint's First Additional Submission, ¶ 36.
[94] Vistaprint's First Additional Submission, ¶¶ 36-37; Request, ¶ 57.

April 11, 2013, require that the IRP Panel focus on whether ICANN's Board was free from conflicts of interest and exercised an appropriate level of due diligence and independent judgment in its decision making.[95] Vistaprint asserts, however, that these issues are mentioned by way of example only. The Bylaws do not restrict the IRP Panel's remit to these issues alone, as the Panel's fundamental task is to determine whether the Board has acted consistently with the Articles and Bylaws[96]

74. <u>IRP declaration binding or non-binding</u>: Vistaprint contends that the outcome of this IRP is binding on ICANN and that any other outcome "would be incompatible with ICANN's obligation to maintain and improve robust mechanisms for accountability."[97]

75. Vistaprint states that since ICANN's amendment of its Bylaws, IRP declarations have precedential value.[98] Vistaprint asserts the precedential value – and binding force – of IRP declarations was confirmed in a recent IRP panel declaration,[99] which itself has precedential value for this case. Vistaprint argues that any other outcome would effectively grant the ICANN Board arbitrary and unfettered discretion, something which was never intended and would be incompatible with ICANN's obligation to maintain and improve robust mechanisms for accountability.[100]

76. Vistaprint contends that the IRP is not a mere "corporate accountability mechanism" aimed at ICANN's internal stakeholders.[101] The IRP is open to any person materially affected by a decision or action of the Board[102] and is specifically available to new gTLD applicants, as stated in the Guidebook, Module 6.4. Vistaprint claims that *internally*, towards its stakeholders, ICANN might be able to argue that its Board retains ultimate decision-making power, subject to its governing principles. *Externally*, however, the ICANN Board's discretionary power is limited, and ICANN and its Board must offer redress when its decisions or actions harm third parties.[103]

77. Vistaprint argues further that the IRP has all the characteristics of an international arbitration.[104] The IRP is conducted pursuant to a set of independently developed

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[95] Bylaws, Article IV, § 3.4.
[96] Vistaprint's First Additional submission, ¶ 35.
[97] Vistaprint's First Additional Submission, ¶ 37.
[98] Vistaprint's First Additional Submission, ¶ 37 (citing Bylaws, Art. IV § 3.21).
[99] *See DCA Third Declaration on IRP Procedure*, ¶ 131 (the panel ruled that "[b]ased on the foregoing and the language and content of the IRP Procedure, the Panel concludes that this Declaration and its future Declaration on the Merits of this case are binding on the Parties").
[100] Vistaprint's First Additional Submission, ¶ 37.
[101] Vistaprint's Second Additional Submission, ¶ 29.
[102] Bylaws, Article IV § 3.2 ("Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action.").
[103] Vistaprint's Second Additional Submission, ¶ 15.
[104] Vistaprint's Second Additional Submission, ¶ 27.

international arbitration rules: the ICDR Rules, as modified by the Supplementary Procedures. The IRP is administered by the ICDR, which is a provider of international arbitration services. The decision-maker is not ICANN, but a panel of neutral individuals selected by the parties in consultation with the ICDR, and appointed pursuant to the ICDR Rules.

78. Vistaprint provides further detailed argument in its Second Additional Submission that the IRP is binding in view of ICANN's Bylaws, the ICDR Rules and the Supplementary Procedures, and that any ambiguity on this issue should weigh against ICANN as the drafter and architect of the IRP:

> *31. As mentioned in Vistaprint's Reply, a previous IRP panel ruled that "[v]arious provisions of ICANN's Bylaws and the Supplementary Procedures support the conclusion that the [IRP] Panel's decisions, opinions and declarations are binding" and that "[t]here is certainly nothing in the Supplementary Rules that renders the decisions, opinions and declarations of the [IRP] Panel either advisory or non-binding" (RM 32, para 98).[105]*
>
> *32. Indeed, as per Article IV(3)(8) of the ICANN Bylaws, the ICANN Board has given its approval to the ICDR to establish a set of operating rules and procedures for the conduct of the IRP. The operating rules and procedures established by the ICDR are the ICDR Rules as referred to in the preamble of the Supplementary Procedures (RM 32, para. 101). The Supplementary Procedures supplement the ICDR Rules (Supplementary Procedures, Preamble and Section 2). The preamble of the ICDR Rules provides that "[a] dispute can be submitted to an arbitral tribunal for a final and binding decision". Article 30 of the ICDR Rules specifies that "[a]wards shall be made in writing by the arbitral tribunal and shall be final and binding on the parties". No provision in the Supplementary Procedures deviates from the rule that the Panel's decisions are binding. On the contrary, Section 1 of the Supplementary Procedures defines an IRP Declaration as a decision/opinion of the IRP Panel. Section 10 of the Supplementary Procedures requires that IRP Declarations i) are made in writing, and ii) specifically designate the prevailing party. Where a decision must specifically designate the prevailing party, it is inherently binding. Moreover the binding nature of IRP Declarations is further supported by the language and spirit of Section 6 of the Supplementary Procedures and Article IV(3)(11)(a) of the ICANN Bylaws. Pursuant to these provisions, the IRP Panel has the authority to summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious. Surely, such a decision, opinion or declaration on the part of the IRP Panel would not be considered advisory (RM 32, para. 107).*
>
> *33. Finally, even if ICANN's Bylaws and Supplementary Procedures are ambiguous - quod non - on the question of whether or not an IRP Declaration is binding, this ambiguity would weigh against ICANN. The relationship between ICANN and Vistaprint is clearly an adhesive one. In such a situation, the rule of contra proferentem applies. As the drafter and architect of the IRP Procedure, it was possible for ICANN, and clearly within its power, to adopt a procedure that expressly and clearly announced that the decisions, opinions and declarations of IRP Panels were advisory only. ICANN did not adopt such a procedure (RM 32, paras. 108-109).*

79. Finally, Vistaprint contends that ICANN conceived of the IRP as an alternative to dispute

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[105] Citing *DCA Third Declaration on IRP Procedure,* ¶ 98.

resolution by the courts. To submit a new gTLD application, Vistaprint had to agree to terms and conditions including a waiver of its right to challenge ICANN's decisions on Vistaprint's applications in a court, provided that as an applicant, Vistaprint could use the accountability mechanisms set forth in ICANN's Bylaws. Vistaprint quotes the *DCA Third Declaration on Procedure,* in which the IRP panel stated:

> *assuming that the foregoing waiver of any and all judicial remedies is valid and enforceable, the ultimate 'accountability' remedy for [Vistaprint] is the IRP.*[106]

80. <u>Authority to award affirmative relief</u>: Vistaprint makes similar arguments in support of its claim that the IRP Panel has authority to grant affirmative relief. Vistaprint quotes the *Interim Declaration on Emergency Request for Interim Measures of Protection in Gulf Cooperation Council v. ICANN ("GCC Interim IRP Declaration),*[107] where that panel stated that the right to an independent review is

> *a significant and meaningful one under the ICANN's Bylaws. This is so particularly in light of the importance of ICANN's global work in overseeing the DNS for the Internet and also the weight attached by ICANN itself to the principles of accountability and review which underpin the IRP process.*

81. Accordingly, Vistaprint argues that the IRP Panel's authority is not limited to declare that ICANN breached its obligations under the Articles, Bylaws and the Guidebook. To offer effective redress to gTLD applicants, the Panel may indicate what action ICANN must take to cease violating these obligations. The point is all the stronger here, as ICANN conceived the IRP to be the sole independent dispute resolution mechanism available to new gTLD applicants.[108]

b. SCO Proceedings Claim

82. Vistaprint states that this case relates to ICANN's handling of the determination in the *Vistaprint SCO* proceedings following String Confusion Objections to Vistaprint's .WEBS applications, but does not relate to the merits of that SCO determination.[109]

83. Vistaprint's basic claim here is that given the errors of process and substance in those proceedings, Vistaprint was not given a fair opportunity to present its case. Vistaprint was deprived of procedural fairness and the opportunity to be heard by an independent panel applying the appropriate rules. Further, Vistaprint was not given any meaningful opportunity for remedy or redress once the decision was made, and in this way ICANN's Board allegedly violated its Articles and Bylaws.[110]

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[106] *DCA Third Declaration on IRP Procedure, ¶* 40.
[107] *Interim Declaration on Emergency Request for Interim Measures of Protection in Gulf Cooperation Council v. ICANN*, ICDR Case No. 01-14-0002-1065, ¶ 59 (February 12, 2015) ("*GCC Interim IRP Declaration*").
[108] Vistaprint's Second Additional Submission, ¶ 24.
[109] Request, ¶ 4.
[110] Request, ¶ 71.

84. Although Vistaprint challenged the SCO decision through ICANN's Request for Reconsideration process, ICANN refused to reconsider the substance of the challenged decision, or to take any action to remedy the lack of due process. In doing so, Vistaprint claims ICANN failed to act in a fair and non-arbitrary manner, with good faith, accountability, due diligence and independent judgment, as required by ICANN's Bylaws and Articles.[111] ICANN's acceptance of the SCO determination and refusal to reverse this decision was an abdication of responsibility and contrary to the evaluation policies ICANN had established in the Guidebook.[112]

85. A number of Vistaprint's contentions regarding the alleged violations of process and substance in SCO proceedings are described in part II.A above addressing Vistaprint's .WEBS applications and the SCO proceedings. Vistaprint's alleges as follows:

(i) ICDR's appointment of the First Expert was untimely, in violation of Article 13(a) of the New gTLD Objections Procedure[113];

(ii) the First Expert (and Third Expert) improperly accepted and considered unsolicited supplemental filings, violating Articles 17 and 18 of the New gTLD Objections Procedure[114];

(iii) ICDR violated Article 21 of the New gTLD Objections Procedure[115] by failing to ensure the timely issuance of an expert determination in the SCO;

(iv) the First Expert failed to maintain independence and impartiality, in violation of Article 13(c) of the New gTLD Objections Procedure[116];

(v) ICDR unjustifiably accepted a challenge to the Second Expert (or created the circumstances for such a challenge), in violation of Article 2 of the ICDR's Supplementary Procedures for String Confusion Objections (Rules);

(vi) the Determination of the Third Expert was untimely, in violation of Article 21(a) of the New gTLD Objections Procedure;

(vii) the Third Expert incorrectly applied the Objector's burden of proof, in violation of section 3.5 of the Guidebook and Article 20(c) of the New gTLD Objections Procedure, which place the burden of proof on the Objector; and

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[111] Request, ¶ 71.

[112] Request, ¶ 8.

[113] Article 13(a) of the Procedure provides: "The DRSP shall select and appoint the Panel of Expert(s) within thirty (30) days after receiving the Response."

[114] Request, ¶ 42. Article 17 provides that *"[t]he Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response."* Article 18 states that *"[i]n order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence."*

[115] Article 21(a) of the Procedure provides that "[t]he DSRP and the Panel shall make reasonable efforts to ensure that the Expert Determination is rendered within forty-five (45) days of the constitution of the Panel."

[116] Article 13(c) of the New gTLD Objections Procedure provides that "[a]ll Experts acting under this Procedure shall be impartial and independent of the parties." Section 3.4.4 of the Guidebook provides that the ICDR will "follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence."

(viii) the Third Expert incorrectly applied ICANN's substantive standard for evaluation of String Confusion Objections, as set out in Section 3.5.1 of the Guidebook, in particular the standards governing the evaluation of a string confusion objection.

86. Based on these alleged errors in process and substance, Vistaprint concludes in its Request:

> *49. In sum, the cursory nature of the Decision and the arbitrary and selective discussion of the parties' arguments by the Panel show a lack of either independence and impartiality or appropriate qualification on the fact of the Panel. The former is contrary to Article 13 of the Procedure; the latter is contrary to the Applicant Guidebook, Module 3-16, which requires that a panel (ruling on a string confusion or other objection) must consist of "appropriately qualified experts appointed to each proceeding by the designated DRSP".[117]*

87. Vistaprint states that ICANN's Board disregarded these accumulated infringements and turned a blind eye to the Third Expert's lack of independence and impartiality. Vistaprint asserts that ICANN is not entitled to blindly accept expert determinations from SCO cases; it must verify whether or not, by accepting the expert determination and advice, it is acting consistent with its obligations under its Articles, Bylaws and Affirmation of Commitments.[118] Vistaprint further claims ICANN would be in violation of these obligations if it were to accept an expert determination or advice in circumstances where the ICDR and/or the expert had failed to comply with the New gTLD Objections Procedure and/or the ICDR Rules for SCOs, or where a panel – even if it had been correctly appointed – had failed to correctly apply the standard set by ICANN.[119]

88. Vistaprint states that following ICANN's decision to accept the *Vistaprint SCO* determination, Vistaprint filed its Reconsideration Request detailing how ICANN's acceptance of the Third Expert's determination was inconsistent with ICANN's policy and obligations under its Articles, Bylaws and Affirmation of Commitments. Background on the RFR procedure is provided above in part II.B. Despite this, Vistaprint states that ICANN refused to reverse its decision.

89. The IRP Panel has summarized as follows Vistaprint's SCO Proceedings Claim concerning ICANN's alleged breaches of its obligations under the Articles, Bylaws and Affirmation of Commitments:

(1) ICANN failed to comply with its obligation under Article 4 of the Articles and IV § 3.4 of the Bylaws to act in good faith with due diligence and independent judgment by failing to provide due process to Vistaprint's .WEBS applications.[120] Good faith encompasses the obligation to ensure procedural fairness and due process, including equal and fair treatment of the parties, fair notice, and a fair opportunity to present one's case. These are more than just formalistic procedural requirements. The opportunity must be meaningful: the party must be given adequate notice of the relevant

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[117] Request, ¶ 49.
[118] Request, ¶ 6.
[119] Request, ¶ 6.
[120] Request, ¶¶ 69-71.

rules and be given a full and fair opportunity to present its case. And the mechanisms for redress must be both timely and effective.

Vistaprint claims that it was not given a fair opportunity to present its case; was deprived of procedural fairness and the opportunity to be heard by an independent panel applying the appropriate rules; and was not given any meaningful opportunity for remedy or redress once the SCO determination was made, even in the RFR procedure. Thus, ICANN's Board failed to act with due diligence and independent judgment, and to act in good faith as required by ICANN's Bylaws and Articles.

(2) ICANN failed to comply with its obligation under Article I § 2.8 to neutrally, objectively and fairly apply documented policies as established in the Guidebook and Bylaws.[121] Vistaprint argues that there is no probability of user confusion if both .WEBS and .WEB were delegated as gTLD strings. Vistaprint states expert evidence confirms that there is no risk that Internet users will be confused and the Third Expert could not have reasonably found that the average reasonable Internet user is likely to be confused between the two strings. As confirmed by the Objector,[122] the average reasonable Internet user is used to distinguishing between words (and non-words) that are much more similar than the strings, .WEBS and .WEB. Since these strings cannot be perceived confusingly similar by the average reasonable Internet user, the *Vistaprint SCO* determination that they are confusingly similar is contradictory to ICANN's policy as established in the Guidebook.

(3) ICANN failed to comply with its obligation to act fairly and with due diligence and independent judgment as called for under Article 4 of the Articles of Incorporation, Articles I § 2.8 and IV § 3.4 of the Bylaws by accepting the SCO determination made by the Third Expert, who was allegedly not independent and impartial.[123] Vistaprint claims that the Third Expert was not independent and impartial and/or is not appropriately qualified. However, Vistaprint claims this did not prevent ICANN from accepting the determination by the Third Expert, without even investigating the dependence and partiality of the Expert when serious concerns were raised to the ICANN Board in the RFR. This is a failure of ICANN to act with due diligence and independent judgment, and to act in good faith as required by ICANN's Bylaws and Articles.

(4) ICANN failed to comply with its obligations under the Article 4 of the Articles, and Article I §§ 2.7 and 2.8 and Article III § 1 of the Bylaws (and Article 9.1 of the Affirmation of Commitments) to act fairly and transparently by failing to disclose/ perform any efforts to optimize the service that the ICDR provides in the New gTLD Program.[124] Vistaprint contends that the BGC's determination on Vistaprint's RFR shows that the BGC made no investigation into Vistaprint's fundamental questions about the Panel's arbitrariness, lack of independence, partiality, inappropriate

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[121] Request, ¶ 72.
[122] Request, Annex 10.
[123] Request, ¶ 73.
[124] Request, ¶¶ 52 and 77.

qualification. In addition, rather than identifying the nature of the conflict that forced the First Expert to step down, the BGC focused on developing hypotheses of reasons that could have led to this expert to stepping down. According to Vistaprint, this shows that the BGC did not exercise due diligence in making its determination and was looking for unsubstantiated reasons to reject Vistaprint's Reconsideration Request rather than making a fair determination.

In addition, as it is ICANN's responsibility to ensure that its policies and fundamental principles are respected by its third party vendors, ICANN had agreed with the ICDR that they were going to "communicate regularly with each other and seek to optimize the service that the ICDR provides as a DRSP in the New gTLD Program" and that ICANN was going to support the ICDR "to perform its duties…in a timely and efficient manner".[125] However, ICANN has failed to show that it sought in any way to optimize the ICRD's service vis-à-vis Vistaprint or that it performed any due diligence in addressing the concerns raised by Vistaprint. Instead, the BGC denied Vistaprint's RFR without conducting any investigation.

(5) ICANN failed to comply with its obligation to remain accountable under Articles I § 2.10 and IV § 1 of the Bylaws (and Articles 3(a) and 9.1 of the Affirmation of Commitments) by failing to provide any remedy for its mistreatment of Vistaprint's gTLD applications.[126] Vistaprint claims that because of ICANN's unique history, role and responsibilities, its constituent documents require that it operate with complete accountability. In contrast to this obligation, throughout its treatment of Vistaprint's applications for .WEBS, ICANN has acted as if it and the ICDR are entitled to act with impunity. ICANN adopted the Third Expert's determination without examining whether it was made in accordance with ICANN's policy and fundamental principles under its Articles and Bylaws. When confronted with process violations, ICANN sought to escape its responsibilities by relying on unrealistic hypotheses rather than on facts that should have been verified. Additionally, ICANN has not created any general process for challenging the substance of SCO expert determinations, while acknowledging the need for such a process by taking steps to develop a review process mechanism for certain individual cases involving SCO objections.

(6) ICANN failed to promote competition and innovation under Articles I § 2.2 (and Article 3(c) of the Affirmation of Commitments) by accepting the Third Expert's determination.[127] Vistaprint's argues that the Objector's sole motive in filing the SCO against Vistaprint was to prevent a potential competitor from entering the gTLD market. This motive is contrary to the purpose of ICANN's New gTLD Program. The Board's acceptance of the determination in the *Vistaprint SCO*, which was filed with an intent contrary to the interests of both competition and consumers, was contrary to ICANN's Bylaws.

c. Disparate Treatment Claim

90.   Vistaprint claims that ICANN's Board discriminated against Vistaprint through the Board's (and the BGC's) acceptance of the Third Expert's allegedly baseless and arbitrary determination in the *Vistaprint SCO*, while allowing other gTLD applications with equally serious string similarity concerns to proceed to delegation, or permitting still other applications that were subject to an adverse SCO determination to go through a separate additional review mechanism.

91.   Vistaprint states that the "IRP Panel's mandate includes a review as to whether or not ICANN's Board discriminates in its interventions on SCO expert determinations," and contends that "[d]iscriminating between applicants in its interventions on SCO expert determinations is exactly what the Board has done with respect to Vistaprint's applications."[128]

92.   Vistaprint asserts that in contrast to the handling of other RFRs, the BGC did not give the full ICANN Board the opportunity to consider the *Vistaprint SCO* matter and did not provide detailed minutes of the meeting in which the BGC's decision was taken.[129] Vistaprint states this is all the more striking as, in other matters related to handling of SCOs with no concerns about the impartiality and independence of the expert or the procedure, the Board considered potential paths forward to address perceived inconsistencies in expert determinations in the SCO process, including implementing a review mechanism. The Board also directed ICANN's President and CEO, or his designee, to publish this proposed review mechanism for public comment.[130] Vistaprint emphasizes that ICANN's Board took this decision the day before Vistaprint filed its Reconsideration Request regarding the *Vistaprint SCO*. However, this did not prevent the BGC from rejecting Vistaprint's RFR without considering whether such a review mechanism might also be appropriate for dealing with the allegedly unfair and erroneous treatment of the SCO related to Vistaprint's .WEBS applications.[131]

93.   The core of Vistaprint's discrimination and disparate treatment claims is stated in its First Additional Submission:

> *7.   Other applicants have equally criticized SCO proceedings. In a letter to ICANN's CEO, United TLD Holdco, Ltd. denounced the process flaws in the SCO proceedings involving the strings .com and .cam. DERCars, LCC filed an RfR, challenging the expert determination in the SCO proceedings relating to the strings .car and .cars. Amazon EU S.a.r.l. filed an RfR, challenging the expert determination in the SCO proceedings relating to the strings .shop and .通販 (which means 'online shopping' in Japanese). The ICANN Board took action in each of these matters.*
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> -   *With respect to the Expert Determination finding .cam confusingly similar to .com, the ICANN Board ordered that an appeals process be developed to address the "perceived inconsistent or otherwise unreasonable SCO Expert Determination".*
> -   *With regard to the Expert Determination finding .cars confusingly similar to .car, the ICANN Board ordered its staff to propose a review mechanism. DERCars decided to withdraw its*

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[128] Vistaprint's Second Additional Submission, ¶ 20-21.
[129] Request, ¶ 52.
[130] Request, ¶ 52 (referencing NGPC Resolution 2014.02.05.NG02).
[131] Request, ¶ 52.

application for .cars before the review mechanism was implemented. As a result, it was no longer necessary for the ICANN Board to further consider the proposed review process.

- *With regard to the Expert Determination finding .通販 confusingly similar to .shop, the ICANN Board ordered that an appeals process be developed to address the "perceived inconsistent or otherwise unreasonable SCO Expert Determination".*

8. While the ICANN Board took action in the above-mentioned matters, it did not do so with respect to the .webs / .web determination. However, the .webs / .web determination was equally unreasonable, and at least equally serious substantive and procedural errors were made in these SCO proceedings. There is no reason for ICANN to treat the .webs / .web determination differently.

* * * *

12. When there are clear violations of the process and the outcome is highly objectionable (all as listed in detail in the request for IRP), the ICANN Board must intervene, as it has done with regard to other applications. The ICANN Board cannot justify why it intervenes in certain cases (.cars / .car, .cam / .com and .通販 / .shop), but refuses to do so in another case (.webs / .web). This is a clear violation of its Bylaws and Articles of Incorporation. The Panel in the current IRP has authority to order that ICANN must comply with its Bylaws and Articles of Incorporation and must disregard the expert determination in relation to Vistaprint's .webs applications.[132]

* * * *

31. When the ICANN Board individually considers an application, it must make sure that it does not treat applicants inequitably and that it does not discriminate among applicants. Article II, Section 3 of ICANN's Bylaws provides that "ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition". However, with regard to the SCO proceedings, the ICANN Board has done the exact opposite. It created the opportunity for some aggrieved applicants to participate in an appeals process, while denying others.

32. As explained above, there is no justification for this disparate treatment, and the ICANN Board has not given any substantial and reasonable cause that would justify this discrimination.

94. Vistaprint also contends that ICANN cannot justify the disparate treatment:

22.   ICANN's attempt to justify the disparate treatment of Vistaprint's applications is without merit. ICANN argues that its Board only intervened with respect to specific expert determinations because there had been several expert determinations regarding the same strings that were seemingly inconsistent (fn. omitted). Vistaprint recognizes that the ICANN Board intervened to address "perceived inconsistent or otherwise unreasonable SCO Expert Determinations" (fn. omitted). However, ICANN fails to explain why the SCO Expert Determination on Vistaprint's .webs applications was not just as unreasonable as the SCO Expert Determinations involving .cars/.car, .cam/.com and 通販 /.shop. Indeed, the determination concerning Vistaprint's .webs applications expressly relies on the determination concerning .cars/.car, that was considered inconsistent or otherwise unreasonable by the ICANN Board that rejected the reasoning applied in the two other .cars/.car expert determinations (fn. omitted).

23.   Therefore, Vistaprint requests the IRP Panel to exercise its control over the ICANN Board and to declare that ICANN discriminated Vistaprint's applications.

95. <u>Timing</u>: Vistaprint contends that the objections it raises in this IRP concerning the Third Expert's SCO determination and the Guidebook and its application are timely.[133] While

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[132] Vistaprint's First Additional Submission, ¶ 12.
[133] Vistaprint's Second Additional Submission, ¶¶ 8-12.

ICANN argues that the time for Vistaprint to object to the SCO procedures as established in the Guidebook has long passed,[134] Vistaprint responds that the opportunity to challenge the erroneous application of the Guidebook in violation of ICANN's fundamental principles only arose when the flaws in ICANN's implementation of the Guidebook became apparent. At the time of the adoption of the Guidebook, Vistaprint was effectively barred from challenging it by the fact that it could not – at that time – show any harm. Further, to raise an issue at that time would have required Vistaprint to reveal that it was contemplating making an application for a new gTLD string, which might have encouraged opportunistic applications by others seeking to extract monetary value from Vistaprint. Although the IRP panel in the *Booking.com v. ICANN* IRP raised similar timing concerns, it did not draw the distinction between the adoption of the general principles and their subsequent implementation.

B. ICANN's Position

a. IRP Panel's Authority

96. <u>Standard of review</u>: ICANN describes the IRP as a unique mechanism available under ICANN's Bylaws.[135] The IRP Panel is tasked with determining whether the Board's actions are consistent with ICANN's Articles and Bylaws. ICANN states that its Bylaws specifically identify a deferential standard of review that the IRP Panel must apply when evaluating the actions of the ICANN Board, and the rules are clear that the IRP Panel is neither asked to, nor allowed to, substitute its judgment for that of the Board.[136] In particular, ICANN cites to Article IV, § 3.4 of the Bylaws indicating the IRP Panel is to apply a defined standard of review to the IRP Request, focusing on:

    a. did the Board act without conflict of interest in taking its decision?;
    b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
    c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

97. Further, ICANN states that the IRP addresses challenges to conduct undertaken by ICANN's Board of Directors; it is not a mechanism to challenge the actions or inactions of ICANN staff or third parties that may be involved with ICANN's activities.[137] The IRP is also not an appropriate forum to challenge the BGC's ruling on a Reconsideration Request in the absence of some violation by the BGC of ICANN's Articles or Bylaws.[138]

98. <u>IRP Declaration binding or non-binding</u>: ICANN states that the IRP "is conducted pursuant to Article IV, section 3 of ICANN's Bylaws, which creates a non-binding method

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[134] ICANN's First Additional Response, ¶¶ 28-29.
[135] Response, ¶ 32.
[136] Response, ¶ 33; ICANN's First Additional Response, ¶ 10.
[137] Response, ¶ 4.
[138] Response, ¶ 12.

of evaluating certain actions of ICANN's Board.[139] The Panel has one responsibility – to "declar[e] whether the Board has acted consistently with the provisions of [ICANN's] Articles of Incorporation and Bylaws."[140] The IRP is not an arbitration process, but rather a means by which entities that participate in ICANN's processes can seek an independent review of decisions made by ICANN's Board.

99. ICANN states that the language of the IRP provisions set forth in Article IV, section 3 of the Bylaws, as well as the drafting history of the development of the IRP provisions, make clear that IRP panel declarations are not binding on ICANN:[141] ICANN explains as follows in its First Additional Response:

> 35. First, the Bylaws charge an IRP panel with "comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of lncorporation and Bylaws." The Board is then obligated to "review[]"[142] and "consider" an IRP panel's declaration at the Board's next meeting "where feasible."[143] The direction to "review" and "consider" an IRP panel's declaration means that the Board has discretion as to whether it should adopt that declaration and whether it should take any action in response to that declaration; if the declaration were binding, there would be nothing to review or consider, only a binding order to implement.

100. ICANN contends that the IRP Panel's declaration is not binding because the Board is not permitted to outsource its decision-making authority.[144] However, the Board will, of course, give serious consideration to the IRP Panel's declaration and, "where feasible," shall consider the IRP Panel's declaration at the Board's next meeting.[145]

101. As to the drafting process, ICANN provides the following background in its First Additional Response:

> 36. Second, the lengthy drafting history of ICANN's independent review process confirms that IRP panel declarations are not binding. Specifically, the Draft Principles for Independent Review, drafted in 1999, state that "the ICANN Board should retain ultimate authority over ICANN's affairs – after all, it is the Board…that will be chosen by (and is directly accountable to) the membership and supporting organizations (fn. omitted). And when, in 2001, the Committee on ICANN Evolution and Reform (ERC) recommended the creation of an independent review process, it called for the creation of "a process to require non-binding arbitration by an international arbitration body to review any allegation that the Board has acted in conflict with ICANN's Bylaws" (fn. omitted). The individuals who actively participated in the process also agreed that the review process would not be binding. As one participant stated: IRP "decisions will be nonbinding, because the Board will retain final decision-making authority" (fn. omitted).

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[139] Response, ¶ 2.
[140] Response, ¶ 2 (quoting Bylaws, Art. IV, § 3.4).
[141] ICANN's First Additional Response, ¶ 34.
[142] ICANN's First Additional Response, ¶ 35 (quoting Bylaws, Art. IV, § 3.11.d).
[143] ICANN's First Additional Response, ¶ 35 (quoting Bylaws, Art. IV, § 3.21).
[144] Response, ¶ 35.
[145] Response, ¶ 35 (quoting Bylaws, Art. IV, § 3.21).

37. In February 2010, the first IRP panel to issue a final declaration, the ICM IRP Panel, unanimously rejected the assertion that IRP panel declarations are binding[146] and recognized that an IRP panel's declaration "is not binding, but rather advisory in effect." Nothing has occurred since the issuance of the ICM IRP Panel's declaration that changes the fact that IRP panel declarations are not binding. To the contrary, in April 2013, following the ICM IRP, in order to clarify even further that IRPs are not binding, all references in the Bylaws to the term "arbitration" were removed as part of the Bylaws revisions. ICM had argued in the IRP that the use of the word "arbitration" in the portion of the Bylaws related to Independent Review indicated that IRPs were binding, and while the ICM IRP Panel rejected that argument, to avoid any lingering doubt, ICANN removed the word "arbitration" in conjunction with the amendments to the Bylaws.

38. The amendments to the Bylaws, which occurred following a community process on proposed IRP revisions, added, among other things, a sentence stating that "declarations of the IRP Panel, and the Board's subsequent action on those declarations, are final and have precedential value" (fn. omitted). Vistaprint argues that this new language, which does not actually use the word "binding," nevertheless provides that IRP panel declarations are binding, trumping years of drafting history, the sworn testimony of those who participated in the drafting process, and the plain text of the Bylaws. This argument is meritless.

39. First, relying on the use of the terms "final" and "precedential" is unavailing – a declaration clearly can be both non-binding and also final and precedential:….

40. Second, the language Vistaprint references was added to ICANN's Bylaws to meet recommendations made by ICANN's Accountability Structures Expert Panel (ASEP). The ASEP was comprised of three world-renowned experts on issues of corporate governance, accountability, and international dispute resolution, and was charged with evaluating ICANN's accountability mechanisms, including the Independent Review process. The ASEP recommended, among other things, that an IRP should not be permitted to proceed on the same issues as presented in a prior IRP. The ASEP's recommendations in this regard were raised in light of the second IRP constituted under ICANN's Bylaws, where the claimant presented claims that would have required the IRP Panel to reevaluate the declaration of the IRP Panel in the ICM IRP. To prevent claimants from challenging Board action taken in direct response to a prior IRP panel declaration, the ASEP recommended that "[t]he declarations of the IRP, and ICANN's subsequent actions on those declarations, should have precedential value" (fn. omitted).

41. The ASEP's recommendations in this regard did not convert IRP panel declarations into binding decisions (fn. omitted). One of the important considerations underlying the ASEP's work was the fact that ICANN, while it operates internationally, is a California non-profit public benefit corporation subject to the statutory law of California as determined by United States courts. As Graham McDonald, one of the three ASEP experts, explained, because California law requires that the board "retain responsibility for decision-making," the Board has "final word" on "any recommendation that ... arises out of [an IRP]" (fn. omitted). The ASEP's recommendations were therefore premised on the understanding that the declaration of an IRP panel is not "binding" on the Board.

102. <u>Authority to award affirmative relief</u>: ICANN contends that any request that the IRP Panel grant affirmative relief goes beyond the Panel's authority.[147] The Panel does not have the authority to award affirmative relief or to require ICANN to undertake specific

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[146] *Declaration of IRP Panel, ICM Registry, LLC v. ICANN*, ICDR Case No. 50 117 T 00224 08, ¶ 133 (Feb. 19, 2010) ("*ICM Registry Final Declaration*").
[147] Response, ¶ 78.

conduct. The Panel is limited to declaring whether an action or inaction of the Board was inconsistent with the Articles or Bylaws, and recommending that the Board stay any action or decision, or take any interim action, until such time as the Board reviews and acts upon the opinion of the Panel.[148] ICANN adds that the IRP panel in *ICM Registry Declaration* found that

> "[t]he IRP cannot 'order' interim measures but do no more than 'recommend' them, and this until the Board 'reviews' and 'acts upon the opinion' of the IRP."[149]

b. SCO Proceedings Claim

103. ICANN states that Vistaprint is using this IRP as a means to challenge the merits of the Third Expert's determination in the *Vistaprint SCO*.[150] As ICANN states in its Response:

> *12. Ultimately, Vistaprint has initiated this IRP because Vistaprint disagrees with the Expert Panel's Determination and the BGC's finding on Vistaprint's Reconsideration Request. ICANN understands Vistaprint's disappointment, but IRPs are not a vehicle by which an Expert Panel's determination may be challenged because neither the determination, nor ICANN accepting the determination, constitutes an ICANN Board action. Nor is an IRP the appropriate forum to challenge a BGC ruling on a Reconsideration Request in the absence of some violation by the BGC of ICANN's Articles or Bylaws. Here, ICANN followed its policies and processes at every turn with respect to Vistaprint, which is all it is required to do.*

104. ICANN states that the IRP Panel has one chief responsibility – to "determine whether the Board has acted consistently with the provisions of [ICANN's] Articles of Incorporation and Bylaws."[151] With respect to Vistaprint's claim that ICANN's Board violated its Articles and Bylaws by "blindly accepting" the Third Expert's SCO determination without reviewing its analysis or result, ICANN responds that there is no requirement for the Board to conduct such an analysis. "Accepting" or "reviewing" the Expert's determination is not something the Board was tasked with doing or not doing. Per the Guidebook, the "findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process."[152] The Guidebook further provides that "[i]n a case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4, String Contention Procedures)."[153] This step is a result not of any ICANN Board action, but a straightforward application of Guidebook provisions for SCO determinations.

105. ICANN states the Board thus took no action with respect to the Third Expert's determination upon its initial issuance, because the Guidebook does not call for the Board to take any action and it is not required by any Article or Bylaw provision. Accordingly, it cannot be a violation of ICANN's Articles or Bylaws for the Board to not conduct a

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[148] ICANN's First Additional Response, ¶ 33 (citing Bylaws, Art. IV, §§ 3.4 and 3.11(d)).
[149] *ICM Registry Final Declaration*, ¶ 133.
[150] Response, ¶ 12; ICANN's First Additional submission, ¶ 4.
[151] Response, ¶ 2 (citing Bylaws, Art. IV, § 3.4).
[152] Response, ¶ 9 (citing Guidebook, § 3.4.6).
[153] Response, ¶ 9 (citing Guidebook, § 3.2.2.1).

substantive review of an expert's SCO determination. And as such, there is no Board action in this regard for the IRP Panel to review.

106. ICANN states that "the sole Board action that Vistaprint has identified in this case is the BGC's rejection of Vistaprint's Reconsideration Request. However, ICANN maintains that nothing about the BGC's handling of the RFR violated ICANN's Articles or Bylaws."[154]

107. In this regard, ICANN states that the BGC was not required, as Vistaprint contends, to refer Vistaprint's Reconsideration Request to the entire ICANN Board.[155] The Bylaws provide that the BGC has the authority to "make a final determination of Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors."[156] Because Vistaprint's Reconsideration Request was a challenge to alleged staff action, the BGC was within its authority, and in compliance with the Bylaws, when it denied Vistaprint's Reconsideration Request without making a referral to the full Board.

108. ICANN states that the BGC did what it was supposed to do in reviewing Vistaprint's Reconsideration Request – it reviewed the Third Expert's and ICANN staff's compliance with policies and procedures, rather than the substance of the Third Expert's SCO determination, and found no policy or process violations.[157] ICANN urges that Vistaprint seeks to use the IRP to challenge the substantive decision of the Third Expert in the *Vistaprint SCO*. However, this IRP may only be used to challenge ICANN Board actions on the grounds that they do not comply with the Articles or Bylaws, neither of which is present here.

109. ICANN nevertheless responds to Vistaprint's allegations regarding errors of process and substance in the SCO proceedings, and contends that the BGC properly handled its review of the *Vistaprint SCO*. ICANN's specific responses on these points are as follows:

    (i)   As to Vistaprint's claim that the ICDR's appointment of the First Expert was untimely, missing the deadline by 5 days, ICANN states that the BGC determined that Vistaprint failed to provide any evidence that it contemporaneously challenged the timeliness of the ICDR's appointment of the First Expert, and that a Reconsideration Request was not the appropriate mechanism to raise the issue for the first time. In addition, the BGC concluded that Vistaprint had failed to show that it was "materially" and "adversely" affected by the brief delay in appointing the First Expert, rendering reconsideration inappropriate.

    (ii)   Regarding Vistaprint's claim that the First Expert (and Third Expert) improperly accepted and considered unsolicited supplemental filings, violating Articles 17 and 18 of the New gTLD Objections Procedure, ICANN states that Article 17 provides the

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[154] ICANN's First Additional Submission, ¶ 4.
[155] Response, ¶ 43.
[156] Response, ¶ 44 (citing Bylaws, Art. IV, § 2.3(f)).
[157] Response, ¶ 11.

expert panel with the discretion to accept such a filing:[158] "The Panel *may decide* whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions."[159] Thus, as the BGC correctly found, it was not the BGC's place to second-guess the First (or Third) Expert's exercise of permitted discretion.

(iii)   As to Vistaprint's claim that the ICDR violated Article 21 of the New gTLD Objections Procedure by failing to ensure the timely issuance of an expert SCO determination, ICANN contends that the BGC properly determined that Vistaprint's claims in this regard did not support reconsideration for two reasons. First, on October 1, 2013, before the determination was supposed to be issued by the First Expert, the ICDR removed that expert. The BGC therefore could not evaluate whether the First Expert rendered an untimely determination in violation of the Procedure. Second, the BGC correctly noted that 45-day timeline applies to an expert's submission of the determination "in draft form to the [ICDR's] scrutiny as to form before it is signed" and the ICDR and the Expert are merely required to exercise "reasonable efforts" to issue a determination within 45 days of the constitution of the Panel.[160]

(iv)   Regarding Vistaprint's claim that the First Expert failed to maintain independence and impartiality, in violation of Article 13(c) of the New gTLD Objections Procedure, ICANN argues this claim is unsupported.[161] As the BGC noted, Vistaprint provided no evidence demonstrating that the First Expert failed to follow the applicable ICDR procedures for independence and impartiality. Rather, all indications are that the First Expert and the ICDR complied with these rules as to this "new conflict," which resulted in a removal of the First Expert. Further, Vistaprint presented no evidence of being materially and adversely affected by the First Expert's removal, which is another justification for the BGC's denial of the Reconsideration Request.

(v)   Vistaprint claimed that the ICDR unjustifiably accepted a challenge to the Second Expert (or created the circumstances for such a challenge), in violation of Article 2 of the ICDR's Supplementary Procedures for String Confusion Objections.[162] ICANN contends that the BGC properly determined that this claim did not support reconsideration. The ICRD Rules for SCOs make clear that the ICDR had the "sole discretion" to review and decide challenges to the appointment of expert panelists. While Vistaprint may disagree with the ICDR's decision to accept the Objector's challenge, it is not the BGC's role to second guess the ICDR's discretion, and it was

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[158] Response, ¶ 50.
[159] New gTLD Objections Procedure, Art. 17.
[160] Response, ¶ 53, citing New gTLD Objections Procedure, Art. 21(a)-(b).
[161] Response, ¶¶ 54-56.
[162] Article 2, § 3 of the ICDR's Supplementary Procedures for String Confusion Objections provides that:

Upon review of the challenge the DRSP in its *sole discretion* *shall make the decision on the challenge and advise the parties of its decision.*
[Underlining added]

not a violation of the Articles or Bylaws for the BGC to deny reconsideration on this ground.

(vi) Vistaprint claimed that the determination of the Third Expert was untimely, in violation of Article 21(a) of the New gTLD Objections Procedure. ICANN claims that the BGC properly held that this claim did not support reconsideration.[163] On November 20, 2013, the ICDR appointed the Third Expert. Vistaprint claimed in its Reconsideration Request that pursuant to Article 21, the determination therefore "should have been rendered by January 4, 2014," which was forty-five (45) days after the Panel was constituted. Because "it took this Panel until January 24, 2014 to render the Decision," Vistaprint contended that the determination was untimely because it was twenty days late. ICANN states that, according to the Procedure, the Expert must exercise "reasonable efforts" to ensure that it submits its determination "in draft form to the DRSP's scrutiny as to form before it is signed" within forty-five (45) days of the Expert Panel being constituted. As the BGC noted, there is no evidence that the Third Expert failed to comply with this Procedure, and reconsideration was therefore unwarranted on this ground.

(vii) ICANN responded to Vistaprint's claim that the Third Expert incorrectly applied the Objector's burden of proof, in violation of section 3.5 of the Guidebook and Article 20(c) of the New gTLD Objections Procedure (which place the burden on the Objector). Vistaprint claimed that the Third Expert contravened ICANN's process because the Expert did not give an analysis showing that the Objector had met the burden of proof".[164] ICANN states that the BGC found the Expert extensively detailed support for the conclusion that the .WEBS string so nearly resembles .WEB – visually, aurally and in meaning – that it is likely to cause confusion. The BGC noted that the Expert had adhered to the procedures and standards set forth in the Guidebook relevant to determining string confusion and reconsideration was not warranted on this basis.

(viii) Finally, as to Vistaprint's claim that the Third Expert incorrectly applied ICANN's substantive standard for evaluation of String Confusion Objections (as set out in Section 3.5.1 of the Guidebook), ICANN contends the BGC properly found that reconsideration was not appropriate.[165] Vistaprint contended that the Expert failed to apply the appropriate high standard for assessing likelihood of confusion.[166] ICANN states that Section 3.5.1 of the Guidebook provides that

> *"[f]or the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user."*

ICANN claims that disagreement as to whether this standard should have resulted in a finding in favor of Vistaprint does not mean that the Third Expert violated any policy or process in reaching his decision. Vistaprint also claimed that the Third

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[163] Response, ¶¶ 61-62.
[164] Response, ¶¶ 63-64.
[165] Response, ¶¶ 65-68.
[166] Request, ¶ 47.

Expert "failed to apply the burden of proof and the standards imposed by ICANN" because the Expert questioned whether the co-existence between Vistaprint's domain name, <webs.com>, and the Objector's domain name, <web.com> for many years without evidence of actual confusion is relevant to his determination. ICANN states that, as the BGC noted, the relevant consideration for the Expert is whether the *applied-for gTLD string* is likely to result in string confusion, not whether there is confusion between second-level domain names. Vistaprint does not cite any provision of the Guidebook, the Procedure, or the Rules that have been contravened in this regard.

110. In sum, ICANN contends that the BGC did its job, which did not include evaluating the merits of Third Expert's determination, and the BGC followed applicable policies and procedures in considering the RFR.[167]

111. Regarding Vistaprint's claims of ICANN's breach of various Articles and Bylaws, ICANN responds as follows in its Response:

71. First, Vistaprint contends that ICANN failed to comply with the general principle of "good faith." But the only reason Vistaprint asserts ICANN failed to act in good faith is in "refus[ing] to reconsider the substance" of the Determination or to "act with independent judgment" (fn. omitted). The absence of an appeal mechanism by which Vistaprint might challenge the Determination does not form the basis for an IRP because there is nothing in ICANN's Bylaws or Articles of Incorporation requiring ICANN to provide one.

72. Second, Vistaprint contends that ICANN failed to apply its policies in a neutral manner. Here, Vistaprint complains that other panels let other applications proceed without being placed into a contention set, even though they, in Vistaprint's opinion, presented "at least equally serious string similarity concerns" as .WEBS/.WEB (fn. omitted). Vistaprint's claims about ICDR's treatment of other string similarity disputes cannot be resolved by IRP, as they are even further removed from Board conduct. Different outcomes by different expert panels related to different gTLDs are to be expected. Claiming that other applicants have not suffered adverse determinations does not convert the Expert Panel's Determination into a "discriminatory ICANN Board act."

73. Third, Vistaprint contends that the ICANN Board violated its obligation to act transparently for not investigating the "impartiality and independence" of the Expert Panel and thereby "did not seek to communicate with [ICDR] to optimize [its] service" (fn. omitted). Aside from the disconnect between the particular Bylaws provision invoked by Vistaprint requiring ICANN's transparency, and the complaint that the ICDR did not act transparently, Vistaprint fails to identify any procedural deficiency in the ICDR's actions regarding the removal of the First Expert, as set forth above. Moreover, Vistaprint cites no obligation in the Articles or Bylaws that the ICANN Board affirmatively investigate the impartiality of an Expert Panel, outside of the requirement that the ICDR follow its policies on conflicts, which the ICDR did.

74. Fourth, Vistaprint contends that ICANN "has not created any general process for challenging the substance of the so-called expert determination," and thus has "brashly flouted" its obligation to remain accountable (fn. omitted). But again, Vistaprint does not identify any provision of the Articles or Bylaws that requires ICANN to provide such an appeals process.

75. Fifth, Vistaprint "concludes" that the ICANN Board neglected its duty to promote competition and innovation (fn. omitted) when it failed to overturn the Expert Panel's Determination. Vistaprint claims that the Objector's "motive in filing the objection was to prevent a potential competitor from entering

the gTLD market" and therefore ICANN's "acceptance" of the objection purportedly contravenes ICANN's core value of promoting competition. But every objection to a gTLD application by an applicant for the same string seeks to hinder a competitor's application. By Vistaprint's logic, ICANN's commitment to promoting competition requires that no objections ever be sustained and every applicant obtains the gTLD it requests. There is no provision in the Articles or Bylaws that require such an unworkable system.

76. All in all, Vistaprint's attempt to frame its disappointment with the Expert Panel's decision as the ICANN Board's dereliction of duties does not withstand scrutiny.

c. Disparate Treatment Claim

112. ICANN states that Vistaprint objects to the Board's exercise of its independent judgement in determining not to intervene further (beyond the review of the BGC) with respect to the Third Expert's determination in the *Vistaprint SCO,* as the Board did with respect to expert determinations on String Confusion Objections regarding the strings (1) .COM/.CAM, (2) .CAR/.CARS, and (3) .SHOP/.*通販* (online shopping in Japanese).[168]

113. ICANN states that the Guidebook provides that in "exceptional circumstances," such as when accountability mechanisms like RFR or IRP are invoked, "the Board might individually consider an application"[169] and that is precisely what occurred in Vistaprint's case. Because Vistaprint sought reconsideration, the BGC considered Vistaprint's Reconsideration Request and concluded that the ICDR and Third Expert had not violated any relevant policy or procedure in rendering the Expert's determination.

114. ICANN states that the ICANN Board only intervened with respect to these other expert determinations because there had been several independent expert determinations regarding the same strings that were seemingly inconsistent with one another. That is not the case with respect to Vistaprint's applications – no other expert determinations were issued regarding the similarity of .WEB and .WEBS.[170] "Unlike .WEB/.WEBS, the COM/.CAM, .CAR/.CARS, and .SHOP/.*通販* strings were all the subject of several, seemingly inconsistent determinations on string confusion objections by different expert panels. So, for example, while one expert upheld a string confusion objection asserting that .CAM was confusingly similar to .COM, another expert overruled a separate string confusion objection asserting precisely the same thing."[171]

115. Further, ICANN explains that

16. Given what were viewed by some as inconsistent determinations, the BGC requested that ICANN staff draft a report for the ICANN Board's New gTLD Program Committee ("NGPC"), "setting out

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[168] ICANN's First Additional Submission, ¶ 14.
[169] ICANN's First Additional Submission, ¶ 5 (citing Guidebook, § 5.1). ICANN quotes the *Booking.com Final Declaration*, where the IRP Panel stated in relation to § 5.1 "*the fact that the ICANN Board enjoys such discretion [to individually consider an application for a New gTLD] and may choose to exercise it at any time does not mean that it is bound to exercise it, let alone at the time and in the manner demanded by Booking.com.*"
[170] ICANN's First Additional Submission, ¶ 5.
[171] ICANN's First Additional Submission, ¶ 15.

options for dealing...[with] differing outcomes of the String Confusion Objection Dispute Resolution process in similar disputes...."[172] *The NGPC subsequently considered potential approaches to addressing perceived inconsistent determinations on string confusion objections, including possibly implementing a new review mechanism.*[173] *ICANN staff initiated a public comment period regarding framework principles of a potential such review mechanism.*[174] *Ultimately, having considered the report drafted by ICANN staff, the public comments received, and the string confusion objection process set forth in the Guidebook, the NGPC determined that the inconsistent expert determinations regarding .COM/.CAM and .SHOP/.通販 were "not[] in the best interest of the New gTLD Program and the Internet community" and directed ICANN staff to establish a process whereby the ICDR would appoint a three-member panel to re-evaluate those expert determinations.*[175]

116. ICANN contends that Vistaprint has identified no Articles or Bylaws provision violated by the Board in exercising its independent judgment to intervene with respect to inconsistent determinations in certain SCO cases, but not with respect to the single expert SCO determination regarding .WEBS/.WEB. The Board was justified in exercising its discretion to intervene with respect to the inconsistent expert determinations regarding .COM/.CAM, .CAR/.CARS and .SHOP/.通販 ‐ the Board acted to bring certainty to multiple and differing expert determinations on String Confusion Objections regarding the same strings.[176] That justification was not present with respect to the single *Vistaprint SCO* determination at issue here. Thus, ICANN contends Vistaprint was not treated differently than other similarly-situated gTLD applicants.

117. <u>Timing</u>: Finally, ICANN also states that the time for Vistaprint to challenge the Guidebook and its standards has past. The current version of the Guidebook was published on June 4, 2012 following an extensive review process, including public comment on multiple drafts.[177] Despite having ample opportunity, Vistaprint did not object to the Guidebook at the time it was implemented. If Vistaprint had concerns related to the issues it now raises, it should have pursued them at the time, not years later and only after receiving the determination in the *Vistaprint SCO*. ICANN quotes the *Booking.com Final Declaration,* where the IRP stated,

> *"the time has long since passed for Booking.com or any other interested party to ask an IRP panel to review the actions of the ICANN Board in relation to the establishment of the string similarity review process, including Booking.com's claims that specific elements of the process and the Board decisions to implement those elements are inconsistent with ICANN's Articles and Bylaws. Any such claims, even if they had any merit, are long since time-barred by the 30-day limitation period set out in Article IV, Section 3(3) of the Bylaws."*[178]

118. ICANN states that while the Guidebook process at issue in this case is different for the

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[172] *See* BGC Determination on Reconsideration Request 13-10, at 11.
[173] *See* Rationale for NGPC Resolution 2014.02.05.NG02, at https://www.icann.org/resources/board-material/resolutions-new-gtld-20 14-02-05-en (last accessed Sept. 15, 2015).
[174] *See* https://www.icann.org/public-comments/sco-rramework-principles-20 14-02-11-en (last accessed Sept. 15, 2015).
[175] ICANN's First Additional Submission, ¶ 16; *see* NGPC Resolution 2014.1 0.12.NG02, *at* https://www.icann.org/resources/board- material/resolutions-new-gtld-2014-1 0-12-en#2.b (last accessed Sept. 15, 2015).
[176] ICANN's First Additional Submission, ¶ 18.
[177] ICANN's First Additional Response, ¶ 27.
[178] *Booking.com final Declaration,* ¶ 129.

process at issue in the *Booking.com IRP* – the SCO process rather than the string similarity review process – the Booking.com IRP panel's reasoning applies equally. ICANN argues that because both processes were developed years ago, as part of the development of the Guidebook, challenges to both are time-barred.[179]

V.   Analysis and Findings

a.   IRP Panel's Authority

119.   <u>Standard of Review</u>: The IRP Panel has benefited from the parties submissions on this issue, noting their agreement as to the Panel's primary task: comparing contested actions (or inactions)[180] of ICANN's Board to its Articles and Bylaws and declaring whether the Board has acted consistently with them. Yet when considering this Panel's comparative task, the parties disagree as to the level of deference to be accorded by the Panel in assessing the Board's actions or inactions.

120.   Vistaprint has sought independent review through this IRP, claiming that is has been "harmed" (i.e., its .WEBS application has not been allowed to proceed and has been placed in a Contention Set) by the Board's alleged violation of the Articles and Bylaws. In accordance with Article IV, § 3.2 of the Bylaws:

> *Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation, and not as a result of third parties acting in line with the Board's action.*

121.   As noted above, Article IV, § 1 of the Bylaws emphasizes that the IRP is an accountability mechanism:

> *The provisions of this Article, creating processes for reconsideration and independent review of ICANN actions and periodic review of ICANN's structure and procedures, are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws.*

122.   The Bylaws in Article IV, § 3.4 detail the IRP Panel's charge and issues to be considered in a defined standard of review:

> *Requests for such independent review shall be referred to an Independent Review Process Panel ("IRP Panel"), which shall be <u>charged</u> with <u>comparing</u> contested actions of the Board to the Articles of Incorporation and Bylaws, and with <u>declaring</u> whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:*
>
> *a.   did the Board act without conflict of interest in taking its decision?;*
> *b.   did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and*

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[179] ICANN's First Additional Submission, ¶ 28.
[180] Bylaws, Art. IV, § 3.11(c) ("The IRP Panel shall have the authority to:…(c) declare whether an <u>action or inaction</u> of the Board was inconsistent with the Articles of Incorporation or Bylaws" (underlining added).

> *c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?[181]*

> *[Underlining added]*

123. The Bylaws state the IRP Panel is *"charged"* with *"comparing"* contested actions of the Board to the Articles and Bylaws and *"declaring"* whether the Board has acted consistently with them. The Panel is to focus, in particular, on whether the Board acted without conflict of interest, exercised due diligence and care in having a reasonable amount of facts in front of it, and exercised independent judgment in taking a decision believed to be in the best interests of ICANN. In the IRP Panel's view this more detailed listing of a defined standard cannot be read to remove from the Panel's remit the fundamental task of comparing actions or inactions of the Board with the Articles and Bylaws and declaring whether the Board has acted consistently or not. Instead, the defined standard provides a list of questions that can be asked, but not to the exclusion of other potential questions that might arise in a particular case as the Panel goes about its comparative work. For example, the particular circumstances may raise questions whether the Board acted in a transparent or non-discriminatory manner. In this regard, the ICANN Board's discretion is limited by the Articles and Bylaws, and it is against the provisions of these instruments that the Board's conduct must be measured.

124. The Panel agrees with ICANN's statement that the Panel is neither asked to, nor allowed to, substitute its judgment for that of the Board. However, this does not fundamentally alter the lens through which the Panel must view its comparative task. As Vistaprint has urged, the IRP is the only accountability mechanism by which ICANN holds itself accountable through *independent third-party review* of its actions or inactions. Nothing in the Bylaws specifies that the IRP Panel's review must be founded on a deferential standard, as ICANN has asserted. Such a standard would undermine the Panel's primary goal of ensuring accountability on the part of ICANN and its Board, and would be incompatible with ICANN's commitment to maintain and improve robust mechanisms for accountability, as required by ICANN's Affirmation of Commitments, Bylaws and core values.

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[181] The Supplementary Rules provide similarly in section 1 that the IRP is designed "to review ICANN Board actions or inactions alleged to be inconsistent with ICANN's Bylaws or Articles of Incorporation" with the standard of review set forth in section 8:

8. Standard of Review

The IRP is subject to the following standard of review: (i) did the ICANN Board act without conflict of interest in taking its decision; (ii) did the ICANN Board exercise due diligence and care in having sufficient facts in front of them; (iii) did the ICANN Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

If a requestor demonstrates that the ICANN Board did not make a reasonable inquiry to determine it had sufficient facts available, ICANN Board members had a conflict of interest in participating in the decision, or the decision was not an exercise in independent judgment, believed by the ICANN Board to be in the best interests of the company, after taking account of the Internet community and the global public interest, the requestor will have established proper grounds for review.

125. The IRP Panel is aware that three other IRP panels have considered this issue of standard of review and degree of deference to be accorded, if any, when assessing the conduct of ICANN's Board. All of them have reached the same conclusion: the Board's conduct is to be reviewed and appraised by the IRP Panel using an objective and independent standard, without any presumption of correctness.[182] As the IRP Panel reasoned in the *ICM Registry Final Declaration*:

> *ICANN is no ordinary non-profit California corporation. The Government of the United States vested regulatory authority of vast dimension and pervasive global reach in ICANN. In "recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization" – including ICANN – ICANN is charged with "promoting the global public interest in the operational stability of the Internet..." ICANN "shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law..." Thus, while a California corporation, it is governed particularly by the terms of its Articles of Incorporation and Bylaws, as the law of California allows. Those Articles and Bylaws, which require ICANN to carry out its activities in conformity with relevant principles of international law, do not specify or imply that the International Review Process provided for shall (or shall not) accord deference to the decisions of the ICANN Board. The fact that the Board is empowered to exercise its judgment in the application of ICANN's sometimes competing core values does not necessarily import that that judgment must be treated deferentially by the IRP. In the view of the Panel, the judgments of the ICANN Board are to be reviewed and appraised by the Panel objectively, not deferentially. The business judgment rule of the law of California, applicable to directors of California corporations, profit and nonprofit, in the case of ICANN is to be treated as a default rule that might be called upon in the absence of relevant provisions of ICANN's Articles and Bylaws and of specific representations of ICANN...that bear on the propriety of its conduct. In the instant case, it is those Articles and Bylaws, and those representations, measured against the facts as the Panel finds them, which are determinative.[183]*

126. The IRP Panel here agrees with this analysis. Moreover, Article IV, §3.21 of the Bylaws provides that "<u>declarations of the IRP Panel</u>, and the Board's subsequent action on those declarations, are final and <u>have precedential value</u>" (underlining added). The IRP Panel recognizes that there is unanimity on the issue of degree of deference, as found by the three IRP panels that have previously considered it. The declarations of those panels have precedential value. The Panel considers that the question on this issue is now settled. Therefore, in this IRP the ICANN Board's conduct is to be reviewed and appraised by this Panel objectively and independently, without any presumption of correctness.

127. On a related point as to the scope of the IRP Panel's review, the Panel agrees with ICANN's point of emphasis that, because the Panel's review is limited to addressing challenges to conduct by ICANN's Board, the Panel is not tasked with reviewing the

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[182] *ICM Registry Final Declaration*, ¶ 136 ("the judgments of the ICANN Board are to be reviewed and appraised by the Panel objectively, not deferentially"); *Booking.com final Declaration,* ¶ 111 ("the IRP Panel is charged with 'objectively' determining whether or not the Board's actions are in fact consistent with the Articles, Bylaws and Guidebook, which the Panel understands as requiring that the Board's conduct be appraised independently, and without any presumption of correctness."); Final Declaration of the IRP Panel in *DotConnectAfrica Trust v. ICANN*, ICDR Case No. 50-2013-001083, ¶ 76 (July 9, 2015) ("*DCA Final Declaration*"), at https://www.icann.org/en/system/files/files/final-declaration-2-redacted-09jul15-en.pdf (last accessed on Sept. 15, 2015) ("The Panel therefore concludes that the "standard of review" in this IRP is a *de novo*, objective and independent one, which does not require any presumption of correctness").
[183] *ICM Registry Final Declaration*, ¶ 136.

actions or decisions of ICANN staff or other third parties who may be involved in ICANN activities or provide services to ICANN (such as the ICDR or the experts in the *Vistaprint SCO)*. With this in mind, and with the focus on the Board, the only *affirmative* action of the Board in relation to Vistaprint's .WEBS gTLD application was through the BGC, which denied Vistaprint's Reconsideration Request.[184] ICANN states that "the sole Board action that Vistaprint has identified in this case is the Board Governance Committee's ('BGC') rejection of Vistaprint's Reconsideration Request, which sought reconsideration of the Expert Determination."[185] It appears that ICANN's focus in this statement is on affirmative action taken by the BGC in rejecting Vistaprint's Reconsideration Request; however, this does not eliminate the IRP Panel's consideration of whether, in the circumstances, inaction (or omission) by the BGC or the full ICANN Board in relation to the issues raised by Vistaprint's application would be considered a potential violation of the Articles or Bylaws.

128. As discussed below, the Panel considers that a significant question in this IRP concerns one of "omission" – the ICANN Board, through the BGC or otherwise, did not provide relief to Vistaprint in the form of an additional review mechanism, as it did to certain other parties who were the subject of an adverse SCO determination.

129. <u>IRP declaration binding or non-binding</u>: As noted above, Vistaprint contends that the outcome of this IRP is binding on ICANN, and that any other result would be incompatible with ICANN's obligation to maintain and improve robust mechanisms for accountability. ICANN, on the other hand, contends that the IRP Panel's declaration is intended to be advisory and non-binding.

130. In analyzing this issue, the IRP Panel has carefully reviewed the three charter instruments that give the Panel its authority to act in this case: the Bylaws, the Supplementary Procedures, and the ICDR Rules. The Panel views that it is important to distinguish between (i) the findings of the Panel on the question of whether the ICANN Board's conduct is consistent (or not) with the Articles and Bylaws, and (ii) any consequent remedial measures to be considered as a result of those findings, at least insofar as those

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[184] The BGC is a committee of the Board established pursuant to Article XII, § 1 of the Bylaws. Article IV, § 2.3 of the Bylaws provide for the delegation of the Board's authority to the BGC to consider Requests for Reconsideration and indicate that the BGC shall have the authority to:
  a. evaluate requests for review or reconsideration;
  b. summarily dismiss insufficient requests;
  c. evaluate requests for urgent consideration;
  d. conduct whatever factual investigation is deemed appropriate;
  e. request additional written submissions from the affected party, or from other parties;
  f. make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors; and
  g. make a recommendation to the Board of Directors on the merits of the request, as necessary.
The BGC has discretion to decide whether to issue a final decision or make a recommendation to ICANN's Board. In this case, the BGC decided to make a final determination on Vistaprint's RFR.
[185] ICANN's First Additional Submission, ¶ 4. By contrast to the IRP Panel's focus on the Board's conduct, the BGC in its decision on Vistaprint's Reconsideration request considered the action or inaction of ICANN staff and third parties providing services to ICANN (i.e., the ICDR and SCO experts).

measures would direct the Board to take or not take any action or decision. The Panel considers that, as to the first point, the findings of the Panel on whether the Board has acted in a manner that is consistent (or not) with the Articles or Bylaws is akin to a finding of breach/liability by a court in a contested legal case. This determination by the Panel is "binding" in the sense that ICANN's Board cannot overrule the Panel's declaration on this point or later decide for itself that it disagrees with the Panel and that there was no inconsistency with (or violation of) the Articles and Bylaws. However, when it comes to the question of whether or not the IRP Panel can *require* that ICANN's Board implement any form of redress based on a finding of violation, here, the Panel believes that it can only raise remedial measures to be considered by the Board in an advisory, non-binding manner. The Panel concludes that this distinction – between a "binding" declaration on the violation question and a "non-binding" declaration when it comes to recommending that the Board stay or take any action – is most consistent with the terms and spirit of the charter instruments upon which the Panel's jurisdiction is based, and avoids conflating these two aspects of the Panel's role.

131. The IRP Panel shares some of Vistaprint's concerns about the efficacy of the IRP as an accountability mechanism if any affirmative relief that might be considered appropriate by the Panel is considered non-binding on ICANN's Board (see discussion below); nevertheless, the Panel determines on the basis of the charter instruments, as well as the drafting history of those documents, that its declaration is binding only with respect to the finding of compliance or not with the Articles and Bylaws, and non-binding with respect to any measures that the Panel might recommend the Board take or refrain from taking. The Panel's Declaration will have "precedential value" and will possibly be made publicly available on ICANN's website.[186] Thus, the declaration of violation (or not), even without the ability to order binding relief vis-à-vis ICANN's Board, will carry more weight than would be the case if the IRP was a confidential procedure with decisions that carried no precedential value.

132. To the extent that there is ambiguity on the nature of the IRP Panel's declaration (which perhaps could have been avoided in the first place), it is because there is ambiguity and an apparent contradiction created by some of the key terms of the three charter instruments – the Bylaws, the Supplementary Procedures, and the ICDR Rules. In terms of a potential interpretive hierarchy for these documents – to the extent that such hierarchy is relevant – the Bylaws can be said to have created the IRP and its terms of reference: the IRP is established as an accountability mechanism pursuant to the Bylaws, Article IV, § 3 (Independent Review of Board Actions). Article IV, § 3.8 of the Bylaws, in turn, delegates to the "IRP Provider" the task of establishing rules and procedures that are supposed to be consistent with Article IV, § 3:

> *Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures,*

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[186] The Panel observes the final declarations in all previous IRPs that have gone to decision, as well as declarations concerning procedure and interim relief, have been posted on ICANN's website. In this respect, Supplementary Procedures, Rule 10(c) provides that a "Declaration may be made public only with the consent of all parties or as required by law". However, ICANN has also agreed in Rule 10(c) that subject to the redaction of confidential information or unforeseen circumstances, "ICANN will consent to publication of a Declaration if the other party so requests."

[Underlining added]

133. Thus, the Supplementary Procedures and ICDR Rules were established pursuant to Article IV, § 3.8 of the Bylaws; however, the requirement of consistency as between the texts was imperfectly implemented, at least with respect to the ICDR Rules, as discussed below. As between the Supplementary Procedures and the ICDR Rules, the Supplementary Procedures will control, as provided in Supplementary Rule 2:

> *In the event there is any inconsistency between these Supplementary Procedures and the Rules, these Supplementary Procedures will govern.*

134. The Bylaws in Article IV, § 3.4 provide that the Panel *shall* be charged with *comparing* contested actions of the Board to the Articles and Bylaws, and with "*declaring*" whether the Board has acted consistently with them. The IRP panel in the *ICM Registry Final Declaration* stressed that the IRP panel's task is "to 'declare', not to 'decide' or to 'determine'."[187] However, the word "declare", alone, does not conclusively answer the question of whether the IRP's declaration (or any part of it) is binding or not. "To declare" means *"to announce or express something clearly and publicly, especially officially."*[188] Declarations can and do serve as the predicate for binding or non-binding consequences in different contexts. For example, a declaratory relief action – in which a court resolves legal uncertainty by determining the rights of parties under a contract or statute without ordering anything be done or awarding damages – can have a binding result because it may later preclude a lawsuit by one of the parties to the declaratory lawsuit. Further, in a non-legal context, "declaring" a state of emergency in a particular state or country can have binding consequences. Thus, the word "declare," in itself, does not answer the issue.

135. Moreover, nothing in the Bylaws, Supplementary Procedures or ICDR Rules suggests that the IRP Panel's declaration is non-binding with respect to the Panel's core task of deciding whether the Board did, or did not, comply the Articles or Bylaws. There is no provision that states the ICANN Board can reconsider this independent and important declaration. To the contrary, the ICDR Rules, which apply to the IRP proceedings, can be read to suggest that <u>both</u> the Panel's finding of compliance (or not) by ICANN's Board, <u>and</u> the Panel's possible reference to any remedial measures, are binding on ICANN. As Vistaprint indicates, the preamble of the ICDR Rules provide that *"[a] dispute can be submitted to an arbitral tribunal for a <u>final and binding decision</u>,"* and Article 30(1) of those Rules specifies that *"[a]wards shall be made in writing by the arbitral tribunal and <u>shall be final and binding on the parties</u>" (emphasis added)*.

136. However, these terms in the ICDR Rules arguably contradict specific provisions of the Bylaws and Supplementary Procedures, at least to the extent that they are read to cover any measures that the IRP Panel would direct the ICANN Board to take or not take. In this way, if there is a contradiction between the texts, the Bylaws and Supplemental rules would govern. However, focusing on the relief that the Panel is authorized to grant

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[187] *ICM Registry Final Declaration*, ¶ 133.
[188] Cambridge English Online Dictionary (United States version).

provides a decisive clue as to the question of whether the IRP declaration, or any part of it, is binding or non-binding, and produces a faithful and harmonized reading of all the texts. While the Bylaws and Supplementary Procedures say nothing to limit the binding effect of the IRP Panel's "liability" declaration, they both contain provisions that expressly indicate the Panel may only "recommend" that the Board stay or take any action or decision. In particular, the Bylaws in Article IV, § 3.11 sets out the IRP Panel's authority in terms of alternative actions that it may take once it is has an IRP case before it:

> *The IRP Panel shall have the authority to:*
> a. *summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious;*
> b. *request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties;*
> c. *declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and*
> d. *recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP;*
> e. *consolidate requests for independent review if the facts and circumstances are sufficiently similar; and*
> f. *determine the timing for each proceeding.*
>
> *[Underlining added]*[189]

137. Article IV, § 3.11(a) provides that the Panel may summarily dismiss an IRP request in certain circumstances. A fair reading of this term is that an IRP panel's dismissal of a case pursuant to § 3.11(a) would be a binding decision, both for the party who brought the IRP request and for ICANN. In other words, ICANN could not require that the IRP panel take-up the case again once it has been dismissed by the panel.[190] Further, the IRP panel can "request additional written submissions" from the parties (including the Board) or certain third parties. Here again, a fair reading of this term is that it is not subject to any review by ICANN Board before it can be implemented and is therefore binding on those who receive such a request.

138. By comparison, any form of relief whereby the IRP Panel *would direct the Board* to take, or refrain from taking, any action or decision, as specified in § 3.11(d), must be "recommend[ed]" to the Board, which then "reviews and acts upon the opinion of the IRP."[191] The Panel's authority is thus limited (and in this sense non-binding) when it

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[189] Bylaws, Art. IV, § 3.11.
[190] Supplementary Rule 6 provides similarly that:

An IRP Panel may summarily dismiss any request for Independent Review where the requestor has not demonstrated that it meets the standing requirements for initiating the Independent Review.

Summary dismissal of a request for Independent Review is also appropriate where a prior IRP on the same issue has concluded through Declaration.

An IRP Panel may also dismiss a querulous, frivolous or vexatious request for Independent Review.

[191] Supplementary Rule 7 provides similarly (as regards interim measures of protection) that:

An IRP Panel may recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the IRP declaration. Where the IRP

(Continued...)

comes to providing ICANN's Board with potential courses of action or inaction in view of Board's non-compliance with the Articles or Bylaws.[192]

139. Several other provisions of the Bylaws and Supplementary Procedures can be fairly read to relate to decisions of the IRP panel that would be considered binding, even as to ICANN's Board. Article IV, § 3.18 provides *"[t]he IRP Panel shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party*." There is no mechanism for the Board to overrule the IRP panel's designation as to which party is the prevailing party. Article IV, § 3.20 provides *"[t]he IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets*." A fair reading of this provision is that the IRP panel's decision concerning such questions of confidentiality would be binding on all parties (including ICANN) in the IRP procedure. Consolidating IRP requests and determining the timing for each IRP proceeding are also decisions of the panel that are binding and not subject to review. Finally, Supplemental Procedures, Rule 11, directs that "[t]he IRP Panel shall fix costs in its Declaration." Here too, this decision of the IRP panel can be fairly read to be binding on the parties, including the Board.

140. Thus, the IRP Panel's authority to render binding or non-binding decisions, orders or relief can be considered in relation to four basic areas:

(i) summary dismissals by the IRP Panel (for different reasons as stated in the Bylaws and Supplementary Procedures) are final and binding on the parties. There is no mechanism for appeal of such dismissals and they have precedential value.

(ii) the designation of prevailing party, fixing costs for the IRP, and other orders in support of the IRP proceedings (e.g., timing of proceedings, confidentiality, requests for additional submissions, consolidation of IRP cases) are binding decisions of the IRP Panel, with no review by the Board or any other body.

(iii) the IRP Panel's declaration of whether or not the Board has acted consistently with the provisions of the Articles and Bylaws is final and binding, in the sense that there is no appeal on this point to ICANN's Board or any other body; it is a final determination and has precedential value.

(iv) any form of relief in which the IRP Panel would direct the Board to take, or refrain from taking, any action or decision is only a recommendation to the Board. In this sense,

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Panel is not yet comprised, the Chair of the standing panel may provide a recommendation on the stay of any action or decision

[192] The word "recommend" is also not free of ambiguity. For example, Article 47 of the ICSID Convention (concerning investor-State arbitration) provides in relevant part that "the Tribunal may, if it considers that the circumstances so require, *recommend* any provisional measures which should be taken to preserve the respective rights of either party" (emphasis added). The use of the word "recommend" in this context may refer to an order of the Tribunal that is intended to be binding on the parties. Nevertheless, in the context of the IRP, the Panel considers that use of the word "recommend" conveys that the Panel's direction of any action or inaction on the part of the Board is a non-binding reference.

such a recommendation is not binding on the Board. The Bylaws and Supplementary Procedures provide specific and detailed guidance in this key area – i.e., relief that would require the Board to take or refraining from taking any action or decision – where the IRP Panel's decisions <u>would not</u> be binding on the Board, but would serve only as a recommendation to be reviewed and acted upon by the Board.

141. The other decisions of the IRP panel, as outlined above and including the declaration of whether or not the Board violated the Articles and Bylaws, would be binding, consistent with the Bylaws, Supplementary Procedures and ICDR Rule Article 30(1). This approach provides a reading that harmonizes the terms of the three charter instruments. It also provides interpretive context for Article IV, § 3.21 of the Bylaws, providing that *"[w]here feasible, the Board shall consider the IRP Panel declaration at the Board's next meeting."* The IRP panel in the *ICM Registry Final Declaration* stated that "[t]his relaxed temporal proviso to do no more than 'consider' the IRP declaration, and to do so at the next meeting of the Board 'where feasible'', emphasizes that it is not binding."[193] However, consistent with the analysis above, the IRP Panel here reads this statement in the *ICM Registry Final Declaration* to relate only to an IRP panel's decision to "recommend" that the Board take, or refrain from taking, any action or decision. It does not relate to the other decisions or duties of the IRP panel, as explained above.

142. Vistaprint contends that the second sentence in Article IV, § 3.21 – providing *"[t]he declarations of the IRP Panel, and the Board's subsequent action on those declarations, are final and have precedential value"* – which was added in April 2013 after the issuance of *ICM Registry Final Declaration,* was a change that supports the view that the IRP panel's outcome, including any references to remedial relief, is binding. However, the Panel agrees with ICANN's view that "a declaration clearly can be both non-binding and also final and precedential."[194] Further, the preparatory work and drafting history for the relevant provisions of the Bylaws relating to the IRP procedure indicate the intention for a non-binding procedure with respect to the Panel's authority to advise the Board to take, or refrain from taking, any action or decision. As summarized in ICANN's contentions above, ICANN has submitted evidence that those who were initially involved in establishing the IRP considered that it should be an advisory, non-binding procedure *in relation to any policies that the Board might be requested to consider and implement by the IRP panel.*[195]

143. Thus, the Bylaws and the Supplementary Procedures draw a line: when the measures that an IRP panel might consider as a result of its core task require that the Board take or refrain from taking any action or decision, the panel may only "recommend" this course of action. On the other hand, if the IRP panel decides that the Board had violated its Articles or Bylaws, or if the panel decides to dismiss the IRP request, designate a prevailing party,

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[193] *ICM Registry Final Declaration*, ¶ 133.
[194] ICANN's First Additional Submission, ¶ 39.
[195] ICANN's First Additional Submission, ¶ 38, n 53 (Vint Cerf, the former Chair of ICANN's Board, testified in the *ICM* IRP that the independent review panel "is an advisory panel. It makes recommendations to the board but the board has the ultimate responsibility *for deciding policy for ICANN*" (italics added)). *ICM v. ICANN,* Hearing Transcript, September 23,2009, at 592:7-11).

set conditions for confidentiality, consolidate IRP requests, request additional written submissions or fix costs, a fair reading of the Bylaws, Supplementary Procedures and ICDR Rules relevant to these determinations would be that the IRP panel's decisions on these matters are binding on both parties, including ICANN.

144. Finally, in view of Article IV, § 3.21 providing that the declarations of IRP panels are final and *have precedential va*lue, the IRP Panel here recognizes that, in addition to the *ICM Registry Final Declaration*, two other IRP panels have considered the question of the IRP panel's authority. In the *Booking.com Final Declaration*, the IRP panel focused on the independent and objective standard of review to be applied to the panel's core task of assessing whether the Board's actions were consistent with the Articles, Bylaws and Guidebook.[196] However, the IRP panel in *Booking.com*, as ICANN acknowledges in its Second Additional Response, did not directly address whether an IRP panel may issue a binding declaration (although ICANN contends that the panel implicitly acknowledged that it cannot).[197]

145. In the *DCA Final Declaration,* the IRP panel addressed directly the question of whether or not the panel's declaration was binding. The panel ruled that its declarations, both as to the procedure and the merits of the case, were binding. The IRP panel in that case raised some of the same concerns that Vistaprint has raised here[198]:

> *110. ICANN points to the extensive public and expert input that preceded the formulation of the Supplementary Procedures. The Panel would have expected, were a mere advisory decision, opinion or declaration the objective of the IRP, that this intent be clearly articulated somewhere in the Bylaws or the Supplementary Procedures. In the Panel's view, this could have easily been done.*

> *111. The force of the foregoing textual and construction considerations as pointing to the binding effect of the Panel's decisions and declarations are reinforced by two factors: 1) the exclusive nature of the IRP whereby the non-binding argument would be clearly in contradiction with such a factor; and, 2) the special, unique, and publicly important function of ICANN. As explained before, ICANN is not an ordinary private non-profit entity deciding for its own sake who it wishes to conduct business with, and who it does not. ICANN rather, is the steward of a highly valuable and important international resource.*

> *[…]*

> *115. Moreover, assuming for the sake of argument that it is acceptable for ICANN to adopt a remedial scheme with no teeth, the Panel is of the opinion that, at a minimum, the IRP should forthrightly explain and acknowledge that the process is merely advisory. This would at least let parties know before embarking on a potentially expensive process that a victory before the IRP panel may be ignored by ICANN. And, a straightforward acknowledgment that the IRP process is intended to be merely advisory might lead to a legislative or executive initiative to create a truly independent compulsory process.*

146. The IRP panel in the *DCA Final Declaration* also emphasized that, according to the terms of the Guidebook, applicants for a new gTLD string waive their right to resort to the courts

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[196] *Booking.com Final Declaration,* ¶¶ 104-115.
[197] ICANN's Second Additional Response, ¶ 29.
[198] *DCA Final Declaration,* ¶ 23 (quoting *DCA Declaration on the IRP Procedure* (Aug. 14, 2014)).

and therefore the IRP serves as the ultimate accountability mechanism for them:[199]

> *15. The IRP is the only independent third party process that allows review of board actions to ensure their consistency with the Articles of Incorporation or Bylaws. As already explained in this Panel's 14 August 2014 Declaration on the IRP Procedure ("August 2014 Declaration"), the avenues of accountability for applicants that have disputes with ICANN do not include resort to the courts. Applications for gTLD delegations are governed by ICANN's Guidebook, which provides that applicants waive all right to resort to the courts:*
>
>> *"Applicant hereby releases ICANN [...] from any and all claims that arise out of, are based upon, or are in any way related to, any action or failure to act by ICANN [...] in connection with ICANN's review of this application, investigation, or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN ON THE BASIS OF ANY OTHER LEGAL CLAIM."*
>
> *Thus, assuming that the foregoing waiver of any and all judicial remedies is valid and enforceable, then the only and ultimate "accountability" remedy for an applicant is the IRP.*

147. The IRP Panel in this case considers that the IRP panel in the *DCA Final Declaration,* and Vistaprint, have made several forceful arguments in favor of why the outcome of the IRP should be considered binding, especially to ensure the efficacy of the IRP as an accountability mechanism. Vistaprint has also urged that the IRP, at least with respect to applicants for new gTLD strings, is not merely a corporate accountability mechanism aimed at *internal* stakeholders, but operates to assess ICANN's responsibilities in relation to *external* third parties. And the outcome of the IRP is binding on these third parties, even if it is not binding on ICANN and its Board. In similar circumstances, it would not be uncommon that individuals, companies or even governments, would agree to participate in dispute resolution processes with third parties that are binding, at least *inter partes*.

148. However, as explained above, the IRP Panel concludes that the distinction between a "binding" declaration on the violation/liability question (and certain other matters as discussed above), on the one hand, and a "non-binding" declaration when it comes to recommending that the Board take or refrain from taking any action or decision, on the other hand, is most faithful to the terms and spirit of the charter instruments upon which the Panel's jurisdiction is based. To the extent that there is any disagreement with this approach, it is for ICANN to consider additional steps to address any ambiguities that might remain concerning the authority of the IRP panel and the legal effect of the IRP declaration.

149. <u>Authority to award affirmative relief</u>: The IRP Panel's analysis on this issue is closely related to, and dependent upon, its analysis of the binding vs. non-binding issue

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[199] *DCA Final Declaration,* ¶ 38 (quoting *DCA Third Declaration on IRP Procedure*).

immediately above. To the extent that the IRP Panel renders any form of relief whereby the Panel would direct the Board to take, or refrain from taking, any action or decision, that relief must be "recommend[ed]" to the Board, which then "reviews and acts upon the opinion of the IRP," as specified in § 3.11(d) of the Bylaws. Relatedly, Supplementary Rule 7 provides that an "IRP Panel may recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the IRP declaration." Consequently, the IRP Panel finds that it does not have authority to render affirmative relief requiring ICANN's Board to take, or refrain from taking, any action or decision.

b. SCO Proceedings Claim

150. The IRP Panel has carefully reviewed Vistaprint's arguments concerning ICANN's alleged violation of its Articles and Bylaws in relation to this *SCO Proceedings Claim.* However, as stated above, the IRP Panel does not review the actions or inactions of ICANN's staff or any third parties, such as the ICDR or SCO experts, who provided services to ICANN. Instead, the IRP Panel's focus is on ICANN's Board and the BGC, which was delegated responsibility from the full Board to consider Vistaprint's Request for Reconsideration.[200]

151. The core of Vistaprint *SCO Proceedings Claim* is that ICANN's Board improperly disregarded accumulated errors made by the ICDR and the SCO experts (especially the Third Expert) during the *Vistaprint SCO* proceedings, and in this way ICANN violated Article IV of the Articles of Incorporation and certain provisions of the Bylaws, as well as the Guidebook.

152. Vistaprint contends that ICANN's Board must verify whether or not, by accepting the SCO expert determination, it is acting consistent with its obligations under its Articles, Bylaws and Affirmation of Commitments,[201] and that ICANN would be in violation of these obligations if it were to blindly accept an expert determination in circumstances where the ICDR and/or the expert had failed to comply with the Guidebook and the New gTLD Objections Procedure and/or the ICDR Rules for SCOs, or where a panel had failed to correctly apply the standard set by ICANN.[202]

153. The IRP Panel disagrees with Vistaprint's contention on this point. Although the Guidebook provides in § 5.1 that ICANN's Board of Directors has ultimate responsibility for the New gTLD Program, there is no affirmative duty stated in the Articles, Bylaws or

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[200] Article IV, §2.15 of ICANN's Bylaws provides that:

For all Reconsideration Requests brought regarding staff action or inaction, the Board Governance Committee shall be delegated the authority by the Board of Directors to make a final determination and recommendation on the matter. Board consideration of the recommendation is not required. As the Board Governance Committee deems necessary, it may make recommendation to the Board for consideration and action. The Board Governance Committee's determination on staff action or inaction shall be posted on the Website. The Board Governance Committee's determination is final and establishes precedential value.

[201] Request, ¶ 6.
[202] Request, ¶ 6.

Guidebook that the Board must to review the result in each and every SCO case. Instead, the Guidebook § 3.4.6 provides that:

> *The findings of the [SCO] panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.*[203]
>
> *[Underlining added]*

154. In the case of an adverse SCO determination, the applicant for a new gTLD string is not left without any recourse. Module 6.6 of the Guidebook provides that an applicant "*MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION*" (no emphasis added).[204]

155. The Reconsideration Request is an "accountability mechanism" that can be invoked by a gTLD applicant, as it was used by Vistaprint, to challenge the result in SCO proceedings. Article IV, § 2.2 of the Bylaws provides that:

> *Any person or entity may submit a request for reconsideration or review of an ICANN action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:*
>
> a. *one or more staff actions or inactions that contradict established ICANN policy(ies); or*
>
> b. *one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or*
>
> c. *one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.*

156. In line with Article IV, § 2.2 of the Bylaws, Vistaprint submitted its Reconsideration Request to challenge actions of the ICDR and SCO experts, claiming their conduct contradicted ICANN policies. While Guidebook, § 5.1 permits ICANN's Board to individually consider new gTLD applications, such as through the RFR mechanism, it does not require that the Board do so in each and every case, *sua sponte.* The Guidebook, § 5.1, provides in relevant part that:

> *ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result … the use of an ICANN accountability mechanism.*[205]

157. The IRP Panel determines that in the absence of a party's recourse to an accountability

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[203] Guidebook, § 3.4.6. The New gTLD Objections Procedure further provides in Article 2(d) that:

> *The 'Expert Determination' is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).*

[204] Guidebook, § 6.6.
[205] Guidebook, § 5.1.

mechanism such as the RFR, the ICANN Board has no affirmative duty to review the result in any particular SCO case.

158. In this case, Vistaprint did submit a Reconsideration Request and the BGC did engage in a detailed review of the alleged errors in process and procedures raised by Vistaprint. The BGC explained what it considered to be the scope of its review, which is consistent with the mandate in Article IV, § 2.2 of the Bylaws for review of "staff actions or inactions that contradict established ICANN policies":

> *In the context of the New gTLD Program, the reconsideration process does not call for the BGC to perform a substantive review of expert determinations. Accordingly, the BGC is not to evaluate the Panel's substantive conclusion that the Requester's applications for .WEBS are confusingly similar to the Requester's application for .WEB. Rather, the BGC's review is limited to whether the Panel violated any established policy or process in reaching that Determination.[206]*

159. In contrast to Vistaprint's claim that the BGC failed to perform its task properly and "turned a blind eye to the appointed Panel's lack of independence and impartiality", the IRP Panel finds that the BGC provided in its 19-page decision a detailed analysis of (i) the allegations concerning whether the ICDR violated its processes or procedures governing the SCO proceedings and the appointment of, and challenges to, the experts, and (ii) the questions regarding whether the Third Expert properly applied the burden of proof and the substantive standard for evaluating a String Confusion Objection. On these points, the IRP Panel finds that the BGC's analysis shows serious consideration of the issues raised by Vistaprint and, to an important degree, reflects the IRP Panel's own analysis.[207]

160. For example, in relation to Vistaprint's contention that the First Expert failed to maintain independence and impartiality, in violation of Article 13(c) of the New gTLD Objections Procedure, the BGC reasoned:

> *The only evidence the [Vistaprint] cites in support of its argument that Mr. Koh failed to maintain his independence during the proceeding is the ICDR's statement that it had decided to remove Mr. Koh "due to a new conflict." (Request, Section 10, Pgs. 9-10.) The ICDR did not provide any further information as to the nature of the conflict. Conflicts can take many forms, such as scheduling or personal conflicts unrelated to the proceedings. There is no evidence that the conflict that inflicted*

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[206] BGC Determination, p. 7, Request, Annex 26.
[207] Vistaprint also asserted that based on the Third Expert's determination in the *Vistaprint SCO,* the Third Expert lacked impartiality and independence, or alternatively lacked qualification. On a complete review of the entire record in this case, including the SCO proceedings and the Reconsideration Request before the BGC, the IRP Panel has found no foundation for these allegations against the Third Expert, and no violation of ICANN's Articles or Bylaws in the manner in which the BGC handled these assertions. The BGC found that these assertions were insufficient to merit reconsideration, as stated in its RFR decision, in footnote 10:

> *[Vistaprint] concludes with the following claim: "The cursory nature of the Decision and the arbitrary and selective discussion of the parties' arguments by the Panel show the lack of either the Panel's independence and impartiality or the Panel's appropriate qualifications." (Request, Section 10, Pg. 23.) [Vistaprint's] assertion is not accompanied by any discussion or further explanation for how ICANN processes were purportedly violated. [Vistaprint's] summary conclusions are without merit and insufficient to warrant reconsideration. Furthermore, [Vistaprint's] claim that the Determination was "cursory" and only contained "selective discussion of the parties' arguments" is unsupported. The Determination was eighteen pages long and contained more than six pages of discussion of the parties' arguments and evidence.*

Mr. Koh was related to the instant proceedings or otherwise impacted Mr. Koh's ability to remain impartial and independent.

Furthermore, [Vistaprint] neither claims to have been, nor presents any evidence of being, materially and adversely affected by Mr. Koh's removal. Indeed, had [Vistaprint] successfully challenged Mr. Koh for lack of independence at the time he was removed, the remedy under the applicable ICDR procedures would have been the removal of Mr. Koh, which was the result here.[208]

161. The BGC concluded that Vistaprint provided no evidence of being materially and adversely affected by the First Expert's removal. Moreover, to the extent that there was an impact due to the First Expert stepping down, this conduct was attributable to the First Expert, not to the ICDR. As the BGC states, had there been a concern about the First Expert's lack of independence, the remedy under the applicable ICDR procedures would have been the removal of that expert, which is what actually occurred.

162. Vistaprint also argued that the BGC conducted no investigation as to the nature of the new conflict that confronted the First Expert and instead "developed baseless hypotheses for the other reasons that could have led to this Panel stepping down."[209] In this respect, perhaps the BGC could have sought to develop evidence on this issue by inquiring with the ICDR about the circumstances concerning the First Expert. Article IV, § 2.13 of the Bylaws provides the BGC "may also request information relevant to the request from third parties," but it does not require that the BGC do so. However, it would not have changed the outcome, as noted above. It is also noteworthy that Article IV, § 2.2(b) of the Bylaws provides that a party may submit a Reconsideration Request <u>to the extent that</u> the party has been adversely affected by:

one or more actions or inactions of the ICANN Board that have been taken or refused to be taken <u>without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act.</u>

163. Here, there was no showing that Vistaprint attempted to develop information concerning how the removal of the First Expert might have had a material and adverse impact on Vistaprint, or information concerning the reasons for the First Expert stepping down.

164. Vistaprint also alleged that the ICDR unjustifiably accepted a challenge to the Second Expert, or created the circumstances for such a challenge. As the BGC noted, the procedure governing challenges to experts is set forth in Article 2 § 3 of the ICDR's New gTLD Objections Procedure, which provides:

Upon review of the challenge the DRSP <u>in its sole discretion</u> shall make the decision on the challenge and advise the parties of its decision.

165. The BGC reasoned that while Vistaprint may disagree with the ICDR's decision to accept the challenge to the Second Expert, that decision was in the "sole discretion" of the ICDR and it was not the BGC's role to second guess the ICDR's discretion in this regard.[210] The IRP Panel finds that the BGC violated no Article, Bylaw or the Guidebook by taking this

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[208] BGC Determination, p. 12, Request, Annex 26.
[209] Request, ¶ 77.
[210] BGC Determination, p. 12, Request, Annex 26.

view. However, it does appear that the ICDR might have avoided the challenge situation in the first place by appointing someone other than the Second Expert – who had served as the expert panel in previous SCO case administered by the ICDR – given that the basis for the challenge against him, which the ICDR accepted, was his involvement in the previous case.

166. Vistaprint also claimed that the Third Expert incorrectly applied both the burden of proof and the substantive criteria for evaluating the String Confusion Objection. The BGC rejected these contentions and the IRP Panel agrees. The BGC's decision looked closely at the standard to be applied in String Confusion Objection proceedings, as well as how the Third Expert extensively detailed the support for his conclusion that the .WEBS string so nearly resembles .WEB – visually, aurally and in meaning – that it is likely to cause confusion.[211] In this respect, the BGC did not violate ICANN's Articles or Bylaws by determining that the Third Expert properly applied the relevant Guidebook policy for String Confusion Objections. As the BGC noted,

> *The Requester's disagreement as to whether the standards should have resulted in a finding in favor of Requester's application does not mean that the panel violated any policy or process in reaching the decision.[212]*

167. The Guidebook provides that the following evaluation standard is be applied in String Confusion Objection proceedings:

> *3.5.1 String Confusion Objection*
>
> *A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.*

168. Vistaprint in its Request emphasized that ICANN has indicated that the SCO test sets a high bar[213]:

> *22. At various times, ICANN has indicated that the string confusion test sets a high bar:*
>
> *- "[T]he standard indicates that confusion must be probable, not merely possible, in order for this sort of harm to arise. Consumers also benefit from competition. For new gTLDs, the similarity test is a high bar, as indicated by the wording of the standard.[...] Therefore, while the objection and dispute resolution process is intended to address all types of similarity, the process is not intended to hobble competition or reserve a broad set of string [sic] for a first mover."(fn. omitted)*
>
> *- "Policy discussions indicate that the most important reason to disallow similar strings as top-level domain names is to protect Internet users from the increased exposure to fraud and other risks that could ensue from confusion of one string for another. This reasoning must be balanced against unreasonable exclusion of top-level labels and denial of applications where considerable investment*

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[211] BGC Recommendation, pp. 15-18, Request, Annex 26.
[212] BGC Determination, p. 17, Request, Annex 26.

[213] Request, ¶¶ 22-23.

has already been made. As the top-level grows in number of registrations, drawing too large a circle of "similarity protection" around each existing string will quickly result in the unnecessary depletion of available names. The unnecessary exclusion of names would also tend to stifle the opportunity of community representation at the top-level and innovation." (fn. omitted)

23. ICANN's high standard for dealing with string confusion objections has been explicitly confirmed by the NGPC, which states that in the Applicant Guidebook 'similar' means:

"strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone. During the policy development and implementation design phases of the New gTLD Program, aural and conceptual string similarities were considered. These types of similarity were discussed at length, yet ultimately not agreed to be used as a basis for the analysis of the string similarity panels' consideration because on balance, this could have unanticipated results in limiting the expansion of the DNS as well as the reach and utility of the Internet. [...] The NGPC reflected on existing string similarity in the DNS and considered the positive and negative impacts. The NGPC observed that numerous examples of similar strings, including singulars and plurals exist within the DNS at the second level. Many of these are not registered to or operated by the same registrant. There are thousands of examples [...]" (NGPC Resolution 2014.02.056. NG02).

169. The passages quoted by Vistaprint, referencing ICANN materials and a resolution of the NGPC, arguably provide useful context in applying the test for String Confusion Objections. After citing these passages, however, Vistaprint contends in its Request that

    "[a]s a result, two strings should only be placed in a contention set if they are so similar that they would create a probability of user confusion were both to be delegated into the root zone, and the finding of confusing similarity must be balanced against the risk of unreasonable exclusion of top-level labels and the denial of applications" (no underlining added).[214]

170. However, the problem with the test as posited by Vistaprint is that it would add a balancing element that is not in the Guidebook's standard: according to Vistaprint the finding of confusing similarity must be balanced against the risk of unreasonable exclusion of top-level labels and the denial of applications. This part of the standard (as advanced by Vistaprint) is not in the Guidebook, although the concerns it represents were reflected in the other ICANN materials. The Guidebook standard is as follows:

    String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

171. There is no reference in this standard to balancing the likelihood of confusion against the needs to promote competition and to guard against the unreasonable exclusion of top-level strings. While it might be advisable to consider whether the standard for String Confusion Objections should be revised to incorporate such a balancing test, these elements were not in the policy that was applied by the Third Expert. Nor was there a violation, by the BGC or the ICANN Board, of any Articles or Bylaws in formulating the SCO standard as it was formulated (based on community input), and in determining that the Third Expert properly applied this policy.

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[214] Request, ¶ 24.

172. ICANN has argued that the time for Vistaprint to have objected to the Guidebook and its SCO policy has long since passed. Vistaprint has responded that it contests the *implementation* of the Guidebook and its *policies*, not just the policies themselves. Even assuming that the Guidebook's policies could be challenged at this point, the IRP Panel finds that the relevant polices, such as the standard for evaluating String Confusion Objections, do not violate any of ICANN's Articles or Bylaws reflecting principles such as good faith, fairness, transparency and accountability. However, the Panel does agree with ICANN that the time for challenging the Guidebook's standard for evaluating String Confusion Objections – which was developed in an open process and with extensive input – has passed.

173. Vistaprint has also complained that it was not provided with the opportunity to appeal the Third Expert's decision on the merits, such that the BGC or some other entity would re-evaluate the Expert's string confusion determination. As noted above, the BGC's review focused on whether the ICDR and the Third Expert properly applied the relevant rules and policies, not on whether the BGC, if it had considered the matter *de novo*, would have found string confusion as between the .WEBS and .WEB strings.

174. The IRP Panel finds that the lack of an appeal mechanism to contest the merits of the Third Expert's SCO determination is not, in itself, a violation of ICANN's Articles or Bylaws. ICANN's commitment through its Articles and Bylaws to act in good faith and with accountability and transparency, and to apply documented policies neutrally, objectively and fairly, does not require that it must have designed the SCO mechanism so that the result of a string confusion determination would be subject to a right of appeal. Other significant dispute resolution systems – such as the international legal regime for commercial arbitration regarding awards as final and binding[215] – do not normally provide for a right of appeal on the merits.

175. In respect of Vistaprint's *SCO Proceedings Claim*, the IRP Panel denies each of Vistaprint's claims concerning ICANN's alleged breaches of obligations under the Articles, Bylaws and Affirmation of Commitments, as follows:

(1) Vistaprint claims that ICANN failed to comply with its obligation under Article 4 of the Articles and IV § 3.4 of the Bylaws to act in good faith with due diligence and independent judgment by failing to provide due process to Vistaprint's .WEBS applications.[216] The IRP Panel denies Vistaprint's claim that Vistaprint was not given a fair opportunity to present its case; was deprived of procedural fairness and the opportunity to be heard by an independent panel applying the appropriate rules; and was not given any meaningful opportunity for remedy or redress once the SCO determination was made, even in the RFR procedure.

(2) Vistaprint claims ICANN failed to comply with its obligation under Article I § 2.8 to neutrally, objectively and fairly apply documented policies as established in the

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[215] *See Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).*
[216] Request, ¶¶ 69-71.

<u>Guidebook and Bylaws.</u>[217] As discussed above, the IRP Panel rejects Vistaprint's claim that the *Vistaprint SCO* determination – finding that the .WEBS and .WEB gTLD strings are confusingly similar – is contradictory to ICANN's policy for String Confusion Objections as established in the Guidebook.

(3) <u>Vistaprint claims ICANN failed to comply with its obligation to act fairly and with due diligence and independent judgment as called for under Article 4 of the Articles of Incorporation, Articles I § 2.8 and IV § 3.4 of the Bylaws by accepting the SCO determination made by the Third Expert, who was allegedly not independent and impartial.</u>[218] As noted above, the IRP Panel finds that there was no failure of the BGC to act with due diligence and independent judgment, and to act in good faith as required by ICANN's Bylaws and Articles, when it determined that Vistaprint's claim – that the Third Expert was not independent and impartial and/or was not appropriately qualified – did not merit reconsideration.

(4) <u>Vistaprint claims that ICANN failed to comply with its obligations under the Article 4 of the Articles, and Article I §§ 2.7 and 2.8 and Article III § 1 of the Bylaws (and Article 9.1 of the Affirmation of Commitments) to act fairly and transparently by failing to disclose/perform any efforts to optimize the service that the ICDR provides in the New gTLD Program.</u>[219] The IRP Panel rejects Vistaprint's contention that the BGC's Reconsideration determination shows that the BGC made no investigation into Vistaprint's fundamental questions about the Third Expert's arbitrariness, lack of independence, partiality, inappropriate qualification, or that the BGC did not exercise due diligence in making its determination on this issue.

(5) <u>Vistaprint claims ICANN failed to comply with its obligation to remain accountable under Articles I § 2.10 and IV § 1 of the Bylaws (and Articles 3(a) and 9.1 of the Affirmation of Commitments) by failing to provide any remedy for its mistreatment of Vistaprint's gTLD applications.</u>[220] The IRP Panel disagrees with Vistaprint's claim that ICANN's Board and the BGC adopted the Third Expert's SCO determination without examining whether it was made in accordance with ICANN's policy and fundamental principles under its Articles and Bylaws. In particular, as described above, the IRP Panel rejects Vistaprint's claim that the *Vistaprint SCO* determination is contradictory to ICANN's policy as established in the Guidebook and agrees with the BGC's analysis on this issue. Regarding Vistaprint's contention that ICANN should have created a review mechanism for challenging the substance of SCO expert determinations, as discussed above, the IRP Panel finds that the lack of such a general appeal mechanism creates no inconsistency with ICANN's Articles or Bylaws.

(6) <u>Vistaprint claims ICANN failed to promote competition and innovation under Articles I § 2.2 (and Article 3(c) of the Affirmation of Commitments) by accepting the Third</u>

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[217] Request, ¶ 72.
[218] Request, ¶ 73.
[219] Request, ¶¶ 52 and 77.
[220] Request,¶¶ 78-79.

Expert's determination.[221] Finally, the IRP Panel disagrees with Vistaprint's contention that the Board's acceptance of the determination in the *Vistaprint SCO* was contrary to ICANN's Bylaws because it was contrary to the interests of competition and consumers.

c. Disparate Treatment Claim

176. Vistaprint's final claim is one that raises a close question for this IRP Panel. Vistaprint contends that ICANN's Board discriminated against Vistaprint through the Board's (and the BGC's) acceptance of the Third Expert's determination in the *Vistaprint SCO*, while allowing other gTLD applications with equally serious string similarity concerns to proceed to delegation[222], or permitting still other applications that were subject to an adverse SCO determination to go through a separate additional review mechanism.

177. The IRP Panel agrees with Vistaprint's statement that the "IRP Panel's mandate includes a review as to whether or not ICANN's Board discriminates in its interventions on SCO expert determinations."[223] As discussed above, in the Guidebook, § 5.1, ICANN has reserved the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community:

> ....The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application....[224]

178. However, as a counterbalance against this reserved power to individually consider new gTLD applications, the ICANN Board must also comply with Article II, § 3 of ICANN's Bylaws, providing for non-discriminatory treatment:

> *Section 3 (Non-Discriminatory Treatment)*
>
> *ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment <u>unless justified by substantial and reasonable cause</u>, such as the promotion of effective competition.*

179. As Vistaprint maintains in its First Additional Submission, "[w]hen the ICANN Board individually considers an application, it must make sure that it does not treat applicants inequitably and that it does not discriminate among applicants."[225]

180. As discussed above in relation to standard of review, the IRP Panel considers that the Board's actions or omissions in this area of alleged non-discriminatory treatment bear the scrutiny of independent and objective review, without any presumption of correctness. Moreover, ICANN's Bylaws in Article I, § 2 set out its core values that should guide the

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[221] Request,¶ 80.
[222] ICANN has permitted the delegation of the .car and .cars gTLDs, the .auto and .autos gTLDs, the .accountant and .accountants gTLDs, the .fan and .fans gTLDs, the .gift and .gifts gTLDs, the .loan and .loans gTLDs, the .new and .news gTLDs and the .work and .works gTLDs.
[223] Vistaprint's Second Additional Submission, ¶ 20.
[224] Guidebook, § 5.1.
[225] Vistaprint's First Additional Submission, ¶ 31.

decisions and actions of ICANN, including the requirement, when balancing among competing core values, to exercise judgment to determine which core values are the most relevant and how they apply to the specific circumstances at hand. Of particular relevance to Vistaprint's disparate treatment claim are the core values set out in §§ 2.8 and 2.9:

8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

*   *   *   *

10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. <u>Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values</u>.

[Underlining added]

181. Vistaprint's disparate treatment claim is based on the following allegations:

   ▪ On <u>June 25, 2013</u>, the NGPC, a sub-committee of ICANN's Board, determined in Resolution 2013.06.25.NG07 that no changes were needed to the existing mechanisms in the Guidebook to address potential consumer confusion from allowing singular and plural versions of the same gTLD string. The NGPC had addressed this issue in response to advice from the ICANN's Government Advisory Committee ("GAC") that due to potential consumer confusion, the Board should "reconsider its decision to allow singular and plural version of the same strings."

   ▪ On <u>February 5, 2014</u>, the day before Vistaprint submitted its Reconsideration Request to the BGC on <u>February 6, 2014</u>, the NGPC approved Resolution 2014.02.05.NG02, which directed ICANN's President to initiate a public comment period on framework principles of a potential review mechanism to address perceived inconsistent String Confusion Objection expert determinations. The NGPC resolution provides in relevant part:

   Whereas, <u>on 10 October 2013 the Board Governance Committee (BGC)</u> requested staff to draft a report for the NGPC on String Confusion Objections "setting out options for dealing with the situation raised within this Request, namely the differing outcomes of the String Confusion Objection Dispute Resolution process in similar disputes involving Amazon's Applied-for String and TLDH's Applied-for String."

   Whereas, <u>the NGPC is considering potential paths forward to address the perceived inconsistent Expert Determinations from the New gTLD Program String Confusion Objections process, including implementing a review mechanism. The review will be limited to the String Confusion Objection Expert Determinations for .CAR/.CARS and .CAM/.COM</u>.

   Whereas, <u>the proposed review mechanism, if implemented, would constitute a change to the current String Confusion Objection process in the New gTLD Applicant Guidebook</u>.

   Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the

Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2014.02.05.NG02), <u>the NGPC directs the President and CEO, or his designee, to publish for public comment the proposed review mechanism for addressing perceived inconsistent Expert Determinations from the New gTLD Program String Confusion Objections process</u>.

<div align="right">*[Underlining added]*</div>

▪ Vistaprint emphasizes that ICANN's Board (through the NGPC) took this decision the day before Vistaprint filed its Reconsideration Request; however, this did not prevent the BGC from denying Vistaprint's RFR less than one month later without considering whether such a review mechanism might also be appropriate for dealing with the SCO determination involving .WEBS/.WEB.[226]

▪ Vistaprint's Reconsideration Request and the BGC's decision on that Request rendered on <u>February 27, 2014</u> contain <u>no reference</u> to the concerns that had been raised both by the BGC (on October 10, 2013 in a prior RFR determination) and the NGPC in its February 5, 2014 resolution concerning inconsistent expert SCO determinations, some of which involved plural and singular versions of the same gTLD string. Neither Vistaprint nor the BGC raised any discussion of disparate treatment at that time. The BGC's determined that its decision on Vistaprint's Reconsideration Request "shall be final and does not require Board (or NGPC) consideration."[227]

▪ On <u>October 12, 2014</u>, approximately 8 months after the BGC's decision on Vistaprint's Reconsideration Request, and after Vistaprint had filed its Request in this IRP (in June 2014), the NGPC approved Resolution 2014.10.12.NG02, in which it identified certain SCO expert determinations "as not being in the best interest of the New gTLD Program and the Internet community," and directed ICANN's President to establish processes and procedures to re-evaluate certain previous SCO expert determinations. Resolution 2014.10.12.NG02 also stated in its rationale:

The NGPC also considered whether there was a reasonable basis for certain perceived inconsistent Expert Determinations to exist, and particularly why the identified Expert Determinations should be sent back to the ICDR while other Expert Determinations should not. The NGPC notes that while on their face some of the Expert Determinations may appear inconsistent, including other SCO Expert Determinations, and Expert Determinations of the Limited Public Interest and Community Objection processes, there are reasonable explanations for these seeming discrepancies, both procedurally and substantively.

First, on a procedural level, each expert panel generally rests its Expert Determination on materials presented to it by the parties to that particular objection, and the objector bears the burden of proof. Two panels confronting identical issues could – and if appropriate should – reach different determinations, based on the strength of the materials presented.

Second, on a substantive level, certain Expert Determinations highlighted by the community that purportedly resulted in "inconsistent" or "unreasonable" results, presented nuanced distinctions

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[226] Request, ¶ 52.
[227] BGC Recommendation, p. 19, Request, Annex 26.

relevant to the particular objection. These nuances should not be ignored simply because a party to the dispute disagrees with the end result. Further, the standard guiding the expert panels involves some degree of subjectivity, and thus independent expert panels would not be expected to reach the same conclusions on every occasion. However, for the identified Expert Determinations, a reasonable explanation for the seeming discrepancies is not as apparent, even taking into account all of the previous explanations about why reasonably "discrepancies" may exist. To allow these Expert Determinations to stand would not be in the best interests of the Internet community.

The NGPC considered whether it was appropriate, as suggested by some commenters, to expand the scope of the proposed review mechanism to include other Expert Determinations, such as some resulting from Community and Limited Public Objections, as well as other String Confusion Objection Expert Determinations, and possibly singular and plural versions of the same string. The NGPC determined that to promote the goals of predictability and fairness, establishing a review mechanism more broadly may be more appropriate as part of future community discussions about subsequent rounds of the New gTLD Program. Applicants have already taken action in reliance on many of the Expert Determinations, including signing Registry Agreements, transitioning to delegation, withdrawing their applications, and requesting refunds. Allowing these actions to be undone now would not only delay consideration of all applications, but would raise issues of unfairness for those that have already acted in reliance on the Applicant Guidebook.

It should also be noted that in response to advice from the Governmental Advisory Committee (GAC), the NGPC previously considered the question of whether consumer confusion may result from allowing singular and plural versions of the same strings. On 25 June 2013, the NGPC adopted a resolution resolving "that no changes [were] needed to the existing mechanisms in the Applicant Guidebook to address potential consumer confusion resulting from allowing singular and plural versions of the same string" http://www.icann.org /en/groups/board/ documents/resolutions-new-gtld-25jun13-en.htm#2.d. The NGPC again notes that the topic of singular and plural versions of the same string also may be the subject of further community discussion as it relates to future rounds of the New gTLD Program.

The NGPC considered community correspondence on this issue in addition to comments from the community expressed at the ICANN meetings. The concerns raised in the ICANN meetings and in correspondence have been factored into the deliberations on this matter.

▪ In view of the NGPC's Resolution 2014.10.12.NG02, Vistaprint describes its disparate treatment claim in its First Additional Submission as follows:

13 .... Since the filing of Vistaprint's request for IRP, the ICANN Board clarified how the string similarity standard must be applied. In its resolutions of 12 October 2014, the ICANN Board identified certain SCO determinations "as not being in the best interest of the New gTLD Program and the Internet community" and set out the rules for a re-evaluation of these SCO determinations (fn. omitted):

- A first SCO determination that needed re-evaluation is the SCO determination in which ICDR's expert accepted Verisign Inc.'s objection to United TLD Holdco Ltd. ('United TLD')'s application for .cam. We refer to this SCO determination as the 'United TLD Determination'. In the United TLD Determination, ICDR's appointed expert found United TLD's application for .cam confusingly similar to Verisign Inc. ('Verisign')'s .com gTLD (RM 23). The ICANN Board decided that (i) the United TLD Determination was not in the best interest of the New gTLD Program and the Internet community and (ii) a new three-member panel must be established to re-evaluate the United TLD Determination (fn. omitted).

Verisign had also raised a SCO on the basis of its .com gTLD against the application for .cam by Dot Agency Limited and the application for .cam by AC Webconnecting Holding B.V. In both cases, the appointed experts determined that no confusing similarity existed between the .cam and .com strings (fn. omitted). We refer to these SCO determinations as the 'Related .cam/.com Determinations'. The ICANN Board decided that the Related .cam/.com Determinations need no

re-evaluation. In addition, the ICANN Board recommended that the three-member panel charged with re-evaluating the United TLD Determination must review the Related .cam/.com Determinations as background (fn. omitted).

- *Another SCO determination that needed re-evaluation is the determination in which ICDR's appointed expert accepted Commercial Connect LLC's objection to Amazon EU S.à.r.l. ('Amazon')'s application for .通販 (which means .onlineshopping in Japanese) (fn. omitted). We refer to this SCO determination as the 'Onlineshopping Determination'. ICDR's appointed expert found in the Onlineshopping Determination that Amazon's application for .通販 was confusingly similar to Commercial Connect LLC's application for .shop. Commercial Connect LLC also invoked its application for .shop in a SCO against Top Level Domain Holdings Limited's application .购物 (which means 'shop' in Chinese). ICDR's appointed expert rejected the latter SCO (fn. omitted). We refer to this SCO determination as the 'Related shop/.shop Determination'. The ICANN Board decided that a three-member panel needs to re-evaluate the Onlineshopping Determination and that no re-evaluation is needed for the Related shop/.shop Determination. The ICANN Board decided that the Related shop/.shop Determination must be reviewed as background by the three-member panel that is charged with re-evaluating the Onlineshopping Determination (fn. omitted).*

14.   The ICANN Board's recommendations to the three-member panels charged with the re-evaluation of the United TLD Determination and the Onlineshopping Determination are clear. Related determinations – involving the same gTLD string(s) and finding that there is no confusing similarity – will not be re-evaluated and must be taken into account in the re-evaluations.

15.   Upon instigation of the ICANN Board, ICANN had developed the same process for re-evaluating the SCO determination in which ICDR's appointed expert accepted Charleston Road Registry Inc. ('CRR')'s objection to DERCars, LLC's application for .cars. We refer to this SCO determination as the 'DERCars Determination'. In the DERCars Determination, ICDR's appointed expert found DERCars, LLC's application for .cars confusingly similar to CRR's application for .car. CRR had also objected to the applications for .cars by Uniregistry, Corp. and Koko Castle, LLC, claiming confusing similarity with CRR's application for .car. The latter objections by CRR were not successful. ICANN decided that DERCars, LLC should be given the option of having the DERCars Determination reviewed. ICANN was not allowing a review of the other SCO determinations involving .car and .cars (fn. omitted).

16. The above shows that ICANN and its Board have always decided in favor of co-existence of 'similar' strings. The ICANN Board explicitly allowed singular and plural gTLD strings to co-exist (fn. omitted). To support this view, the ICANN Board referred to the existence of thousands of examples of singular and plurals within the DNS at second level, which are not registered to or operated by the same registrant. The ICANN Board inter alia referred to the co-existing car.com and cars.com (fn. omitted).

17. Why did the ICANN Board intervene in the DERCars determination – involving the strings .car and .cars – but refused to intervene in the SCO Determination involving .web and .webs? In view of the small number of SCO Determinations finding confusing similarity between two strings (fn. omitted), it is a true mystery why the ICANN Board intervened in some matters, but refused to do so in the SCO determinations on Vistaprint's applications for .webs.

18. If anything, the .webs/.web string pair is less similar than the .cars/.car string pair. Cars is commonly used as the plural for car. Web, however, commonly refers to the world wide web, and as such, it is not normally a word where the plural form would be used.

182.   Vistaprint contends that ICANN cannot justify the disparate treatment described above. While Vistaprint recognizes that ICANN's Board intervened to address perceived inconsistent or otherwise unreasonable SCO expert determinations, ICANN failed to explain why the SCO determination on Vistaprint's .WEBS applications was not just as unreasonable as the SCO expert determinations involving .cars/.car, .cam/.com, and 通販

/.shop.

183. In response to Vistaprint's disparate treatment claim, ICANN contends that ICANN's Board only intervened with respect to certain SCO expert determinations because there had been several independent expert determinations regarding the same strings that were seemingly inconsistent with one another. ICANN states that is not the case with respect to Vistaprint's applications, as no other expert determinations were issued regarding the similarity of .WEB and .WEBS.[228] ICANN further urges that the Board was justified in exercising its discretion to intervene with respect to the inconsistent SCO expert determinations regarding .COM/.CAM, .CAR/.CARS and .SHOP/.通販, because the Board acted to bring certainty to differing SCO expert determinations regarding the same strings.[229] However, this justification was not present with respect to the single *Vistaprint SCO.*

184. Finally, ICANN stated that "Vistaprint has identified no Articles or Bylaws provision violated by the ICANN Board *in exercising its independent judgment to intervene with respect to certain inconsistent expert determinations on string confusion objections unrelated to this matter, but not with respect to the single Expert Determination regarding .WEB/.WEBS*" (italics added).[230]

185. The IRP Panel has considered carefully the parties' contentions regarding Vistaprint's disparate treatment claim. The Panel finds that, contrary to what ICANN has stated above, ICANN's Board did not have an opportunity to "exercise its independent judgment" – in particular, in view of its decisions to implement an additional review mechanism for certain other inconsistent SCO expert determinations – to consider specifically whether it should intervene with respect to the adverse SCO expert determination involving Vistaprint's .WEBS applications.

186. It is clear that ICANN's Board, through the BGC and the NGPC, was aware of the concerns involving inconsistent decisions in SCO proceedings when it decided Vistaprint's Reconsideration Request in February 2014. The NGPC, on the day (February 5, 2014) before Vistaprint filed is Reconsideration Request and in response to a request from the BGC, initiated a public comment period on framework principles for a potential review mechanism to address perceived inconsistent SCO expert determinations. However, the BGC's decision on the Reconsideration Request rendered on February 27, 2014 made no mention of these issues.[231] By comparison, there is no evidence that

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[228] ICANN's First Additional Submission, ¶ 5.
[229] ICANN's First Additional Submission, ¶ 18.
[230] ICANN's Second Additional submission, ¶ 21.
[231] In this regard, the IRP panel in the *Booking.com final Declaration* (¶ 119) quoted Mr. Sadowsky, a member of the Board's NGPC committee, commenting on the Reconsideration process as follows:

The reconsideration process is a very narrowly focused instrument, relying solely upon investigating deviations from established and agreed upon process. As such, it can be useful, but it is limited in scope. In particular, it does not address situations where process has in fact been followed, but the results of such process have been regarded, sometimes quite widely, as being contrary to what might be best for significant or all segments of the…community and/or Internet users in general.

Vistaprint was aware of these issues at the time it filed its Reconsideration Request on February 6, 2014. Vistaprint has raised them for the first time in a timely manner during the pendency of this IRP.

187. In accordance with Article 1, § 2 of the Bylaws, the Board *shall* exercise its judgment to determine which competing core values are most relevant and how they apply to arrive at a defensible balance among those values in relation to the case at hand. Given the timing of Vistaprint's Reconsideration Request, and the timing of ICANN's consultation process for potential review mechanisms to address inconsistent SCO expert determinations, this exercise of judgment by the Board has not yet occurred in the case of Vistaprint's .WEBS gTLD applications.

188. Here, ICANN is subject to the requirements of Article II, § 3 of its Bylaws regarding non-discriminatory treatment, providing that it shall not apply its "standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause." ICANN has provided additional relief to certain gTLD applicants who were subject to adverse decisions in String Confusion Objection cases. In those cases, the differences in the gTLD strings at issue were not too dissimilar from the .WEBS/.WEB gTLD strings. One of the cases in which ICANN agreed to provide an additional mechanism for review involved a string confusion objection for the .CAR/.CARS strings, which involve the singular vs. plural of the same string. Meanwhile, many other singular and plural variations of the same gTLD strings have been permitted to proceed to delegation, including AUTO and .AUTOS; .ACCOUNTANT and ACCOUNTANTS; .FAN and .FANS; .GIFT and .GIFTS; .LOAN and .LOANS; .NEW and .NEWS; and .WORK and .WORKS.

189. This IRP Panel, among its three members, could not agree – in regards to the specific circumstances of Vistaprint's gTLD applications – whether the reasons offered by ICANN in its Resolution 2014.10.12.NG02 for refusing the "to expand the scope of the proposed review mechanism to include other [SCO] Expert Determinations" would meet the standard of non-discrimination imposed by Article II, § 3 of the Bylaws, as well as the relevant core values in Article 1, § 2 of the Bylaws (e.g., applying documented policies neutrally and objectively, with integrity and fairness). For instance, one view is that limiting the additional review mechanism to only those SCO cases in which there were inconsistent decisions is a sufficient reason for intervening in these cases, but not in other SCO cases involving similar singular vs. plural gTLD strings were the applicant received an adverse decision. On the other hand, another view is that the real focus should be on the developments involving single vs. plural gTLDs strings, including the inconsistency of decisions and the offering of additional review mechanism in certain cases, and the delegation of so many other single/plural variations of the same gTLD strings, which are, at least in this way, similarly situated to the circumstances of the .WEBS/.WEB strings.[232]

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[232] Regarding inconsistent decisions, Vistaprint quoted the statement dated October 8, 2014, of ICANN's former Chief Strategy Officer and Senior Vice President of Stakeholders Relations, Kurt Pritz, who had apparently been leading the introduction of the New gTLD Program, concerning ICANN's objection procedure:

(Continued...)

190. The IRP Panel is mindful that it should not substitute its judgment for that of ICANN's Board. The Board has not yet considered Vistaprint's claim of disparate treatment, and the arguments that ICANN makes through its counsel in this IRP do not serve as a substitute for the exercise of independent judgment by the Board. Without the exercise of judgment by ICANN's Board on this question of whether there is any inequitable or disparate treatment regarding Vistaprint's .WEBS gTLD applications, the Board would risk violating its Bylaws, including its core values. As the Emergency IRP Panel found in the *GCC Interim IRP Declaration*:

> *The ICANN Board does not have an unfettered discretion in making decisions. In bringing its judgment to bear on an issue for decision, it must assess the applicability of different potentially conflicting core values and identify those which are most important, most relevant to the question to be decided. The balancing of the competing values must be seen as "defensible", that is it should be justified and supported by a reasoned analysis. The decision or action should be based on a reasoned judgment of the Board, not on an arbitrary exercise of discretion.*

> *This obligation of the ICANN Board in its decision making is reinforced by the standard of review for the IRP process under Article IV, Section 3.4 of the Bylaws, quoted at paragraph 42 b. above, when the action of the Board is compared to the requirements under the Articles and Bylaws. The standard of review includes a consideration of whether the Board exercised due diligence and care in having a reasonable amount of facts before them and also whether the Board exercised its own independent judgment.* [233]

191. Here, the IRP Panel finds that due to the timing and scope of Vistaprint's Reconsideration Request (and this IRP proceeding), and the timing of ICANN's consultation process and subsequent NGPC resolution authorizing an additional review mechanism for certain gTLD applications that were the subject of adverse SCO decisions, the ICANN Board has not had the opportunity to exercise its judgment on the question of whether, in view of ICANN's Bylaw concerning non-discriminatory treatment and based on the particular

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There is no doubt that the New gTLD Program objection results are inconsistent, and not predictable. The fact is most easily demonstrated in the 'string confusion,' objections where challenges to exactly the same strings yielded different results. [...] With globally diverse, multiple panelists invoking untried standards and questions of first impression in an industry with which they were not familiar and had little training, the panelists were bound to deliver inconsistent, unpredictable results. ICANN put no mechanism put [sic] into place to rationalize or normalize the answers. [...] It is my opinion that ICANN, having proven in the initial evaluation context that it could do so, should have implemented measures to create as much consistency as possible on the merits in the objection rulings, requiring DRSPs to educate and train their experts as to the specific (and only) standards to employ, and to review and correct aberrant results. The failure to do so resulted in violation of the overarching policy articulated by the GNSO and adopted by the Board at the outset of the new gTLD Program, as well as policies stated in the Bylaws and Articles of Incorporation concerning on discrimination, application of document policies neutrally, objectively and fairly, promotion of competition, and accountability." (fn. omitted).
[233] *See GCC Interim IRP Declaration, ¶¶ 76-77 ("Upon completion of the various procedures for evaluation and for objections under the Guidebook, the question of the approval of the applied for domain still went back to the NGPC, representing the ICANN Board, to make the decision to approve, without being bound by recommendation of the GAC, the Independent Objector or even the Expert Determination. Such a decision would appear to be caught by the requirements of Article 1, Section 2 of the Bylaws requiring the Board or the NGPC to consider and apply the competing values to the facts and to arrive at a defensible balance among those values" ¶ 90 (underlining added).*

circumstances and developments noted above, such an additional review mechanism is appropriate following the SCO expert determination involving Vistaprint's .WEBS applications.[234] Accordingly, it follows that in response to Vistaprint's contentions of disparate treatment in this IRP, ICANN's Board – and not this Panel – should exercise its independent judgment on this issue, in light of all of the foregoing considerations.

VI.   Prevailing Party; Costs

192. Article IV, § 3.18 of ICANN's Bylaws requires that the IRP Panel "specifically designate the prevailing party." This designation is relevant to the allocation of costs, given that the same section of the Bylaws provides that the "party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider."

193. Article IV, § 3.18 of the Bylaws also states that "in an extraordinary case the IRP Panel may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses."

194. Similarly, the Supplementary Procedures provide in Rule 11:

> *The IRP Panel shall fix costs in its Declaration. The party not prevailing in an IRP shall ordinarily be responsible for bearing all costs of the proceedings, but under extraordinary circumstances the IRP Panel may allocate up to half of the costs to the prevailing party, taking into account the circumstances of the case, including the reasonableness of the parties' positions and their contribution to the public interest.*
>
> *In the event the Requestor has not availed itself, in good faith, of the cooperative engagement or conciliation process, and the requestor is not successful in the Independent Review, the IRP Panel must award ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.*

195. Here, Vistaprint engaged in the Cooperative Engagement Process, although the process did not resolve the issues between the parties. The "IRP Provider" is the ICDR, and, in accordance with the ICDR Rules, the costs to be allocated between the parties – what the

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[234] The IRP Panel observes that the NGPC, in its Resolution 2014.10.12.NG02, sought to address the issue of why certain SCO expert determinations should be sent back to the ICDR while others should not. In that resolution, the NGPC determined that to promote the goals of predictability and fairness, establishing a review mechanism more broadly may be appropriate as part of future rounds in the New gTLD Program. The NGPC stated that applicants may have already taken action in reliance on SCO expert determinations, including signing Registry Agreements, transitioning to delegation, withdrawing their applications, and requesting refunds. However, in this case Vistaprint does not fall within the category of applicants who have taken such actions in reliance. Instead, it is still asserting its claims in this IRP proceeding. In accordance with the Bylaws, Vistaprint is entitled to an exercise of the Board's independent judgment to determine, based on the facts of the case at hand and in view of ICANN's Bylaws concerning non-discriminatory treatment and core values, whether Vistaprint should be entitled to the additional review mechanism that was made available to certain other gTLD applicants.

Bylaws call the "costs of the IRP Provider", and the Supplementary Procedures call the "costs of the proceedings" – include the fees and expenses of the IRP Panel members and of the ICDR.

196. ICANN is the prevailing party in this IRP. This designation is confirmed by the Panel's decisions concerning Vistaprint's requests for relief in this IRP:

- Vistaprint requests that the Panel find ICANN breached its Articles, Bylaws, and the Guidebook. The Panel declares that ICANN's Board (including the BGC) did not violate the Articles, Bylaws and Guidebook.

- Vistaprint requests that the Panel require ICANN to reject the Third Expert's determination in the *Vistaprint SCO*, disregard the resulting "Contention Set", and allow Vistaprint's applications for .WEBS to proceed on their merits. The Panel determines that it does not have authority to order the relief requested by Vistaprint. In addition, the Panel declares that the Board (through the BGC) did not violate the Articles, Bylaws and Guidebook in regards to the BGC's handling of Vistaprint's Reconsideration Request.

- Vistaprint requests, in the alternative, that the Panel require ICANN to reject the *Vistaprint SCO* determination and organize a new procedure, in which a three-member panel would re-evaluate the Third Expert's decision taking into account (i) the ICANN Board's resolutions on singular and plural gTLDs, as well as the Board's resolutions on the DERCars SCO Determination, the United TLD Determination, and the Onlineshopping SCO Determination, and (ii) ICANN's decisions to delegate the following gTLDs: .CAR and .CARS; .AUTO and .AUTOS; .ACCOUNTANT and ACCOUNTANTS; .FAN and .FANS; .GIFT and .GIFTS; .LOAN and .LOANS; .NEW and .NEWS; and .WORK and .WORKS. The Panel determines that it does not have authority to order the relief requested by Vistaprint. In addition, the Panel recommends that ICANN's Board exercise its judgment on the question of whether an additional review mechanism is appropriate to re-evaluate the Third Expert's determination in the *Vistaprint SCO*, in view of ICANN's Bylaws concerning core values and non-discriminatory treatment, and based on the particular circumstances and developments noted in this Declaration, including (i) the *Vistaprint SCO* determination involving Vistaprint's .WEBS applications, (ii) the Board's (and NGPC's) resolutions on singular and plural gTLDs, and (iii) the Board's decisions to delegate numerous other singular/plural versions of the same gTLD strings.

197. The IRP Panel also recognizes that Vistaprint, through its Request and submissions, raised certain complex and significant issues and contributed to the "public interest" involving the New gTLD Program and the Independent Review Process. It is therefore appropriate and reasonable to divide the IRP costs over the parties in a 60% (Vistaprint) / 40% (ICANN) proportion.

FOR THE FOREGOING REASONS, the IRP Panel hereby:

(1) Declares that Vistaprint's IRP Request is denied;

(2) Designates ICANN as the prevailing party;

(3) Recommends that ICANN's Board exercise its judgment on the question of whether an additional review mechanism is appropriate to re-evaluate the Third Expert's determination in the *Vistaprint SCO*, in view of ICANN's Bylaws concerning core values and non-discriminatory treatment, and based on the particular circumstances and developments noted in this Declaration, including (i) the *Vistaprint SCO* determination involving Vistaprint's .WEBS applications, (ii) the Board's (and NGPC's) resolutions on singular and plural gTLDs, and (iii) the Board's decisions to delegate numerous other singular/plural versions of the same gTLD strings;

(4) In view of the circumstances, Vistaprint shall bear 60% and ICANN shall bear 40% of the costs of the IRP Provider, including the fees and expenses of the IRP Panel members and the fees and expenses of the ICDR. The administrative fees and expenses of the ICDR, totaling US$4,600.00 as well as the compensation and expenses of the Panelists totaling US$229,167.70 are to be borne US$140,260.62 by Vistaprint Limited and US$93,507.08 by ICANN. Therefore, Vistaprint Limited shall pay to ICANN the amount of US$21,076.76 representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by ICANN upon demonstration that these incurred fees and costs have been paid; and

(5) This Final Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute the Final Declaration of this IRP Panel.

_____   _____
    Siegfried H. Elsing   Geert Glas
    Date: Date:

_____
                        Christopher Gibson
                        Chair of the IRP Panel
                        Date: 9 Oct. 2015

(3) Recommends that ICANN's Board exercise its judgment on the question of whether an additional review mechanism is appropriate to re-evaluate the Third Expert's determination in the *Vistaprint SCO*, in view of ICANN's Bylaws concerning core values and non-discriminatory treatment, and based on the particular circumstances and developments noted in this Declaration, including (i) the *Vistaprint SCO* determination involving Vistaprint's .WEBS applications, (ii) the Board's (and NGPC's) resolutions on singular and plural gTLDs, and (iii) the Board's decisions to delegate numerous other singular/plural versions of the same gTLD strings;

(4) In view of the circumstances, Vistaprint shall bear 60% and ICANN shall bear 40% of the costs of the IRP Provider, including the fees and expenses of the IRP Panel members and the fees and expenses of the ICDR. The administrative fees and expenses of the ICDR, totaling US$4,600.00 as well as the compensation and expenses of the Panelists totaling US$229,167.70 are to be borne US$140,260.62 by Vistaprint Limited and US$93,507.08 by ICANN. Therefore, Vistaprint Limited shall pay to ICANN the amount of US$21,076.76 representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by ICANN upon demonstration that these incurred fees and costs have been paid; and

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Siegfried H. Elsing
Date: 9 October 2015

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Geert Glas
Date:

_____
Christopher Gibson
Chair of the IRP Panel
Date:

(3) Recommends that ICANN's Board exercise its judgment on the question of whether an additional review mechanism is appropriate to re-evaluate the Third Expert's determination in the *Vistaprint SCO*, in view of ICANN's Bylaws concerning core values and non-discriminatory treatment, and based on the particular circumstances and developments noted in this Declaration, including (i) the *Vistaprint SCO* determination involving Vistaprint's .WEBS applications, (ii) the Board's (and NGPC's) resolutions on singular and plural gTLDs, and (iii) the Board's decisions to delegate numerous other singular/plural versions of the same gTLD strings;

(4) In view of the circumstances, Vistaprint shall bear 60% and ICANN shall bear 40% of the costs of the IRP Provider, including the fees and expenses of the IRP Panel members and the fees and expenses of the ICDR. The administrative fees and expenses of the ICDR, totaling US$4,600.00 as well as the compensation and expenses of the Panelists totaling US$229,167.70 are to be borne US$140,260.62 by Vistaprint Limited and US$93,507.08 by ICANN. Therefore, Vistaprint Limited shall pay to ICANN the amount of US$21,076.76 representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by ICANN upon demonstration that these incurred fees and costs have been paid; and

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Date:

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Geert Glas
Date: 9 October 2015

_____
Christopher Gibson
Chair of the IRP Panel
Date: 9 Oct. 2015

RM 5

Bylaws

Effective as of 6 November 1998

Note: this page is an archive of an old version of the bylaws. The current ICANN bylaws are always available at: https://www.icann.org/resources/pages/governance/bylaws-en

BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS
A California Nonprofit Public-Benefit Corporation
As effective 6 November 1998

CONTENTS:

ARTICLE I: OFFICES AND SEAL

Section 1. OFFICES

The principal office for the transaction of the business of this corporation (the "Corporation") will be in the County of Los Angeles, State of California, United States of America. The Corporation may also have an additional office or offices within or outside the United States of America as the Board of Directors (the "Board") may from time to time

establish.

Section 2. SEAL

The Board may adopt a corporate seal and use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE II: MEMBERSHIP

(This Article is reserved for use when the Corporation has members.)

ARTICLE III: TRANSPARENCY AND PROCEDURES

Section 1. GENERAL

The Corporation and its subordinate entities shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness. In addition to the specific procedures set forth in these Bylaws, the Initial Board shall investigate the development of additional transparency policies and transparency procedures designed to provide information about, and enhance the ability of interested persons to provide input to, the Board and Supporting Organizations. Any such additional transparency policies and procedures shall be widely publicized by the Board in draft form, both within the Supporting Organizations and on a publicly-accessible Internet World Wide Web site maintained by the Corporation (the "Web Site"). Any such additional transparency policies and procedures may be adopted only after a process for receiving and evaluating comments and suggestions has been established by the Board, and after due consideration of any comments or suggestions received by the Board.

Section 2. ACCESS TO INFORMATION

All minutes of meetings of the Board, Supporting Organizations (and any councils thereof) and Committees shall be approved promptly by the originating body and, no later than twenty-one (21) days after the meeting, shall be made publicly available on the Web Site and otherwise; provided, however, that any minutes relating to personnel or employment matters, legal matters (to the extent the Board determines is necessary or appropriate to protect the interests of the Corporation), matters that the Corporation is prohibited by law or contract from disclosing publicly and other matters that the Board determines are not appropriate for public distribution shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in generic terms in the relevant minutes the reason for such nondisclosure.

Section 3. NOTICE AND COMMENT PROVISIONS

(a) The Board shall post on the Web Site (i) periodically a calendar of scheduled meetings for the upcoming year, and (ii) in advance of each Board meeting, a notice of the fact and time that such meeting will be held and, to the extent known, an agenda for the meeting. If reasonably practicable, the Board shall post notices of special meetings of the Board at least fourteen (14) days prior to the meetings.

(b) Prior to adoption of any policies that substantially affect the operation of the Internet or third parties, the Board will:

(i) provide public notice on the Web Site explaining what policies are being considered for adoption and why;

(ii) provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments; and

(iii) after a reasonable comment period, take action on the proposed policies, establishing an effective date, and publishing the reasons for the action taken.

(c) As appropriate, the Corporation will facilitate the translation of final published documents into various appropriate languages.

Section 4. BOARD RECONSIDERATION

The Board shall adopt policies and procedures through which a party affected by an action of the Corporation can seek reconsideration of that action. These policies and procedures may include threshold standards or other requirements to protect against frivolous or non-substantive use of the reconsideration process. The Board may, in its sole discretion, provide for an independent review process by a neutral third party.

ARTICLE IV: POWERS

Section 1. GENERAL POWERS

(a) Except as otherwise provided in the Articles of Incorporation or these Bylaws (including Section 1(c) of Article VI which sets forth responsibilities of Supporting Organizations), the powers of the Corporation will be exercised, its property controlled and its business and affairs conducted by or under the direction of the Board. Unless otherwise provided herein or by law, the Board, other than the Initial Board (as defined in Article V, Section 1 of these Bylaws), may act by a majority vote of Directors present at the meeting, subject to the quorum requirements in Section 17 of Article V. Unless otherwise provided herein or by law, the Initial Board may act by a vote of two-thirds of all members of the Board. Any references herein to a vote of the Board shall mean the vote of only those members present at the meeting unless otherwise provided herein by reference to "all of the members of the Board."

(b) The Corporation shall not act as a Domain Name System Registry or Registrar or Internet Protocol Address Registry in competition with entities affected by the policies of the Corporation. Nothing in this Section 1(b) is intended to prevent the Corporation from taking whatever steps are necessary to protect the operational stability of the Internet in the event of financial failure of a Registry or Registrar or other emergency.

(c) The Corporation shall not apply its standards, policies, procedures or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.

ARTICLE V: STRUCTURE OF THE BOARD OF DIRECTORS

Section 1. INITIAL BOARD

The initial Board of Directors of the Corporation ("Initial Board") shall consist of nine At Large members, the president (when appointed) and those directors that have been nominated in accordance with these bylaws by any Supporting Organization(s) that is recognized by the Board pursuant to Section 3(b) of Article VI. The At Large members of the Initial Board shall serve until September 30, 1999, unless by a two-thirds (2/3) vote of all the members of the Board that term is extended for some or all of the At Large members of the Initial Board for an additional period, to expire no later than September 30, 2000. The members of the Initial Board (other than the At Large members) shall serve the terms specified in Section 9(d) of this Article. No At Large member of the Initial Board shall be eligible for additional service on the Board until two years have elapsed following the end of his or her term on the Initial Board.

Section 2. INITIAL BOARD MEMBERS SELECTED BY THE SUPPORTING ORGANIZATIONS

Immediately upon the recognition of a Supporting Organization by the Board pursuant to Section 3(b) of Article VI, the Board shall request that such Supporting Organization nominate three persons to be directors. Upon receipt of such nominations, the Board shall elect such persons as members of the Initial Board.

Section 3. NUMBER OF DIRECTORS AND ELECTION OF CHAIRMAN

(a) The authorized number of Directors shall be no less than nine (9) and no more than nineteen (19).

(b) The Board shall elect a Chairman from among the Directors, not including the President.

Section 4. QUALIFICATION OF DIRECTORS AFTER THE INITIAL BOARD

Each Board after the Initial Board shall be comprised as follows:

(i) Three (3) Directors nominated by the Address Supporting Organization, as defined in Article VI;

(ii) Three (3) Directors nominated by the Domain Name Supporting Organization, as defined in Article VI;

(iii) Three (3) Directors nominated by the Protocol Supporting Organization as defined in Article VI;

(iv) Nine (9) At Large Directors, selected pursuant to a process to be established by a majority vote of all the At Large Board members of the Initial Board; and

(v) The person who shall be, from time to time, the President of the Corporation.

Section 5. ADDITIONAL QUALIFICATIONS

Notwithstanding anything herein to the contrary, no official of a national government or a multinational entity established by treaty or other agreement between national

governments may serve as a Director. As used herein, the term "official" means a person (a) who holds an elective governmental office or (b) who is employed by such government or multinational entity and whose primary function with such government or entity is to develop or influence governmental or public policies.

Section 6. INTERNATIONAL REPRESENTATION

In order to ensure broad international representation on the Board, no more than one-half (1/2) of the total number of At Large Directors serving at any given time shall be residents of any one Geographic Region, and no more than two (2) of the Directors nominated by each Supporting Organization shall be residents of any one Geographic Region. As used herein, each of the following shall be a "Geographic Region": Europe; Asia/Australia/Pacific; Latin America/Caribbean Islands; Africa; North America. The specific countries included in each Geographic Region shall be determined by the Board, and this Section shall be reviewed by the Board from time to time (but at least every three years) to determine whether any change is appropriate.

Section 7. CONFLICT OF INTEREST

The Board, through a committee designated for that purpose, shall require a statement from each Director not less frequently than once a year setting forth all business and other affiliations which relate in any way to the business and other affiliations of the Corporation. Each Director shall be responsible for disclosing to the Corporation any matter that could reasonably be considered to make such Director an "interested director" within the meaning of Section 5233 of the California Nonprofit Public Benefit Corporation Law ("CNPBCL"). In addition, each Director shall disclose to the Corporation any relationship or other factor that could reasonably be considered to cause the Director to be considered to be an "interested person" within the meaning of Section 5227 of the CNPBCL. The Board shall adopt policies specifically addressing Director, Officer and Supporting Organization conflicts of interest. No Director shall vote on any matter in which he or she has a material and direct interest that will be affected by the outcome of the vote.

Section 8. DUTIES OF DIRECTORS

Directors shall serve as individuals who have the duty to act in what they reasonably believe are the best interests of the Corporation and not as representatives of their Supporting Organizations, employers or any other organizations or constituencies.

Section 9. ELECTION AND TERM

(a) Directors (other than the Initial Directors) shall be elected at each annual meeting of the Board to hold office until the end of their terms pursuant to the procedures described in this Section. If an annual meeting is not held or the Directors are not elected at the annual meeting, they may be elected at any special meeting of the Board held for that purpose. Each Director, including a member of the Initial Board and a Director elected to fill a vacancy or elected at a special meeting, shall hold office until expiration of the term for which elected and until a successor has been elected and qualified or until that Director resigns or is removed in accordance with these Bylaws. Notwithstanding the foregoing, each time a person is appointed as President of the Corporation, the Board shall, at the time of such appointment, elect such person to the Board to

serve for as long as, but only as long as, such person holds the office of President.

(b) Each Supporting Organization shall (i) select the Board members to be nominated by that Supporting Organization through a process determined by the Supporting Organization and approved by the Board, and (ii) notify the Board and the Secretary of the Corporation in writing of those selections at least 30 days prior to the date on which the Board votes on such nominee(s). The Board shall elect as Directors the persons properly nominated by the Supporting Organizations.

(c) At Large Board members other than those serving on the Initial Board shall be elected by a process to be determined by a majority vote of all At Large members of the Initial Board, following solicitation of input from the Advisory Committee on Membership described in Section 3 of Article VII and other interested parties and consideration of all such suggestions. At a minimum, such a process shall consist of nominations from Internet users, industry participants, and organizations, and should give consideration to such nominees. Such process shall call for election of At Large directors by one or more categories of members of the Corporation admitted pursuant to qualifications established by majority vote of the At Large members of the Initial Board. Before any nominee is added to a ballot of nominees submitted to the members for their consideration, the Board shall establish (i) a process to determine if support for such nominee is adequate to put such nominee's name on the ballot and (ii) qualifications a nominee must have in order to be submitted to the membership.

(d) The regular term of office of a Director (other than (i) the person holding the office of President, who shall serve for as long as, and only for as long as, such person holds the office of President, and (ii) a member of the Initial Board, who shall serve for the period specified in these bylaws) shall be three (3) years. No Director may serve for more than two (2) terms. Notwithstanding the foregoing, the three original Directors nominated by any Supporting Organization shall be elected for terms of one (1) year, two (2) years, and three (3) years, respectively, with each term considered to have begun on October 1, 1998 regardless of when those original Directors actually take office. The terms of the first At Large Directors elected to replace the At Large members of the Initial Board shall be as follows: three such At Large Directors shall serve a term of one (1) year, three such At Large Directors shall serve a term of two (2) years, and three such At Large Directors shall serve a term of three (3) years.

(e) Resources of the Corporation will not be expended in support of any campaign of any nominee for the Board.

Section 10. RESIGNATION

Subject to Section 5226 of the CNPBCL, any Director may resign at any time, either by oral tender of resignation at any meeting of the Board (followed by prompt written notice to the Secretary of the Corporation) or by giving written notice thereof to the President or the Secretary of the Corporation. Such resignation shall take effect at the time specified, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to

make it effective. The successor shall be elected pursuant to Section 12 of this Article.

Section 11. REMOVAL OF A DIRECTOR Any Director may be removed following notice and a three-fourths (3/4) majority vote of all members of the Board; provided, however, that the Director who is the subject of the removal action shall not be entitled to vote on such an action or be counted as a member of the Board when calculating the required three-fourths (3/4) vote; and provided further, that each vote to remove a Director shall be a separate vote on the sole question of the removal of that particular Director. A Director nominated by a Supporting Organization can be recommended for removal by that Supporting Organization through procedures adopted by that Supporting Organization and ratified by the Board. Upon such recommendation for removal, the Board shall vote to remove such Director. If the Board seeks to remove more than one Director nominated by a Supporting Organization or more than one At Large Director within a four-month period, the Board must show reasonable cause for its action.

Section 12. VACANCIES

A vacancy or vacancies in the Board of Directors shall be deemed to exist in the case of the death, resignation or removal of any Director, if the authorized number of Directors is increased, if a Supporting Organization shall fail to nominate its Directors (other than Directors on the Initial Board) in accordance with Section 9 of this Article, or if a Director has been declared of unsound mind by a final order of court or convicted of a felony or incarcerated for more than 90 days as a result of a criminal conviction or has been found by final order or judgment of any court to have breached a duty under Sections 5230 et seq. of the CNPBCL. Any vacancy occurring on the Board of Directors shall be filled in accordance with Section 9 of this Article at any meeting of the Board occurring after such vacancy. A Director elected to fill a vacancy on the Board shall serve for the unexpired term of his or her predecessor in office and until a successor has been selected and qualified. The replacement need not hold the office, if any, of the removed Director. No reduction of the authorized number of Directors shall have the effect of removing a Director prior to the expiration of the Director's term of office.

Section 13. ANNUAL MEETING OF THE BOARD OF DIRECTORS

Annual meetings of the Board will be held for the purpose of electing Directors, Officers and for the transaction of such other business as may come before the meeting. The first annual meeting will be held the last week of September 1999 or on such other date as may be set by the Board. Subsequent annual meetings shall be held as set by the Board not less than ten (10) nor more than thirteen (13) months after the annual meeting held the prior year. In the absence of designation, the annual meeting will be held at the principal office of the Corporation. The annual meeting will be open to the public, and to the extent practicable, should be held in different locations around the world on a regular basis. If the Board determines that it is practical, the annual meeting should be distributed in real-time and archived video and audio formats on the Internet.

Section 14. REGULAR MEETINGS

Regular meetings of the Board will be held on dates to be determined by the Board. To the extent practicable, regular meetings should be held in different locations around the world on a regular basis. In the absence of other designation, regular meetings will be held at the principal office of the Corporation.

Section 15. SPECIAL MEETINGS

Special meetings of the Board may be called by or at the request of one-quarter (1/4) of the members of the Board or by the Chairman of the Board or the President. A call for a special meeting will be made by the Secretary of the Corporation. In the absence of designation, special meetings will be held at the principal office of the Corporation.

Section 16. NOTICE OF MEETINGS

Notice of time and place of all meetings will be delivered personally or by telephone or by electronic mail to each Director, or sent by first-class mail (air mail for addresses outside the United States) or facsimile, charges prepaid, addressed to each Director at the Director's address as it is shown on the records of the Corporation. In case the notice is mailed, it will be deposited in the United States mail at least fourteen (14) days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone or facsimile or electronic mail it will be delivered personally or by telephone or facsimile or electronic mail at least forty-eight (48) hours before the time of the holding of the meeting. Notwithstanding anything in this Section 16 to the contrary, notice of a meeting need not be given to any Director who signed a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

Section 17. QUORUM

At all annual, regular and special meetings of the Board, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, unless otherwise provided herein or by law. If a quorum shall not be present at any meeting of the Board, the Directors present thereat may adjourn the meeting from time to time to another place, time or date. If the meeting is adjourned for more than twenty-four (24) hours, notice shall be given to those Directors not at the meeting at the time of the adjournment.

Section 18. ACTION BY TELEPHONE MEETING

Members of the Board or any Committee of the Board may participate in a meeting of the Board or Committee of the Board through use of conference telephone or similar communications equipment, provided that all Directors participating in such a meeting can speak to and hear one another. Participation in a meeting pursuant to this Section constitutes presence in person at such meeting. The Corporation shall be required to make available at the place of any meeting of the Board the telecommunications equipment necessary to permit members of the Board to participate by telephone.

Section 19. ACTION WITHOUT MEETING

Any action required or permitted to be taken by the Board or a Committee of the Board may be taken without a meeting if all of the Directors entitled to vote thereat shall individually or collectively consent in writing to such action. Such written consent shall have

the same force and effect as the unanimous vote of such Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 20. ELECTRONIC MAIL

If permitted under applicable law, communication by electronic mail shall be considered equivalent to any communication otherwise required to be in writing, except a written consent authorized by Section 19 of this Article. The Corporation shall take such steps as it deems appropriate under the circumstances to assure itself that communications by electronic mail are authentic.

Section 21. RIGHTS OF INSPECTION

Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind, and to inspect the physical properties of the Corporation. The Corporation shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

Section 22. COMPENSATION

The Directors shall receive no compensation for their services as Directors. The Board may, however, authorize the reimbursement of actual and necessary reasonable expenses incurred by Directors performing duties as Directors.

Section 23. PRESUMPTION OF ASSENT

A Director present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting, or unless such Director files a written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof, or forwards such dissent or abstention by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of such action.

Section 24. RULES OF PROCEDURE

Unless waived by a majority vote at a meeting, the rules of procedure at meetings of the Board and committees of the Board and Supporting Organizations shall be rules contained in "Roberts' Rules of Order on Parliamentary Procedure," newly revised, so far as applicable and when not inconsistent with these Bylaws, the Articles of Incorporation or any resolution of the Board.

ARTICLE VI: SUPPORTING ORGANIZATIONS

Section 1. POWERS

> (a) The Supporting Organizations shall serve as advisory bodies to the Board and shall have such powers and duties as may be prescribed by the Board and these Bylaws. The Board may add additional Supporting Organizations by a two-thirds (2/3) majority vote of all members of the Board and in such event shall, by such two-thirds (2/3) vote, reallocate the positions on the Board set forth in Section 4 of Article V. A Supporting Organization may not have

obligations to any other entity inconsistent with its duties to the Corporation.

(b) Each Supporting Organization shall be responsible for nominating Directors for election to those seats on the Board designated to be filled by each Supporting Organization.

(c) The Supporting Organizations shall be delegated the primary responsibility for developing and recommending substantive policies and procedures regarding those matters within their individual scope (as defined by the Board in its recognition of each such Supporting Organization). Any such recommendation forwarded to the Board by a Supporting Organization shall be simultaneously transmitted to all other Supporting Organizations so that each Supporting Organization may comment to the Board regarding the implications of such a recommendation on activities within their individual scope. The Board shall accept the recommendations of a Supporting Organization if the Board finds that the recommended action, policy or procedure (1) complies with the Articles and Bylaws, (2) was arrived at through fair and open processes (including permitting participation by representatives of other Supporting Organizations if requested), (3) is not reasonably opposed by any of the other Supporting Organizations, and (4) furthers the purposes of, and is in the best interest of, the Corporation. If the Board declines to accept any such recommendation of a Supporting Organization, it shall return the recommendation to the Supporting Organization for further consideration, along with an explanation of the reasons it declines to accept the recommendation. If, after reasonable efforts, the Board does not receive a recommendation from a Supporting Organization that meets the foregoing standards or, after attempting to mediate any disputes or disagreements between Supporting Organizations, receives conflicting recommendations from Supporting Organizations, and the Board finds that there is a justification for prompt action, the Board may initiate, amend or modify and then approve a specific action, policy or procedure. Nothing in this Section 1 is intended to limit the general powers of the Board or the Corporation to act on matters not within the scope of a Supporting Organization or that the Board finds are necessary or appropriate to further the purposes of the Corporation.

Section 2. QUALIFICATION FOR MEMBERSHIP IN A SUPPORTING ORGANIZATION

The Board shall review and, if consistent with the purposes of the Corporation and its Articles and Bylaws and the purposes of the Supporting Organization, ratify any qualifications for membership adopted by each of the Supporting Organizations. Participation in a Supporting Organization shall be open to any individual or organization that meets the minimum qualifications adopted by the Supporting Organization and ratified by the Board. Each Supporting Organization may adopt membership structures, including open or multiple classes or categories of members, that it deems appropriate for its effective functioning, consistent with the foregoing.

Section 3. DESCRIPTION AND QUALIFICATIONS

(a) There shall at least be the following Supporting Organizations:

(i) The Address Supporting Organization shall be composed of

representatives from regional Internet address registries and others
with legitimate interests in these issues, as determined by the
Address Supporting Organization consistent with Section 2 of this
Article and approved by the Board. The Address Supporting
Organization shall create an Address Council to make
recommendations to the Board regarding the operation, assignment
and management of Internet addresses and other related subjects;

(ii) The Domain Name Supporting Organization shall be composed
of representatives from name registries and registrars of top-level
domains ("TLDs"), businesses and any other entities that are users
of the Internet and others with legitimate interests in these issues,
as determined by the Domain Name Supporting Organization
consistent with Section 2 of this Article and approved by the Board.
The Domain Name Supporting Organization shall create a Names
Council to make recommendations regarding TLDs, including
operation, assignment and management of the domain name
system and other related subjects; and

(iii) The Protocol Supporting Organization shall be composed of
representatives from Internet protocol organizations and others with
legitimate interests in these issues, as determined by the Protocol
Supporting Organization consistent with Section 2 of this Article and
approved by the Board. The Protocol Supporting Organization shall
create a Protocol Council to make recommendations regarding the
operation, assignment and management of protocol parameters,
such as port numbers, enterprise numbers, other technical
parameters and related subjects.

(b) The Board shall review an application for recognition as one of the
Supporting Organizations referred to in Section 3(a) of this Article VI, and, after
requesting and considering comments from parties interested in matters within
the scope of the proposed Supporting Organization, shall approve such
application if the Board finds that it has been organized in accordance with
these Bylaws, that it will fairly and adequately reflect the full range of views of
all interested parties, and that its recognition would be in the best interest, and
serve the purposes, of the Corporation. The application shall include, but not be
limited to, a description of the following in form and substance acceptable to the
Board (and a commitment to implement the matters described in the
application): (i) membership or participation criteria, (ii) methods for developing
substantive Internet policies to be recommended to the Board and selecting
Board nominees, (iii) open, transparent, fair and non-discriminatory processes
(including procedures for public attendance at appropriate meetings of the
Supporting Organization and for the participation of interested persons who
may not be members of the Supporting Organization in advisory committees of
the Supporting Organization), (iv) policies to ensure international and diverse
participation, (v) policies for disclosure to the Corporation by members of or
participants in a Supporting Organization council of conflicts of interest or other
financial interests in matters within the scope of the Supporting Organization
(such conflicts or interests, however, not necessarily requiring abstention from
action), and (vi) methods for funding the Supporting Organization and providing

funding for the Corporation (consistent with Article XI, Section 4 of these Bylaws). If more than one application to be a particular Supporting Organization is received by the Board, it shall encourage, to the extent possible and reasonable, such competing applicants to resolve any differences, and shall not approve any application that does not meet the criteria set forth in this Section 3.

ARTICLE VII: COMMITTEES

Section 1. COMMITTEES GENERALLY

(a) The Board may establish one or more committees in addition to those set forth in Section 3 of this Article VII. Committees are of two kinds: those having legal authority to act for the Corporation, known as Committees of the Board, and those that do not have that authority, known as Advisory Committees. Except where otherwise stated in these Bylaws, committee members shall be appointed by the Board. Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all members of the Board; provided, however, that if a Director or Directors are the subject of the removal action, such Director or Directors shall not be entitled to vote on such an action or be counted as a member of the Board when calculating the required two-thirds (2/3) vote; and, provided further, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all members of the Board. The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:

>   (i) The filling of vacancies on the Board or on any committee;

>   (ii) The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;

>   (iii) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;

>   (iv) The appointment of committees of the Board or the members thereof;

>   (v) The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CNPBCL;

>   (vi) The approval of the annual budget required by Section 4 of Article XI; or

>   (vii) The compensation of any officer described in Sections 4 through 7 of Article VIII.

(b) The Board shall have the power to prescribe the manner in which proceedings of any committee shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless these Bylaws, the Board or

such committee shall otherwise provide, the regular and special meetings shall be governed by the provisions of Article V applicable to meetings and actions of the Board. Each committee shall keep regular minutes of its proceedings and shall report the same to the Board from time to time, as the Board may require.

Section 2. COMMITTEES OF THE BOARD

Only Directors may be appointed to a Committee of the Board. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. The Board may terminate any Committee of the Board.

Section 3. ADVISORY COMMITTEES

The Board may create one or more Advisory Committees in addition to those set forth in the next paragraph. Advisory Committee membership may consist of Directors only, Directors and nondirectors, or nondirectors only, and may also include nonvoting members and alternate members. Advisory Committees shall have no legal authority to act for the Corporation, but shall report their findings and recommendations to the Board. There shall be at least the following Advisory Committees:

(a) There shall be a Governmental Advisory Committee. The initial chairman of the Governmental Advisory Committee shall be appointed by the Board and shall hold that position until the election of his or her successor; subsequent chairs shall be elected by the members of the Governmental Advisory Committee pursuant to procedures adopted by such members. Members of the Governmental Advisory Committee shall be representatives of national governments, multinational governmental organizations and treaty organizations, each of which may appoint one representative to the Committee. The Governmental Advisory Committee should consider and provide advice on the activities of the Corporation as they relate to concerns of governments, particularly matters where there may be an interaction between the Corporation's policies and various laws, and international agreements. The Board will notify the chairman of the Governmental Advisory Committee of any proposal for which it seeks comments under Article III, Section 3(b) and will consider any response to that notification prior to taking action.

(b) There shall be a DNS Root Server System Advisory Committee. The initial chairman of the DNS Root Server System Advisory Committee shall be appointed by the Board; subsequent chairs shall be elected by the members of the DNS Root Server System Advisory Committee pursuant to procedures adopted by the members. The responsibility of the Root Server System Advisory Committee shall be to advise the Board about the operation of the root name servers of the domain name system. The Root Server System Advisory Committee should consider and provide advice on the operational requirements of root name servers, including host hardware capacities, operating systems and name server software versions, network connectivity and physical environment. The Root Server System Advisory Committee should examine and advise on the security aspects of the root name server system. Further, the

Root Server System Advisory Committee should review the number, location, and distribution of root name servers considering the total system performance, robustness, and reliability.

(c) Until such time as the process for the election of At Large directors shall have been approved as contemplated by Section 9(c) of Article V, there shall be an Advisory Committee on Membership. The members of the Advisory Committee on Membership shall consist of certain Directors selected by the Board as well as other persons appointed by the Board. The chairman of the Advisory Committee on Membership shall be appointed by the Board and shall be a Director. The responsibility of the Advisory Committee on Membership shall be to advise the Board on the creation of the membership structure called for in Section 9(c) of Article V.

Section 4. TERM OF OFFICE

The chairman and each member of a committee shall serve until his or her successor is appointed, or until such committee is sooner terminated, or until he or she is removed, resigns, or otherwise ceases to qualify as a member of the committee.

Section 5. QUORUM; MEETINGS

A majority of the members of the committee shall constitute a quorum at any meeting of that committee. Each committee shall meet as often as is necessary to perform its duties.

Section 6. VACANCIES

Vacancies on any committee shall be filled in the same manner as provided in the case of original appointments.

Section 7. COMPENSATION

Committee members shall receive no compensation for their services as a member of a committee. The Board may, however, authorize the reimbursement of actual and necessary expenses incurred by committee members, including Directors, performing their duties as committee members.

ARTICLE VIII: OFFICERS

Section 1. OFFICERS

The officers of the Corporation will be a President (who will serve as Chief Executive Officer), a Secretary, a Treasurer/Chief Financial Officer, and a Chief Technical Officer. The Corporation may also have, at the discretion of the Board, any additional officers that it deems appropriate. Any person, other than the President, may hold more than one office, except that no member of the Board (other than the President) shall simultaneously serve as an officer of the Corporation.

Section 2. ELECTION OF OFFICERS

The officers of the Corporation will be elected annually by the Board, pursuant to the recommendation of the President. Each such officer shall hold his or her office until he or

she resigns, is removed, is otherwise disqualified to serve, or his or her successor is elected.

Section 3. REMOVAL OF OFFICERS

Any Officer may be removed, either with or without cause, by a two-thirds (2/3) majority vote of all the members of the Board. Should any vacancy occur in any office as a result of death, resignation, removal, disqualification or any other cause, the Board may delegate the powers and duties of such office to any Officer or to any Director until such time as a successor for the office has been elected.

Section 4. PRESIDENT

The President will be the Chief Executive Officer (CEO) of the Corporation in charge of all of its activities and business. All other officers and staff shall report to the President or his or her delegate. The President shall serve as a member of the Board, and shall be entitled to attend any meeting of any committee. The President shall report annually to the Board on the current state of the Corporation and plans for the future. The President will be empowered to call special meetings of the Board as set forth herein, and shall discharge all other duties as may be required by these Bylaws and from time to time may be assigned by the Board.

Section 5. SECRETARY

The Secretary shall keep or cause to be kept the minutes of the Board in one or more books provided for that purpose, will see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law, and in general perform all duties as from time to time may be prescribed by the President or the Board.

Section 6. TREASURER/CHIEF FINANCIAL OFFICER

The Treasurer/Chief Financial Officer ("CFO") shall be the chief financial officer of the Corporation. If required by the Board, the CFO shall give a bond for the faithful discharge of his or her duties in such form and with such surety or sureties as the Board shall determine. The CFO shall have charge and custody of all the funds of the Corporation and shall keep or cause to be kept, in books belonging to the Corporation, full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of the Corporation in such depositories as may be designated for that purpose by the Board. The CFO shall disburse the funds of the Corporation as may be ordered by the Board or the President and, whenever requested by them, shall deliver to the Board and the President an account of all his or her transactions as CFO and of the financial condition of the Corporation. The CFO shall be responsible for the Corporation's financial planning and forecasting and shall assist the President in the preparation of the Corporation's annual budget. The CFO shall coordinate and oversee the Corporation's funding, including any audits or other reviews of the Corporation or its Supporting Organizations. The CFO shall be responsible for all other matters relating to the financial operation of the Corporation.

Section 7. CHIEF TECHNICAL OFFICER

The Chief Technical Officer shall advise the Board and the President on engineering and other technical issues related to the matters which they consider.

Section 8. ADDITIONAL OFFICERS In addition to the officers described above, any additional or assistant officers who are elected or appointed by the Board shall perform such duties as will be assigned to them by the President or the Board.

Section 9. COMPENSATION AND EXPENSES

The compensation of any Officer of the Corporation shall be approved by the Board. Expenses incurred in connection with performance of their officer duties may be reimbursed to Officers upon approval of the President (in the case of Officers other than the President) or the Board.

ARTICLE IX: INDEMNIFICATION OF DIRECTORS, OFFICERS EMPLOYEES AND OTHER AGENTS

The Corporation shall, to maximum extent permitted by the CNPBCL, indemnify each of its agents against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of the Corporation. For purposes of this Article, an "agent" of the Corporation includes any person who is or was a Director, Officer, employee or any other agent of the Corporation; or is or was serving at the request of the Corporation as a Director, Officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the Corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not this Corporation would have the power to indemnify the agent against that liability under the provisions of this Article.

ARTICLE X: GENERAL PROVISIONS

Section 1. CONTRACTS

The Board may authorize any Officer or Officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. In the absence of a contrary Board authorization, contracts and instruments may only be executed by the following Officers: President, any Vice President, or the CFO. Unless authorized or ratified by the Board, no other Officer, agent or employee shall have any power or authority to bind the Corporation or to render it liable for any debts or obligations.

Section 2. DEPOSITS

All funds of the Corporation not otherwise employed will be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select.

Section 3. CHECKS

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation will be signed by such Officer or Officers, agent or agents, of the Corporation and in such a manner as shall from time to time be determined by resolution of the Board.

Section 4. LOANS

No loans will be made by or to this Corporation and no evidences of indebtedness will be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances; provided, however, that no loans will be made by the Corporation to its Directors or Officers.

ARTICLE XI: FISCAL MATTERS

Section 1. ACCOUNTING

The fiscal year end of the Corporation shall be determined by the Board.

Section 2. AUDIT

At the end of the fiscal year, the books of the Corporation will be closed and audited by certified public accountants. The appointment of the fiscal auditors will be the responsibility of the Board.

Section 3. ANNUAL REPORT AND ANNUAL STATEMENT

The Corporation shall cause the annual report and the annual statement of certain transactions as required by the CNPBCL to be prepared and sent to each member of the Board and to such other persons as the Board may designate, no later than one hundred twenty (120) days after the close of the Corporation's fiscal year.

Section 4. FISCAL CONTROLS

(a) Annual Budget. The President shall prepare and, at least three (3) months prior to the commencement of each fiscal year, submit to the Board, a proposed annual budget of the Corporation for the next fiscal year. The proposed budget shall identify anticipated revenue sources and levels and shall, to the extent practical, identify anticipated material expense items by line item. The Board shall adopt an annual budget and shall publish the adopted Budget on the Web Site.

(b) Fees and Charges. The Board shall set fees and charges for the services, rights and benefits provided by the Corporation to the Supporting Organizations and others, with the goal of fully recovering the reasonable costs of the operation of the Corporation and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of the Corporation. Such fees and charges shall be fair and equitable, and shall be published on the Web Site in a sufficiently detailed manner so as to be readily accessible.

(c) Annual Report. The Board shall publish, at least annually, a report describing its activities, including an audited financial statement and a description of any payments made by the Corporation to Directors (including reimbursements of expenses).

ARTICLE XII: AMENDMENTS

Except as otherwise provided in the Articles of Incorporation, the Articles of Incorporation or Bylaws of the Corporation may be altered, amended, or repealed and new Bylaws adopted only upon action by two-thirds (2/3) majority vote of all members of the Board.

Comments concerning the layout, construction and functionality of this site should be sent to webmaster@icann.org.

Page Updated 15-Apr-2003

Petillion

RM 6

differences of juvenile fish as they pass downstream through Lake Pateros and Wells Dam. For modification 1, PUD GC requests an increase in the take of juvenile, endangered, UCR steelhead associated with a study designed to inventory fish species in Wells reservoir on the Columbia River. ESA-listed fish are proposed to be observed by SCUBA divers or collected in beach seines, anesthetized, examined, allowed to recover, and released. Modification 1 is requested to be valid for the duration of the permit. Permit 1116 expires on December 31, 2002.

Dated: June 4, 1998.

Patricia A. Montanio,
Deputy Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 98–15439 Filed 6–9–98; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 980212036–8146–02]

Management of Internet Names and Addresses

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Statement of policy.

SUMMARY: On July 1, 1997, as part of the Clinton Administration's *Framework for Global Electronic Commerce,*[1] the President directed the Secretary of Commerce to privatize the domain name system (DNS) in a manner that increases competition and facilitates international participation in its management.

Accordingly, on July 2, 1997, the Department of Commerce issued a Request for Comments (RFC) on DNS administration. The RFC solicited public input on issues relating to the overall framework of the DNS administration, the creation of new top-level domains, policies for domain name registrars, and trademark issues. During the comment period, more than 430 comments were received, amounting to some 1500 pages.[2]

On January 30, 1998, the National Telecommunications and Information Administration (NTIA), an agency of the Department of Commerce, issued for comment, *A Proposal to Improve the Technical Management of Internet Names and Addresses.* The proposed

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[1] Available at *<http://www.ecommerce.gov>.*
[2] July 2, 1997 RFC and public comments are located at: *<http://www.ntia.doc.gov/ntiahome/domainname/index.html>.*

rulemaking, or ''Green Paper,'' was published in the **Federal Register** on February 20, 1998, providing opportunity for public comment. NTIA received more than 650 comments, as of March 23, 1998, when the comment period closed.[3]

The Green Paper proposed certain actions designed to privatize the management of Internet names and addresses in a manner that allows for the development of robust competition and facilitates global participation in Internet management. The Green Paper proposed for discussion a variety of issues relating to DNS management including private sector creation of a new not-for-profit corporation (the ''new corporation'') managed by a globally and functionally representative Board of Directors.

EFFECTIVE DATE: This general statement of policy is not subject to the delay in effective date required of substantive rules under 5 U.S.C. § 553(d). It does not contain mandatory provisions and does not itself have the force and effect of law.[4] Therefore, the effective date of this policy statement is June 10, 1998.

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Authority: 15 U.S.C. 1512; 15 U.S.C. 1525; 47 U.S.C. 902(b)(2)(H); 47 U.S.C. 902(b)(2)(I); 47 U.S.C. 902(b)(2)(M); 47 U.S.C. 904(c)(1).

SUPPLEMENTARY INFORMATION:

Background

Domain names are the familiar and easy-to-remember names for Internet computers (e.g., ''www.ecommerce.gov''). They map to unique Internet Protocol (IP) numbers (e.g., 98.37.241.30) that serve as routing addresses on the Internet. The domain name system (DNS) translates Internet names into the IP numbers needed for transmission of information across the network.

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[3] The RFC, the Green Paper, and comments received in response to both documents are available on the Internet at the following address: *<http://www.ntia.doc.gov>.* Additional comments were submitted after March 23, 1998. These comments have been considered and treated as part of the official record and have been separately posted at the same site, although the comments were not received by the deadline established in the February 20, 1998 **Federal Register** Notice.

[4] See Administrative Law Requirements at p. 19.

U.S. Role in DNS Development

More than 25 years ago, the U.S. Government began funding research necessary to develop packet-switching technology and communications networks, starting with the ''ARPANET'' network established by the Department of Defense's Advanced Research Projects Agency (DARPA) in the 1960s. ARPANET was later linked to other networks established by other government agencies, universities and research facilities. During the 1970s, DARPA also funded the development of a ''network of networks;'' this became known as the Internet, and the protocols that allowed the networks to intercommunicate became known as Internet protocols (IP).

As part of the ARPANET development work contracted to the University of California at Los Angeles (UCLA), Dr. Jon Postel, then a graduate student at the university, undertook the maintenance of a list of host names and addresses and also a list of documents prepared by ARPANET researchers, called Requests for Comments (RFCs). The lists and the RFCs were made available to the network community through the auspices of SRI International, under contract to DARPA and later the Defense Communication Agency (DCA) (now the Defense Information Systems Agency (DISA)) for performing the functions of the Network Information Center (the NIC).

After Dr. Postel moved from UCLA to the Information Sciences Institute (ISI) at the University of Southern California (USC), he continued to maintain the list of assigned Internet numbers and names under contracts with DARPA. SRI International continued to publish the lists. As the lists grew, DARPA permitted Dr. Postel to delegate additional administrative aspects of the list maintenance to SRI, under continuing technical oversight. Dr. Postel, under the DARPA contracts, also published a list of technical parameters that had been assigned for use by protocol developers. Eventually these functions collectively became known as the Internet Assigned Numbers Authority (IANA).

Until the early 1980s, the Internet was managed by DARPA, and used primarily for research purposes. Nonetheless, the task of maintaining the name list became onerous, and the Domain Name System (DNS) was developed to improve the process. Dr. Postel and SRI participated in DARPA's development and establishment of the technology and practices used by the DNS. By 1990, ARPANET was completely phased out.

The National Science Foundation (NSF) has statutory authority for supporting and strengthening basic scientific research, engineering, and educational activities in the United States, including the maintenance of computer networks to connect research and educational institutions. Beginning in 1987, IBM, MCI and Merit developed NSFNET, a national high-speed network based on Internet protocols, under an award from NSF. NSFNET, the largest of the governmental networks, provided a "backbone" to connect other networks serving more than 4,000 research and educational institutions throughout the country. The National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy also contributed backbone facilities.

In 1991–92, NSF assumed responsibility for coordinating and funding the management of the non-military portion of the Internet infrastructure. NSF solicited competitive proposals to provide a variety of infrastructure services, including domain name registration services. On December 31, 1992, NSF entered into a cooperative agreement with Network Solutions, Inc. (NSI) for some of these services, including the domain name registration services. Since that time, NSI has managed key registration, coordination, and maintenance functions of the Internet domain name system. NSI registers domain names in the generic top level domains (gTLDs) on a first come, first served basis and also maintains a directory linking domain names with the IP numbers of domain name servers. NSI also currently maintains the authoritative database of Internet registrations.

In 1992, the U.S. Congress gave NSF statutory authority to allow commercial activity on the NSFNET.[5] This facilitated connections between NSFNET and newly forming commercial network service providers, paving the way for today's Internet. Thus, the U.S. Government has played a pivotal role in creating the Internet as we know it today. The U.S. Government consistently encouraged bottom-up development of networking technologies, and throughout the course of its development, computer scientists from around the world have enriched the Internet and facilitated exploitation of its true potential. For example, scientists at CERN, in Switzerland, developed software, protocols and conventions that formed the basis of today's vibrant World Wide Web. This type of pioneering Internet research and development continues in cooperative organizations and consortia throughout the world.

DNS Management Today

In recent years, commercial use of the Internet has expanded rapidly. As a legacy, however, major components of the domain name system are still performed by, or subject to, agreements with agencies of the U.S. Government.

(1) Assignment of numerical addresses to Internet users.

Every Internet computer has a unique IP number. IANA, headed by Dr. Jon Postel, coordinates this system by allocating blocks of numerical addresses to regional IP registries (ARIN in North America, RIPE in Europe, and APNIC in the Asia/Pacific region), under contract with DARPA. In turn, larger Internet service providers apply to the regional IP registries for blocks of IP addresses. The recipients of those address blocks then reassign addresses to smaller Internet service providers and to end users.

(2) Management of the system of registering names for Internet users.

The domain name space is constructed as a hierarchy. It is divided into top-level domains (TLDs), with each TLD then divided into second-level domains (SLDs), and so on. More than 200 national, or country-code, TLDs (ccTLDs) are administered by their corresponding governments or by private entities with the appropriate national government's acquiescence. A small set of gTLDs do not carry any national identifier, but denote the intended function of that portion of the domain space. For example, .com was established for commercial users, .org for not-for-profit organizations, and .net for network service providers. The registration and propagation of these key gTLDs are performed by NSI, under a five-year cooperative agreement with NSF. This agreement expires on September 30, 1998.

(3) Operation of the root server system.

The root server system is a set of thirteen file servers, which together contain authoritative databases listing all TLDs. Currently, NSI operates the "A" root server, which maintains the authoritative root database and replicates changes to the other root servers on a daily basis. Different organizations, including NSI, operate the other 12 root servers.[6]

The U.S. Government plays a role in the operation of about half of the Internet's root servers. Universal name consistency on the Internet cannot be guaranteed without a set of authoritative and consistent roots. Without such consistency messages could not be routed with any certainty to the intended addresses.

(4) Protocol Assignment.

The Internet protocol suite, as defined by the Internet Engineering Task Force (IETF), contains many technical parameters, including protocol numbers, port numbers, autonomous system numbers, management information base object identifiers and others. The common use of these protocols by the Internet community requires that the particular values used in these fields be assigned uniquely. Currently, IANA, under contract with DARPA, makes these assignments and maintains a registry of the assigned values.

The Need for Change

From its origins as a U.S.-based research vehicle, the Internet is rapidly becoming an international medium for commerce, education and communication. The traditional means of organizing its technical functions need to evolve as well. The pressures for change are coming from many different quarters:

—There is widespread dissatisfaction about the absence of competition in domain name registration.

—Conflicts between trademark holders and domain name holders are becoming more common. Mechanisms for resolving these conflicts are expensive and cumbersome.

—Many commercial interests, staking their future on the successful growth of the Internet, are calling for a more formal and robust management structure.

—An increasing percentage of Internet users reside outside of the U.S., and those stakeholders want to participate in Internet coordination.

—As Internet names increasingly have commercial value, the decision to add new top-level domains cannot be made on an *ad hoc* basis by entities or individuals that are not formally accountable to the Internet community.

—As the Internet becomes commercial, it becomes less appropriate for U.S. research agencies to direct and fund these functions.

The Internet technical community has been actively debating DNS

[5] See Scientific and Advanced-Technology Act of 1992; Pub. L. 102–476 section 4(9), 106 Stat. 2297, 2300 (codified at 42 U.S.C. 1862 (a)).

[6] An unofficial diagram of the general geographic location and institutional affiliations of the 13 Internet root servers, prepared by Anthony

Rutkowski, is available at <*http://www.wia.org/pub/rootserv.html*>.

management policy for several years. Experimental registry systems offering name registration services in an alternative set of exclusive domains developed as early as January 1996. Although visible to only a fraction of Internet users, alternative systems such as the name.space, AlterNIC, and eDNS affiliated registries [7] contributed to the community's dialogue on the evolution of DNS administration.

In May of 1996, Dr. Postel proposed the creation of multiple, exclusive, competing top-level domain name registries. This proposal called for the introduction of up to 50 new competing domain name registries, each with the exclusive right to register names in up to three new top-level domains, for a total of 150 new TLDs. While some supported the proposal, the plan drew much criticism from the Internet technical community.[8] The paper was revised and reissued.[9] The Internet Society's (ISOC) board of trustees endorsed, in principle, the slightly revised but substantively similar version of the draft in June of 1996.

After considerable debate and redrafting failed to produce a consensus on DNS change, IANA and the Internet Society (ISOC) organized the International Ad Hoc Committee [10] (IAHC or the Ad Hoc Committee) in September 1996, to resolve DNS management issues. The World Intellectual Property Organization (WIPO) and the International Telecommunications Union (ITU) participated in the IAHC. The Federal Networking Council (FNC) participated in the early deliberations of the Ad Hoc Committee.

The IAHC issued a draft plan in December 1996 that introduced unique and thoughtful concepts for the evolution of DNS administration.[11] The final report proposed a memorandum of understanding (MoU) that would have established, initially, seven new gTLDs

to be operated on a nonexclusive basis by a consortium of new private domain name registrars called the Council of Registrars (CORE).[12] Policy oversight would have been undertaken in a separate council called the Policy Oversight Committee (POC) with seats allocated to specified stakeholder groups. Further, the plan formally introduced mechanisms for resolving trademark/domain name disputes. Under the MoU, registrants for second-level domains would have been required to submit to mediation and arbitration, facilitated by WIPO, in the event of conflict with trademark holders.

Although the IAHC proposal gained support in many quarters of the Internet community, the IAHC process was criticized for its aggressive technology development and implementation schedule, for being dominated by the Internet engineering community, and for lacking participation by and input from business interests and others in the Internet community.[13] Others criticized the plan for failing to solve the competitive problems that were such a source of dissatisfaction among Internet users and for imposing unnecessary burdens on trademark holders. Although the POC responded by revising the original plan, demonstrating a commendable degree of flexibility, the proposal was not able to overcome initial criticism of both the plan and the process by which the plan was developed.[14] Important segments of the Internet community remained outside the IAHC process, criticizing it as insufficiently representative.[15]

As a result of the pressure to change DNS management, and in order to facilitate its withdrawal from DNS management, the U.S. Government, through the Department of Commerce and NTIA, sought public comment on the direction of U.S. policy with respect to DNS, issuing the Green Paper on January 30, 1998.[16] The approach outlined in the Green Paper adopted elements of other proposals, such as the

early Postel drafts and the IAHC gTLD–MoU.

Comments and Response: The following are summaries of and responses to the major comments that were received in response to NTIA's issuance of *A Proposal to Improve the Technical Management of Internet Names and Addresses.* As used herein, quantitative terms such as ''some,'' ''many,'' and ''the majority of,'' reflect, roughly speaking, the proportion of comments addressing a particular issue but are not intended to summarize all comments received or the complete substance of all such comments.

1. Principles for a New System

The Green Paper set out four principles to guide the evolution of the domain name system: stability, competition, private bottom-up coordination, and representation.

Comments: In general, commenters supported these principles, in some cases highlighting the importance of one or more of the principles. For example, a number of commenters emphasized the importance of establishing a body that fully reflects the broad diversity of the Internet community. Others stressed the need to preserve the bottom-up tradition of Internet governance. A limited number of commenters proposed additional principles for the new system, including principles related to the protection of human rights, free speech, open communication, and the preservation of the Internet as a public trust. Finally, some commenters who agreed that Internet stability is an important principle, nonetheless objected to the U.S. Government's assertion of any participatory role in ensuring such stability.

Response: The U.S. Government policy applies only to management of Internet names and addresses and does not set out a system of Internet ''governance.'' Existing human rights and free speech protections will not be disturbed and, therefore, need not be specifically included in the core principles for DNS management. In addition, this policy is not intended to displace other legal regimes (international law, competition law, tax law and principles of international taxation, intellectual property law, etc.) that may already apply. The continued applicability of these systems as well as the principle of representation should ensure that DNS management proceeds in the interest of the Internet community as a whole. Finally, the U.S. Government believes that it would be irresponsible to withdraw from its existing management role without

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[7] For further information about these systems see: name.space: <*http://namespace.pgmedia.net*>; AlterNIC: <*http://www.alternic.net*>; eDNS: <*http://www.edns.net*>. Reference to these organizations does not constitute an endorsement of their commercial activities.

[8] Lengthy discussions by the Internet technical community on DNS issues generally and on the Postel DNS proposal took place on the *newdom, com-priv, ietf* and *domain-policy* Internet mailing lists.

[9] See *draft-Postel-iana-itld-admin-01.txt;* available at <*http://www.newdom.com/archive*>.

[10] For further information about the IAHC see: <*http://www.iahc.org*> and related links. Reference to this organization does not constitute an endorsement of the commercial activities of its related organizations.

[11] December 1996 draft: *draft-iahc-gtldspec-00.txt;* available at <*http://info.internet.isi.edu:80/in-drafts/files*>.

[12] The IAHC final report is available at <*http://www.iahc.org/draft-iahc-recommend-00.html*>.

[13] See generally public comments received in response to July 2, 1997 RFC located at <*http://www.ntia.doc.gov/ntiahome/domainname/email*>.

[14] For a discussion, see Congressional testimony of Assistant Secretary of Commerce Larry Irving, Before the House Committee on Science, Subcommittee on Basic Research, September 25, 1997 available at <*http://www.ntia.doc.gov/ntiahome/domainname/email*>.

[15] See generally public comments received in response to July 2, 1997 RFC located at <*http://www.ntia.doc.gov/ntiahome/domainname/email*>.

[16] The document was published in the **Federal Register** on February 20, 1998, (63 FR 8826 (Feb. 20, 1998)).

taking steps to ensure the stability of the Internet during its transition to private sector management. On balance, the comments did not present any consensus for amending the principles outlined in the Green Paper.

2. The Coordinated Functions

The Green Paper identified four DNS functions to be performed on a coordinated, centralized basis in order to ensure that the Internet runs smoothly:

1. To set policy for and direct the allocation of IP number blocks;

2. To oversee the operation of the Internet root server system;

3. To oversee policy for determining the circumstances under which new top level domains would be added to the root system; and

4. To coordinate the development of other technical protocol parameters as needed to maintain universal connectivity on the Internet.

Comments: Most commenters agreed that these functions should be coordinated centrally, although a few argued that a system of authoritative roots is not technically necessary to ensure DNS stability. A number of commenters, however, noted that the fourth function, as delineated in the Green Paper, overstated the functions currently performed by IANA, attributing to it central management over an expanded set of functions, some of which are now carried out by the IETF.

Response: In order to preserve universal connectivity and the smooth operation of the Internet, the U.S. Government continues to believe, along with most commenters, that these four functions should be coordinated. In the absence of an authoritative root system, the potential for name collisions among competing sources for the same domain name could undermine the smooth functioning and stability of the Internet.

The Green Paper was not, however, intended to expand the responsibilities associated with Internet protocols beyond those currently performed by IANA. Specifically, management of DNS by the new corporation does not encompass the development of Internet technical parameters for other purposes by other organizations such as IETF. The fourth function should be restated accordingly:

• To coordinate the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet.

3. Separation of Name and Number Authority

Comments: A number of commenters suggested that management of the domain name system should be separated from management of the IP number system. These commenters expressed the view that the numbering system is relatively technical and straightforward. They feared that tight linkage of domain name and IP number policy development would embroil the IP numbering system in the kind of controversy that has surrounded domain name issuance in recent months. These commenters also expressed concern that the development of alternative name and number systems could be inhibited by this controversy or delayed by those with vested interests in the existing system.

Response: The concerns expressed by the commenters are legitimate, but domain names and IP numbers must ultimately be coordinated to preserve universal connectivity on the Internet. Also, there are significant costs associated with establishing and operating two separate management entities.

However, there are organizational structures that could minimize the risks identified by commenters. For example, separate name and number councils could be formed within a single organization. Policy could be determined within the appropriate council that would submit its recommendations to the new corporation's Board of Directors for ratification.

4. Creation of the New Corporation and Management of the DNS

The Green Paper called for the creation of a new private, not-for-profit corporation [17] responsible for coordinating specific DNS functions for the benefit of the Internet as a whole. Under the Green Paper proposal, the U.S. Government [18] would gradually transfer these functions to the new corporation beginning as soon as possible, with the goal of having the new corporation carry out operational responsibility by October 1998. Under the Green Paper proposal, the U.S. Government would continue to

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[17] As used herein, the term ''new corporation'' is intended to refer to an entity formally organized under well recognized and established business law standards.

[18] As noted in the Summary, the President directed the Secretary of Commerce to privatize DNS in a manner that increases competition and facilitates international participation in its management. Accordingly, the Department of Commerce will lead the coordination of the U.S. government's role in this transition.

participate in policy oversight until such time as the new corporation was established and stable, phasing out as soon as possible, but in no event later than September 30, 2000. The Green Paper suggested that the new corporation be incorporated in the United States in order to promote stability and facilitate the continued reliance on technical expertise residing in the United States, including IANA staff at USC/ISI.

Comments: Almost all commenters supported the creation of a new, private not-for-profit corporation to manage DNS. Many suggested that IANA should evolve into the new corporation. A small number of commenters asserted that the U.S. Government should continue to manage Internet names and addresses. Another small number of commenters suggested that DNS should be managed by international governmental institutions such as the United Nations or the International Telecommunications Union. Many commenters urged the U.S. Government to commit to a more aggressive timeline for the new corporation's assumption of management responsibility. Some commenters also suggested that the proposal to headquarter the new corporation in the United States represented an inappropriate attempt to impose U.S. law on the Internet as a whole.

Response: The U.S. Government is committed to a transition that will allow the private sector to take leadership for DNS management. Most commenters shared this goal. While international organizations may provide specific expertise or act as advisors to the new corporation, the U.S. continues to believe, as do most commenters, that neither national governments acting as sovereigns nor intergovernmental organizations acting as representatives of governments should participate in management of Internet names and addresses. Of course, national governments now have, and will continue to have, authority to manage or establish policy for their own ccTLDs.

The U.S. Government would prefer that this transition be complete before the year 2000. To the extent that the new corporation is established and operationally stable, September 30, 2000 is intended to be, and remains, an ''outside'' date.

IANA has functioned as a government contractor, albeit with considerable latitude, for some time now. Moreover, IANA is not formally organized or constituted. It describes a function more than an entity, and as such does not currently provide a legal foundation for the new corporation. This is not to say,

however, that IANA could not be reconstituted by a broad-based, representative group of Internet stakeholders or that individuals associated with IANA should not themselves play important foundation roles in the formation of the new corporation. We believe, and many commenters also suggested, that the private sector organizers will want Dr. Postel and other IANA staff to be involved in the creation of the new corporation.

Because of the significant U.S.-based DNS expertise and in order to preserve stability, it makes sense to headquarter the new corporation in the United States. Further, the mere fact that the new corporation would be incorporated in the United States would not remove it from the jurisdiction of other nations. Finally, we note that the new corporation must be headquartered somewhere, and similar objections would inevitably arise if it were incorporated in another location.

5. Structure of the New Corporation

The Green Paper proposed a 15-member Board, consisting of three representatives of regional number registries, two members designated by the Internet Architecture Board (IAB), two members representing domain name registries and domain name registrars, seven members representing Internet users, and the Chief Executive Officer of the new corporation.

Comments: Commenters expressed a variety of positions on the composition of the Board of Directors for the new corporation. In general, however, most commenters supported the establishment of a Board of Directors that would be representative of the functional and geographic diversity of the Internet. For the most part, commenters agreed that the groups listed in the Green Paper included individuals and entities likely to be materially affected by changes in DNS. Most of those who criticized the proposed allocation of Board seats called for increased representation of their particular interest group on the Board of Directors. Specifically, a number of commenters suggested that the allocation set forth in the Green Paper did not adequately reflect the special interests of (1) trademark holders, (2) Internet service providers, or (3) the not-for-profit community. Others commented that the Green Paper did not adequately ensure that the Board would be globally representative.

Response: The Green Paper attempted to describe a manageably sized Board of Directors that reflected the diversity of the Internet. It is probably impossible to allocate Board seats in a way that satisfies all parties concerned. On balance, we believe the concerns raised about the representation of specific groups are best addressed by a thoughtful allocation of the "user" seats as determined by the organizers of the new corporation and its Board of Directors, as discussed below.

The Green Paper identified several international membership associations and organizations to designate Board members such as APNIC, ARIN, RIPE, and the Internet Architecture Board. We continue to believe that as use of the Internet expands outside the United States, it is increasingly likely that a properly open and transparent DNS management entity will have board members from around the world. Although we do not set any mandatory minimums for global representation, this policy statement is designed to identify global representativeness as an important priority.

6. Registrars and Registries

The Green Paper proposed moving the system for registering second level domains and the management of generic top-level domains into a competitive environment by creating two market-driven businesses, registration of second level domain names and the management of gTLD registries.

a. Competitive Registrars

Comments: Commenters strongly supported establishment of a competitive registrar system whereby registrars would obtain domain names for customers in any gTLD. Few disagreed with this position. The Green Paper proposed a set of requirements to be imposed by the new corporation on all would-be registrars. Commenters for the most part did not take exception to the proposed criteria, but a number of commenters suggested that it was inappropriate for the United States government to establish them.

Response: In response to the comments received, the U.S. Government believes that the new corporation, rather than the U.S. Government, should establish minimum criteria for registrars that are pro-competitive and provide some measure of stability for Internet users without being so onerous as to prevent entry by would-be domain name registrars from around the world. Accordingly, the proposed criteria are not part of this policy statement.

b. Competitive Registries

Comments: Many commenters voiced strong opposition to the idea of competitive and/or for-profit domain name registries, citing one of several concerns. Some suggested that top level domain names are not, by nature, ever truly generic. As such, they will tend to function as "natural monopolies" and should be regulated as a public trust and operated for the benefit of the Internet community as a whole. Others suggested that even if competition initially exists among various domain name registries, lack of portability in the naming systems would create lock-in and switching costs, making competition unsustainable in the long run. Finally, other commenters suggested that no new registry could compete meaningfully with NSI unless all domain name registries were not-for-profit and/or noncompeting.

Some commenters asserted that an experiment involving the creation of additional for-profit registries would be too risky, and irreversible once undertaken. A related concern raised by commenters addressed the rights that for-profit operators might assert with respect to the information contained in registries they operate. These commenters argued that registries would have inadequate incentives to abide by DNS policies and procedures unless the new corporation could terminate a particular entity's license to operate a registry. For-profit operators, under this line of reasoning, would be more likely to disrupt the Internet by resisting license terminations.

Commenters who supported competitive registries conceded that, in the absence of domain name portability, domain name registries could impose switching costs on users who change domain name registries. They cautioned, however, that it would be premature to conclude that switching costs provide a sufficient basis for precluding the proposed move to competitive domain name registries and cited a number of factors that could protect against registry opportunism. These commenters concluded that the potential benefits to customers from enhanced competition outweighed the risk of such opportunism. The responses to the Green Paper also included public comments on the proposed criteria for registries.

Response: Both sides of this argument have considerable merit. It is possible that additional discussion and information will shed light on this issue, and therefore, as discussed below, the U.S. Government has concluded that the issue should be left for further consideration and final action by the new corporation. The U.S. Government is of the view, however, that competitive systems generally result in greater innovation, consumer choice,

and satisfaction in the long run. Moreover, the pressure of competition is likely to be the most effective means of discouraging registries from acting monopolistically. Further, in response to the comments received, the U.S. government believes that new corporation should establish and implement appropriate criteria for gTLD registries. Accordingly, the proposed criteria are not part of this policy statement.

7. The Creation of New gTLDs

The Green Paper suggested that during the period of transition to the new corporation, the U.S. Government, in cooperation with IANA, would undertake a process to add up to five new gTLDs to the authoritative root. Noting that formation of the new corporation would involve some delay, the Green Paper contemplated new gTLDs in the short term to enhance competition and provide information to the technical community and to policy makers, while offering entities that wished to enter into the registry business an opportunity to begin offering service to customers. The Green Paper, however, noted that ideally the addition of new TLDs would be left to the new corporation.

Comments: The comments evidenced very strong support for limiting government involvement during the transition period on the matter of adding new gTLDs. Specifically, most commenters—both U.S. and non-U.S.— suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running. Few believed that speed should outweigh process considerations in this matter. Others warned, however, that relegating this contentious decision to a new and untested entity early in its development could fracture the organization. Others argued that the market for a large or unlimited number of new gTLDs should be opened immediately. They asserted that there are no technical impediments to the addition of a host of gTLDs, and the market will decide which TLDs succeed and which do not. Further, they pointed out that there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution.

Response: The challenge of deciding policy for the addition of new domains will be formidable. We agree with the many commenters who said that the new corporation would be the most appropriate body to make these decisions based on global input. Accordingly, as supported by the

preponderance of comments, the U.S. Government will not implement new gTLDs at this time.

At least in the short run, a prudent concern for the stability of the system suggests that expansion of gTLDs proceed at a deliberate and controlled pace to allow for evaluation of the impact of the new gTLDs and well-reasoned evolution of the domain space. New top level domains could be created to enhance competition and to enable the new corporation to evaluate the functioning, in the new environment, of the root server system and the software systems that enable shared registration.

8. The Trademark Dilemma

When a trademark is used as a domain name without the trademark owner's consent, consumers may be misled about the source of the product or service offered on the Internet, and trademark owners may not be able to protect their rights without very expensive litigation. For cyberspace to function as an effective commercial market, businesses must have confidence that their trademarks can be protected. On the other hand, management of the Internet must respond to the needs of the Internet community as a whole, and not trademark owners exclusively. The Green Paper proposed a number of steps to balance the needs of domain name holders with the legitimate concerns of trademark owners in the interest of the Internet community as a whole. The proposals were designed to provide trademark holders with the same rights they have in the physical world, to ensure transparency, and to guarantee a dispute resolution mechanism with resort to a court system.

The Green Paper also noted that trademark holders have expressed concern that domain name registrants in faraway places may be able to infringe their rights with no convenient jurisdiction available in which the trademark owner could enforce a judgment protecting those rights. The Green Paper solicited comments on an arrangement whereby, at the time of registration, registrants would agree to submit a contested domain name to the jurisdiction of the courts where the registry is domiciled, where the registry database is maintained, or where the "A" root server is maintained.

Comments: Commenters largely agreed that domain name registries should maintain up-to-date, readily searchable domain name databases that contain the information necessary to locate a domain name holder. In general commenters did not take specific issue with the database specifications

proposed in Appendix 2 of the Green Paper, although some commenters proposed additional requirements. A few commenters noted, however, that privacy issues should be considered in this context.

A number of commenters objected to NSI's current business practice of allowing registrants to use domain names before they have actually paid any registration fees. These commenters pointed out that this practice has encouraged cybersquatters and increased the number of conflicts between domain name holders and trademark holders. They suggested that domain name applicants should be required to pay before a desired domain name becomes available for use.

Most commenters also favored creation of an on-line dispute resolution mechanism to provide inexpensive and efficient alternatives to litigation for resolving disputes between trademark owners and domain name registrants. The Green Paper contemplated that each registry would establish specified minimum dispute resolution procedures, but remain free to establish additional trademark protection and dispute resolution mechanisms. Most commenters did not agree with this approach, favoring instead a uniform approach to resolving trademark/ domain name disputes.

Some commenters noted that temporary suspension of a domain name in the event of an objection by a trademark holder within a specified period of time after registration would significantly extend trademark holders' rights beyond what is accorded in the real world. They argued that such a provision would create a *de facto* waiting period for name use, as holders would need to suspend the use of their name until after the objection window had passed to forestall an interruption in service. Further, they argue that such a system could be used anti-competitively to stall a competitor's entry into the marketplace.

The suggestion that domain name registrants be required to agree at the time of registration to submit disputed domain names to the jurisdiction of specified courts was supported by U.S. trademark holders but drew strong protest from trademark holders and domain name registrants outside the United States. A number of commenters characterized this as an inappropriate attempt to establish U.S. trademark law as the law of the Internet. Others suggested that existing jurisdictional arrangements are satisfactory. They argue that establishing a mechanism whereby the judgment of a court can be enforced absent personal jurisdiction

over the infringer would upset the balance between the interests of trademark holders and those of other members of the Internet community.

Response: The U.S. Government will seek international support to call upon the World Intellectual Property Organization (WIPO) to initiate a balanced and transparent process, which includes the participation of trademark holders and members of the Internet community who are not trademark holders, to (1) develop recommendations for a uniform approach to resolving trademark/ domain name disputes involving cyberpiracy (as opposed to conflicts between trademark holders with legitimate competing rights), (2) recommend a process for protecting famous trademarks in the generic top level domains, and (3) evaluate the effects, based on studies conducted by independent organizations, such as the National Research Council of the National Academy of Sciences, of adding new gTLDs and related dispute resolution procedures on trademark and intellectual property holders. These findings and recommendations could be submitted to the board of the new corporation for its consideration in conjunction with its development of registry and registrar policy and the creation and introduction of new gTLDs.

In trademark/domain name conflicts, there are issues of jurisdiction over the domain name in controversy and jurisdiction over the legal persons (the trademark holder and the domain name holder). This document does not attempt to resolve questions of personal jurisdiction in trademark/domain name conflicts. The legal issues are numerous, involving contract, conflict of laws, trademark, and other questions. In addition, determining how these various legal principles will be applied to the borderless Internet with an unlimited possibility of factual scenarios will require a great deal of thought and deliberation. Obtaining agreement by the parties that jurisdiction over the domain name will be exercised by an alternative dispute resolution body is likely to be at least somewhat less controversial than agreement that the parties will subject themselves to the personal jurisdiction of a particular national court. Thus, the references to jurisdiction in this policy statement are limited to jurisdiction over the domain name in dispute, and not to the domain name holder.

In order to strike a balance between those commenters who thought that registrars and registries should not themselves be engaged in disputes between trademark owners and domain

name holders and those commenters who thought that trademark owners should have access to a reliable and up-to-date database, we believe that a database should be maintained that permits trademark owners to obtain the contact information necessary to protect their trademarks.

Further, it should be clear that whatever dispute resolution mechanism is put in place by the new corporation, that mechanism should be directed toward disputes about cybersquatting and cyberpiracy and not to settling the disputes between two parties with legitimate competing interests in a particular mark. Where legitimate competing rights are concerned, disputes are rightly settled in an appropriate court.

Under the revised plan, we recommend that domain name holders agree to submit infringing domain names to the jurisdiction of a court where the ''A'' root server is maintained, where the registry is domiciled, where the registry database is maintained, or where the registrar is domiciled. We believe that allowing trademark infringement suits to be brought wherever registrars and registries are located will help ensure that all trademark holders '' both U.S. and non-U.S. '' have the opportunity to bring suits in a convenient jurisdiction and enforce the judgments of those courts.

Under the revised plan, we also recommend that, whatever options are chosen by the new corporation, each registrar should insist that payment be made for the domain name before it becomes available to the applicant. The failure to make a domain name applicant pay for its use of a domain name has encouraged cyberpirates and is a practice that should end as soon as possible.

9. Competition Concerns

Comments: Several commenters suggested that the U.S. Government should provide full antitrust immunity or indemnification for the new corporation. Others noted that potential antitrust liability would provide an important safeguard against institutional inflexibility and abuses of power.

Response: Applicable antitrust law will provide accountability to and protection for the international Internet community. Legal challenges and lawsuits can be expected within the normal course of business for any enterprise and the new corporation should anticipate this reality.

The Green Paper envisioned the new corporation as operating on principles similar to those of a standard-setting

body. Under this model, due process requirements and other appropriate processes that ensure transparency, equity and fair play in the development of policies or practices would need to be included in the new corporation's originating documents. For example, the new corporation's activities would need to be open to all persons who are directly affected by the entity, with no undue financial barriers to participation or unreasonable restrictions on participation based on technical or other such requirements. Entities and individuals would need to be able to participate by expressing a position and its basis, having that position considered, and appealing if adversely affected. Further, the decision making process would need to reflect a balance of interests and should not be dominated by any single interest category. If the new corporation behaves this way, it should be less vulnerable to antitrust challenges.

10. The NSI Agreement

Comments: Many commenters expressed concern about continued administration of key gTLDs by NSI. They argued that this would give NSI an unfair advantage in the marketplace and allow NSI to leverage economies of scale across their gTLD operations. Some commenters also believe the Green Paper approach would have entrenched and institutionalized NSI's dominant market position over the key domain name going forward. Further, many commenters expressed doubt that a level playing field between NSI and the new registry market entrants could emerge if NSI retained control over .com, .net, and .org.

Response: The cooperative agreement between NSI and the U.S. Government is currently in its ramp down period. The U.S. Government and NSI will shortly commence discussions about the terms and conditions governing the ramp-down of the cooperative agreement. Through these discussions, the U.S. Government expects NSI to agree to take specific actions, including commitments as to pricing and equal access, designed to permit the development of competition in domain name registration and to approximate what would be expected in the presence of marketplace competition. The U.S. Government expects NSI to agree to act in a manner consistent with this policy statement, including recognizing the role of the new corporation to establish and implement DNS policy and to establish terms (including licensing terms) applicable to new and existing gTLD registries under which registries, registrars and gTLDs are permitted to

operate. Further, the U.S. Government expects NSI to agree to make available on an ongoing basis appropriate databases, software, documentation thereof, technical expertise, and other intellectual property for DNS management and shared registration of domain names.

11. A Global Perspective

Comments: A number of commenters expressed concern that the Green Paper did not go far enough in globalizing the administration of the domain name system. Some believed that international organizations should have a role in administering the DNS. Others complained that incorporating the new corporation in the United States would entrench control over the Internet with the U.S. Government. Still others believed that the awarding by the U.S. Government of up to five new gTLDs would enforce the existing dominance of U.S. entities over the gTLD system.

Response: The U.S. Government believes that the Internet is a global medium and that its technical management should fully reflect the global diversity of Internet users. We recognize the need for and fully support mechanisms that would ensure international input into the management of the domain name system. In withdrawing the U.S. Government from DNS management and promoting the establishment of a new, non-governmental entity to manage Internet names and addresses, a key U.S. Government objective has been to ensure that the increasingly global Internet user community has a voice in decisions affecting the Internet's technical management.

We believe this process has reflected our commitment. Many of the comments on the Green Paper were filed by foreign entities, including governments. Our dialogue has been open to all Internet users—foreign and domestic, government and private— during this process, and we will continue to consult with the international community as we begin to implement the transition plan outlined in this paper.

12. The Intellectual Infrastructure Fund

In 1995, NSF authorized NSI to assess domain name registrants a $50 fee per year for the first two years, 30 percent of which was to be deposited in the Intellectual Infrastructure Fund (IIF), a fund to be used for the preservation and enhancement of the intellectual infrastructure of the Internet.

Comments: Very few comments referenced the IIF. In general, the comments received on the issue

supported either refunding the IIF portion of the domain name registration fee to domain registrants from whom it had been collected or applying the funds toward Internet infrastructure development projects generally, including funding the establishment of the new corporation.

Response: As proposed in the Green Paper, allocation of a portion of domain name registration fees to this fund terminated as of March 31, 1998. NSI has reduced its registration fees accordingly. The IIF remains the subject of litigation. The U.S. Government takes the position that its collection has recently been ratified by the U.S. Congress,[19] and has moved to dismiss the claim that it was unlawfully collected. This matter has not been finally resolved, however.

13. The .us Domain

At present, the IANA administers .us as a locality-based hierarchy in which second-level domain space is allocated to states and U.S. territories.[20] This name space is further subdivided into localities. General registration under localities is performed on an exclusive basis by private firms that have requested delegation from IANA. The .us name space has typically been used by branches of state and local governments, although some commercial names have been assigned. Where registration for a locality has not been delegated, the IANA itself serves as the registrar.

Comments: Many commenters suggested that the pressure for unique identifiers in the .com gTLD could be relieved if commercial use of the .us space was encouraged. Commercial users and trademark holders, however, find the current locality-based system too cumbersome and complicated for commercial use. They called for expanded use of the .us TLD to alleviate some of the pressure for new generic TLDs and reduce conflicts between American companies and others vying for the same domain name. Most commenters support an evolution of the .us domain designed to make this name space more attractive to commercial users.

Response: Clearly, there is much opportunity for enhancing the .us domain space, and .us could be expanded in many ways without displacing the current structure. Over the next few months, the U.S. Government will work with the private

sector and state and local governments to determine how best to make the .us domain more attractive to commercial users. Accordingly, the Department of Commerce will seek public input on this important issue.

Administrative Law Requirements

On February 20, 1998, NTIA published for public comment a proposed rule regarding the domain name registration system. That proposed rule sought comment on substantive regulatory provisions, including but not limited to a variety of specific requirements for the membership of the new corporation, the creation during a transition period of a specified number of new generic top level domains and minimum dispute resolution and other procedures related to trademarks. As discussed elsewhere in this document, in response to public comment these aspects of the original proposal have been eliminated. In light of the public comment and the changes to the proposal made as a result, as well as the continued rapid technological development of the Internet, the Department of Commerce has determined that it should issue a general statement of policy, rather than define or impose a substantive regulatory regime for the domain name system. As such, this policy statement is not a substantive rule, does not contain mandatory provisions and does not itself have the force and effect of law.

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, that, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the proposed rule on this matter, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published along with the proposed rule. No comments were received regarding this certification. As such, and because this final rule is a general statement of policy, no final regulatory flexibility analysis has been prepared.

This general statement of policy does not contain any reporting or record keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. ch. 35 (PRA). However, at the time the U.S. Government might seek to enter into agreements as described in this policy statement, a determination will be made as to whether any reporting or record keeping requirements subject to the PRA are being implemented. If so, the NTIA will, at that time, seek approval under the PRA for such requirement(s) from the Office of Management and Budget.

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[19] 1998 Supplemental Appropriations and Rescissions Act; Pub. L. 105–174; 112 Stat. 58.

[20] Management principles for the .us domain space are set forth in Internet RFC 1480, (http://www.isi.edu/in-notes/rfc1480.txt).

This statement has been determined to be not significant for purposes of Office of Management and Budget review under Executive Order 12866, entitled Regulatory Planning and Review.

Revised Policy Statement

This document provides the U.S. Government's policy regarding the privatization of the domain name system in a manner that allows for the development of robust competition and that facilitates global participation in the management of Internet names and addresses.

The policy that follows does not propose a monolithic structure for Internet governance. We doubt that the Internet should be governed by one plan or one body or even by a series of plans and bodies. Rather, we seek a stable process to address the narrow issues of management and administration of Internet names and numbers on an ongoing basis.

As set out below, the U.S. Government is prepared to recognize, by entering into agreement with, and to seek international support for, a new, not-for-profit corporation formed by private sector Internet stakeholders to administer policy for the Internet name and address system. Under such agreement(s) or understanding(s), the new corporation would undertake various responsibilities for the administration of the domain name system now performed by or on behalf of the U.S. Government or by third parties under arrangements or agreements with the U.S. Government. The U.S. Government would also ensure that the new corporation has appropriate access to needed databases and software developed under those agreements.

The Coordinated Functions

Management of number addresses is best done on a coordinated basis. Internet numbers are a unique, and at least currently, a limited resource. As technology evolves, changes may be needed in the number allocation system. These changes should also be coordinated.

Similarly, coordination of the root server network is necessary if the whole system is to work smoothly. While day-to-day operational tasks, such as the actual operation and maintenance of the Internet root servers, can be dispersed, overall policy guidance and control of the TLDs and the Internet root server system should be vested in a single organization that is representative of Internet users around the globe.

Further, changes made in the administration or the number of gTLDs contained in the authoritative root system will have considerable impact on Internet users throughout the world. In order to promote continuity and reasonable predictability in functions related to the root zone, the development of policies for the addition, allocation, and management of gTLDs and the establishment of domain name registries and domain name registrars to host gTLDs should be coordinated.

Finally, coordinated maintenance and dissemination of the protocol parameters for Internet addressing will best preserve the stability and interconnectivity of the Internet. We are not, however, proposing to expand the functional responsibilities of the new corporation beyond those exercised by IANA currently.

In order to facilitate the needed coordination, Internet stakeholders are invited to work together to form a new, private, not-for-profit corporation to manage DNS functions. The following discussion reflects current U.S. Government views of the characteristics of an appropriate management entity. What follows is designed to describe the characteristics of an appropriate entity generally.

Principles for a New System

In making a decision to enter into an agreement to establish a process to transfer current U.S. Government management of DNS to such a new entity, the U.S. will be guided by, and consider the proposed entity's commitment to, the following principles:

1. Stability. The U.S. Government should end its role in the Internet number and name address system in a manner that ensures the stability of the Internet. The introduction of a new management system should not disrupt current operations or create competing root systems. During the transition and thereafter, the stability of the Internet should be the first priority of any DNS management system. Security and reliability of the DNS are important aspects of stability, and as a new DNS management system is introduced, a comprehensive security strategy should be developed.

2. Competition. The Internet succeeds in great measure because it is a decentralized system that encourages innovation and maximizes individual freedom. Where possible, market mechanisms that support competition and consumer choice should drive the management of the Internet because they will lower costs, promote innovation, encourage diversity, and enhance user choice and satisfaction.

3. Private, Bottom-Up Coordination. Certain management functions require coordination. In these cases, responsible, private-sector action is preferable to government control. A private coordinating process is likely to be more flexible than government and to move rapidly enough to meet the changing needs of the Internet and of Internet users. The private process should, as far as possible, reflect the bottom-up governance that has characterized development of the Internet to date.

4. Representation. The new corporation should operate as a private entity for the benefit of the Internet community as a whole. The development of sound, fair, and widely accepted policies for the management of DNS will depend on input from the broad and growing community of Internet users. Management structures should reflect the functional and geographic diversity of the Internet and its users. Mechanisms should be established to ensure international participation in decision making.

Purpose. The new corporation ultimately should have the authority to manage and perform a specific set of functions related to coordination of the domain name system, including the authority necessary to:

(1) Set policy for and direct allocation of IP number blocks to regional Internet number registries;

(2) Oversee operation of the authoritative Internet root server system;

(3) Oversee policy for determining the circumstances under which new TLDs are added to the root system; and

(4) Coordinate the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet.

Funding. Once established, the new corporation could be funded by domain name registries, regional IP registries, or other entities identified by the Board.

Staff. We anticipate that the new corporation would want to make arrangements with current IANA staff to provide continuity and expertise over the course of transition. The new corporation should secure necessary expertise to bring rigorous management to the organization.

Incorporation. We anticipate that the new corporation's organizers will include representatives of regional Internet number registries, Internet engineers and computer scientists, domain name registries, domain name registrars, commercial and noncommercial users, Internet service providers, international trademark

holders and Internet experts highly respected throughout the international Internet community. These incorporators should include substantial representation from around the world.

As these functions are now performed in the United States, by U.S. residents, and to ensure stability, the new corporation should be headquartered in the United States, and incorporated in the U.S. as a not-for-profit corporation. It should, however, have a board of directors from around the world. Moreover, incorporation in the United States is not intended to supplant or displace the laws of other countries where applicable.

Structure. The Internet community is already global and diverse and likely to become more so over time. The organization and its board should derive legitimacy from the participation of key stakeholders. Since the organization will be concerned mainly with numbers, names and protocols, its board should represent membership organizations in each of these areas, as well as the direct interests of Internet users.

The Board of Directors for the new corporation should be balanced to equitably represent the interests of IP number registries, domain name registries, domain name registrars, the technical community, Internet service providers (ISPs), and Internet users (commercial, not-for-profit, and individuals) from around the world. Since these constituencies are international, we would expect the board of directors to be broadly representative of the global Internet community.

As outlined in appropriate organizational documents, (Charter, Bylaws, etc.) the new corporation should:

(1) Appoint, on an interim basis, an initial Board of Directors (an Interim Board) consisting of individuals representing the functional and geographic diversity of the Internet community. The Interim Board would likely need access to legal counsel with expertise in corporate law, competition law, intellectual property law, and emerging Internet law. The Interim Board could serve for a fixed period, until the Board of Directors is elected and installed, and we anticipate that members of the Interim Board would not themselves serve on the Board of Directors of the new corporation for a fixed period thereafter.

(2) Direct the Interim Board to establish a system for electing a Board of Directors for the new corporation that insures that the new corporation's Board of Directors reflects the geographical and functional diversity of the Internet,

and is sufficiently flexible to permit evolution to reflect changes in the constituency of Internet stakeholders. Nominations to the Board of Directors should preserve, as much as possible, the tradition of bottom-up governance of the Internet, and Board Members should be elected from membership or other associations open to all or through other mechanisms that ensure broad representation and participation in the election process.

(3) Direct the Interim Board to develop policies for the addition of TLDs, and establish the qualifications for domain name registries and domain name registrars within the system.

(4) Restrict official government representation on the Board of Directors without precluding governments and intergovernmental organizations from participating as Internet users or in a non-voting advisory capacity.

Governance. The organizing documents (Charter, Bylaws, etc.) should provide that the new corporation is governed on the basis of a sound and transparent decision-making process, which protects against capture by a self-interested faction, and which provides for robust, professional management of the new corporation. The new corporation could rely on separate, diverse, and robust name and number councils responsible for developing, reviewing, and recommending for the board's approval policy related to matters within each council's competence. Such councils, if developed, should also abide by rules and decision-making processes that are sound, transparent, protect against capture by a self-interested party and provide an open process for the presentation of petitions for consideration. The elected Board of Directors, however, should have final authority to approve or reject policies recommended by the councils.

Operations. The new corporation's processes should be fair, open and pro-competitive, protecting against capture by a narrow group of stakeholders. Typically this means that decision-making processes should be sound and transparent; the basis for corporate decisions should be recorded and made publicly available. Super-majority or even consensus requirements may be useful to protect against capture by a self-interested faction. The new corporation does not need any special grant of immunity from the antitrust laws so long as its policies and practices are reasonably based on, and no broader than necessary to promote the legitimate coordinating objectives of the new corporation. Finally, the commercial importance of the Internet necessitates

that the operation of the DNS system, and the operation of the authoritative root server system should be secure, stable, and robust.

The new corporation's charter should provide a mechanism whereby its governing body will evolve to reflect changes in the constituency of Internet stakeholders. The new corporation could, for example, establish an open process for the presentation of petitions to expand board representation.

Trademark Issues. Trademark holders and domain name registrants and others should have access to searchable databases of registered domain names that provide information necessary to contact a domain name registrant when a conflict arises between a trademark holder and a domain name holder.[21] To this end, we anticipate that the policies established by the new corporation would provide that following information would be included in all registry databases and available to anyone with access to the Internet:

—Up-to-date registration and contact information;
—Up-to-date and historical chain of registration information for the domain name;
—A mail address for service of process;
—The date of domain name registration;
—The date that any objection to the registration of the domain name is filed; and
—Any other information determined by the new corporation to be reasonably necessary to resolve disputes between domain name registrants and trademark holders expeditiously.

Further, the U.S. Government recommends that the new corporation adopt policies whereby:

(1) Domain registrants pay registration fees at the time of registration or renewal and agree to submit infringing domain names to the authority of a court of law in the jurisdiction in which the registry, registry database, registrar, or the "A" root servers are located.

(2) Domain name registrants would agree, at the time of registration or renewal, that in cases involving cyberpiracy or cybersquatting (as opposed to conflicts between legitimate competing rights holders), they would submit to and be bound by alternative dispute resolution systems identified by the new corporation for the purpose of resolving those conflicts. Registries and Registrars should be required to abide by decisions of the ADR system.

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[21] These databases would also benefit domain name holders by making it less expensive for new registrars and registries to identify potential customers, enhancing competition and lowering prices.

(3) Domain name registrants would agree, at the time of registration or renewal, to abide by processes adopted by the new corporation that exclude, either pro-actively or retroactively, certain famous trademarks from being used as domain names (in one or more TLDs) except by the designated trademark holder.

(4) Nothing in the domain name registration agreement or in the operation of the new corporation should limit the rights that can be asserted by a domain name registrant or trademark owner under national laws.

The Transition

Based on the processes described above, the U.S. Government believes that certain actions should be taken to accomplish the objectives set forth above. Some of these steps must be taken by the government itself, while others will need to be taken by the private sector. For example, a new not-for-profit organization must be established by the private sector and its Interim Board chosen. Agreement must be reached between the U.S. Government and the new corporation relating to transfer of the functions currently performed by IANA. NSI and the U.S. Government must reach agreement on the terms and conditions of NSI's evolution into one competitor among many in the registrar and registry marketplaces. A process must be laid out for making the management of the root server system more robust and secure. A relationship between the U.S. Government and the new corporation must be developed to transition DNS management to the private sector and to transfer management functions.

During the transition the U.S. Government expects to:

(1) Ramp down the cooperative agreement with NSI with the objective of introducing competition into the domain name space. Under the ramp down agreement NSI will agree to (a) take specific actions, including commitments as to pricing and equal access, designed to permit the development of competition in domain name registration and to approximate what would be expected in the presence of marketplace competition, (b) recognize the role of the new corporation to establish and implement DNS policy and to establish terms (including licensing terms) applicable to new and existing gTLDs and registries under which registries, registrars and gTLDs are permitted to operate, (c) make available on an ongoing basis appropriate databases, software, documentation thereof, technical expertise, and other intellectual

property for DNS management and shared registration of domain names;

(2) Enter into agreement with the new corporation under which it assumes responsibility for management of the domain name space;

(3) Ask WIPO to convene an international process including individuals from the private sector and government to develop a set of recommendations for trademark/domain name dispute resolutions and other issues to be presented to the Interim Board for its consideration as soon as possible;

(4) Consult with the international community, including other interested governments as it makes decisions on the transfer; and

(5) Undertake, in cooperation with IANA, NSI, the IAB, and other relevant organizations from the public and private sector, a review of the root server system to recommend means to increase the security and professional management of the system. The recommendations of the study should be implemented as part of the transition process; and the new corporation should develop a comprehensive security strategy for DNS management and operations.

Dated: June 4, 1998.

William M. Daley,
Secretary of Commerce.
[FR Doc. 98–15392 Filed 6–9–98; 8:45 am]
BILLING CODE 3510–60–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for June 18, 1998 at 10:00 a.m. in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001. The meeting will focus on a variety of projects affecting the appearance of the city.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, D.C., June 2, 1998.

Charles H. Atherton,
Secretary.
[FR Doc. 98–15372 Filed 6–9–98; 8:45 am]
BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

June 5, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for special shift and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 64361, published on December 5, 1997.

Troy H. Cribb,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
June 5, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-

RM 7

iana-itld-admin-00   J. Postel
                                                                       ISI
                                                                  May 1996

   New Registries and the Delegation of International Top Level Domains

                     draft-postel-iana-itld-admin-00.txt

Status of this Memo

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   munnari.oz.au.

Abstract

   This document describes a proposed policy, procedure, and control
   structure for the allocation of additional top-level domains.
   Further it discusses the issues surrounding additional international
   top level domains (iTLDs) and registries, qualification proposals for
   operating such a registry, and justifications for the positions
   expressed in this paper.

   This document describes policies and procedures to

      o allow open competition in domain name registration in the
        iTLDs,

      o and provide the IANA with a legal and financial umbrella

   Note that while cooperation between competing iTLD registries is
   allowed, it is not required. This is specifically not assumed in
   this proposal, and is considered to be an operational aspect of a
   registry best determined, and coordinated, by contractual agreements
   between private interests.

Postel   Expires 3-Nov-96   [Page 1]

iana-itld-admin-00   New Registries and iTLDs   May 1996

The NEWDOM, IETF, and related mailing lists are encouraged to read,
and comment, on this material. Presuming a consensus can be found
within these audiences, the distribution of this memorandum should be
expanded to include general commentary from the Internet community.

1. Introduction

For the purpose of delegation, the top level domains (TLDs) fall into
the categories listed below. While all are described to provide
context, only the last is the subject of this document.

1.1. National TLDs

The two-character namespace is, and will remain, reserved for ISO
country codes under existing accepted Internet RFCs.

National TLDs such as AF, FR, US, ... ZW are named in accordance
with ISO 3166, and have, in the major part, been delegated to
national naming registries. Any further delegation of these TLDs
is undertaken by the Internet Assigned Number Authority (IANA), in
accordance with the policies described in RFC 1591.

It is good practice for these delegated TLD registries to publicly
document the applicable management policies and further delegation
procedures for these national domains, as, for example, RFC 1480
does for the US domain.

1.2. US Governmental TLDs

1.2.1. Delegation of the GOV TLD is described by RFC 1816, and is
    under the authority of the US Federal Networking Council (FNC).

1.2.2. Delegation of the MIL domain is under the authority of the
    DDN NIC. See DDS Management Bulletin 9513, dated Nov 7, 1995,
    "Policy Governing Domain Registration in the '.MIL' and
    '.SMIL.MIL' Domains"

    The document can be obtained by either: ftp nic.ddn.mil, cd
    ddn-news, get bul-9513.txt or http://nic.ddn.mil/ddn-man.html.

1.3. Infrastructure TLDs

TLDs such as IN-ADDR.ARPA and INT are under the authority of the
IANA and may be delegated to others, e.g., IN-ADDR.ARPA is
currently delegated to the Internic for day-to-day management.
They are created for technical needs internal to the operation of
the internet at the discretion of the IANA in consultation with
the IETF. See RFC 1591 for general guidance on the use of the INT

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and ARPA domains.

1.4 The EDU TLD

Delegation of the EDU domain is under the authority of the FNC and
is currently delegated to the NSF which has contracted to the
Internic for registration. See RFC 1591 for general guidance on
the use of the EDU domain.

Over time, the FNC and NSF may decide to use other delegation
models, such as those described below for non-governmental TLDs.

1.5 The International Top Level Domains (iTLDs) COM, ORG, and NET

The iTLDs are generic top level domains which are open to general
registration. They are currently delegated to the Internic by the
authority of the IANA. See RFC 1591 for general guidance on the
use of the COM, NET, and ORG domains.

The INT top level domain is also used for a very restricted class
of international organizations established by treaties between the
governments of countries. See RFC 1591 for general guidance on
the use of the INT domains.

1.5.1. The intent for these iTLDs is discussed in RFC 1591.
    Generally, COM is for commercial organizations (e.g., companies
    and corporations), NET is for the internal infrastructure of
    service providers, and ORG is for miscellaneous organizations
    (e.g., non-profit corporations, and clubs).

1.5.2. There is a perceived need to open the market in commercial
    iTLDs to allow competition, differentiation, and change, and
    yet maintain some control to manage the Domain Name System
    operation.

    The current situation with regards to these domain spaces, and
    the inherent perceived value of being registered under a single
    top level domain (.COM) is undesirable and should be changed.

    Open, free-market competition has proven itself in other areas
    of the provisioning of related services (ISPs, NSPs, telephone
    companies) and appears applicable to this situation.

    It is considered undesirable to have enormous numbers
    (100,000+) of top-level domains for administrative reasons and
    the unreasonable burden such would place on organizations such
    as the IANA.

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It is not, however, undesirable to have diversity in the top—
level domain space, and in fact, positive market forces dictate
that this diversity, obtained through free competition, is the
best means available to insure quality service to end—users and
customers.

1.5.3. As the net becomes larger and more commercial, the IANA
needs a formal body to accept responsibility for the legal
issues which arise surrounding DNS policy and its
implementation.

1.6. This memo deals with introducing new registries for iTLDs and
additional iTLDs names, it does not deal with the longer term
issue of the management and charter of the current iTLDs (COM,
NET, and ORG), or the specialized TLDs (EDU, GOV, MIL, INT, and
ARPA).

The current iTLDs may come under the provisions of this document
when their current sponsorship relationship ends.

The specialized iTLDs have such restrictive requirements for
registration that they do not play a significant role in the
competitive business environment.

1.7. Trademarks

Domain names are intended to be an addressing mechanism and are
not intended to reflect trademarks, copyrights or any other
intellectual property rights.

Except for brief mentions in sections 6.1, 6.4, and 9.3,
trademarks are not further discussed in this document.

2. Goals

To facilitate administration of the domain name subsystem within the
Internet by ensuring that there is an open and competitive
marketplace for clients to obtain and subsequently maintain
delegation of subdomains within the iTLDs, while preserving the
operational integrity of the Internet DNS itself.

The specific measures to achieve this objective are as follows:

2.1. Provide the IANA with the international legal and financial
umbrella of the Internet Society (ISOC),

2.2. Allow open competition in domain name registration in the iTLDs,
     which will then allow registries to charge for their services,

2.3. Allow multiple registries to operate cooperatively and fairly in
     the existing iTLDs and/or other multi-registry iTLDs which may be
     created,

2.4. Facilitate creation of new iTLDs in a fair and useful, but
     reliable, fashion,

2.5. Provide for reliable maintenance of the registrants of an iTLD
     should the current delegatee no longer wish to maintain it, and

2.6. Define iTLD policies and procedures by open methods, modeled on
     the IETF process and/or using IETF mechanisms when appropriate.

3.0 Scope of this Document

This document describes the administrative structure for the
operation of the iTLDs. While other administrative issues may exist
within the broader domain of the DNS, they are not addressed in this
document.

Specifically:

3.1. Only those relationships between the IANA, IETF, and ISOC which
     are specifically necessary for responsible maintenance of the
     iTLDs are described.

3.2. The Board of Trustees acts for the ISOC, the IAB for the IETF,
     and the IANA for itself.

3.3. Long range maintenance of the IANA is not described; although it
     is believed that the IANA should draw financial support from a
     wide community.

3.4. The IETF is not directly involved in operation of the net.
     Hence it serves the iTLD administrative work mainly in a technical
     capacity, such as the formalization of new protocols and the
     handling of technical appeals.

3.5. The ISOC does not directly operate the net. But it takes legal
     responsibility for standards processes and some network management
     processes, manages funds, and participates in the appeals process.

3.6. The IANA and any necessary ad hoc groups deal with operational
     details.

3.7. The ISOC, the IETF, and the IANA are not to be legally or
     financially responsible for the registries. The registries must
     be responsible for themselves.

3.8. Creation of a large staff is not desired.

4. Technical Assumptions

Further growth within the iTLDs can be accommodated technically, and
tools are in evidence to automate much of the process of registration
and maintenance of entries within the DNS as well as multiple
administrative access to a single delegated domain.

4.1. The size of current TLD databases such as COM, while large, is
     not really a burden on servers, nor is it expected to become so in
     the near future.

4.2. Procedures which allow mutual exclusion for the creation of
     names within a single TLD are being developed within the IETF's
     "dnsind" and "dnssec" working groups, and a test implementation is
     available.

4.3. Tools are being developed to ease the processes of registration
     and running the information servers which are expected of
     registries.

5. The Process

5.1. The IANA continues to supervise and control all operational
     aspects of the iTLDs, and is the second level of the appeals
     process after the registries (which are the first level). It
     appoints three members to the ad hoc iTLD group(s). The IANA may
     directly review appeals and/or it may ask the Internet DNS Names
     Review Board (IDNB) to participate in the review of an appeal.
     The IANA has the option of asking the IDNB to review an appeal, or
     the IANA may handle the appeal itself.

     As described in RFC 1591 regarding a dispute between parties
     contending for the management of a national TLD, the IDNB, a
     committee established by the IANA, will act as a review panel for
     cases in which the parties can not reach agreement among
     themselves.

     Now the role of the IDNB is expanded to include appeals on a
     technical basis of the process documented in this memo.

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    5.2. The IETF, as part of its normal procedures, publishes documents
         which describe technical and operational aspects of the domain
         space including the iTLDs. It also provides an appeals procedure
         for process issues and appoints two members to the ad hoc iTLD
         group(s). That is, it reviews appeals that question whether the
         process was properly followed.

    5.3. The ISOC provides the legal and financial umbrella, and the
         final level of the appeal process. It provides an appeals
         procedure for procedural issues and appoints two members to the ad
         hoc iTLD group(s). The ISOC assumes legal liability for the
         process and the iTLDs. The ISOC reviews appeals that question the
         fairness of the process itself (not the application of the process
         to a particular case).

    5.4. The ad hoc working group, for developing procedures and deciding
         creation of new iTLDs and chartering of registries, consist of
         seven members appointed by the IANA (3), the IETF (2), and the
         ISOC (2).

    5.5. Note that 'ad hoc' means 'for this purpose only.' In this case,
         a new ad hoc group is created and convened on a periodic basis
         (probably annual) when needed to change procedures or to review
         registry and iTLD applications.

    5.6. It is estimated that approximately ten (10) new registries and
         thirty (30) iTLDs will be created per year. It is expected that
         this will continue for the next five years - unless something
         significant happens to change this plan. In this first year of
         this plan more new registries may be chartered, perhaps up to
         fifty (50).

    5.7. The policies and procedures to be used by the ad hoc working
         group will be decided by the first ad hoc group in an open process
         and will be clearly documented. This group will be appointed and
         convene in in the next few months. It is expected that these
         policies and procedures will mature over time.

    5.8. Multiple registries for the COM TLD database, and multiple
         registries for other (new and old) iTLDs may be created in the
         future.

    5.9. New iTLDs and registries will be created over time. This is a
         direct change to RFC 1591. New iTLDs may be created with a non-
         exclusive administration arrangement (multiple registries for one
         iTLD).

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5.10. The intent is similar to the licensing of radio stations in
    some countries.

5.11. Registries pay for charters, and the fees collected are kept in
    a fund managed by the ISOC and used for the iTLD process (such as
    for insurance against an iTLD registry withdrawal or collapse),
    and possibly to support an evolved future funding model for the
    IANA.

6. Selection of iTLDs and Registries

6.1. The New Registries and iTLDs

There will be up to fifty (50) new registries, with no more than
two thirds (2/3) in the same country, created in 1996, and
chartered to operate for up to five years.

Up to three iTLDs may be operated by any single organization.
Each new registry will choose up to 3 new iTLD names it will
manage under its charter.

There will be no institution of multiple registries per iTLD in
1996 by the ad hoc committee. Registry operators are
encouraged to make such arrangements on their own initiative.

[In future years, charters may be for a new registry (creating
a multiple registry iTLD) for either an existing iTLD or a new
iTLD, or for renewing the charter of an existing registry and
iTLD(s).]

Summary: A new registry gets up to three new iTLDs for
exclusive management for a period of up to five years; if the
registry chooses it may establish a joint management of one or
more of its iTLDs with other registries. All registries will
be reviewed after five years, it is very likely that registries
that provide good services will be rechartered.

6.1.1. The new iTLD Name Space

It is desirable to maintain a "short" suffix on these iTLDs to
permit easier use by the public. As such, the presumption will
be that only three-character alphanumeric iTLDs will be
assigned.

The space of new iTLD names will be restricted to alpha numeric
strings of exactly 3 characters. iTLD names are case
independent (i.e., COM = com = cOm).

```
            <iTLD-name> ::= <let-dig> <let-dig> <let-dig>

            <let-dig>   ::= <letter> | <digit>

            <letter>    ::= A | B | C | ... | Z

            <digit>     ::= 0 | 1 | 2 | ... | 9
```

These names must be generic, i.e., not well known company
identifiers or trademarks. iTLDs which are previously
registered trademarks are specifically excluded from
consideration as appropriate assignments.

   A possible exception might be for a generic term that is
   trademarked substantially world wide and is not associated
   with a particular product or service or purpose other than
   domain name registration.

This condition may be impossible to enforce, since on a world
wide basis in may be very difficult to determine if a
particular string of letters is a trademark is any country or
is the identification of a well known company in any country.

In any case the neither the IANA nor the ad hoc committee plan
to spend any time or energy on research in this area. The
applicants to operate registries and manage iTLDs are on their
honor not to select iTLD names knowingly in violation of this
condition.

6.2. Who May Apply

Persons or organizations wishing to operate registries and manage
iTLDS shall send applications to the IANA in accordance with the
provisions of this memo.

A "person or organization" may be a single person or organization
or any group of persons and organizations which may combine to
offer registration services under one name as a cooperative or
competitive provider of services, provided that all partners in
the confederation or alliance shall otherwise be in compliance
with the terms of this document.

Organizations granted iTLD names may add or remove additional
cooperating registration partners at their discretion, provided
that doing so does not violate the provisions of this memorandum.

6.3. Open Process

The applications for iTLD domain names and registries shall be evaluated in a neutral, impartial, and open manner.

The proceedings and evaluations of the applications submitted shall be available for public inspection via an on-line procedure (e.g., web site) along with the decisions made.

Financial and business aspects of proposals are kept confidential during the evaluation process. The complete proposal of the successful applicants, including these aspects, will be made public at the completion of the ad hoc committee process.

6.3. Review Criteria

All applications are judged on three criteria: Registration Services, Operational Resources, and Business Aspects.

Charter approval does not necessarily go to the highest bidder. Reliability, quality of service, sustainability, are also important aspects.

When a registry which has provided good quality and reliable service comes up for charter renewal, barring unusual circumstances, the charter renewal application should be approved.

6.3.1. Registration Services

Each registry provide the following administrative services and policies for each iTLD they administer:

1) Access to the Registration Database

The DNS database files and "whois" databases maintained by any iTLD operator are deemed to be publicly available and public, non-protected, information. The intent is to allow easy access to the information needed to investigate and correct operational problems.

A registry shall provide guaranteed availability of the registration data in a useful form should transfer of responsibility become necessary, e.g., regular publication of the information, or regular deposits of copies of the information with a reputable escrow agent instructed to release the information to the IANA.

The IANA is authorized to designate one or more organizations

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        as "escrow holders" of said database information for the
        purposes described below under "Termination of Registries".

            The escrow holder will have to keep very up to date copies
            of the database probably through some automated system that
            makes a copy on a daily basis.

        The registry must provide a means, via the "whois" protocol, to
        search the database of second-level domains maintained by this
        registry and return common directory information. This
        information shall include, but not necessarily be limited to:

        a) The "owner" of the second-level domain, including contact
           name(s), physical address(es), and telephone number(s) of
           the persons responsible for the operation of the second-
           level domain.

        b) The nameserver hostnames and IP addresses serving that
           second-level domain.

        c) The current status (operational, on hold, pending, etc) of
           that second-level domain.

        There is no intent to have a "global phonebook" of second-level
        domain holders. The intent is to provide information necessary
        for tracking down and resolving operational problems.

        iTLD registries are expected to provide their own directory
        service, and "rWhois" is designated as one of the operational
        choices which a registry may wish to utilize. However, no
        attempt is made to mandate any particular technical or
        organizational requirements from a registry to service requests
        for lookups of a domain holder in other, competing registries
        and iTLDs.

        Internal database and operational issues are to be decided by
        the registry. These issues, including pricing to customers of
        the registry, are properly free-market issues and are excluded
        from the control of the IETF, IANA, ISOC and other related
        organizations.

        2) A help desk and staff to answer questions via electronic
        mail, fax and normal telephone during customary business hours.

        3) Published policies on services offered, registration
        procedures, and fees.

        4) A clear description of the appeals mechanism within the

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registry, including the entry point for appeals and the
expected response time.

5) All of the public information identified in points 1 through
4 above shall be made available via WWW, FTP, and automated
email responder at an address associated with the organization.

6.3.2. Operational Resources

1) Internet Connectivity

A description of the Internet connectivity to the site where
each nameserver for each iTLD will be located.

For example, a diagram showing full multi-homed connectivity to
the organization's computers which will serve as the iTLD
nameservers, with each leg of that connectivity being at a
non-aggregated data rate of <whatever>.

And route advertisement via BGP4 for this organization's
connectivity must be operational for the connections maintained
under this provision, and the network involved should be
operating in a "defaultless" configuration.

2) Nameserver Performance

The description of at least two (2) nameservers for the iTLDs
in question. These nameservers shall run the latest
"consumable" release of the BIND code (4.9.x at present), and
may include local enhancements, changes, or operational
improvements.

The names and IP addresses of the hosts which are proposed to
serve the iTLDs.

6.3.3. Business Aspects

A description of the applicant which shows sufficient business
viability that the registry is likely to operate successfully
for at least five years (this is not a business plan, rather
some documentation that lends credibility to the applicant's
proposal),

A bid amount in USD to be paid to the iTLD fund if charter is
awarded, and

A bid amount in USD to be paid annually to the iTLD fund.

6.4. The Application

All of the information required to be supplied with an application
should be prepared for transmission via email in plain ASCII text,
in English. The details of the submission of applications will be
determined by the ad hoc committee.

The application shall include the following:

6.4.1. Applicant Name

The name of the applicant, including the contact information.

6.4.2. iTLD Names

The three three-character iTLDs proposed, along with an
statement indemnifying the IANA and the ISOC for any
infringement of trademark which may be created by the IANA
authorizing this assignment.

6.4.3. The Criteria Statements

The applicant's approach to the three criteria of section 6.3,
Registration Services, Operational Resources, and Business
Aspects.

These statements should include:

A clear statement of the charter, policies, and procedures,

a statement of registrant qualification procedures,

a statement that they will be non-discriminatory in the sense
of treating all applicants equally (if a registry chooses to
operate the iTLD "CHM" for companies in the chemical business
it may decline to register companies not in that business)

a description demonstrating the organizational and technical
competence to run a registry and the expected accompanying
information services,

a statement that the registry will

    (1) abide by the results of the appeals process (as
    described in this memo) and the direction of the IANA, and

    (2) hold harmless ISOC, IANA, IETF, the ad hoc committee,
    and

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            (3) obtain the usual prudent insurance.

    6.4.4. The Application Fee

        A non-refundable application fee of USD 1000 payable to the
        "Internet Society" to be deposited in the "iTLD fund".

6.5. Charters are for a period of five years, but annual progress
reports are submitted for review by IANA and the ad hoc group. Only
in exceptional cases of radical change or abuse of a charter may the
IANA or the ad hoc group recommend to the IANA and ISOC that the
charter be reevaluated before the charter period is reached (see
appeals process, and termination of registries sections).

6.9. Schedule

There are several stages that each take some time: forming the ad hoc
committee, finalizing the procedure, accepting the applications, and
evaluating the applications.

6.9.1. Assume the ad hoc committee is be formed day 1.

6.9.2. The ad hoc committee will finalize and announce its procedures
    by day 30.

6.9.3. The ad hoc committee will accept applications until day 90.

6.9.4. The ad hoc committee will review the applications and announce
    its selections by day 135.

For example suppose the ad hoc committee was formed on 1-May-96.
Then the schedule would be:

        01-May-96   ad hoc committee formed

        01-Jun-96   procedures finalized,
                         begin accepting applications

        01-Aug-96   stop accepting applications,
                         begin evaluation

        15-Sep-96   announce selections

7. Termination of Registries

iTLD registries may decide they no longer wish to operate their
registry. Likely, the operation will not be profitable when this
occurs, yet the registrants under the iTLD may need to be supported
for a considerable time.

Some portion of the fees in the ISOC-managed iTLD fund may be used to
pay for some other organization to operate the failing iTLD or
registry until it again becomes viable or until the registrants have
safely migrated elsewhere.

While it is unclear how expensive providing even temporary service
for the iTLDs of a failed registry might be, the iTLD process must be
prepared for the case where a very popular, possibly because it is
low cost, iTLD or registry fails.

Some views on the possible scenarios:

   It will be very expensive.

      Bailing out the registrants of a failing domain could be very
      expensive, even on the order of a million USD (remember, a
      likely failure mode may be because someone thought they could
      do it for less).

   It is not a big deal.

      It is presumed that any registry with a significant client base
      will constitute a legitimate on-going business interest with
      revenue prospects sufficient to insure that the registry will
      in fact be transferred to another organization.

      As an example, presuming 5,000 registrants of a given registry
      and a fee of 50 USD per year, a revenue stream of 250000 USD
      per year would inure to the benefit of any organization taking
      over the services of a defunct organization.

      Should a registry close without having significant second-level
      registrations in place at that time, the impact to the Internet
      users as a whole will be minimal or non-existent.

Succession issues related to the relationships between customers of a
registry and that registry itself are properly contractual matters
between the registry and its customers, and when properly attended to
do not involve the IETF, ISOC, or the IANA.

The IANA or its designee may operate one or more "escrow services" to

insure that the records contained in a registry will remain available
in the event of intentional or accidental destruction due to a
registry forfeiting a iTLD.

Organizations providing registry services may elect to terminate
their involvement in this program and release the iTLD namespace
delegated to their organization under the following circumstances:

7.1. Any organization may transfer the authority for, and
     registration services provided, for a iTLD to any other
     organization provided that the new registration authority complies
     with all provisions of this memorandum. The business and
     financial terms under which this transfer is conducted shall be
     properly between the old and new registry organizations and not
     under the jurisdiction of the IANA, the IETF or the ISOC. However,
     the IANA must be notified of such a transfer, and the charter of
     the registry for the management of these iTLDs shall be reviewed
     as a renewal of the charter at the next normal session of the ad
     hoc committee.

7.2. iTLDs which are "orphaned" by a registry that constructively
     abandons them or ceases business operations without first securing
     a successor organization to assume the authority and registration
     services for that namespace shall be deemed "abandoned".
     Abandoned iTLD namespace shall be auctioned to the highest bidder
     by an open, competitive bid process adjudicated by the IANA or its
     designees, which shall be conducted without undue delay. During
     the interim period in question the IANA shall be authorized to
     designate one or more firm(s) to hold the existing registration
     records to prevent the interruption of service.

7.3. An organization that is found by the IANA to be in violation of
     the terms of this delegation memorandum shall be given notice by
     the IANA of intent to recover the iTLD domain space allocated
     under this policy via normal postal mail. Within 30 days, the
     organization against which the complaint has been lodged shall a)
     cure the violation(s) of this policy, (b) transfer authority to
     another organization under 7.1 above, or (c) constructively
     abandon for public auction the namespace under the provisions of
     7.2 above. Where the facts are disputed regarding possible
     violations of this policy, the IANA is authorized to promulgate
     reasonable adjudication policies which should include an
     arbitration provision.

8. Finances

It is desirable to keep the ISOC, IANA and IETF from becoming
involved in operational and contractual aspects of the iTLD
registries, and it is further desirable to separate, to the extent
possible, the IETF and IANA funding from these organizations.

It is presumed in the best interest of the IETF, the IANA, ant the
ISOC to see that this separation of function is preserved.

Note:

Indemnification provisions from the registries to the IANA and
related organizations may not serve to properly insulate the
ISOC, IANA and IETF from legal proceedings, as it should be
presumed that any organization which is legally challenged in a
significant fashion may be unable to properly pay any judgments
levied against it. Current "deep pockets" legal practice
exposes related organizations to the negative effects of these
legal actions should the original organization be unable to
fulfill its financial obligations.

There is a concern that the presence of a funding path creates
a tying arrangement between for-profit organizations and a set
of non-profit organizations which up to now have not been
legally, financially, or otherwise encumbered by the actions of
these registries.

8.1. A registry may charge as it sees fit, within the bounds of the
   policy published when it is chartered.

8.2. The ISOC manages all finances in a separate iTLD fund with open
   reporting and published budgets. Agreement of the ISOC, the IANA,
   and the IETF is required on all budgets.

8.3. Charter fee income may be used to pay legal costs of the IANA,
   IETF, ISOC, and ad hoc groups when legal disputes arise from the
   iTLDs process.

8.4. Charter fee income is also used to pay modest and publicly
   visible costs of the chartering process, e.g., the costs of the ad
   hoc committee, the administrative staff, and costs incurred by the
   ISOC.

8.5. Charter fee income may also be used to fund the IANA if and when
     it becomes necessary.

8.6. Should the reserves be too large, a consensus of the IANA, IETF,
     and ISOC would allow disbursements for the general network good,
     e.g., scholarships for engineers from developing countries.

8.7. The ISOC may charge a modest amount for administering the iTLD
     account.

9. Appeals

Arbitration to resolve conflicts is encouraged. That an appeals
process is specified should not preclude use of arbitration. The
appeals process described here is for when arbitration has failed or
when the parties decide not to use arbitration, yet they do not wish
to exercise recourse to lawyers and courts.

9.1. The appeals process does not apply to disputes over Intellectual
     Property Rights on names (trademark, service mark, copyright).
     These disputes are best left to arbitration or the courts.
     Registries may require appropriate waivers from registrants.

9.2. The appeals process does not apply to charging and billing.
     This is left to market forces, arbitration, and the courts.

9.3. The appeals process applies to all other aspect of registry
     processing of registration requests.

9.4. A registrant's first recourse is to the registry which has
     denied them registration or otherwise failed to provide the
     expected service.

9.5. All registries must specify in their applications an entry point
     and a process for appeals, as well as a response time, and must
     subsequently conform to them.

9.6. If appellant is dissatisfied with the registry response, appeal
     may be escalated to the IANA.   The IANA hears appeals based only
     on technical issues. Note that the IANA may use the IDNB to
     process the appeal.

9.7. The IANA must define its entry point for appeals and must
     respond to appeals within four weeks.

9.8. If appellant is dissatisfied with the IANA response, and the
     appeal has nontrivial process aspects, the appeal may be escalated
     to the IETF. The IETF hears appeals based only on process issues,
     that is, claims that the procedure was not followed.

9.9. If appellant is dissatisfied with the IANA and, if invoked, the
     IETF response, appeal may be escalated to the ISOC. The ISOC
     appeals process hears appeals only about the fairness of the
     procedure. I.e. the decision of IANA and/or IETF is final,
     unless there is an appeal that the procedure itself is unfair.

9.10. The appeals process works by email. Appellant must provide
      concise history of the case and summarize grounds of appeal. The
      IANA, the IETF, or the ISOC may ask for information from third
      parties. All information is normally treated as nonconfidential
      and may be made publicly available. Confidential information is
      considered only in special circumstances.

9.11. The IANA, the IETF and the ISOC may establish appeals sub-
      committees chosen either from their own membership or outside of
      it by whatever means each deems reasonable for their procedures
      and purposes.

10. Security Considerations

There are no known security considerations beyond those already
extant in the DNS.

11. Acknowledgments

This memo is a total rip off of a draft by Randy Bush, combined with
substantial inclusion of material from a draft by Karl Denninger.
The appeals section was originally written by Brian Carpenter.

To this base i've made many changes small and large. So to the
extent you like this it is probably their work, and to the extent you
don't like it it is probably all my fault.

A lot of significant and constructive input and review was received
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iana-itld-admin-00   New Registries and iTLDs   May 1996

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RM 8

First Status Report to the Department
of Commerce
15 June 1999

STATUS REPORT TO THE DEPARTMENT OF COMMERCE

JUNE 15, 1999

On November 25, 1998, the United States Department of Commerce ("DOC") officially recognized the Internet Corporation for Assigned Names and Numbers ("ICANN") as the global, non-profit consensus organization designed to carry on various administrative functions for the Internet name and address system that it had called upon the Internet community to create in its White Paper issued in June, 1998. Approximately six months have now passed since the signing of the Memorandum of Understanding between DOC and ICANN; this document constitutes a status report on both progress made and issues remaining to be solved.

I. STANDARDS AND CRITERIA FOR EVALUATING PROGRESS.

The process of establishing ICANN has understandably been a difficult and contentious one from the beginning. The creation of a worldwide, non-profit, private consensus organization to manage various aspects of a global resource is a unique undertaking; there are no models for such a non-governmental entity with similar responsibilities. We have sought consensus from a necessarily diverse set of actors, ranging from academics to businesses to infrastructure providers to engineers; consensus is frequently elusive even in more homogeneous groups. There were inevitably many different views about how to accomplish the goal, not to mention a variety of opinions as to whether the goal was desirable at all.

In this environment, it is hardly surprising that there remains today a diversity of views on what has been done, what should be done, and how things could be done. It is also almost certainly true that there is no single right way to move toward the stated goal; there are likely to be several paths that could be followed to an acceptable outcome. On the other hand, there is a set of standards and criteria against which the work of the last six months can reasonably be measured: the standards and criteria set forth by the US Government in the White Paper.

While the White Paper may not be the equivalent of the Magna Carta, it did set forth a series of guiding principles (subsequently adopted essentially verbatim in the MOU) that seemed at the time to have wide-spread support within the Internet community from both private and public commenters. The core principles articulated in the White Paper were as follows:

> 1. Stability: "During the transition and thereafter, the stability of the Internet should be the first priority of any DNS management

system."

2. Competition: "Where possible, market mechanisms that support competition and consumer choice should drive the management of the Internet because they will lower costs, promote innovation, encourage diversity, and enhance user choice and satisfaction."

3. Private Sector, Bottom-Up Coordination: "A private coordinating process is likely to be more flexible than government and to move rapidly enough to meet the changing needs of the Internet and of Internet users. The private process should, as far as possible, reflect the bottom-up governance that has characterized development of the Internet to date."

4. Representation: "Management structures should reflect the functional and geographic diversity of the Internet and its users. Mechanisms should be established to ensure international participation in decision making."

These principles formed the basis of the MOU, and have dictated ICANN's policy decisions to date. They are the standards which the ICANN Initial Board has used to guide its policy development efforts, and against which the results of those efforts should be measured.

In addition to these core principles, the White Paper went on to discuss:

funding: the White Paper assumed that the new corporation would be funded by "domain name registries, regional IP registries, or other entities identified by the Board;"

staff: the White Paper assumed that the new corporation would absorb the IANA staff that had been carrying out many of these functions pursuant to government contracts;

incorporation: the White Paper assumed that the new entity would be incorporated in the United States, but have a Board made up of members from around the world;

governance: the White Paper called for a "sound and transparent decision-making process;" and

operations: the White Paper stated that processes should be "fair, open and pro-competitive."

In addition, the White Paper suggested a **structure** that was "balanced to equitably represent the interests of IP number registries, domain name registries, domain name registrars, the technical community, Internet service providers (ISPs), and Internet users (commercial, not-for-profit, and individuals) from around the world." The White Paper went on to declare that the new corporation should take the following early actions:

1. "appoint, on an interim basis, an initial Board of Directors," which would serve "until the Board of Directors is elected and installed."

2. "establish a system for electing a Board of Directors . . . that insures that the new corporation's Board of Directors reflects the geographical and functional diversity of the Internet, and is sufficiently flexible to permit evolution to reflect changes in the constituency of Internet stakeholders," while preserving, "as much as possible, the tradition of bottom-up governance;" Directors "should be elected from membership or other associations open to all or through other mechanisms that ensure broad representation and participation in the election process."

3. "develop policies for the addition of TLDs, and establish the qualifications for domain name registries and domain name registrars within the system."

4. "restrict official government representation on the Board of Directors without precluding governments and intergovernmental organizations from participating as Internet users or in a non-voting advisory capacity."

The White Paper also set forth views on **intellectual property** issues, including that (1) all interested parties "should have access to searchable databases of registered domain names; (2) domain name registrants should be required to "pay registration fees at the time of registration or renewal;" (3) domain name registrants would agree to "submit to and be bound by alternative dispute resolution systems;" and (4) the new corporation would protect "certain famous trademarks from being used as domain names . . . except by the designated trademark holder."

Finally, the White Paper stated that the United States Government would itself take certain steps to "accomplish the objectives" set forth in the White Paper. These were identified as the following:

1. "ramp down the cooperative agreement with NSI with the objective of introducing competition into the domain name space."

2. "enter into agreement[s] with the new corporation under which it assumes responsibility for management of the domain name space."

3. ask WIPO to "convene an international process . . . to develop a set of recommendations for trademark/domain name dispute resolutions and other issues to be presented to the Interim Board for its consideration as soon as possible."

4. "consult with the international community, including other interested governments."

5. "undertake . . . a review of the root server system to recommend means to increase the security and professional management of the system."

While the transition process is still young, periodic evaluations of progress are desirable checks on both the direction and pace of the transition. This report attempts to provide

such an evaluation.

II. IMPORTANT ACTIONS.

The following list sets forth important actions and decisions by ICANN since the signing of the [Memorandum of Understanding](#) with DOC in November, 1998:

- Agreement signed with USC to absorb IANA functions
- Creation of [Membership Advisory Committee](#)
- [Designation of ICANN as Newco](#) under [Amendment 11](#) to Cooperative Agreement with NSI
- Creation of [Government Advisory Committee](#)
- Creation of [Root Server System Advisory Committee](#)
- [First ICANN Board meeting in Singapore](#)
- Adoption of [registrar accreditation guidelines](#)
- Accreditation of [five testbed registrars](#)
- Creation of [Advisory Committee on Independent Review](#)
- Recognition of [Domain Names Supporting Organization](#)
- Receipt of [WIPO recommendations](#)
- [Second ICANN Board meeting in Berlin](#)
- Recognition of [six out of seven initial DNSO constituency organizations](#)
- [Provisional accreditation of 37 post-testbed registrars](#)
- [Referral of WIPO recommendations](#) to DNSO
- Receipt of [MAC recommendations](#) and [referral to staff for implementation](#)
- [Provisional recognition](#) of [Protocol Supporting Organization](#)

Follow-up action on many of these items will take place during the next ICANN Board meeting on [August 24-26 in Santiago](#).

III. POINT-BY-POINT COMPARISON TO WHITE PAPER.

The [White Paper](#) identified four overarching principles that should guide the formation and decisions of ICANN: stability, competition, private-sector bottom-up coordination, and functional and geographic representation:

> 1. **Stability.** The DNS has remained fully operational, notwithstanding increasing demand for domain-name services and the introduction of competition in the registration of names in the .com, .net and .org TLDs (as described below). This issue -- operational stability -- requires constant attention, especially given the less than enthusiastic cooperation that ICANN and the DOC have received from Network Solutions, Inc., the historical monopoly registry and registrar in these domains. There remain important steps to be taken in the transition process, including the introduction of fully competitive name registration services, the full separation of NSI's registry and registration services, and the ultimate transfer of root server administration/control to ICANN. ICANN and DOC will carefully manage these events with this primary objective in mind.
>
> 2. **Competition.** With the accreditation of five testbed registrars, and the beginning of competitive domain-name registration services

by those registrars, the transition from monopoly to competition has begun. As has been true in every other transition from monopoly to competition, there have already been difficulties, and there will undoubtedly be others. In such situations, the incumbent monopolist has no particular incentive to do anything more, or quicker, than is absolutely required to expedite this transition, and our experience to date is that this situation will not prove to be an exception. Nevertheless, one of the testbed registrars is now operating and selling domain name services in competition with NSI; the other four testbed registrars are expected to begin competitive operations within the next two weeks; 37 other entities have been conditionally accredited to begin operating when the testbed phase is completed; and ICANN and DOC are continuing to seek appropriate cooperation from NSI to facilitate the transition to full and open competition.

3. **Private-Sector Bottom-Up Coordination.** The Initial Board has encouraged the self-organization of its constituent units through bottom-up efforts, rather than dictation of the organization, structure and membership from the top. This has predictably resulted in a somewhat chaotic process, and taken some time; bottom-up process has much to recommend it, but those benefits do not include efficiency and speed. Nevertheless, we have seen great progress: the Domain Name Supporting Organization is essentially formed, and has begun to function in its advisory role to the ICANN Board by taking under consideration various recommendations made to ICANN by WIPO, and referred by the ICANN Board to the DNSO for its recommendations. In addition, the Protocol Supporting Organization proposal was approved by the ICANN Board in its recent Berlin meeting, and we hope that this entity can be officially recognized soon. The final part of this puzzle, the Address Supporting Organization, is scheduled to submit a proposal to the ICANN Board for its review at its next meeting in Santiago in August.

4. **Representation.** With the three Supporting Organizations listed just above responsible for electing three members each to ICANN's 19-member Board, the functional diversity objective of the White Paper will be substantially met once those entities are formed and have provided Directors to the Board. ICANN will also require that those Directors be geographically diverse, as is true to a significant extent today with the Initial Board (which includes residents of three of the five ICANN-defined geographic regions). The more difficult effort, described in some detail below, is the design of the process for electing the nine At Large Directors called for by the ICANN Bylaws, but the process of defining an electorate and establishing Director election procedures consistent with the White Paper principles is well underway.

Thus, the four guiding principles of the White Paper have in fact been realized in ICANN's organizational and policy development process to date, as can be seen in somewhat more

detail by the following focus on specific issues addressed in the White Paper

Incorporation and Initial Board. As suggested by the White Paper, ICANN was incorporated in the United States in October, 1998. Its Initial Board is broadly representative of the Internet community, with five Directors (including the Interim CEO) from the United States, three from Europe, one from Australia and one from Japan; their professional backgrounds include educational computing, telecommunications, Internet technical/academic interests, trade associations and Internet entrepreneurial activities.

Funding. The White Paper suggested that ICANN should be funded by name or address registries, presumably by allocation of a portion of the fee charged by those registries. Since ICANN is intended to be non-profit, and therefore revenues may only recover its costs, over time those fees will be adjusted to balance ICANN's specific funding needs, which are not yet clear. In the interim, ICANN has proposed to fund its future operations primarily from a fee of no greater than $1 annually per domain-name registration, an approach suggested (without a specific amount) by the White Paper, with the exact amount of that fee to be determined over time by ICANN's costs and the revenue generated by a particular fee level. Since ICANN is not yet fully functional, it has existed to date on private donations and credit, with some recent small amount of funds received from those seeking accreditation as registrars.

Staffing. As called for by the White Paper, most of the former IANA staff are now managed and compensated by ICANN, and have continued to carry out their technical and administrative responsibilities without interruption.

Governance and Operations. The White Paper called for an "open and transparent" decision-making process. As a result, the ICANN bylaws require a broad set of procedures to ensure that all points of view be considered before any decisions are taken. These include extensive notice and comment requirements before any decisions are made that "substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges."

In addition, the ICANN Board has made it a practice to hold a public meeting immediately prior to our regular quarterly Board meetings, in which all matters on the Board agenda are discussed with participants. While Board meetings are not open to the public, to facilitate the candid and objective decision-making so critical at this stage of ICANN's development, the Board has adopted the practice of immediately publishing all Board decisions, making the text of resolutions public as quickly as possible, and holding a public press conference immediately following its meetings to explain its decisions and take questions about them.

Structure. The ICANN structure follows almost exactly the

prescription of the White Paper. There is an Initial Board which will serve until a regularly elected Board is installed, but in any event not beyond October 2000. Since the latter will be composed of three persons elected by each of three Supporting Organizations (a total of nine), nine persons elected by the At Large membership, and the president of ICANN *ex officio*, the creation of the Supporting Organizations and the At Large membership is a necessary condition for the existence of a regularly elected Board.

Taking care to follow the principle of bottom-up coordination, the Initial Board has left to the communities involved the creation of the Supporting Organizations. These groups have, not surprisingly, moved at different paces, to the effect that the Domain Name SO is now close to full formation, and is likely to elect its three Directors by the end of 1999, while the Protocol SO and the Address SO are somewhat further from completion. Still, it does seem possible that the nine SO Directors could all be in place relatively early in 2000. The Initial Board's present intention is to simply add these Directors as elected to the Initial Board.

The nine At Large Directors scheduled to be elected by a membership present a more complicated problem. Despite a significant amount of work by a diverse Membership Advisory Committee, we still have not identified the specific process by which a broadly representative membership can be constituted, with due regard for the cultural and economic differences within the global user community and the need to protect against minority capture. The White Paper seemed to assume that Directors would be elected "from membership or other associations;" as presently contemplated, however, the nine At Large Directors are scheduled to be elected by individual members. This deviation from the White Paper prescription presents a number of serious practical and economic problems to be overcome before a process consistent with the stability that the White Paper described as the "first priority" of the transition can be established.

Nevertheless, the Membership Advisory Committee has recommended a set of policies to the Board, and the Board has directed staff and legal counsel to recommend before the Santiago meeting how those policies could be implemented. The fact that it is a very difficult problem to solve consistent with the White Paper principles does not mean that it is not necessary to solve this challenge; there must be a way for the users of the Internet, who will undoubtedly be affected by the policy decisions of ICANN, to have a role in influencing those policy decisions, and the Initial Board is committed to making that happen.

New TLDs. The White Paper assumed that the Initial Board would both address the possibility of a need for new TLDs, and establish a system of qualifications for DNS registries and registrars in current and any new TLDs. WIPO has now, pursuant to the invitation in the

White Paper, made a series of [recommendations](#) relating to new TLDs, dispute resolution and related issues. We have referred those recommendations to the newly-established DNSO for its review and recommendations to the ICANN Board.

ICANN has developed a set of [guidelines for the accreditation of registrars](#) in the .com, .net and .org domains, and has accredited five registrars (the testbed registrars) and provisionally accredited 37 others who will begin operations following the completion of the testbed. It is developing guidelines for the accreditation of registries, and has begun discussions with both registry administrators and its [Government Advisory Committee](#) about the appropriateness of, and standards for, contractual relationships with registries and registrars for country code TLDs.

Relations with Governments. In order to meet the White Paper objective of facilitating input from national governments and international organizations while remaining a private, non-governmental organization, ICANN created the [Government Advisory Committee](#). The GAC now comprises representatives of 33 national governments and international organizations, and functions as a vehicle for advising the ICANN Board of particular concerns of governmental entities relating to the domain name system and IP addresses and protocols. Consistent with the White Paper prescription, the GAC has no authority over ICANN or its policies; it exists to offer advice and to serve as a conduit for the transmission of the interests and concerns of governmental bodies to the ICANN Board and the public.

Concerning each of these specific issues or proposals identified in the White Paper, ICANN has acted consistently with the principles outlined in that document. In particular, ICANN agrees with the White Paper's assertions that "the stability of the Internet should be the first priority," that competition should "drive the management of the Internet," that the private coordinating process should, "as far as possible reflect . . . bottom-up governance," and that its structure and processes should reflect the "functional and geographic diversity of the Internet and its users." As the above description illustrates, the policies ICANN has adopted to date universally reflect the implementation of those principles.

IV. CURRENT CHALLENGES.

There are a number of important issues that remain to be dealt with, including the creation of a workable At Large membership structure, the resolution of various issues relating to the relationship of intellectual property principles and the DNS, and the policies that will guide the relationship of ICANN with country code TLDs. Nonetheless, the most critical immediate challenge facing ICANN and the DOC remains the creation of a fully competitive environment for the registration of names in the global Top Level Domains -- in particular, .com., .net, and .org. The transition from monopoly to competition in these domains is necessary for the long-term success of the privatization approach endorsed by the White Paper, and at the moment the critical uncertain element is the cooperation of the current monopoly government contractor, Network Solutions, Inc. ("NSI").

NSI occupies a central role in the DNS process. It is the registry operator for the most important TLDs -- .com, .net and .org. It has until recently been the monopoly registrar for those domains, and it still remains by far the dominant registrar. It is responsible for the operation of the A root server, under the direction of the DOC. And it is by far the most powerful entity in the DNS environment. So long as NSI operates the .com registry, all new registrars must rely on NSI -- their principal competitor -- for access to that registry. Thus, in a very practical sense, NSI has a significant influence on the pace of progress toward the competitive environment envisioned by the White Paper.

NSI's cooperation with ICANN and DOC to date has been limited. Its principal responsibility under [Amendment 11](#) to its Cooperative Agreement with DOC was to create a Shared Registration System interface for its registry so that competitive registrars could use the registry on the same terms as the NSI registrar. The SRS was supposed to be functional on April 26; in fact, the first competitive registrar was not able to begin offering competitive registrations until June 2. The other four testbed registrars are still trying to achieve workable interfaces. In addition, NSI's demands for overly broad intellectual property protection and various other restrictive license terms for the SRS have considerably slowed progress. The result has been the likely delay of the end of the testbed period and of the beginning of fully competitive registrations.

Perhaps even more importantly, at least for the short term, NSI has to date refused to accept the community-consensus registrar accreditation policies adopted by ICANN after public notice and comment, and has even asserted that it should not have to comply with the same accreditation standards that apply to all other registrars. Obviously, full and fair competition requires that all have the same opportunities, and to the extent that there are consumer protection or other requirements, that all meet them equally. Thus, it is critical to accomplishing the White Paper objective of maximizing competition that (1) NSI's registry and registrar functions be fully separated, so that NSI as a registrar does not have any structural advantage over its registrar competitors; (2) NSI accept community consensus policies relating to registrars, as reflected in ICANN's accreditation standards; and (3) the relationship between NSI as registry and all registrars does not allow NSI to impair or adversely affect the development of competition because of its continuing monopoly position as registry operator.

Both DOC and ICANN have stated that only accredited registrars will be permitted to carry out registration activities in the .com, .net and .org domains after the completion of the testbed phase; combined with NSI's current position, this obviously creates the potential for conflict between NSI and DOC/ICANN. In addition, NSI is required by Amendment 11 to fully separate its registry functions from its registrar functions, and to charge for its registry functions a fee that covers its costs and a reasonable return on its investment but no more. The amount of this fee obviously has competitive implications, especially if NSI continues as a registrar, and the fact that NSI and DOC have not yet reached an agreement on this key issue is also a basis for potential conflict.

Finally, as a general proposition, NSI has to date refused to accept the policy authority of ICANN, although it continues to "participate" in the creation of ICANN institutions and policies. It has funded and encouraged a variety of ICANN critics, including some whose only common cause with NSI would appear to be unhappiness with ICANN. In short, NSI has generally been an impediment, not a help, in the transition from government controlled monopoly to a private competitive DNS. While this is perhaps not surprising, if this approach continues, and depending on how it continues, it could have adverse

implications for the short-run stability of the domain name system. Because of this possibility, ICANN and DOC are taking prudent steps necessary to be able to implement the White Paper objectives with or without the cooperation of NSI.

V. CONCLUSION.

In summary, the first six months of ICANN's existence have been productive, albeit somewhat frenetic. There is much to do, and a cacophony of voices with a range of advice from "go slow" to "speed up," and everything in between. The volunteers who make up the Initial Board have been dismayed by the amount of work required, and tremendously impressed by the incredible willingness of people from all over the world to work with us to try to make this great experiment work. We have a difficult road in front of us, but our experience to date makes us even more confident that the job will get done.

Esther Dyson
Interim Chairman of the Board

Michael M. Roberts
Interim President and Chief Executive Officer

Comments concerning the layout, construction and functionality of this site
should be sent to webmaster@icann.org.

Page Updated 07-Jan-2008

RM 9

ICANN Resolutions (/resolutions) » 2001-06-04 - Referral of .org Issues to DNSO

Important note: The Board Resolutions are as reported in the Board Meeting Transcripts, Minutes & Resolutions portion of ICANN's website. Only the words contained in the Resolutions themselves represent the official acts of the Board. The explanatory text provided through this database (including the summary, implementation actions, identification of related resolutions, and additional information) is an interpretation or an explanation that has no official authority and does not represent the purpose behind the Board actions, nor does any explanations or interpretations modify or override the Resolutions themselves. Resolutions can only be modified through further act of the ICANN Board.

2001-06-04 - Referral of .org Issues to DNSO

Resolution of the ICANN Board

Topic:

.org Referral to the DNSO

Summary:

Board refers certain matters to the DNSO to develop policies to assist in the orderly selection of a successor entity to operate the .org TLD as part of the transition of the .org TLD from Verisign as required by Verisign's registry agreement.

Category:

gTLDs

Meeting Date:

Mon, 4 Jun 2001

Resolution Number:

01.71, 01.72, 01.73

URL for Resolution:

http://www.icann.org/en/minutes/prelim-report-04jun01.htm
(http://www.icann.org/en/minutes/prelim-report-04jun01.htm)

Status:

Complete

Implementation Actions:

- Consider the issues raised by the transition of the .org registry, including, whether to select an existing entity or to establish a new entity.
  - Responsible entity: DNSO
  - Due date: 12 October 2001
  - Completion date: 5 February 2002
- Report on its progress, and seek public comment on the Report.
  - Responsible entity: DNSO
  - Due date: November 2001
  - Completion date: 5 February 2002

Resolution Text:

Whereas, on 25 May 2001 ICANN entered (http://www.icann.org/announcements/icann-pr25may01.htm) into a new registry agreement with VeriSign, Inc. for the .org top-level domain (http://www.icann.org/tlds/agreements/verisign/registry-agmt-org-16apr01.htm);

Whereas, under that agreement VeriSign's operation of the .org top-level domain will terminate on 31 December 2002, at which time the operation will be turned over to an entity designated by ICANN;

Whereas, before the transition to operation of the .org top-level domain by the new entity can occur, it will be necessary to designate or establish an appropriate entity, to fashion its legal relationship with ICANN, to develop any necessary policies for the entity's operation, and to allow the entity to set up its business operations;

Whereas, it is the Board's goal that these activities be completed in an orderly manner and in time to permit transfer of operational responsibilities for .org on the contracted schedule;

Whereas, meeting this goal will require early planning and policy development;

Whereas, the Board considers that the designation of a successor registry for the .org top-level domain involves policy issues concerning the domain-name system that should be referred to the Domain Name Supporting Organization for its consideration and recommendations;

Whereas, under Subsection 5.1.4 of the current .org registry agreement (http://www.icann.org/tlds/agreements/verisign/registry-agmt-org-16apr01.htm#5.1.4) VeriSign must contribute a US$ 5,000,000 endowment to be used to fund future operating costs of a non-profit entity, if one is designated by ICANN as successor operator;

Whereas, the Board notes that the availability of this endowment should be considered in developing policy for the future operation of the .org top-level domain;

Whereas, the Board urges that consideration be given to the positive effects on stability of assuring the ability of present registrants to continue their registrations;

Resolved [01.71] that the Board refers to the Names Council for its consideration the issues raised by the scheduled transition of the operation of the .org top-level domain from VeriSign to a new entity, including at least:(a) whether to select an existing entity to succeed VeriSign as responsible for operation of the .org TLD, or to establish a new entity;

(b) the characteristics of the entity to be selected or established;

(c) selection criteria for the entity or its organizers;

(d) principles governing its relationship with ICANN (sponsored or unsponsored TLD, term of operation, etc.); and

(e) policies for the entity's operation of the .org top-level domain (to the extent they are not to be established by the entity).
Further resolved [01.72] that the Names Council is requested to provide a report on its progress on the issues referred by resolution 01.71, including any policy recommendations it has developed, no later than 12 October 2001; and

Further resolved [01.73] that the report will then be posted for public comment in advance of ICANN's third annual meeting in November 2001.

Other Related Resolutions:

- The ICANN Board resolution on the reassignment of the .org TLD is posted at: http://www.icann.org/minutes/prelim-report-14mar02.htm (http://www.icann.org/minutes/prelim-report-14mar02.htm)

- Resolution 02.58 and 02.59 - Establishing target schedule (subject to change by Board) for requesting, receiving, and evaluating proposals; set tentative examination fee for proposals: http://www.icann.org/en/minutes/prelim-report-22apr02.htm (http://www.icann.org/en/minutes/prelim-report-22apr02.htm)

- Resolution 02.85 - Establishing final examination fee to be US$29,000: http://www.icann.org/en/minutes/prelim-report-28jun02.htm (http://www.icann.org/en/minutes/prelim-report-28jun02.htm)

- Resolutions 02.110, 02.111, 02.112, 02.113, 02.144, and 02.115 - Proposal of Internet Society selected for negotiations to become successor operator of .org: http://www.icann.org/en/minutes/prelim-report-14oct02.htm (http://www.icann.org/en/minutes/prelim-report-14oct02.htm)

- Other resolutions TBD

Additional Information:

- To review DNSO's Final Report to the ICANN Board sent on 5 February 2002, please see http:www.dnso.org/dnso/notes/20020205.NCdotorg-to-ICANN.html (http:www.dnso.org/dnso/notes/20020205.NCdotorg-to-ICANN.html)

- 7 January 2003 Advisory Concerning .org Transition (http://www.icann.org/announcements/advisory-07jan03.htm)

- 9 December 2002 IANA Report on Redelegation of the .org Top-Level Domain (http://www.iana.org/reports/org-report-09dec02.htm)

- 3 December 2002 .org Agreement Signed; Transition Plans Announced (http://www.icann.org/announcements/announcement-03dec02.htm)

- 24 October 2002 Proposed ICANN-PIR .org Registry Agreement Posted (http://www.icann.org/announcements/announcement-24oct02.htm)

- 14 October 2002 <u>ICANN Board Selects New .org Registry Operator</u> <u>(http://www.icann.org/announcements/announcement-14oct02.htm)</u>

- For further information regarding .org Reassignment (Request for Proposals, Criteria for Assessing Proposals, Index to Applications, ICANN Public Forum, Public Comments, and Evaluation), see Meeting Minutes 14 October 2002: <u>http://www.icann.org/en/minutes/prelim-report-14oct02.htm</u> <u>(http://www.icann.org/en/minutes/prelim-report-14oct02.htm)</u>

- ICANN Accra Meeting on Reassignment of .org TLD, posted 26 February 2002: <u>http://www.icann.org/en/meetings/accra/org-topic.htm </u> <u>(http://www.icann.org/en/meetings/accra/org-topic.htm)</u>;

- ICANN Stockholm Meeting on Referral of .org Issues to DNSO, posted 3 June 2001: <u>http://www.icann.org/en/meetings/stockholm/org-topic.htm</u> <u>(http://www.icann.org/en/meetings/stockholm/org-topic.htm)</u>

- ICANN Public Comment Forum on Reassignment of .org TLD: <u>http://forum.icann.org/org/</u> <u>(http://forum.icann.org/org/)</u>

- May 2001 Registry Agreement with VeriSign, Inc. providing that VeriSign will cease being the registry operator for .org top-level domain as of 31 December 2002:<u>http://www.icann.org/en/tlds/agreements/verisign/org-index.htm</u> <u>(http://www.icann.org/en/tlds/agreements/verisign/org-index.htm)</u>

- .org Registry Agreement: <u>http://www.icann.org/en/tlds/agreements/org/</u> <u>(http://www.icann.org/en/tlds/agreements/org/)</u>

- The resolution does not address funding for the items identified therein.

RM 10

ICANN Accra Meeting Topic: Reassignment of the .org TLD

Posted: 26 February 2002

The Registry Agreement for .org, which was signed in May 2001 between ICANN and VeriSign, Inc., provides that VeriSign will cease being the registry operator for .org as of 31 December 2002. The agreement also provides:

> 5.1.4 No later than 90 days prior to [31 December 2002], [VeriSign] will pay to ICANN or ICANN's designee the sum of US $5 million, to be used by ICANN in it sole discretion to establish an endowment to be used to fund future operating costs of the non-profit entity designated by ICANN as successor operator of the .org registry. [VeriSign] agrees that such funds, once paid to ICANN, will become the property of ICANN and/or ICANN's designee, and that [VeriSign] will have no ownership or other rights or interests in such funds or in the manner in which they are used or disbursed.

> 5.1.5 [VeriSign] further agrees that it will make available to the party designated by ICANN as successor operator of the .org registry the use of global resolution and distribution facilities, at no charge until 31 December 2003, and thereafter at a price to be determined, for so long as [VeriSign] is also the operator of the .com registry.

At its meeting in Stockholm, Sweden, on 4 June 2001, the ICANN Board referred to the ICANN Domain Name Supporting Organization (DNSO) the issues raised by the scheduled transition of the operation of the .org top-level domain from VeriSign to a new entity. In response, the DNSO created a task force, which prepared a report that makes several recommendations. The report was adopted by the DNSO Names Council unanimously (one member absent) at a meeting on 17 January 2002. The adopted report appears below.

The reassignment of the .org TLD will be a subject of the March 2002 ICANN meeting in Accra, Ghana. The issue will be discussed at the ICANN Public Forum to be held in Accra on 13 March 2002. The following day, the ICANN Board will consider how to proceed with selecting an entity to succeed VeriSign in operating the .org TLD. The actions that will be considered include the following:

- Adoption of principles for selection of an entity to succeed VeriSign to operate .org beginning in January 2003;
- Adoption of principles and policies under which .org will be operated by the successor;
- Authorization of a process for selecting the successor through the solicitation of proposals, including establishment of minimum qualifications, desirable characteristics, and application fees; and
- Other matters presented in the dot Org Task Force report as submitted to the Board by the DNSO Names Council.

Persons wishing to comment on these matters may do so at the ICANN Public Forum to be held in Accra on 13 March 2002 or by entering the web-based forum below and submitting a written comment.

Click here to enter the web-based forum on reassignment of the .org TLD.

February 5, 2002

Stuart Lynn
President and Chief Executive Officer
Internet Corporation for Assigned Names and Numbers (ICANN)
4676 Admiralty Way, Suite 330
Marina Del Rey, CA 90202, USA

Dear Stuart,

The Names Council, at the teleconference held on January 17, 2002, endorsed the dot Org Task Force's final report.

The Names Council hereby submits the report to the Board for approval.

The report documents:

A. Background to dot ORG report
B. Task Force members
C. Mailing List archives
D. Draft statement of policy and public comment archives - October 2, 2001
E. Final Report endorsed by the Names Council - January 17, 2002
F. Minority report submitted by the Business Consituency
G. Public comments submitted during two week period after endorsement, 18 Jan to 1 Feb 2002

Thank you for your time and consideration of these comments.

Respectfully,

Names Council Chair

Report of the Dot Org Task Force
Adopted by the DNSO Names Council 17 January 2002

A. Background to dot ORG report and terms of reference

On 25 May 2001 ICANN formally entered into new agreements under which the Internet's .com, .net, and .org domains will be operated for the next several years. The VeriSign, Inc. will give up control over the .org registry by the end of 2002.

For more information on the ICANN/VeriSign registry agreements, see <http://www.icann.org/tlds/agreements/verisign/>.

On 4 June 2001, in Stockholm, ICANN Board made the following decisions: cf. http://www.icann.org/minutes/prelim-report-04jun01.htm

> Resolved [01.71] that the Board refers to the Names Council for its consideration the issues raised by the scheduled transition of the operation of the .org top-level domain from VeriSign to a new entity, including at least:
>
> > (a) whether to select an existing entity to succeed VeriSign as responsible for operation of the .org TLD, or to establish a new entity;
> >
> > (b) the characteristics of the entity to be selected or established;
> >
> > (c) selection criteria for the entity or its organizers;
> >
> > (d) principles governing its relationship with ICANN (sponsored or unsponsored TLD, term of operation, etc.); and
> >
> > (e) policies for the entity's operation of the .org top-level domain (to the extent they are not to be established by the entity).
>
> Further resolved [01.72] that the Names Council is requested to provide a report on its progress on the issues referred by resolution 01.71, including any policy recommendations it has developed, no later than 12 October 2001; and
>
> Further resolved [01.73] that the report will then be posted for public comment in advance of ICANN's third annual meeting in November 2001.
>
> Board resolution 01.71 became the terms of reference for the dot org task force.

B. The dot Org Task Force was composed of the following members:

Milton Mueller, NCDNHC
Guillermo Carey, IPCC
Elisabeth Porteneuve, ccTLD
Grant Forsyth, BC
Cary Karp, gTLD
Ken Stubbs, Registrars
Marc Schneiders, GA representaive elected

See http://www.dnso.org/dnso/notes/2001.DNSO-GA-IDN-dotorgTF.html .

C. Mailing list archives

The mailing list, found under Names Council Task Forces and Committees, was set up on 4 Aug 2001 with the archives in http://www.dnso.org/clubpublic/nc-org/Arc00/

E-mail discussion from the GA is archived in: http://www.dnso.org/clubpublic/ga-org/Arc00/maillist.html

D. Draft statement of policy and public comments

The Names Council dot ORG divestiture Task Force submitted a draft statement of policy (v3.3, October 2, 2001) for public comment, see:http://www.dnso.org/clubpublic/council/Arc06/msg00142.html

Public comments may be found at: http://www.dnso.org/dnso/dnsocomments/comments-dotorg/Arc01/ 11 October 2001 to 16 October 2001 (closed)

Following this the final report was drafted.

E. Final Report of the dot ORG Task Force on policy advice endorsed by the Names Council of the DNSO at the teleconference meeting on January 17, 2002

(The report is short and an executive summary is not required.)

http://www.dnso.org/dnso/notes/20020117.NCdotorg-report.html

F. The Business Constituency Minority Report

http://www.dnso.org/dnso/notes/20020205.NCdotorg-final-annexF.html

G. Public comments submitted during two week period after endorsement, 18 Jan to 1 Feb 2002

http://www.dnso.org/dnso/notes/20020205.NCdotorg-final-annexG.html

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Annex E

NC Dot Org Task Force report to the Names Council

11 January 2002

Presented by Milton Mueller, NC Dot Org TF Chair.

NAMES COUNCIL .ORG DIVESTITURE TASK FORCE v 5.4 (January 10, 2002)

The .org registry should be operated for the benefit of the worldwide community of organizations, groups, and individuals engaged in noncommercial communication via the Internet. Responsibility for .org administration should be delegated to a non-profit organization that has widespread support from and acts on behalf of that community.

The notions of sponsorship and restriction, as applied elsewhere in the gTLD process, do not provide an adequate framework for the .org divestiture. Some clear statement of administrative and marketing practices will be necessary but this must not result in an exclusive boundary being set around the community of eligible registrants. The manner in which the normative guidelines are labeled is not a primary consideration, but the framework should include all the points below.

1. Characteristics of the Organization to Administer .org

> 1a. The initial delegation of the .org TLD should be to a non-profit organization that is noncommercial in orientation and the initial board of which includes substantial representation of noncommercial .org registrants. We recognize that noncommercial registrants do not have uniform views about policy and management, and that no single organization can fully encompass the diversity of global civil society. Nevertheless, applicant organizations should be able to demonstrate international support and participation from a significant number of noncommercial .org registrants. The organization's policies and practices should strive to be responsive to and supportive of the noncommercial Internet user community, and reflect as much of its diversity as possible. While the initial delegation should be to an organization that meets the criteria described above, the ongoing governance arrangements should be open to any .org registrant.

> 1b. Applicants for operation of the .org registry should be recognized non-profit entities (understood to include corporations, associations, partnerships or cooperatives as those terms are defined in the legal jurisdiction in which the organization is established). Subcontracting of operational functions to for-profit providers is permitted.

> 1c. Applicants are encouraged to propose governance structures for the .org TLD that provide all .org registrants with the opportunity to directly participate in either the selection of officers, or the election of policy-making council members, or both. The bylaws should provide explicitly for an open, transparent and participatory process by which .org operating policies are initiated, reviewed and revised in a manner which reflects the interests of .org domain name holders and is consistent with the terms of its registry agreement with ICANN.

> 1d. In order to permit the largest number of qualified non-profit organizations to compete for award of the .org TLD contract, the Board should require no more than the equivalent of USD$200,000 in demonstrated financial resources from applicants.

2. Policy Guidelines for Applicants to Administer .org

> 2a. Definition of the .org community Each applicant organization should include in its application a definition of the relevant community for which names in the .org TLD are intended, detailing the types of registrants who constitute the target market for .org and proposing marketing and branding practices oriented toward that community.

> The definition of the relevant community should be much broader than simply formal non-profit organizations. It must also include individuals and groups seeking an outlet for noncommercial expression and information

exchange, unincorporated cultural, educational and political organizations, and business partnerships with non-profits and community groups for social initiatives.

2b. No eligibility requirements

Dot org will continue to be operated without eligibility requirements. With a definition of the served community and appropriate marketing practices in place, the organization and the registrars should rely entirely on end-user choice to determine who registers in .org.

Specifically, applicants:

- Must not propose to evict existing registrants who do not conform to its target community. Current registrants must not have their registrations cancelled nor should they be denied the opportunity to renew their names or transfer them to others.
- Must not attempt to impose any new prior restrictions on people or organizations attempting to register names, or propose any new dispute initiation procedures that could result in the cancellation of domain delegations. The UDRP would apply as per section 5 below, however.

2c. Surplus funds

Differentiation of the domain is a key policy objective in the transition, and new marketing practices are the primary tool for achieving that objective. Applicants should propose specific marketing policies and practices designed to differentiate the domain, promote and attract registrations from the defined community, and minimize defensive and duplicative registrations.

Applicants should specify how they plan to disburse any surplus funds. Use of surplus funds for purposes not directly related to dot org registry operation is permitted, provided that the registry operation itself is adequately sustained and that the additional purposes bear some relationship to Internet use, administration and policy. For example, applicants are encouraged to propose methods of supporting and assisting non-commercial participants in the ICANN process. Uses intended only to subsidize other activities of the organization or its subsidiaries, activities that are not subject to oversight and management by the .org governance arrangements, should not be considered.

2d. Registrars

All ICANN-accredited registrars should be eligible to register names in .org. However, applicants are encouraged to propose methods of managing the relationship between the registry and registrars that encourage differentiation of the domain.

2e. Definition of marketing practices

Differentiation of the domain is a key policy objective in the transition, and new marketing practices are the primary tool for achieving that objective. Applicants should propose specific marketing policies and practices designed to differentiate the domain, promote and attract registrations from the defined community, and minimize defensive and duplicative registrations.

3. The Verisign endowment

Applicants should meet all requirements needed to qualify for the $5 million endowment from Verisign. Applications should describe how they propose to utilize the endowment and the timing of its use.

4. The Registry Operator

Any entity chosen by the TLD delegee to operate the .org registry (including itself) must function efficiently and reliably and show its commitment to a high quality of service for all .org users worldwide, including a commitment to making registration, assistance and other services available to ICANN-accredited registrars in different time zones and different languages. The ".org" registry should match or improve on the performance specifications of the current ".org" registry. The registry fee charged to accredited registrars should be as low as feasible consistent with the maintenance of good quality service. The registry- registrar protocol should either remain the same as the current ".org" registry, or it should match the new international standard for registry- registrar protocols being developed in the Internet Engineering Task Force.

5. ICANN Policies

The .org administration must adhere to policies defined through ICANN processes, such as policies regarding registrar accreditation, shared registry access, the uniform dispute resolution policy, and access to registration contact data via WHOIS.

6. Follow up

ICANN should invite applications from qualifying non-profit organizations to assume responsibility for operation of the .org registry with a deadline no later than 30 June 2002, so that an evaluation, selection and agreement process may be completed well in advance of the 31 December expiration of the current agreement with Verisign.

ICANN will provide an opportunity for the Names Council to review the request for proposals (RFP) prepared by the ICANN staff prior to its public dissemination, and will adjust the RFP as needed in consultation with the Task Force to ensure compliance with the policy. Application fees should be as low as possible consistent with the objective of discouraging frivolous applications.

Annex F

F. The Business Constituency Minority Report

The Business Constituency (BC) support the key policy objectives embodied in the report on the divestiture of .org endorsed by the DNSO Names Council on its audio meeting of 17/1/02.

Having said that, the BC has two remaining issues that we wish to communicate to the Board through the inclusion of this minority view.

The BC would have the ICANN Board note that the BC:

1. Does support restricted access (applied in the least interventionist manner by way of ex-post challenge) to future new registrations as a practical means of defining the constituency of registrants. Similarly, the "Sponsored" model of organization responsible for the domain would seem to provide the best basis for meeting the wish of devolved policy development inherent in the TF's report.

2. Urges the Board to increase competition and diversity and encourage new investment in the provision of gTLD registry services, by ensuring the market position of existing dominant providers are not entrenched nor enhanced through participation in, taking an interest in, or contracting to deliver critical services to, the new .org management organisation.

Grant Forsyth BC Representative on the NC TF on .org

Annex G

Public comment on the report was invited for a period of 14 days starting on 18th January ending on 1st February 2002.

The archive are at http://www.dnso.org/dnso/dnsocomments/comments-dotorg/Arc02/

The Public comments are as stated below in chronological order:

1. Milton Mueller <mueller@syr.edu>

The Noncommercial Domain Name Holders Constituency sees the policies in the current draft as a well-crafted balance of the various constituencies' interests. We strongly favor a noncommercial management organization for .org and expect it to be broadly supported by and responsive to noncommercial Internet users. As we have made clear on numerous occasions, we oppose any attempt to restrict registrations in .org or to create new dispute initiative procedures. We prefer to rely on marketing practices and end-user choice to differentiate the domain. The NCDNHC joins the business constituency in calling the Board's attention to the competition policy issues raised by the divestiture of .org. We urge the Board to increase competition and diversity and encourage new investment in the provision of gTLD registry services, by ensuring that the market position of existing dominant actors are not entrenched nor enhanced through participation in, taking an interest in, or contracting to deliver critical services to, the new .org management organisation.

2. Danny Younger <DannyYounger@cs.com>

The limited number of public comments posted to this task force report (as well as to other recent task force reports) is indicative of a serious problem which once more calls into question the viability of the "task force approach". The DNSO has the responsibility to engage in outreach and to obtain the public's view. Instead, it merely "goes through the motions" and obtains no substantive input whatsoever from the public. This is pathetic and is yet another indication that the DNSO is in need of new leadership and must be thoroughly reformed.

3. Eric Brunner-Williams in Portland Maine <brunner@nic-naa.net>

Introductory Comments:

I'm ambivalent on the structural form of the delegee. The case for non-profit was argued with back during the WG-C period,

without ever getting down to the awkward bits of actual capital outlay, cost-recovery, cleaning up the current operator's mess, etc. The closest the newTLD process has manifested to this point of view is the .coop delegation and its operator, a cooperative.

1. Characteristics of the Organization to Administer .org

Subsection 1b, final sentence, is highly problematic. Absent any other bar on the construction of the delegee, policy body, operator, registry, registrars, resellers and registrants, this one sentence allows highly fictional forms of "non-profit" policy and operational management oversight of the "new" .org.

If the first thesis is worth testing with the .org registry, registrars and registrants, that "for profit" is infra dig, then the corollary should also be worth testing, and the below sentence modified by the insertion of "not".

1b. ... Subcontracting of operational functions to for-profit providers is permitted.

Subsection 1d is interesting also. The goal stated is to create "the largest number of qualified" applicants. The condition is a lowering of the bar for financial resources. There are two things "wrong" with this picture. First, the cost of entry for registry operators is falling, the NeuLevel figure of $20 million is an artifact of poor judgement, other registries have gone-live on a tenth of that. However, the cost to meet existing ICANN gTLD functional and non-functional requirements is significantly greater than the 200k bogie, and under-capitalization or limited access to capital resources is just asking for trouble. Second, who cares if there are two or more "qualified" applicants? One will do very nicely, and beauty contests among entities that haven't any registry, or registrar operational experience, is a waste of everyone's time.

I suggest the following substitution for the original text:

1d. In order to ensure the capability of the applicant(s), the Board should require the equivalent of USD$500,000 in demonstrated financial resources from applicants.

2. Policy Guidelines for Applicants to Administer .org

Subsection 2b contradicts the notion that the incoming operator will utilize a distinct policy from the outgoing operator. This is an endorsement of the policy that is elsewhere deprecated.

Subsection 2c presumes no capital accumulation is consistent with the goals of the delegee, policy body, operator, registrars, resellers, or registrants. If no capital accumulation is allowed under the operating agreement, then the ability of the parties to invest accumulated capital in improved services is barred.

3. The Verisign endowment

While soaking Verisign is always a good idea, selecting an operator that can not succeed without $5 million in "found money" is absurd. If there is any case for burning $5 million of Verisign's money, it is in cleaning up the current pool of illegitimate registrants from the current registry. If there is any case for qualification from an applicant, it is non-dependency upon "found monies" for operational transfer and maintenance.

4. The Registry Operator

This is a wasted paragraph. The functional and non-functional requirements will be sufficiently close to the ICANN newTLD form. The pricing verbiage is unimaginative. Whether the registry uses RRP or EPP is irrelevant.

6. Follow up

The final sentence of the final para is interesting. Application fees are viewed not as a reasonable fee to cover ICANN's evaluation process, but as some brand of "non-frivolousness". This is a poor way to view both the cost to ICANN, and the ability of the applicant to raise funds. Given the 200K, or the 500K figures (Milton, et alia, and my own, respectively), the current 50K figure is not prohibitive.

Concluding Comments:

The .org registry is a 10^^7 sized registry, significantly smaller than the .edu registry, transferred earlier. It could be transferred to some existing non-commercial registry operator, or put up for competitive bid. Of the set of possible existing non-commercial registry operators, several ccTLD and a very few gTLD registry operators appear to be viable and appropriate choices.

Questions are welcome.

Eric Brunner-Williams wampumpeag,
llc and The EPP Trade Association,
a 501(c)(6) not-for-profit, Deleware Incorporation

4. Thomas Roessler <roessler@does-not-exist.org>

The undersigned members of the DNSO General Assembly

1. endorse the criteria and guidelines for applicants for operation of the .org registry contained in the Final Report of the .org Task Force (http://www.dnso.org/clubpublic/council/Arc09/msg00031.html)

2. support the unrestricted character of .ORG, both for new and old registrants, and the absence of new eviction mechanisms for domain name holders.

3. emphasize the need for a complete divestiture of the .org TLD and urge the DNSO Names Council and the ICANN Board to ensure that the divestiture increases competition. The applicant organizations must submit proposals which are consistent with the goal of divestiture.

4. are concerned about the possibility of a price raise in the .org registration fee and emphasize that the registry fee should be "as low as feasible consistent with the maintenance of good quality service" (TF Final Report, 4). The ICANN Board's decision about the applicant organization should not be deflected by excessive attention to proposals for spending a possible surplus.

5. encourage applicant organizations to propose ways of ensuring that the "differentiation of the domain", which is "a key objective in the transition" (TF Final Report, 2e), is also communicated to dispute resolution providers and panelists. A simplistic, undifferentiated approach to domain disputes in the .org TLD puts the potential benefits at risk.

6. urge applicant organizations to consider incentives and deterrents to ensure that all registrars market .org domains in a way which does not run counter to the goal of differentiation enabling end-user choice.

7. thank the GA representative on the .org Task Force, Marc Schneiders, for his work.

Agree:

Don Brown <donbrown_L@inetconcepts.net> GA-subscr, GA-voting
Marc Schneiders <marc@fuchsia.bijt.net> GA-subscr, GA-voting, NCDNHC
Sotiris Sotiropoulos <sotiris@hermesnetwork.com> GA-subscr, GA-voting
Dan Steinberg <synthesis@videotron.ca> GA-voting
Michael Froomkin <froomkin@law.miami.edu> GA-subscr, GA-voting
Thomas Roessler <roessler@does-not-exist.org> GA-subscr, GA-voting
Joop Teernstra <terastra@terabytz.co.nz> GA-subscr, GA-voting
Alexander Svensson <alexander@svensson.de> GA-subscr, GA-voting
David P. Farrar <david@farrar.com> GA-subscr, GA-voting
Leah Gallegos <jandl@jandl.com> GA-subscr, GA-voting
Jessica Westbrook <JessWest@aol.com> GA-subscr, GA-voting

Disagree:

Chuck Gomes <cgomes@verisign.com> GA-voting, gTLD constituency
Jeff Williams <jwkckid1@ix.netcom.com>

5. Cassidy Sehgal - <cassidy.sehgal@registrypro.com>

The following are the public comments of the gTLD constituency (the "Constituency" or "we") on the final report of the Task Force on the divestiture of .org which was approved by the Names Council as a consensus policy recommendation to the ICANN Board. We have no comments on the Final Report itself that can be meaningfully expressed in a public comment, however, we note that certain opinions have been voiced in the discussion of the latest drafts and subsequent to the Final Report's issuance. The Constituency is so concerned by these statements, that we are submitting the following comments to establish our position on the same.

We are particularly concerned by the view expressed by the Business Constituency and Non-Commercial Domain Name Holders Constituency that the "market position of existing dominant providers are not entrenched nor enhanced through participation in, taking an interest in, or contracting to deliver critical services to, the new .org management organization."

Any such restriction or prohibition on the participation, interest or contracting ability of certain "dominant" providers raises significant concerns. Defining "dominant" providers, actors or service providers is not easily accomplished, and has not been done. As a result, existing registrars, registries, ISPs (i.e. AT&T, British Telecom, IBM, etc.) could be arbitrarily excluded from providing contract services.

Such a prohibition is also fundamentally anti-competitive and may ultimately add to the cost of services provided by the registry. By restricting the ability of the .org registry to choose its contractors or service providers and creating an artificial exclusion of certain market players, there will be less competition for services, and lower costs to the registry may well be forgone if the excluded parties are indeed offering the most competitive prices. Moreover, the limitation may also exclude provision of services

by the most efficient and reliable parties, thereby hindering the performance of the .org registry.

Forcing the registry to pay higher prices for whatever they procure results in a higher cost structure for effected registries and this higher cost structure is eventually passed along to registrants. ICANN intervention into the ability of the .org registry to sub-contract or otherwise work with, seek participation from "dominant players" is not only outside of the scope of ICANN's mandate and mission, it also imposes a tax on registrants and eventually makes the registration service less interesting in the market.

For each of the foregoing reasons, the Constituency strongly objects to the view that there be any restriction upon the .org registry's ability to freely seek participation or contracting services from any players or actors that it deems capable of ensuring the secure and reliable operation of the domain.

6. Milton Mueller <mueller@syr.edu>

Reply comments of Milton Mueller to the gTLD comments on the .org Task Force.

Please note that the entirety of the gTLDs' comments are aimed at the additional positions of two DNSO constituencies and not at the Task Force Report itself.

The Task Force as a whole deliberately refrained from taking a position on the competition policy issue for two reasons:

First, because it did not seem to command a complete consensus among the constituencies;

Second, because we did not want the policymaking process to become bogged down in questions of defining "dominance" or in debate over phrasings that might be construed to include or exclude specific applicants.

That being said, when the Board makes its final selection among applicants, it seems to me to be impossible for the Board to ignore questions of competition policy. The whole process of removing control of dot org from Verisign was motivated by a desire to increase the number of players in the market and to reduce Verisign's dominance of the registry marketplace. If we were concerned exclusively with who was the low-cost provider we might not need to divest .org at all.

Obviously the pro-competition policy proposed by NCDNHC and B&C does not enjoy the same unanimous support enjoyed by the Task Force report as a whole. That fact should not, however, prevent the Board from using simple common sense and taking competition, dominance and diversity into account when faced with a set of qualified applicants that differ significantly in those dimensions. Consensus policies are binding on the Board, but while the consensus we are forwarding does not REQUIRE the Board to exclude dominant providers, neither does it PREVENT it from doing so.

The economic reasoning behind Mr. Neumann's comments is weak. Virtually any new registry is bound to have higher initial costs than a dominant incumbent because of economies of scale. However, it is well known in economics that in the long term competition encourages DYNAMIC efficiencies that are far more important to society than the static efficiencies that can be measured by looking at current cost structures. For example, the unit costs of new entrants in long distance telecommunications were often higher than the incumbent in the 1980s; but their competition led to investment in new transmission technolgoies, notably fiber, that improved overall efficiency.

Also, I would note that by Jeff's reasoning, ANY exclusion "reduces competition" and therefore we should not even exclude Verisign itself from applying for administration of the .org domain. Which seems a bit absurd given the purpose of the .org divestiture.

It is not surprising that the gTLD constituency, which represents incumbent registries who either collectively or individually account for a dominant share of the gTLD registry market, would oppose a call for attentiveness to dominance in the final selection process. I am sure that the Board will be wise enough to take this into account in weighing the comments.

7. Marc Schneiders <marc@fuchsia.bijt.net>

I fully support Milton's position. The registry market is a regulated market. In such a market, you cannot apply free market principles completely. The regulation diminishes competition by definition. It has to counter that effect as well to avoid the evils of monopolies and cartels. (This is even true when you start deregulating, which ICANN does not really seem to be doing very well so far.) New players on the market have to get a chance against the (former) monopolist or cartel.

Given the revenue of current registrations in ORG (slightly under 3 million), I doubt any new company would have to charge higher registry fees than the $6 VeriSign now takes.

Marc@Schneiders.ORG GA rep on the ORG Task Force

8. Comments of the Association for Computing Machinery's Internet Governance Project To the Names Council's Dot ORG Task Force Report

The Association for Computing Machinery's Internet Governance Project (ACM-IGP) wishes to express its strong support for the comments of the NC Dot ORG Task Force, and its Report placed on public notice on January 18 ("Report"). In our comments below, ACM-IGP will first express some general concerns regarding the future of .ORG, and then comment directly on sections of

the Report.

General Concerns:

Overall, ACM-IGP is very concerned that the .ORG space will be restricted as it is spun off to new technical and policy management. Unlike any other gTLD delegation to date, .ORG is not a new creation. It is an existing community; it is a valued noncommercial space. Whatever the initial intentions of the National Science Foundation in creating .ORG two decades ago, it has exceeded all expectations and bounds. Dot-ORG is the place for political and personal commentary, community organizing and family pages, as well as important organizational communication.

Dot-ORG is the place for organizational communication online on the Internet, but organizational communication is not done solely by organizations. It is the communication of communities, families, schools, libraries, unincorporated associations, and formal organizations. The .ORG domain name space offers an opportunity for online participation by the most diverse group online.

There is rumored to be a move to restrict .ORG to perhaps even its most narrow definition, e.g., to allow only organizations to register .ORG domain names in the future. Such a restriction on .ORG would disenfranchise entire classes of communication online. Where .COM, .NET, .BIZ and .INFO are top level domains open for general commercial domain name registration; .ORG is the only top level domain open for general noncommercial domain name registration. To assign new management for the purpose of breaking up Verisign's monopoly is a fine idea; to establish new rules that excommunicate entire classes of noncommercial communication is not.

Specific Comments on Task Force Report:

ACM-IGP agrees generally with the full report. We thank the Task Force for all its hard work, and the Names Council for its support of this work. We note the particular importance of the following sections:

A. "[A]pplicant organizations should be able to demonstrate international support and participation from a significant number of noncommercial .org registrants." [Report, Section 1a]

As discussed above, the .ORG delegation involves an existing, diverse and robust domain name space. It would not make sense for one organization (however international) or one region to dominate or win exclusive management of .ORG. An international coalition of noncommercial organizations from many countries and regions will reflect existing .ORG registrations and move forward to lay the foundation and set the policies for positive further growth of .ORG for the benefit of their countries and regions.

B. "The definition of the relevant community should be much broader than simply formal nonprofit organizations. It must also include individuals and groups seeking an outlet for noncommercial expression and information exchange, unincorporated cultural, educational and political organizations, and business partnership with non-profits and community groups for social initiatives." [Report, Section 2a.]

The words above were carefully chosen, and provide the core of what ICANN must protect, preserve and expand. They should be adopted in their entirety in the final ICANN proposals.

C. "Dot org will continue to be operated without eligibility requirements... the registrars should rely entirely on end-user choice to determine who registers in .org." [Report, Section 2b]

The Noncommercial Community has proven itself. In overwhelming numbers, it flocks to .ORG to register its domain names. It is a successful example of self-selection in the domain name space.

But the Task Force Report goes a step further. It asks ICANN to require that the new registry adopt a "definition of the served community" and put into place "appropriate marketing practices" [Report, Section 2b]. We have seen that even with the inappropriate marketing practices of today (encouraging companies .ORG, and the Noncommercial Community overwhelmingly register in it. Self-selection will only become better as the new registry (under the Report's proposals) actively markets to the Noncommercial Community.

Conclusion:

Again, our support for the Report runs to all its points and proposals. Our thanks again to the Task Force, to its chairman, and to the Names Council. We urge the ICANN Board to adopt the principles and recommendations of the DNSO in this Report.

Respectfully submitted,
Kathryn A. Kleiman
Director, ACM-IGP

9. Eric Dierker <eric@hi-tek.com>

Dear fine sir;

Please elaborate on this seemingly incongruent statement.

I guess I was mistaken in my understanding that we were looking for divestiture at any cost.

Is it your contention that the goal has devolved to the lowest common denominator of cost?

I agree with your telecom analogy, but am troubled by your fatalistic conclusions (?).

How do you suggest we move forward taking in your, Neumans' and Jeffs' input.

Your opinion is always valued here, please go out on a practical limb and give some modicum of advise.

Sincerely,

Eric Milton Mueller wrote:

> <with major snippage>
>
> That being said, when the Board makes its final selection among
> applicants, it seems to me to be impossible for the Board to ignore
> questions of competition policy. The whole process of removing
> control of dot org from Verisign was motivated by a desire
> to increase the number of players in the market and to reduce
> Verisign's dominance of the registry marketplace. If we were
> concerned exclusively with who was the low-cost provider
> we might not need to divest .org at all.

10. Eric Brunner-Williams <brunner@nic-naa.net>

There appears to be some underlying points of agreement between Mssrs Meuller and Neuman, to pick them as arbitrary points of reference in an apparently bi-polar dispute. Both agree that:

- the designee SHALL BE a non-profit entity,
- the designee SHALL NOT operate the registry,
- not to reference cost data available from the newTLD roll-outs.

As a policy, steering the current registry and its communities of registrants towards the original purpose of the registry, and the overwhelming majority of its 1 million registrants, towards non-commercial purpose, is reasonably, but not of necessity, applied also to the selection criteria of the designee. As several DNSO constituencies appear to agree on the first point, that issue is settled.

The second point is probably one which is not controlling. A proposal by a non-profit is not likely to fail simply because the non-profit is demonstrably capable of operating the registry, and proposes to do so rather than contract the service out to another non-profit, or for-profit, either by single-source or competitive bid. Consequently, that issue is peripheral.

The third point is where the money is. One-time and recurring cost vs pricing. This is where a discussion would benefit from data. With only two exceptions known to me, all of the newTLD projects ran 7-figure one-time costs, ranging from a high of $20 million (.biz) to one-tenth that. Assuming that the terms of the divestiture are "data only", the application must cost-in an RRP or an EPP registry, one or more data bases and associated business logic (some of which isn't necessary until some time after "go-live"), and a constellation of public data publication facilities hosting dns, whois, and operational "other" servers.

The community experience and expertise developed in the newTLD roll-out of late-2001 and early-2002 (.info, .biz, .name, .coop, .museum, and .pro and .aero) strongly supports costing a "data only" transfer at or under the mid 6-figure mark for one-time cost, with North American/European labor costs assumed.

The operational experience of SRI during its tenure of the ARPA NIC contract, with a staffing of 15 EFTS, modified to reflect a CRM model restricted to the ICANN accredited registrars, a policy-body liaison task, and a infrastructure maintencne requirement, strongly supports costing either a "data only" or a "data-plus-infrastructure" transfer at the 7-figure mark for recurring costs, again with North American/European labor costs assumed.

These figures, a .5M one-time and a 1M recurring cost, are guides for neutral policy base price, and active policy add-on price estimates. How active the policy or policies eventually specified in an ICANN RFP, or how creative the cost management and value multiplier in an Application, these vary from this base point.

Eric Brunner-Williams
wampumpeag, llc

Regular Meeting of the Board Minutes

14 Mar 2002

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

A meeting of the Board of Directors of the Internet Corporation for Assigned Names and Numbers (the "Corporation") was held on Thursday, 14 March 2002, at the La Palm Royal Beach Hotel, in Accra, Ghana.

The following Directors of the Corporation were present: Vint Cerf (chairman), Amadeu Abril i Abril, Robert Blokzijl, Ivan Moura Campos, Jonathan Cohen, Philip Davidson, Masanobu Katoh, Hans Kraaijenbrink, Sang-Hyon Kyong, M. Stuart Lynn, Andy Mueller-Maguhn, Jun Murai, Alejandro Pisanty, Nii Quaynor, and Helmut Schink. Karl Auerbach and Linda S. Wilson participated telephonically.

Also present at the meeting were Louis Touton, Vice President, General Counsel and Secretary of the Corporation; Andrew McLaughlin, Chief Financial Officer of the Corporation; and Joe Sims, of Jones, Day, Reavis & Pogue. The meeting was open to the public.

The Chairman, Vint Cerf, called the meeting to order at 08:55 UTC (8:55 am local time).

At-Large Membership

Dr. Cerf opened the meeting by reading aloud draft resolutions regarding the At-Large Study Committee Report:

> [1] Whereas, the issue of how to create mechanisms for meaningful participation and representation for individual users has been a subject of debate in the ICANN (Internet Corporation for Assigned Names and Numbers) community since ICANN (Internet Corporation for Assigned Names and Numbers)'s creation;

[2] Whereas, various proposals failed to achieve broad consensus support in the community, notwithstanding repeated efforts to achieve that end, in part because of widely divergent views and fundamentally different perspectives about the expected or desired results of various approaches within the ICANN (Internet Corporation for Assigned Names and Numbers) community;

[3] Whereas, at its Cairo meeting on 10 March 2000 the Board concluded that, given these impediments, it should initiate a comprehensive study of the concept, structure, and processes relating to a proposed At Large membership;

[4] Whereas, at its Yokohama meeting on 16 July 2000 the Board adopted bylaws to enable the election of five directors through regional online elections, and to create a committee to study the At Large concept;

[5] Whereas, the At Large Study Committee ("ALSC") was chartered in January 2001 to undertake a comprehensive study of the concept, structure, and processes relating to an ICANN (Internet Corporation for Assigned Names and Numbers) At Large membership, and has worked diligently to that end, for which the Board and the ICANN (Internet Corporation for Assigned Names and Numbers) community are extremely grateful;

[6] Whereas, in resolution 01.125 (/minutes/minutes-15nov01.htm#01.125) the Board accepted the ALSC Final Report and Recommendations, dated 5 November 2001, as a basis for further discussion by the Board and the ICANN (Internet Corporation for Assigned Names and Numbers) community, and that discussion has in fact continued since that time;

[7] Whereas, the Board believes that the At Large community properly defined embraces the full range of Internet users, including not only individual users, but also academic institutions, small businesses, non-commercial entities of various kinds, including consumer groups, and various other non-governmental organizations, all of which have a legitimate interest in, and a need for workable mechanisms for

informed participation in, the ICANN (Internet Corporation for Assigned Names and Numbers) policymaking process;

[8] Whereas, the Board perceives a broad consensus throughout the ICANN (Internet Corporation for Assigned Names and Numbers) community around the core ALSC recommendations relating to the desirability of an At Large mechanism to enable outreach and informed participation by Internet users, and specifically for individual users;

[9] Whereas, in particular, the Board perceives a broad consensus that (a) all Internet users have a significant stake in ICANN (Internet Corporation for Assigned Names and Numbers)'s activities, (b) it is critical that all Internet users have the opportunity to meaningfully participate in ICANN (Internet Corporation for Assigned Names and Numbers) policymaking, and (c) the general public interest must be represented in the ICANN (Internet Corporation for Assigned Names and Numbers) policymaking process and on its Board;

[10] Whereas, the Board strongly endorses the ALSC's observation that a structure for informed participation by individual users is required and, in order to be most effective, should be built on sustainable local Internet community institutions, rather than attempting to engineer global top-down structures that lack local roots;

[11] Whereas, the ALSC has solicited expressions of interest from many Internet organizations, a number of which could credibly form the initial nucleus of a regionally-based At Large entity with the objective of educating and facilitating the meaningful involvement of Internet users (and particularly individual users) in ICANN (Internet Corporation for Assigned Names and Numbers)'s policymaking activities through bottom-up, self-organized, and self-sustaining local Internet community institutions;

[12] Whereas, the Board wishes to move forward with energy and enthusiasm to build a meaningful structure for informed participation by the full range of Internet users, and seeks avenues to achieve these objectives that are bottom-up, self-

organized, and self-sustaining;

[13] Whereas, the Board has concluded that the structural and procedural implementation of the principles stated above can most effectively be developed in the context of broader ICANN (Internet Corporation for Assigned Names and Numbers) reforms such as those proposed in the President's Report delivered to the Board on 24 February 2002, and currently the subject of intense discussion throughout the ICANN (Internet Corporation for Assigned Names and Numbers) community;

[14] Whereas, the Board agrees with the reservations expressed in the ALSC Final Report about the validity and practicality of global online elections, and appreciates the very considerable effort undertaken by the ALSC to identify an electoral process that would reduce (if not eliminate) those problems, but remains concerned about the fairness, representativeness, validity and affordability of global online elections among an easily captureable pool of self-selected and largely unverifiable voters;

[15] Whereas, the Board is not persuaded that global elections are the only or the best means of achieving meaningful public representation or the informed participation of Internet users in the ICANN (Internet Corporation for Assigned Names and Numbers) process;

[16] Therefore it is resolved that the Board again expresses its sincere appreciation to the members of the ALSC for their hard work, sensible analysis, and useful recommendations, and to all the members of the ICANN (Internet Corporation for Assigned Names and Numbers) community that participated in that process;

[17] Resolved that ICANN (Internet Corporation for Assigned Names and Numbers) should have a robust At Large mechanism for meaningful, informed participation by Internet users of the kind recommended in the ALSC report;

[18] Resolved that the Board calls upon the ICANN (Internet Corporation for Assigned Names and Numbers) community to

devote sustained energy to the creation of At Large structures built upon bottom-up, self-organized, local Internet community institutions and other organizations that meet the general criteria of openness, participation, and self-sustainability, anticipating that most such entities are not ICANN (Internet Corporation for Assigned Names and Numbers)-specific, but already serve their communities in broader ways;

[19] Resolved that the Board expresses the hope that its endorsement of these principles for informed Internet user participation will encourage those interested in an At Large structure to continue the creation, strengthening, or coordinating of local Internet community institutions so as to meet these basic criteria; and

[20] Resolved that the Board Committee on Evolution and Reform, working in conjunction with the President and staff, is instructed to ensure that their ongoing efforts at crafting a blueprint for ICANN (Internet Corporation for Assigned Names and Numbers) reform include (a) workable mechanisms and procedures that enable meaningful opportunities for participation by the full range of Internet users, including individuals, academic institutions, large and small businesses, non-commercial entities (including consumer groups), and other non-governmental organizations, (b) an appropriate role for those interests in ICANN (Internet Corporation for Assigned Names and Numbers)'s coordinating and management structures, and (c) appropriate mechanisms to minimize disruption during the reform implementation process.

Mr. Kraaijenbrink moved, with Mr. Cohen's second, that the Board adopt the above resolutions.

Mr. Cohen noted that the resolutions do not foreclose the possibility of selecting Directors through voting by individual Internet users, but allows for possible reconsideration by a future Board. Mr. Abril i Abril stated his view that online voting suffers from the lack of a defined electorate and that the focus should be on effective participation of individual Internet users in ICANN (Internet Corporation for

Assigned Names and Numbers)'s activities, through organized structures, not simply on individual voices. Dr. Blokzijl commented that any future At-Large organizations should make clear where they tie in with ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission Statement, which is mainly technical, and he noted that this point was missing from the proposed resolutions.

Dr. Kyong pointed out that the "Board Committee on Evolution and Reform", referred to in clause [20], did not yet exist by that name. By consensus, the phrase "Board Committee on Evolution and Reform" in clause [20 was changed to read "Board Committee on Restructuring".

Mr. Mueller-Maguhn moved to amend clause [6] by adding "and action" after "further discussion". The motion was not seconded. Mr. Mueller-Maguhn then moved to amend clause [20] by adding "create a new subcommittee for At-Large organization" after "Board Committee on Evolution and Reform". This motion was also not seconded.

Mr. Mueller-Maguhn then moved, with Dr. Kyong's second, that clause [20] be amended by deleting the "and" before "(c)" and adding ", and (d) a mechanism for election or selection of At-Large directors to succeed the current At-Large directors who represent the At-Large membership on the Board." Dr. Blokzijl spoke in opposition to the amendment, stating that the Board should not create special positions for special-interest groups. Responding to Mr. Mueller-Maguhn's concern, Mr. Cohen stated his personal belief that it was very unlikely that the terms of the At-Large directors would simply be allowed to expire with no replacements. Mr. Auerbach stated that it was vital that At-Large directors be on the Board when the future of At-Large is determined. Dr. Lynn expressed concern over dictating the outcome of the At-Large issue before it is fully considered in the context of ICANN (Internet Corporation for Assigned Names and Numbers) reform. A vote was taken, and the amendment was defeated 5-12-0, with Mr. Auerbach, Dr. Kyong, Mr. Mueller-Maguhn, Dr. Quaynor, and Dr. Wilson voting in favor.

Discussion then resumed on the main resolutions. Mr. Katoh commented that the first election was a very important starting point, but that he believes that Board members can be selected by

some other means and he suggested that they re-visit the issue of elections in several years. Dr. Lynn commented that he is opposed to elections right now but he is eager to work with people who are interested in building organizations for participation and involvement that are "win-win." Mr. Auerbach stated his view that passing these resolutions will be "win-lose" because he and the other At Large directors will lose their seats on the Board. He also expressed his dismay that more planning for the elections had not occurred.

Dr. Wilson expressed her support for moving forward with effective structures for individuals to participate in ICANN (Internet Corporation for Assigned Names and Numbers)'s work. She noted that efforts by some to expand the mission of ICANN (Internet Corporation for Assigned Names and Numbers) have confounded the effort to design effective At-Large participation. She stressed the importance of providing ICANN (Internet Corporation for Assigned Names and Numbers) with a broadly accepted mission as well as a process for altering that mission should it become necessary. Dr. Campos highlighted the need for effective individual participation before elections, since voting without participation is at best a smoke screen and at worst dangerous. He also emphasized that definition of a clear mission for ICANN (Internet Corporation for Assigned Names and Numbers) is vital. Dr. Quaynor noted that the impending reform process should be viewed as complementing, rather than replacing, the At-Large activities.

Dr. Kyong expressed serious concern that clause [15] effectively eliminates the possibility of an election during 2002 to replace the At-Large directors whose terms are expiring in the Fall. He moved, with Mr. Mueller-Maguhn's second, for the addition of a clause [21], which would read: "Resolved that in the event the reform under discussion presently, which may call for restructuring of the Board, does not take place before the expiration of the terms of the At-Large directors presently serving, then the Board is committed to do what it should to extend the terms of those Board members until such reform is complete."

Mr. Kraaijenbrink pointed out that the resolutions already cover Dr. Kyong's concerns because they provide that there will be proposals to the Board to avoid disruption on the governance of the Corporation and the Board members have a duty to the Corporation

to see to that. Dr. Lynn stated that he was sympathetic to the goal of the proposed amendment but pointed out that the Board can't commit to anything along the lines of the proposed amendment without a duly made amendment to the bylaws.

Mr. Cohen was concerned that adopting such an amendment might hamstring the Board and the Committee on Reform in unknown ways. Dr. Cerf noted that any action extending terms would require an amendment to the bylaws. The earliest action could be taken would be at the Bucharest meeting. Dr. Kyong expressed his concern that leaving a major uncertainty built into a resolution is unsettling to the Board as well as to the community at large. He said if a bylaws change is required, then one will be attempted, even if a proposed bylaws change does not have total consent and is not achieved. There being no other discussion, a vote was taken on the proposed amendment. It was defeated on a 3-13-1 vote, with Mr. Auerbach, Dr. Kyong, and Mr. Mueller-Maguhn voting in favor and Dr. Campos abstaining.

In continuing discussion of the main resolutions, Dr. Pisanty echoed Dr. Campos' warnings about seeking democracy without participation. Where an electorate is poorly defined, and not informed through effective participation, experience teaches that elections carry dangers. He also supported the need for a clearly defined mission. Dr. Lynn emphasized that contingency planning for a vote is being completed. Mr. Auerbach expressed his view that ICANN (Internet Corporation for Assigned Names and Numbers) is a policy organization, not a technical organization. If the Board moves away from "one person, one vote" and goes into qualifications, he believes it is entering a very difficult area.

A vote was then taken on the main resolutions, which read:

> Whereas, the issue of how to create mechanisms for meaningful participation and representation for individual users has been a subject of debate in the ICANN (Internet Corporation for Assigned Names and Numbers) community since ICANN (Internet Corporation for Assigned Names and Numbers)'s creation;
>
> Whereas, various proposals failed to achieve broad

consensus support in the community, notwithstanding repeated efforts to achieve that end, in part because of widely divergent views and fundamentally different perspectives about the expected or desired results of various approaches within the ICANN (Internet Corporation for Assigned Names and Numbers) community;

Whereas, at its Cairo meeting on 10 March 2000 the Board concluded that, given these impediments, it should initiate a comprehensive study of the concept, structure, and processes relating to a proposed At Large membership;

Whereas, at its Yokohama meeting on 16 July 2000 the Board adopted bylaws to enable the election of five directors through regional online elections, and to create a committee to study the At Large concept;

Whereas, the At Large Study Committee ("ALSC") was chartered in January 2001 (/minutes/minutes-22jan01.htm#AtLargeMembershipStudy) to undertake a comprehensive study of the concept, structure, and processes relating to an ICANN (Internet Corporation for Assigned Names and Numbers) At Large membership, and has worked diligently to that end, for which the Board and the ICANN (Internet Corporation for Assigned Names and Numbers) community are extremely grateful;

Whereas, in resolution 01.125 (/minutes/minutes-15nov01.htm#01.125) the Board accepted the ALSC Final Report and Recommendations, dated 5 November 2001, as a basis for further discussion by the Board and the ICANN (Internet Corporation for Assigned Names and Numbers) community, and that discussion has in fact continued since that time;

Whereas, the Board believes that the At Large community properly defined embraces the full range of Internet users, including not only individual users, but also academic institutions, small businesses, non-commercial entities of various kinds, including consumer groups, and various other non-governmental organizations, all of which have a legitimate interest in, and a need for workable mechanisms for

informed participation in, the ICANN (Internet Corporation for Assigned Names and Numbers) policymaking process;

Whereas, the Board perceives a broad consensus throughout the ICANN (Internet Corporation for Assigned Names and Numbers) community around the core ALSC recommendations relating to the desirability of an At Large mechanism to enable outreach and informed participation by Internet users, and specifically for individual users;

Whereas, in particular, the Board perceives a broad consensus that (a) all Internet users have a significant stake in ICANN (Internet Corporation for Assigned Names and Numbers)'s activities, (b) it is critical that all Internet users have the opportunity to meaningfully participate in ICANN (Internet Corporation for Assigned Names and Numbers) policymaking, and (c) the general public interest must be represented in the ICANN (Internet Corporation for Assigned Names and Numbers) policymaking process and on its Board;

Whereas, the Board strongly endorses the ALSC's observation that a structure for informed participation by individual users is required and, in order to be most effective, should be built on sustainable local Internet community institutions, rather than attempting to engineer global top-down structures that lack local roots;

Whereas, the ALSC has solicited expressions of interest from many Internet organizations, a number of which could credibly form the initial nucleus of a regionally-based At Large entity with the objective of educating and facilitating the meaningful involvement of Internet users (and particularly individual users) in ICANN (Internet Corporation for Assigned Names and Numbers)'s policymaking activities through bottom-up, self-organized, and self-sustaining local Internet community institutions;

Whereas, the Board wishes to move forward with energy and enthusiasm to build a meaningful structure for informed participation by the full range of Internet users, and seeks avenues to achieve these objectives that are bottom-up, self-

organized, and self-sustaining;

Whereas, the Board has concluded that the structural and procedural implementation of the principles stated above can most effectively be developed in the context of broader ICANN (Internet Corporation for Assigned Names and Numbers) reforms such as those proposed in the President's Report delivered to the Board on 24 February 2002, and currently the subject of intense discussion throughout the ICANN (Internet Corporation for Assigned Names and Numbers) community;

Whereas, the Board agrees with the reservations expressed in the ALSC Final Report about the validity and practicality of global online elections, and appreciates the very considerable effort undertaken by the ALSC to identify an electoral process that would reduce (if not eliminate) those problems, but remains concerned about the fairness, representativeness, validity and affordability of global online elections among an easily captureable pool of self-selected and largely unverifiable voters;

Whereas, the Board is not persuaded that global elections are the only or the best means of achieving meaningful public representation or the informed participation of Internet users in the ICANN (Internet Corporation for Assigned Names and Numbers) process;

Therefore it is resolved [02.15] that the Board again expresses its sincere appreciation to the members of the ALSC for their hard work, sensible analysis, and useful recommendations, and to all the members of the ICANN (Internet Corporation for Assigned Names and Numbers) community that participated in that process;

Resolved [02.16] that ICANN (Internet Corporation for Assigned Names and Numbers) should have a robust At Large mechanism for meaningful, informed participation by Internet users of the kind recommended in the ALSC report;

Resolved [02.17] that the Board calls upon the ICANN (Internet Corporation for Assigned Names and Numbers)

community to devote sustained energy to the creation of At Large structures built upon bottom-up, self-organized, local Internet community institutions and other organizations that meet the general criteria of openness, participation, and self-sustainability, anticipating that most such entities are not ICANN (Internet Corporation for Assigned Names and Numbers)-specific, but already serve their communities in broader ways;

Resolved [02.18] that the Board expresses the hope that its endorsement of these principles for informed Internet user participation will encourage those interested in an At Large structure to continue the creation, strengthening, or coordinating of local Internet community institutions so as to meet these basic criteria; and

Resolved [02.19] that the Board Committee on Restructuring, working in conjunction with the President and staff, is instructed to ensure that their ongoing efforts at crafting a blueprint for ICANN (Internet Corporation for Assigned Names and Numbers) reform include (a) workable mechanisms and procedures that enable meaningful opportunities for participation by the full range of Internet users, including individuals, academic institutions, large and small businesses, non-commercial entities (including consumer groups), and other non-governmental organizations, (b) an appropriate role for those interests in ICANN (Internet Corporation for Assigned Names and Numbers)'s coordinating and management structures, and (c) appropriate mechanisms to minimize disruption during the reform implementation process.

The resolutions were adopted by a vote of 14-1-2, with Mr. Auerbach voting against and Dr. Kyong and Mr. Mueller-Maguhn abstaining.

After a break from 10:34 UTC to 11:09 UTC (10:34 am to 11:09 am local time), Dr. Cerf reconvened the Board and presented a reorganized list of agenda items.

Evolution and Reform Committee

Dr. Blokzijl moved, with Mr. Kraaijenbrink's second, that the Board adopt the following resolutions:

[1] Whereas, a Committee on Restructuring ("Committee") was established by the Board in resolution 01.132;

[2] Whereas, a more appropriate name for this Committee would be the Committee on ICANN (Internet Corporation for Assigned Names and Numbers) Evolution and Reform;

[3] Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) President has published a Report describing current issues facing ICANN (Internet Corporation for Assigned Names and Numbers) and recommending various reforms to deal with those issues;

[4] Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) staff has posted a document describing the current activities of ICANN (Internet Corporation for Assigned Names and Numbers) as a contribution to the ongoing dialogue concerning ICANN (Internet Corporation for Assigned Names and Numbers)'s mission;

[5] Whereas, the Committee is responsible for monitoring community discussion on the full range of ICANN (Internet Corporation for Assigned Names and Numbers) reform topics, and for evaluating and making recommendations to the Board concerning any specific proposals for reforming ICANN (Internet Corporation for Assigned Names and Numbers) structures and procedures, including the President's Report noted above;

[6] Whereas, it is important that steady and real progress be made toward resolving the various reform issues now under discussion in the ICANN (Internet Corporation for Assigned Names and Numbers)

community, and that a proposed blueprint and timetable for the implementation of any such reforms be available for Board action at its Bucharest meeting in June, and for public review and comment prior to that meeting;

[7] Therefore it is resolved [02.20] that the name of this Board Committee is changed to the Committee on ICANN (Internet Corporation for Assigned Names and Numbers) Evolution and Reform;

[8] Resolved that the Committee is instructed to report to the Board its recommendations for a framework for the structure and functioning of a reformed ICANN (Internet Corporation for Assigned Names and Numbers), and a timetable for implementing that framework, no later than 31 May 2002, so that it can be considered by the Board at its upcoming meeting in Bucharest on 28 June 2002;

[9] Resolved the Committee is instructed that this framework and timetable should include recommendations dealing with the following:

[9.1] first and foremost, a list of essential functions of ICANN (Internet Corporation for Assigned Names and Numbers), and a proposed mission statement for ICANN (Internet Corporation for Assigned Names and Numbers);

[9.2] the appropriate form of public-private partnership to ensure that ICANN (Internet Corporation for Assigned Names and Numbers) decisionmaking takes proper account of the public interest in its activities;

[9.3] meaningful participation and input from informed Internet users participating through an At Large mechanism, as described in resolution 02.17;

[9.4] the structured participation of all stakeholders in the organization's deliberations and decision making, and in providing input for policy that guides the decisions;

[9.5] the ways the different components of any proposed structure will function together and interact;

[9.6] the system of checks and balances that will ensure both the effectiveness and the openness of the organization.

[9.7] the ways in and conditions under which essential components of any proposed structure that may not be able to be fully incorporated at the start of the reform process will be included when appropriate; and

[9.8] a description of a proposed transition process from the current structure to any recommended new structure, including a description of how the present components of ICANN (Internet Corporation for Assigned Names and Numbers) relate to the new proposed structure, and the anticipated timetable for that transition;

[10] Resolved that the Board strongly encourages comments and suggestions relating to ICANN (Internet Corporation for Assigned Names and Numbers) evolution and reform from all stakeholders to the Committee as soon as possible, and encourages the Committee to inform the community as soon as possible of any deadlines for such input;

[11] Resolved that the Committee should consider all input from the community through the forums established by the President and other public forums, and is encouraged to consult any parties that express themselves through such forums, or through

> correspondence directed to the committee's email address, where the Committee determines that it requires clarifications or further input from specific stakeholders;
>
> [12] Resolved that the Committee should work closely with the President and staff throughout this process; and
>
> [13] Resolved that the Committee is instructed to ensure that any recommendations to be considered by the Board at its meeting in Bucharest on 28 June 2002 are posted for public review and comment no later than 31 May 2002.

Mr. Abril i Abril suggested that they list the names of the members when referring to the Committee on Restructuring in clause [1]. This amendment was made by consensus. At Mr. Mueller-Maguhn's suggestion, clause [9.2] was modified by consensus by changing "the appropriate form of public-private partnership to ensure" to read "ensuring".

Mr. Auerbach said it was premature to charter a Committee on Reform until ICANN (Internet Corporation for Assigned Names and Numbers)'s scope is more clearly defined. Dr. Blokzijl expressed his opinion that the resolutions already contemplate the two-step process of defining ICANN (Internet Corporation for Assigned Names and Numbers)'s scope and designing an appropriate structure. Mr. Katoh urged the Internet community and the ICANN (Internet Corporation for Assigned Names and Numbers) community to focus on the document entitled "What ICANN (Internet Corporation for Assigned Names and Numbers) Does (/general/toward-mission-statement-07mar02.htm)" as a good starting point for discussion and he urged the Internet community to give the Board specific comments about what ICANN (Internet Corporation for Assigned Names and Numbers) should or should not do.

Mr. Auerbach moved, with Mr. Schink's second, to amend the resolutions to add a clause stating that: "the Committee shall not

begin to consider issues of reform until such time as they have prepared a written statement of essential function and have obtained comment from the public and the Board." Mr. Mueller-Maguhn spoke in support of Mr. Auerbach's amendment. Dr. Lynn spoke in opposition to the amendment, stating that its effect was already present in clause [9.1]. Dr. Cerf pointed out that if the Board does not agree with the Committee's definition of the Mission Statement in Bucharest, the Committee will not proceed to implementation. Mr. Kraaijenbrink commented that splitting the reform process as contemplated by the proposed amendment would be detrimental. Dr. Campos noted that attempting to serialize the discussions would delay the whole process. Dr. Lynn stated his view that strict serialization was not feasible.

A vote was taken on Mr. Auerbach's amendment. It was defeated by a vote of 3-14-0, with Mr. Auerbach, Mr. Mueller-Maguhn, and Dr. Schink voting in favor.

There being no further discussion, a vote was called on the main resolutions, which read as follows:

> Whereas, a Committee on Restructuring ("Committee"), presently consisting of Alejandro Pisanty (Chair), Lyman Chapin, Phil Davidson, Hans Kraaijenbrink, and Nii Quaynor, was established by the Board in resolution 01.132 (/minutes/minutes-15nov01.htm#01.132);
>
> Whereas, a more appropriate name for this Committee would be the Committee on ICANN (Internet Corporation for Assigned Names and Numbers) Evolution and Reform;
>
> Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) President has published a Report describing current issues facing ICANN (Internet Corporation for Assigned Names and Numbers) and recommending various reforms to deal with those issues (/general/lynn-reform-proposal-24feb02.htm);
>
> Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) staff has posted a document describing the current activities of ICANN (Internet

Corporation for Assigned Names and Numbers) as a contribution to the ongoing dialogue concerning ICANN (Internet Corporation for Assigned Names and Numbers)'s mission;

Whereas, the Committee is responsible for monitoring community discussion on the full range of ICANN (Internet Corporation for Assigned Names and Numbers) reform topics, and for evaluating and making recommendations to the Board concerning any specific proposals for reforming ICANN (Internet Corporation for Assigned Names and Numbers) structures and procedures, including the President's Report noted above;

Whereas, it is important that steady and real progress be made toward resolving the various reform issues now under discussion in the ICANN (Internet Corporation for Assigned Names and Numbers) community, and that a proposed blueprint and timetable for the implementation of any such reforms be available for Board action at its Bucharest meeting in June, and for public review and comment prior to that meeting;

Therefore it is resolved [02.20] that the name of this Board Committee is changed to the Committee on ICANN (Internet Corporation for Assigned Names and Numbers) Evolution and Reform;

Resolved [02.21] that the Committee is instructed to report to the Board its recommendations for a framework for the structure and functioning of a reformed ICANN (Internet Corporation for Assigned Names and Numbers), and a timetable for implementing that framework, no later than 31 May 2002, so that it can be considered by the Board at its upcoming meeting in Bucharest on 28 June 2002;

Resolved [02.22] the Committee is instructed that this framework and timetable should include recommendations dealing with the following:

> first and foremost, a list of essential functions of ICANN

(Internet Corporation for Assigned Names and Numbers), and a proposed mission statement for ICANN (Internet Corporation for Assigned Names and Numbers);

ensuring that ICANN (Internet Corporation for Assigned Names and Numbers) decisionmaking takes proper account of the public interest in its activities;

meaningful participation and input from informed Internet users participating through an At Large mechanism, as described in resolution 02.17;

the structured participation of all stakeholders in the organization's deliberations and decision making, and in providing input for policy that guides the decisions;

the ways the different components of any proposed structure will function together and interact;

the system of checks and balances that will ensure both the effectiveness and the openness of the organization.

the ways in and conditions under which essential components of any proposed structure that may not be able to be fully incorporated at the start of the reform process will be included when appropriate; and

a description of a proposed transition process from the current structure to any recommended new structure, including a description of how the present components of ICANN (Internet Corporation for Assigned Names and Numbers) relate to the new proposed structure, and the anticipated timetable for that transition;

Resolved [02.23] that the Board strongly encourages comments and suggestions relating to ICANN (Internet Corporation for Assigned Names and Numbers) evolution and reform from all stakeholders to the Committee as soon as possible, and encourages the Committee to inform the

community as soon as possible of any deadlines for such input;

Resolved [02.24] that the Committee should consider all input from the community through the forums established by the President and other public forums, and is encouraged to consult any parties that express themselves through such forums, or through correspondence directed to the committee's email address, where the Committee determines that it requires clarifications or further input from specific stakeholders;

Resolved [02.25] that the Committee should work closely with the President and staff throughout this process; and

Resolved [02.26] that the Committee is instructed to ensure that any recommendations to be considered by the Board at its meeting in Bucharest on 28 June 2002 are posted for public review and comment no later than 31 May 2002.

The resolutions were adopted by a 15-1-1 vote, with Mr. Auerbach voting against and Mr. Mueller-Maguhn abstaining.

Security (Security – Security, Stability and Resiliency (SSR)) Committee Charter

Dr. Lynn moved, with Dr. Blokzijl's second, that the Board adopt the following resolution:

Whereas, in resolution 01.117 (/minutes/minutes-15nov01.htm#01.117) the Board directed the President to appoint a President's standing committee on the security and stability of the Internet's naming and address allocation systems ("Security (Security – Security, Stability and Resiliency (SSR)) Committee") and to develop a proposed charter in collaboration with the President's standing committee and submit it to the Board for its approval;

Whereas, Dr. Stephen Crocker has been appointed as the chair of the Security (Security – Security, Stability and Resiliency (SSR)) Committee and the President is near

finalizing the membership of the committee;

Whereas, the President has, in consultation with the present members of the Security (Security – Security, Stability and Resiliency (SSR)) Committee developed a charter (/committees/security/charter-14mar02.htm), which has been presented to the Board;

Whereas, the Board has reviewed the charter and concludes that it states an appropriate scope and mission for the committee;

Resolved [02.27] that the Security (Security – Security, Stability and Resiliency (SSR)) Committee charter (/committees/security/charter-14mar02.htm) is approved as submitted.

In response to a question by Mr. Abril i Abril, Dr. Lynn said the Committee membership was comprised of approximately 20 distinguished individuals with good geographic and functional diversity. Dr. Lynn stated that he intended to bring a resolution converting the Standing Committee into an Advisory Committee (Advisory Committee) to the next Board meeting for approval.

The resolution was adopted by a 16-1-0 vote, with Mr. Auerbach voting against.

LACNIC (Latin American and Caribbean Internet Addresses Registry) Application and Transition Plan

Dr. Campos moved, with Dr. Pisanty's second, that the Board adopt the following resolutions:

[1] Whereas the President has adopted a set of procedures and standards for the receipt and evaluation of applications for recognition as a regional Internet registry (RIR (Regional Internet Registry)), as authorized by the Board in resolution 01.68;

[2] Whereas an application for recognition, together with a detailed transition plan – including draft bylaws, policies,

funding model, and staff resumes – have been submitted to ICANN (Internet Corporation for Assigned Names and Numbers) by the LACNIC (Latin American and Caribbean Internet Addresses Registry) organization;

[3] Whereas the President has conducted a preliminary evaluation and concluded that the application and transition plan constitute a reasonable basis for eventual recognition, while noting that some adjustments will be necessary;

[4] Whereas APNIC (Asia-Pacific Network Information Center), ARIN (American Registry for Internet Numbers.), and the RIPE (Rseaux IP Europens) NCC have communicated a joint statement praising the excellent work of the LACNIC (Latin American and Caribbean Internet Addresses Registry) organization, noting the close cooperation between ARIN (American Registry for Internet Numbers.) and LACNIC (Latin American and Caribbean Internet Addresses Registry), and recommending a favorable response to the application by recognizing LACNIC (Latin American and Caribbean Internet Addresses Registry)'s accomplishments thus far and according an interim status to LACNIC (Latin American and Caribbean Internet Addresses Registry);

It is:

[5] Resolved that the Board gives its conditional approval to the LACNIC (Latin American and Caribbean Internet Addresses Registry) application for recognition and transition plan, with the expectation that the transition plan will be completed and a final application for recognition will be submitted; and

[6] Resolved that the President is directed to continue working closely with LACNIC (Latin American and Caribbean Internet Addresses Registry) and ARIN (American Registry for Internet Numbers.) to assist in a smooth transition and the preparation of a revised application for full recognition of LACNIC (Latin American and Caribbean Internet Addresses Registry) in conformance with the criteria set forth in ICP-2 and the ASO (Address Supporting Organization) Memorandum of Understanding.

Dr. Blokzijl noted his satisfaction with LACNIC (Latin American and Caribbean Internet Addresses Registry)'s progress. Dr. Pisanty stated his discomfort with the wording of clause [5]. Specifically, he expressed concern that the phrase "conditional approval" suggested more stringent additional requirements than are intended. After some discussion, the Board's consensus was to change "conditional" to "provisional." A vote was then taken on the resolutions, which read:

> Whereas the President has adopted a set of procedures and standards for the receipt and evaluation of applications for recognition as a regional Internet registry (RIR (Regional Internet Registry)), as authorized by the Board in resolution 01.68 (/minutes/minutes-04jun01.htm#01.68);
>
> Whereas an application for recognition, together with a detailed transition plan – including draft bylaws, policies, funding model, and staff resumes – have been submitted to ICANN (Internet Corporation for Assigned Names and Numbers) by the LACNIC (Latin American and Caribbean Internet Addresses Registry) organization;
>
> Whereas the President has conducted a preliminary evaluation and concluded that the application and transition plan constitute a reasonable basis for eventual recognition, while noting that some adjustments will be necessary;
>
> Whereas APNIC (Asia-Pacific Network Information Center), ARIN (American Registry for Internet Numbers.), and the RIPE (Rseaux IP Europens) NCC have communicated a joint statement praising the excellent work of the LACNIC (Latin American and Caribbean Internet Addresses Registry) organization, noting the close cooperation between ARIN (American Registry for Internet Numbers.) and LACNIC (Latin American and Caribbean Internet Addresses Registry), and recommending a favorable response to the application by recognizing LACNIC (Latin American and Caribbean Internet Addresses Registry)'s accomplishments thus far and according an interim status to LACNIC (Latin American and Caribbean Internet Addresses Registry);

It is:

Resolved [02.28] that the Board gives its provisional approval to the LACNIC (Latin American and Caribbean Internet Addresses Registry) application for recognition and transition plan, with the expectation that the transition plan will be completed and a final application for recognition will be submitted; and

Resolved [02.29] that the President is directed to continue working closely with LACNIC (Latin American and Caribbean Internet Addresses Registry) and ARIN (American Registry for Internet Numbers.) to assist in a smooth transition and the preparation of a revised application for full recognition of LACNIC (Latin American and Caribbean Internet Addresses Registry) in conformance with the criteria set forth in ICP-2 and the ASO (Address Supporting Organization) Memorandum of Understanding.

The resolutions were adopted by a 14-0-3 vote, with Mr. Auerbach, Dr. Campos, and Dr. Pisanty abstaining.

Response to United Nations Secretary General Kofi Annan

Dr. Quaynor moved, with Dr. Pisanty's second, that the Board adopt the following resolutions:

[1] Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Board has received, with gratitude, the kind and encouraging wishes of Secretary General Kofi Annan;

[2] Whereas, the Board notes with particular pleasure the receipt of the Secretary General's communication while the Board was meeting in Accra, Ghana;

[3] Whereas, the Board is in agreement with the Secretary General as to the importance of Information and Communications Technology (ICT) in world social and economic affairs, including the Internet;

[4] Now therefore it is resolved that the ICANN (Internet Corporation for Assigned Names and Numbers) Board expresses its deep appreciation to Secretary General Annan and accepts his invitation to participate in the activities of the Secretary General's ICT initiative; and

[5] It is further resolved that the Chairman of the Board of ICANN (Internet Corporation for Assigned Names and Numbers) will undertake to liaise with the appropriate activities and persons engaged in UN ICT work, keeping alert, always, for opportunities for mutually beneficial work between ICANN (Internet Corporation for Assigned Names and Numbers) and the UN and its various subsidiary organizations.

Dr. Lynn moved, with Dr. Kyong's second, to add an additional resolution clause to ask Dr. Quaynor to convey the resolutions to Secretary General Kofi Annan. The amendment was made by consensus. The Board then voted on the resolutions, which read:

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Board has received, with gratitude, the kind and encouraging wishes of Secretary General Kofi Annan;

Whereas, the Board notes with particular pleasure the receipt of the Secretary General's communication while the Board was meeting in Accra, Ghana;

Whereas, the Board is in agreement with the Secretary General as to the importance of Information and Communications Technology (ICT) in world social and economic affairs, including the Internet;

Now therefore [02.30] it is resolved that the ICANN (Internet Corporation for Assigned Names and Numbers) Board expresses its deep appreciation to Secretary General Annan and accepts his invitation to participate in the activities of the Secretary General's ICT initiative;

It is further resolved [02.31] that the Chairman of the Board of

ICANN (Internet Corporation for Assigned Names and Numbers) will undertake to liaise with the appropriate activities and persons engaged in UN ICT work, keeping alert, always, for opportunities for mutually beneficial work between ICANN (Internet Corporation for Assigned Names and Numbers) and the UN and its various subsidiary organizations; and

It is further resolved [02.32] that Director Nii Quaynor be asked to convey these resolutions to the Secretary General.

The resolutions were adopted by a 17-0-0 vote.

Thanks for Organization and Facilitation of Meeting

Dr. Lynn moved, with Dr. Pisanty's second, that the Board adopt the following resolution:

Whereas, the preparation for and execution of the ICANN (Internet Corporation for Assigned Names and Numbers) Ghana meeting (/accra/) has been conducted in an exemplary fashion;

Whereas, the government of Ghana, and the hosts, reflect a true support to the Internet in and its population welcomed participants, and showed their utmost support for the benefits of the Internet;

Whereas, the hospitality, facilities, attention to the needs of the participants and extraordinary efforts to provide support have been without peer;

Whereas, the enormous participation from the region should be the beginning of continued relations;

Now therefore [02.33], the ICANN (Internet Corporation for Assigned Names and Numbers) Board expresses its deep appreciation and thanks, on its own behalf and on behalf of all participants to:

Local Organizers: Dr. Nii Quaynor - ICANN (Internet

Corporation for Assigned Names and Numbers) Board
Member and CEO of Network Computer Systems; Prof.
Clement Dzidonu - President – International Institute for
Information Technology; William Tevie – Network
Computer Systems; Mike Baidoo – Network Computer
Systems; Nancy Dotse – Network Computer Systems;
Johnny Nettey - Network Computer Systems; Joseph
Abanyin – Network Computer Systems; Alfred
Archampong – Network Computer Systems; David
Kumi – Network Computer Systems; Nana Quaynor;
Steve Huter – Network Start-up Resource Centre; Joel
Jaeggli – University of Oregon

Government of Ghana, including: Mr. Hayfron – Ministry
of Communication & Technology; Mr. Percy Amarteifio –
Immigration Service; Mr. Kofi Sekyiamah – Ministry of
Information

Sponsors: Afilias; Agence de la Francophonie; CTO,
.BIZ and .US; Network Computer Systems; NSRC; The
Government of the Republic of Ghana; Global Name
Registry; Valley View University; INIIT; VeriSign.

The Board especially appreciates the efforts of the Organizing
Committee, most particularly the work of Dr. Nii Quaynor,
Nancy Dotse, William Tevie, and Johnny Nettey. Dr. Quaynor
has been an active and instrumental participant in the ICANN
(Internet Corporation for Assigned Names and Numbers)
process, including very active in ensuring and promoting
participation from the African region.

In addition, the Board expresses its great appreciation to
Diane Schroeder, Steve Huter, Joel Jaeggli; John Crain, Terri
Darrenougue; Laura Brewer; and the ICANN (Internet
Corporation for Assigned Names and Numbers) staff for their
continued extraordinary service to ICANN (Internet
Corporation for Assigned Names and Numbers) and the
ICANN (Internet Corporation for Assigned Names and
Numbers) community.

Mr. Cohen expressed the Meetings Committee's deep appreciation

for the excellent work done by the organizers of the meeting. A token of the Board's appreciation was presented to Dr. Quaynor, to a standing ovation. The resolution was adopted by a 16-0-1 vote, with Dr. Quaynor abstaining.

Thanks to Paul Twomey and the Australian Government

Dr. Cerf moved, with Dr. Blokzijl's second, that the Board adopt the following resolution:

> Whereas, Dr. Paul Twomey has served ICANN (Internet Corporation for Assigned Names and Numbers), its Governmental Advisory Committee (Advisory Committee) (/committees/gac/) (GAC (Governmental Advisory Committee)), and the Internet Community with skill, wisdom, and panache as Chairman since February 1999;
>
> Whereas, the Government of Australia has generously provided secretariat services to the GAC (Governmental Advisory Committee) for the same period of time,
>
> Whereas, Dr. Twomey has announced his intention to step down from his GAC (Governmental Advisory Committee) position and its chairmanship at the close of the October 2002 meeting in Shanghai; and
>
> Whereas, the Government of Australia has announced that it would end its operation of the GAC (Governmental Advisory Committee) secretariat at the close of the June 2002 meeting in Bucharest;
>
> Now therefore [02.34] resolved that the ICANN (Internet Corporation for Assigned Names and Numbers) Board expresses its deep appreciation to Paul Twomey and the Australian Government for their long-standing support and leadership in connection with ICANN (Internet Corporation for Assigned Names and Numbers)'s mission. The Board wishes Dr. Twomey all possible success in his future work and expresses the hope that his knowledge and perspective will continue to be available to ICANN (Internet Corporation for Assigned Names and Numbers) in the future.

The resolution was adopted by acclamation.

Thanks to Agence de la Francophonie

Dr. Cerf moved, with Mr. Cohen's second, that the Board adopt the following resolution:

> Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) meetings in Accra have been greatly enriched by the availability of simultaneous English-French and French-English translation, supported by the Agence de la Francophonie;
>
> Whereas, this valuable translation initiative has been led by Pierre Ouedraogo, without whose energy and commitment it would not have been possible;
>
> It is:
>
> Resolved [02.35] that the ICANN (Internet Corporation for Assigned Names and Numbers) Board expresses its sincere thanks and appreciation to the Agence de la Francophonie and to Pierre Ouedraogo, whose efforts have helped the ICANN (Internet Corporation for Assigned Names and Numbers) community better fulfill its mandate to enable global participation in our dialogues.

The resolution was adopted by acclamation.

The Board of Directors then recessed for lunch at 12:10 UTC (12:10 pm local time).

The meeting resumed at 13:39 UTC (1:39 pm local time).

.org Reassignment

Mr. Abril i Abril moved, with Dr. Blokzijl's second, that the Board adopt the following resolutions:

> Whereas, the May 2001 .org registry agreement (/tlds/agreements/verisign/org-index.htm) between VeriSign,

Inc., and ICANN (Internet Corporation for Assigned Names and Numbers) provides that VeriSign will cease being the registry operator for .org top-level domain as of 31 December 2002;

Whereas, at its meeting in Stockholm, Sweden, on 4 June 2001 (/stockholm/), the ICANN (Internet Corporation for Assigned Names and Numbers) Board referred (/accra/org-topic.htm) to the ICANN (Internet Corporation for Assigned Names and Numbers) Domain Name (Domain Name) Supporting Organization (Supporting Organization) (DNSO (Domain Name Supporting Organisation)) the issues raised by the scheduled transition of the operation of the .org top-level domain from VeriSign to a new entity;

Whereas, in response, the DNSO (Domain Name Supporting Organisation) created a task force, which prepared a report that makes several recommendations, which was adopted by the DNSO (Domain Name Supporting Organisation) Names Council (http://www.dnso.org/dnso/notes/20020117.NCteleconf-minutes.html) on 17 January 2002;

Whereas, the report was posted on the ICANN (Internet Corporation for Assigned Names and Numbers) web site (/accra/org-topic.htm) on 26 February 2002;

Whereas, public comment on the report was received by a web-based forum (http://forum.icann.org/org/) and at the ICANN (Internet Corporation for Assigned Names and Numbers) Public Forum held in Accra, Ghana, on 13 March 2002 (/accra/index.html#13March);

Resolved [02.36] that the President is directed to cause a request for proposals for the reassignment of the .org top-level domain to be prepared (in consultation with the members of the Board) and issued, with at least thirty days allowed for applications by those proposing to become the successor operator of the .org top-level domain;

Resolved [02.37] that the applications when received will be posted on the ICANN (Internet Corporation for Assigned

Names and Numbers) web site with a mechanism allowing public comment;

Resolved [02.38] that the President is directed to cause the applications to be evaluated and a report to be posted and provided to the Board in advance of the ICANN (Internet Corporation for Assigned Names and Numbers) Bucharest meeting in June 2002; and

Resolved [02.39] that the President is requested to prepare and present to the Board a proposal for application fee levels based on ICANN (Internet Corporation for Assigned Names and Numbers)'s likely costs in connection with soliciting and reviewing the applications, making the selections, and any related costs.

Mr. Abril i Abril said the Board should make clear its position with regard to the recommendations made by the DNSO (Domain Name Supporting Organisation) Names Council and he commented that (1) the DNSO (Domain Name Supporting Organisation) report is too weak on the technical requirements for the registry; (2) the registry should not use surplus funds for non-registry purposes. Dr. Blokzijl pointed out that the technical requirements for operating .org, with an existing user base of about 3 million people and organizations, is more demanding than the requirements for a newly created top-level domain. Mr. Auerbach supported the statement of the DNSO (Domain Name Supporting Organisation) that there should be no eligibility requirements for registrations in .org. Dr. Cerf summarized three points he felt the Board should provide as guidance to the President: (1) the nature of the organization that undertakes to run .org does not have to be not-for-profit; (2) the Board should specifically recommend against any requirement for support of activities that are not specifically relevant to operating the .org domain; (3) the Board should explicitly recommend that there be no restrictions or constraints on the registrants in the .org domain. In addition, Dr. Lynn suggested a fourth point: (4) that preference be given to organizations that either directly or through subcontracting demonstrate experience in operating a registry of scale. Dr. Pisanty stressed the importance of stability, efficiency, good operation, pricing, and services of the new registry operator.

Dr. Cerf proposed that the Board convey its guidance informally to the President, rather than by express resolution language. This approach was accepted. Four points emerged as supported by the majority of the Board: (1) the crucial importance of demonstrated technical ability, without unduly restricting the pool of applicants; (2) there should be no restrictions on eligibility for registrations (there were some qualifications to Mr. Abril i Abril's views on this); (3) there should be no explicit mechanism in ICANN (Internet Corporation for Assigned Names and Numbers)'s relationship with the registry operator for the use of excess registry revenues for "good works" (although the operator could choose to spend excess funds as it saw fit); and (4) there should be no preference in favor or against not-for-profit applicants.

The resolutions were adopted by a 17-0-0 vote.

.pro Agreement

Dr. Lynn moved, with Mr. Cohen's second, that the Board adopt the following resolutions:

> Whereas, in <u>resolutions 00.89 (/minutes/minutes-annual-meeting-16nov00.htm#00.89)</u> and <u>00.90 (/minutes/minutes-annual-meeting-16nov00.htm#00.90)</u> the Board selected seven new TLD (Top Level Domain) proposals for negotiations toward appropriate agreements between ICANN (Internet Corporation for Assigned Names and Numbers) and the proposing registry operators and sponsoring organizations and authorized the President and General Counsel to conduct those negotiations on behalf of ICANN (Internet Corporation for Assigned Names and Numbers);
>
> Whereas, one of the <u>selected proposals was by RegistryPro (/tlds/pro2/)</u> for an unsponsored .pro TLD (Top Level Domain);
>
> Whereas, negotiations of the .pro agreement were concluded and posting of the resulting draft agreement and appendices on the ICANN (Internet Corporation for Assigned Names and Numbers) web site was completed on 6 March 2002;
>
> Whereas, a <u>web-based forum</u>

(http://forum.icann.org/newtldagmts/) was made available for public comment and the issue was discussed at the ICANN (Internet Corporation for Assigned Names and Numbers) Public Forum on 13 March 2002 (/accra/index.html#13March);

Whereas, after hearing community views the Board concludes that entry of the negotiated agreement would be in the interest of the Internet community;

Resolved [02.40], that the President is authorized to enter the .pro registry agreement, with any minor corrections as the President determines are consistent with the intention of the agreement as posted; and

Further resolved [02.41], that the President is authorized to implement the agreement once it is signed, including by accrediting registrars for the .pro top-level domain (in that regard, registrars already accredited and in good standing for .aero, .biz, .com, .info, .name, .net, or .org may be accredited for .pro without additional qualifying procedures upon entering an accreditation agreement that the President determines is consistent with the existing accreditation agreement (/registrars/ra-agreement-17may01.htm) for .aero, .biz, .com, .info, .name, .net, and .org).

Mr. Abril i Abril expressed concerns regarding the possibility of registration of second-level domains within .pro, which he felt would breach the logic and clarity of the domain. Mr. Auerbach inquired about the differences between the original .pro proposal and the agreement; Dr. Wilson noted these had been described in a posted document (/accra/pro-agmt-topic.htm). In response to Mr. Abril i Abril's concern, Dr. Lynn pointed out that second-level domains could only be implemented with ICANN (Internet Corporation for Assigned Names and Numbers)'s approval. Dr. Cerf clarified that the agreement with the operator will restrict registrations to organizations or individuals with professional authority or certification, and Section 2.6 of the agreement allows for the Staff and Board to question any improper use of the second-level domain. Dr. Blokzijl expressed his opinion that ICANN (Internet Corporation for Assigned Names and Numbers) should not micromanage any particular TLD (Top Level Domain).

The resolutions were adopted by a 16-0-1 vote, with Mr. Auerbach abstaining.

Dr. Lynn noted that this completed the seven new TLD (Top Level Domain) agreements and he thanked all of those who worked with ICANN (Internet Corporation for Assigned Names and Numbers) on the negotiations, including the ICANN (Internet Corporation for Assigned Names and Numbers) staff and outside counsel. In response to a question by Mr. Auerbach, Dr. Lynn noted that there was US$323,000 left in application fees, which would be used for the costs of evaluation and any litigation.

Geographic and Geopolitical Names in .info

Mr. Cohen moved, with Mr. Kraaijenbrink's second, that the Board adopt the following resolutions:

> Whereas, in resolution 01.93 (/minutes/minutes-10sep01.htm#01.93) the President was directed to propose to the Board an action plan for rapid analysis of the technical and other issues related to registration of domain names in .info corresponding to geographic and geopolitical names;
>
> Whereas, on 11 October 2001 the Names Council adopted a resolution (http://www.dnso.org/clubpublic/council/Arc06/doc00010.doc) commenting on this issue, and on 26 October 2001 the Governmental Advisory Committee (Advisory Committee) submitted additional commentary (/committees/gac/names-council-resolution-commentary-26oct01.htm), both of which were posted on ICANN (Internet Corporation for Assigned Names and Numbers) web sites;
>
> Whereas, the President's proposed action plan (/montevideo/action-plan-country-names-09oct01.htm) was posted on the ICANN (Internet Corporation for Assigned Names and Numbers) website on 9 October 2001, proposing creation of an .info Country Names Discussion Group (ICNG) consisting of Board members and representatives of GAC (Governmental Advisory Committee) participants and additional individuals invited by the President;

Whereas, in resolution 01.122 (/minutes/minutes-15nov01.htm#01.122) the Board accepted the President's recommendation to appoint the ICNG;

Whereas, under resolution 01.123 (/minutes/minutes-15nov01.htm#01.123) the President invited representatives from WIPO (World Intellectual Property Organization), Afilias, and the DNSO (Domain Name Supporting Organisation) Chair also to participate in the ICNG;

Whereas, the ICNG extensively discussed the issues through a preliminary physical meeting, conference calls, and e-mail;

Whereas, the ICNG's draft final report (/accra/icng-topic.htm) was posted for public comment on 21 February 2002;

Whereas, public comment and input to the draft report (/minutes/minutes-15nov01.htm#01.122) by the community occurred;

Whereas, the ICNG notes that while it recommends to proceed with restriction of use of the reserved names in .info to governments and distinct economies, because of the variety of ways of spelling country names, the ICNG recommended exploring the potential utility of a new top level domain (TLD (Top Level Domain)) specifically for uses only by governments of countries and distinct economies; and

Whereas, the ICNG deserves recognition as an example of the ability of the Board and the GAC (Governmental Advisory Committee), as an advisory body, to constructively reach resolution on a controversial issue;

Resolved [02.42] that the Board thanks the ICNG for its work and accepts its report;

Resolved [02.43] that the Board adopts the ICNG recommendation that the 329 country names reserved under resolution 01.92 should be made available for registration by the governments and public authorities of the areas associated with the names and directs the General Counsel to cause those names to be made available to those

governments and public authorities according to procedures established by the GAC (Governmental Advisory Committee);

Resolved [02.44] that, in view of the second recommendation in the ICNG report, the Board invites the GAC (Governmental Advisory Committee) to investigate the level of interest by governments and distinct economies for a TLD (Top Level Domain) to be used internationally for official purposes, and if established, what criteria and ground rules are necessary for such a TLD (Top Level Domain).

The question was called, and the Board adopted the resolutions by a 14-1-2 vote, with Mr. Auerbach voting against and Mr. Abril i Abril and Mr. Mueller-Maguhn abstaining.

Redemption Grace Period

Dr. Cerf described the topic of redemption grace period, in which domain names that expire would go into a period of stasis after their deletion, so that inadvertent expirations can be corrected. The names would be disabled during this stasis period, so that the registrant's attention would be drawn to the deletion.

Mr. Cohen moved, with Mr. Abril i Abril's second, that the Board adopt the following resolution:

[1] Whereas, on 14 February 2002 the ICANN (Internet Corporation for Assigned Names and Numbers) staff posted a proposal to establish a Redemption Grace Period for unsponsored TLDs under which names deleted by registrars would be deactivated for thirty days, during which the registrant could redeem the name through a registrar before being subject to re-registration;

[2] Whereas, the proposal was the topic of discussion by registrars, registry operators, and users, including at numerous meetings, through e-mail, and at the ICANN (Internet Corporation for Assigned Names and Numbers) Public Forum held 13 March 2002 in Accra, Ghana;

[3] Whereas, the commentary received has shown that some

domain names are being deleted without the intention of the domain-name holder;

[4] Whereas, the community discussions have demonstrated broad support for the general points of the Redemption Grace Period Proposal, with the recognition that several technical details must be worked out before the proposal can be implemented;

[5] Resolved that the President is authorized to convene a technical steering group (including knowledgeable registry and registrar personnel) to develop a concrete proposal implementing the Redemption Grace Period Proposal, to be considered by the Board at a later meeting after posting on the ICANN (Internet Corporation for Assigned Names and Numbers) web site and an opportunity for public comment.

Mr. Abril i Abril noted that the goal of the Redemption Grace Period is not purely technical or to preserve registrars' businesses, but is centered on preserving the legitimate interests of the registrants by installing a safety net.

Mr. Auerbach inquired as to why the resolution authorized the President to convene a committee instead of handing the issue over to the DNSO (Domain Name Supporting Organisation). Mr. Touton explained that errors in deletions were on the rise and prompt action was needed. The DNSO (Domain Name Supporting Organisation) process would delay implementation considerably, and accordingly action should move forward with the President's committee, which will be composed of DNSO (Domain Name Supporting Organisation) participants. Dr. Pisanty pointed out that the DNSO (Domain Name Supporting Organisation) Chair posted a very aggressive schedule of meetings for structure issues and could possibly include this issue and get timely input. Dr. Cerf suggested the Board proceed with the resolution with the understanding that the President would alert the DNSO (Domain Name Supporting Organisation) for a rapid response on the issue.

Dr. Wilson proposed adding language to clause [5] encouraging the President to engage quickly with the DNSO (Domain Name Supporting Organisation) on this issue. By consensus, the phrase

"and in consultation with the Domain Name (Domain Name) Supporting Organization (Supporting Organization)" was added after "knowledgeable registry and registrar personnel" in clause [5].

The Board then voted on the amended resolution, which stated:

> Whereas, on 14 February 2002 the ICANN (Internet Corporation for Assigned Names and Numbers) staff posted a proposal to establish a Redemption Grace Period (/registrars/redemption-proposal-14feb02.htm) for unsponsored TLDs under which names deleted by registrars would be deactivated for thirty days, during which the registrant could redeem the name through a registrar before being subject to re-registration;
>
> Whereas, the proposal was the topic of discussion by registrars, registry operators, and users, including at numerous meetings, through e-mail, and at the ICANN (Internet Corporation for Assigned Names and Numbers) Public Forum held 13 March 2002 in Accra, Ghana;
>
> Whereas, the commentary received has shown that some domain names are being deleted without the intention of the domain-name holder;
>
> Whereas, the community discussions have demonstrated broad support (http://www.icann.org/accra/redemption-topic.htm) for the general points of the Redemption Grace Period Proposal, with the recognition that several technical details must be worked out before the proposal can be implemented;
>
> Resolved [02.45] that the President is authorized to convene a technical steering group (including knowledgeable registry and registrar personnel and in consultation with the Domain Name (Domain Name) Supporting Organization) to develop a concrete proposal implementing the Redemption Grace Period Proposal, to be considered by the Board at a later meeting after posting on the ICANN (Internet Corporation for Assigned Names and Numbers) web site and an opportunity for public comment.

The resolution was adopted by a 17-0-0 vote.

Independent Review Implementation

Mr. Kraaijenbrink moved, with Dr. Schink's second, that the Board adopt the following resolutions:

> Whereas, in resolutions 01.49 through 01.51 (/minutes/minutes-07may01.htm#IndependentReview) the Board called for the Independent Review Nominating Committee to present a slate of nine nominees meeting the requirements of the Independent Review Policy;
>
> Whereas, the Committee has been unable to present a slate of nine nominees under the Independent Review Policy in the ten months that have passed since the call for nominations;
>
> Whereas, the General Counsel has presented to the Board (/accra/indrev-topic.htm) a description of the significant difficulties that have confronted the Nominating Committee and has recommended that the Board thank the committee members for their efforts and immediately begin a review of the Independent Review Policy with the goal of providing a more workable independent review mechanism;
>
> Whereas, particularly in view of the ongoing discussions of the need for broader ICANN (Internet Corporation for Assigned Names and Numbers) reforms, the Board believes that the present Independent Review Policy (/committees/indreview/policy.htm) should be reviewed and evaluated in the larger context of ICANN (Internet Corporation for Assigned Names and Numbers) reform;
>
> Whereas, in resolution 01.132 (/minutes/minutes-15nov01.htm#01.132) the Board established a Committee on Restructuring (since renamed the Committee on ICANN (Internet Corporation for Assigned Names and Numbers) Evolution and Reform in resolution 02.20), to monitor and provide reports to the Board on restructuring issues;
>
> Resolved [02.46] that the members of the Independent

Review Nominating Committee are thanked for their service in attempting to carry out the extremely challenging task presented to them and the committee is excused from further service;

Further resolved [02.47] that the issues concerning an independent review mechanism are referred to the Committee on ICANN (Internet Corporation for Assigned Names and Numbers) Evolution and Reform for its consideration in the context of its ultimate recommendations on ICANN (Internet Corporation for Assigned Names and Numbers) evolution and reform.

Dr. Pisanty commented that the standards set for the constitution of the Independent Review Panel (IRP) were unrealistically high. Mr. Abril i Abril agreed. Dr. Cerf noted that it was hard to populate the Nominating Committee and it was hard for the Nominating Committee to populate the IRP. Dr. Wilson noted that she chaired the Independent Review Advisory Committee, which had recommended the current plan, but that she has come to believe that what that committee proposed was not workable because one could not expect volunteers to take on the tasks that were assigned and meet all the criteria that the community and the bylaws required. Dr. Schink noted a very strong North American dominance on the list of nominees and he asked that they have regional diversity in the process, especially for the legal aspects involved.

Mr. Auerbach stated his view that the particular problems reported by the General Counsel (/accra/indrev-topic.htm) did not undermine the current policy, but instead required renewed implementation efforts.

The resolutions were adopted by a 13-1-2 vote, with Mr. Auerbach voting against, Mr. Mueller-Maguhn and Dr. Schink abstaining, and Dr. Blokzijl temporarily absent from the room.

Retention of Auditors

Mr. Davidson moved, with Dr. Blokzijl's second, that the Board adopt the following resolutions:

> Whereas, the Audit Committee has recommended that ICANN (Internet Corporation for Assigned Names and Numbers) seek to retain KPMG, LLP, to conduct an audit of ICANN (Internet Corporation for Assigned Names and Numbers)'s financial reports for the 2001-2002 fiscal year;
>
> Resolved [02.48] that the President is authorized to negotiate, in consultation with the Audit Committee, with KPMG, LLP, regarding the terms of its engagement to audit ICANN (Internet Corporation for Assigned Names and Numbers)'s financial reports for the 2001-2002 fiscal year;
>
> Resolved [02.49] that the Audit Committee is delegated authority to authorize, upon recommendation of the President, entry of an agreement with KPMG, LLP, under which the audit for the 2001-2002 fiscal year will be conducted.

Mr. Mueller-Maguhn inquired as to how long ICANN (Internet Corporation for Assigned Names and Numbers) will engage KPMG and how often ICANN (Internet Corporation for Assigned Names and Numbers) will change its auditors. Dr. Lynn replied that this would be the third year with KPMG and he pointed out that it is difficult for ICANN (Internet Corporation for Assigned Names and Numbers) to find a major auditing firm due to the amount of work required to understand the particular nature of ICANN (Internet Corporation for Assigned Names and Numbers)'s work. Mr. Davidson noted that this was discussed in the Audit Committee, which believes there is significant value in retaining auditors who had expertise in knowing the organization. The Audit Committee recommends retaining KPMG for another year. Dr. Cerf suggested that Mr. Mueller-Maguhn call any questions regarding the auditors to the Audit Committee and let it decide based on its various criteria whether it is appropriate to change.

The resolutions were adopted by a 14-1-2 vote, with Mr. Auerbach voting against and Mr. Mueller-Maguhn and Dr. Lynn abstaining.

Other Matters

Dr. Cerf advised the Board that he would seek to find a date and place, before Bucharest, where the Board could meet again to

continue its discussions about ICANN (Internet Corporation for Assigned Names and Numbers)'s state and direction. Dr. Cerf also expressed the Board's gratitude to the local hosts, the translators, the staff, the real-time translators, and the real-time captioners.

There being no further business, the meeting was adjourned at 14:54 UTC (2:54 pm local time).

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Louis Touton
Secretary

ICANN Board Discussion of .org Reassignment

(Accra, Ghana—14 March 2002)

Note: The following is the output of the real-time captioning taken of a discussion of .org Reassignment by the ICANN Board on 14 March 2002 at its public meeting in Accra, Ghana. Although it is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors.

Although this captioning is not authoritative, it may be helpful to those preparing proposals to become the successor operator of .org. Captioning for the full afternoon session of the Board meeting on 14 March 2002 is posted here.

ICANN Board Discussion of .org Reassignment

Accra, Ghana
Thursday Afternoon, March 14, 2002

[Earlier proceedings on other topics omitted.]

>>**VINTON CERF:** THEN I'LL TAKE IT THAT – I'LL TAKE IT THAT WE CAN INTRODUCE THIS RESOLUTION, WHICH I WILL READ FOR THE BENEFIT OF THE PEOPLE IN THE AUDIENCE WHO HAVE REQUESTED IT.

WHEREAS THE MAY 2001 DOT ORG REGISTRY AGREEMENT BETWEEN VERISIGN, INC., AND ICANN PROVIDES THAT VERISIGN WILL CEASE BEING THE REGISTRY OPERATOR FOR DOT ORG TOP-LEVEL DOMAIN AS OF 31 DECEMBER 2002;

WHEREAS AT ITS MEETING IN STOCKHOLM, SWEDEN, ON 4 JUNE 2001, THE ICANN BOARD REFERRED TO THE ICANN DOMAIN NAME SUPPORTING ORGANIZATION, DNSO, THE ISSUES RAISED BY THE SCHEDULED TRANSITION OF THE OPERATION OF THE DOT ORG TOP-LEVEL DOMAIN FROM VERISIGN TO A NEW ENTITY;

WHEREAS IN RESPONSE, THE DNSO CREATED A TASK FORCE WHICH PREPARED A REPORT THAT MAKES SEVERAL RECOMMENDATIONS, WHICH WAS ADOPTED BY THE DNSO NAMES COUNCIL ON 17 JANUARY 2002;

WHEREAS THE REPORT WAS POSTED ON THE ICANN WEB SITE ON 26 FEBRUARY 2002;

WHEREAS PUBLIC COMMENT ON THE REPORT WAS RECEIVED BY A WEB-BASED FORUM AND AT THE ICANN PUBLIC FORM HELD IN ACCRA, GHANA ON 13 MARCH 2002.

RESOLVED THAT THE PRESIDENT IS DIRECTED TO CAUSE A REQUEST FOR

PROPOSALS FOR THE REASSIGNMENT OF THE DOT ORG TOP-LEVEL DOMAIN TO BE PREPARED IN CONSULTATION WITH THE MEMBERS OF THE BOARD, AND ISSUED, WITH AT LEAST 30 DAYS ALLOWED FOR APPLICATIONS BY THOSE PROPOSING TO BECOME THE SUCCESSOR OPERATOR OF THE DOT ORG TOP-LEVEL DOMAIN;

RESOLVED THAT THE APPLICATIONS WHEN RECEIVED WILL BE POSTED ON THE ICANN WEB SITE WITH A MECHANISM ALLOWING PUBLIC COMMENT;

RESOLVED THAT THE PRESIDENT IS DIRECTED TO CAUSE THE APPLICATIONS TO BE EVALUATED AND A REPORT TO BE POSTED AND PROVIDED TO THE BOARD IN ADVANCE OF THE ICANN BUCHAREST MEETING IN JUNE 2002;

AND RESOLVED THAT THE PRESIDENT IS REQUESTED TO PREPARE AND PRESENT TO THE BOARD A PROPOSAL FOR APPLICATION FEE LEVELS BASED ON ICANN'S LIKELY COSTS IN CONNECTION WITH SOLICITING AND REVIEWING THE APPLICATIONS, MAKING THE SELECTIONS, AND ANY RELATED COSTS.

THEREIN IS THE READING OF THE DOT ORG REASSIGNMENT RESOLUTION.

I CALL UPON ANY WILLING BOARD MEMBER TO PUT THIS RESOLUTION ON THE TABLE.

>>VINTON CERF: AMADEU.

IS THERE A SECOND?

ROB BLOKZIJL.

IS THERE ANY DISCUSSION OF THIS RESOLUTION ON THE TABLE?

>>AMADEU ABRIL I ABRIL: YES, SOME DISCUSSION.

THE ITEM I WANTED TO DISCUSS HERE IS RELATIONSHIP WITH THE RECOMMENDATIONS REGARD FROM THE DNSO NAMES COUNCIL.

YESTERDAY THEY MADE SOME QUESTIONS AND IT WAS (INAUDIBLE) AND THE MEMBERS WERE NOT HERE TO ANSWER.

IN ANY CASE, WE HAVE SOME RECOMMENDATIONS, AND HERE WE DON'T SAY ANYTHING CLEAR ABOUT WHAT WE'RE DOING WITH THE RECOMMENDATIONS.

AND WE ARE SUPPOSED TO, SOMEHOW.

AND I WOULD EXPLAIN WHY I OPPOSE SOME OF THE RECOMMENDATIONS, AND I THINK WE SHOULD OPPOSE – OR AT LEAST HOW WE SHOULD INTERPRET THOSE RECOMMENDATIONS.

FIRST OF ALL, I THINK THAT THE DNSO REPORT, WHICH IS A VERY GOOD PIECE OF WORK, IS TOO WEAK ON THE TECHNICAL REQUIREMENTS FOR THE REGISTRY, BUT THIS CAN BE SOLVED.

IT'S NOTHING THAT WOULD BE IN CONTRADICTION WITH.

IT'S JUST THAT IT'S SIMPLY LACKING WITH RECOMMENDATION.

SECONDLY, AND MORE IMPORTANT, THE ASSUMPTION MADE IN THE RECOMMENDATION IS THAT THE REGISTRY COULD BE, AND IT SEEMS ALSO TO SUPPORT THAT, A REGISTRY THAT USES (SURPLUS FUNDS FOR DIFFERENT ACTIVITIES.

I OPPOSE THAT FOR A SERIES OF REASONS.

I DON'T THINK IT'S PRACTICAL.

WE HAVE THE EXPERIENCE WITH THE FAMOUS INTELLECTUAL INFRASTRUCTURE OUT OF THE DOT COM WORKING REGISTRY THAT WE HAD MORE PROBLEMS THAN AT ANY TIME.

SOLVED IT.

I DON'T THINK THE DNS SHOULD BE THE MECHANISM FOR FUNDING OTHER ALTERNATIVE INITIATIVES REGARDLESS OF HOW WELL-INTENTIONED THEY ARE.

AND ALSO THOROUGHLY, I THINK IT WAS ALEX WHO EARLIER POINTED IT OUT, THIS IS NOT BRINGING IN ANY SENSE MORE MONEY FROM PARTS OF THE WORLD TO THE – NONCOMMERCIAL GOALS.

IT'S SIMPLY TAKING MONEY FROM THE NONCOMMERCIAL REGISTRANTS TO FUND WHAT THE MANAGEMENT OF THAT REGISTRY BELIEVES ARE ADEQUATE POLITICAL ISSUES TO FIGHT FOR.

AND I DON'T THINK THAT THE DNS SHOULD BE A MONEY-MAKING MILL FOR ANY POLITICAL-ORIENTED, IN ANY SENSE, ACTIVITY.

I DON'T THINK THIS IS THE GOAL OF A REGISTRY.

AND I THINK WE WILL COMMENT ON THAT, BUT I THINK WE SHOULD MAKE THAT VERY EXPLICIT, THIS CHARGE VERY EXPLICIT.

WE WANT A REGISTRY THAT RUNS THE DOT ORG ON THE BENEFIT OF THE DOT ORG REGISTRANTS; THAT IS, THE NONCOMMERCIAL, IN THE LARGE SENSE, USERS OF THE DNS THAT CHOOSE TO USE THAT CONCRETE TOP-LEVEL DOMAIN.

AND THE OTHER QUESTION THAT I HAVE REGARDING THE RECOMMENDATIONS WITH WHICH I DISAGREE, AND I WOULD LIKE THAT WE MAKE THAT MORE EXPLICIT, THAT IT SAYS SOMEHOW THAT THE BASIC ACTIVITY OF THIS REGISTRY SHOULD BE THE MARKETING OF THE DOT ORG DIFFERENCE, IF YOU WANT.

FRANKLY, I AM SURPRISED THAT THE REGISTRY FOR NONCOMMERCIAL ACTIVITIES NEEDS TO HAVE AS ITS PRINCIPAL ACTIVITY MARKETING.

I THINK IT'S SOME CONTRADICTION.

SECONDLY, I REPEAT, I THINK THE MAIN ACTIVITY HAS TO BE TO RUN THE REGISTRY ON A COST BASIS, EFFICIENT, TECHNICALLY STABLE SITUATION, WHOLLY FOR THE BENEFIT OF THE DNS AND DOT ORG REGISTRANTS, MOST ESPECIALLY.

SO I WANTED ONLY TO MAKE CLEAR THE POINT AT WHICH I DISAGREE WITH THE RECOMMENDATIONS.

NOT ALL OF THEM; JUST THE THREE POINTS.

AND I THINK THE BOARD SHOULD MAKE IT CLEAR THAT IN THE REQUEST WE WILL DIRECT THE STAFF TO GO IN THAT DIRECTION OR SIMPLY FOLLOW THE WHOLE OF THE RECOMMENDATION BY THE NAMES COUNCIL.

THANKS.

>>VINTON CERF: THANK YOU VERY MUCH, AMADEU.

I THINK WE CAN FIND A WAY TO MAKE CLEAR OUR INTENT.

ROB BLOKZIJL.

>>ROBERT BLOKZIJL: YEAH, I WANT NOT SO MUCH TO COMMENT ON THE PROPOSED TEXT.

I WANT TO MAKE CLEAR THAT THE BOARD AND STAFF UNDERSTAND THE FACT THAT THIS IS DIFFERENT FROM CREATING A NEW TOP-LEVEL DOMAIN.

SO WE DON'T HAVE MUCH FREEDOM.

I'M TALKING FROM A TECHNICAL POINT OF VIEW.

WHOEVER IS GOING TO RUN DOT ORG IN THE NEAR FUTURE INHERITS AN EXISTING USER BASE OF ABOUT 3 MILLION PEOPLE AND ORGANIZATIONS, SOME OF THEM INDIVIDUAL PERSONS, SOME OF THEM LARGE ORGANIZATIONS THAT ARE REALLY DEPENDENT UPON THE PROPER OPERATION OF DOT ORG. JUST TO NAME ONE, THE INTERNATIONAL RED CROSS TODAY COULD NOT DO ITS WORK WITHOUT THE REGISTRY DOT ORG.

>>AMADEU ABRIL I ABRIL: ICANN

>>ROBERT BLOKZIJL: ICANN, MAYBE.

THERE IS ALWAYS ICANN.NL.

WHICH IS RESERVED FOR ICANN, BY THE WAY.

SO THERE ARE NOT MANY ORGANIZATIONS THAT HAVE A DEMONSTRATED EXPERIENCE IN RUNNING A REGISTRY WITH 3 MILLION REGISTERED NAMES.

A REGISTRY WHICH HAS ABOUT 10, 12 SERVERS SCATTERED AROUND THE WORLD ON CRUCIAL SPOTS OF THE INTERNET.

THIS IS A LITTLE BIT MORE THAN RUNNING A COUNTRY CODE TOP-LEVEL DOMAIN, FOR INSTANCE.

>>VINTON CERF: THANK YOU VERY MUCH, ROB.

KARL AUERBACH ASKED TO BE GIVEN A CHANCE TO SPEAK TO THIS RESOLUTION, SO KARL, YOU NOW HAVE THE FLOOR.

>>KARL AUERBACH: OKAY.

I HOPE THIS NEW PHONE BRIDGE IS WORKING.

THE RESOLUTION AS I READ IT SEEMS TO AVOID DEALING WITH THE QUESTIONS THAT WERE SO FOUGHT OVER, OR NOT FOUGHT OVER BUT SO MUCH DISCUSSED IN THE DNSO AS TO WHO COULD BE IN DOT ORG.

IN PARTICULAR, WHETHER IT WOULD BE OPEN ONLY TO NONCOMMERCIALS OR WHETHER IT WOULD BE OPEN, AS IT TRADITIONALLY HAS BEEN, TO EVERYONE.

AND AS I UNDERSTAND IT, THE DNSO AND THE NAMES COUNCIL DID ADOPT SEVERAL PRINCIPLES REGARDING THE USE OF DOT ORG.

AND I THINK IT'S QUITE APPROPRIATE TO INCORPORATE THOSE PRINCIPLES INTO THE RESOLUTION ITSELF TO MAKE IT CLEAR THAT WE ARE ADOPTING THE WORK OF THE DNSO.

AND I DON'T WANT TO READ IT HERE ON THE PHONE.

IT WOULD TAKE A LITTLE WHILE.

BUT THERE HAVE BEEN SOME VERY SPECIFIC POINTS THAT THE DNSO HAS PUT FORWARD, AND PROBABLY THE MOST IMPORTANT ONE BEING THAT THERE WOULD BE NO ELIGIBILITY REQUIREMENTS.

THE DOT ORG WOULD CONTINUE TO BE OPERATED WITHOUT ELIGIBILITY REQUIREMENT.

ESSENTIALLY, ANYBODY COULD BE IN IT WITHOUT DEMONSTRATING THAT THEY'RE NON-PROFIT.

AND I'D LIKE TO DISCUSS THAT, BUT I'D ALSO LIKE TO AMEND THE RESOLUTION TO INCORPORATE THE STATEMENT OF THE DNSO.

I DON'T HAVE ANY SPECIFIC LANGUAGE, HOWEVER.

>>VINTON CERF: OKAY.

THANK YOU, KARL.

I THINK THE WAY WE MIGHT APPROACH THIS IS TO TRY TO IDENTIFY KEY ISSUES THAT WE THINK SHOULD BE EXPRESSED IN THIS PARTICULAR RESOLUTION, IF WE FEEL THERE'S NEED FOR MORE GUIDANCE TO THE PRESIDENT AND THE

STAFF.

A POTENTIAL ALTERNATIVE WOULD BE TO CAPTURE THE SENSE OF THIS CONVERSATION THAT WE ARE GOING TO HAVE AND TRY TO ASSURE THAT THE PRESIDENT TAKES THAT INTO ACCOUNT IN HIS PREPARATION FOR THE RFP.

BUT I'M NOT – KARL, I'M NOT TRYING TO DIVERT AWAY FROM THE POSSIBILITY OF AMENDING THIS RESOLUTION TO ACHIEVE SOME OF WHAT YOU'RE SUGGESTING.

LET ME TAKE STUART AND ROB BEFORE WE COME BACK AROUND TO THIS QUESTION OF EDITING THE TEXT.

STUART.

>>STUART LYNN: THANK YOU VERY MUCH.

YES, GUIDANCE FROM THE BOARD WOULD BE VERY HELPFUL.

ONE WAY WE COULD DO THIS IS I CAN TRY AND DIVINE WHAT I SENSE IS HOW THE BOARD FEELS, ENSURE THAT THE STAFF INCORPORATES THAT IN THE RFP, BRING THAT BACK TO THE BOARD TO MAKE SURE THAT I HAVEN'T MISINTERPRETED THE WISDOM OF THE BOARD.

THE OTHER WAY IS FOR THE BOARD TO BE A LITTLE MORE PRECISE IN ITS GUIDANCE.

AND I'M NOT SURE WHICH IT IS.

I HEAR – (INAUDIBLE) IS PRESENT.

I'M VERY SYMPATHETIC TO WHAT AMADEU WAS SAYING ABOUT THE PURPOSE OF THE REGISTRY SHOULD BE TO SERVE THE REGISTRANTS OF THE REGISTRY AND NOT BE IN THE BUSINESS OF WHAT'S EFFECTIVELY TRYING TO DEVELOP FUNDS FOR OTHER PURPOSES.

BUT I'M NOT SURE HOW THE BOARD FEELS ABOUT THAT.

I DISAGREE WITH AMADEU, AS I UNDERSTOOD IT, HIS NOTION ABOUT MARKETING.

NOT FOR PROFITS ALWAYS ENGAGE IN MARKETING.

UNIVERSITIES MARKET FOR STUDENTS AND THEY SELL FOOTBALL TICKETS, TOO, IN THE UNITED STATES, AND WHATEVER SPORTS YOU LIKE IN PERHAPS OTHER PARTS OF THE WORLD.

SO MARKETING DOESN'T WORRY ME PERSONALLY, BUT THE OTHER PART DOES.

SO IN SUMMARY, I FEEL A LITTLE BIT AT SEA IN INTERPRETING THE WISDOM OF THE BOARD BUT I'M HAPPY TO PUNT AND BRING IT BACK TO THE BOARD FOR MORE SPECIFICITY.

>>VINTON CERF: IN THE INTEREST OF NOT PROLONGING YOUR ABILITY TO GET THE RFP OUT, I THINK WE CAN TRY FOR A LITTLE MORE PRECISION.

ROB, YOU HAVE THE FLOOR.

>>ROBERT BLOKZIJL: A WORD FROM THE PAST.

DOT ORG WAS CREATED AT THE SAME TIME AS DOT COM.

DOT COM WAS FOR COMMERCIAL ENTITIES AND DOT ORG FOR NONCOMMERCIAL ORGANIZATIONS, NOT-FOR-PROFIT ORGANIZATIONS.

AND WE SHOULD HAVE LEARNED FROM THE FACT THAT IN AN INTERNET SPACE THAT WAS INCREDIBLY MORE SIMPLE TEN YEARS AGO THAN IT IS TODAY, EVEN THEN IT WAS NOT POSSIBLE TO DRAW A CLEAR LINE.

AND THE CURRENT STATE OF AFFAIRS IS THAT THERE ARE ABOUT CLOSE TO 30 MILLION REGISTRATIONS IN THE DOT COM AND ABOUT 3 MILLION UNDER DOT ORG.

UNDER DOT COM YOU WILL FIND, I'M SURE, IF YOU DO AN ANALYSIS, A LOT MORE COMMERCIAL ACTIVITIES THAN UNDER DOT ORG, BUT YOU WILL FIND NON-PROFITS UNDER DOT COM AND YOU WILL FIND PROFITS UNDER DOT ORG.

THE SECOND POINT IS I THINK IN ANY INDIVIDUAL COUNTRY IN THE WORLD, IT IS VERY DIFFICULT TO GIVE A PROPER DEFINITION OF WHAT IS A NOT-FOR-PROFIT ORGANIZATION.

SO DOING THIS ON THE INTERNATIONAL LEVEL, IT'S AN IMPOSSIBLE TASK.

SO LESS RULES ARE BETTER THAN MORE RULES, I WOULD SAY.

>>VINTON CERF: LET ME TRY TO TAKE UP THIS POINT, AND KARL, I HOPE I WILL BE ABLE TO ADDRESS SOME OF YOUR CONCERNS WITH THIS SUGGESTION.

I THINK THAT THERE ARE AT LEAST THREE VERY SPECIFIC POINTS THAT THE BOARD MIGHT WISH TO MAKE TO THE PRESIDENT.

ONE OF THEM IS THAT THE NATURE OF THE ORGANIZATION THAT UNDERTAKES TO RUN DOT ORG DOES NOT HAVE TO BE NOT FOR PROFIT OR FOR PROFIT.

I THINK WE SHOULD BE NEUTRAL ON THIS POINT.

FOR CLARIFICATION, THE OFFER MADE BY VERISIGN OF THE $5 MILLION ASSISTANCE IS ONLY APPLICABLE IN THE EVENT THAT THE SELECTED ORGANIZATION IS A NOT-FOR-PROFIT ORGANIZATION; ESSENTIALLY, A NONCOMPETITOR.

HOWEVER, THERE IS NO CONSTRAINT, IN MY VIEW, ON ADOPTING, AWARDING THIS PARTICULAR ORGANIZATION TO A FOR-PROFIT; IT'S JUST THEY WOULD NOT HAVE THE BENEFIT OF THAT ADDITIONAL FUNDING FROM VERISIGN.

I SEE YOUR HAND, AMADEU, BUT I HAVE TWO MORE POINTS I'D LIKE TO MAKE.

I THINK THAT WE SHOULD EXPLICITLY RECOMMEND AGAINST ANY SPECIAL PROVISION FOR SUPPORT OF ACTIVITIES THAT ARE NOT SPECIFICALLY RELEVANT TO OPERATING THE DOT ORG DOMAIN.

ANY NOTION THAT SOME PART OF THE FUNDING SHOULD BE DIVERTED FOR GOOD WORKS I THINK MERELY COMPLICATES THE JOB OF THE ORGANIZATION IN SOME VERY DRAMATIC WAY.

SO I WOULD SAY THAT WE SHOULD MAKE NO PROVISION FOR SUCH SPECIAL ACTIVITY.

I WOULD POINT OUT TO YOU THAT ANY ORGANIZATION IS FREE, FOR PROFIT OR NOT, TO EXECUTE GOOD WORKS.

WE DON'T NEED TO DIRECT THAT.

AND FINALLY, I WOULD TAKE ROB'S POINT THAT WE SHOULD EXPLICITLY RECOMMEND THAT THERE BE NO RESTRICTIONS OR CONSTRAINTS ON THE REGISTRANTS IN DOT ORG, PRIMARILY JUST GIVEN PAST HISTORY AND THE CURRENT STATE OF THAT TOP-LEVEL DOMAIN.

SO I WOULD PROPOSE TO EITHER CAPTURE THIS SIMPLY AS A SENSE OF THE BOARD IN THE MINUTES OR PERHAPS EVEN TO RENDER THOSE THREE POINTS, ASSUMING THE BOARD IS AGREEABLE TO THEM, WITHIN THE TEXT OF THE RESOLUTION.

AMADEU HAD HIS HAND UP, THEN STUART, THEN ALEX.

>>AMADEU ABRIL I ABRIL: USE DIFFERENT LANGUAGE FOR DIFFERENT POINTS AND THE FIRST ONE SAID WE HAVE NO CONSTRAINTS, WHICH IS TRUE.

THE SECOND, I THINK THAT WE SHOULD EXPLICITLY ADDRESS, WHICH ADDRESSES YOUR OPINION.

AND THE THIRD ONE IS REGARDING THE NATURE OF THE REGISTRY OPERATOR, OR THE REGISTRY TO MAKE IT SHORT.

NO, WE DON'T HAVE ANY LEGAL CONSTRAINT, BUT WE HAVE SOME RECOMMENDATIONS AND THEN WE ALSO HAVE OUR OPINIONS.

AND I THINK THAT I PERSONALLY, AS DIRECTOR, WOULD LIKE TO RECOMMEND TO STAFF TO SHOW PREFERENCE FOR A NOT-FOR-PROFIT REGISTRY, OR (INAUDIBLE) I WOULD LIKE A DOT ORG REGISTRY TO FUNCTION ON A COST-BASIS ANALYSIS OF THE PRICE.

WHICH IS NOT NECESSARILY THE SAME AS BEING A NOT-FOR-PROFIT ORGANIZATION, BUT IT IS MORE IMPORTANT TO ME.

>>VINTON CERF: STUART LYNN.

>>STUART LYNN: IN ADDITION TO YOUR THREE POINTS, MR. CHAIRMAN, THERE WAS A FOURTH POINT, I BELIEVE, THAT ESSENTIALLY ROB BLOKZIJL WAS RAISING, THAT THE PREFERENCE IS GIVEN TO ORGANIZATIONS WHO EITHER DIRECTLY OR INDIRECTLY – THAT IS, THROUGH SUBCONTRACTING – CAN DEMONSTRATE EXPERIENCE IN OPERATING A REGISTRY OF SCALE.

>>VINTON CERF: POINT IS WELL TAKEN.

ALEX PISANTY.

>>ALEJANDRO PISANTY: I THINK IT'S IMPORTANT TO KEEP IN MIND, AS AMADEU HAS SAID, AS PART OF THE FRAMEWORK FOR ANALYZING THE REASSIGNMENT OF DOT ORG, THE RECOMMENDATIONS OF THE DNSO, BUT THERE'S DEFINITELY, IN MUCH OF WHAT HAS BEEN SAID ALREADY, THE POSSIBILITY THAT MUCH BETTER SERVICE TO A NONCOMMERCIAL COMMUNITY CAN BE AFFORDED BY AN EFFICIENT REGISTRY.

I TAKE THE WORDS OF JAMES LOVE, WHO HAS BEEN DISCUSSING THIS INTENSIVELY, FROM A CONSUMER POINT OF VIEW.

ALSO LOOKING FOR, FIRST OF ALL, EXCELLENT SERVICE, EXCELLENT PRICING.

AND IF THIS IS COMPATIBLE WITH THE OTHER CRITERIAS EXPRESSED BY THE DNSO, THEN I THINK THAT WE SHOULD DO THAT.

THE BOARD SHOULD – WE SHOULD GET THE SENSE OF THE BOARD ON WHETHER THE FOREMOST REQUIREMENT WILL BE THE STABILITY, EFFICIENCY, GOOD OPERATION OF THE REGISTRY AS EXPRESSED BY ROB BLOKZIJL, PRICING AND CONSUMER SERVICE REQUIREMENTS, AND ONLY THEN CONSIDER, I MEAN, IF THINGS WERE STILL EQUAL, CONSIDER THE SUPERVENING POLITICAL STRUCTURE THAT THE DNSO REQUIREMENTS WOULD RECOMMEND, THE GOVERNMENTS OF THE ORGANIZATION THAT TAKES CARE OF THE DOT ORG ITSELF.

>>VINTON CERF: IN ORDER TO NOT PROLONG THIS DISCUSSION OVER MUCH, I'M GOING TO SUGGEST SEVERAL – FIRST I'M GOING TO SUGGEST THAT WE CONVEY OUR VIEWS TO THE PRESIDENT BY WAY OF A SENSE OF THE BOARD RATHER THAN EDITING THE CONTENTS OF THIS RESOLUTION.

SECOND, I WOULD PROPOSE TO YOU THAT WE TAKE THESE SPECIFIC POINTS THAT HAVE BEEN MENTIONED SO FAR AND FIND OUT WHAT OUR – WHETHER WE HAVE AGREEMENT ON THEM OR NOT IN ORDER TO MAKE VERY CONCRETE OUR SENSE TO THE PRESIDENT.

SO I'D LIKE TO BEGIN WITH THE POINT THAT ALEX PISANTY FIRST SAID.

WOULD THERE BE ANY OBJECTION AMONG THE BOARD TO CONVEYING TO THE PRESIDENT THAT A WELL-FUNCTIONING DOT ORG IS PARAMOUNT, AND THAT THAT SHOULD BE A MAJOR CRITERION FOR THE SELECTION, SINCE WE HAVE 3 MILLION USERS WHO WILL BE AFFECTED BY ANY POOR-QUALITY PERFORMANCE?

SO EVIDENCE OF ABILITY TO PERFORM SHOULD BE A VERY HIGH – HIGHLY CRITICAL CRITERION IN THE SELECTION.

MAY I ASK IF THERE'S ANY DISAGREEMENT WITH THAT?

OKAY.

I DON'T KNOW WHETHER KARL OR LINDA HAVE ANYTHING TO SAY ABOUT THAT.

>>KARL AUERBACH: YEAH, I'D LIKE TO JUMP IN HERE FOR A SECOND.

>>VINTON CERF: GO AHEAD, KARL.

>>KARL AUERBACH: IT'S HARD TO TELL ON THE PHONE WHETHER I'VE GOT A SPOT OR NOT.

I'M NOT DISAGREEING WITH YOU HERE.

I JUST WANTED TO, IN PART OF THE DISCUSSION THAT'S GOING ON, I'VE NOTICED WHAT I THINK IS SOME CONFUSION OR AMBIGUITY WITH RESPECT TO THE PERSON OR ENTITY TO WHOM THE OPERATIONAL CONTRACT WOULD BE AWARDED VERSUS THE CONCEPT OF WHO WOULD BE APPROPRIATE REGISTRANTS WITHIN THAT TLD.

AND I THINK WE HAVE TO BE VERY CLEAR TO DISTINGUISH BETWEEN THESE TWO CASES.

LIKE, FOR EXAMPLE, I DON'T REALLY CARE WHETHER IT'S A NON-PROFIT OR FOR-PROFIT OPERATOR.

TO ME, IT DOESN'T MAKE ANY DIFFERENCE AS LONG AS THEY DO GOOD-QUALITY WORK.

BUT ON THE OTHER HAND, LOOKING AT THE DNSO'S OUTPUT, I THINK THEY'RE CLEARLY EXPRESSING THE POINT THAT THE PEOPLE WHO REGISTER WITHIN DOT ORG SHOULD BE ABLE TO SELF-SELECT AND NOT BE SUBJECTED TO CRITERIA, EXTERNALLY APPLIED CRITERIA, AS TO WHETHER OR NOT THEY ARE APPROPRIATE REGISTRANTS IN THAT FIELD.

I JUST WANTED TO POINT OUT THAT WE NEED TO DISTINGUISH BETWEEN THESE TWO DIFFERENT THINGS.

>>VINTON CERF: THANK YOU, KARL. I BELIEVE THAT THE BOARD HERE PRESENT IS MAKING THAT DISTINCTION. AND I WILL COME TO THAT PARTICULAR QUESTION IN JUST A MOMENT.

IN FACT, THE NEXT ITEM I WAS GOING TO BRING UP IS WHETHER THERE SHOULD BE ANY RESTRICTIONS ON THE REGISTRANTS WHO ARE PERMITTED TO REGISTER IN DOT ORG.

AND MY RECOMMENDATION FOR THE SENSE OF THE BOARD IS THAT THERE ARE NO SUCH RESTRICTIONS AND THAT IT IS AN OPEN, PUBLIC REGISTRATION,

UNRESTRICTED REGISTRATION.

I MIGHT POINT OUT THAT BY DOING THIS, WE ELIMINATE AN ENORMOUS PROBLEM FOR THE OPERATOR WHO WOULD OTHERWISE HAVE TO MAKE VERY COMPLICATED DECISIONS ABOUT THE NATURE OF THE REGISTRANT.

IS THERE ANY DISAGREEMENT FROM THE BOARD WITH THAT RECOMMENDATION TO THE PRESIDENT? AMADEU.

>>AMADEU ABRIL I ABRIL: IT'S A PARTIAL DISAGREEMENT.

I THINK THERE ARE TWO DIFFERENT THINGS. ONE THINGS ARE WHETHER THE – ONE THING IS WHETHER THE REGISTRY IS RESTRICTED OR NOT IN ITS ACCESS, THAT IS, IF THE ELIGIBLE REGISTRANTS HAVE TO PROVE SOMETHING BEFORE. IT'S IMPOSSIBLE TO PROVE THEY ARE NOT-FOR-PROFIT, BUT THIS IS IRRELEVANT. IT'S IMPOSSIBLE TO PROVE THAT YOU ARE USING OR YOU WILL BE USING THE DOT ORG DOMAIN NAME FOR ANY GIVEN PURPOSE. THAT'S ONLY AN EX POST TO BE MADE.

SO WE ALL – I THINK WE ALL AGREE, AND THIS IS CONSISTENT ALSO WITH THE DNSO RECOMMENDATION, THAT IT SHOULD NOT BE PRIOR EXAMINATION OF CONDITIONS.

A DIFFERENT THING IS THAT I BELIEVE IT IS POSSIBLE – I'M NOT SAYING THAT IT IS NECESSARY, BUT I THINK IT IS PERFECTLY POSSIBLE, AND NOT CONTRADICTORY WITH YOUR REQUIREMENTS, THAT A DECLARATION REGARDING THE NONCOMMERCIAL USE OF THE DOMAIN NAME IS BEING MADE AS PART OF THE REGISTRATION AGREEMENT, AND THAT THIS, THEN, IS SPECIFICALLY USED IN SUBSEQUENT DISPUTES REGARDING THE DOMAIN NAME. THAT IS, THAT THERE IS A COMMITMENT OF A CERTAIN TYPE OF USE OF THIS DOMAIN NAME, AND THAT THIS EX POST MAY SERVE IN CASE THAT SOMEONE DISPUTES THAT THEY HAVE THE DOMAIN NAME.

I AM NOT SAYING I AM FAVORING THAT. I AM SAYING THIS IS VERY DIFFERENT, AND THAT'S MUCH MORE EASILY FEASIBLE.

>>VINTON CERF: I HAVE TWO PEOPLE WHO WOULD LIKE TO SPEAK, I HOPE, ON THIS POINT, ALEX AND THEN ROB.

>>ALEJANDRO PISANTY: WHILE I UNDERSTAND DOCTOR – I MEAN, AT THE END OF HIS STATEMENT, AMADEU SAYS THAT THIS TYPE OF VERIFICATION OF NONCOMMERCIAL USE OF THE REGISTRATION WOULD COME ONLY IN CASE OF DISPUTES, I WOULD UNDERLINE THAT IT IS SOMETHING THAT GOES INTO THE CONTENT OF WHATEVER IS REGISTERED AND NOT INTO THE DOMAIN NAME.

>>VINTON CERF: AND –

>>ALEJANDRO PISANTY: IN (INAUDIBLE) CONTEXT.

>>VINTON CERF: AND ROB.

>>ROBERT BLOKZIJL: YEAH, I UNDERSTAND THE CONCERNS. BUT, AGAIN, LOOK

AT THE HISTORY.

THERE ARE ABOUT 30 MILLION DOT COM NAMES AND ABOUT 3 MILLION DOT ORGS.

SO THE VAST MAJORITY OF THE COMMERCIAL WORLD IS NOT INTERESTED IN PROTECTING THEIR NAME UNDER DOT ORG. SO OTHER PEOPLE CAN USE NAMES WHICH OTHERWISE MIGHT BE CONTESTED.

THIS IS HOW I INTERPRET THE VAST DIFFERENCE IN NUMBERS OF REGISTRATIONS.

>>VINTON CERF: IN ORDER – IN THE ORDER – I WANT TO GIVE AMADEU THE OPPORTUNITY TO FIND OUT WHETHER THE REST OF THE BOARD WOULD WANT TO PURSUE SUCH A MECHANISM THAT WOULD ALLOW A COMPLAINT OR A DISPUTE TO BE LODGED.

I WILL POINT OUT TO THE BOARD THAT THAT MECHANISM STILL OPENS UP SUBSTANTIAL COMPLEXITY FOR THE OPERATOR OF DOT ORG. MECHANISMS FOR THOSE DISPUTES HAVE TO BE IN PLACE, AND IT JUST MAKES THINGS HARDER.

I ALSO WANTED TO POINT OUT FOR THOSE WHO ARE UNAWARE, THAT THE AGREEMENT WITH VERISIGN TO ENGAGE IN THIS DIVESTITURE OF DOT ORG IS TIMED TO A TIMETABLE WHICH COMES TO A CLOSE ON THE 1ST OF JANUARY, 2003, OR THE 31ST OF DECEMBER, 2002.

AND THERE IS LITTLE LATITUDE FOR US TO CHANGE THAT SHORT OF REOPENING THE ENTIRE AGREEMENT WITH VERISIGN, WHICH I WOULD RECOMMEND TO YOU IS NOT A VERY WISE IDEA.

SO WE'RE TRYING TO ACCOMPLISH THIS TRANSITION IN A VERY EXPEDITIOUS WAY, AND SIMPLIFYING THE TASK OF THAT OPERATOR SEEMS TO ME AN IMPORTANT CRITERION FOR OUR OWN RECOMMENDATIONS.

SO, AMADEU, IN ORDER TO DISCOVER HOW THE BOARD FEELS ABOUT THIS, LET ME ASK WHETHER THERE IS – TAKE A STRAW POLL HERE.

IF YOU VOTE "YES" ON MY QUESTION, YOU WILL BE ADOPTING AMADEU'S IDEA, WHICH IS TO HAVE A DECLARATION OF NONPROFIT USE FOR PURPOSES OF LATER DISPUTE.

IF YOU REJECT AMADEU'S PROPOSITION, THEN WE WILL BE BACK TO THE OPEN AND UNCONSTRAINED REGISTRATION.

SO LET ME ASK NOW FOR A SENSE OF THE BOARD SHOW OF HANDS.

HOW MANY PEOPLE WOULD SUPPORT AMADEU'S IDEA?

AMADEU AND ANDY.

MAY I HEAR FROM LINDA AND KARL?

>>LINDA WILSON: I DO NOT SUPPORT IT.

>>KARL AUERBACH: NEITHER DO I.

>>VINTON CERF: OKAY. I WON'T ASK FOR A SHOW OF – WELL, WE MIGHT HAVE A MILLION ABSTENTIONS. IS THERE ANYONE WHO WISHES TO ABSTAIN FROM THIS STRAW POLL?

MR. COHEN.

>>JONATHAN COHEN: I DIDN'T HEAR THE BEGINNING.

>>VINTON CERF: I SEE. ALL RIGHT. I THINK THAT BY THIS, WE DISCOVER THAT THE BOARD'S SENSE IS THAT WE SHOULD KEEP AN OPEN REGISTRATION.

THE NEXT POINT HAS TO DO WITH THE DNSO'S OR NAMES COUNCIL'S RECOMMENDATION THAT WE COULD CHOOSE A PATH THAT INVOLVES EXPLICITLY AUTHORIZING THE OPERATION TO DIVERT ANY EXCESS FUNDS TO GOOD WORKS. MY RECOMMENDATION TO THE BOARD IS TO CONVEY THE SENSE TO THE PRESIDENT THAT WE NOT DO THAT IN ANY EXPLICIT WAY, AND THAT THE ORGANIZATION BE FOCUSED ON MAKING THE OPERATION SAFE, SECURE, EFFICIENT, AND AS INEXPENSIVE AS POSSIBLE.

IF I – DO I HEAR ANY DISAGREEMENT WITH THAT RECOMMENDATION?

THANK YOU.

AND, FINALLY, THE LAST ITEM IS WHETHER THERE IS ANY REASON TO SHOW PREFERENTIAL – TO SHOW PREFERENCE FOR THE OPERATOR OF DOT ORG, WHETHER WE SHOULD PREFERENTIALLY CHOOSE A NOT-FOR-PROFIT ORGANIZATION OR WHETHER WE SHOULD BE NEUTRAL ON THE POINT. AND BEFORE WE FIND OUT WHAT THE SENSE OF THE BOARD IS, I WOULD POINT OUT THAT ANY FOR-PROFIT ORGANIZATION IS CAPABLE OF SETTING UP A NOT-FOR-PROFIT ORGANIZATION. SO THIS DISTINCTION MAY BE ALMOST ILLUSORY.

>>ALEJANDRO PISANTY: I WOULD BE VERY CONCERNED ABOUT THE HONESTY OF ANY OF THESE PROPOSALS.

>>VINTON CERF: HE SAID HE WOULD BE CONCERNED ABOUT THE HONESTY OF A PROPOSAL WHICH CLAIMED TO BE A NOT-FOR-PROFIT BUT WHICH MIGHT HAVE A HIDDEN FOR-PROFIT ACTIVITY IN IT.

SO MAY I ASK ONCE AGAIN FOR THE SENSE OF THE BOARD. MAY I SEE IF ANYONE WOULD OBJECT TO CONVEYING TO THE PRESIDENT THAT WE ARE NEUTRAL ON THE NATURE OF THE ORGANIZATION THAT OFFERS THIS SERVICE? AMADEU, YOU WOULD OBJECT?

>>AMADEU ABRIL I ABRIL: YES.

>>VINTON CERF: THANK YOU. KARL AND LINDA, WOULD YOU RESPOND TO THIS, PLEASE.

>>LINDA WILSON: I'D LIKE TO LEAVE IT OPEN TO EITHER KIND.

>>KARL AUERBACH: YEAH, I'D LIKE TO LEAVE IT OPEN AS WELL.

>>VINTON CERF: ROB BLOKZIJL?

>>ROBERT BLOKZIJL: I WOULD LEAVE IT OPEN.

>>VINTON CERF: YOU WOULD LEAVE IT OPEN?

>>ROBERT BLOKZIJL: YEAH. I AM MORE INTERESTED IN GOOD SERVICES.

>>VINTON CERF: I BELIEVE THE SENSE OF THE BOARD IS THAT WE SHOULD LEAVE IT OPEN.

MEMBERS OF THE BOARD, WE HAVE CONVEYED IN THE MINUTES SOME VERY SPECIFIC GUIDANCE TO THE PRESIDENT.

DOES ANY MEMBER OF THE BOARD BELIEVE THAT WE NEED TO CONVEY ANY ADDITIONAL GUIDANCE AT THIS TIME, BEARING IN MIND THAT WE WILL HAVE CONSULTATIVE OPPORTUNITIES WITH THE PRESIDENT OVER THE COURSE OF HIS PREPARATION FOR THE RFP?

>>AMADEU ABRIL I ABRIL: THE ONLY THING I WANTED TO MENTION WAS THIS LAST POINT WAS SPECIFICALLY ADDRESSED BY THE DNSO IN ITS POSITION RECOMMENDING THAT INITIAL OPERATOR BE A NOT-FOR-PROFIT ORGANIZATION. I ONLY WANTED TO RAISE THE QUESTION TO THE BOARD THAT WE ARE, IN THIS CASE, GIVING DIFFERENT ADVICE, WHICH IS NOT A BAD THING, NECESSARILY, BUT SHOULD BE NOTED.

>>VINTON CERF: I WOULD POINT OUT THAT ADVICE IS ADVICE, AND THE BOARD IS MAKING THE DECISIONS. NII QUAYNOR.

>>NII QUAYNOR: JUST A QUICK COMMENT.

IT'S TRUE THAT WE HAVE TO RECOMMEND AN OPERATOR THAT IS CAPABLE OF HANDLING THE SCALE. BUT WE SHOULD NOT PUSH IT SO FAR TO THE EXTREME THAT WE LOSE OUT OR IT NARROWS DOWN THE POTENTIAL OPERATORS TO SOMETHING THAT I THINK WOULD BE TOO RESTRICTIVE.

THE PRIORITY SHOULD BE STABILITY OF THE NET AND OPERATION AND QUALITY OF THE SERVICE PROVIDED.

WE SHOULD ALSO BE REASONABLY OPEN TO ONE WHO IS ABLE TO DEMONSTRATE IN SOME WAY THAT HE IS ABLE TO SCALE TO THAT LEVEL, SO THAT WE ARE ACTING TO EXPAND THE NET OF GOOD OPERATORS.

>>VINTON CERF: I THINK THAT'S NOT AN UNREASONABLE SENTIMENT TO EXPRESS, AS LONG AS WE TAKE INTO ACCOUNT THAT DEMONSTRATION OF CAPABILITY IS PARAMOUNT.

ARE THERE ANY OTHER DESIRES ON THE BOARD TO CONVEY SPECIFIC

GUIDANCE TO THE PRESIDENT?

IN THAT CASE, LADIES AND GENTLEMEN, I WOULD – I'M SORRY, GENTLEMEN – LADIES. YES, WE HAVE A LADY ON THE BOARD WHOM I CANNOT SEE, LINDA.

SO, LADIES AND GENTLEMEN, I NOW CALL ON YOUR VOTE ON THIS RESOLUTION. ALL THOSE IN FAVOR OF THIS RESOLUTION, PLEASE RAISE YOUR HAND.

FOUR, FIVE, SIX, SEVEN, EIGHT, NINE, TEN, 11, 12, 13, 14 HERE. 15. DID I MISCOUNT? 15 HERE.

KARL AND LINDA?

>>LINDA WILSON: I FAVOR.

>>KARL AUERBACH: AND I'M IN FAVOR AS WELL.

>>VINTON CERF: IT IS UNANIMOUS. THANK YOU VERY MUCH FOR THAT EFFICIENT AGREEMENT.

[Later proceedings on other topics omitted.]

Comments concerning the layout, construction and functionality of this site
should be sent to webmaster@icann.org.

RM 11

.org Reassignment: Request for Proposal Materials
Posted: 20 May 2002

.org Reassignment: Request for Proposals

On 31 December 2002, the current registry agreement for the operation of the .org top-level domain (TLD) expires. Accordingly, the Internet Corporation for Assigned Names and Numbers (ICANN) is preparing to solicit proposals from those seeking to assume responsibility for operating the registry for the .org TLD beginning after that expiration.

On 22 April 2002 ICANN announced a target schedule for the .org Request for Proposal process. Under that schedule, draft RFP materials were posted on 1 May 2002. Based on community input, various revisions have been made to the draft materials, resulting in the finalized RFP materials listed below. (Please note that the RFP materials are subject to being updated or corrected until the deadline for submitting proposals. Applicants should check this page immediately before submitting their proposals to ensure they are aware of all corrections and updates.)

The RFP materials consist of the following:

- Application Instructions for the .org Top-Level Domain

- .org Application Transmittal Form

- .org Proposal

- Fitness Disclosure

- Statement of Requested Confidential Treatment of Materials Submitted

- Reassignment of the .org Top-Level Domain: Criteria for Assessing Proposals

- A model .org Registry Agreement, not including appendices

We have also posted responses to questions regarding the RFP materials and process.

For the benefit of .org applicants, we have separately posted real-time captioning output of the ICANN Board's 14 March 2002 discussion on .org reassignment at its meeting in Accra, Ghana.

Comments concerning the layout, construction and functionality of this site

should be sent to <u>webmaster@icann.org</u>.

Page updated 18-Jun-2002

Application Instructions for the .org Top-Level Domain

Posted: 20 May 2002

This document is a finalized version of the [Draft] Application Instructions for the .org Top-Level Domain posted on 1 May 2002. Please do not rely on the earlier document. See the end of this document for a summary of changes.

Please be sure to check this web page for updates immediately before you submit your application.

Application Instructions for the .org Top-Level Domain

A1. On 31 December 2002, the current registry agreement under which the .org top-level domain (TLD) is operated expires. Accordingly, the Internet Corporation for Assigned Names and Numbers (ICANN) is soliciting proposals from entities seeking to assume responsibility for operating the registry for the .org TLD beginning at the expiration.

I. WHAT TO DO IN CONSIDERING WHETHER TO APPLY

A2. The .org registry currently holds over 2,700,000 registered domain names. The requirements for operating a TLD registry of this scale are very stringent. It is highly likely that the successor operator will be an organization that has demonstrated capability to operate a domain-name registry of significant scale, either on its own or through firmly established and well-documented outsourcing arrangements. Accordingly, organizations considering whether to apply to become the successor operator should ensure they have the necessary capabilities.

A3. The fee for having an application even considered is US$ 35,000 (with a possible rebate, see section VIII below), and your own cost of formulating a proposal and preparing an adequate application will likely be much more that. It is likely that several applications will be received. There is no guarantee that your application will be selected from among these applications.

A4. If your application is selected, you will be required to enter into a registry agreement with ICANN concerning your operation of the .org registry. The model form of the agreement is posted on the ICANN web site; please note that several appendices must be prepared and agreed between you and ICANN based on the details of your proposal. If agreement is not reached on the registry agreement and its appendices, ICANN reserves the right to make another selection of the organization that will become the successor operator.

A5. Before deciding whether to apply, we strongly recommend that you do all of the following:

A5.1. Read these instructions completely and be sure you thoroughly understand them.

A5.2. Carefully read the summary of the .org application process and schedule that appears in section II below.

A5.3. Familiarize yourself with the Criteria for Assessing Proposals document that is posted at <http://www.icann.org/tlds/org/criteria.htm>. That document summarizes some of the factors that ICANN will consider in evaluating applications and associated information.

A5.4. Secure the professional assistance of experts (technical, financial, legal, management etc.) to help you evaluate the chances that your application will be successful. If you decide to go forward with the application process, the help of these experts will be vital in formulating the proposal and preparing the application.

A5.5. Review all of the application materials thoroughly to ascertain what information you will need to assemble and what agreements you must make.

II. SUMMARY OF THE APPLICATION PROCESS AND SCHEDULE

A6. On 22 April 2002, the ICANN Board established a target schedule for the application process. This schedule, which is intended to result in selection of a successor operator and completion of contractual arrangements in time for a transition on 1 January 2003, is subject to adjustments as future circumstances warrant. The schedule is currently as follows:

1 May 2002 - ICANN posted draft Request for Proposal (RFP) materials. These draft materials were subject to revision based on suggestions received, including from the ICANN Names Council (those comments were scheduled to be received by 13 May 2002). Even though these materials werew not final, organizations wishing to apply were urged to review them to begin working on their applications.

13 May 2002 - Deadline for prospective applicants to submit written questions to ICANN regarding the draft RFP. By this date, questions were required to be submitted in plaintext form by e-mail to <org-apps@icann.org>. These questions could include requests for additional information that applicants considered necessary to prepare their applications. The current operator of the .org top-level domain, VeriSign, Inc., has indicated that it will make reasonable efforts to supply ICANN with pertinent non-public data concerning registrations within the .org top-level domain, so that it can be made available to all applicants. Because of competitive considerations and legal requirements (including under the securities laws), however, prospective applicants will be required to enter into a non-disclosure agreement, enforceable by VeriSign, with respect to this non-public data.

20 May 2002 - Final version of RFP materials is being posted, including revisions of the draft materials based on the suggestions and questions received.

24 May 2002 - Written questions from prospective applicants (as submitted no later than 13 May) will be posted on the ICANN web site, with ICANN's responses to those questions. Those submitting questions may request anonymity, but substantive questions and responses will (absent extraordinary circumstances) be posted. Those sending questions should take this into account in framing their questions.

18 June 2002 - Deadline for submission of applications. Applications must include a completed, signed transmittal form, a proposal, a fitness disclosure, and payment of the US$ 35,000 interim examination fee. You must also submit a Statement of Requested Confidential Treatment of Materials Submitted, indicating either that you do not seek confidential treatment of any part of your application or specifying what confidential treatment you request. Please note that ICANN will agree to confidential treatment only in extraordinarily compelling circumstances.

As soon as feasible afterward - Applications will be posted on the ICANN web site. A mechanism will be provided to receive written comments from the public on the applications.

27 June 2002 - This is the date of the ICANN Public Forum to be held in Bucharest, Romania. A portion of the Public Forum will be devoted to discussion of the .org applications, including presentations by the applicants. An additional session for presentations at Bucharest may also be held on 25 or 26 June 2002. Applicants will be notified of any such additional session promptly after the application deadline (currently scheduled for 18 June 2002).

28 June 2002 - The ICANN Board will meet in Bucharest on this date. The Board will finally establish the examination fee based on the total number of applications received and estimated costs. The final examination fee will not exceed the interim fee of US$ 35,000; if it is less than the interim fee, the difference will be refunded to the applicants.

22 July 2002 - ICANN will post a draft evaluation report based on review and analysis of the applications by ICANN staff and specially engaged experts. A mechanism will be established for receiving written comments on the draft evaluation report, both from the applicants and from the public generally.

1 August 2002 - Deadline for comments on the draft evaluation report.

8 August 2002 - The Final Evaluation Report and Recommendation will be presented to the ICANN Board and posted on the ICANN web site.

Late August 2002 - The ICANN Board will select one of the applications, subject to completion of a mutually agreeable registry agreement.

III. WHAT YOUR APPLICATION MUST INCLUDE

A7. To apply, you must send a complete application to ICANN so that it arrives between 11 and 18 June 2002, inclusive. If the complete application arrives at ICANN during this period, the date on which you submit your application will not affect the selection process.

A8. A complete application must include all of the following elements:

- 8.1. A completed and signed .org Application Transmittal form. Changes and qualifications to the language of the form are not permitted.
- 8.2. A separately bound and clearly labeled .org Proposal, with completed and signed cover sheet, attachments, accompanying materials.
- 8.3. A completed and signed Fitness Disclosure, with any attachments.
- 8.4. A completed and signed Statement of Requested Confidential Treatment of Materials Submitted, with any attachments. This statement clarifies whether or not you are requesting confidential treatment of any part of your application and, if you are, specifies which portion you want treated confidentially, the manner of confidential treatment you request, and the justification for the requested treatment. Please note that confidential treatment is strongly disfavored.
- 8.5. Payment of the US$ 35,000 interim fee for examination of the application (see item A10 below).

A9. The first four of the above elements must be provided in hard copy. Items A8.1, A8.2, and A8.3 must also be provided in electronic form on one or more 3½" floppy diskettes (IBM high density) or on a CD-ROM (a) in HTML format (merely using Microsoft Word's HTML conversion features is discouraged) and (b) in one of the following formats: Microsoft Word, WordPerfect, or plaintext.

A10. For your application to be treated as complete, you must pay the US$ 35,000 interim examination fee in full. Your application will only be considered upon full payment of this examination fee. We prefer you make the payment by check, but as an alternative you may make the payment by wire transfer.

A10.1. If you choose to pay by check, with your application you must send a check, drawn on a United States bank and payable to the Internet Corporation for Assigned Names and Numbers (ICANN), in the amount of 35,000 United States dollars. Please note that the check must accompany the application.

A10.2. If you choose to pay by wire transfer, you must arrange for a wire transfer of 35,000 United States dollars to be sent to ICANN at the following account:

Internet Corporation for Assigned Names and Numbers
Account number 09142-07182
Routing indicator 121000358
SWIFT Code BofAUS3N
Bank of America Branch 0914
4754 Admiralty Way
Marina del Rey, CA 90292 USA
Telephone +1/310/247-2080

Wire transfers must be received at least five business days before we receive your application and you must include a wire transfer receipt or other document identifying the wire transfer with your application.

IV. GUIDELINES FOR PREPARING THE APPLICATION

A11. We strongly urge applicants to obtain the professional assistance of experts (technical, financial, legal, management, etc.) to help formulate the proposals and prepare the application.

A12. All applications should be submitted on A4 or 8½" x 11" paper, arranged and bound as stated in item A8 of these Instructions and in instructions contained in the various forms.

A13. Applications must be submitted in the English language. (Copies in other languages may be included for posting.)

A14. Carefully follow not only these general instructions, but any instructions stated in the application forms as well.

A15. ICANN seeks the fullest information from applicants. Thus, please provide as much detail as possible in response to the application questions. Be particularly attentive to providing full information with regard to your demonstrated technical capabilities, and the resources that you have available to run the registry, the nature of the registry services you propose to provide and the terms under which you propose to provide them, and your plan for transitioning from the current registry operator.

A16. In general, applications should answer each request in a numbered paragraph corresponding to the number of the question. Certain sections of the application forms require that the applicant submit a comprehensive plan that addresses the questions posed in the application. For these plans, applicants need not answer each request in a numbered paragraph corresponding to the number of the question so long as all of the topics on which information is requested are addressed in detail in the plan. If there is no answer available for a particular question, please indicate that fact next to the number corresponding to the question.

A17. **Please Note:** We strongly recommend that you go to the ICANN web site after the final version of the RFP materials are posted (scheduled for 20 May 2002) to familiarize yourself with any revisions made to the draft materials. **Immediately before you finalize your application documents and send them in, you should go to the ICANN web site a second time and review each of the following documents to ensure that you are aware of any updates of them:**

- A17.1. The Criteria for Assessing Proposals.
- A17.2. These general Application Instructions.
- A17.3. The .org Application Transmittal form.
- A17.4. .org Proposal form.
- A17.5. Fitness Disclosure form.
- A17.6. Statement of Requested Confidential Treatment of Materials Submitted form.
- A17.7. Model .org Registry Agreement.

The documents listed there (including these instructions) will be revised as appropriate to reflect the most up-to-date information available. Your application must be submitted using the versions of items A17.3 through A17.6 that are in effect at the time you submit your application.

V. WHERE TO SEND COMPLETED APPLICATION

A18. Completed applications should be sent by mail, overnight delivery service, or courier

directly to ICANN at the following address:

> Internet Corporation for Assigned Names and Numbers
> .org Applications
> 4676 Admiralty Way, Suite 330
> Marina del Rey, CA 90292 USA
> Telephone: +1 310 823-9358

A19. Applications sent via e-mail will not be accepted. Supporting hard-copy documents, the required electronic copies of the documents, and a check for the US$ 35,000 interim examination fee (or documents identifying a wire transfer you have already made) must accompany the application materials. To assist the ICANN staff in handling applications, we would appreciate notification by e-mail to <org-apps@icann.org> when sending an application that exceeds 30 kilograms (66 pounds).

VI. WHEN TO SEND APPLICATION

A20. The complete application, including all forms, attachments, and accompanying materials, along with the check for the US$ 35,000 interim examination fee (or wire-transfer documentation), must be received by ICANN at its office in Marina del Rey during the period beginning 11 June 2002 and ending 18 June 2002. All materials must be received before 5:00 pm, California time, on 18 June 2002.

VII. CONFIDENTIAL MATERIAL IN APPLICATIONS

A21. ICANN intends to evaluate applications to become the successor operator for .org in as open and transparent a manner as feasible. At the same time, however, ICANN recognizes that to encourage applicants to provide all documents and information relevant to the application, it is appropriate to afford applicants the opportunity to submit legitimate trade-secret information (if any) with a request for confidential handling by ICANN.

A22. Except to the extent that it expressly agrees otherwise in writing, ICANN will be free to disclose and use information submitted in connection with an application in any manner and to anyone it deems appropriate. If the applicant wishes ICANN to accord confidential treatment to any material in its application or otherwise submitted in connection with the application, the applicant must expressly request confidential treatment of that material in the Statement of Requested Confidential Treatment of Materials Submitted that it submits. ICANN will review the request; unless ICANN and the applicant agree regarding confidential treatment of the affected material, it will be returned to the applicant and not considered as part of the application. Applicants are strongly encouraged to avoid, or at least to minimize, requests for confidential treatment of material in applications or submitted in connection with applications.

A23. For the procedure ICANN will use to handle requests for confidential treatment, please carefully review section I of the Statement of Requested Confidential Treatment of Materials Submitted.

VIII. THE EXAMINATION FEE

A24. As noted above, every application must be accompanied by payment of a fee of US$ 35,000. This is only an examination fee to obtain consideration of your application. The amount of this fee has been established on an interim basis based on presently

available cost information. At its [meeting in Bucharest in late June 2002](#), the ICANN Board will consider, based on the information then available, the amount of the examination fee that should be finally established. The ICANN Board will establish the final examination fee, in an amount that will not exceed US$ 35,000, but otherwise determined in ICANN's sole discretion. In the event that the fee is finally established in an amount less than US$ 35,000, rebates will be paid to applicants.

A25. The US$ 35,000 interim examination fee will be refunded only in the following two circumstances: (a) a rebate is made in ICANN's sole discretion according to item A24 above and (b) in the event that you withdraw your application prior to its consideration because you and ICANN do not reach an agreement on confidential treatment of the application. (See [section I of the Statement of Requested Confidential Treatment of Materials Submitted](#) for details on this exception.) Under no circumstances will ICANN's failure to select your application be grounds for refund of all or any part of the examination fee.

A26. There is absolutely no assurance that your application will be selected for negotiations toward entry of an agreement under which you will become the successor registry operator or that, if your application is selected, the negotiations will lead to entry of such an agreement. Indeed, it is possible that ICANN may be prevented from selecting a successor registry operator due to legal or other reasons. By submitting an application, you fully assume the risk of all contingencies in the application, evaluation, and selection processes.

IX. THE EVALUATION PROCESS

A27. ICANN will accept completed applications from 11 to 18 June 2002. Shortly after receiving your complete application, ICANN will send an e-mail to the e-mail address listed under [item B14 of your .org Application Transmittal form](#). If an addtional session for presentations at Bucharest is then planned for 25 or 26 June 2002, you will be notified of the arrangments for that session.

A28. During the applications period, questions regarding the new TLD application process may be sent to <org-apps@icann.org>. To help provide all applicants with equitable access to information about the process as they prepare their applications, between the time of finalization of the RFP materials (scheduled for 20 May 2002) and the application deadline (scheduled for 18 June 2002) all requests to ICANN for information about the process or issues arising in preparation of an application must be submitted in written form (preferably by e-mail). During this period, applicant requests for personal or telephone consultations regarding these matters will not be granted.

A29. Ordinarily, any substantive responses to written questions submitted during the application period will be posted on the ICANN web site. Those sending questions should take this into account in framing their questions.

A30. ICANN intends to post complete applications it receives on the ICANN web site shortly after the application deadline (which is currently scheduled for 18 June 2002). Except to the extent that ICANN has agreed in writing to treat information confidentially, all materials submitted in connection with applications are subject to being posted on the ICANN web site. ICANN anticipates that it will seek comments from various groups and from the public generally on the applications that are received.

A31. Applicants should be prepared to give brief presentations on their proposals at the [ICANN Public Forum scheduled to be held on 27 June 2002 in Bucharest](#), Romania, and in a possible addtional presentation session on 25 or 26 June 2002 (see items [A6](#) and [A27](#) above). Any materials used in the presentations (such as PowerPoint presentations) must be submitted in electronic form immediately beforehand.

A32. After the deadline for submission of applications (scheduled for 18 June 2002), ICANN will be evaluating all of the applications received. This process will involve not only reviewing what has been submitted, but also consulting with experts engaged by ICANN and gathering additional information that may be pertinent to the application.

A33. As needed, after the application deadline the ICANN evaluation team may gather additional information by sending applicants e-mails asking for the information or by other means. These inquiries will be initiated by the ICANN staff.

A34. Under the current schedule, in late-August 2002 the ICANN Board will select one of the applications for negotiation of a registry agreement under which the applicant will become the successor registry operator for the .org top-level domain. The agreement will be substantially in the form posted at <http://www.icann.org/tlds/org/draft-registry-agmt.htm>, including the appendices linked from that document. Some details, such as commitments to quality-of-service levels, registry services to be provided, pricing, and the plan for transition, will be incorporated in appendices to the agreement based on the statements in the application that is selected.

Prior draft:

[1 May 2002](#)

Summary of changes from prior draft:

- [Item A4](#) has been slightly reworded for clarity.
- The preamble of [item A6](#) has been slightly reworded for clarity. The first three items in the schedule have been reworded to reflect that the schedule for those items has already been met. Two sentences have been added to the entry for 27 June 2002 noting that a pre-Public-Forum presentation session may be held.
- The first sentence of item A7 has been reworded by adding the work "inclusive." See [item A20](#) for details of the application deadline.
- A sentence has been added to [item A8.1](#) t make clear that the provisions of the transmittal form may not be changed or qualified.
- [Item A9](#) has been revised to more specifically specify the electronic format to be provided.
- A clarifying sentence has been added to [item A10.1](#).
- [Item A17.7](#) has been reworded to conform to terminology in the remainder of the RFP materials.
- A sentence has been added to [item A27](#) to comform to the change noted above concerning a possible additional presentation session at Bucharest.
- The last sentence of [item A28](#) has been reworded to enhance precision.
- [Item A31](#) has been reworded to comform to the change noted above concerning a possible additional presentation session at Bucharest.
- [Item A34](#) has been reworded slightly for clarity.

Comments concerning the layout, construction and functionality of this site
should be sent to webmaster@icann.org.

Page updated 16-Jan-2008

.org Application Transmittal Form

Posted: 20 May 2002

This document is a finalized version of the [Draft] .org Application Transmittal Form posted on 1 May 2002. **Please do not rely on the earlier document. See the end of this document for a summary of changes.**

Please be sure to check this web page for updates immediately before you submit your application.

.org Application Transmittal Form

[Instructions: Please replace the bracketed, italicized portions below with the information requested, check one of the alternatives in item B6, and complete the signature block of this form. No other changes should be made to this form.]

An application is hereby made to become the successor operator of the registry for the .org top-level domain.

B1. This application is made by:

[List the full legal name, principal address, telephone and fax numbers, and e-mail address of the applicant.]

B2. The person signing below certifies that he or she has full authority to make this application on behalf of the applicant and to make all agreements, representations, waivers, and undertakings stated in this transmittal form and accompanying materials. Copies of the documents demonstrating the authority (such as a certificate from the applicant's corporate secretary) are attached.

[Attach directly to this transmittal form the documentation of the authority of the person signing. Place the legend "B2: Authorization" at the top of each page of these attachments.]

B3. All documents linked directly or indirectly from ".org Application Process: Information for Applicants," posted at <http://www.icann.org/tlds/org/> have been thoroughly reviewed on behalf of applicant. In particular, the following documents have been reviewed:

   B3.1. Application Instructions: .org Top-Level Domain, posted at

<http://www.icann.org/tlds/org/app-instructions.htm>.

B3.2. Reassignment of the .org Top-Level Domain: Criteria for Assessing TLD Proposals, posted at <http://www.icann.org//tlds/org/criteria.htm>

The applicant understands that failure fully to follow instructions included in these documents will be a factor negatively affecting consideration of this application.

B4. This application consists of the following, in addition to this transmittal form:

B4.1. The .org Proposal, with cover sheet and attachments and accompanying materials.

[With this transmittal form, submit a clearly labeled and separately bound .org Proposal.]

B4.2. A Fitness Disclosure.

[With this transmittal form, submit a clearly labeled and separately bound Fitness Disclosure prepared and signed on behalf of the applicant.]

B4.3. A Statement of Requested Confidential Treatment of Materials Submitted.

[Whether or not any confidential treatment is sought, please attach the Statement of Requested Confidential Treatment of Materials Submitted, including attached sheets, directly to this transmittal form. Place the legend "Statement of Requested Confidential Treatment of Materials Submitted" at the top of every page of the statement.]

B5. This application is accompanied by one or more 3½" floppy diskettes (IBM high density) or a CD-ROM containing files with item B4.1 above in the formats specified by item A9 of the Application Iinstructions.

[Submit the disk(s) with the application.]

B6. Check one:

( ) This application is accompanied by a check, drawn on a United States bank and payable to the Internet Corporation for Assigned Names and Numbers (ICANN), in the amount of 35,000 United States dollars.

( ) At least five business days before submitting this application, the applicant has sent 35,000 United States dollars by wire transfer according to item A10.2 of the .org Top-Level Domain Application Instructions. This application is accompanied by a wire transfer receipt or other document identifying the wire transfer.

The applicant understands and agrees that this US$35,000 is only an examination fee (established on an interim basis) to obtain consideration of this application; that the fee will be refunded or returned only in the following two circumstances: (a) a rebate is made in ICANN's sole discretion according to item A24 of the .org Top-Level Domain Application Instructions and (b) in the event that the applicant withdraws this application prior to its consideration because the applicant and ICANN do not reach an agreement on confidential treatment of the application. (See section I of the Statement of Requested Confidential Treatment of Materials Submitted for details on this exception.) Under no circumstances will ICANN's failure to select this application be grounds for refund of all or any part of the examination fee.

The applicant also understands and agrees that there is no understanding, assurance, or agreement that this application will be selected for negotiations toward entry of a .org registry agreement; or that, if this application is selected, the negotiations will lead to entry of such an agreement or appointment of the applicant as the successor operator of the registry for the .org top-level domain. The applicant understands and acknowledges that ICANN has the right to reject all applications to become the successor operator for the .org registry that it receives.

[Be sure to include a valid check drawn on a United States bank in the full amount, or documentation of the wire transfer.]

B7. The applicant hereby authorizes ICANN to:

> B7.1. contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to this application,

> B7.2. take any other steps to verify, elaborate on, supplement, analyze, assess, investigate, or otherwise evaluate the information contained in this application or other information that, in ICANN's sole judgment, may be pertinent to this application,

> B7.3. consult with persons of ICANN's choosing regarding the information in this application or otherwise coming into ICANN's possession.

The above authorizations do not authorize ICANN to disclose, use, or handle properly designated confidential materials contrary to a written agreement, signed by ICANN's President or Vice-President, entered according to the procedures described in section I of the Statement of Requested Confidential Treatment of Materials Submitted.

B8. The applicant understands that difficulties encountered by ICANN in verifying, elaborating on, supplementing, analyzing, assessing, investigating, or otherwise evaluating any aspect within or related to this application may reflect negatively on the application. In consideration of ICANN's review of the application, the applicant hereby waives liability on the part of ICANN (including its officers, directors, employees, consultants, attorneys, and agents) for its (or their) actions or inaction in verifying the information provided in this application or in conducting any other aspect of its (or their) evaluation of this application.

(The waiver of liability in the immediately preceding sentence is subject only to any requirements concerning disclosure, use, and handling of properly designated confidential materials that are expressly stated in a written agreement, signed by ICANN's President or Vice-President, entered according to the procedures described in section I of the Statement of Requested Confidential Treatment of Materials Submitted.) The applicant further waives liability on the part of any third parties who provide information to ICANN or its officers, directors, employees, consultants, attorneys, and agents in connection with the application.

B9. The applicant hereby authorizes ICANN (and its officers, directors, employees, consultants, attorneys, and agents) to publish on ICANN's web site, and to disclose or publicize in any other manner, all materials submitted to, or obtained or generated by, ICANN (or its officers, directors, employees, consultants, attorneys, and agents) in connection with the application, including ICANN's (or their) evaluations and analyses in connection with the application or ICANN's investigation or evaluation of the application, except to the extent set forth in a written and duly signed agreement between ICANN and the applicant on the terms for confidential treatment of particular materials or information submitted by applicant (see section I of the Statement of Requested Confidential Treatment of Materials Submitted for details). The applicant grants ICANN and its officers, directors, employees, consultants, attorneys, and agents a license to use any copyright or other intellectual property that applicant may have in any portion of the application for this purpose.

B10. The applicant hereby gives ICANN permission to use the applicant's name and/or logo in ICANN's public announcements (including informational web pages) relating to the reassignment of the .org top-level domain.

B11. The applicant hereby agrees, acknowledges, and represents that it has no legally enforceable right to acceptance or any other treatment of this application or to the delegation in any particular manner of the .org top-level domain. It further agrees, acknowledges, and represents that it has no legally enforceable rights in, to, or in connection with the .org top-level domain by virtue of its preparation or submission of this application or by virtue of ICANN's receipt of this application, ICANN's acceptance of the examination fee, ICANN's consideration or other handling of this application, or statements made in connection with this or other applications ICANN receives.

B12. The applicant understands and agrees that it will acquire rights in connection with the .org top-level domain only in the event that it enters one or more written, duly signed agreements with ICANN, and that applicant's rights in connection with the .org top-level domain will be limited to those expressly stated in the written, duly signed agreements.

B13. In consideration of ICANN's review of the application:

B13.1. the applicant, for itself and each of its officers, directors, employees, consultants, attorneys, agents, partners, and joint venturers, hereby agrees that neither ICANN, nor any of its officers, directors, employees, consultants, attorneys, and agents, shall have any liability for its/his/her receipt, consideration, evaluation, analysis, or other activities in any way connected with this application; and

B13.2. the applicant hereby releases and forever discharges ICANN and each of its officers, directors, employees, consultants, attorneys, and agents from any and all claims and liabilities relating in any way to (a) any action or inaction by or on behalf of ICANN in connection with this application or (b) the appointment or failure to appoint of a successor registry operator for the .org top-level domain.

B14. Please send an e-mail to the following address acknowledging receipt of this application:

[Please fill in the e-mail address to which an acknowledgement should be sent.]

By signing this transmittal form, the undersigned certifies (a) that he or she has authority to do so on behalf of the applicant and, (b) on his or her own behalf and on behalf of the applicant, that all information contained in this application, and all supporting documents included with this application, is true and accurate to the best of his/her/its knowledge and information. The undersigned and the applicant understand that any material misstatement or misrepresentation will reflect negatively on this application and may cause cancellation of any delegation of a top-level domain based on this application.

_____
Signature

_____
Name (please print)

_____
Title

_____
Name of Applicant

_____
Date

Prior draft:

1 May 2002

Summary of changes from prior draft:

- Specific instructions have been added for this form immediately under the title.
- An example of appropriate documentation of authority has been added to item B2.
- The instructions for item B4.2 have been clarified.
- Item B5 has been reworded for clarity and to conform to a change in item A9 of the Application Instructions.
- Items B7 and B8 have been reworded to better reflect the possibility that a written confidentiality agreement will be entered according to section I of the Statement of Requested Confidential Treatment of Materials Submitted.
- The certification at the end of this document has been revised to include a representation of authority. This is in accord with item B2.

Comments concerning the layout, construction and functionality of this site
should be sent to webmaster@icann.org.

Page updated 20-May-2002

.org Proposal Form

Posted: 20 May 2002

This document is a finalized version of the [Draft] .org Proposal Form posted on 1 May 2002. Please do not rely on the earlier document. See the end of this document for a summary of changes.

Please be sure to check this web page for updates immediately before you submit your application.

.org Proposal Form

[To the applicant: Your .org Proposal should be separately bound (if more than one volume, please sequentially number them) and labeled with the applicant's name and ".org Proposal." It must cover all topics described below. This document, signed on behalf of the applicant, should be included at the front as a cover document to your .org Proposal. The materials listed in item C50 below must accompany the .org Proposal.

Please place the legend "CONFIDENTIAL" on any part of your description that you have listed in item E3.1 of your Statement of Requested Confidential Treatment of Materials Submitted.]

I. GENERAL INFORMATION ABOUT THE APPLICANT

C1. The first section of the .org Proposal (after the signed copy of this document) covers general information about the applicant. Please key your responses to the designators (C2, C3, C4, etc.) below.

C2. The full legal name, principal address, telephone and fax numbers, and e-mail address of the applicant, and the URL of its principal world wide web site.

C3. A general description of the applicant's business and other activities.

C4. The applicant's type of entity (e.g., corporation, partnership, etc.) and law (e.g., Denmark) under which it is organized. Please state whether the applicant is for-profit or non-profit. If it is non-profit, please provide a detailed statement of its mission.

C5. Dun & Bradstreet D-U-N-S Number (if any) of the applicant.

C6. The number of employees currently employed by the applicant.

C7. The applicant's total revenue (in US dollars) in the last-ended fiscal year.

C8. Full names and positions of (i) all directors, (ii) all officers, (iii) all relevant managers, and (iv) any persons or entities owning five percent or more of the applicant.

C9. Provide the name, telephone and fax number, and e-mail address of person to contact for additional information regarding this application. If there are multiple people, please list all their names, telephone and fax numbers, and e-mail addresses and describe the areas as to which each should be contacted.

C10. Intentionally omitted.

II. STATEMENT OF CAPABILITIES OF THE APPLICANT AND CONTRACTED SERVICE PROVIDERS

C11. As stated in the Criteria for Assessing Proposals, "ICANN's first priority is to preserve the stability of the Internet" and "ICANN will place significant emphasis on the demonstrated ability of the applicant or a member of the proposing team to operate a TLD registry of significant scale in a manner that provides affordable services with a high degree of service responsiveness and reliability." This section of the .org Proposal offers the applicant the opportunity to demonstrate its ability to operate the .org registry in that manner.

Throughout this document, operation of the .org registry, including providing all associated Registry Services, as defined in subsection 1.16 of the model .org Registry Agreement, is referred to as the "Registry Function".

C12. State whether the applicant intends to perform all aspects of the Registry Function, or whether the applicant intends to outsource some or all aspects of the Registry Function to other entities that will provide services or facilities under contract with the applicant. If any portion(s) of the services or facilities will be provided by another entity under contract, please describe which portion(s), state the time period during which they will be provided under contract, and identify what entity will be providing the services or facilities.

C13. Identify by name each entity other than the applicant that will provide any of the following:

- all services and facilities used to perform the Registry Function;
- any portion of the services and facilities used to perform the Registry Function accounting for 10% or more of overall costs of the Registry Function; or
- any portion of any of the services and facilities used to perform the following parts of the Registry Function accounting for 25% or more of overall costs of the part: database operation, zone file generation, zone file distribution and publication, billing and collection, data escrow and backup, customer (registrar) support, and Whois service.

The identification of each entity should include:

C13.1 The full legal name, principal address, telephone and fax numbers, and e-mail address of the entity, and the URL of its principal world wide web site.

C13.2. A general description of the entity's business and other activities.

C13.3. The entity's type (e.g., corporation, partnership, etc.) and law (e.g.,

Denmark) under which it is organized. Please state whether the entity is for-profit or non-profit. If it is non-profit, please provide a detailed statement of its mission.

C13.4. Dun & Bradstreet D-U-N-S Number (if any) of the entity.

C13.5. The number of employees currently employed by the entity.

C13.6. The entity's total revenue (in US dollars) in the last-ended fiscal year.

C14. For each entity identified in item C13, please state the scope and terms of the contract under which the facilities or services will be provided and attach documentary evidence that the entity has committed to enter into that contract.

[ICANN's evaluation of your response to item C15 will be a major factor in the selection of a successor .org operator. We recommend that you give a detailed, specific response.]

C15. Describe in detail the abilities of the applicant and the entities identified in item C13 to operate a TLD registry of significant scale in a manner that provides affordable services with a high degree of service responsiveness and reliability. Your response should give specifics, including significant past or present achievements and activities of the applicant and the entities identified in item C13 that demonstrate the described abilities. It should also include information about key technical personnel (qualifications and experience), size of technical workforce, and access to systems development tools.

III. TECHNICAL PLAN (INCLUDING TRANSITION PLAN)

C16. The third section of the .org Proposal is a description of your technical plan. This section must include a comprehensive, professional-quality technical plan that provides a full description of the proposed technical solution for transitioning and operating all aspects of the Registry Function. The topics listed below are representative of the type of subjects that will be covered in the technical plan section of the .org Proposal.

[ICANN will extensively review and analyze this section of the .org Proposal. The content, clarity, and professionalism of this section will be important factors in ICANN's evaluation of applications. We strongly recommend that those who are planning to apply secure professional assistance from engineers and/or other technical consultants to aid in the formulation of the technical plan and the preparation of the technical plan section of the .org Proposal.]

C17. Technical plan for performing the Registry Function. This should present a comprehensive technical plan for performing the Registry Function. In addition to providing basic information concerning the proposed technical solution (with appropriate diagrams), this section offers the applicant an opportunity to demonstrate that it has carefully analyzed the technical requirements for performing the Registry Function. Factors that should be addressed in the technical plan include:

C17.1. General description of proposed facilities and systems. Address all locations of systems. Provide diagrams of all of the systems operating at each location. Address the specific types of systems being used, their capacity, and their interoperability, general availability, and level of security. Describe buildings, hardware, software systems, environmental equipment, Internet

connectivity, etc.

C17.2. Registry-registrar model and protocol. Please describe in detail, including a full (to the extent feasible) statement of the proposed RRP and EPP implementations. See also item C22 below.

C17.3. Database capabilities. Database size, throughput, scalability, procedures for object creation, editing, and deletion, change notifications, registrar transfer procedures, grace period implementation, reporting capabilities, etc.

C17.4. Zone file generation. Procedures for changes, editing by registrars, updates. Address frequency, security, process, interface, user authentication, logging, data back-up.

C17.5. Zone file distribution and publication. Locations of nameservers, procedures for and means of distributing zone files to them. If you propose to employ the VeriSign global resolution and distribution facilities described in subsection 5.1.5 of the current .org registry agreement, please provide details of this aspect of your proposal.

C17.6. Billing and collection systems. Technical characteristics, system security, accessibility.

C17.7. Data escrow and backup. Frequency and procedures for backup of data. Describe hardware and systems used, data format, identity of escrow agents, procedures for retrieval of data/rebuild of database, etc.

C17.8. Publicly accessible look up/Whois service. Address software and hardware, connection speed, search capabilities, coordination with other Whois systems, etc.

C17.9. System security. Technical and physical capabilities and procedures to prevent system hacks, break-ins, data tampering, and other disruptions to operations. Physical security.

C17.10. Peak capacities. Technical capability for handling a larger-than-projected demand for registration. Effects on load on servers, databases, back-up systems, support systems, escrow systems, maintenance, personnel.

C17.11. Technical and other support. Support for registrars and for Internet users and registrants. Describe technical help systems, personnel accessibility, web-based, telephone and other support, support services to be offered, time availability of support, and language-availability of support.

C17.12. Compliance with specifications. Describe the extent of proposed compliance with technical specifications, including compliance with at least the following RFCs: 954, 1034, 1035, 1101, 2181, 2182.

C17.13. System reliability. Define, analyze, and quantify quality of service.

C17.14. System outage prevention. Procedures for problem detection,

redundancy of all systems, back up power supply, facility security, technical security, availability of back up software, operating system, and hardware, system monitoring, technical maintenance staff, server locations.

C17.15. System recovery procedures. Procedures for restoring the system to operation in the event of a system outage, both expected and unexpected. Identify redundant/diverse systems for providing service in the event of an outage and describe the process for recovery from various types of failures, the training of technical staff who will perform these tasks, the availability and backup of software and operating systems needed to restore the system to operation, the availability of the hardware needed to restore and run the system, backup electrical power systems, the projected time for restoring the system, the procedures for testing the process of restoring the system to operation in the event of an outage, the documentation kept on system outages and on potential system problems that could result in outages.

C17.16. Registry failure provisions. Please describe in detail your plans for dealing with the possibility of a registry failure due to insolvency or other factors that preclude restored operation.

C18. Transition Plan. This should present a detailed plan for the transition of the Registry Function from the current facilities and services provided by VeriSign, Inc., to the facilities and services you propose. Issues that should be discussed in this detailed plan include:

C18.1. Steps of the proposed transition, including sequencing and scheduling.

C18.2. The duration and extent of any interruption of any part of the Registry Function.

C18.3. Contingency plans in the event any part of the proposed transition does not proceed as planned.

C18.4. The effect of the transition on (a) .org registrants and (b) Internet users seeking to resolve .org domain names.

C18.5. The specifics of cooperation required from VeriSign, Inc.

C18.6. Any relevant experience of the applicant and the entities identified in item C13 in performing similar transitions.

C18.7. Any proposed criteria for the evaluation of the success of the transition.

C19. Please describe in detail mechanisms that you propose to implement to ensure compliance with ICANN-developed policies and the requirements of the registry agreement.

IV. PROVISIONS FOR EQUIVALENT ACCESS BY ACCREDITED REGISTRARS

C20. The selected successor operator for the .org registry will be required to provide all ICANN-accredited registrars having registry-registrar agreements in effect with equivalent access to registry services through a shared registry system, under which those registrars will provide services (either directly or through resellers) to registrants. This section of the

.org Proposal covers the applicant's proposed arrangements for interacting with registrars in a manner that provides equivalent access.

C21. Describe in detail your proposed methods of providing registry services on an equivalent basis to all accredited registrars having registry-registrar agreements in effect. Your description should include any measures intended to make registration, technical assistance, and other services available to ICANN-accredited registrars in different time zones and relevant languages. In addition, describe the Registry Code of Conduct and other commitments you propose to make to ensure that all such registrars receive equivalent access to registry services. In preparing your response to this item, you may wish to refer to Appendices H and I of the registry agreements ICANN has entered for unsponsored TLDs (e.g., .biz, .com, .info, .name, and .pro).

C22. VeriSign, Inc., the current operator of the .org registry uses a registry-registrar protocol (RRP) documented in RFC 2832. At the time of the transition, the selected successor operator will be required to continue to support the RRP (unless a migration of registrars in .org to another protocol has already been completed by that time). In addition, the selected successor operator will be required to implement support for the IETF provreg working group's protocol specification for an Extensible Provisioning Protocol (EPP) no later than 135 days after it is adopted as a Proposed Standard [RFC 2026, section 4.1.1]. Provide a detailed description of your plan for supporting RRP at the time of transition, for supporting EPP within the required time frame, and for providing registrars with a smooth, low-cost migration path from RRP to EPP.

C23 and C24. Intentionally omitted.

V. PROPOSED REGISTRY SERVICES

C25. Describe each Registry Service (as defined in subsection 1.16 of the model .org Registry Agreement) that you propose to provide for a fee. For an example of a description of this type, see <http://www.icann.org/tlds/agreements/name/registry-agmt-appc-1-03jul01.htm>.

C26. State the maximum price you propose for each Registry Service identified in item C25.

C27. Describe each Registry Service (as defined in subsection 1.16 of the model .org Registry Agreement) that you propose to provide without charging a fee.

C28. Describe the technical performance (including quality-of-service commitments) you propose to make. See <http://www.icann.org/tlds/agreements/name/registry-agmt-appd-29jun01.htm> for an example. The successor operator will be expected to meet the Cross-Network Nameserver Performance Requirements set forth in section 2.1 of the document at the above URL.

C29. Intentionally omitted.

VI. ENHANCEMENT OF COMPETITION

C30. One of ICANN's core principles is the encouragement of competition in the provision of registration services at both the registry and registrar levels. Promotion of that principle will be a criterion. As one illustration of this criterion, a major purpose of the reassignment

of the .org registry is to diversify the provision of registry services by placing the .org registry under different operation than the .com and .net registries. Consideration will be given to the extent to which proposed arrangements are consistent with this purpose. As another illustration, applicants are encouraged to refrain from prohibiting non-affiliated providers of backend services from offering their services in connection with other applications. This section of the .org Proposal concerns the effect on competition of the selection of a successor registry operator.

C31. Give your analysis of how selecting your application would affect competition in the provision of registration services at both the registry and registrar level.

C32. State whether the applicant or any entity identified in item C13 operates a DNS registry having more than 500,000 registered names and, if so, provide details.

C33. Describe in detail all affiliations, including direct or indirect ownership and contractual arrangements (including letters of intent) for the past, present, or future provision of registry services, between (a) the applicant or any entity identified in item C13 and (b) any operator of a DNS registry having more than 500,000 registered names.

C34. Intentionally omitted.

VII. RESPONSIVENESS TO THE NONCOMMERCIAL INTERNET USER COMMUNITY

C35. Describe in detail the mechanisms you propose for ensuring that the policies and practices followed in your operation of the .org registry are responsive to and supportive of the noncommercial Internet user community, and reflect as much of its diversity as possible. Your description should include any affiliation you propose with representative noncommercial organizations and details (including proposed bylaws or other chartering documents) regarding any governing or advisory groups that you propose.

C36. Submit any evidence that demonstrates support for your proposal among registrants in the .org TLD, particularly those actually using .org domain names for noncommercial purposes. Support from diverse noncommercial entities from across the global Internet community will be considered in the selection.

C37. Intentionally omitted.

VIII. DIFFERENTIATION OF THE .ORG TLD

C38. Describe any measures you propose to make to differentiate the .org TLD from TLDs intended for commercial purposes. Your proposal should describe in detail any planned marketing practices designed to differentiate the .org TLD, promote and attract registrations from the global noncommercial community, and minimize defensive and duplicative registrations.

C39. Intentionally omitted.

IX. THE VERISIGN ENDOWMENT

C40. The current .org registry agreement between ICANN and VeriSign, Inc., states:

> 5.1.4 No later than 90 days prior to the Expiration Date, [VeriSign] will pay to

ICANN or ICANN's designee the sum of US $5 million, to be used by ICANN in it sole discretion to establish an endowment to be used to fund future operating costs of the non-profit entity designated by ICANN as successor operator of the .org registry. [VeriSign] agrees that such funds, once paid to ICANN, will become the property of ICANN and/or ICANN's designee, and that [VeriSign] will have no ownership or other rights or interests in such funds or in the manner in which they are used or disbursed.

C41. Do you propose to seek to qualify to receive any funds from this endowment?

C41.1. If so, describe in detail how you propose to use this endowment. Include the commitments you propose to make about the uses to which the endowment would be put. Explain why those uses are consistent with the smooth, stable transition and operation of the .org TLD for the benefit of current and future .org registrants.

C41.2. If you propose to seek to qualify to receive the endowment funds, explain why you believe that your proposed use is consistent with the terms of the endowment.

C42-49. Intentionally omitted.

X. SUPPORTING DOCUMENTATION

C50. The following documentation should be provided in support of your .org Proposal:

C50.1. Organizational documents of applicant. A copy of the organizational documents (articles of association, bylaws, enabling legislation, etc.) of the applicant.

C50.2. Organizational documents of certain other entities. A copy of the organizational documents of each non-profit entity identified in item C13.

C50.3. Business references. A list of significant trade and credit references of the applicant and each entity identified in item C13.

C50.4. Annual reports. A copy of the most recent annual financial report (or similar document), if any, of the applicant and each entity identified in item C13.

C50.5. Evidence of commitment. Any documentation requested by item C14.

C50.6. Evidence of community support. Any documentation requested by item C36.

By signing this .org Proposal, the undersigned certifies (a) that he or she has authority to do so on behalf of the applicant and, (b) on his or her own behalf and on behalf of the applicant, that all information contained in this proposal, and all documents attached to this proposal, is true and accurate to the best of his/her/its knowledge and information. The undersigned and the applicant understand that any material misstatement or misrepresentation will reflect negatively on the application of which this proposal is a part and may cause cancellation of any delegation of a top-level domain based on that application.

Signature

Name (please print)

Title

Name of Applicant

Date

Prior draft:

[1 May 2002](#)

Summary of changes from prior draft:

- Items [C11](#), [C25](#), and [C27](#) have been reworded slightly to conform to terminology in the remainder of the RFP materials.
- A sentence was added to [item C17.5](#) regarding use of the global distribution and resolution facilities VeriSign will make available under its .org Registry Agreement.
- [Item C20](#) has been reworded to correct garbled language.
- [Item C21](#) has been revised to recognize that a registry agreement has also been entered for .pro.
- [Item C22](#) has been revised to reflect some timing contingencies regarding the adoption of EPP as an IETF-Proposed Standard.
- [Item C30](#) has been reworded to conform to a revision in [criterion 3](#).
- A missing "TLD" has been added to [item C38](#).

Comments concerning the layout, construction and functionality of this site
should be sent to webmaster@icann.org.

Page updated 20-May-2002

Fitness Disclosure
(for .org Application)

Posted: 20 May 2002

This document is a finalized version of the [Draft] Fitness Disclosure posted on 1 May 2002. Please do not use the earlier document.

Please be sure to check this web page for updates immediately before you submit your application.

Fitness Disclosure

The following disclosures are hereby made on behalf of the applicant.

D1. Within the past ten years, has any current director, officer, or manager of the applicant (a) been convicted of any felony; (b) been convicted of any misdemeanor related to financial activities; (c) been judged by a court to have committed fraud or breach of fiduciary duty, or (d) been the subject of a judicial determination that is similar or related to any of these?

[Answer "yes" or "no."]

D2. Within the past ten years, has the applicant itself (a) been convicted of any felony; (b) been convicted of any misdemeanor related to financial activities; (c) been judged by a court to have committed fraud or breach of fiduciary duty, or (d) been the subject of a judicial determination that is similar or related to any of these?

[Answer "yes" or "no."]

D3. Within the past ten years, has any current director, officer, or manager of the applicant been disciplined by any government or by any organization of which he or she was a member for conduct involving dishonesty or misuse of funds of others?

[Answer "yes" or "no."]

D4. Within the past ten years has the applicant itself been disciplined by any government or by any organization of which it was a member for conduct involving dishonesty or misuse of funds of others?

[Answer "yes" or "no."]

D5. Is any director, officer, or manager of the applicant currently involved in any judicial or regulatory proceeding that could result in a conviction, judgment, determination, or discipline of the type specified in items D1 or D3?

[Answer "yes" or "no."]

D6. Is the applicant itself currently involved in any judicial or regulatory proceeding that could result in a conviction, judgment, determination, or discipline of the type specified in items D2 or D4?

[Answer "yes" or "no."]

D7. Within the past three years, has any current director, officer, or manager of the applicant been adjudged to be bankrupt or insolvent?

[Answer "yes" or "no."]

D8. Has the applicant itself ever been adjudged to be bankrupt or insolvent?

[Answer "yes" or "no."]

D9. If the response to any of items D1 through D8 is affirmative, please provide complete details on separate sheets of paper attached to this disclosure.

[Please attach one or more sheets with complete details.]

By signing this fitness disclosure, the undersigned certifies that he or she has authority to do so on behalf of the applicant. On his or her own behalf and on behalf of the applicant, the undersigned certifies that all information contained in this fitness disclosure, and all documents attached to this disclosure, is true and accurate to the best of his/her/its knowledge and information. The undersigned and the applicant understand that any material misstatement or misrepresentation will reflect negatively on the application of which this disclosure is a part and may cause cancellation of any delegation of a top-level domain based on that application.

_____
Signature

_____
Name (please print)

_____
Title

_____
Name of Applicant

_____

Date

Prior draft:

1 May 2002

No changes from the prior draft were made in this finalized version.

Statement of Requested Confidential Treatment of Materials Submitted

Posted: 20 May 2002

This document is a finalized version of the [Draft] Statement of Requested Confidential Treatment of Materials Submitted posted on 1 May 2002. Please do not rely on the earlier document. See the end of this document for a summary of changes.

Please be sure to check this web page for updates immediately before you submit your application.

Statement of Requested Confidential Treatment of Materials Submitted

I. PROCEDURE FOR CONFIDENTIAL TREATMENT OF MATERIALS SUBMITTED.

ICANN intends to evaluate applications to become the successor operator for the .org top-level domain in as open and transparent a manner as is reasonably feasible. At the same time, however, ICANN recognizes that to encourage applicants to provide all documents and information relevant to the application, it is appropriate to afford applicants the opportunity to submit legitimate trade-secret information with a request for confidential handling by ICANN.

Except to the extent that it expressly agrees otherwise in writing, ICANN will be free to disclose and use information submitted in connection with an application in any manner and to anyone it deems appropriate. If the applicant wishes ICANN to accord confidential treatment to any material in its application or otherwise submitted in connection with the application, the applicant must expressly request confidential treatment of that material in this statement and mark the material with the legend "CONFIDENTIAL." Applicants are strongly encouraged to avoid, or at least to minimize, requests for confidential treatment of material in applications or submitted in connection with applications.

Any request for confidential handling will be reviewed for confidentiality by ICANN staff before further consideration of the material to which the request relates. **In general, requests for confidential treatment will be strongly disfavored, and granted only for extraordinarily compelling reasons.** ICANN will promptly notify the applicant of the extent to which ICANN is willing to agree to treat the designated material in a as confidential and the manner in which ICANN is willing to handle that material, requesting a response from the applicant within two business days. If ICANN is not willing to agree to the applicant's request for confidential handling in its entirety, ICANN and the applicant will discuss the matter in an effort to reach a written agreement on confidential treatment of materials. Only a written agreement, signed by ICANN's President or Vice-President, will

be binding on ICANN.

In the event the applicant requests confidential treatment of materials and ICANN and the applicant do not agree on provisions for confidential treatment within a period designated by ICANN, ICANN will, to the extent of the disagreement, delete all material submitted by applicant that is subject to applicant's request for confidentiality. The deleted information will then cease to be part of the applicant's application and will not be considered by ICANN in reviewing the application, nor will the deleted information be disclosed or otherwise used by ICANN. After being advised of what has been deleted, the applicant will be offered (for two business days) the opportunity to withdraw the application and obtain a refund of the US$ 35,000 interim evaluation fee. ICANN intends to use reasonable efforts to meet the timing and related requirements of this section I, but shall not be liable for failing to meet them.

II. APPLICANT'S REQUEST FOR CONFIDENTIAL TREATMENT.

E1. The applicant's full legal name is:

[Please insert the full legal name of the applicant.]

E2. Does the applicant request confidential treatment of any portion of the application or any material submitted in connection with the application?

[Answer "yes" or "no".]

E3. If the response to item E2 is yes, please provide, on sheets of paper attached to this Statement of Requested Confidential Treatment of Materials Submitted, the following information for each set of material as to which the applicant requests confidential treatment:

[Attach sheets stating the information requested in items E3.1, E3.2, and E3.3.]

E3.1. Clearly identify exactly what material is subject to the request for confidential treatment. The identification should state the general nature of the material (e.g., "Economic Terms of Prior Agreement Submitted to Demonstrate Operational Capabilities") and precisely and clearly state every place in the application or material submitted where the material appears (e.g., "the first full paragraph on page 24 of the '.org Proposal'").

[In addition, be sure to place the legend "CONFIDENTIAL" on each part of your overall application that you identify in response to this item.]

E3.2. State precisely what restrictions on disclosure, use, and handling of the material is requested.

E3.3. Provide a justification for why the material should be treated confidentially and why the restrictions on disclosure, use, and handling are appropriate.

By signing this Statement of Requested Confidential Treatment of Materials Submitted, the undersigned certifies that he or she has authority to do so on behalf the applicant. The undersigned agrees on behalf of himself or herself and the applicant to the procedure described in section I of this statement and that there is no claim to confidential treatment for any material submitted by applicant not clearly identified in response to item E3.1 and marked "CONFIDENTIAL." The undersigned agrees, on his or her own behalf and on behalf of the applicant and each of its officers, directors, employees, consultants, attorneys, agents, partners, and joint venturers, that neither ICANN, nor any of its officers, directors, employees, consultants, attorneys, and agents, shall have any monetary liability for disclosure or use of submitted materials contrary to the procedure described in section I of this statement, except where that disclosure or use is done to maliciously harm applicant.

_____
Signature

_____
Name (please print)

_____
Title

_____
Name of Applicant(s)

_____
Date

Prior draft:

1 May 2002

Summary of changes from prior draft:

- The fourth paragraph of section I has been slightly reworded to promote clarity.
- Item E3.1 has been reworded to be consistent with the terminology used in the rest of the RFP package.
- Item E3.2 has been reworded to ensure that the proposed disclosure, use, and handling restrictions are precisely stated.

Comments concerning the layout, construction and functionality of this site should be sent to webmaster@icann.org.

Page updated 20-May-2002

Reassignment of .org Top-Level Domain: Criteria for Assessing Proposals

Posted: 20 May 2002

This document is a finalized version of the [Draft] Criteria for Assessing Proposals posted on 1 May 2002. **Please do not rely on the earlier document. See the end of this document for a summary of changes.**

Please be sure to check this web page for updates immediately before you submit your application.

Reassignment of .org Top-Level Domain: Criteria for Assessing Proposals

On 31 December 2002, the current registry agreement for the operation of the .org top-level domain (TLD) expires. Accordingly, the Internet Corporation for Assigned Names and Numbers (ICANN) is soliciting proposals from entities seeking to assume responsibility for operating the registry for the .org TLD beginning at the expiration.

Instructions for preparing and submitting proposals appear at <http://www.icann.org/tlds/org/app-instructions.htm>. It is very important that organizations seeking to become the successor operator for the .org TLD carefully follow those instructions.

This document discusses the criteria that ICANN intends to consider in evaluating and selecting from among the proposals that are received. The general criteria include those listed below. ICANN expects that additional considerations in the evaluation and selection of proposals may be suggested by analysis and comparison of the proposals received.

1. Need to preserve a stable, well-functioning .org registry.

ICANN's first priority is to preserve the stability of the Internet, including the domain-name system (DNS). Inasmuch as the .org TLD presently contains over 2,700,000 second-level domains, a principal consideration will be ICANN's level of confidence that a particular proposal will result in technically sound, high-quality services that meet the needs of .org registrants.

Proposals should include specific plans, backed by ample, firmly committed resources, as to how the proposed operator intends to operate the .org TLD in a stable and technically competent manner. (See also criterion 9 below, on transition plans.) In evaluating proposals, ICANN will place significant emphasis on the demonstrated ability of the applicant or a member of the proposing team to operate a TLD registry of significant scale in a manner that provides affordable services with a high degree of service responsiveness

and reliability.

2. Ability to comply with ICANN-developed policies.

As a globally open TLD, the operation of the .org registry must comply with policies defined through ICANN processes, such as policies regarding registrar accreditation, shared registry access, the uniform dispute resolution policy, and access to registration contact data via Whois. Consideration will be given to the adequacy of mechanisms proposed for ensuring compliance with those policies.

3. Enhancement of competition for registration services.

One of ICANN's core principles is the encouragement of competition in the provision of registration services at both the registry and registrar levels. Promotion of that principle will be a criterion. As one illustration of this criterion, a major purpose of the reassignment of the .org registry is to diversify the provision of registry services by placing the .org registry under different operation than the .com and .net registries. Consideration will be given to the extent to which proposed arrangements are consistent with this purpose. As another illustration, applicants are encouraged to refrain from prohibiting non-affiliated providers of backend services from offering their services in connection with other applications.

4. Differentiation of the .org TLD.

A key objective is differentiation of the .org TLD from TLDs intended for commercial purposes. Appropriate marketing practices are a primary tool for achieving that objective. Proposals should include detailed planned marketing practices designed to differentiate the .org TLD, promote and attract registrations from the global noncommercial community, and minimize defensive and duplicative registrations.

5. Inclusion of mechanisms for promoting the registry's operation in a manner that is responsive to the needs, concerns, and views of the noncommercial Internet user community.

The successor operator's policies and practices should strive to be responsive to and supportive of the noncommercial Internet user community, and reflect as much of its diversity as possible. Consideration will be given to mechanisms proposed for achieving this responsiveness and supportiveness. A broad variety of mechanisms are possible, such as teaming between for-profit and non-profit organizations and establishment of governing or advisory groups for the operation of the .org registry that include representatives of the noncommercial Internet user community.

Where representative governing or advisory groups are proposed, the proposal should ensure a mechanism for providing all .org registrants with the opportunity to participate in that mechanism, either through the selection of members, or through some other means. The bylaws or other documents establishing the groups should provide explicitly for an open, transparent, and participatory process by which .org operating policies are initiated, reviewed, and revised in a manner that reflects the interests of .org domain name holders and is consistent with the terms of its registry agreement with ICANN.

6. Level of support for the proposal from .org registrants.

Demonstrated support among registrants in the .org TLD, particularly those actually using

.org domain names for noncommercial purposes, will be a factor in evaluation of the proposals. Noncommercial registrants do not have uniform views about policy and management, and no single organization can fully encompass the diversity of global civil society. There will likely be significant difficulties in ascertaining the level of support for particular .org proposals from throughout the .org registrants and noncommercial community. Nevertheless, proposals to operate the .org TLD should provide available evidence of support from across the global Internet community.

7. The type, quality, and cost of the registry services proposed.

The specific registry services proposed should allow uninterrupted provision of all services presently provided to .org registrants. In addition, plans and provisions for additional registry services that will benefit .org registrants will be considered. Consideration will be given to proposed quality-of-service commitments. Any proposal should match or improve on the performance levels of the current .org registry.

In view of the noncommercial character of many present and future .org registrants, affordability is important. A significant consideration will be the price at which the proposal commits to provide initial and renewal registrations and other registry services. The registry fee charged to accredited registrars should be as low as feasible consistent with the maintenance of good-quality service.

The .org TLD will be operated with a shared registration system providing numerous (currently over one hundred) competitive registrars from around the world with equivalent access to registry services. Operation of a large TLD registry employing a shared registration system involves many aspects. In addition to the recording of registrations and provision of nameservice, necessary capabilities include Whois service, data escrow, certification of registrars for connection to the registry, processing of transfers between registrars, and technical and other support of registrars. Consideration will be given to the means proposed to supply all services required for operation of the .org TLD.

8. Ability and commitment to support, function in, and adapt protocol changes in the shared registry system.

The selected registry operator for .org will be required to provide registry services to ICANN-accredited registrars through a shared registry system, under which those registrars provide services (either directly or through resellers) to registrants. Consideration will be given to the proposed methods of providing registry services on an equivalent basis to all accredited registrars. Applicants should show a commitment to making registration, technical assistance, and other services available to ICANN-accredited registrars in different time zones and relevant languages.

The current .org registry uses a registry-registrar protocol documented in RFC 2832. Proposals should demonstrate the ability to support registrar communications under that protocol at the time of the successor registry operator's commencement of service. The applicant should also commit to adapting to meet changes to this protocol as adopted by the ICANN process.

In particular, the provreg working group of the Internet Engineering Task Force is currently working on specifications for a standard for registry-registrar communications, and it is expected that unsponsored TLD registry operators will comply with any standards that

result. Consideration will be given to provisions for migration in a manner that minimizes burdens on registrars. (See also "Transition considerations", below.)

9. Transition considerations.

A smooth transition to a new operator of the .org TLD is essential. Proposals should include detailed plans (including plans for significant contingencies) for the transition. They should also commit to provide data to allow ICANN's evaluation of the .org transition process.

10. Ability to meet and commitment to comply with the qualification and use requirements of the VeriSign endowment and proposed use of the endowment.

To the extent that a proposal contemplates the availability of the VeriSign US$5 million endowment (see subsection 5.1.4 of the current .org Registry Agreement), the proposal should demonstrate that it meets the qualification and use requirements of that endowment. Proposals that employ the endowment should also include detailed commitments about the uses to which the endowment would be put, and consideration will be given to the extent to which those uses are consistent with the smooth, stable transition and operation of the .org TLD for the benefit of current and future .org registrants.

11. The completeness of the proposals submitted and the extent to which they demonstrate realistic plans and sound analysis.

ICANN intends to place significant emphasis on the completeness of the proposals and the extent to which they demonstrate that the applicant has a thorough understanding of what is involved, has carefully thought through all relevant issues, has realistically assessed all requirements for implementing the proposal, has procured firm commitments for all necessary resources, and has formulated sound plans for executing the proposal. Applicants are strongly encouraged to retain well-qualified professional assistance (e.g., technical, engineering, financial, legal, marketing, and management professionals, as appropriate) in formulating their proposals. Proposals that are presented in a clear, substantive, detailed, and specific manner will be preferred.

Prior draft:

1 May 2002

Summary of changes from prior draft:

- The explanation of criterion 3 has been reworded. Promotion of competition is intended to be a general criterion, not limited to ICANN's goal of placing the .org registry under different operation than the .com and .net registries (though that goal is an appopriate illustration of the general criterion). A second illustration, concerning avoidance of applicants' exclusivity arrangements with back-end providers, has been added to the explanation.
- The statement (in bold face) of criterion 5 has been reworded for clarity.
- The explanation of crierion 10 has been reworded for clarity.

Comments concerning the layout, construction and functionality of this site

should be sent to webmaster@icann.org.

Page updated 20-May-2002

Model .org Registry Agreement

Posted: 20 May 2002

This document is a finalized version of the [Draft] .org Registry Agreement posted on 1 May 2002. Please do not rely on the earlier document. See the end of this document for a summary of changes.

Please be sure to check this web page for updates immediately before you submit your application.

Model .org Registry Agreement

This document sets forth a skeleton of the .org Registry Agreement which the selected successor registry operator for the .org top-level domain (TLD) will be expected to enter. (The terms of this skeleton agreement may be adjusted by ICANN to reflect results of ICANN's ongoing evolution and reform process.)

The skeleton agreement includes a main part (presented below), which is modeled on the registry agreement ICANN entered in 2001 for the unrestricted .info TLD. (A similar agreement was entered for the restricted, unsponsored .biz, .name, and .pro TLDs.) Adjustments have been made to the skeleton to reflect that the .org TLD is being transitioned from an incumbent operator rather than being started up, as was the case for the .info TLD.

The agreement with the successor operator for the .org TLD will also include appendices covering various topics. It is anticipated that the following appendices will be used in substantially the same form as used for .info:

- A: Format and Technical Requirements for Requests to Change TLD Nameservers
  http://www.icann.org/tlds/agreements/unsponsored/registry-agmt-appa-09may01.htm

- B: Format and Technical Requirements for Requests to Change TLD Contact Information
  http://www.icann.org/tlds/agreements/unsponsored/registry-agmt-appb-09may01.htm

- K: Names Reserved from Registration
  http://www.icann.org/tlds/agreements/unsponsored/registry-agmt-appk-26apr01.htm

- N: TLD Zone-File Access Agreement
  http://www.icann.org/tlds/agreements/unsponsored/registry-agmt-appn-11may01.htm

- Q: Whois Data Specification–ICANN

http://www.icann.org/tlds/agreements/unsponsored/registry-agmt-appq-09may01.htm

- S: Data Escrow Agreement
  http://www.icann.org/tlds/agreements/unsponsored/registry-agmt-apps-11may01.htm

- T: Monthly Registry Reports
  http://www.icann.org/tlds/agreements/unsponsored/registry-agmt-appt-11may01.htm

- V: Initial Consensus Policies
  http://www.icann.org/tlds/agreements/unsponsored/registry-agmt-appv-26feb01.htm

- Y: Sanctions Program
  http://www.icann.org/tlds/agreements/unsponsored/registry-agmt-appy-26apr01.htm

In addition, it is anticipated that other appendices used in the .info, .biz, .name, and .pro registry agreements will serve, with some modifications, as guides for the appendices used for .org. The appendices are linked below; appropriate customization will be required for the .org registry agreement based on the nature of the selected proposal, the requirements described in the .org Proposal Form (see, e.g., items C17.2, C21, C22, and C28), and other circumstances. Nonetheless, the appendices linked below are instructive as to the form and content of the appendices used for the .org registry agreement:

- C: Functional Specifications
  - .biz Appendix C
    http://www.icann.org/tlds/agreements/biz/registry-agmt-appc-11may01.htm
  - .info Appendix C
    http://www.icann.org/tlds/agreements/info/registry-agmt-appc-11may01.htm
  - .name Appendix C
    http://www.icann.org/tlds/agreements/name/registry-agmt-appc-03jul01.htm
  - .pro Appendix C
    http://www.icann.org/tlds/agreements/pro/registry-agmt-appc-27apr02.htm
- D: Performance Specifications
  - .biz Appendix D
    http://www.icann.org/tlds/agreements/biz/registry-agmt-appd-11may01.htm
  - .info Appendix D
    http://www.icann.org/tlds/agreements/info/registry-agmt-appd-11may01.htm
  - .name Appendix D
    http://www.icann.org/tlds/agreements/name/registry-agmt-appd-29jun01.htm
  - .pro Appendix D
    http://www.icann.org/tlds/agreements/pro/registry-agmt-appd-02mar02.htm
- E: Service-Level Agreement
  - .biz Appendix E
    http://www.icann.org/tlds/agreements/biz/registry-agmt-appe-11may01.htm
  - .info Appendix E
    http://www.icann.org/tlds/agreements/info/registry-agmt-appe-11may01.htm
  - .name Appendix E
    http://www.icann.org/tlds/agreements/name/registry-agmt-appe-02jul01.htm
  - .pro Appendix E
    http://www.icann.org/tlds/agreements/pro/registry-agmt-appe-29dec01.htm
- F: Registry-Registrar Agreement
  - .biz Appendix F

http://www.icann.org/tlds/agreements/biz/registry-agmt-appf-11may01.htm
- .info Appendix F
  http://www.icann.org/tlds/agreements/info/registry-agmt-appf-11may01.htm
- .name Appendix F
  http://www.icann.org/tlds/agreements/name/registry-agmt-appf-03jul01.htm
- .pro Appendix F
  http://www.icann.org/tlds/agreements/pro/registry-agmt-appf-27apr02.htm
- G: Fees for Registry Services
  - .biz Appendix G
    http://www.icann.org/tlds/agreements/biz/registry-agmt-appg-11may01.htm
  - .info Appendix G
    http://www.icann.org/tlds/agreements/info/registry-agmt-appg-11may01.htm
  - .name Appendix G
    http://www.icann.org/tlds/agreements/name/registry-agmt-appg-03jul01.htm
  - .pro Appendix G
    http://www.icann.org/tlds/agreements/pro/registry-agmt-appg-27apr02.htm
- H: Equivalent Access Certification
  - .biz Appendix H
    http://www.icann.org/tlds/agreements/biz/registry-agmt-apph-11may01.htm
  - .info Appendix H
    http://www.icann.org/tlds/agreements/info/registry-agmt-apph-11may01.htm
  - .name Appendix H
    http://www.icann.org/tlds/agreements/name/registry-agmt-apph-06mar01.htm
  - .pro Appendix H
    http://www.icann.org/tlds/agreements/pro/registry-agmt-apph-12mar01.htm
- I: Registry Code of Conduct
  - .biz Appendix I
    http://www.icann.org/tlds/agreements/biz/registry-agmt-appi-27apr01.htm
  - .info Appendix I
    http://www.icann.org/tlds/agreements/info/registry-agmt-appi-27feb01.htm
  - .name Appendix I
    http://www.icann.org/tlds/agreements/name/registry-agmt-appi-03mar01.htm
  - .pro Appendix I
    http://www.icann.org/tlds/agreements/pro/registry-agmt-appi-01mar01.htm
- O: Whois Specification–Public Whois
  - .biz Appendix O
    http://www.icann.org/tlds/agreements/biz/registry-agmt-appo-11may01.htm
  - .info Appendix O
    http://www.icann.org/tlds/agreements/info/registry-agmt-appo-11may01.htm
  - .name Appendix O
    http://www.icann.org/tlds/agreements/name/registry-agmt-appo-29jun01.htm
  - .pro Appendix O
    http://www.icann.org/tlds/agreements/pro/registry-agmt-appo-06may01.htm
- P: Whois Data Specification–Independent Whois Provider
  - .biz Appendix P
    http://www.icann.org/tlds/agreements/biz/registry-agmt-appp-11may01.htm
  - .info Appendix P
    http://www.icann.org/tlds/agreements/info/registry-agmt-appp-11may01.htm
  - .name Appendix P
    http://www.icann.org/tlds/agreements/name/registry-agmt-appp-28jun01.htm

- - .pro Appendix P
      http://www.icann.org/tlds/agreements/pro/registry-agmt-appp-27dec01.htm
  - R: Data Escrow Specification
    - .biz Appendix R
      http://www.icann.org/tlds/agreements/biz/registry-agmt-appr-11may01.htm
    - .info Appendix R
      http://www.icann.org/tlds/agreements/info/registry-agmt-appr-11may01.htm
    - .name Appendix R
      http://www.icann.org/tlds/agreements/name/registry-agmt-appr-29jun01.htm
    - .pro Appendix R
      http://www.icann.org/tlds/agreements/pro/registry-agmt-appr-27apr02.htm
  - W: Additional Covenants
    - .biz Appendix W
      http://www.icann.org/tlds/agreements/biz/registry-agmt-appw-25apr01.htm
    - .info Appendix W
      http://www.icann.org/tlds/agreements/info/registry-agmt-appw-26apr01.htm
    - .name Appendix W
      http://www.icann.org/tlds/agreements/name/registry-agmt-appw-25jun01.htm
    - .pro Appendix W
      http://www.icann.org/tlds/agreements/pro/registry-agmt-appw-04mar02.htm
  - X: Registry Operator's Domain Names
    - .biz Appendix X
      http://www.icann.org/tlds/agreements/biz/registry-agmt-appx-11may01.htm
    - .info Appendix X
      http://www.icann.org/tlds/agreements/info/registry-agmt-appx-11may01.htm
    - .name Appendix X
      http://www.icann.org/tlds/agreements/name/registry-agmt-appx-02jul01.htm
    - .pro Appendix X
      http://www.icann.org/tlds/agreements/pro/registry-agmt-appx-27apr02.htm

The current .org registry is operated based on a "thin" registry model. (.info, .biz, .name, and .pro have "thick" registries.) In the event that the selected proposal contemplates to continue the registry with a thin model, adjustments will be necessary in some of the appendices (particularly O, P, and R) used for the thick registries. The following appendices from the current .org registry agreement may serve as good models in a thin-registry environment:

- VGRS .org Appendix O: Whois Specification–Public Whois
  http://www.icann.org/tlds/agreements/verisign/registry-agmt-appo-org-16apr01.htm

- VGRS .org Appendix P: Whois Data Specification–Independent Whois Provider
  http://www.icann.org/tlds/agreements/verisign/registry-agmt-appp-16apr01.htm

- VGRS .org Appendix R: Data Escrow Specification
  http://www.icann.org/tlds/agreements/verisign/registry-agmt-appr-25may01.htm

Two appendices that will be used for the .org registry agreement relate specifically to the transition of an existing TLD, rather than the start-up of a new TLD as addressed in the .biz, .info, .name, and .pro agreements. These are Appendix J–Transition Plan and Appendix U–Transition Reports. These appendices will require significant adjustments from the corresponding appendices from the .biz, .info, .name, and .pro agreements, but

those appendices may provide some guidance:

- J: Start-Up Plan
    - .biz Appendix J
      http://www.icann.org/tlds/agreements/biz/registry-agmt-appj-11may01.htm
    - .info Appendix J
      http://www.icann.org/tlds/agreements/info/registry-agmt-appj-11may01.htm
    - .name Appendix J
      http://www.icann.org/tlds/agreements/name/registry-agmt-appj-30jun01.htm
    - .pro Appendix J
      http://www.icann.org/tlds/agreements/pro/registry-agmt-appj-11feb02.htm
- U: Proof-of-Concept Reports
    - .biz Appendix U
      http://www.icann.org/tlds/agreements/biz/registry-agmt-appu-11may01.htm
    - .info Appendix U
      http://www.icann.org/tlds/agreements/info/registry-agmt-appu-11may01.htm
    - .name Appendix U
      http://www.icann.org/tlds/agreements/name/registry-agmt-appu-30jun01.htm
    - .pro Appendix U
      http://www.icann.org/tlds/agreements/pro/registry-agmt-appu-04mar02.htm

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This REGISTRY AGREEMENT ("Agreement") is by and between the Internet Corporation for Assigned Names and Numbers, a not-for-profit corporation, and [insert name of successor operator], a [insert type of legal organization].

1. DEFINITIONS. For purposes of this Agreement, the following definitions shall apply:

1.1. The "Authoritative Root-Server System" means the constellation of DNS root-nameservers specified, from time to time, in the file <ftp://ftp.internic.net/domain/named.root>.

1.2. The "Base Period" means a period beginning on the Commencement-of-Service Date and extending until the Expiration Date.

1.3. The "Commencement-of-Service Date" means the date, not sooner than the Effective Date, on which the Registry TLD is first delegated within the Authoritative Root-Server System to nameservers designated by Registry Operator.

1.4. The "DNS" refers to the Internet domain-name system.

1.5. The "Effective Date" means the later of (a) the Signature Date and (b) 1 January 2003.

1.6. The "Expiration Date" is the date specified in Subsection 5.1.1, as it may be extended according to Subsection 5.1.2.

1.7. "ICANN" refers to the Internet Corporation for Assigned Names and Numbers, a party to this Agreement.

1.8. An "ICANN-Accredited Registrar" is an entity or person accredited by

ICANN to act as a registrar for domain names within the domain of the Registry TLD.

1.9. "Personal Data" refers to data about any identified or identifiable natural person.

1.10. [Deliberately left blank]

1.11. "Registered Name" refers to a domain name within the domain of the Registry TLD, whether consisting of two or more (e.g., john.smith.name) levels, about which Registry Operator (or an affiliate engaged in providing Registry Services) maintains data in a Registry Database, arranges for such maintenance, or derives revenue from such maintenance. A name in a Registry Database may be a Registered Name even though it does not appear in a zone file (e.g., a registered but inactive name).

1.12. "Registry Data" means all Registry Database data maintained in electronic form, and shall include TLD Zone-File Data, all data used to provide Registry Services submitted by registrars in electronic form, and all other data used to provide Registry Services concerning particular domain name registrations or nameservers maintained in electronic form in the Registry Database.

1.13. "Registry Database" means a database comprised of data about one or more DNS domain names within the domain of the Registry TLD that is used to generate either DNS resource records that are published authoritatively or responses to domain-name availability lookup requests or Whois queries, for some or all of those names.

1.14. "Registry Operator" refers to [insert registry operator's name], a party to this Agreement, or any assignee of it under Subsection 5.11.

1.15. "Registry-Registrar Agreement" means an agreement between Registry Operator and an ICANN-Accredited Registrar with the provisions specified by Subsection 3.4.

1.16. "Registry Services" means services provided as an integral part of the operation of the Registry TLD, including all subdomains in which Registered Names are registered. In determining whether a service is integral to the operation of the Registry TLD, consideration will be given to the extent to which the Registry Operator has been materially advantaged in providing the service by its designation as such under this Agreement. The development of technology, expertise, systems, efficient operations, reputation (including identification as Registry Operator), financial strength, or relationships with registrars and third parties shall not be deemed an advantage arising from the designation. Registry Services include: receipt of data concerning registration of domain names and nameservers from registrars, provision to registrars of status information relating to the Registry TLD, dissemination of TLD zone files, operation of the Registry TLD zone servers, dissemination of contact and other information concerning domain-name and nameserver registrations in the Registry TLD, and such other services required by ICANN in the manner

provided in Subsections 4.3 through 4.6. Registry Services shall not include the provision of nameservice for a domain used by a single entity under a Registered Name registered through an ICANN-Accredited Registrar.

1.17. "Registry TLD" refers to the .org TLD.

1.18. "Service Term" means that portion of the Term of this Agreement commencing on the Commencement-of-Service Date.

1.19. "Term of this Agreement" begins on the Effective Date and continues until the earlier of (a) the Expiration Date, or (b) termination of this Agreement.

1.20. "TLD" refers to a top-level domain in the DNS.

1.21. "TLD Zone-File Data" means all data contained in a DNS zone file for the Registry TLD, or for any subdomain for which Registry Services are provided and that contains Registered Names, as provided to nameservers on the Internet.

1.22. The "Signature Date" refers to the date on which this Agreement is first signed on behalf of both parties.

2. ICANN OBLIGATIONS.

2.1. General Obligations of ICANN. With respect to all matters that affect the rights, obligations, or role of Registry Operator, ICANN shall during the Term of this Agreement:

> **2.1.1.** exercise its responsibilities in an open and transparent manner;
>
> **2.1.2.** not unreasonably restrain competition and, to the extent feasible, promote and encourage robust competition;
>
> **2.1.3.** not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause; and
>
> **2.1.4.** ensure, through its reconsideration and independent review policies, adequate appeal procedures for Registry Operator, to the extent it is adversely affected by ICANN standards, policies, procedures or practices.

2.2. Designation of Registry Operator. ICANN hereby designates Registry Operator as the sole operator for the Registry TLD during the Term of this Agreement.

2.3. Recognition in Authoritative Root-Server System. During the Term of this Agreement, Registry Operator may, by notifying ICANN, request (a) delegation of the Registry TLD to specified DNS nameservers and (b) changes in that delegation. Any such request must be made in a format, and otherwise

meet technical requirements, specified from time to time by ICANN. The initial format and technical requirements are set forth in Appendix A. Changes to the format and technical requirements may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6. ICANN will use commercially reasonable efforts to have such requests implemented in the Authoritative Root-Server System within five business days of the submission.

2.4. Recognition in the Root-Zone Contact Database. To the extent ICANN publishes contact data regarding TLDs, during the Term of this Agreement it will show the Registry TLD's operator as Registry Operator and the Registry TLD's administrative and technical contacts as requested from time to time by Registry Operator. Any such request must be made in a format, include the elements of contact data, and otherwise meet technical requirements, specified from time to time by ICANN. The initial requirements for these requests are set forth in Appendix B. Changes to the requirements for requests may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

2.5. Other Obligations of ICANN. During the Term of this Agreement, ICANN shall use commercially reasonable efforts to:

> **2.5.1.** maintain, or cause to be maintained, a stable, secure, authoritative and publicly available database of relevant information regarding the delegation of the Registry TLD;

> **2.5.2.** generate, or cause to be generated, authoritative and accurate root zone information from such database and operate, or cause to be operated, the Authoritative Root-Server System in a stable and secure manner;

> **2.5.3.** maintain, or cause to be maintained, authoritative records and an audit trail regarding delegations of the Registry TLD and records related to these delegations; and

> **2.5.4.** inform Registry Operator in a timely manner of any changes to ICANN's contact information.

2.6. Use of ICANN Name, Logo, and Website. ICANN hereby grants to Registry Operator a non-exclusive, worldwide, royalty-free license during the Term of this Agreement (a) to state that it is designated by ICANN as the registry operator for the Registry TLD, (b) to use a logo specified by ICANN to signify that Registry Operator is an ICANN-designated registry operator, and (c) to link to pages and documents within the ICANN web site. No other use of ICANN's name or logo is licensed hereby. This license may not be assigned or sublicensed by Registry Operator.

3. REGISTRY OPERATOR OBLIGATIONS.

3.1. Obligation to Provide Registry Services. During the Service Term, Registry Operator shall operate, or cause to be operated, a registry of Registered Names that meets the functional specifications described by Subsection 3.2 and the performance specifications described by Subsection 3.3. Throughout the Term of this Agreement, Registry Operator shall be obligated to enter into a Registry-Registrar Agreement with any ICANN-Accredited Registrar seeking such an agreement on the terms specified by Subsection 3.4. Registry Operator shall commence providing Registry Services in the Registry TLD according to the registry transition plan specified in Subsection 3.7 and, on the conclusion of that plan and throughout the remainder of the Term of this Agreement, shall continue providing Registry Services. Throughout the Service Term, Registry Operator shall provide Registry Services in compliance with any Registry-Registrar Agreement as provided in Subsection 3.4 that is then in effect.

3.2. Functional Specifications for Registry Services. All Registry Services provided by Registry Operator shall be provided under this Agreement and shall meet the functional specifications established by ICANN. The initial functional specifications are set forth in Appendix C. Non-material changes and additions to the functional specifications may be made by Registry Operator with prior written notice to ICANN and any affected ICANN-Accredited Registrars. All other changes and additions to the functional specifications may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.3. Performance Specifications for Registry Services. All Registry Services provided by Registry Operator shall meet the performance specifications and comply with the registrar service level agreement established by ICANN. The initial performance specifications are set forth in Appendix D and the initial service level agreement is set forth in Appendix E. Changes to the performance specifications or service level agreement may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.4. Registry-Registrar Agreements. During the Term of this Agreement, Registry Operator shall enter a Registry-Registrar Agreement with any ICANN-Accredited Registrar desiring to enter such an agreement. All Registry Services provided by Registry Operator for the Registry TLD shall be provided strictly in accordance with that Registry-Registrar Agreement:

> **3.4.1.** Initially, the form of the Registry-Registrar Agreement shall be that attached as Appendix F.

> **3.4.2.** The form of the Registry-Registrar Agreement may be revised (a) by Registry Operator with the written consent of ICANN, (b) by ICANN in the manner provided in Subsections 4.3 through 4.6, provided that any additional terms are within the topics set forth in Subsection 4.2, or, (c) with respect to the price charged registrars by Registry Operator for Registry Services, according to Subsection

3.4.3.

3.4.3. Registry Operator may, at its option and with thirty days written notice to ICANN and to all ICANN-Accredited Registrars, revise the prices charged to registrars under the Registry-Registrar Agreement, provided that (a) the same price shall be charged for services charged to all ICANN-Accredited Registrars (provided that volume adjustments may be made if the same opportunity to qualify for those adjustments is available to all ICANN-Accredited Registrars) and (b) the prices shall not exceed those set forth in Appendix G, as adjusted according to Subsections 3.14.5 and 4.4. Registry Operator shall charge no fee to anyone for Registry Services if such fee is not listed on Appendix G. For Registry Services (a) listed on Appendix G without a stated price or (b) introduced more than six months after the Commencement-of-Service Date, Registry Operator may propose to ICANN, no later than thirty days before the commencement of that service, the inclusion in Appendix G of an offering price for the Registry Service. The offering price for the Registry Service shall be included in Appendix G only upon the written consent of ICANN, which shall not be unreasonably withheld or delayed (ordinarily 30 days or less).

3.5. Fair Treatment of ICANN-Accredited Registrars.

3.5.1. Registry Operator shall provide all ICANN-Accredited Registrars that have Registry-Registrar Agreements in effect, and that are in compliance with the terms of such agreements, equivalent access to Registry Operator's Registry Services, including to its shared registration system.

3.5.2. Registry Operator shall certify to ICANN every six months, using the objective criteria set forth in Appendix H, that Registry Operator is providing all such ICANN-Accredited Registrars with equivalent access to its Registry Services, including to its shared registration system.

3.5.3. Registry Operator shall not act as a registrar with respect to the Registry TLD. This shall not preclude Registry Operator from registering names within the domain of the Registry TLD in compliance with Subsection 3.6. This also shall not preclude an affiliate of Registry Operator from acting as a registrar with respect to the Registry TLD, provided that Registry Operator complies with the provisions of Subsections 3.5.4 and 3.5.5.

3.5.4. Registry Operator shall comply with its Code of Conduct attached as Appendix I. Any changes to that Code of Conduct will require ICANN's written approval.

3.5.5. Registry Operator will ensure, in a form and through ways described in Appendix H, that the revenues and assets of Registry Operator are not utilized to advantage registrars that are affiliated

with Registry Operator to the detriment of other ICANN-Accredited Registrars. The distribution of funds by Registry Operator to its debt or equity participants in accordance with their debt or equity participation shall not violate this Subsection 3.5.5.

3.5.6. With respect to its obligations under Subsections 3.5.1 through 3.5.5 and Appendices H and I, Registry Operator agrees to participate in and comply with the sanctions program described in Appendix Y, provided that all other registry operators having registry agreements with ICANN for the operation of unsponsored top-level domains (i.e. top-level domains, other than country-code and infrastructure domains, not having a sponsoring organization) are obligated to participate in and comply with a sanctions program with substantially the same provisions as Appendix Y. Registry Operator agrees that the sanctions program described in Appendix Y shall be a non-exclusive and additional option for ICANN to promote compliance with Subsections 3.5.1 through 3.5.5 and Appendices H and I, and that the availability of that option does not limit or affect in any way ICANN's ability to employ any other compliance measures or remedies available under this Agreement.

3.6. Registrations Not Sponsored by Registrars Under Registry-Registrar Agreements. Registry Operator shall register domain names within the domain of the Registry TLD, other than on a request submitted by a registrar pursuant to that registrar's Registry-Registrar Agreement, only as follows:

3.6.1. Registry Operator may register the domain names (a) listed on Appendix X (Part A) or (b) matching a pattern specified in Appendix X (Part C) for its own use in operating the registry and providing Registry Services under this Agreement. At the conclusion of its designation by ICANN as the operator for the Registry TLD, Registry Operator shall transfer all such domain-name registrations to the entity or person specified by ICANN.

3.6.2. Registry Operator may register the domain names listed on Appendix X (Part B) for its own use, provided that the total number of domain names listed on Appendix X at any time does not exceed 5,000. Registry Operator may retain registration of those names at the conclusion of its designation by ICANN as the operator for the Registry TLD, provided registration fees are paid and all other requirements for registration by third parties are met.

3.6.3. Appendix X may be revised only (a) upon written notice by Registry Operator to ICANN and written consent by ICANN, which ICANN shall not withhold without reason, or (b) in the manner provided in Subsections 4.3 through 4. 6. It shall be reasonable for ICANN to withhold consent to revise Appendix X where the revision would result in more than 5,000 names being listed on Parts A and B of Appendix X.

3.6.4. As instructed from time to time by ICANN, Registry Operator

shall maintain the registration of up to 5000 domain names within the domain of the Registry TLD for use by ICANN and other organizations responsible for coordination of the Internet's infrastructure.

3.6.5. Subsection 3.6 shall not preclude Registry Operator from registering domain names within the domain of the Registry TLD through an ICANN-Accredited Registrar pursuant to that registrar's Registry-Registrar Agreement.

3.7. Transition Plan. Registry Operator shall commence provision of Registry Services for the Registry TLD, including the provision of nameservice for the Registry TLD, according to the schedule and procedures set forth in the registry transition plan in Appendix J to this Agreement.

3.8. Registration Restrictions Within Registry TLD.

3.8.1. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve from registration the domain names specified by a schedule established by ICANN. The initial schedule is attached as Appendix K. Changes to the schedule may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.8.2. [Deliberately left blank]

3.9. Bulk Access to TLD Zone Files. Registry Operator shall provide bulk access to the zone files for the Registry TLD as follows:

3.9.1. to third parties-on the terms set forth in the TLD zone file access agreement established by ICANN. The initial terms of the agreement are set forth as Appendix N to this Agreement. Changes to the terms of the TLD zone file access agreement may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.9.2. to ICANN-on a continuous basis in the manner which ICANN may from time to time specify.

3.10. Publication by Registry Operator of Registry Data.

3.10.1. At its expense, Registry Operator shall provide free public query-based access to up-to-date data concerning domain-name and nameserver registrations maintained by Registry Operator in connection with the Registry TLD. The data elements reported, format of responses to queries, data update frequency, query types supported, and protocols through which access is provided shall be as established by ICANN. The initial specification of the data elements reported, format of responses to queries, minimum data

update frequency, query types supported, and protocols through which access is provided are set forth in Appendix O. Registry Operator may request supplementation of the specification to include additional data elements reported or query types supported, in which event ICANN shall act to supplement the specification in a reasonable manner within a reasonable time. Other changes to the specification may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.10.2. To ensure operational stability of the registry, Registry Operator may temporarily limit access under Subsection 3.10.1 in which case Registry Operator shall immediately notify ICANN of the nature of and reason for the limitation. Registry Operator shall not continue the limitation longer than a period established by ICANN if ICANN objects in writing, which objection shall not be unreasonably made. The period shall initially be five business days; changes to that period may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6. Such temporary limitations shall be applied in a non-arbitrary manner and shall apply fairly to all ICANN-Accredited Registrars.

3.10.3. In providing query-based public access to registration data as required by this Subsection 3.10, Registry Operator shall not impose terms and conditions on the use of the data provided, except as permitted by policy established by ICANN. Unless and until ICANN establishes a different policy, Registry Operator shall permit use of data it provides in response to queries for any lawful purposes except to: (a) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than the data recipient's own existing customers; or (b) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-Accredited Registrar, except as reasonably necessary to register domain names or modify existing registrations. Changes to that policy may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.10.4. To comply with applicable statutes and regulations and for other reasons, ICANN may from time to time establish policies in the manner described by Subsections 4.3 through 4.6 establishing limits on the data concerning registrations that Registry Operator may make available to the public through a public-access service described in this Subsection 3.10 and on the manner in which Registry Operator may make them available. In the event ICANN establishes any such policy, Registry Operator shall abide by it

within the time allowed by Subsection 4.5.

3.10.5. At its expense, Registry Operator shall provide bulk access to up-to-date data concerning domain-name and nameserver registrations maintained by Registry Operator in connection with the Registry TLD in the following two ways:

3.10.5.1. on a daily schedule, only for purposes of providing free public query-based access to up-to-date data concerning domain-name and nameserver registrations in multiple TLDs, to a party designated from time to time in writing by ICANN. The content and format of this data, and the procedures for providing access, shall be as established by ICANN. The initial content, format, and procedures are set forth in Appendix P. Changes to that content and format and those procedures may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.10.5.2. on a continuous basis, to ICANN in the manner which ICANN may from time to time reasonably specify, only for purposes of verifying and ensuring the operational stability of Registry Services, the DNS, and the Internet. The content and format of this data, and the procedures for providing access, shall be as established by ICANN. The initial content, format, and procedures are set forth in Appendix Q. Changes to that content and format and those procedures may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.11. Data Escrow. Registry Operator shall periodically deposit into escrow all Registry Data in an electronic format. The escrow shall be maintained, at Registry Operator's expense, by a reputable escrow agent mutually approved by Registry Operator and ICANN, such approval also not to be unreasonably withheld by either party. The schedule, content, format, and procedure for escrow deposits shall be as established by ICANN from time to time. The initial schedule, content, format, and procedure shall be as set forth in Appendix R. Changes to the schedule, content, format, and procedure may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6. The escrow shall be held under an agreement, substantially in the form of Appendix S, among ICANN, Registry Operator, and the escrow agent. In the event that, after a good-faith search by ICANN and Registry Operator, no mutually approved escrow agent agrees to the terms of Appendix S, ICANN and Registry Operator shall, in conjunction with a mutually approved escrow agent, negotiate in good faith for a substitute escrow agreement.

3.12. Registry Operator's Handling of Personal Data. Registry Operator shall notify registrars sponsoring registrations in the registry for the Registry TLD of the purposes for which Personal Data submitted to Registry Operator by registrars is collected, the intended recipients (or categories of recipients) of such Personal Data, and the mechanism for access to and correction of such Personal Data. Registry Operator shall take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

3.13. Rights in Data. Except as permitted by the Registry-Registrar Agreement, Registry Operator shall not be entitled to claim any intellectual property rights in data supplied by or through registrars. In the event that Registry Data is released from escrow under Subsection 3.11, any rights held by Registry Operator in the data shall automatically be transferred on a non-exclusive, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.

3.14. Registry-Level Financial Support of ICANN. During the Term of this Agreement, Registry Operator shall pay to ICANN the following fees:

3.14.1. Fixed Registry-Level Fee. Registry Operator shall pay ICANN a quarterly Fixed Registry-Level Fee in an amount established by the ICANN Board of Directors, in conformity with the ICANN bylaws and articles of incorporation, not to exceed one quarter of the annual Fixed Registry-Level Fee Cap described in Subsection 3.14.4.

3.14.2. Variable Registry-Level Fee. Registry Operator shall pay ICANN a quarterly Variable Registry-Level Fee in an amount calculated according to a formula and method established from time to time by the ICANN Board of Directors, in conformity with the ICANN bylaws and articles of incorporation. The formula and method shall allocate the total variable fee among all TLDs sponsored or operated under a sponsorship or registry agreement with ICANN (whether the fee is collected at the registry or registrar level) based on the relative size of the registries for those TLDs. It shall be permissible for the formula and method so established to do any of the following: (a) to measure the size of a TLD's registry, at least once per year where feasible, by the number of names under administration within the TLD by the registry's operator, (b) to deem the number of domain names under administration within the Registry TLD to be the number of Registered Names, (c) to provide for a deduction in computing a sponsor's or operator's Variable Registry-Level Fee of some or all of that sponsor's or registry operator's Fixed Registry-Level Fee, and (d) to provide that the number of domain names under administration for the .com, .net, and .org TLDs is the number of second-level domains within those TLDs. It shall also be permissible for the formula and method to consider accreditation fees collected from registrars as a credit applied to the Variable Registry-Level Fee for the TLD to which the

fees pertain. Groups of registries for two or more TLDs may, with the agreement of their sponsors or operators and ICANN, agree to allocate the variable fee collected from them in a manner not based on the relative size of the registries within the group, provided that the combined variable fees collected for all TLDs within the group is based on the combined size of the registries in the group.

3.14.3. Payments Must Be Timely. Registry Operator shall pay the quarterly Fixed and Variable Registry-Level Fees within thirty days after the date of ICANN's invoice for those fees. These payments shall be made in a timely manner throughout the Term of this Agreement and notwithstanding the pendency of any dispute between Registry Operator and ICANN. Registry Operator shall pay interest on payments not timely made at the rate of 1% per month or, if less, the maximum rate permitted by California law.

3.14.4. Fee Caps. The Fixed Registry-Level Fee Cap shall be US$115,000 per year until and including 30 June 2003; shall automatically increase by 15% on July 1 of each year beginning in 2003; and may be increased by a greater amount in the manner provided by Subsection 4.3 The sum of the Fixed Registry-Level Fees and the Variable Registry-Level Fees due to be paid in any year ending on any 30 June during or within one year after the Term of this Agreement by all TLD sponsors and registry operators having sponsorship or registry agreements with ICANN shall not exceed the Total Registry-Level Fee Cap described in the following sentence. The Total Registry-Level Fee Cap shall be US$6,325,000 for the fiscal year ending 30 June 2003; shall increase by 15% each fiscal year thereafter; and may be increased by a greater amount in the manner provided by Subsection 4.3.

3.14.5. Adjustments to Price. The maximum pricing for initial and renewal registrations set forth in Appendix G shall be adjusted at the beginning of each calendar quarter by adding, to the amount specified in that Appendix (after adjustment according to Subsection 4.4) as the applicable annual charge for initial or renewal registration of a domain name, an amount calculated according to the following three sentences. For calendar quarters in which the variable fee is collected at the registrar level, the amount shall be US$0.00. For the first two calendar quarters during the Term of this Agreement in which the variable fee is collected at the registry level, the amount shall be four times the per-name variable accreditation fee charged to registrars for the quarter beginning six months earlier. For subsequent calendar quarters, the amount shall be four times the quarterly Variable Registry-Level Fee reflected in the invoice to Registry Operator for such a fee for the quarter beginning six months earlier divided by the number of Registered Names that the invoice shows was used to calculate that quarterly Variable Registry-Level Fee.

3.15. Reports Provided to ICANN. Registry Operator shall provide the

following periodic written reports to ICANN regarding the following:

3.15.1. Monthly Reports on Registry Operations. Within twenty days after the end of each month during the Term of this Agreement, Registry Operator shall provide ICANN a written report, giving information specified by ICANN, on operation of the registry during the month. The initial specification of information is set forth in Appendix T. Changes to that specification may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall withhold without reason) or in the manner provided in Subsections 4.3 through 4.6.

3.15.2. Transition Reports. Registry Operator shall, for the purpose of providing data concerning the transition of the Registry TLD to operation by Registry Operator, provide reports concerning the Registry TLD's operation on a schedule and with content specified in Appendix U.

4. PROCEDURES FOR ESTABLISHMENT OR REVISION OF SPECIFICATIONS AND POLICIES.

4.1. Registry Operator's Ongoing Obligation to Comply With New or Revised Specifications and Policies. During the Term of this Agreement, Registry Operator shall comply, in its provision of Registry Services, on the schedule provided in Subsection 4.5, with

4.1.1. new or revised specifications (including forms of agreement to which Registry Operator is a party) and policies established by ICANN as Consensus Policies in the manner described in Subsection 4.3,

4.1.2. in cases where:

4.1.2.1. this Agreement expressly provides for compliance with revised specifications or policies established in the manner set forth in one or more subsections of this Section 4; or

4.1.2.2. the specification or policy concerns one or more topics described in Subsection 4.2.

4.2. Topics for New and Revised Specifications and Policies. New and revised specifications and policies may be established on the following topics:

4.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, technical reliability, and/or operational stability of Registry Services, the DNS, or the Internet;

4.2.2. functional and performance specifications for the provision of Registry Services;

4.2.3. safety and integrity of the Registry Database;

4.2.4. procedures to avoid disruptions of registration due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving Registered Names affected by such a suspension or termination;

4.2.5. resolution of disputes regarding whether particular parties may register or maintain registration of particular domain names;

4.2.6. principles for allocation of Registered Names (e.g., first-come/first-served, timely renewal, holding period after expiration);

4.2.7. prohibitions on warehousing of or speculation in domain names by registries or registrars;

4.2.8. maintenance of and access to accurate and up-to-date contact information for domain-name registrants;

4.2.9. reservation of Registered Names that may not be registered initially or that may not be renewed due to reasons reasonably related to (a) avoidance of confusion among or misleading of users, (b) intellectual property, or (c) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and

4.2.10. registry policies reasonably necessary to implement Consensus Policies relating to registrars.

4.3. Manner of Establishment of New and Revised Specifications and Policies.

4.3.1. "Consensus Policies" are those specifications or policies established based on a consensus among Internet stakeholders represented in the ICANN process, as demonstrated by (a) action of the ICANN Board of Directors establishing the specification or policy, (b) a recommendation, adopted by at least a two-thirds vote of the council of the ICANN Supporting Organization to which the matter is delegated, that the specification or policy should be established, and (c) a written report and supporting materials (which must include all substantive submissions to the Supporting Organization relating to the proposal) that (i) documents the extent of agreement and disagreement among impacted groups, (ii) documents the outreach process used to seek to achieve adequate representation of the views of groups that are likely to be impacted, and (iii) documents the nature and intensity of reasoned support and opposition to the proposed policy.

4.3.2. In the event that Registry Operator disputes the presence of such a consensus, it shall seek review of that issue from an Independent Review Panel established under ICANN's bylaws.

Such review must be sought within fifteen working days of the publication of the Board's action establishing the policy. The decision of the panel shall be based on the report and supporting materials required by Subsection 4.3.1. In the event that Registry Operator seeks review and the Independent Review Panel sustains the Board's determination that the policy is based on a consensus among Internet stakeholders represented in the ICANN process, then Registry Operator must implement such policy unless it promptly seeks and obtains a stay or injunctive relief under Subsection 5.9.

4.3.3. If, following a decision by the Independent Review Panel convened under Subsection 4.3.2, Registry Operator still disputes the presence of such a consensus, it may seek further review of that issue within fifteen working days of publication of the decision in accordance with the dispute resolution procedures set forth in Subsection 5.9; provided, however, that Registry Operator must continue to implement the policy unless it has obtained a stay or injunctive relief under Subsection 5.9 or a final decision is rendered in accordance with the provisions of Subsection 5.9 that relieves Registry Operator of such obligation. The decision in any such further review shall be based on the report and supporting materials required by Subsection 4.3.1.

4.3.4. A specification or policy established by the ICANN Board of Directors on a temporary basis, without a prior recommendation by the council of an ICANN Supporting Organization, shall also be considered to be a Consensus Policy if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, so long as the Board reasonably determines that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the operational stability of Registry Services, the DNS, or the Internet, and that the proposed specification or policy is as narrowly tailored as feasible to achieve those objectives. In establishing any specification or policy under this provision, the ICANN Board of Directors shall state the period of time for which the specification or policy is temporarily adopted and shall immediately refer the matter to the appropriate Supporting Organization for its evaluation and review with a detailed explanation of its reasons for establishing the temporary specification or policy and why the Board believes the policy should receive the consensus support of Internet stakeholders. If the period of time for which the specification or policy is adopted exceeds ninety days, the Board shall reaffirm its temporary establishment every ninety days for a total period not to exceed one year, in order to maintain such specification or policy in effect until such time as it meets the standard set forth in Subsection 4.3.1. If the standard set forth in Subsection 4.3.1 is not met within the temporary period set by the Board, or the council of the Supporting Organization to which it has been referred votes to reject the temporary specification or policy, it will no longer be a "Consensus Policy."

4.3.5. For all purposes under this Agreement, the policies identified in Appendix V shall be treated in the same manner and have the same effect as "Consensus Policies."

4.3.6. In the event that, at the time the ICANN Board of Directors establishes a specification or policy under Subsection 4.3.1 during the Term of this Agreement, ICANN does not have in place an Independent Review Panel established under ICANN's bylaws, the fifteen-working-day period allowed under Subsection 4.3.2 to seek review shall be extended until fifteen working days after ICANN does have such an Independent Review Panel in place and Registry Operator shall not be obligated to comply ICANN with the specification or policy in the interim.

4.4. Pricing Adjustments Arising from New or Revised Specifications or Policies. The maximum prices stated in Appendix G shall be increased through an amendment to this Agreement as approved by ICANN and Registry Operator, such approval not to be unreasonably withheld, to reflect demonstrated increases in the net costs of providing Registry Services arising from (A) new or revised ICANN specifications or policies adopted after the Signature Date, or (B) legislation specifically applicable to the provision of Registry Services adopted after the Signature Date, to ensure that Registry Operator recovers such costs and a reasonable profit thereon; provided that such increases exceed any reductions in costs arising from (A) or (B) above.

4.5. Time Allowed for Compliance. Registry Operator shall be afforded a reasonable period of time (not to exceed four months unless the nature of the specification or policy established under Subsection 4.3 reasonably requires, as agreed to by ICANN and Registry Operator, a longer period) after receiving notice of the establishment of a specification or policy under Subsection 4.3 in which to comply with that specification or policy, taking into account any urgency involved.

4.6. Indemnification of Registry Operator. ICANN shall indemnify, defend, and hold harmless Registry Operator (including its directors, officers, employees, and agents) from and against any and all claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising solely from Registry Operator's compliance as required by this Agreement with an ICANN specification or policy (including, without limitation, a Consensus Policy) established after the Signature Date; except that Registry Operator shall not be indemnified or held harmless hereunder to the extent that the claims, damages or liabilities arise from the particular manner in which Registry Operator has chosen to comply with the specification or policy, where it was possible for Registry Operator to comply in a manner by which the claims, damages, or liabilities would not arise. As an alternative to providing the indemnity stated in this Subsection 4.6, ICANN may, at the time it establishes a specification or policy after the Signature Date giving rise to an indemnity obligation under this Subsection 4.6, state ICANN's election that the Registry Operator shall bear the cost of insuring the claims, damages, liabilities, costs, and expenses that would otherwise be indemnified by ICANN under this Subsection 4.6, in which case the reasonable cost to Registry Operator of such

insurance shall be treated under Subsection 4.4 as a cost of providing Registry Services arising from the newly established ICANN specification or policy.

5. MISCELLANEOUS PROVISIONS.

5.1. Expiration of this Agreement.

5.1.1. The initial Expiration Date shall be six years after the Commencement-of-Service Date.

5.1.2. [Deliberately left blank]

5.1.3. Registry Operator acknowledges and agrees that upon the earlier of (i) the Expiration Date or (ii) termination of this Agreement by ICANN pursuant to Subsection 5.4, it will cease to be the operator of the Registry TLD unless ICANN and Registry Operator enter a new registry agreement continuing Registry Operator's status as operator of the Registry TLD.

5.1.4. Upon conclusion of its status as operator of the Registry TLD, Registry Operator shall make all commercially reasonable efforts to cooperate with ICANN, and with any party designated by ICANN as successor operator, to facilitate prompt and smooth transition of the operation of the Registry TLD.

5.1.5. Registry Operator acknowledges and agrees that, except as expressly provided by this Agreement, it shall not acquire any right in the Registry TLD by virtue of its operation of the Registry TLD or its provision of Registry Services hereunder.

5.2. Procedure for Subsequent Agreement.

5.2.1. Registry Operator may, no later than eighteen months prior to the initial Expiration Date, submit a written proposal to ICANN for the extension of this Agreement for an additional term (the "Renewal Proposal"). The Renewal Proposal shall contain a detailed report of the Registry Operator's operation of the Registry TLD and include a description of any additional Registry Services, proposed improvements to Registry Services, or changes in price or other terms of service. ICANN shall provide an initial response to the Renewal Proposal within thirty days of receiving it and, during a period of at least six months after receiving the Renewal Proposal, ICANN shall consider the Renewal Proposal and meet with Registry Operator to discuss the Renewal Proposal, but the decision whether to accept the Renewal Proposal shall be in ICANN's sole discretion.

5.2.2. Only after the six-month period described in Subsection 5.2.1 may ICANN call for competing proposals from potential successor registry operators for the Registry TLD. Registry Operator shall be eligible, to the same extent as similarly situated entities, to submit a proposal to such a call. To the extent that the Renewal Proposal demonstrates (i) substantial service in the interests of the Internet

community, (ii) enhancement of competition for registration services, and (iii) enhancement of the utility of the DNS, such demonstration shall be among the specific factors considered in ICANN's evaluation of any competing proposals, but the choice from among competing proposals shall be in ICANN's sole discretion.

5.2.3. In the event a party other than the Registry Operator is selected as the successor registry operator for the Registry TLD upon the expiration of this Agreement, ICANN shall require the successor registry operator to pay to Registry Operator a Registry Operator Transfer Fee equal to the difference of:

> **5.2.3.1.** the present value, at the Expiration Date (as extended, if applicable), computed using a discount rate equal to the London Inter-Bank Offer Rate ("LIBOR") (based on the term of renewal of the successor registry operator) plus three percent per annum, of the revenue stream that would be achieved by the successor registry operator from renewal fees during the term (not taking into account any extensions) of the successor registry operator's registry agreement for Registered Names on the Expiration Date that have not been continuously under registration during the entire Base Period, assuming that the domain-name registrations are renewed at the time of their expiration for a renewal term and at annual renewal fees and rates described in the next four sentences. The assumed renewal term, fees, and rates shall be based on actual experience within the Registry TLD during a period (the "Benchmark Period") consisting of the eighteen months immediately prior to the Expiration Date. The assumed renewal term shall be the average total term by which registrations of Registered Names scheduled for expiration during the Benchmark Period are extended by renewal during the Benchmark Period. The assumed renewal rate shall be the percentage of names scheduled for expiration during the Benchmark Period that are extended by renewal at least once during the Benchmark Period. The assumed annual renewal fee shall be the lesser of (i) the maximum annual renewal fee that the successor registry operator may charge under its registration agreement and (ii) the average of the annual renewal fees charged by Registry Operator during the Benchmark Period; less

> **5.2.3.2.** the present value, at the Expiration Date, computed using a discount rate equal to the LIBOR (based on the term of renewal of the successor registry operator) plus three percent per annum, of the expense stream that would result during the term (not taking into account any extensions) of the successor registry operator's registry agreement from continued registration

of the registrations at the Expiration Date, with the same assumptions regarding renewal rates and terms set forth in Subsection 5.2.3.1 above. For purposes of this calculation, the annual expense of continued registration shall be assumed to be 45% of the assumed annual renewal fee stated in Subsection 5.2.3.1 above.

5.2.3.3. The calculation of present value shall be on a monthly basis with all renewals and expenses occurring in a given month assumed to occur at the end of the month. The Registry Operator Transfer Fee shall be paid, with interest per annum equal to the LIBOR plus three percent, from the Expiration Date, within nine months after the Expiration Date.

5.3. Condition to Performance. In the event that ICANN is unable, through use of commercially reasonable efforts, to have the Registry TLD delegated within the Authoritative Root-Server System to nameservers designated by Registry Operator within two years after the Effective Date, then this Agreement shall be automatically terminated without liability of either party to the other party and neither party shall have any further obligation hereunder. Thirty days in advance of such an automatic termination, either party may propose an extension of the time in which delegation must occur, and in that event the other party shall consult in good faith (but without obligation to agree) concerning the proposal. No extension of the time in which delegation must occur shall be effective unless embodied in a written amendment signed by authorized agents of both parties to this Agreement.

5.4. Termination by ICANN. This Agreement may be terminated before its expiration by ICANN in any of the following circumstances:

5.4.1. There was a material misrepresentation, material inaccuracy, or materially misleading statement, made with knowledge of its falsity, inaccuracy, or misleading nature or without reasonable cause to believe it was true, accurate, and not misleading, of then-existing fact or of Registry Operator's intention in its application for the Registry TLD or any written material provided to or disclosed to ICANN by the Registry Operator in connection with the application. The foregoing shall not apply to projections or forward-looking statements (other than statements, not made in good faith, about Registry Operator's intentions) in the application or materials.

5.4.2. Registry Operator:

5.4.2.1. is convicted by a court of competent jurisdiction of a felony or other serious offense related to financial activities, or is the subject of a determination by a court of competent jurisdiction that ICANN reasonably deems as the substantive equivalent of those offenses; or

5.4.2.2. is disciplined by the government of its domicile

for conduct involving dishonesty or misuse of funds of others.

5.4.3. Any officer or director of Registry Operator is convicted of a felony or of a misdemeanor related to financial activities, or is judged by a court to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these, and such officer or director is not immediately removed in such circumstances.

5.4.4. Registry Operator fails to cure any material breach of this Agreement (other than a failure to comply with a Consensus Policy adopted by ICANN during the Term of this Agreement as to which Registry Operator has obtained a stay under Subsection 5.9) within fifteen business days (or such longer reasonable period as may be necessary using best efforts to cure such breach) after ICANN gives Registry Operator written notice of the breach.

5.4.5. Registry Operator's action or failure to act has been determined by arbitration under Subsection 5.9 to be in violation of this Agreement and Registry Operator continues to act or fail to act in the manner that was determined to violate this Agreement for a period stated in the arbitration decision, or if no period is stated, fifteen business days.

5.4.6. Registry Operator acts or continues acting in a manner that ICANN has reasonably determined endangers the operational stability of Registry Services, the DNS, or the Internet after receiving three days notice of that determination.

5.4.7. Registry Operator fails to pay to ICANN the final amount of sanctions determined to be appropriate under the sanctions program described in Appendix Y within thirty days after the amount of sanctions is deemed final.

5.4.8. Registry Operator becomes bankrupt or insolvent.

This Agreement may be terminated in the circumstances described in Subsections 5.4.1 through 5.4.7 above only upon thirty calendar days written notice to Registry Operator (in the case of the circumstances described in Subsections 5.4.4, 5.4.5, and 5.4.6 occurring after Registry Operator's failure to cure), with Registry Operator being given an opportunity during that time to initiate arbitration under Subsection 5.9 to determine the appropriateness of termination under this Agreement. In the event Registry Operator initiates arbitration concerning the appropriateness of termination by ICANN, Registry Operator may at the same time request that the arbitration panel stay the termination until the arbitration decision is rendered, and that request shall have the effect of staying the termination until the decision or until the arbitration panel has granted an ICANN request for lifting of the stay. If Registry Operator acts in a manner that ICANN reasonably determines endangers the operational stability of Registry Services, the DNS, or the Internet and upon notice does not

immediately cure, ICANN may suspend this Agreement for five calendar days pending ICANN's application for more extended injunctive relief under Subsection 5.9. This Agreement may be terminated immediately upon notice to Registry Operator in the circumstance described in Subsection 5.4.8.

5.5. Representations and Warranties of Registry Operator. Registry Operator represents and warrants to ICANN that:

> **5.5.1.** it is a [type of organization] duly organized, validly existing, and in good standing under the laws of [jurisdiction of organization];

> **5.5.2.** it has all requisite organizational power and authority to execute, deliver and perform its obligations under this Agreement;

> **5.5.3.** the execution, performance and delivery of this Agreement has been duly authorized by Registry Operator; and

> **5.5.4.** subject to Subsection 5.3, no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by Registry Operator in order for it to enter into and perform its obligations under this Agreement.

5.6. Additional Covenants of Registry Operator. Throughout the Term of the Agreement, Registry Operator shall comply, in all material respects, with the covenants contained in Appendix W.

5.7. Indemnification of ICANN. Registry Operator shall indemnify, defend, and hold harmless ICANN (including its directors, officers, employees, and agents) from and against any and all claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to: (a) the selection of Registry Operator to operate the Registry TLD; (b) the entry of this Agreement; (c) discontinuance of the status of the prior registry operator, (d) delegation of the Registry TLD to Registry Operator, (e) Registry Services; (f) collection or handling of Personal Data by Registry Operator; (g) any dispute concerning registration of a domain name within the domain of the Registry TLD; and (h) duties and obligations of Registry Operator in operating the Registry TLD; provided that, with respect to items (b) through (h) only, Registry Operator shall not be obligated to indemnify, defend, or hold harmless ICANN to the extent of ICANN's indemnification of Registry Operator under Subsection 4.6 and provided further that, with respect to item (h) only, Registry Operator shall not be obligated to indemnify, defend, or hold harmless ICANN to the extent the claim, damage, liability, cost, or expense arose due to a breach by ICANN of any obligation contained in this Agreement. For avoidance of doubt, nothing in this Subsection 5.7 shall be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for the costs associated with the negotiation or execution of this Agreement, or with the monitoring or management of the parties' respective obligations under this Agreement.

5.8. Indemnification Procedures. If any third-party claim is commenced that is indemnified under Subsections 4.6 or 5.7, notice thereof shall be given to the indemnifying party as promptly as practicable. If, after such notice, the

indemnifying party acknowledges its obligation to indemnify with respect to such claim, then the indemnifying party shall be entitled, if it so elects, in a notice promptly delivered to the indemnified party, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to the indemnified party to handle and defend the same, at the indemnifying party's sole cost and expense, provided that in all events ICANN shall be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN policies or conduct. The indemnified party shall cooperate, at the cost of the indemnifying party, in all reasonable respects with the indemnifying party and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom; provided, however, that the indemnified party may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting the indemnifying party other than the payment of money in an amount that is indemnified shall be entered into without the consent of the indemnified party. If the indemnifying party does not assume full control over the defense of a claim subject to such defense in accordance with this Subsection, the indemnifying party may participate in such defense, at its sole cost and expense, and the indemnified party shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of the indemnifying party.

5.9. Resolution of Disputes Under This Agreement. Disputes arising under or in connection with this Agreement, including requests for specific performance, shall be resolved through binding arbitration conducted as provided in this Subsection 5.9 pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted in the English language and shall occur in Los Angeles County, California, USA. There shall be three arbitrators: each party shall choose one arbitrator and, if the two arbitrators are not able to agree on a third arbitrator, the third shall be chosen by the ICC. The parties shall bear the costs of the arbitration in equal shares, subject to the right of the arbitrators to reallocate the costs in their award as provided in the ICC rules. The parties shall bear their own attorneys' fees in connection with the arbitration, and the arbitrators may not reallocate the attorneys' fees in conjunction with their award. The arbitrators shall render their decision within ninety days of the initiation of arbitration. In all litigation involving ICANN concerning this Agreement (as provided in the remainder of this Subsection), jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles, California, USA; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction. For the purpose of aiding the arbitration and/or preserving the rights of the parties during the pendency of an arbitration, the parties shall have the right to seek a temporary stay or injunctive relief from the arbitration panel or a court located in Los Angeles, California, USA, which shall not be a waiver of this arbitration agreement.

5.10. Limitation of Liability. ICANN's aggregate monetary liability for violations of this Agreement shall not exceed the amount of Fixed or Variable Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-

month period under Subsection 3.14. Registry Operator's aggregate monetary liability to ICANN for violations of this Agreement shall be limited to fees and monetary sanctions due and owing to ICANN under this Agreement. In no event shall either party be liable for special, indirect, incidental, 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 OTHERWISE PROVIDED IN THIS AGREEMENT, REGISTRY OPERATOR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED BY ITSELF, ITS SERVANTS, OR ITS AGENTS OR THE RESULTS OBTAINED FROM THEIR WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

5.11. Assignment. Any assignment of this Agreement shall be effective only upon written agreement by the assignee with the other party to assume the assigning party's obligations under this Agreement. Moreover, neither party may assign this Agreement without the prior written approval of the other party. Notwithstanding the foregoing, a party may assign this Agreement by giving written notice to the other party in the following circumstances: (a) Registry Operator may assign this Agreement as part of the transfer of its registry business if such transfer and assignment are approved in advance by ICANN pursuant to its procedures, and (b) ICANN may assign this Agreement (i) in conjunction with a reorganization or re-incorporation of ICANN, to another non-profit corporation organized for the same or substantially the same purposes as ICANN or (ii) as required by Section 5 of Amendment 1 (dated 10 November 1999, as amended by Amendment 3 dated 25 May 2001) to the 25 November 1998 Memorandum of Understanding between ICANN and the United States Department of Commerce.

5.12. Subcontracting. Registry Operator shall not subcontract portions of the technical operations of the Registry TLD accounting for more than 80% of the value of all Registry TLD operations without ICANN's written consent. (This requirement for consent shall be in addition to observance of any covenants contained in Appendix W.) When ICANN's consent to subcontracting is requested, ICANN shall respond within fifteen business days, and the consent shall not be unreasonably withheld. In any subcontracting of the technical operations of the Registry TLD, the subcontract shall state that the subcontractor shall not acquire any right in the Registry TLD by virtue of its performance under the subcontract.

5.13. Force Majeure. Neither party shall be liable to the other for any loss or damage resulting from any cause beyond its reasonable control (a "Force Majeure Event") including, but not limited to, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government or other competent authority, compliance with any statutory obligation or executive order, industrial disputes of any kind (whether or not involving either party's employees), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, and acts or omissions of persons for whom neither party is responsible. Upon occurrence of a Force Majeure Event and to the extent such occurrence interferes with either party's performance of this

Agreement, such party shall be excused from performance of its obligations (other than payment obligations) during the first six months of such interference, provided that such party uses best efforts to avoid or remove such causes of nonperformance as soon as possible.

5.14. No Third-Party Beneficiaries. This Agreement shall not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or Registered Name holder.

5.15. Notices, Designations, and Specifications. All notices (including determinations, designations, and specifications) to be given under this Agreement shall be given in writing at the address of the appropriate party as set forth below, unless that party has given a notice of change of address in writing. Any notice required by this Agreement shall be deemed to have been properly given when delivered in person, when sent by electronic facsimile, or when scheduled for delivery by an internationally recognized courier service. Designations and specifications by ICANN under this Agreement shall be effective when written notice of them is deemed given to Registry.

If to ICANN, addressed to:

> Internet Corporation for Assigned Names and Numbers
> 4676 Admiralty Way, Suite 330
> Marina Del Rey, California 90292 USA
> Telephone: +1 310-823-9358
> Facsimile: +1 310-823-8649
> Attention: Chief Executive Officer

If to Registry Operator, addressed to:

> [fill in]

5.16. Dates and Times. All dates and times relevant to this Agreement or its performance shall be computed based on the date and time observed in Los Angeles, California, USA.

5.17. Language. All notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

5.18. Amendments and Waivers. No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both 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 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.

5.19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5.20. Entire Agreement. This Agreement (including its Appendices, which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the Registry TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject. In the event of a conflict between the provisions in the body of this Agreement (Section 1 to Subsection 5.20) and any provision in its Appendices, the provisions in the body of the Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By:_____
M. Stuart Lynn
President and CEO

Date: _____

[Successor Operator]

By:_____
[name]
[title]

Date: _____

Prior draft:

[1 May 2002](#)

Summary of changes from prior draft:

- The discussion of the appendices at the beginning of this document has been significantly elaborated. References to the .pro registry agreement, which was signed on 3 May 2002, were added.
- The definition of "Commencement-of-Service Date" in subsection 1.3 has been revised. This revision principally affects the operation of subsections 3.1, 3.4.3, and 5.1.1.
- The definition of "Effective Date" in subsection 1.5 has been revised. This change (and the consequent change in the meaning of "Term of this Agreement") better integrates a variety of provisions with the termination of the current .org registry agreement.
- A definition of "Signature Date" has been added in subsection 1.22. This term is used in subsections 1.5, 4.4, and 4.6.
- A reference in subsection 3.1 to a "registry start-up plan" has been corrected to read "registry transition plan".
- A very minor wording change has been made to subsection 3.7.
- Subsection 5.5.1 has been revised to remove the apparent requirement that the

Registry Operator be a Delaware, USA, corporation. (The language in the prior draft was inadvertently carried over from an existing agreement and reflected the organizational type and jurisdication of the registry operator for that TLD.)

- Two additional areas of indemnity have been added to subsection 5.7. They are items (c) and (d) in that subsection.

Comments concerning the layout, construction and functionality of this site should be sent to webmaster@icann.org.

Page updated 24-May-2002

Petillion

RM 12

.org Reassignment: Preliminary Staff Report on Evaluation of the Proposals for Reassignment of the .Org Registry

Posted: 19 August 2002

Preliminary Staff Report on Evaluation of the Proposals for Reassignment of the .Org Registry

Summary

This Preliminary ICANN Staff Report documents the results of the solicitation and evaluation process used to assist in the ICANN Board's selection of an entity to assume responsibility for operating the .org registry starting 1 January 2003 from the current operator of that registry, VeriSign, Inc. It is now posted for comments of the bidders and community prior to finalization and submission to the ICANN Board for its decision. Public comments on this draft report should be submitted by e-mail to org-eval@icann.org on or before 29 August 2002. A final version of this Staff Report, taking into account comments received, will be posted on 5 September 2002, and comments will also be invited on that final version.

Eleven strong proposals were received in response to the Request for Proposals issued by ICANN on 20 May 2002. Each bidder clearly took the task very seriously and invested considerable effort in proposal preparation and submission. ICANN should be very grateful for both the interest demonstrated and the effort and resources expended.

Unfortunately, only one bidder can be successful. ICANN owes it to those who submitted bids, therefore, to conduct as fair, thorough, impartial, open and transparent a process as is reasonably possible. Every effort has been made in the solicitation and evaluation processes to ensure that is the case. No process can be perfect – there is always room for improvement and, indeed, a longer timescale *might* have produced more bids or more complete bids, and a more detailed evaluation. However, we have great confidence in both the bid process and in the evaluation methodology and results. We believe the evaluation process has been fair and impartial, and that more time for evaluation or a different approach would not have led to a different conclusion.

Because the selection criteria span a variety of subjects, the evaluation was conducted using a multi-team approach. The teams were:

- **Gartner, Inc.** performed an evaluation of technical aspects of the bids, which were identified in the published criteria (based on Board comments at its Accra meeting) as of primary importance. Gartner is an internationally recognized leader in the field of information technology consulting.
- An international team of **Chief Information Officers** from major academic institutions performed an independent evaluation of those technical aspects using a different methodology.

- The **Noncommercial Domain Name Holders Constituency** of ICANN's DNSO evaluated "usage" aspects (as detailed below) of the bids.
- **ICANN's General Counsel** evaluated certain procedural aspects.

These evaluators – many of whom graciously volunteered their time – worked very hard and under very tight deadlines to produce their evaluations. ICANN appreciates their efforts.

This report summarizes the results of the evaluation. Each of the three teams evaluating the technical and usage aspects produced three-tier rankings of the bids. Only one of the proposals – that submitted by the Internet Society (ISOC) – was accorded top-tier ranking by all three teams. Based on that fact, and consideration of procedural aspects, ICANN staff's preliminary (subject to public comment) recommendation is that the proposal submitted by the Internet Society (ISOC) be selected.

Background

The bid solicitation arose from the revisions to the agreements among ICANN, VeriSign, and the U.S. Department of Commerce that were approved by the ICANN Board at its meeting on 2 April 2001 and signed in May 2001. One of the provisions of that agreement was that VeriSign would relinquish responsibility for operating the .org registry to an entity of selected by ICANN at the end of the calendar year 2002. As part of that provision, VeriSign also agreed to provide a US$5M endowment to be used to fund future operating costs of the successor registry operator, provided it is a non-profit entity.

In response to this provision, ICANN launched an open and transparent bid solicitation and evaluation process that was announced on 22 April 2002. Full details of this announcement, of the subsequent steps followed, and of the bids received can be found at the ICANN website in the Materials on .Org Reassignment. The bid solicitation was authorized by the ICANN Board at its meeting in Accra, Ghana in March 2002 following a report and recommendations it had received from the Domain Name Supporting Organization (DNSO). At that meeting, the ICANN Board stated that primacy of consideration should be given to stability of transition and operation of the .org registry so that there be no service interruptions in the .org registry.

As a result of the final Request for Proposals that was issued by ICANN on 20 May 2002, eleven proposals were received on or before the 18 June 2002 deadline. These and all subsequent materials received by the bidders are posted on the ICANN Website at http://www.icann.org/tlds/org/. Open and transparent procedures were maintained throughout the evaluation process. Bidders were requested to communicate only in writing with ICANN staff or board members, and any materials received from any of the bidders were posted on the website. All bidders were invited to make a brief presentation on their bid in the special ICANN Public Forum held for the purpose on 26 June 2002 in Bucharest, Romania. The process allowed for written questions to be submitted by prospective bidders prior to final submission of bids; all questions and answers were posted on the website.

This report summarizes the process used to evaluate the bids received and presents the resulting staff recommendation to the Board.

The Bidders

Eleven bids were received. Six of these were from not-for-profit organizations, most of which had obtained the commitment of other operating registries ("back-end operators") to operate the .org registry on the bidder's behalf should the bidder be successful, but the bidder would retain overall policy direction and community interface, that is, overall responsibility and accountability would remain with the bidder. All six not-for-profit bidders and one for-profit bidder plan to seek the US$5M endowment to be provided by VeriSign to assist with operating costs. One of the six (UIA) proposed to employ the services of the VeriSign registry should UIA be awarded the reassignment.

The eleven proposals in alphabetic order and, where applicable, associated back-partners including "back-end" registry operators are as follows:

Proposal	Primary Partner(s)
.Org Foundation	eNom Inc.
Dot Org Foundation	Registry Advantage: Kintera Inc.
GNR	International Federation of Red Cross and Red Crescent Societies
IMS/ISC	N/A
Internet Society (ISOC)	Afilias and Auxiliary Service Providers
NeuStar	N/A
Organic Names	CentraNic Limited
RegisterOrg	Register.com
Switch	Auxiliary Service Providers
UIA	VeriSign
Unity Registry	Poptel Limited; AusRegistry Pty Ltd.

Table 1: Proposal Submissions and Associated Primary Partners

Evaluation Process

The RFP stated eleven criteria that would be used in assessing the proposals. These are listed here for ease of reference:

1. Need to preserve a stable, well-functioning .org registry.
2. Ability to comply with ICANN-developed policies.
3. Enhancement of competition for registration services.
4. Differentiation of the .org TLD from TLDs intended for commercial purposes.
5. Inclusion of mechanisms for promoting the registry's operation in a manner that is responsive to the needs, concerns, and views of the noncommercial Internet user community.
6. Level of support for the proposal from .org registrants.
7. The type, quality, and cost of the registry services proposed.
8. Ability and commitment to support, function in, and adapt protocol changes in the shared registry system.
9. Transition considerations.

10. Ability to meet and commitment to comply with the qualification and use requirements of the VeriSign endowment and proposed use of the endowment.
11. The completeness of the proposals submitted and the extent to which they demonstrate realistic plans and sound analysis.

Criteria 1, 7, 8, and 9 are primarily technical in nature and are referenced here as *Technical Criteria*. Criteria 4, 5 and 6 are focused on the extent to which the bidders address the needs of non-commercial registrants consistent with the primary purposes of the .org registry; these are referenced here as *Usage Criteria*. Criteria 2, 3, and 10 are primarily procedural in nature and are designated as *Procedural Criteria*. Criterion 11 is in a category of its own and is addressed separately.

The decision was made to select different teams to evaluate each set of criteria, since different expertise was required in each case. In fact, as described below, two Technical Evaluation Teams were selected that operated independently and without knowledge of each other in order to lend confidence to the final results. For reasons described below, ICANN's General Counsel evaluated the Procedural Criteria. Criterion 11 was also assigned to one of the Technical Evaluation teams for reasons described below.

The reports of the evaluation teams can be viewed at the links below:

Gartner, Inc. Evaluation Report (technical aspects)
Academic CIO Evaluation Report (technical aspects)
NCDNHC Evaluation Report (usage aspects)
ICANN General Counsel Evaluation Report (procedural aspects)

ICANN staff analyzed these reports, and synthesized the results into the final staff recommendation to the ICANN Board as presented in this document. During the evaluation process, staff were available to answer questions of the evaluation teams and to clarify terms and definitions or any issues associated with the RFP. Staff also addressed any issues regarding potential conflicts of interest that arose in one or two cases (there were no actual conflicts of interest, in fact).

An attempt was also made to create an international panel of experts who could provide e-mail answers to technical questions regarding registry operations. This proved impractical in the short timeframe available, particularly given the small pool of large registry operators who were not themselves part of one or more of the proposals (and also given the influence of summer vacations!).

The proposals were all required to follow a particular format to ease comparison and evaluation. Section C of the responses consisted of answers to 36 questions (several with subparts) that were intended to elicit information regarding how well the bidder met one or more of each criterion. Staff also provided to the evaluation teams a mapping of these so-called "C-questions" into the criteria, that is, for each criterion this mapping indicated the list of relevant C-questions that should primarily be considered in the evaluation team's analysis. This mapping was intended to be helpful, but by no means binding, that is, an evaluation team could consider any part of each response and related posted material in reaching their conclusions.

The Evaluation Teams

The processes used by each evaluation team are summarized below. Prior to the posting of this report, the identity of each team and of its members has not been made publicly available. This was to ensure as far as possible that each team could work quietly through their evaluations based on the posted materials without any risk of being importuned by anyone who may have an interest in the outcome of the process.

Technical Evaluation Teams:

Two very different evaluation teams were selected to evaluate the proposals with respect to the Technical Criteria. Each was requested to follow its own approach to evaluation to ensure diverse evaluations, since there is no absolutely deterministic and failsafe way to conduct an evaluation. Each team operated independently and without knowledge of the other. Until the posting of this report, they have not seen each other's evaluations.

Two teams were chosen following different approaches essentially to provide a check and balance on the evaluation process. Consistency of responses from each team would lend confidence to the validity of the evaluations. Serious inconsistencies would raise questions about methodology that might require reexamination of the process and the results. This approach was felt to be especially important in the case of the technical evaluation, because of the weight the Board had clearly placed on the primacy of operational stability in the transfer of the .org registry, as was reflected in the published criteria for evaluation.

Both teams were instructed only to rely on posted materials, namely the RFP and associated materials, the proposals and associated materials, and (to the extent germane) posted community comments. That is, their work needed to be documentable with reference to the written word.

The teams and processes used were as follows:

Gartner, Inc.: Gartner, Inc. ("Gartner") is an internationally recognized consulting corporation that specializes in information and communication technologies. It also analyzes industry and technology trends and provides reports to its customers that are highly regarded. One particular area of Gartner specialization is procurement, where Gartner provides full services to its clients for all phases of the procurement process from RFP development to final bidder selection and negotiations. ICANN secured the services of Gartner, however, just to be of assistance in the evaluation phase of the .org reassignment process.

In the work leading to its final report, Gartner used a traditional "weights and scores" methodology to analyze the proposals, supplemented by its own approach to assigning weights and to providing advisories to ICANN about particular items that, in Gartner's view, could be obscured by the weights and scores process. (This can occur, for example, if a particular bid – in spite of having a good overall finals score in a particular category – provided an unacceptable response in an area that Gartner interpreted as being critical according to the words of the RFP.) In the Gartner approach, the RFP technical criteria were analyzed and broken down into specific subcomponents.

In this process, weights were assigned to each subcomponent according to its importance as documented in the RFP or other posted materials or to the overall goal of the particular criterion. Each subcomponent was separately analyzed and scored according to a defined scale, leading to an overall numerical score for each proposal against each of the technical criteria. Gartner also combined the criteria into a single overall assessment, using its own judgment as to what weight to assign the results of each individual criterion based on Gartner's reading of the RFP. Gartner also summarized the strengths and weaknesses of each proposal.

Although not strictly a technical criterion, Gartner was also asked to assess Criterion 11 regarding the completeness of the proposals and the extent to which they demonstrate sound plans and realistic analysis. This was because a very high proportion of the C-questions were directed towards the technical criteria, and it made sense to obtain Gartner's views in this area.

Academic CIO Team: To provide a completely different perspective, a team was assembled that was primarily composed of CIOs (or individuals with relevant ICT administration experience) from major academic institutions in the U.S., Mexico, and Australia, with considerable experience in procurements, and information and communication technologies. The members of the team and their individual qualifications are listed in Appendix 1 and in the evaluation team's report. The team was chaired by Jim Dolgonas, formerly Assistant Vice President for Information Resources and Communications at the University of California Office of the President, and now Chief Operating Officer for CENIC, the Consortium for Educational Network Initiatives in California.

This team followed a more condensed approach than Gartner. The team was asked to classify the proposals into three tiers: high, acceptable, and marginal. The team adopted a modified "Delphic" approach, whereby each team member carefully read each proposal and reached a tentative individual conclusion regarding the classification of each proposal according to the technical criteria. The team then met together and worked through their individual evaluations until they reached a team consensus on the classification of each proposal.

The team was not asked to provide in their report a detailed analysis of the strengths and weakness of each proposal, but to provide a short definition of each classification category that demonstrates the ground rules used. The team was only asked to provide a brief report on their overall findings, not a detailed justification.

From this perspective, the Academic CIO Team evaluation should be considered as a reasonableness check on the Gartner evaluation, not as a detailed evaluation in its own right.

Usage Evaluation Team:

The Usage Evaluation Team (this appellation is bestowed in this report, and was not given to the team at the start of their work) was composed of individuals active in the ICANN Non-Commercial Domain Name Holders Constituency (NCDNHC). This all-volunteer team was assembled and co-

chaired by Harold Feld and Milton Mueller. Members of the team are listed in Appendix 1 and in the team's report.

Many members of this team had considerable familiarity with the task in hand, having participated directly or indirectly in the DNSO task force (or at least in the dialog surrounding the work of the task force) on .org that led to the DNSO recommendation to the ICANN Board. In particular, many individuals on this team had previously carefully considered many of the issues and concerns surrounding the relationship of the .org registry to the domain name aspirations of the non-commercial community (or communities).

Given this familiarity, it was not felt necessary to establish two evaluation teams in this area. The team, however, was asked that the evaluation of each proposal on each of the three criteria be based on documented, reasoned analysis. The report of the team speaks for itself very well in this regard.

The team used a combination of weights and scores methodology and ranking methodology to reach its conclusions, and combined these approaches to arrive at combined overall scores for each proposal across all three criteria, using two different approaches to synthesizing its findings. The team acknowledges that any such quantitative approach is subject to imperfections, and prefers in its final recommendations to classify the proposals into three tiers, suggesting that ICANN not attempt to differentiate among proposals within each tier.

Procedural Evaluation Team:

It is something of a misnomer to call this a "team", since it is simply an evaluation by ICANN's General Counsel of three of the criteria concerning matters that do not fit within the expertise of the other teams. Criterion 2 is largely a verification step that all bidders are expected to meet, so that it only needs to be applied to the proposal(s) likely to be selected based on the overall evaluation. Criterion 3 relates to enhancement of competition and is relevant mainly to bids involving relationships to the incumbent registry operator, and analysis of that criterion has been focused accordingly. Because criterion 10 is similarly relevant only to particular proposals (i.e. only those seeking to qualify for the VeriSign endowment), evaluation under that criterion has also been targeted.

The fourth criterion in this category (#11) does require evaluation as part of the overall process. For the reasons indicated above, Gartner was asked to provide an evaluation of the proposals with respect to this criterion and has done so.

ICANN should also be grateful to all the members of the evaluation teams listed in this Report who worked very hard under a very tight deadline to produce their recommendations. Many of these individuals are volunteers who graciously made their time available for this activity.

Evaluation Summary

The evaluation reports can be directly accessed and speak for themselves. Although each

evaluation took a different approach, both the technical and the usage evaluations resulted in classifying each proposal into one of three overall tiers. The exact definitions of these tiers varied among the evaluations, as did the methodologies for integrating the applicable criteria. In Table 2, however, we summarize the proposals according to these tiers, using A, B, C as indicators for the categorization, *while again emphasizing that these indicators represent different metrics for each evaluation and can only be interpreted in detail by reference to the reports themselves.* In fact, two separate columns are presented for the Usage Evaluation representing the results of two different approaches used in that evaluation.

Proposal	Technical Evaluation[1]		Usage Evaluation[2]	
	Gartner Inc.	Academic CIO	Average Ranking	Normalized Ranking
.Org Foundation	C	C	C	C
Dot Org Foundation	A	C	B	C
GNR	A	B	B	B
IMS/ISC	C	C	A	B
Internet Society (ISOC)	A	A	A	A
NeuStar	A	A	B	B
Organic Names	C	B	C	C
RegisterOrg	A	B	B	C
Switch	C	C	C	C
UIA	B	B	B	B
Unity Registry	B	C	A	A

Table 2: Summary of Rankings[3] of Evaluation Teams

Key to Table 2:

A: Ranked as top tier by evaluation team
B: Ranked as middle tier by evaluation team
C: Ranked as bottom tier by evaluation team

Notes to Table 2:

1. With respect to Criteria 1, 7, 8, 9
2. With respect to Criteria 4, 5, 6
3. See evaluation reports for separate definitions of A, B, C

Again, it must be emphasized that these designations cannot be readily combined into a single result for each proposal.

Conclusions and Recommendation

Notwithstanding the caution just expressed, it is apparent from Table 2 that only one proposal, namely the ISOC proposal, was ranked top-tier in each evaluation, according to each evaluation's team definition of such a designation. That is the fundamental basis for a recommendation to the Board that the ISOC proposal be selected and that the Board authorize the President to proceed to negotiate an agreement based on that proposal.

However, further comments are in order. The ISOC proposal is also in the "A" category as evaluated by Gartner with respect to Criterion 11 addressing completeness of proposal and soundness of plans. ICANN Counsel has also validated that the ISOC proposal meets the requirements of Criterion 2 insofar as compliance with ICANN-developed policies is concerned: indeed, the ISOC "back-end" operator, Afilias, has already demonstrated this in its operation of the recently launched .info registry. Counsel has also opined that this proposal should qualify for the VeriSign endowment (Criterion 10).

The "back-end" operator contracted by ISOC, Afilias, is a consortium of eighteen gTLD registrars. VeriSign is a minority (5.6%) shareholder of Afilias as one of these registrars. Because the other Afilias shareholders are VeriSign's competitors, however, VeriSign's ability to exercise control over Afilias is effectively minimized and, indeed, no VeriSign employee has been elected to Afilias' Board of Trustees/Directors. In these circumstances, VeriSign's minority stake in Afilias does not materially implicate Criterion 3 (Enhancing Competition for Registry Services), particularly in view of the fact that the .org registry would be assigned to ISOC, not Afilias.

From Table 2, it can be seen that there are other strong proposals. The Board has stated that it gives primacy to consideration of continuing stability of operation of the .org registry as indicated through demonstrated experience. This gives special weight to the technical evaluation of Criterion 1 (need to preserve a stable, well-functioning .org registry) and to an extent Criterion 9 (transition considerations). In other words, proposals that rank very high with respect to these criteria should be given primacy of consideration above all others, and vice versa. The Gartner evaluation ranks the NeuStar proposal highest in these categories, followed by ISOC and then UIA (Criterion 1) or GNR (Criterion 9). However, NeuStar, UIA, and GNR all rank in the "B" category of the Usage Evaluations, and the last two also fall in the "B" category of the Academic CIO Technical Evaluation. The UIA proposal also falls short of the other proposals with respect to Criterion 3, in enhancing competition. In considering the GNR proposal, it is also appropriate to recognize that its experience in operating a shared registry is demonstrably less than that of Afilias (ISOC), NeuStar, or VeriSign (UIA), in that the .name registry is an order of magnitude smaller than the .info (Afilias), .biz/.us (NeuStar), or certainly any of the VeriSign operated gTLD registries; furthermore, as described in the General Counsel's evaluation of Criterion 3, GNR's shared (real-time) mode operation of the .name registry has used a VeriSign "back-end", that is, not using the technology that GNR proposes to use for .org.

Nevertheless, further consideration can be given to one of these proposals – particularly the NeuStar and GNR proposals (because of the registry diversification Criterion 3 issue with the UIA proposal) – if it proves impossible to negotiate an agreement with ISOC should the Board approve this recommendation.

Conversely, the Unity proposal ranks at the top of the Usage Evaluation, and the IMS/ISC proposal ranks second in one approach in the Usage Evaluation. Both of these proposals,

however, fall short in the Technical Evaluations, although the Unity proposal does fall in the "B" category of the Gartner Technical Evaluation.

In summary, although there are several strong proposals among the eleven submitted, the staff's view is that the ISOC proposal is the strongest and most balanced proposal overall. We recommend that the Board authorize the President to enter into negotiations immediately on a schedule that would allow Board approval of the negotiated agreement and ultimate transition of the registry so that ISOC could commence operations on 1 January 2003.

Should negotiations with ISOC fail in the allowed timeframe, staff recommends that the President be authorized to enter into negotiations with NeuStar and then GNR, in that order. NeuStar's and GNR's ranking could be perceived as about equal overall, but weight should be given to the greater experience of NeuStar in actually and successfully operating a large registry and having completed a transition of an actual registry (.us) from VeriSign.

We conclude this report by thanking all the many individuals and institutions that worked so hard and who expended significant resources in formulating and submitting proposals; and in evaluating the proposals. A competitive process such as this can only have one successful award. But this result should not detract from the overall effort and thoroughness of all the submissions.

Appendix 1: Evaluation Teams

Technical Evaluation Teams

Gartner, Inc.

- Mark Gilbert - Director - Engagement Manager
- Jamshid Lal - Senior Consultant - Project Manager

Academic CIO Evaluation Team

- Geoffrey Dengate, Griffith University, Australia
- James Dolgonas, Corporation for Education Network Initiatives in California, USA
- Lev Gonick, Case Western University, USA
- Anne Stunden, University of Wisconsin, USA
- Juan Voutssas, National Autonomous University of Mexico

Usage Evaluation Team (from NCDNHC)

- Mr. Thierry Amoussougbo, Benin
- Mr. Harold Feld, USA
- Mr. Eric Iriarte, Peru
- Mr. Milton Mueller, USA
- Ms. Youn Jun Park, Republic of Korea
- Mr. Ermanno Pietrosemli, Venezuela
- Mr. Marc Schneider, Germany
- Mr. Dany Vandromme, France

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Page Updated 20-Sep-2002

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NCDNHC

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EVALUATION REPORT
OF THE ICANN/DNSO
NON COMMERCIAL CONSTITUENCY

CRITERIA 4, 5 and 6

INTRODUCTION

In July 2002 ICANN's management asked the DNSO's Noncommercial Domain Name Holders' Constituency (NCDNHC) to assist in evaluating the bids submitted to ICANN to take over the .org registry management. ICANN specifically asked for assistance with respect to Criteria 4 (differentiation), 5 (responsiveness to the noncommercial community) and 6 (public support among noncommercial users). The letter from Stuart Lynn making this request is provided in Annex 1 of this document. The NCDNHC organized a dedicated evaluation committee made of 8 members, chaired by Harold Feld. The members performed the work in full consultation through e-mails and phone conferences. The list of the evaluation committee members is provided in Annex 3.

The three criteria are evaluated and the bidders are ranking accordingly, using a three tier categorization. The last section summarizes the rankings and displays two methods of developing a unified ranking across the three categories.

CONTENTS:

1. Criterion 4: Differentiation

2. Criterion 5: Responsiveness and Governance

3. Criterion 6: Public Support

4. Overall Rankings and Assessment

Annex 1: Comments on Method for Assessing Public Support
Annex 2: Letter from Stuart Lynn, ICANN CEO, to NCDNHC
Annex 3: List of NCDNHC Evaluation Committee members
Annex 4: Excel spreadsheet containing data on public support
Annex 5: Excel spreadsheet containing ranking.

CRITERION 4: DIFFERENTIATION
The consensus policy regarding the .org domain was that applicants should find a way to strengthen the distinctive identity of the .org domain while at the same time keeping it open and unrestricted. In evaluating the proposals along this dimension, we considered the following six factors:

- _Market research._ Did the applicant do real research on the uses and users of .org?
- _Positioning._ What kind of identity are they proposing for .org? Is it supported by the research, is it clear and appealing, and can it form the basis for effective promotion? How well thought-out is the marketing plan?
- _Defensive registration._ Did the applicant propose concrete strategies or methods to discourage defensive registrations?
- _Unrestricted._ Are the proposed differentiation methods consistent with the policy objective of keeping .org unrestricted and open?
- _Innovation._ Are innovative services and activities proposed that would help to differentiate the domain? How desirable or undesirable are these services from a noncommercial user's point of view?
- _Registrars._ Because registrars are the channel through which current and prospective .org registrants are served, did the proposal demonstrate that the applicant understands the challenges of leveraging this relationship, and propose feasible methods of working with registrars to differentiate the domain?

We evaluated each of these factors on a 6-point scale ranging from 0 to 5. We considered _Positioning_, _Lack of restriction_, _Innovation_, and _Relations to Registrars_ to be the most important evaluation criteria in the differentiation realm; these criteria were weighted at one (1). "Defensive Registration" and "Market Research" were weighted at one half. The performance of each applicant on each of these factors and their overall rankings are displayed below:

Table 1
Ranking of Applicants by Differentiation Criteria

Applicant & Rank	Market Research	Positioning	Defensive	Unrestricted	Innovation	Registrars	Score
1. UNITY	3	4	4	5	3	5	**20.5**
2. RegisterOrg	4	5	0	5	0	4	**16.0**
3. IMS/ISC	0	5	0	5	5	0	**15.0**
3. Neustar	5	3	5	5	0	2	**15.0**
5. Internet Society	3	3	2	5	0	4	**14.5**
6. GNR	5	4	5	5	0	0	**14.0**
7. Organic Names	0	2	3	5	0	3	**11.5**
8. SWITCH	0	0	0	5	5	0	**10.0**
9. DotOrg Foundation	2	2	0	0	3	3	**9.0**
10. UIA/Diversitas	0	2	1	2	2	1	**7.5**
11. .Org Foundation	0	0	0	5	0	0	**5.0**
Weighting	0.5	1	0.5	1	1	1	

SCALE		
Very good	5
Good	4
Acceptable	3
Mediocre	2
Poor	1
None	0

In this case, the top applicant stood significantly above the rest, as the only one to address each of the criteria satisfactorily or better. Thus, it occupies the first tier (orange color) by itself. The differences between the next five applicants in the second tier (magenta color) are less pronounced (the third ranking was a tie). Applicants in the bottom tier (light-green color) either ran afoul of the policy requirements or failed to research and elaborate their plans sufficiently to make the proposal credible.

RANK 1: UNITY
The strength of this applicant is that it gave careful thought to all the ramifications of the problems of marketing and differentiating an unrestricted domain, and came up with a comprehensive and integrated plan to address the challenge.

The proposal divides the market for .org names into three segments, with each needing a distinct message:

- For noncommercial registrants: ".org is the online space that defines you."
- For commercial registrants: .org is "the space to make your case; i.e, defensive registrants will be encouraged to use.org names in a new and positive way, to highlight their social responsibility activities, rather than simply redirecting them to their .com site. .Org promotion will be linked to Corporate Social Responsibility and Cause Related Marketing campaigns.
- For the general public, .org will be positioned as "the space to make a difference," a place where people can find out about charities and support groups and the wide range of noncommercial online organizations. (One weakness in the Unity proposal is that it fails to recognize that individuals and families often register .org names for personal statements and websites.)

The Unity Registry proposal places great emphasis on securing the cooperation of registrars in repositioning the domain. It proposes a cooperative marketing program with real financial incentives for registrars; a cooperative advertising program; a registrar relations department; a road show for education of registrars. The largest allocation in the proposed market budget (40%) is for this.

Thirty percent of the marketing budget will be used to engage an international PR agency to develop a strategy to communicate the message about the "new" .org. carrying the key message of "this is your space, get your .org." This plan is linked to Unity's plan for a "thick registry: if you are listed in the directory then your profile and reach will benefit.

The proposal allocates 20% of its relevant budget to encourage corporate entities to use .org registrations to corporate social responsibility outreach. Unity proposes to work directly with PR firms to get them to encourage their clients to use .org in the recommended way.

Unity Registry plans to use a thick registry (one that contains a lot of voluntarily secured information about the registrant) to differentiate the domain. A "thick registry" will facilitate the building of directory services, new portals, and software tools to help citizens engage with the non-profit communities. Unity proposes to establish three channels through which the database can be used:

- A searchable, .org-branded directory
- Basic subsets of the directory on third-party websites
- Customizable subsets of the directory on third-party websites.

We note that many of the same good ideas appear in various other proposals; this proposal, however, was the only one to put them all together in a coherent and complete way.

RANK 2: REGISTER ORG

This applicant also displayed very good market research, and showed a good understanding of the types of registrants in .org and their diversity. Based on the DNSO policy statement, it articulated one of the most appealing identities for the domain: "A

place for people, causes, and ideas." It is committed to keeping .org open and unrestricted. While RegisterOrg did not propose any innovative technical services, it showed a thorough understanding of the marketing problem and how to leverage the relationship with registrars. It proposed to expand the registrar channel to include portal sites, hosting companies, and offline businesses that have not traditionally participated in domain name distribution. It proposed to develop an extensive toolkit for registrars. It outlined a media placement strategy, with detailed budget allocations that were probably too specific to be realistic.

On the downside, the proposal did not specifically discuss minimization of defensive registrations, and lacked the kind of clear commitment to market only to noncommercials that was present in the Neustar proposal. While the $2.5 million Community Organization Grants administered through the Benton Foundation and the Open Society Institute are nice, there is no explanation of how those expenditures will strengthen the identity of .org or develop the market for .org registration. We are skeptical that these expenditures will have that effect.

RANK 3: NEUSTAR AND IMS/ISC (TIE)

Neustar
The Neustar proposal contains excellent market research. It also begins with a strong pledge not to promote defensive registrations and to market exclusively to noncommercials. This simple pledge may not be formally enforceable, but it is such a clear and unambiguous statement that any major deviation from it would make the breach of the promise obvious to anyone who cared to notice. We wish other for-profit applicants had done the same. The proposal does not articulate a clear brand identity, but the marketing plan is thorough and clearly based on what they discovered from the market research. There are no particularly innovative technical or service proposals in this application, except for a verification service designed to encourage trademark holders to relinquish .org names when an alternative registrant is genuinely noncommercial. Also, compared to the Unity and RegisterOrg proposals, relatively little was done to manage the relationship with registrars in special ways to promote a distinct noncommercial orientation.

IMS/ISC
This applicant's approach to differentiation was unique and, to some members of the committee, highly appealing, but also flawed in key respects. IMS/ISC has already articulated a strong identity for the domain by positioning it as a "public trust" and emphasizing its own roots in the technical community and its legal status as a nonprofit public benefit corporation. The strong response of a certain portion of the .org registrant community to that identity is documented in the next section on Public Support. The applicants promise to publish the source code of all their software, to develop new technical tools, and to develop generic second-level domains in .org (such as resource.org, phone.org, fax.org, etc) into "public utilities." This is the only applicant who expressed interest in "reducing the number of domain names sold" under .org.

We feel extremely confident that a .org domain run by this applicant would become, and be perceived as, genuinely "different." But we have concerns. While the proposal is rich in ideas for innovative services it is weak in articulating strategies to market the services. It is weaker still in making efforts to discover whether end users actually want the proposed services. The proposal contains no research on the market, typology or demographics of .org registrations or the uses and users of the .org domain. The proposers claim to have "strong roots in the noncommercial world" but those roots are in the world of Internet technical developers – a tiny slice of the two million .org registrants. There is no discussion of how to minimize defensive registrations. The proposal conspicuously lacks any discussion of the role of registrars in promoting – or undermining – their desired image and methods of differentiation.

We are concerned about the possibility that an .org domain operated by this bidder might ignore what large segments of current or prospective .org registrants want in order to pursue their own notions of what is technically elegant or interesting. These concerns are exacerbated by the absence of formal mechanisms for input from the community in this bidder's governance structure (see next section).

RANK 5: THE INTERNET SOCIETY

The Internet Society performed original market research and pulled together a lot of statistical material about .org from public sources. Its proposal emphasizes that .org lacks a brand image and that ISOC will provide it with one. Despite the wealth of statistical detail in the proposal's discussion of marketing and differentiation, one does not come away from it with a clear brand image or creative strategy for reinvigorating the .org domain. ISOC's proposal to brand .org as the "Internet home of non-commercial entities" struck this group as somewhat flat and uninspiring. Moreover, ISOC's own research shows that .org is already generally perceived in this way, so it is unclear how this positioning would improve things.

The ISOC proposal relies entirely on marketing and registrar relations for differentiation; it offers no innovative "thick registry" services. ISOC would minimize defensive and duplicative registrations by focusing outreach on a limited target: non-commercial entities not yet on the Internet, especially outside the USA. It would avoid "large media purchases" and concentrate on personally educating leaders and executives of nonprofit organizations.

Regarding registrar relationships, ISOC proposes to help registrars by providing them with "a wide array of marketing materials." Most significantly, it will offer financial incentives to registrars for delivering "quality registrations" of .org names; i.e., registrations that are actually used rather than parked. The feasibility and sustainability of this plan requires closer scrutiny than we can give it here, but it seems like a good idea.

In sum, ISOC focuses on broadening the geographic scope of .org registrations but, unlike some of the other proposals, does not seem to do much to strengthen the value proposition.

RANK 6: GNR

This applicant developed a clear and valid definition of "noncommerciality" and engaged in detailed analysis of the great variation in the types of registrants and uses in .org. It has developed a clear brand identity ("The Community Capital" with visual symbol), written a vision statement that explicitly recognizes the diversity of .org, and proposes an OrgCentre ("Open resources for the community") to reinforce this identity. Its marketing materials will emphasize its 15% donation to "worthy projects." However, its discussion of specific marketing methods is weaker than other top-ranked applicants.

As in the first-ranked applicant there is a strong emphasis on repurposing .org among corporate registrants. The strength of this proposal is that it draws on the International Federation of Red Cross and Red Crescent Societies for that purpose, piggybacking upon those organizations' existing corporate partnerships. This aids with defensive registrations; however, we felt that this aspect of differentiation was overemphasized in the GNR bid. While corporate repurposing among major partners of IFRC may help with some defensive registrations not enough concrete steps were proposed to market to new noncommercial users.

RANK 7: ORGANIC NAMES

There is no substantive market research underlying the Organic Names approach to differentiation. Even some of the numbers are obsolete (the proposal claims that there are over 3 million registrations in .org). The proposal says that market research would be conducted later.

The proposal does put forward an identity: "organizations with a human face." The proposal puts almost all of its branding emphasis on corporate repurposing. Organic Names "seeks to bring a branding of corporate social responsibility to *.org*". It "wishes to encourage the adoption of the *.org* name by organisations and corporations that see themselves as having a social dimension." While this is a good way to approach defensive registrations we don't think it is viable as an identity or strategy for the entire range of noncommercial entities, many of which are not corporate.

Organic Names proposes to promote the domain through co-marketing with registrars, by offering them rebates or discounts. But as far as we can tell their approach does nothing to encourage registrars to market the domain in a particular way.

RANK 8: SWITCH

SWITCH performed no market research. It did not propose a specific identity or brand for the domain. There was no discussion of how they would minimize defensive registrations. There was no discussion of how the registrar relationship would be leveraged.

On the positive side, SWITCH is committed to keeping registration in .org open and unrestricted. SWITCH did propose innovative services that in our opinion would be useful to .org registrants and would help to differentiate the domain. Specifically, the applicant proposed cooperative advertising arrangements (funds given to .org name

holders to support "campaigns of non-commercial ORG registrants, and prominently featuring their ORG domain name"); a directory service; and a community gateway website. Funds for cooperative advertising would be allocated by a committee in which .org registrants would have some input. The registry would collect data about the nature and scope of activities of non-commercial ORG registrants for publication in the SWITCH2ORG search engine. The directory service would allow keyword searching by "themes." ORG-at-a-Glance will act as an 'automated broker' between those wishing to publish information on a given topic and those wishing to subscribe to such information. These are all interesting and valuable proposals, developed credibly by the proposal.

RANK 9: DOTORG FOUNDATION

The DotOrg Foundation proposal is not based on any market research; however, unlike other proposals that promise they will do such research in the future, this proposal does a thoughtful job of identifying items that need to be researched.

DotOrg proposes a validation product to differentiate .org. Validation is optional but the applicant claims that it "will engender a far greater level of public confidence when encountering validated noncommercial organizations online" and "will facilitate the validated organizations reaching their audience and conducting transactions with them." Validation is decentralized; according to the proposal, "each validator would be responsible for establishing a wholesale price for its services. Registrars would decide which, if any, validators' services to offer through their websites and set the retail prices to be charged to their customers."

The evaluation team's response to the validation concept ranged from lukewarm to strongly negative. At best, it was perceived as a harmless attempt to differentiate the domain voluntarily, by means of optional certifications. Those taking this view thought it inappropriate to speculate on whether or not such a service would actually be feasible in the marketplace. At worst, it was perceived as a backdoor attempt to transform .org into a sponsored, restricted model. Somewhere in the middle were those who believe that bundling domain name registrations with optional validations makes no sense as a criterion for awarding the domain. These concerns need to be outlined in more detail.

Currently, the trust we put in noncommercial organizations is not based on their domain name. It is based on public reputation and in some cases on a special legal status, such as 501-3(c) in the USA, or other forms of validation. There are numerous legal mechanisms and accreditation agencies to solve the problem of trust. It is not clear what is gained by coupling these functions to the operation of a domain name registry *unless one is actually going to restrict entry into the domain on that basis*, as is done with .edu, .museum, .coop or .mil.[1] Thus, if a validation service is viable as a purely commercial, voluntary

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[1] One point of consensus from the .org policy process was that if ICANN wants a fully "validated" domain for nonprofits, it should simply create a new TLD for that purpose. .Org is not suitable for that purpose because of its legacy of openness and its heterogeneity.

proposition, DotOrg Foundation and associated registrars could do it *without having any control over the .org registry*.

Two things are clear: 1) validation will be an added cost, for those who choose to do it, and 2) any validation and seal program requires achievement of a significant critical mass of buyers and widespread understanding among the user public before it can improve trust and therefore create an incentive among domain name registrants to pay the extra amount. If validation is used by only a small number of web sites – and/or if the sources and criteria for validation are so heterogeneous that the public does not understand them – the seal will be a meaningless detail and Internet users will not care whether a site is validated or not. If that happens, no one will pay extra for the service, and hence validation will do nothing to differentiate the domain.

A more serious problem with the DotOrg proposal is that it develops special techniques to encourage Intellectual Property searches of the .org database. That aspect of the proposal actually works *against* differentiation of the .org domain, by encouraging .com holders to continue imposing the same standards and criteria to .org names that they apply to .com names. Such methods would seem to invite defensive registrations rather than discourage them, in direct conflict with the recommended consensus policy. That is why this proposal earned a "Zero" in the "Defensive registration" check box.

Regarding registrar relations, DotOrg says that it may offer co-marketing funds to registrars to be used to target noncommercial end users. Marketing initiatives that are likely to be eligible for co-marketing include media and creative costs for online, print and direct mail. Additionally, the DotOrg Foundation would consider co-sponsoring various registrar promotions such as product giveaways and renewal incentives. The vagueness of these proposals earned DotOrg a moderate score in the Registrar criterion.

RANK 10: UIA/DIVERSITAS

UIA would position the domain as "the natural home for civil society" and "The gTLD home of the non-profit community." Both may seem obscure or unexciting to registrants and, as has often been noted, many noncommercial org registrants are not formally incorporated as nonprofits. The UIA proposal contains no market research, but a promise to conduct market research in the future. It also contains a promise to "work with a creative or branding agency to create a distinctively new identity for .org that places substantial distance from its U.S. centric past," indicating that it has not yet conceived of a distinctively new identity. UIA believes that it has an advantage in doing this because of its links to 50,000 NGOs, but it did not leverage this advantage in the preparation of its proposal.

We appreciated UIA's strong statement that the .org community is "heterogeneous" and should not have a homogeneous marketing policy. However, unlike the Unity proposal the UIA proposal contains no coherent ideas about how to reconcile the need for efficient marketing with the heterogeneity of the target community.

UIA attempts to supplement its differentiation claims by utilizing "authentication" technology to "stratify" noncommercial from commercial registrants. It (rather cursorily) discusses an opt-in "seal" program that would authenticate registrants as a genuine noncommercial entity. Our concerns about authentication strategies are expressed more fully in the discussion of the DotOrgFoundation proposal above.

UIA claims that it will give "incentives" to registrars to inform current .org registrants of the changes it is implementing. But the incentives are unspecified. It says it is "developing co-marketing materials for registrars to use when talking with corporate registrants that have a number of defensive .org registrations. The nature of these materials is unspecified.

RANK 11: .ORG FOUNDATION
This application contains only the most cursory treatment of the marketing and differentiation issue. No market research has been conducted and no specific strategy or plan for doing this has been articulated. The applicant promises that it "will develop" an identity and "will identify" media venues for reaching the .org community with suitable messages. Presumably this is intended to describe its behavior after it has been awarded the domain. No specific methods or strategies for minimizing defensive and duplicative registrations was articulated; in fact, this proposal encourages defensive registration by proposing a "mini sunrise" period for expired domain names that privileges trademark owners. No innovative services were proposed. No relationship with registrars was defined.

CRITERION 5: RESPONSIVENESS TO THE NON-COMMERCIAL USER COMMUNITY

Criterion Five asks each applicant to detail "mechanisms for promoting the registry's operation in a manner that is responsive to the needs, concerns and views of the noncommercial Internet user community." As the text further explains, this criterion can be satisfied in a myriad of ways – from giving .org registrants a direct say in the management of the .org registry to teaming with non-commercial entities with broad roots in the non-commercial community.

As an initial matter, the Committee observes that any bidder can make promises. Accordingly, the highest ratings were given to detailed plans that were the most self-executing, thus avoiding the need for any continuous monitoring and enforcement by ICANN. The Committee also considered critical the level of details provided by the bidders, as this will serve as benchmarks for ICANN to measure the performance of the successful bidder and will serve as a definite guideline for enforcement. Vague promises of establishing some sort of council or researching the needs of the community after receiving the award were given little weight, while detailed plans with clear avenues for responsiveness were ranked more highly. Thus, a vague promise to allow the community to elect the entire board might rank lower than a detailed plan to create a truly representative advisory council.

"Responsiveness" does not mean merely on matters of policy, but includes general responsiveness to the needs of the community on an ongoing basis. The Committee notes, however, that the criterion asks for responsiveness to the noncommercial community specifically. Accordingly, general commitments to maintain a reliable registry, promises of lower prices for registration and pledges to provide general customer support, while important to noncommercial registrants, are important to all customers and do not address responsiveness to the noncommercial community specifically. By contrast, mechanisms designed to differentiate .org or to seek input from or representation of the noncommercial community specifically -- even on non-policy matters -- were considered within the proper scope of the evaluation for this criterion.

The most important evaluation criterion was the ongoing governance structure defined by the applicant.; i.e., what formal organizational mechanisms or structures are proposed to allow noncommercial .org registrants to influence policy and/or management? This was weighted double the amount of other criteria in our rankings.

In accordance with instructions received from ICANN management, the Evaluation Committee did not automatically assign any preference to a non-profit entity over a for-profit entity. Because past performance may prove to be an important indicator of future performance and commitment, the Committee did take notice of longstanding relationships between the bidders (whether for-profit or non-profit) and the non-commercial community available in the public record. The quality of the relationship was also considered. As an example, any retail goods store has a "relationship" with noncommercial customers, but this is not a particularly noteworthy relationship that would indicate whether the retailer is "responsive" to the specific needs of

noncommercial customers. By contrast, a for-profit retailer specializing in servicing noncommercial organizations could be judged by the character of this long-standing business relationship.

In this regard, the Committee also noted to what extent the bidder sought to work with the existing ICANN community, such as by responding on the public message board to questions formulated by noncommercial domain name registrants.[2] The Committee also took account of the relationship the bidder proposes with the Noncommercial Domain Name Holders' Constituency (NCDNHC) after winning the bid and whether the bidder will attempt to facilitate participation by the noncommercial entities in ICANN generally. The NCDNHC recognizes that it is not synonymous with the entire noncommercial user community, but it is the only recognized constituency within ICANN for formal participation by noncommercial entities in ICANN processes. Applicants who wish to facilitate participation of the noncommercial community within ICANN on an ongoing basis should either express an interest in facilitating participation in the NCDNHC and facilitating the NCDNHC's ability to work within ICANN, or provide alternative methods that are equally likely to bolster noncommercial .org registrants' ability to participate in and influence ICANN's affairs.

The Committee also considered, in accordance with the language of the criterion, any partnerships with non-profits formed for purposes of the bid. In considering these partnerships, the Committee looked to the nature of the partnership (e.g., how involved will the non-commercial partner be in the management of the registry or in formulating registry policy) and the demonstrated ability of the partner to engage the global noncommercial .org community.

Finally, the Committee also considered the commitments of bidders to serve the public interest. The Committee is mindful that in Accra, several Board members expressed skepticism on the relationship between "good works" and the running of the registry. Some Board Members observed that "good works" projects might be considered a tax on registrants to fund projects totally unrelated to the work of a registry or the goals of ICANN in supporting Internet stability. The Committee observes, however, that "good works" genuinely related to the mission of the .org registry act to differentiate the registry, may increase the ability of the noncommercial community globally to participate in management of the registry, and may enhance representation and stability. In line with the Board's preferences, we weighted "good works" only half of the weight of other criteria in our rankings.

Creating definitive rankings is a difficult and, to some degree, inherently arbitrary process. Accordingly, it is more valuable to consider the placement of bidders within

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[2] Nine of the eleven bidders chose to avail themselves of the opportunity to address the NCDNHC at Bucharest. Because that opportunity was not widely advertised, and because it was only announced one week before the Bucharest meeting, the Committee has not considered the failure to take advantage of this opportunity an indicator of non-responsiveness. In addition, the Committee observes that only two of the 8 evaluation team members were present at Bucharest, and that the Committee has relied exclusively on the content in the public record.

tiers rather than to focus on the specific ranking of the bid. However the figures are given to illustrate how important the gap may be between bidders.

Table 2:
Responsiveness and GovernanceRankings

Applicant And Rank	Input/ Governance	Pre-bid survey	Post-bid Responsiveness	ICANN/ NCDNHC	Relationship w. Community	Services targeted at community	"Good works"	Score
1. Unity	6	3	5	1	6	5	0	27.25
2. GNR	4	3	5	5	5	4	5	26.75
3. ISOC	3	3	5	5	3	5	2	21.75
4. DotOrg Foundation	6	0	5	0	3	3	0	20.50
5. UIA	2	1	5	5	3	2	0	16.75
6. IMS/ISC	2	0	6	0	3	3	2	14.00
7. Neustar	3	5	5	0	0	3	0	12.75
8. Register Org	2	5	5	0	3	0	2	11.75
9. Switch	2	0	2	0	3	0	0	8.00
10. .Org Foundation	2	0	2	0	0	0	0	5.00
11. Organic Names	0	0	0	0	0	0	0	0.00

Weight	2.00	0.25	0.50	1.00	1.00	1.00	0.50	

RANK 1: UNITY REGISTRY

Unity presented a well-developed and workable model for providing community input on an ongoing basis. Unity promises to develop a cooperative of all .org registrants, which would create a policy council. The track record of Unity's parent Poptel creates confidence that it can and will carry through on this commitment. Although the Policy structure does not have formal ability to make decisions, a number of additional safeguards ensure that the registry will remain responsive to the community and that the proposed OPG will not be merely window dressing. (1) The use of a pre-existing independently developed standard (the "AA1000 Social Responsibility" scale developed by the institute of social and Ethical Accountability) and an outside auditor (Accountable) to provide objective measures of responsiveness; (2) The creation of the Operations Advisory Group (OAG) to ensure that policy recommendations will be implemented; and, (3) The OPG will have oversight over the 10% services and development fund.

Unity receives a "High" rating in community relationship although it is a for-profit enterprise because of the long-standing and broad relationships its parent Poptel has with

the global noncommercial community. This relationship focuses in the area of telecommunications networks and services, the area relevant to consideration here. We have classed Unity's commitment to take 10% of pre-tax revenue to develop services as a commitment to develop registry services responsive to the community rather than to create generic "good works." Although this commitment does not propose a specific service, as some other bidders have, it represents a significant, concrete commitment of resources and creation of a defined mechanism for developing new, responsive services on an ongoing basis.

Since submitting the bid, Unity has been active in the public message forum and responded to the Questions posted there by the NCDNHC. It has therefore received a "high" in post-bid responsiveness.

RANK 2: GLOBAL NAMES REGISTRY (GNR)

Although a for-profit entity, GNR has partnered with the International Federation of the Red Cross and Red Crescent Societies ("Red Cross"). While the Red Cross is a global noncommercial entity with extensive relationships in the noncommercial world around the globe, in contrast to Poptel it has no extensive experience in the area of information technology and communications networks. While the Committee recognizes that GNR provides such expertise through its relationships with global registrars, it is still speculative as to how Red Cross and GNR will work through their partnership to blend their experiences on a day-to-day basis. As a result, the Committee ranked their community relationship as "Moderately High" rather than "High."

The Committee recognizes that GNR has proposed both an aggressive outreach program through its .OrgCenter, significant input into the "Good Works" grants via the Causeway Community Foundation, a Steering Committee composed of members of the community, and to work extensively with the NCDNHC. We were also impressed with its transparency mechanisms. Nevertheless, we rated the Input/Governance as "Moderately High" rather than High for the following reasons. GNR's proposed Steering Committee cannot provide the same level of input as a truly independent body because GNR will control appointment to the Steering Committee. Furthermore, because GNR will make the ultimate decisions on policy, it will have the power to define and distil consensus without any formal documentation tying the various inputs (Steering Committee, outreach, Red Cross) together. Indeed, although it commits to remaining responsive, GNR ultimately have the power to entirely ignore any input.

GNR has committed to working with the NCDNHC and to potentially giving travel grants to noncommercial entities so that they can attend ICANN meetings. For these reasons, GNR receives a "High" rating on ICANN/NCDNHC. GNR has participated in the public forum and responded to the questions posted by the NCDNHC. Accordingly, it received a "High" rating in that category.

RANK 3: INTERNET SOCIETY (ISOC)

The Internet Society is an international noncommercial organization with extensive relationships with other noncommercial entities, commercial entities, and governments.

Some on the Committee expressed concern, however, that ISOC's associations extend only to the networking/connectivity community and not to a broader base of noncommercial entities. Furthermore, there was dissatisfaction with ISOC's tendency to regard itself as the voice of the Internet community. This concern was supported in ISOC's answer to Question C36, inquiring for evidence of global support, wherein ISOC relied primarily on its own Board of Directors and international network of chapters as evidence of global community support. While we agree that the existence of a membership and chapters constitutes evidence of support, it is surely true that the global noncommercial community and .org registrants are much broader than one organization with a few thousand members. Accordingly, the Committee ranked ISOC as "Moderate" on the "Relationship to Community" category.

Under ISOC's proposed governance structure, PIR (a subsidiary of ISOC) retains final decision making authority for the registry, and has no avenues for input outside its own organization. Also, the relationship between ISOC chapters, membership and its governance board are in flux at the moment, so it is not clear how much influence that would give .org registrants. Thus, the Committee rated ISOC "Low" in Input/Governance.

ISOC has participated on the public forum and answered the questions of the NCDNHC. It has also, in its application, expressed a commitment to working with the NCDNHC constituency and ICANN and to help support the NCDNHC financially. Accordingly, the Committee awarded a rating of "High" in both categories.

ISOC proposes a number of very innovative services designed to respond to the needs of noncommercial entities, not just registrants generally. ISOC therefore received a "High" rating in this category. Finally, the Committee notes that although it has made no commitment to support "good works," profits from the registry will go to ISOC. On the arguable proposition that support for IAB/IETF standards processes constitutes "good works" we awarded ISOC a "Low" ranking in this category rather than a "None."

RANK 4: DOTORG FOUNDATION
The DotOrg Foundation describes an aggressive outreach program including a series of "town meetings" (four in conjunction with ICANN meetings). Its governance will include an Advisory Council (AC) initially chosen by the bidder but ultimately elected by .org registrants. The AC will elect three Board members. The Committee recognizes that the bidder may influence the outcome of the AC through its initial choices and that three directors do not equate with control of the board, which could ignore the AC directors. Nevertheless, because of the strong voice given to the community in the governance of .org and because of the aggressive outreach plan, the Committee gives DotOrg Foundation a "High" rating in Input/Governance. Numerically, DotOrg was tied with Internet Society, but due to the higher priority we assigned to the Input/Governance dimension, we ranked DotOrg slightly higher than ISOC, although both are included in the first tier.

The bidder has offered a validation service. The Committee has expressed concerns regarding this service as a means of differentiating the TLD in the discussion of the Differentiation criteria. Nevertheless, some members of the noncommercial community have expressed support for a validation service as responsive to their needs. Accordingly, the Committee has awarded DotOrg Foundation a "Low" rather than "None" rating in the Services category.

DotOrg foundation has participated in the public forum and answered the questions of the NCDNHC, accordingly, it has received a "high" in that category. DotOrg did not propose any methods to assist noncommercial registrants to participate in ICANN processes.

RANK 5: UNION OF INTERNATIONAL ASSOCIATIONS (UIA)

UIA is a non-profit with an extensive history of working with noncommercial organizations as a registry. While this function has brought UIA into contact with many non-profits, it does not indicate that it has extensive working relationships with these non-profits. UIA has acknowledged this to some degree in its letter to ICANN and in the discussion on how to interpret the initial claims in its application. Because the working relationship of UIA with the international noncommercial community is of a fundamentally different nature than what is at issue here, the Committee has given UIA only a "moderate" rating in its relationship to the noncommercial community.
UIA has offered to work with the NCDNHC and funds to facilitate the participation of noncommercial organizations within ICANN. For these reasons, it received a "high" rating in the relevant category.

The rest of its application, however, suffers from too many generalities. While rhetorically committing to an open governance process that will facilitate consensus within the community, it provides no details, timetables, or clear limitations on its ability as the registry to act absent any community input or consensus. It promises to develop new services for the community but, unlike Unity, it provides no mechanism or commitment of resources.

Accordingly, the Committee has given UIA a "low" ranking in the category of Input/governance and a "Very Low" in services. UIA has participated in the public forum and answered the NCDNHC questions, earning a "high" ranking in that category.

RANK 6: IMS/ISC

This bid has been extremely difficult to quantify. The principals have devoted their professional lives to the Internet community, and the Committee has the highest respect for their achievements. In addition, the commitment to put the code for the registry and registry tools in the public domain demonstrates a sincere commitment to manage the registry as a public resource. The proposed transparency mechanisms are also impressive. Furthermore, the Committee observes that the bidder has been an active participant on the public forum and responded within hours to the questions posted by the NCDNHC.

Ultimately, however, the bidders propose no formal governance or input mechanism beyond their personal reputations and their personal commitment to openness. The bid is highly personalized in the entrepreneurial character of the bidders. The Committee feels, however, that this provides an insufficient basis for responsiveness over the long term. Management of the bidder may change, or the current management may grow out of touch with the community. If that were to happen, the community would have no recourse.

Furthermore, the bidder appears entirely focused on responsiveness to the traditional technical community rather than to the broader noncommercial community. This is supported by the bidder's "good works" commitment – a donation of 8% of its revenues to support the IETF and IAB. While such good works further the growth and development of the Internet to the benefit of all – including the noncommercial community – it is not specifically responsive to the needs of the broader noncommercial community.

Therefore, although mindful of the character and contributions of IMS and ISC and its principals, and impressed with the overall approach of the bidder to manage .org as a public trust, the Committee has given this bid "Very Low" ratings in Input/Governance, a "Low" rating in the Good Works category, and "Moderate" ratings in "Relationship to the Community" and "Services Targeted at the Community."

RANK 7: NEUSTAR

Neustar has put forward a well-thought out governance plan that meaningfully involves the noncommercial community. Although the decisions of its proposed "Global Policy Council" are not binding, Neustar's guarantee of presenting the GPC's recommendations to ICANN when ICANN must approve a new registry service provides some check on Neustar's ability to ignore a GPC recommendation. Nevertheless, the Committee does note the limitations of the GPC. In addition, Neustar's outreach and input channels, while transparent, are passive rather than active. The Committee therefore awarded Neustar a "Moderate" in this category.

Neustar has no general relationship with the noncommercial community and has not partnered with any noncommercial entity that could provide such a relationship. It makes no commitment to perform "good works" within the Community and makes no mention of facilitating noncommercial participation in ICANN or work with the NCDNHC. Neustar has participated in the public forum and answered the questions submitted by the NCDNHC.

Neustar offers one new service responsive to the noncommercial community. It offers to facilitate transfer of names from commercial entities to noncommercial entities by verifying for the commercial registrant that the noncommercial would-be registrant is not a cybersquatter. This would facilitate the use of .org names by genuine noncommercial entities that might otherwise be occupied by defensive commercial registrations.

RANK 8: REGISTER ORG

RegisterORG offers has partnered with the Benton Foundation and the Open Society Institute – two non-profits well known for extensive international work. It has committed substantial resources, $2.5 million dollars, so that these organizations may develop input from the noncommercial community and facilitate noncommercial community involvement with .org.

Ultimately, however, RegiserORG retains total control and may ignore any input generated through its noncommercial partners. Neither RegisterORG nor its noncommercial partners has detailed any plan for outreach. Therefore it received a Low rating in the Input/governance cell. RegisterORG has no relationship with the noncommercial community, except via its partnership with Benton and OSI. The extensive relationships of OSI and Benton and the commitment of resources cannot entirely compensate for the lack of detail in the plan, particularly where Benton and OSI appear to be more in a consulting relationship than a true partnership. The Committee therefore gave this bid a "Moderate" rating in its relationship to the community. RegisterORG has participated on the public forum and responded to the questions of the NCDNHC, receiving a High rating in that area.

The bidder has proposed no new services or good works projects, beyond supporting Benton and OSI. The bidder proposes no relationship with the NCDNHC, and has not offered to facilitate participation of noncommercial entities in ICANN.

RANK 9: SWITCH

SWITCH is a non-profit organization with extensive experience in the European academic networking community. It has no other relationships with the noncommercial community. The Committee has therefore given it a "Moderate" rating in the relationship to Community category.

SWITCH has no specific plans for outreach beyond a passive website. It will create a policy council to suggest policy, with no binding force. Switch will select the first seven members of this policy council, who will then determine how to select other members. SWITCH does not detail by what criteria it will select these initial members. This method does not appear to provide any meaningful input to the broader, global noncommercial community. It has therefore received a Low/Moderate rating in the input/governance category.

SWITCH participated little in the public forum, and did not answer the questions of the NCDNHC. It therefore received a "Low" rating in this category. It has articulated no role for noncommercials within ICANN nor proposed any relationship with or support for the NCDNHC. It proposes no new services or good works.

RANK 10: .ORG FOUNDATION

The .Org Foundation exists solely for purposes of this bid. The sole Board member is a Seattle entrepreneur. It has no relationship with the noncommercial community.

The bidder proposes using the recommendations of the At Large Study Committee as the basis of creating a .org at large. The bidder does not explain how it will implement these recommendations or what powers the At Large will have in relationship to the registry.

The rest of its commitments to the community consist entirely of vague, unsupported statements and promises. Because it at least invoked a pre-existing standard, it received a "Low" ranking on Input/Governance.

While the .Org Foundation was a frequent participant on the public forum, this participation was primarily in the form of posting letters of support and other self-serving statements. The bidder did not respond to the NCDNHC questions, nor to any other substantive questions on the list. It therefore received a rating of "Low" in the post-bid category.

Nothing in the bid reflects even the least familiarity with the noncommercial community in its drafting. The bidder proposes no relationship with the NCDNHC or a means to facilitate greater participation by noncommercial organizations within ICANN.
The Committee recognizes that the bidder has recently proposed to add a validation service. Based upon the materials submitted into the record by the bidder, this validation service appears directed to external users rather than as a genuine effort to differentiate the TLD. In addition, its inclusion as an afterthought raises the suspicion that the proposal is driven by support expressed for the verification service of the DotOrg Foundation. Thus, although the Committee gave the DotOrg Foundation a "low/moderate" rating in the services category for its service, the Committee does not award the .Org Foundation any rating for this last minute addition.

RANK 11: ORGANIC NAMES
Organic Names maintains in its application that it is inherently impossible to be responsive to so broad a constituency as the global noncommercial user community and dangerous to try. It therefore proposes no governance structure, no formal input structure for the noncommercial community, no relationship with the NCDNHC, no mechanism for facilitating participation in ICANN by the noncommercial community, no services targeted to the noncommercial community, and no "good works" projects. The bidder does not appear to have consulted anyone about its bid, has not participated on the public forum, and did not answer the questions of the NCDNHC.

The Committee notes that in Organic Name's public presentation to the Board in Bucharest it was not merely dismissive of the notion of the responsiveness criterion, but denigrated the attempts of other bidders to even try. The bidder maintains, in its application and its address to the Board, that it is best responsive to the .org community by providing a stable, secure registry – and that the efforts of other bidders to provide more than this distract them from this purpose and, by implication, will prove less stable and secure. The other bidders, however, equally promise a secure, stable registry, and at lower prices. The Committee observes that this bid most replicates the existing registry policies. It is the opinion of the committee that ICANN and the noncommercial community can do far better than the *status quo*.

CRITERION 6: SUMMARY OF PUBLIC SUPPORT

Public support was assessed using endorsements that were found either in the proposals or in the public comment board. In order to facilitate a uniform comparison and ranking we put all expressions of support into two simple categories, Class A and Class B. **(See the Annex 2 on Method for additional discussion.)**

Class A endorsements had to meet three criteria: 1) they had to come from an organization (as opposed to an individual), 2) the organizations had to be noncommercial, and 3) they had to be a holder of a .org domain name. The classification did not take into account differences in the size or "importance" of organizations, as that would have taken us too deeply into subjective territory or interminable measurement and verification issues.

Endorsements from individuals, non-.org name holders, commercial firms, and qualified or limited endorsements were classified as Class B endorsements. Also, if a Class A endorsing organization was a financial beneficiary of the bid it was demoted to Class B.

For ranking purposes, one Class A was considered to be worth 5 Class B's. We also rated the geographic diversity of the support expressions as "High," "Medium," and "Low" and used it as a tiebreaker. Endorsements that came from individuals or businesses with a primary interest in selling domain names were discounted entirely; i.e., we interpreted the "public" in public support to mean users/consumers and not suppliers.

Table 1 below summarizes the results. Explanatory comments follow. We have, through color-coding of the Table, divided the applicants into three tiers. While the rankings are justifiable and meaningful, in some cases the shades of difference between them are minor and might have changed with slight differences in methodology. A particular bidder's location in one of the tiers, on the other hand, is a solid indicator. The top three have demonstrated widespread support for their application and are ranked relatively high in terms of the geographic distribution of their support. The next four have demonstrated moderate support and limited or low geographic diversity. The bottom four have very limited support and low geographic diversity.

Table 3
Ranking by Public Support

Rank	Bidder	Class A	Class B	Score	Geo. Diversity
1	**IMS/ISC**	0	420	**84**	Medium
2	**Unity Registry**	23	39	**28**	Medium
3	**Internet Society**	2	100	**22**	High
4	**.Org Foundation**	14	17	**17.5**	Low
5	**UIA**	4	10	**6**	Medium
5	**Neustar**	1	25	**6**	Medium
7	**DotOrg Foundation**	5	4	**<6**	Low
8	**GNR**	0	6	**1**	Low
9	**RegisterOrg**	0	4	**<1**	Low
10	**Switch**	0	3	**<1**	Low
11	**Organic Names**	0	0	**0**	--

RANK 1: INTERNET MULTICASTING SERVICE/INTERNET SOFTWARE CONSORTIUM
This bidder only solicited individual endorsements. IMS/ISC received (as of August 5) 435 individualized expressions of support. We sampled and verified 120 of the messages, and based on the results feel confident classifying 420 as valid Class B endorsements. Approximately 35 percent of the supporters are estimated to be registrants of .org names. None of these messages were based on form letters and only a handful were based on direct organizational or commercial ties to the bidder; therefore, we consider it to constitute a substantial indication of independent support, although the quality and depth of the comments vary significantly. The .org name-holder endorsers of this bid consisted disproportionately of owners of personal and family websites, bloggers, and small-scale technical consultants. There were also endorsements from some well-known Internet personalities. The endorsements are nationally diverse as regards North America and European countries, but there are few from Asia, Africa, or Latin America.

RANK 2: UNITY REGISTRY
Unity Registry received the greatest number of valid support letters from noncommercial *organizations* (60+). There was a total of twenty-three (23) Class A endorsements and another thirty-nine (39) Class B endorsements. Unity was, as far as the evaluation team knows, the only bidder to consult with noncommercial organizations widely and publicly *prior* to the deadline for applications to be presented to ICANN, holding two international consultations with a wide range of civil society groups. The organizational

types endorsing the Unity bid represented the broadest range of organizations, such as human rights advocates, labor union associations, community networking organizations, business associations, environmental groups, and development organizations. We think this breadth of support is important, as it reflects the diversity of the .org domain. Geographic diversity was moderately good, with a large number of UK-based and French organizations but substantial representation from other European countries and the USA, plus a few organizations from Asia. There were few organizations from the developing world. Another key consideration is that endorsers of the Unity bid responded quickly and affirmatively to verification inquiries, indicating real support by the listed organizations.

Endorsements from dotCoop LLC and the National Business Cooperative Assocation were discounted because of the business relationship between these firms and PopTel, one of the operators involved in this bid. A few other organizations could not be verified.

RANK 3: THE INTERNET SOCIETY (ISOC)

The Internet Society demonstrated support for its proposal by mobilizing its own membership and chapters. With one late exception, the British Computer Society, it does not seem to have sought or received organizational endorsements from outside of ISOC. Over 500 individual indications of support for the bid, the great majority from ISOC members, were received. About 28% of them list verifiable .org registrations. These messages were obtained by having individuals fill out a web form on the ISOC site.

In assessing ISOC's support, the evaluation team found it fair and necessary to distinguish between internal and external expressions of support. Internal expressions (e.g., ISOC chapters, officers and members) were aggregated into one Class A endorsement from the Internet Society. Non-ISOC individual endorsements were counted as Class B endorsements. We estimate 100 of these, although it is not always clear which individual endorsements were ISOC members and our count may overstate the number of independent support messages.

Internal endorsements were collapsed into one Class A endorsement because many other organizations have members or member-organizations and in those cases we eliminated duplicates. Moreover, ISOC chapters, officers and members could be viewed as interested parties, because their organization might receive material benefits from ISOC's control of the .org registry. Finally, the method of demonstrating support chosen by ISOC often did not permit independent verification, as many of the names on the list have no email addresses or URLs, and the level of commitment required to post a support message is minimal.

ISOC's membership endorsements are the most diverse geographically, encompassing more than 75 nations.

RANK 4: THE .ORG FOUNDATION.

The .Org Foundation received fourteen (14) Class A organizational endorsements. It also received seventeen (17) Class B individual, commercial and political organizational

endorsements, only one of which had a registered .org name. The geographic scope of endorsements for this bid is extremely narrow: nearly all of the entities are based in Seattle, Washington, USA. There was political support for the bid from elected government officials in that area and the Microsoft Corporation. All but one of the endorsements are from the United States.

In addition, the applicant generated approximately 100 individual endorsements. These endorsements, however, were discounted by the committee because they came from commercial entities sending in form letters as a result of eNom's mobilization of its registrar marketing network. To cite one of many examples, the website of one of the supporters listed, a John Bagwell, resolves to "Bagwell Marketing Associates" and contains an advert for eNom on the front page. Although we did not have time to individually verify every one of the individual endorsements submitted by .Org Foundation, of the twenty we did sample and were able to verify, all came from commercial entities affiliated with eNom. The testimonials may indicate that eNom's customers and marketing partners are supportive, but they do not indicate "demonstrated support" for the bid "among … those actually using .org domain names for noncommercial purposes," as required by the RFP.

RANK 5: UNION OF INTERNATIONAL ASSOCIATIONS/DIVERSITAS
The UIA bid received four (4) Class A endorsements and ten (10) Class B endorsements. We counted the UIA itself as a Class A endorsement because it is a nonprofit holding a .org name with longstanding ties to the international community of noncommercial organizations. We did not, however, accept UIA's arguments that all of its many member organizations have indirectly endorsed its bid by using it as a directory. (See the discussion in the Appendix) The Class B organizations all lacked a .org domain name. Many of the endorsements were based on form letters.

RANK 5: NEUSTAR
The Neustar bid received 1 Class A endorsement from the Association of Local Telecommunication Services and Class B endorsements from twenty-five (25) organizations, nineteen (19) of which are .org name users. Some of the organizations are large associations of nonprofits. However, except for ALTS all of the messages are based on a form letter that only discusses and endorses the concept of a Global Advisory Council. They do not necessarily endorse the bid as a whole or the specific bidder in relation to other bids. Twelve (12) of the letters explicitly disclaim any intention to support Neustar's bid over others; the others state that if Neustar is selected they will participate in the Global Advisory Council, indicating a slightly stronger level of support. But most of the organizations in the latter category did not respond to verification inquiries asking to clarify the ambiguity, and the one that did respond (Independent Sector) disassociated themselves from endorsement of the Neustar bid as such. For that reason we classified all but the ALTS letter as Class B endorsements. More than half of the letters are from organizations based in Washington, DC. Four (4) are from the UK, three (3) are from Italy, 1 is from an organization with bases in Switzerland and Canada. The concept of a Global Advisory Council was also endorsed by country code registries

in Taiwan and the Peoples Republic of China, although their status as stakeholders in the .org domain is more tenuous.

The group notes, but discounted, five endorsements received from registrar companies. As supplier organizations with a commercial interest in domain name sales, these endorsements were not relevant to the RFP's request for "demonstrated support" for the bid "among … those actually using .org domain names for noncommercial purposes."

RANK 7: DOTORG FOUNDATION.

The DotOrg Foundation received five (5) Class A organizational endorsements and four (4) Class B endorsements. The Class A endorsements came from Association of Fundraising Professionals, Guidestar, Canada Helps, Charity Navigator and ePhilanthropy. Several of these endorsing organizations are involved in verification activities, which might give them a special interest in the DotOrg bid, but we counted them as Class A's anyway. One of the organizations, Independent Sector, has also filed comments in support of limited aspects of the Neustar bid, so we counted it as a Class B endorsement.

RANK 8: GLOBAL NAME REGISTRY (GNR)

GNR received organizational endorsements from the International Federation of Red Cross and Red Crescent Societies (IFRC), the British Red Cross, and the Charities Aid Foundation. We could not classify any of these as Class A endorsements, however, because each organization has a financial interest in the success of the bid. IFRC would receive 5 percent of the revenue from the registry, the British Red Cross would act as agent of the IFRC, and the Charities Aid Foundation would be involved in allocating the funds. The GNR bid also received support letters from four (4) commercial firms supporting the idea of using .org domains for corporate social responsibility sites. Thus, in total this applicant received seven (7) Class B endorsements.

RANK 9: REGISTERORG

The RegisterOrg bid received letters of support from four (4) organizations, all of which we classified as Class B endorsements. Two of the organizations, the Benton Foundation and the Open Society Institute, are .org name holders and noncommercial organizations. They would, however, receive financial benefits from Register.com if the bid is successful so they were not classified as Class A. All but one of the organizations are based in the USA.

RANK 10: SWITCH

The Swiss bid received supportive testimonials from three individuals. The statements came from satisfied customers of the country code registry, and were deemed independent by the review team. There was little geographic diversity as two were in Switzerland and one was in Austria. We counted them as three (3) Class B endorsements.

RANK 11: ORGANIC NAMES

The Organic Names bid produced no expressions of support in the bidding materials and received no message of support on the public bulletin board.

SYNTHESIS

Having developed rankings across the three evaluation criteria assigned to us by ICANN, the Committee then attempted to integrate them into an overall ranking. This was done in two ways. The committee did not have time to come to an agreement among itself as to which was best.

Method 1: Average Ranking

The first method was simply to average the rankings across all three evaluations. This method was based on the assumption that the methods and categorizations used in the different criteria cannot all be reduced to a single numerical metric, and therefore only the ranking itself should be used. It produced the following result:

Rank	Bidder	Support	Different	Respons	Average
1.	Unity Registry	2	1	1	1.33
2.	IMS/ISC	1	3	6	3.33
3.	Internet Society	3	5	3	3.67
4.	Neustar	5	3	7	5.00
5	GNR	8	6	2	5.33
6.	RegisterOrg	9	2	8	6.33
7.	DotOrg Foundation	7	9	4	6.67
8.	UIA	5	10	5	6.67
9.	.Org Foundation	4	11	10	8.33
10.	Switch	10	8	9	9.00
11.	Organic Names	11	7	11	9.67

Unity Registry, which placed in the first tier in all three criteria, emerges clearly as the best proposal, with an average ranking of 1.33. The two other first-tier applicants, IMS/ISC and the Internet Society, come in closely bunched together behind it. Depending on other aspects of the evaluation, all three of the first-tier applicants should be considered front-runners for the final award, unless some aspect of their proposal completely disqualifies them on technical, business, or competition policy criteria. Conversely, the bottom three applicants, having consistently placed in the bottom tier in at least two and sometimes three of the evaluation criteria, should be eliminated from further consideration on those grounds alone.

Method 2: Normalized Ranking

Having developed rankings across the three evaluation criteria assigned to us be ICANN, the Committee then attempted to integrate them into an overall ranking. To have a fair account of the three criteria, a normalization was applied to suppress the over-estimate influence of criteria having numerous parameters with their own weighting. This allows

us to bring all three criteria with the same capacity of influencing the results. Then, the normalized grades were added to produce the final grade.

1. Unity	24.47
2. ISOC	20.47
3. IMS/ISC	16.73
4. GNR	15.73
5. UIA	12.47
6. Neustar	12.4
7. DotOrg Foundation	10.07
8. Register Org	9.53
9. .Org Foundation	8.33
10. Switch	6.13
11. Organic Names	4.6

The rank is deduced from the decreasing order of the grades. As for the individual criteria evaluations, the committee cast the applicants in three tiers, based on the grouping of the grades.

Unity Registry, which placed in the first tier in all three criteria, emerges clearly as the best proposal, with a final grade of 24.47, followed by ISOC with 20.47. Four other applicants come in closely bunched together well behind them. Depending on other aspects of the evaluation, all six of the top applicants should be in the running for the final award, unless some aspect of their proposal completely disqualifies them on technical, business, or competition policy criteria. Conversely, the bottom five applicants, having consistently placed in the bottom tier in at least two and sometimes three of the evaluation criteria, should be eliminated from further consideration on those grounds alone.

ANNEX 1

Stuart Lynn Letter to NCDNHC

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Harold and Milton have kindly (and enthusiastically)
offered the NCDNHC's assistance in the evaluation of the
eleven .org applications that were submitted.  We greatly
appreciate this offer.

In finalizing arrangements for the evaluation, we would
find it very useful to receive from the NCDNHC its
evaluation of each application based on criteria 4, 5, and
6 of the eleven that have been published at
<http://www.icann.org/tlds/org/criteria.htm>.  The
published explanations of these three criteria, which are
the ones most within the NCDNHC's area of special knowledge
and interest, are reproduced below this message.
Evaluations of the applications with respect to the other
criteria will be conducted by other groups with the
appropriate expertise.

It is very important that ICANN's evaluation of each
application be done in a thorough and evenhanded manner,
according to the published criteria, and only according to
publicly posted documentation.

Accordingly, the NCDNHC's evaluation will be most useful to
the overall effort if the evaluations of each application
on each of the three criteria are based on a documented,
reasoned analysis, and if care is taken to ensure that the
evaluators hold no present or anticipated financial
interest with respect to any of the applicants.

Materials that are available in connection with these three
criteria include (a) the applications (posted at
<http://www.icann.org/tlds/org/applications/>),
particularly the responses to items C38 (criterion 4), C35
(criterion 5), and C36 (criterion 6); the presentations at
the Public Forum on 26 June in Bucharest (see
<http://www.icann.org/tlds/org/> for links); and the web-
based public comment forum <http://forum.icann.org/org/>.
We understand that the NCDNHC also received presentations
by several bidders. (If these or other materials are relied
on in the analysis they should be made part of the posted
record--please send them to Louis Touton for that purpose.)
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We are currently in the process of establishing a revised
schedule for the evaluation, since it now seems clear that
some delays will be necessary to do a top-quality
evaluation. However, to meet the need to have the selected
applicant in place for a timely transition from VeriSign we
believe that any NCDNHC evaluation would be needed by
approximately 15 August 2002.

Please let me know whether you believe that the NCDNHC
could provide assistance as outlined above. Thanks again
for your enthusiastic participation.

Best regards,

Stuart

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          EVALUATION CRITERIA FOR NCDNHC ANALYSIS
    (Criteria 4, 5, and 6 with explanations as posted at
       <http://www.icann.org/tlds/org/criteria.htm>.)

4. Differentiation of the .org TLD.

A key objective is differentiation of the .org TLD from
TLDs intended for commercial purposes. Appropriate
marketing practices are a primary tool for achieving that
objective. Proposals should include detailed planned
marketing practices designed to differentiate the .org TLD,
promote and attract registrations from the global
noncommercial community, and minimize defensive and
duplicative registrations.

5. Inclusion of mechanisms for promoting the registry's
operation in a manner that is responsive to the needs,
concerns, and views of the noncommercial Internet user
community.

The successor operator's policies and practices should
strive to be responsive to and supportive of the
noncommercial Internet user community, and reflect as much
of its diversity as possible. Consideration will be given
to mechanisms proposed for achieving this responsiveness
and supportiveness. A broad variety of mechanisms are
possible, such as teaming between for-profit and non-profit
organizations and establishment of governing or advisory
groups for the operation of the .org registry that include

representatives of the noncommercial Internet user community.

Where representative governing or advisory groups are proposed, the proposal should ensure a mechanism for providing all .org registrants with the opportunity to participate in that mechanism, either through the selection of members, or through some other means. The bylaws or other documents establishing the groups should provide explicitly for an open, transparent, and participatory process by which .org operating policies are initiated, reviewed, and revised in a manner that reflects the interests of .org domain name holders and is consistent with the terms of its registry agreement with ICANN.

6. Level of support for the proposal from .org registrants.

Demonstrated support among registrants in the .org TLD, particularly those actually using .org domain names for noncommercial purposes, will be a factor in evaluation of the proposals. Noncommercial registrants do not have uniform views about policy and management, and no single organization can fully encompass the diversity of global civil society. There will likely be significant difficulties in ascertaining the level of support for particular .org proposals from throughout the .org registrants and noncommercial community. Nevertheless, proposals to operate the .org TLD should provide available evidence of support from across the global Internet community.

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ANNEX 2

Public Support:
APPENDIX ON METHOD

In assessing "public support," endorsements were the only documented facts we had to work with. Assessing endorsements as a proxy for "the level of public support" is an inexact process. There are distinctions between individual and organizational endorsements; distinctions between organizations composed of individuals and organizations composed of other organizations; differences between individually drafted letters, form letters, and adding a name to a list; variations in organizations' size; variations in the prominence or fame of an individual, whether the endorser is truly a noncommercial Internet user, geographic diversity, and so on.

We concluded that the best way to handle this complexity was to develop a *uniform* and *simple* method of comparing expressions of public support. A comparison based on a simple, uniform standard eliminates opportunities for discretionary judgment calls that could be influenced by biases. A purely impressionistic assessment of public support that does not bother to count, classify and analyze is not acceptable. A more complex standard of weighting endorsements might appear to be more realistic, but in fact would require information that we did not have time to get, much less verify – information that could easily be faked, as well. In the end the information and verification problems associated with more detailed methods would open the door to far more subjectivity and arbitrariness than the method we chose.

In order to facilitate a fair comparison and ranking we put all expressions of support into two crude categories:
- Class A endorsements had to meet three criteria: they had to come from organizations, the organization had to be noncommercial, and it had to hold a .org domain name. These are objective, easily verifiable criteria.
- Endorsements from individuals, non-.org name holders of any type, commercial firms, or qualified or limited expressions of support were considered to be Class B endorsements. Also, if a Class A organization was a financial beneficiary of the bid it was demoted to a Class B endorsement.
- For ranking purposes, one Class A was considered to be worth 5 Class B's.
- We also rated the geographic diversity of the support expressions as "High," "Medium," and "Low" and used it as a tiebreaker.
- Endorsements that came from individuals or businesses with a primary interest in selling domain names were discounted entirely.

This method proved to be analytically useful and fairly easy to apply. Two questions about it may need to be addressed.

First, why did we not distinguish between the size of organizations? Two reasons. First, problems of measurement and double-counting would be insurmountable if we tried.

There is no uniform and verifiable way to measure the "size" of organizations and it would be inappropriate to rely on self-reporting. Some organizations are members of other organizations, leading to ridiculously large numbers and double counting. If we cannot measure objectively and accurately it is farcical to pretend to be basing our judgments on measurement.

Second, the size of an organization is not a reliable indicator of the degree of actual public support behind an endorsement of an .org proposal. It is not true that because the headquarters of a large organization endorses something that tens of thousands of their members will act in a certain way. The vast majority of members are most likely to be totally unaware of the bidding process, much less aware of the details of a particular bid; many members may have views different from the secretariat. Ultimately, all public support comes from individuals, and organizations are not perfect proxies for their individual members in this type of situation.

The gap between organizational endorsements and members is even more apparent when organizations comprised of other organizations are involved. We have a clear and compelling example of this in the .org endorsements. The International Confederation of Free Trade Unions, itself an organization composed of many organizations totaling millions of individuals, is a member of the Union of International Associations. UIA's discussion of public support initially listed ICFTU as a supporter because of its membership in UIA, but ICFTU objected because it is a major backer of Unity Registry bid. Clearly, membership in an organization does not automatically confer agency to express support. Going further down the chain, there may for all we know be individual members of ICFTU trade unions, or entire local unions for that matter, that do not favor the Unity bid. All we really know is that the organizational management of ICFTU has endorsed Unity and the management of UIA has endorsed…itself. What we were really getting in these org bids were endorsements from the secretariats of organizations, which generally means at best a small group of board members or executives and in many cases just the executive director.

Finally, in the domain name sphere, both small and large organizations may have the same number of domain name registrations under .org. In other words, in any representation or management scheme based on "one domain name, one vote" they would be weighted equally.

We do believe that organizations deserve more weight than individuals, but not that much. Which leads to a second question: Why the 5–1 ratio?

The specific number is arbitrary, of course. It might be 4 or it might be 6. But the basic range is justified by the fact that an organizational endorsement generally involves the assent of a management group, whereas an individual endorsement involves the assent of only one person. We put the ratio on the low side based on our judgment that the management groups making the endorsement decisions were small groups. This conclusion was strengthened by our experience with the verification inquiries. Inquiries that were not directed to the specific person who signed the endorsing letter were met

with incomprehension or no response. The ratio was picked prior to any ranking and applied objectively after the fact. An objective method like this, even if it is somewhat arbitrary, at least makes transparent to decision makers the basis for the ranking. If one wishes, one can alter the 5 – 1 ratio to any other number and see how it affects the rankings.

Organizational endorsements were verified in two ways. In all cases (except for mass individual endorsements) web sites were checked to see if the organization exists, and sometimes this involved searching using Google to find the relevant URL. If we could not find the organization's site or any reference to the organization on other sites, we discounted the organization. In a sample of organizational endorsements, verification letters were sent out. The text of the email is reproduced here:

```
Greetings.

You or your organization submitted a support statement
for one of the companies applying to take over the
.org registry as part of ICANN's divestiture process.

ICANN has asked us to verify these endorsements and
we would greatly appreciate it if you could respond
to the following questions:

1. Please clarify whether your letter was written on
behalf of your organization or represents only your
personal endorsement.

2. Please affirm that no material consideration or
promises of material consideration were made in exchange
for your endorsement.

3. Do you consider the proposal on the whole
to be superior to other proposals? (If you are unfamiliar
with the other proposals please answer "Don't Know")

Thanks for your cooperation!

Dr. Milton Mueller
On behalf of the Noncommercial Domain
Name Holders Constituency
of ICANN.
```

Individual endorsements were so numerous that they had to be sampled rather than individually tested in total. That was only an issue with the IMS/ISC, .Org Foundation, and ISOC proposals. IMS/ISC individual endorsements were all verifiable, containing links to URLs and/or email addresses (although a few of them did not work or were duplicate, and thus were discounted.) The sample ratios were high (1 - 4) so the results should be statistically representative. Most (not all) of the .Org Foundation endorsements had email addresses or URLs associated with them, and they were sampled at a 1-4 ratio. The ISOC endorsements, which typically had no "clickable" contact information associated with them, could not be verified in this manner. That problem was solved

partly by collapsing all ISOC-member endorsements into a single Class A organizational endorsement, and partly by reading through the list to come up with a rough guesstimate as to how many of the individual endorsements were not ISOC members. Our estimate tried to err on the generous side. Given the near-impossibility of verifying most of the ISOC endorsements one could argue that all of them should be discounted, but we believe that most of them are legitimate reflections of ISOC's standing among Internet businesses and users around the world.

ANNEX 3

NCDNHC evaluation committee member list

- Mr Thierry Amoussougbo, Benin
- Mr Harold Feld, USA
- Mr Eric Iriarte, Peru
- Mr Milton Mueller, USA
- Ms Youn Jun Park, Republic of Korea
- Mr Ermanno Pietrosemli, Venezuela
- Mr Marc Schneider, Germany
- Mr Dany Vandromme, France

ANNEX 4 – NCDNHC Report

GNR

Name of organization or person	Verified	.org name	Location	Comments
Class B				
International Federation of Red Cross and Red Crescent Societies	X	Yes	CH	Receives 5% of revenue
British Red Cross	X	No	UK	Acts as agent of IFRC
Charities Aid Foundation	X	No	UK	Would be involved in allocating funds
nfpSynergy/Future Foundation		No	UK	Form letter
Ogilvy & Mather		No	UK	Form letter
Virgin.com Ltd		No	UK	Form letter
Nestle UK		No	UK	Form letter

IMS/IMC

Name of organization or person	Verified	.org name	Location	Comments
Class B				
435 individual endorsements		35%	various	
260 "Dot spread" endorsements		32%	various	Significant overlap between dot spread and individual
Sample:				
Aaron Ucko	X	Yes	DC, US	Debian.org
Rhizome.org	X	Yes	US	Artistic community
Ari Gordon-Schlosberg		Yes	CA, US	Personal website
Don Coleman	X	Yes	CA, US	Family web site
Eduardo Santiago		Yes	NM, US	Personal website
Joseph Buck	X	Yes	CA, US	Family web site
Larry Price	X	Yes	OR, US	Eugene Free Community Network (efn.org)
Lisa Bloch		Yes	WA, US	
Mark Frazer		Yes	ON, CA	Personal website
Mike O'Dell		Yes	VA, US	
robert G. Ferrell		Yes	TX, US	Society for Creative Anachronism chapter site
Robert Terzi		Yes	NY, US	
Schmuel Mikel	X	Yes	MI, US	Storyteller with personal .org website
Sean Berry		Yes	CA, US	Personal website
Stephanie George		Yes	FL, US	Alachua (Florida) Freenet
Win Treese		Yes	MA, US	Personal/family web site
Adam Moskowitz		No		
Andy Beals		No	CA, US	
August Kull		No		
Barry Lustig		No		

Name	Verified	.org name	Location	Comments
Bob Crandell		No	OR, US	
Bob Miller		No		
Brian Carpenter		No	UK	Former IAB Chair
Chris Kantarjiev		No	CA, US	
David Eckhardt		No	PA, US	.edu domain
David Ulevitch		No		EveryDNS.net operator (also Bastard Operator from Hell)
Davka		No	CO, US	
Dorothy Smock	X	No	OK, US	
Dug Falby		No	UK	
Eric Dillenseger		No		
Eric Johnson		No	FL, US	
Gray Watson	X	No	MA, US	
Jeff Hollingsworth		No	MD, US	professor, .edu domain
John Brothers	X	No	GA, US	
Lawrence Green	X	No	CA, US	
Luca La Ferla		No	IT	digitaltrust.it
Michael Berch		No		
Mike Toft		No		
Rich Salz		No		
Roger Cheng	X	No	TW	Affiliated with Industrial Technology Resarch Institute, but individual only. Org name under TW ccTLD
Roger Hicks	X	No	NZ	Founder APIC, Member of the (newly formed) .nz Oversight Committee
Sean Levy		No	PA, US	
Sherman Treece	?	No	?	
Steven D. Miller		No	?	
Tim hughes		No	UK	
Todd Kover		No	TX, US	technician for ISP
William Clark		No	TX, US	software consultant
Alexander Newman	?		?	

ISOC

Name of organization or person	Verified	.org name	Location	Comments
Class A				
The Internet Society	X	Yes	US	Strong support from chapters and members
British Computer Society	X	Yes	UK	.org domain redirected to .org.uk domain
Class B				
Estimated 100 minimal list endorsements from non-ISOC members				

Neustar

Name of organization or person	Verified	.org name	Location	Comments
Class A				
ALTS		Yes	DC, US	A commercial trade association
Class B				
American Society of Association Executives	n	Yes	DC, US	Endorses advisory council and states that it will participate in it if Neustar is selected
American Horse Council		Yes	DC, US	"
International Air Transport Association		Yes	CH & CA	"
National School Boards Association	n	Yes	VA, US	"
International Bar Association		Yes	UK	"
National Kidney Foundation of the Capitol Area		Yes	DC, US	"
William McGowan Charitable Trust		Yes	DC, US	"
First Book		Yes	DC, US	"
MENCAP		Yes	UK	"
Wondir Foundation		Yes	DC, US	"
New Media Society		Yes	DC, US	"
Food and Agriculture Organization of the UN		No	Int'l	Form letter only endorses Global Advisory Council concept
TelecomHUB		Yes	DC, US	"
Movimondo	s	Yes	IT	"
LL Pellicano		Yes	IT	"
NARUC		Yes	DC, US	"
World Gold Council		Yes	UK	"
Computers for Charity		No	UK	" <holds .org.uk name>
StarGazer Foundation		Yes	DC, US	"
CN-NIC	n	No	CN	" <ccTLD operator>
TWNIC		No	TW	" <ccTLD operator>
Network for Online Commerce		Yes	UK	Commercial trade association
ITRI		No	TW	Government research agency in Taiwan
L'Associazione "Ivrea Calcio"		No	IT	Football association
Independent Sector	X	Yes	DC, US	No specific support for this bidder; endorses advisory council in other applicants as well
Discounted				
United Domains AG		No	DE	Registrar who supports Neustar's non-registrar status
BulkRegister		No	US	Registrar who supports Neustar's non-registrar status
EnCirca		No	US	Registrar who supports Neustar's non-registrar status and business partner in .us
Internetters Ltd		No	UK	Commercial registrar
Dotster		No	US	Commercial registrar
We Save Our World		?	?	Unable to verify organization's existence

Organic Names

(No expressions of support in the bidding materials or the public bulletin board.)

RegisterOrg

Name of organization or person	Verified	.org name	Location	Comments
Class B				
Benton Foundation		Yes	DC, US	Supports bid, but notes that Register.com has pledged $2.5 million grants to nonprofits
OSI		Yes	NY, US	Does not specifically endorse Register.com bid; may receive a grant from Register.com if its bid is successful
.AG NIC		No	AG	Satisfied user of Register.com services.
Powered by Professionals		No	US	Commercial

SWITCH

Name of organization	Verified	.org name	Location	Comments
Class B				
Michael Haberler, EUNet		No	AT	Individual, not organizational; Satisfied customer of SWITCH
Ralph Kowallick, Fachhochschuler beider Basel		No	CH	Individual, not organizational; Satisfied customer of SWITCH
Daniel Sutter, informatiker eidg. Fa		No	CH	Satisfied customer of SWITCH

UIA

Name of organization or person	Verified	.org name	Location	Comments
Class A				
Union of International Associations	X	Yes	CH	
Development Alternatives		Yes	IN	Form letter
Earth Pledge Foundation		Yes	US	Form letter
GEN-Europe		Yes	DK	Form letter
Transnational Research Institute - Knowlton		Yes	CA	
Class B				
ABECE		No	BE	
European Partners for the Environment		No	BE	Form letter
European Society for Environment and Development		No	BE	Form letter
Global Action Plan / GAP International		No	SE	
GIVE Forschunggesellschaft		No	AT	Form letter

Name of organization or person	Verified	.org name	Location	Comments
Italian Centre for International Associations		No	IT	A branch organization founded by the bidder
Vision 2020		No	BE	
Spirit of the Land Foundation		No	US	UIA hosts its web site
International Business Law Program, U. Dundee		No	UK	Only a program director within a university
Welsh Institute for Health and Social Care		No	UK	Form letter

Unity

Name of organization or person	Verified	.org name	Location	Comments
Class A				
AITIC (Assn International Trade, Information & Cooperation		Yes	CH	
Assn of British Credit Unions, Ltd		Yes	UK	
CECOP, the European Confederation of Worker's Co-operatives, Social Cooperatives and Participative Enterprises		Yes	BE	
Charter 99	X	Yes	UK	
Ethical Consumer		Yes	UK	
GreenNet		Yes	UK	
Human Rights Information and Documentation Systems		Yes	CH	
ICFTU	X	Yes	UK	
IFWEA (International Federation of Workers Education Associations)	s	Yes	CH	
International Cooperative and Mutual Insurance Federation		Yes	UK	
Media Action International		Yes	CH	
OneWorld International		Yes	UK	
UNAIDS		Yes	CH	UNICEF, UNDP, UNFPA, UNDCP, ILO, WHO, UNESCO, WORLD BANK
UNED Forum	X	Yes	UK	
Union Network International		Yes	UK	
World Association of Christian Communication, WACC		Yes	UK, US	
World Forum on Community Networking		Yes	CA	
PLANETE SOLIDARITE	x	Yes	FR	
ATTAC International	x	Yes	FR/INT	Has organizations in 7 European countries
AITEC Association Internationale de techniciens, Experts et Chercheurs	x	Yes	FR	Web site a directory under globenet.org
Les Penelopes		Yes	FR	Feminist Association
Resol		Yes	FR	Organization devoted to "the interdependent social economy"
IIFOR Institute of Organizations		Yes	CA	
Class B				
AccountAbility		No	UK	Holds .org.uk name

Asia Pacific Enterprise Training Centre		No	AU	
Association for Prevention of Torture		No	CH	
Diane Cabell, Berkman Center, Harvard Law School	X	No	US	Individual
BOND	s	No	UK	Holds .org.uk name. Association of 260 UK-based development organizations
Centre for the Study of Co-operatives University of Saskatchewan	X	No	CA	
ChangeNet.SK		No	SK	
Christian Aid		No	UK	Holds .org.uk name
Ethical Events		No	UK	
European Assn for Community Networking		No	UK, FR	Some affiliates of EACN have .org names
Global Community Networking Partnership Secretariat		No	AR	
IIRD (Indian Environmental Group)		No	IN	
Internet Rights Bulgaria		No	BG	
Internet Society of Australia		No	AU	Holds .org.au name; ISOC-AU also endorses ISOC bid
Opendemocracy.net		No	UK	
OxFam		No	UK	Holds .org.uk name
RITS - Rede de Informações para o Terceiro Setor	X	No	BR	Holds.org.br name
Trades Union Congress		No	UK	Member of ICFTU
Jean Whitehead (personal)		No	UK	Works as consultant for Social Enterprise Coalition
Toby Johnson (personal)	X	Yes	BE	Customer of Poptel, former administrator of European Union programmes for the co-operative and voluntary/NGO sectors
Joan Dzenowagis, WHO (personal)	X	No	CH	
David Hopson (personal)		No	UK	
auDA		No	AU	ccTLD management association
Guenther Leue, GeoNet		No	DE	Commercial; founder and president of electronic messaging company
Manchester City Council		No	UK	Political
John Lewis Partnership		No	UK	Employee-owned business
T. Gordon Roddick, founder, The Body Shop		No	UK	Individual; commercial
World Federalist Association	X	Yes	US	Individual
Viva, Agnes Leroy	x	No	FR	Magazine
Incidences	x	No	FR	
Le Cheque Dejeuner		No	FR	Cooperative
Le Monde		No	FR	
MACIF		No	FR	
Ouvaton		No	FR	.coop name
Place Publique		No	FR	www.place-publique.fr
POLITIS - Jean-Pierre Beauvais		No	FR	weekly newspaper
Sabine Kurjo McNeill		No	UK	Individual endorsement by creator of first LETS (Local Exchange Trading System) in London.
Les Peripheriques vous Parlent		Yes?	FR	Email address under globenet.org; no website

Jane Taylor	s	No	UK	Associate Editor, Positive News
Discounted				
dotCoop, LLC		No	US	Business ties to Poptel
Natl Cooperative Business Assn		Yes	US	Business ties to Poptel
ESCOOP		?	?	Unable to verify
NOUVEAU SIECLE - Genevieve Lecamp		?	?	Unable to verify

ANNEX 5

Support

Bidder	Class A	Class B	Geo. Diversity	TOTAL	SCORE CLASS
IMS/ISC	0	2	1	7	84
Unity Registry	2	2	1	9	28
Internet Society	1	2	2	9	22
.Org Foundation	2	1	0	5	17.5
UIA	1	1	1	5	6
DotOrg Foundation	1	0	0	1	6
Neustar	0	1	0	3	6
GNR	0	1	0	3	1
RegisterOrg	0	0	0	0	0
Switch	0	0	0	0	0
OrgaNIC	0	0	0	0	0

Weighting	1	3	1	5

N > 5 ==> 2	N > 20 ==> 2	High = 2
0 < N < 5 ==> 1	5 < N = 20 ==> 1	Medium = 1
N = 0 ==> 0	0 < N = 5 ==> 0	Low = 0

Differentiation

Applicant & Rank	Market Research	Positioning	Defensive	Unrestricted	Innovation	Registrars	score
1. UNITY	3	4	4	5	3	5	20.5
2. RegisterOrg	4	5	0	5	0	4	16
3. IMS/ISC	0	5	0	5	5	0	15
3. Neustar	5	3	5	5	0	2	15
5. Internet Society	3	3	2	5	0	4	14.5
6. GNR	5	4	5	5	0	0	14
7. Organic Names	0	2	3	5	0	3	11.5
8. SWITCH	0	0	0	5	5	0	10
9. DotOrg Foundation	2	2	0	0	3	3	9
10. UIA/Diversitas	0	2	1	2	2	1	7.5
11. .Org Foundation	0	0	0	5	0	0	5
Weighting	0.5	1	0.5	1	1	1	5

Very good	5
Good	4
Acceptable	3
Mediocre	2
Poor	1
None	0

Support

Rank	Bidder	Class A	Class B	Geo. Diversity
1	IMS/ISC	0	420	Medium
2	Unity Registry	23	39	Medium
3	Internet Society	2	100	High
4	.Org Foundation	14	17	Low
5	DotOrg Foundation	6	3	Low
6	UIA	4	10	Medium
7	Neustar	1	25	Medium
8	GNR	0	6	Low
9	RegisterOrg	0	4	Low
10	Switch	0	3	Low
11	Organic Names	0	0	--

Average Final Rankings

Bidder	support	Ranking differ	gov	Average
Unity Registry	2	1	1	1.33
IMS/ISC	1	3	6	3.33
Internet Society	3	5	3	3.67
Neustar	5	3	7	5.00
GNR	8	6	2	5.33
RegisterOrg	9	2	8	6.33
DotOrg Foundation	7	9	4	6.67
UIA	5	10	5	6.67
.Org Foundation	4	11	10	8.33
Switch	10	8	9	9.00
Organic Names	11	7	11	9.67

Scale 1

	Input/Governance	Pre-bid survey	Post-bid Responsiveness	ICANN/NCDNHC	Relationship with Community	Services targeted at community	"Good works"	ranking
1. Unity	4	2	3	1	4	3	0	**18.00**
2. GNR	3	2	3	3	3	0	3	**15.50**
3. ISOC	2	2	3	3	2	3	1	**14.50**
4. DotOrg Foundation	4	0	3	0	1	1	0	**11.50**
5. Neustar	2	3	3	0	0	2	0	**8.25**
6. IMS/ISC	1	0	4	0	2	2	1	**8.50**
7. Register Org	1	3	3	0	2	0	1	**6.75**
8. UIA	1	1	3	3	2	1	0	**9.75**
9. Switch	1	0	1	0	2	0	0	**4.50**
10 .Org Foundation	1	0	1	0	0	0	0	**2.50**
11. Organic Names	0	0	0	0	0	0	0	**0.00**

Weight	2.00	0.25	0.50	1.00	1.00	1.00	0.50	

Very High	4
High	3
Moderate	2
Low	1
None	0

Arithmetic Final Rankings

GLOBAL RANKING	Responsiveness	Support	Differentiation	TOTAL
Unity	**27.25**	**9.00**	**20.50**	**24.47**
IMS/ISC	**21.25**	**7.00**	**15.00**	**18.67**
Neustar	**14.00**	**3.00**	**15.00**	**12.73**
ISOC	**26.75**	**9.00**	**14.50**	**21.93**
Register Org	**16.75**	**0.00**	**16.00**	**10.87**
UIA	**12.75**	**5.00**	**7.50**	**11.40**
GNR	**20.50**	**3.00**	**14.00**	**14.07**
DotOrg Foundation	**11.75**	**1.00**	**9.00**	**7.73**
Switch	**5.00**	**0.00**	**10.00**	**5.33**
.Org Foundation	**8.00**	**5.00**	**5.00**	**9.13**
Organic Names	**0.00**	**0.00**	**11.50**	**4.60**

Final Weighting	0.27	1.00	0.40	0.00
Question Weighting	1.00	1.00	1.00	0.00
Structural Weighting	0.27	1.00	0.40	0.00
Scale length	6.00	2.00	5.00	0.00
Sum(weights)	6.25	5.00	5.00	0.00

Scale 2

	Input/Governance	Pre-bid survey	Post-bid Responsiveness	ICANN/NCDNHC	Relationship with Community	Services targeted at community	"Good works"	ranking	
1. Unity	6	3	5	1	6	5	0	**27.25**	
2. GNR	4	3	5	5	4	4	5	**26.75**	
3. ISOC	2	3	5	5	3	5	2	**21.25**	
4. DotOrg Foundation	6	0	5	0	3	3	0	**20.50**	
5. Neustar	3	5	5	0	0	3	0	**12.75**	
6. IMS/ISC	2	0	6	0	3	3	2	**14.00**	
7. Register Org	2	5	5	0	3	0	2	**11.75**	
8. UIA	2	1	5	5	3	2	0	**16.75**	
9. Switch	2	0	2	0	3	0	0	**8.00**	
10 .Org Foundation	2	0	2	0	0	0	0	**5.00**	
11. Organic Names	0	0	0	0	0	0	0	**0.00**	
								Long Scale	
Weight	2.00	0.25	0.50	1.00	1.00	1.00	0.50	6.25	

Very High	6
High	5
Moderately high	4
Moderate	3
Low	2
Very low	1
None	0

FINAL RANKING
FROM
ARITMETIC

GLOBAL RANKING	Responsiveness	Support	Differentiation	TOTAL
Unity	27.25	9.00	20.50	**24.47**
ISOC	26.75	9.00	14.50	**21.93**
IMS/ISC	21.25	7.00	15.00	**18.67**
GNR	20.50	3.00	14.00	**14.07**
UIA	12.75	5.00	7.50	**11.40**
Neustar	14.00	3.00	15.00	**12.73**
DotOrg Foundation	11.75	1.00	9.00	**7.73**
Register Org	16.75	0.00	16.00	**10.87**
.Org Foundation	8.00	5.00	5.00	**9.13**
Switch	5.00	0.00	10.00	**5.33**
Organic Names	0.00	0.00	11.50	**4.60**

	Responsiveness	Support	Differentiation
Final Weighting	0.27	1.00	0.40
Question Weighting	1.00	1.00	1.00
Structural Weighting	0.27	1.00	0.40
Scale length	6	2	5
Sum(weights)	6.25	5	5

Petillion

RM 14

Statement of Capabilities of the Applicant and Contracted Service Providers

Section II — Statement of Capabilities of the Applicant and Contracted Service Providers

Executive Summary

The Internet Society's (ISOC) bid on behalf of its subsidiary, Public Interest Registry, Inc. (PIR), to operate the registry rests on its extraordinary capabilities in two areas.

First, ISOC is the foremost non-profit organization focused exclusively on Internet-issues-and has been for more than ten years. As the organizational home of the Internet Engineering Task Force (IETF), Internet Architecture Board (IAB), and other Internet standards-setting bodies, ISOC has a global constituency that provides deep understanding of the policy and management issues facing TLDs, as well as keen insight into proposed enhancements to .ORG. PIR will have the benefit of ISOC's established consensus building mechanisms that will enable it to manage both policy and strategy for the domain. Further, ISOC has earned the respect of the Internet and noncommercial communities, which will help PIR.

Second, PIR has Afilias' commitment to provide the back-end registry services for .ORG. Afilias is the registry operator for .INFO, the most successful of the 7 new gTLDs, and the .VC ccTLD. Afilias manages more than 805,000 names in .INFO using the new EPP (Extensible Provisioning Protocol) standard for registry operations-and has spearheaded the use of EPP, including the first implementation of EPP's transfer capability. Afilias supports more than 90 ICANN-accredited registrars. Together these registrars already handle 99% of .ORG's current registrations. Afilias has prepared an EPP transition plan based on experience both with these registrars and a similar conversion being managed by AusRegistry Pty. Ltd., in Australia. (Afilias is a minority shareholder in AusRegistry.)

This section will detail the capabilities of PIR and Afilias to deliver "best in class" registry services that enhance the stability of the Internet, deliver affordable services with a high degree of service responsiveness and reliability, and enable .ORG to realize its full potential on a global basis.

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C11. Overview

As stated in the [Criteria for Assessing Proposals](#), "ICANN's first priority is to preserve the stability of the Internet" and "ICANN will place significant emphasis on the demonstrated ability of the applicant or a member of the proposing team to operate a TLD registry of significant scale in a manner that provides affordable services with a high degree of service responsiveness and reliability." This section of the Proposal offers the applicant the opportunity to demonstrate its ability to operate the .org registry in that manner.

Throughout this document, operation of the .ORG registry, including providing all associated Registry Services, as defined in [subsection 1.16 of the model .org Registry Agreement](#), is referred to as the "Registry Function."

Summary of how PIR's proposal meets or exceeds the 11 Assessment Criteria

This section summarizes how PIR's capabilities meet or exceed all of the assessment criteria. Expanded discussions follow in the subsequent sections of this proposal.

1. PIR will provide a stable, well-functioning .ORG registry

PIR has identified a team that will operate .ORG in such a way as to preserve the stability of the Internet and the DNS; deliver technically sound, high quality services; and meet the needs of .ORG registrants.

PIR's ability to operate the registry in a technologically stable manner is provided through its selection of Afilias as its back-end registry services provider. Afilias has more domain years of management experience with the new EPP protocol than any other registry services provider. As the operator of the .INFO TLD, Afilias has demonstrated its ability to manage day-to-day registry operations in a stable, reliable, and secure manner, delivering excellent service levels to both registrars and registrants.

Beyond this, Afilias managed the "Sunrise" and "Land Rush" periods for the new .INFO gTLD. These complex and critical phases of the launch illustrate Afilias' ability to successfully support "first-ever" policy implementations that have significant technical, legal, and customer service implications. In conjunction with this launch, Afilias also implemented the first-ever near-real-time propagation of domain information. This allowed

registrants to register a domain name and then have their domains live and functioning on the Web within minutes, introducing unprecedented speed and ease of use for registrants worldwide. Afilias has also assisted in the first-ever transition of an existing domain to an EPP registry system. Afilias continues to strengthen its capabilities, and is now taking the speed and reliability of its DNS service to the next level.

PIR will provide high quality services to both .ORG registrants and registrars. In addition to core registry services, PIR plans to strengthen .ORG by developing and introducing, at the registry level, services tailored to noncommercial entities such as registrant controlled name locking; search engine submission; a .ORG directory; name watch; navigational links; plus database and list management. Given the relatively unsophisticated nature of many noncommercial organizations, we believe that these extra "helping hand" services can help them move successfully to the Internet.

ISOC is a long-standing member of the community of .ORG registrants, and many of its existing programs support these organizations. In addition to the many existing ISOC programs detailed in Section VII ("Responsiveness to the Noncommercial Internet User Community"), PIR proposes adding two major new elements:

- The establishment of a .ORG Advisory Council: leaders from key noncommercial groups who provide advice to .ORG management on policy and other issues.

- A special input section on the PIR Web site that provides .ORG news and empowers visitors to comment on and even introduce items of interest.

Details may be found in Section III ("Technical Plan"); Section V ("Proposed Registry Services"), and Section VII ("Responsiveness to the Noncommercial Internet User Community").

2. PIR will comply with ICANN-developed policies

ISOC stands firmly behind the goals and outcomes of the ICANN policy development process. This was one of the key considerations in the selection of Afilias, who deals with ICANN-accredited registrars ONLY, and already has proven mechanisms in place to ensure equitably shared registry access, adherence to the UDRP process (as well as the special Sunrise Challenge process), compliance with the WHOIS data accessibility requirements, and so on. The most complete review of the proposal's adherence to ICANN policies can be found in Section III ("Technical Plan").

3. PIR's .ORG will enhance competition for registration services

Under PIR management, competition in the domain space will be strengthened in three ways:

- First, PIR will be a new entry to the registry space, providing an effective new voice for the long-neglected noncommercial sector.

- Second, this proposal strengthens a currently small but promising back-end registry services player (Afilias, which holds 3% of the current gTLD registry market), ensuring the continued availability of a realistic alternative to VeriSign.

- And third, PIR is proposing an effective marketing effort for .ORG, reinforcing its strengths and establishing strong branding that will withstand inevitable market changes in the future. Details are found in Section VI ("Enhancement of Competition") and Section VIII ("Differentiation of the .ORG TLD").

4. PIR will differentiate the .ORG TLD

PIR's program for differentiating .ORG is far-reaching and realistic. Through a combination of marketing and public relations, PIR's program will create a sustainable competitive advantage for .ORG through: 1) a clear and compelling positioning that leverages .ORG's noncommercial heritage and sets it apart from other TLDs; 2) a marketing campaign that enlists and equips registrars to tap .ORG's growth potential; and 3) a public relations program that expands the market by educating the budding noncommercial sector around the world. Details are provided in Section VIII ("Differentiation of the .ORG TLD").

5. PIR will institute mechanisms to ensure responsiveness to the non-commercial community

PIR will institute mechanisms for promoting the registry's operation in a manner that is responsive to the needs, concerns, and views of the non-commercial Internet user community.

ISOC has long-established mechanisms in place for responding to and supporting noncommercial Internet users. These include a wide range of programs of global impact that support ISOC's four pillars: education and training (including outreach to less-developed countries); standards and protocols; public policy; and membership. PIR will supplement these with: 1) a new .ORG Advisory Council selected from globally representative leaders from noncommercial organizations; and 2) additional Web-based input mechanisms that allow comment by interested parties. Details of these mechanisms are found Section VII ("Responsiveness to the Noncommercial Internet User Community").

6. PIR has a high level of support from .ORG registrants

ISOC's established reputation allows PIR's approach to enjoy the support of a wide range of individuals and entities, including the leaders of many noncommercial entities both inside and outside the Internet space. These organizations and individuals are attracted by ISOC's heritage of responsiveness and support for noncommercial interests, and PIR's proposed governance and consensus-building mechanisms. This solid foundation will help enable .ORG to reach its full potential under new management. Details regarding these supportive organizations and individuals are found in Section VII ("Responsiveness to the Noncommercial Internet User Community").

7. PIR will provide registry services better than those currently provided

PIR will provide high-quality, reasonably priced services to both .ORG registrants and registrars. Once transitioned, .ORG will operate as a "thick" registry based on EPP, providing all of the core registry functions needed to support a TLD consistent with ICANN requirements. EPP provides a number of improvements over the legacy RRP system, including the benefits of having "thick" registrant information kept at the registry level, near-instant WHOIS updating, and faster resolution of registered names. These benefits will be available to .ORG automatically upon completion of the transition to PIR's EPP system. See Section III ("Technical Plan")

In addition to core registry services, PIR plans to strengthen .ORG by introducing the add-on services described in Section V ("Proposed Registry Services").

We will maintain the current price of US$6.00/domain year for three reasons:

- First, we know from experience that we can provide the enhanced core services at the current price (add-on services may be priced separately). It is not necessary to increase the registration/renewal price to cover costs.

- Second, a portion of the current price is needed to fund the activities outlined in the

proposal for properly serving the noncommercial community and developing the space.

- And third, we believe that a price reduction at the registry level is unlikely to be reflected in the retail price. Hence, a price reduction would have no benefit to registrants or Internet users.

8. PIR will support and adopt protocol changes in the shared registry system

PIR will contract with Afilias to provide back-end registry services. ISOC itself is deeply involved in the standards-setting process and works closely with every major Internet standards-setting body. Afilias has more experience with the new EPP standard than any other provider, and is an active participant in the various industry groups that determine the evolution of the standards. Both PIR and Afilias share a commitment to open standards and ISOC's mission, which is "to assure the open development, evolution, and use of the Internet for the benefit of all people throughout the world."

This commitment is illustrated by plans Afilias already has in place to: 1) improve the speed, reliability, and security of its DNS services; and 2) evolve to the new EPP v0.6, the most recent and current version of this protocol. See Section III ("Technical Plan") for an extensive discussion of this topic.

9. PIR will provide a smooth transition

Central to PIR's selection of Afilias as the back-end provider was Afilias' reputation for stability and its deliberate approach to problem solving. Afilias is a pioneer in transitioning an existing TLD to EPP through its relationship with AusRegistry. Afilias provided technical assistance to AusRegistry for moving parts of the .AU ccTLD to EPP, a transition now in progress and set to launch July 1, 2002. Further, auDA, the .AU governing body, contracted Afilias to certify the transition before allowing it to proceed. We are confident that the transition of .ORG will be as smooth as possible and that any wrinkles that occur will be addressed with Afilias' deliberate, thorough manner. Section III ("Technical Plan") contains a complete plan.

10. PIR will comply with the requirements of the VeriSign endowment

PIR is both able and fully committed to complying with the requirements of the endowment. While the endowment is not required for PIR to successfully transition .ORG, it will greatly accelerate our ability to reinvigorate the domain and make it the true global home of non-commercial organizations on the Internet.

PIR proposes that the endowment be dedicated primarily to expanding outreach to non-commercial organizations on behalf of .ORG. The non-commercial community worldwide is technologically behind other economic sectors in adopting and leveraging the Internet. The key impediment is lack of KNOWLEDGE. To address this pressing need, PIR proposes to field extensive programming for non-commercials in two areas: education and awareness building, especially in technologically emerging markets.

These supplemental efforts will include expanded and tailored versions of the proven ISOC-modeled workshops, Internet Fiestas, and conferences designed to reach out to and educate non-commercials. To build awareness, we would enlarge core marketing and PR activities (e.g. press outreach, speakers at non-commercial events, on-line resource center) to reach more non-commercials with a more tailored package.

In addition, we also propose investing a portion of the endowment in accelerating the availability of new .ORG services designed to help organizations develop their visibility, give donors peace of mind, and connect people to communities. These include: no-cost,

value adding services such as name locking, a directory, and site linking; and low cost options to add monitoring, search engine submission and security services. While these products are part of the ongoing plan, endowment funds would provide immediate resources to initiate development and get these into the market more quickly.

These efforts have the dual benefits of helping these organizations enter the Internet age and building .ORG sites through the recruitment of quality registrants. And, they will address the goals of the endowment, since: PIR is a non-profit organization; and these activities deliver primary market development, a future operating expense of the registry. Section IX ("The VeriSign Endowment") contains details.

11. PIR's proposal is complete and realistic, and demonstrates sound analysis

We believe that this proposal is complete, and addresses not only the requirements stated in the .ORG Proposal Form, but also all of the requirements for successfully transitioning and operating the .ORG domain for the benefit of current and future .ORG registrants.

ISOC believes that it has more experience assessing and solving Internet-related issues than any other organization in existence. This makes PIR well qualified to provide general and policy management to a significant domain such as .ORG. Further, its standing in the noncommercial community makes it particularly well suited to manage a domain dedicated to an extremely large and varied community, the needs of which can best be understood by a fellow member.

To provide back-end registry services, PIR has selected Afilias, the leading EPP pioneer. Afilias brings extensive experience with: the .INFO launch using EPP; domain transition to EPP; EPP capabilities such as transfers; and relationships with nearly all of the current ICANN-accredited .ORG registrars. Afilias has an established track record of delivering back-end registry services in a stable, secure, and professional manner consistent with ICANN's requirements.

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C12. Contracted Service Providers

State whether the applicant intends to perform all aspects of the Registry Function, or whether the applicant intends to outsource some or all aspects of the Registry Function to other entities that will provide services or facilities under contract with the applicant. If any portion(s) of the services or facilities will be provided by another entity under contract, please describe which portion(s), state the time period during which they will be provided under contract, and identify what entity will be providing the services or facilities..

PIR will manage all policy and general management aspects of the .ORG domain. Afilias will provide back-end registry services. These include operational interfacing with Registrars and managing the names from registration through resolution. Afilias already supports the .INFO domain. Afilias is committed to the contract between ICANN and PIR for its duration. Afilias, in turn, has long-term contracts with best-in-class technology providers such as IBM, UltraDNS, and DSI Technology Escrow Services (a subsidiary of Iron Mountain Incorporated), which, in combination, enable the company to deliver complete domain services. Section III ("Technical Plan") contains details.

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C13. Identification of Contracted Service Providers

Identify by name each entity other than the applicant that will provide any of the following:

- all services and facilities used to perform the Registry Function;
- any portion of the services and facilities used to perform the Registry Function accounting for 10% or more of overall costs of the Registry Function; or
- any portion of any of the services and facilities used to perform the following parts of the Registry Function accounting for 25% or more of overall costs of the part: database operation, zone file generation, zone file distribution and publication, billing and collection, data escrow and backup, customer (registrar) support, and Whois service.

The identification of each entity should include:

C13.1 The full legal name, principal address, telephone and fax numbers, and e-mail address of the entity, and the URL of its principal World Wide Web site.
C13.2. A general description of the entity's business and other activities.
C13.3. The entity's type (e.g., corporation, partnership, etc.) and law (e.g., Denmark) under which it is organized. Please state whether the entity is for-profit or non-profit. If it is non-profit, please provide a detailed statement of its mission.
C13.4. Dun & Bradstreet D-U-N-S Number (if any) of the entity.
C13.5. The number of employees currently employed by the entity.
C13.6. The entity's total revenue (in US dollars) in the last-ended fiscal year.

See summary chart

Full Legal Name	Afilias Limited	IBM Corporation	ULTRA DNS	DSI Technology Escrow Services, Inc.
				(Wholly owned subsidiary of Iron Mountain, Inc.)
Principal address	Office 125 52 Broomhill Road Tallaght, Dublin 24 Ireland	New Orchard Road Armonk, New York 10504	800 N. San Mateo DriveSan Mateo, CA 94401	745 Atlantic AvenueBoston, MA 02111
Telephone number	+353-1-431-0511	1-914-499-1900	1-650-227-2600	1-617-535-4766
Fax number	+353-1-431-0557		1-650-227-2662	1-617-350-7881
E-mail address	support@afilias.info	http://www.ibm.com/contact/query	info@ultradns.com	info@ironmountain.com
World wide web site	http://www.afilias.info/	http://www.ibm.com/	http://www.ultradns.com/	http://www.ironmountain.com/
Business and other activities	Afilias is a fully integrated global provider of domain name registry services. Afilias was formed in September of 2000 and was the first new gTLD operator selected by ICANN in November of 2000 to launch a new registry system using a thick registry model based on the new EPP (extensible provisioning protocol) standard.	At IBM, we strive to lead in the creation, development and manufacture of the industry's most advanced information technologies,including computer systems, software, networking systems, storage devices and microelectronics. We translatethese advanced technologies into value for our customers through our professional solutions and services businesses worldwide.	UltraDNS™ Corporation is the leading Directory Infrastructure Services Provider (DISP), delivering solutions that enhance the reliability and performance of the world's largest directories and the mission-critical applications that access them. UltraDNS provides managed services and also develops custom infrastructure solutions based on its proprietary Directory Services Platform, the first global directory infrastructure capable of the most demanding database problems -- such as Internet site requests.	Iron Mountain, Inc. is the global leader in records and information management services. Iron Mountain currently provides services to over 150,000 customer accounts in 80 markets in the United States and 44 markets outside of the United States. The Company operates over 650 records management facilities in the United States, Canada, Europe and Latin America.
Entity type	Corporation	Corporation	Corporation	Corporation
Jurisdiction	Ireland	New York	Delaware	Pennsylvania
D-U-N-S	98-539-8986	00-136-8083	15-050-9185	62-253-5417
No. of employees	30	319,876	32	11,300
Annual revenue	US$1,118,923	US$85.9 billion	Privately held	US$1.2 billion
Annual report	Attached (See Appendix A)	http://www.ibm.com/annualreport/2001/home/index.html		http://media.corporate-ir.net/media_files/NYS/IRM/reports/irm_ar01.pdf

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C14. Agreements with Contracted Service Providers

For each entity identified in item C13, please state the scope and terms of the contract under which the facilities or services will be provided and attach documentary evidence that the entity has committed to enter into that contract.

ISOC has selected Afilias, Limited to support PIR by providing the back end registry management services for .ORG. Afilias is a fully integrated global provider of domain name registry services and is committed to delivering all the core registry functions required to operate the .ORG TLD successfully, including: database development and management; zone file generation, distribution and publication; operational testing and evaluation; dispute resolution; billing; technical and customer support; data escrow and backup; WHOIS; and system security. At PIR's direction, Afilias will manage the names from registration through to resolution.

Evidence of Afilias' commitment is shown below and in Appendix T.

June 12, 2002

The Internet Society
1775 Wiehle Avenue, Suite 102
Reston, VA 20190-5108

Re: .ORG Redelegation – Letter of Intent

Ladies and Gentlemen:

Afilias Limited ("Afilias") hereby affirms its intent to honor the Letter of Intent executed on May 31, 2002, between Afilias and the Internet Society ("ISOC"):

- ISOC will submit an application to ICANN to become the registry operator for the .ORG registry;

- In the application, ISOC will propose the establishment of a separate entity, owned or controlled solely by the Internet Society: Public Interest Registry, or PIR. PIR will serve as the registry operator, if the application is selected by ICANN;

- ISOC (or its designee, PIR) will contract with Afilias to provide registry technical and support services in connection with the operation of the registry;

- ISOC (or its designee, PIR) will be the sole beneficiary of the US$5 million endowment anticipated to be paid by VeriSign as set forth in Section 5.1.4 of the current .ORG registry agreement; and

- The application proposes a $6 a year registration fee, with $4 going to Afilias for registry infrastructure services and $2 going to ISOC (or its designee, PIR) to provide administrative and policy oversight functions and other outreach activities

The subcontract may contain performance, stability and other technical requirements to which Afilias agrees to comply.

The subcontract agreement will correspond with the term of the .org registry agreement.
Best Regards,
AFILIAS LIMITED

Hal Lubsen
President and CEO

In addition, Afilias has committed to provide a $250,000 line of credit to PIR to cover any start-up expenses, contingent upon the selection of ISOC's bid by ICANN.

Afilias, in turn, has entered into long-term agreements with the following vendors to provide critical functions for the operation of the registry:

- International Business Machines (IBM) [http://www.ibm.com] and Afilias have an existing

long-term agreement to provide data center, systems and technology. Please refer to Section III for technical details.

- UltraDNS Corporation (UltraDNS) [http://www.ultradns.com] and Afilias have an existing long-term agreement to provide global DNS services on behalf of the registry operator. Please refer to Section III for technical details.

- Iron Mountain, Inc. (DSITechnology Escrow Services) [http://www.ironmountain.com] and Afilias have an existing long-term agreement to perform data escrow services. Please refer to Section III for technical details.

C15. Abilities of Applicant and Key Technical Personnel

Describe in detail the abilities of the applicant and the entities identified in item C13 to operate a TLD registry of significant scale in a manner that provides affordable services with a high degree of service responsiveness and reliability. Your response should give specifics, including significant past or present achievements and activities of the applicant and the entities identified in item C13 that demonstrate the described abilities. It should also include information about key technical personnel (qualifications and experience), size of technical workforce, and access to systems development tools.

A. Overview: Applicant's ability to operate the .ORG TLD registry

ISOC believes that it has more experience assessing and solving Internet related issues than any other organization in existence. Through its links to virtually every significant Internet technical body, it has access to the Internet's most experienced and visionary individuals. This provides PIR with outstanding qualifications for the general and policy management of .ORG.

Further, ISOC has senior standing in the noncommercial community, as illustrated by the endorsements detailed in Section VII ("Responsiveness to the Noncommercial Internet user Community"). This will make it much easier for PIR to successfully manage a large domain dedicated to the needs of fellow noncommercial organizations.

PIR has chosen Afilias as its back-end registry services provider. Afilias brings significant strength to .ORG, including: 1) experience managing a large registry in a stable, secure manner; 2) EPP knowledge including transition of existing names to EPP; and 3) existing capacity to immediately handle the demands of .ORG. Further, Afilias has standing relationships with virtually all of the ICANN Accredited registrars currently handling .ORG.-which will make the transition even smoother.

The management of a domain of the scale of .ORG is a significant challenge for any organization. However, we have assembled a seasoned team that possesses the qualifications, character and capacity to revitalize .ORG and enable it to fulfill its potential as the global home of noncommercial entities on the Internet.

B. Key Technical Personnel/Size of Technical Workforce/ Access to Systems Development Tools

Afilias' technology team combines many years of experience in designing, building and maintaining highly scalable, distributed and networked transaction-based systems. The team is led by Ram Mohan, the company's VP of Business Operations and CTO, along with Howard Eland, Afilias' Senior Technology Architect, Michael Young, the company's Director of Information Technology, and Andrew Sullivan, the company's Senior Database Architect.

Ram helped Afilias navigate through the launch of the .INFO domain, including the first-ever large scale random-ordered queue processing system, followed by a transition to a real-time first-come-first-served Registry system. Ram's prior experience is in massively parallel, real-time transaction based systems in the search engine and financial services

industries. Ram was the architect of and led the team responsible for one of the largest existing full-text document search engines in the world, Electric Library (http://www.elibrary.com) - a system that serves over 4,000 transactions concurrently with sub-second performance, performing natural-language search over 40 million documents with over 500 million keywords. Ram serves on ICANN's Committee on Security and Stability, is a member of the DNSO WHOIS Task Force, and is the Registry representative on ICANN's Technical Steering Committee on Redemption Grace Periods. Ram has a BS in Electrical Engineering from the University of Mangalore, an MBA in Entrepreneurial Management from Bharathidasan University, and is completing an MS in Computer Science from Drexel University, Philadelphia.

The team's strengths are significantly augmented by Howard Eland, the company's Senior Technology Architect. Howard most recently helped design the new EPP-6 compliant .AU registry to be highly scalable and support the transition of over 300,000 .AU domains. Howard brings a background in networking, security, database and systems architecture, and is an Internet pioneer who founded Information Technology Enterprises Inc. (ITEI), an early Internet and Application Services company. Howard's prior experience includes significant assignments at Infonautics Inc, and at AT&T GIS' Federal Systems Division, including the development of 2,000,000 lines of C language code for X.400 systems for the US Army. Howard is actively involved in the IETF's provreg group, as well as other Internet standards working groups. Howard has been published in various peer-reviewed technical journals. Howard has a B.S. in Computer Science from the Michigan State University.

Michael Young strengthens the company's technology leadership. In his role as Director of Information Technology, Michael oversees the day-to-day operations of the .INFO registry, and is responsible for the significant optimization of the Registry system in 2001, leading to its stable, speedy and scalable characteristics. The most recent 7 years of Michael's 12 year IT experience has been in systems operations and software development management, specializing in 24/7 high availability environments. Michael headed up technology operations for one of the Canadian Stock Exchange's institutional brokerage houses, Griffiths McBurney and Partners. As, Senior Project Manager at an Internet based grocery retailer, GroceryGateway.com, he coordinated and engineered the start-up of mission critical systems involving business systems, development and IT. In addition to numerous technology certifications, Michael has a B.A. from the University of Toronto.

Andrew Sullivan is the company's Senior Database Architect, and brings strong knowledge and experience in database design, development and deployment. Andrew began exploring database design in 1996, while pursuing graduate studies at McMaster University. His interest led him to abandon his studies, and to enter the technology sector. After two years, he returned to McMaster to work in Computing and Information Services. He holds a B.A. form the University of Ottawa and an M.A. from McMaster University. Andrew is active in the database community.

Afilias' technical workforce numbers over 20, and includes key personnel in Database Administration, Systems Architecture, Quality Assurance, Technical Support, Documentation, Database Analysis, Financial Systems and Billing Support, as well as front-line Customer Support. Section III, C17.11 describes in further detail key technical personnel who will help the .org registry establish the highest standards of customer service and problem resolution.

The .ORG registry will have access to the full range of systems development and monitoring tools that have been acquired or developed by Afilias. These tools will provide the .ORG registry unparalleled ability to provide best-of-breed services to registrars, registrants, organizations, individuals and other interested parties. The registry has a strong background and has implemented engineering standards in each of the major components of registry management, including (but not limited to) software code management, quality assurance and control, software operations metrics, systematic testing procedures and formal development and operational methodologies. The .ORG

registry intends to meet or exceed stringent technical, security and performance standards and set the benchmark for how a registry in the public interest ought to operate.

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Comments concerning this site should be sent to orginfo@isoc.org.

Enhancement Of Competition

Executive Summary

ICANN has succeeded in introducing competition in the registrar market. However, in the gTLD registry space, VeriSign still maintains a 95% market share, with .ORG declining under its stewardship. While competition is important, stability is paramount. To guarantee a stable and smooth transition, the new .ORG registry operator must have demonstrated experience maintaining a shared registry system containing at least 500,000 domain names under management. ISOC believes that Afilias is the optimal registry infrastructure provider to guarantee stability, while simultaneously enhancing competition in the registry marketplace. Further, the ISOC proposal provides competitive marketing for .ORG to restore its vitality.

Overview: ISOC applauds and supports ICANN's efforts to diversify the provision of registry services by selecting a new registry operator for the .ORG TLD. ISOC and PIR believe that this objective is consistent with the policy statements made by the U.S. Department of Commerce in its 1998 White Paper, "Management of Internet Names and Addresses." Specifically, the U.S. government's position was that "competitive systems generally result in greater innovation, consumer choice, and satisfaction in the long run" and that the "pressure of competition is likely to be the most effective means of discouraging registries from acting monopolistically." (See Docket Number 980212036-8146-02; http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm)

To date, ICANN has succeeded in introducing meaningful competition in the registrar marketplace. Whereas less than three years ago VeriSign, formerly Network Solutions Inc., sponsored 100% of the domain names registered in the generic top-level domains, now VeriSign sponsors less than 36%.

Figure 56
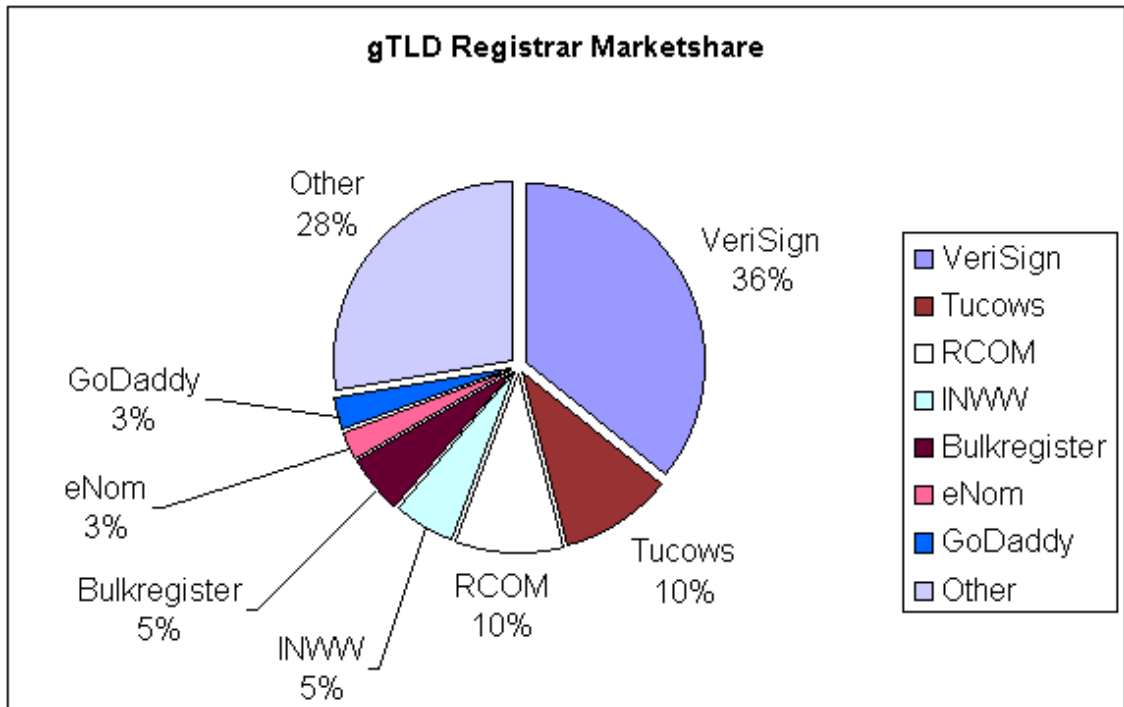
Source: SnapNames State of the Domain April 2002

However, despite the introduction of competitive registry services as part of the ICANN TLD proof of concept, VeriSign still dominates gTLD registry services, holding a 95% market share.

Figure 57
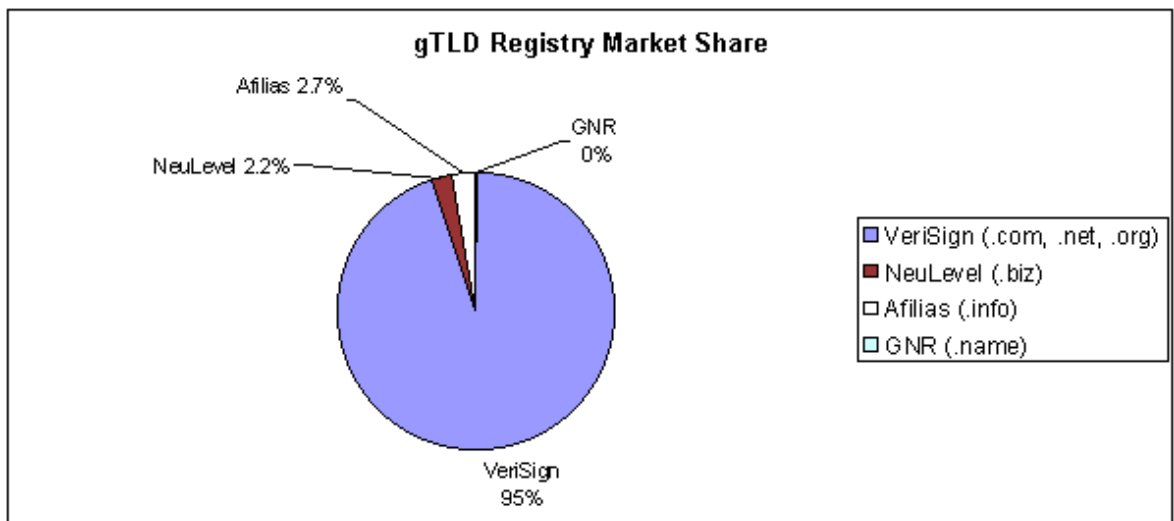
Source SnapNames State of the Domain April 2002

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C30. Instructions

One of ICANN's core principles is the encouragement of competition in the provision of registration services at both the registry and registrar levels. Promotion of that principle will be a criterion. As one illustration of this criterion, a major purpose of the reassignment of the .ORG registry is to diversify the provision of registry services by placing the .ORG registry under different operation than the .com and .net registries. Consideration will be given to the extent to which proposed arrangements are consistent with this purpose. As another illustration, applicants are encouraged to refrain from prohibiting non-affiliated providers of backend services from offering their services in connection with other applications. This section of the .ORG Proposal concerns the effect on competition of the selection of a successor registry operator.

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C31. Analysis of the Effect on Competition

Give your analysis of how selecting your application would effect competition in the provision of registration services at both the registry and registrar level.

A. Enhancement of Competition — Registry Level

When ISOC began evaluating the opportunities associated with becoming the registry operator of the .ORG TLD, it understood the necessity to balance the needs of increasing competition at the registry level while maintaining the stability of the .ORG registry for the benefit of the MORE THAN two million registrants. Based upon the importance that the ICANN Board placed on operational stability during its recent meeting in Accra, ISOC realized that it would need to partner with an established back-end registry infrastructure provider in order to maximize its opportunity to become the .ORG registry operator.

ISOC believes that the 500,000-domain name benchmark referenced in C32 provides an excellent measurement for the ability of a registry operator to guarantee a stable transition from the current registry operator. To identify a suitable back-end registry infrastructure to partner with, ISOC identified those TLDs with over 500,000 domain names under management:

Figure 58
Registries With Over 500,000 Names Under Management

TLD*	Domain Names	Registry Operator
.COM	21,437,793[1]	VeriSign GRS
.DE	5,573,261[2]	DENIC eG
.NET	3,676,229[1]	Verisign GRS
.UK	3,526,797[3]	Nominet UK
.ORG	2,358,634[1]	VeriSign GRS
.INFO	807,680[1]	Afilias
.NL	732,562[4]	NL Domain Registry
.IT	676,756[5]	IAT – CNR
.BIZ	640,824[1]	NeuLevel
.AR	515,000[6]	MRECIC
.CC	500,000[6]	eNIC (VeriSign)

*gTLDs in bold
Sources: 1- SnapNames "State of the Domain" report, April 2002; 2 - DENIC, June 10, 2002 - http://www.denic.de/DENICdb/stats/index.en.html ; 3 - Nominet UK, June 10, 2002 - http://www.nic.uk/news/stats/index.html ; 4 -SIDN, June 10, 2002 - http://www.domain-registry.nl/sidn_english/flat/Home/ ; 5 -Naming Authority Italiana, June 10, 2002 - http://www.nic.it/RA/ ; 6 -ICANN Proposed Budget - http://www.icann.org/financials/proposed-budget-15may02.htm

Then ISOC analyzed the following factors for each of the above registry operators: 1) whether each shared registry system was established and robust, 2) the registry protocol each uses, and 3) each registry operator's relationship with ICANN-accredited registrars. The chart below summarizes some of the factors considered in our evaluation process.

Figure 59
Evaluation Factors

REGISTRY	Registry Protocol	Registry Contract with ICANN
Afilias	EPP	Yes
DENIC eG	SMTP (based)	No
eNIC (VeriSign)	RRP	No
IAT – CNR	N/A	No
MRECIC	N/A	No
NeuLevel	EPP	Yes
NL Domain Registry	N/A	No
Nominet UK	SMTP (based)	No
VeriSign GRS	RRP	Yes

After balancing the needs of increasing competition at the registry level while maintaining the stability of the .ORG registry, ISOC felt that Afilias was uniquely qualified to provide the registry infrastructure in its bid for the .ORG re-delegation.

As the registry operator for .INFO, the first and most popular of the seven proof-of-concept registry operators selected by ICANN, Afilias currently has over 805,000 domain names under management. In addition to .INFO, Afilias provides registry services to support the .VC (St. Vincent and the Grenadines) ccTLD and is an affiliate of AusRegistry Pty. Ltd., the registry operator for the COM.AU, NET.AU, ASN.AU, ID.AU, and ORG.AU second-level domains.

Afilias has a diverse multinational presence (offices in Ireland, the United States, Canada, and the UK) and has demonstrated the ability to resolve complex policy issues (.INFO country names and inappropriately registered Sunrise names). It has a stable EPP registry implementation that is capable of supporting a RRP protocol during transition as required by the ICANN contract; and has demonstrated experience in transitioning a TLD between registry operators.

Afilias has also successfully demonstrated a robust EPP protocol that has processed over 20,000 intra-registrar transfers. In enhancing competition at the registrar level, it is critical that a registry be able to support domain name portability between registrars. This level of domain name portability is unmatched in any of the other proof of concept registry providers to date.

Another factor in ISOC's selection of Afilias is that it strengthens a currently small but promising back-end registry services provider ensuring the continued availability of a realistic alternative to VeriSign. Although ICANN succeeded in introducing competition into the marketplace by accrediting a large number of registrars, market conditions suggest that are likely to be far fewer viable registry infrastructure providers. ISOC believes that given this reality, competition and stability is best served at the registry level by selecting a small but established registry service provider with an proven record of maintaining over a half a million names, as opposed to supporting a registry infrastructure provider with less proven accomplishments.

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B. Enhancement of Competition — Registrar Level

Given the need to provide a stable transition for .ORG registrants, the following statistics reinforce the likelihood that Afilias will be able to provide registrars with a seamless transition for their registrants.

Out of the 102 registrars authorized by VeriSign to provide .COM, .ORG, and .NET registrations, the great majority are already Afilias-authorized, which means they have

passed Afilias' rigorous operational testing and engineering (OT&E) process and have proved their ability to use the EPP protocol. *More importantly, over 99.2 percent of the current .ORG domain names are sponsored by a registrar that is already Afilias-authorized. The overwhelming majority of .ORG names are with registrars who are already using Afilias' EPP system on a day-to-day basis.*

Figure 60
Registrars Market Share in .ORG vs. Afilias Authorization

REGISTRAR	Country	Market Share	.ORG Registrations	Afilias Auth
000Domains.com	US	0.000425	10	Yes
007Names, Inc.	US	0.006291	148	Yes
123 Registration, Inc.	US	0.013985	329	Yes
1 eNameCo	US	0.094327	2219	Yes
1dni.com	US	0.002295	54	Yes
1st Domain.net, division of G+D International	US	0.058195	1369	Yes
4Domains.com	US	0.014538	342	Yes
A Technology Company, Inc.	Canada	0.002806	66	No
Active ISP ASA	Norway	0.175859	4137	Yes
Address Creation	US	0.020957	493	Yes
aitdomains.com	US	0.329741	7757	Yes
Alice's Registry, Inc.	US	0.000468	11	Yes
Alldomains.com, Inc.	US	0.261727	6157	Yes
America Online, Inc.	US	0.040298	948	No
Ascio Technologies, Inc.	Denmark	0.372972	8774	Yes
ATLNTD.com	Russia	0	0	No
AWRegistry	US	0.121575	2860	Yes
BB Online UK Ltd.	UK	0.037918	892	Yes
BookMyName SAS	France	0.02338	550	Yes
BulkRegister.com, Inc.	US	4.691652	110369	Yes
CORE - Council of Internet Registrars	Switzerland	2.350183	55287	Yes
Capital Networks Pty. Ltd.	Australia	0.111671	2627	Yes
Catalog.com, Inc.	US	0.112988	2658	Yes
Computer Data Networks	Kuwait	0.005824	137	No
Corporate Domains, Inc.	US	0.005994	141	Yes
Cronon AG	Germany	0.230483	5422	Yes
Deutsche Telekom, AG	Germany	0.015771	371	No
DirectI.com	India	0.034092	802	Yes
directNIC	US	1.451122	34137	Yes
Domain Bank, Inc.	US	0.663307	15604	Yes
Domain Registration Services, Inc	US	0.168547	3965	Yes
DomainCity.com	Korea	0	0	No

domaindiscount24.com	Germany	0.065974	1552	Yes
DomainDiscover	US	1.371588	32266	Yes
Domaininfo.com	Sweden	0.134285	3159	Yes
DomainPeople, Inc.	Canada	0.430061	10117	Yes
DomainRegistry.com, Inc.	US	0.056197	1322	Yes
DomainSite.com, Inc.	US	0.081447	1916	No
DomainZoo.com, Inc.	US	0.052498	1235	Yes
doregi.com	Korea	0.132925	3127	Yes
DotRegistrar.com	US	1.08933	25626	Yes
Dotster, Inc.	US	2.065587	48592	Yes
Eastern Communications Co., Ltd.	China	0.003613	85	No
EasySpace, Ltd.	UK	0.761545	17915	Yes
EnetRegistry.com Corp.	US	0.002125	50	No
eNom, Inc.	US	2.337983	55000	Yes
EPAG, Enter-Price Multimedia AG	Germany	0.40073	9427	Yes
GK Group LLC	US	0.3365	7916	No
Gabia, Inc.	Korea	0.173861	4090	Yes
Gandi	France	1.835317	43175	Yes
Global Media Online, Inc.	Japan	0.303513	7140	Yes
Globedom	Austria	0.013603	320	Yes
Go Daddy Software, Inc.	US	2.984754	70215	Yes
IA Registry	US	0.164296	3865	No
I.D.R. Internet Domain Registry, Ltd.	Israel	0.005016	118	Yes
InterAccess Company	US	0.016153	380	No
Interactive Telecom Network, Inc.	US	0.001105	26	No
Interdomain SA	Spain	0.084252	1982	Yes
Internet Names WorldWide	Australia	4.947385	116385	Yes
ItsYourDomain.com	US	0.791599	18622	Yes
joker.com	Germany	1.509189	35503	Yes
Markmonitor	US	0.023422	551	Yes
Mr. DomReg.com, Inc.	Canada	0.01254	295	Yes
Namebay	Monaco	0.108567	2554	Yes
NameEngine, Inc.	US	0.040043	942	Yes
Names4Ever	US	0.421985	9927	Yes
NameScout, Corp.	Canada	0.102191	2404	Yes
NamesDirect.com, Inc.	Bermuda	0.438436	10314	Yes
NameSecure.com, Inc.	US	0.774638	18223	Yes
Neteka, Inc.	Canada	0.008077	190	Yes
Netpia.com, Inc.	Korea	0.106314	2501	Yes
NetNames	UK	0.130672	3074	Yes

Network Solutions, Inc.	US	39.54932	930380	Yes
NewDentity.com	US	0	0	No
Nominalia Internet S.L.	Spain	0.008374	197	Yes
NORDNET	France	0.114476	2693	Yes
Omnis Network, LLC	US	0.028863	679	Yes
OnlineNIC, Inc.	China	0.285064	6706	Yes
OVH Sarl	France	0	0	No
pairNIC	US	0	0	No
PSI-Japan, Inc.	Japan	0.060447	1422	Yes
Parava Networks, Inc.	US	0.112648	2650	Yes
pAsia, Inc.	China	0.00204	48	No
Primus Telecommunications Pty. Ltd	Australia	0.033242	782	No
register.com	US	9.909392	233114	Yes
Register.it SPA	Italy	0.043784	1030	Yes
Registrars.com	US	0	0	Yes
Registration Technologies, Inc.	US	0.020192	475	Yes
RGNames.com	Korea	0.003358	79	Yes
Schlund+Partner AG	Germany	2.5782	60651	Yes
Secura GmbH	Germany	0.031924	751	Yes
Signature Domains	US	0.153372	3608	Yes
Stargate Communications, Inc.	US	0.576292	13557	Yes
TLDs, dba SRSPlus	US	0.081489	1917	Yes
topnet AG	Germany	0.000085	2	No
Total Registrations	UK	0.088971	2093	Yes
Transpac	France	0.077238	1817	Yes
TUCOWS, Inc.	Canada	10.13660	238459	Yes
Virtual Internet (UK) Ltd.	UK	0.007099	167	Yes
Wild West Domains, Inc.	US	0	0	Yes
Xin Net Corp	China	0.096282	2265	No
YesNIC Co Ltd.	Korea	0.262492	6175	Yes

Source: SnapNames "State of the Domain" database, April 2002

An additional factor to increase competitive registrar services is the removal of the $100,000 surety instrument currently required by VeriSign registry to register .ORG domain names. To further enhance the competitive structure of the registry market for the benefit of registrars, the ISOC proposal also seeks to make .ORG more competitive versus other TLDs. The .ORG domain has been declining recently, as promotional registrations have not been not renewed and ccTLDs and the new TLDs have taken market share. ISOC's proposal demonstrates how it will reinvigorate the .ORG domain behind clear positioning and effective marketing, restoring .ORG to a competitive position within this challenging market.

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C32. Operation of a Registry with More than 500,000 Names

State whether the applicant or any entity identified in item C13 operates a DNS registry having more than 500,000 registered names and, if so, provide details.

ISOC has chosen to contract with Afilias, based upon the detailed analysis in C31, to provide back-end registry infrastructure services in connection with this bid. Afilias is the current registry operator of the .INFO TLD and has more than 800,000 domain names under management.

ISOC will rely upon Afilias' technical experience and infrastructure to provide a stable and seamless transition from the current registry operation. However, ISOC will exercise complete policy and administrative oversight of the registry in its role as registry operator.

ISOC has modeled this relationship, in part, upon the contractual agreement between EDUCAUSE and VeriSign governing their operation of the .EDU registry. Similar to the administrative and policy role that EDUCAUSE provides based upon its established role as a nonprofit association in the higher education community, ISOC believes that it is ideally suited to play a similar role for the non-commercial registrants in the .ORG registry, with Afilias providing the registry technical infrastructure.

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C33. Affiliations

Describe in detail all affiliations, including direct or indirect ownership and contractual arrangements (including letters of intent) for the past, present, or future provision of registry services, between (a) the applicant or any entity identified in item C13 and (b) any operator of a DNS registry having more than 500,000 registered names.

(a) The Applicant or Any Entity Identified in Item C13

The Internet Society (ISOC) is comprised of more than 137 organizational members, including nonprofit, trade and professional organizations, foundations, educational institutions, corporations, government agencies, and other international organizations that share a commitment to the health of the Internet. A list of all Internet Society organizational members can be found online at http://www.isoc.org/orgs/orgsbyname.shtml. Afilias became an executive level organizational member of the Internet Society earlier this year, joining other registry operators such as CORE, DENIC eG, EDUCAUSE, Melbourne IT, Nominet UK, and VeriSign.

Donald Heath currently serves as a director of Afilias and sits on the Internet Society's Board of Trustees. After formal introductions between the Internet Society and Afilias, Mr. Heath recused himself from all further discussions in connection with this matter.

On May 15, 2002 the Internet Society's Board of Trustees overwhelmingly approved the decision to contract with Afilias to help secure the reallocation of the .ORG registry. Specifically, the Board authorized the President of the Internet Society, Lynn St. Amour, to enter into a Letter of Intent (LOI) with Afilias. On May 31, 2002, the Internet Society and Afilias entered into a LOI in connection with this RFP, which incorporated the following terms:

- ISOC will submit an application to ICANN to become the registry operator for the .ORG registry;

- In the application, ISOC will propose the establishment of a separate entity, owned or controlled solely by the Internet Society: Public Interest Registry, or PIR. PIR will serve as the registry operator, if the application is selected by ICANN;

- ISOC (or its designee, PIR) will contract with Afilias to provide registry technical and support services in connection with the operation of the registry;

- ISOC (or its designee, PIR) will be the sole beneficiary of the US$5 million

endowment anticipated to be paid by VeriSign as set forth in Section 5.1.4 of the current .ORG registry agreement;

- The application proposes a $6 a year registration fee, with $4 going to Afilias for registry infrastructure services and $2 going to ISOC (or its designee, PIR) to provide administrative and policy oversight functions and other outreach activities; and

Afilias has committed to provide a $250,000 line of credit to PIR to cover any start-up expenses, contingent upon the selection of ISOC's bid by ICANN.

(b)   Any Operator of a DNS Registry Having More than 500,000 Registered Names.

Afilias is a privately held Irish limited corporation. It was founded in September of 2000 by a consortium of 18 ICANN-accredited domain name registrars, located across 10 countries: 1stDomain.net, a division of G+D International LLC; Corporate Domains, Inc.; Domain Bank, Inc.; DomainInfo AB; DomainPeople, Inc.; Domain Registration Services; Enter-Price Multimedia AG (EPAG); Internet Council of Registrars (CORE); interQ, Inc.; Netnames International Ltd; Network Solutions, Inc. Registrar Operations; Polar Software Ltd. d/b/a Signdomains.com; Procurement Services International (Japan), Inc.; Register.com; Schlund + Partner AG; Sitename; Ascio (formerly Speednames, Inc.); Tucows, Inc.

Network Solutions is a wholly owned corporation of VeriSign, Inc., which currently operates four registries in excess of 500,000 domain names: .COM, .NET, .ORG, and .CC. Currently no Network Solutions or VeriSign employee or representative serves on the Afilias Board of Trustees/Directors.

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Comments concerning this site should be sent to orginfo@isoc.org.

Petillion

RM 15

Comments of the Internet Society (ISOC) on .org Preliminary Evaluation Report

(Received 29 August 2002)

Internet Society Response to the Preliminary Staff Report on Evaluation of the Proposals for the Reassignment of the .org Registry

The Internet Society (ISOC) for response to the Preliminary Staff Report on Evaluation of the Proposals: Reassignment of the .ORG Registry.

First, we thank the ICANN staff and the four contributors to the Preliminary Report – Gartner Inc.; the Noncommercial Domain Name Holders Constituency (NCDNHC) team; the international CIO team; and the General Counsel – for their time, energy, and commitment to this important decision. We believe the report reflects a process that has been as fair, thorough, impartial, and transparent as is reasonably possible.

The preliminary report awarded ISOC top tier ratings across the board--the only bidder to achieve this consistently high level and we were pleased to see the evaluation report recommend that �the proposal submitted by the Internet Society (ISOC) be selected.� ISOC has also recently posted a statement and additional FAQ�s to address several questions that emerged after the report was published.

Second, we�d like to reiterate that ISOC has been a not-for-profit corporation for over 10 years and is operated exclusively for educational, charitable, and scientific purposes. ISOC is a global entity as illustrated by the following:

- **Individual Members**: Over 10,000 individual members distributed as follows: 33% Europe; 35% North America; 17% Asia-Pacific; and 15% from Africa, Latin America, etc. Individuals elect their chapter leaders, who represent them with the ISOC secretariat.
- **Chapters**: Our 73 existing and 64 proposed chapters are located in: Europe-31%; North America-21%; Asia-Pacific-12% and Africa, Latin America, etc.-36%.
- **Organization Members**: Over 130 organizations are also members of ISOC, one third of which are not-for-profits. While many are global in scope, their headquarters break out as follows: Europe-37%; North America-45%; Asia-Pacific-16% and Africa, Latin America, etc.-2%.
- **Board of Trustees**: Our 17 current Board members have home ties in: Europe-41%; North America-41%; Asia-Pacific-6%; and Africa, Latin America, etc.-12%.

Should ISOC be selected, we will form a new not-for-profit company – the Public Interest Registry (PIR) �to run the .ORG registry. PIR�s board will be appointed by ISOC, but PIR will be a separate legal entity and isolated from ISOC financially and operationally. PIR

(not ISOC) will enter into the registry management agreement with ICANN, and PIR will contract with Afilias for all back-end registry services. Our agreement with Afilias provides that Afilias will cover the start-up, transition, and initial operating costs and will then be repaid by PIR for these expenses over the course of the agreement. Afilias� use of existing capacity will help minimize these costs.

Third, regarding the individual reports, we find the evaluation methodologies to be carefully conceived, the executions objective and impartial, and the resulting conclusion sound. Nevertheless, we would like to draw your attention to several aspects of our bid in response to specific comments in the evaluations. We will address the NCDNHC report first in keeping with its status as the .ORG user representative. Then, we�ll comment on the Gartner, CIO and General Counsel reports in that order. We will close with a summary of the strengths of the ISOC proposal.

NCDNHC Report:
Criteria: 4 (differentiation), 5 (responsiveness and governance), and 6 (public support)

We will address the comments of the NCDNHC first because, as a not-for-profit organization ourself, we feel it is extremely important to ensure a voice within .ORG for the non-commercial community. To our knowledge, the .ORG evaluation process is the first attempt by ICANN to explicitly incorporate the voice of the registrant in the formal proposal evaluation stage. As that voice, the NCDNHC report must carry substantial weight once basic competency criteria have been satisfied.

Members of the DNSO�s Noncommercial Domain Name Holders Constituency assumed the difficult task of assessing each proposal on �usage� issues, including differentiation, responsiveness, and public support. We recognize that the diversity of viewpoints within this broad community made this task challenging, but we appreciate the efforts and care shown, and believe the report reflects a balanced and thoughtful result. The committee used two different final ranking mechanisms, and the ISOC proposal finished in the top tier under both approaches. The committee�s incisive comments provide helpful guidance regarding issues of importance to the community. Topics of note include:

Differentiation--Innovation: The NCDNHC report indicated a lack of �innovative �thick registry� services� to differentiate .ORG. Our proposal does propose new services to strengthen the value proposition, but they were addressed in Criteria 7 (Services-bid section V) – which was not included in the scope of the NCDNHC assignment. Perhaps we should have also addressed them under Criteria 4 (Differentiation-bid section VIII). Nevertheless, we proposed a wide array of innovative thick registry services (both free and low-cost). These include a .ORG directory, ORGRing linking to related sites; ORGWatch domain monitoring; ORGLock hijacking protection, and other safeguarding, and privacy protection products. Together with the marketing activities, we believe they will help PIR to differentiate the .ORG TLD.

Differentiation – Registrars: PIR is committed to working with registrars to make .ORG a success. Our proposed channel programs will improve the penetration of .ORG among non-commercial entities, expand .ORG beyond the US to make it a truly global domain, and market the domain in a responsible and appropriate manner. Our partner Afilias has working relationships with 100 ICANN-accredited registrars, who represent more than 99%

of existing .ORG registrations.

Our proposal advocates co-op programs that offer real financial incentives to registrars. For example, PIR will establish a .ORG Marketing Fund designed to help offset Registrar expense as they support .ORG in marketing efforts. Our proposed programs innovatively tie reimbursements to results. Our partner Afilias was the first of the new gTLD registry operators to launch such a program to registrars, and will offer advice to PIR.

Differentiation – Defensive: The report correctly noted our proposal�s intent to minimize speculative or defensive registrations by focusing our outreach on a limited target: non-commercial entities not yet on the Internet. While the proposal clearly identified the programs we would execute, it did not document our intent to avoid soliciting any speculative or defensive registrations. For the record, it is not our intent to solicit this type of registration for .ORG.

Responsiveness – Input/Governance: Our bid contains proposals for new community input mechanisms for use by the noncommercial and Internet communities. We agree that it is essential for the registry operator to solicit and take advantage of advice from the .ORG community it will serve.

- PIR will establish a .ORG Advisory Council to focus solely on .ORG issues. These issues may range from policy to the introduction of new services, and the Council will serve as an ombudsman-type resource for management as it seeks to incorporate the broadest possible input for important decisions. The Council will be made up of leadership from the broad spectrum of the non-commercial world.
- We will also establish Web-based input mechanisms. Members of the broad Internet community should have means of learning about and commenting on initiatives under way in the .ORG domain. Similarly, .ORG management should be able to tap the community for input. To facilitate this communication, we have proposed polling, discussion forums, and more.
- PIR will be governed by Directors, who will be separate from but selected by the ISOC Board of Trustees. ISOC trustees are, in turn, selected by representatives of various ISOC member or expert groups, so input from a broad constituency will become part of PIR�s heritage as well.

Responsiveness – Good Works: PIR�s marketing program rests importantly on activities that may also be counted �good works� or �community projects.� These are outreach programs that will educate and train nonprofits on how to better leverage the Internet. In some cases, PIR will adapt ISOC's proven workshop programs, enabling PIR's outreach to commence without a lengthy startup period. Some of these existing programs are detailed in the bid.

Public Support: By the time of the evaluation, ISOC had presented more than 500 letters of support from a broad geographic spectrum, over one third (1/3) of which were from non-ISOC-affiliated individuals. We were also pleased with other letters of Class A support that were presented in the proposal itself, such as those from the Research Libraries Group, EDUCAUSE and INSEAD. The e-mail addresses of the supporters, which have been omitted out of respect for the privacy of the authors, are available for ICANN�s inspection if desired.

We should note that since our proposal was submitted, we have received 100 more letters

of support, including .ORG registrants such as The British Computer Society (www.bcs.org) noted in the report and the International Council for Computer Communication (www.icccgovernors.org). The ISOC proposal now has support from 85 countries, and ISOC�s was the only proposal to achieve a �high� rating for geographical diversity from the NCDNHC. As the report correctly pointed out, ISOC�s endorsement letters supported ISOC as a bidder and the ISOC proposal in its entirety rather than isolated portions of it.

Gartner, Inc. Report:
Criteria: 1 (stable registry), 7 (services), 8 (protocol changes support), 9 (transition), 11 (complete and realistic)

This technology-focused evaluation followed a thorough, rigorous scoring process, earning ISOC a top-tier rating. Gartner clearly recognized the strengths of Afilias, our back-end registry services provider. Specifically, that Afilias:

- currently provides registry services for more than 925,000 names (945,000 as of August 29, 2002) with a near-real-time EPP process that is fast, reliable, and secure;
- supports over 100 ICANN-accredited registrars, who account for more than 99% of current .ORG registrations;
- will, at PIR�s direction, introduce new services to add value;
- is proven able to provide a full range of services on an equivalent basis as mandated by ICANN;
- can deliver a transition that is free of service interruptions.

The stability of Afilias is further illustrated by the deliberate manner in which the .INFO domain was launched. Despite market conditions that varied significantly from the original plan, the company was able to: deliver on commitments to both ICANN and the registrars; conduct business in a financially stable manner that included steady staffing and program levels; and operate in a reliable and consistent manner. Net, Afilias has a proven ability to plan carefully and execute prudently.

While Gartner judged our proposal to be �very detailed and thorough,� for purposes of clarity we have chosen to address five specific discussion points in relation to their report:

1) Perceived differences in SLA commitments in C17.13 vs. C28

Section C17.13 explicitly discusses our guarantee of absolutely the highest network and gTLD Domain Name Service SLAs � the most critical part of stable operations within a registry. Section 28 specifically covers SRS availability.

Our datacenter and DNS providers[1], IBM and UltraDNS, have proven, battle-tested infrastructure and services backgrounds that enable them both to deliver solutions that enhance the reliability and performance of the world�s largest directories, computer systems, and the mission-critical applications that access them. Both IBM and UltraDNS are committed to Afilias in binding SLAs that guarantee 100% network uptime and 99.999% DNS availability. (These SLAs are available for ICANN�s inspection if desired.)

As noted in our proposal[2], the 99.73% availability for DNS in Section C28 is for any single name server. In the event that any one individual name server fails, the redundancy and

failover mechanisms within our managed DNS architecture will automatically and immediately take over, assuring a 99.999% availability level for DNS.

ISOC is a clear leader among all the .ORG applicants in service level metrics. To this point, we would like to draw the evaluation team�s attention to the highest levels of registry service performance metrics that we have committed to[3], in comparison with the Service Levels from the other applicants[4].

Comparison of Service Levels Across .ORG Registry Applicants

SLA�s	ISOC	NeuStar	GNR	Unity	IMS	UIA	DotOrg	.Org	Organic	Reg. Org.	SWITCH
SRS											
Transform Response Time (sec)	0.8 sec	3 sec	3 sec	4 sec	3 sec	3 sec	0.8 sec	3 sec	3 sec	0.8 sec	5 sec
Query Response Time (Sec)	0.4 sec	1.5 sec	Data Not Found	4 sec	1.5 sec	3 sec	0.4 sec	3 sec	3 sec	0.4 sec	3 sec
Planned Outage / Month (hrs)	8 hrs	8 hrs	8 hrs	8 hrs	8 hrs	8 hrs	2.67 hrs	4 hrs	8 hrs	2.67 hrs	Data Not Found
Extended[5] Planned Outage / Qtr (hrs)	0 hrs	18 hrs	36 hrs	18 hrs	4.5 hrs	6 hrs	3 hrs	0 hrs	24 hrs	3 hrs	Data Not Found
	ISOC	NeuStar	GNR	Unity	IMS	UIA	DotOrg	.Org	Organic	Reg. Org.	SWITCH
DNS											
Update Freq. (min)	15 (<5 min actual)	15	Data Not Found	15	5	Data Not Found	5	15	Data Not Found	5	15
Cross Network NS Perf. (ms RTT)	300	300	300	Data Not Found	300	300	Data Not Found	300	Data Not Found	300	Data Not Found
	ISOC	NeuStar	GNR	Unity	IMS	UIA	DotOrg	.Org	Organic	Reg. Org.	SWITCH
WHOIS											
Response Time (sec)	0.8 sec (0.2 sec actual)	1.5 sec	1.5 sec	1.5 sec	1.5 sec	1.5 sec	0.8sec	1.5 sec	1.5 sec	0.8sec	6 sec
Planned Outage /	8 hrs	8 hrs	8 hrs	8 hrs	8	8 hrs	2.67	4	8 hrs	2.67	Data Not

Month (hrs)					hrs		hrs	hrs		hrs	Found
Extended[5] 6 Planned Outage / Qtr (hrs)	0 hrs*	18 hrs	36 hrs	18 hrs	4.5 hrs	6 hrs	3 hrs	0 hrs	36 hrs	3 hrs	Data Not Found

2) SRS failover time and performance of the secondary data center

The SRS system for .ORG will be based on the same stable, redundant infrastructure currently in use for .INFO[6]. A well thought-out, methodical and swift recovery procedure for many different types of SRS events – ranging from slow performance, through the total destruction of all data centers – has been described in our proposal[7], and reflects procedures currently in existence for the .INFO registry. This greatly reduces the risk of failure within the SRS, or any other part of the registry system.

In the event of a planned outage of the primary data center, PIR�s SRS system would be switched over immediately to the secondary site[8]. As our proposal states, registrars may notice a brief degradation of service while their SRS clients re-connect to the secondary site. This effect, we believe, would apply to all applicants for the .ORG redelegation.

A major unplanned outage, such as a catastrophic disaster at the primary location, would activate the same SRS failover procedure, as outlined in Section C17.16.1. Since there would not be any advance notice of the outage to registrars, they would need to be contacted immediately to redirect their SRS clients to the secondary site. Our contingency plans ensure that all registrars will be contacted in as timely a fashion as possible in this unlikely event.

It is also important to note that a failure in the SRS system does not impact the ability to resolve existing .ORG domains in any way. In such an instance, PIR will remain able to keep its commitment of providing the highest levels of DNS availability.

3) SRS database architecture

The SRS database structure, schema, and procedures in our proposal have been designed to ensure a smooth transition of .ORG from the current registry operator. Afilias, with nearly one million names under management, has clearly demonstrated its ability to manage and maintain a large database in a scalable manner. As of June 18, 2002, the SRS database at Afilias contained over 12 million records, and supported the full range of domain name transactions required by registrars.

The proposed SRS database for .ORG will reside on production grade high-availability Sun Microsystems hardware , and will be connected to the network in a fully-redundant fashion, with automatic failover in the event of a network component failure.

In order to provide a clearer understanding of the fault-tolerant structure and redundancy of our database services, we have reproduced Figure 39[10] from our application. This figure, which shows the system and database architecture of the WHOIS system, is also representative of the design and architecture of the overall SRS system, and was included in the original proposal for this purpose.

In addition to a strong and stable database system, ISOC believes that competent technical leadership in database design and operations is critical in the smooth operation of the SRS database, the heart of any domain registry. Afilias draws upon the skills[11] of its experienced management team, including Andrew Sullivan, the company's Senior Database Architect, who brings strong knowledge and experience in database design, development and deployment. Andrew is an active participant in various Open Source database projects, including PostgreSQL, and is an acknowledged expert in both database design and database operation.

The current configuration for the SRS database in the .INFO registry clearly demonstrates that the RDBMS has sufficient capacity[12] to handle a 200% growth in the .ORG namespace[13], with over 2,000 gigabytes of storage capacity[14], and the ability to handle over four times the current .ORG sustained transaction loads[15].

Figure 39: ORG Database Architecture
http://www.icann.org/tlds/org/applications/isoc/section3.html#c17.8-7
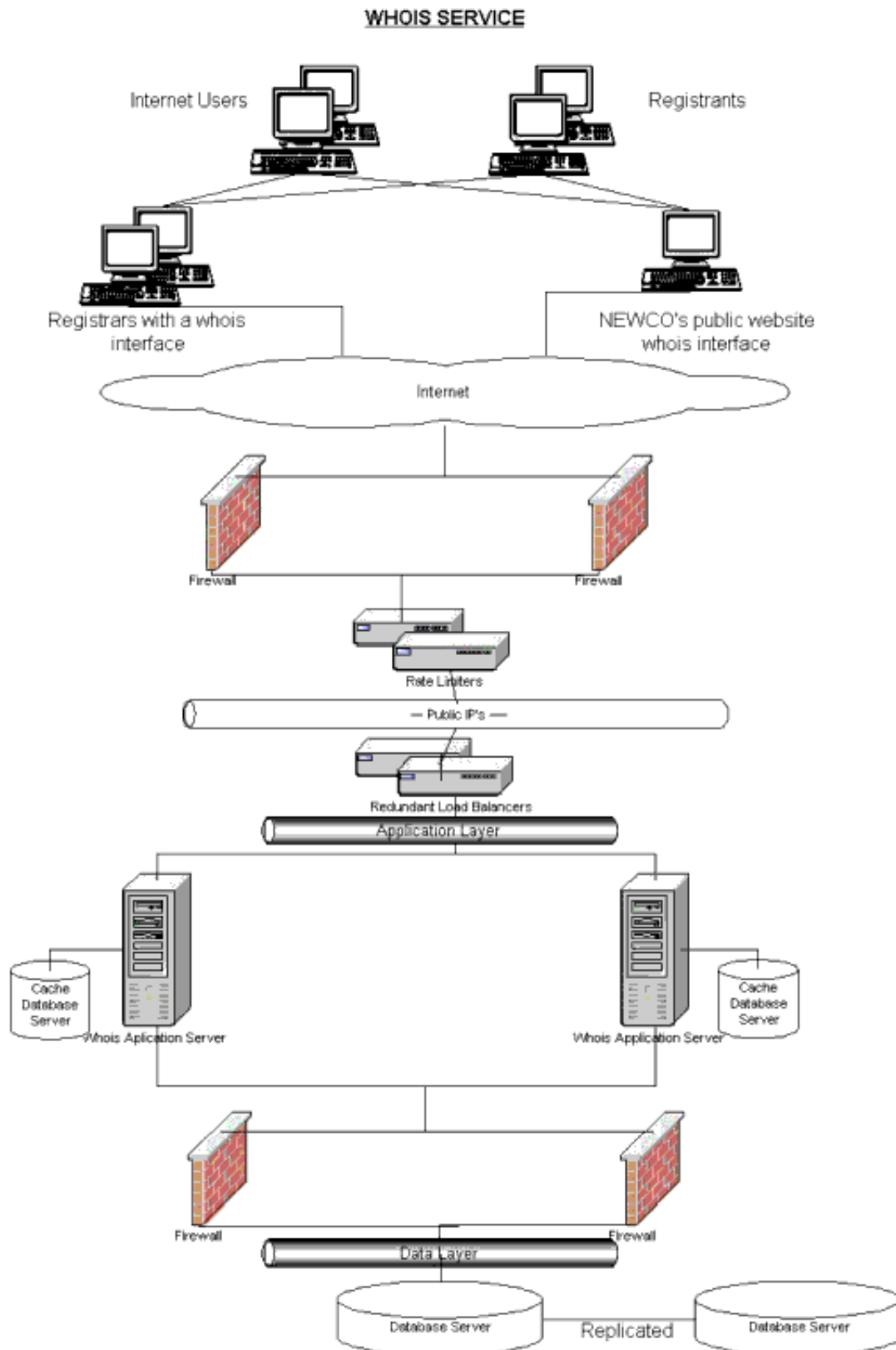
4) Staffing and training plans for the .ORG transition

A significant portion of the task of transitioning the .ORG domain will be handled by PIR�s partner, Afilias. One of the benefits for ISOC of working with Afilias is that it has existing capacity and staff to support the transition and ongoing technical operations of the .ORG registry.

The transition team will be lead by Ram Mohan, Afilias� VP of Business Operations and CTO, who has been involved with building and directing successful multi-functional teams for over 10 years. Ram has built strong Technology, Customer Service and Registrar Relations teams at Afilias. These teams are led by Howard Eland – Senior Technology Architect; Michael Young – Director of Information Technology, and Andrew Sullivan – Senior Database Architect. In addition to this leadership team, we also have over 20 highly qualified, experienced staff. While we anticipate that there may be a need to supplement the core staff with a few additions, we are confident that we have the right team already in place to ensure a successful transition.

With respect to registrar training and education, Afilias is both skilled and experienced. As the registry that pioneered the first implementation of an EPP-based gTLD registry, the success of the .INFO domain was directly tied to Afilias� training and education of registrars in the new technology. In addition, Afilias has led numerous training and planning sessions for registrars, including, most recently for the successfully concluded Land Rush 2 name distribution process. Similar training processes are described within the transition plans in the proposal.

5) PIR vs. Afilias roles

As detailed in our proposal, PIR will have general management and policy responsibility for the registry while Afilias manages the technical aspects under contract to PIR. Beginning with contract negotiations (should the ISOC bid be selected) PIR will provide overall registry leadership. This includes .ORG strategy and priorities, policy implementation, management of the PIR website and its new community input mechanisms; establishment of the .ORG Advisory Council; decisions on the proposed new services such as product definitions and how and when to introduce them; and the management of financials, reporting and other activities ICANN may require.

Academic CIO Team Evaluation:
Criteria: 1 (stable registry), 7 (services), 8 (protocol changes support), 9 (transition)

The international group of CIOs also focused on technical aspects of the bid, but used a different methodology and operated independently of Gartner. The CIO team�s report judged ISOC to be a �High Ranking Proposal,� one of only two it judged that �could definitely operate the registry successfully.� The evaluation team stated that our bid demonstrated:

- �Very solid technology, technology plan, and technology staff with strong likelihood of stable registry operation during the life of the agreement.� The partner (Afilias) ��has a demonstrated ability to operate a large, global registry.�
- �A strong business and organizational model. Organization appears well prepared to operate registry without significant organization risks.�

ICANN General Counsel Report:
Policy Adherence, Competitive Impact, and Endowment Eligibility

The General Counsel report addressed policy adherence, competitive impact, and endowment eligibility, and judged ISOC to be in the top tier for all three.

The competitive criterion is especially important, given the magnitude of the .ORG domain and the ICANN core principle of encouraging ��competition in the provision of registration services at both the registry and registrar levels.� We believe that it is key for ICANN to select a manager that can successfully build .ORG to its full potential and enable it to compete effectively with .COM and .NET as well as the other TLD�s. The ISOC proposal is uniquely attractive because it combines the perspective and experience of the Internet Society with Afilias� demonstrated ability to build and manage a domain in an economically sustainable and stable manner. These attributes will fuel the revitalization of .ORG and enable PIR to foster new levels of competition within the industry overall.

In Closing

We are happy that the staff and evaluation teams recognized the strength of our proposal. ��the ISOC proposal is the strongest and most balanced proposal overall.�

ISOC�s proposal brings the best technical capacity to .ORG through its back-end service provider Afilias, who has unmatched experience in running and operating a large-scale, EPP-based, gTLD registry (.INFO). We will modernize .ORG with new technical standards by upgrading the registry system to support the new, faster EPP protocol and by reducing registration to resolution time from hours to minutes. In addition, the proposal includes new registry services such as name locking, site linking, directory, and ID certification designed to deliver tailored, valuable services to meet the unique needs of .ORG registrants. Our proposal ensures that .ORG will remain stable and secure during and after the transition to the new registry operator.

ISOC�s proposal also clearly outlines a plan to revitalize .ORG. Based on our own expertise in the Internet and non-commercial communities, we will further .ORG�s heritage as the home of non-commercial organizations on the Internet. This plan includes the new services noted above plus a global marketing and public relations program focused on educating non-commercial organizations on the uses of the Internet. It further incorporates new community input mechanisms such as a .ORG Advisory Council and various Web-based tools and features. These will allow .ORG registrants to have a role in the management of .ORG that is absent today.

Overall, we believe ISOC's experience as a not-for-profit, Internet-focused organization, combined with Afilias� expertise as a stable and proven back end provider, enables us to fully meet all the criteria set forth by the ICANN Board.

In summary, we thank the ICANN staff and evaluation teams for their diligence, especially given the tight timetables involved, the complexity of the evaluations, and the importance of this project. We remain committed to our proposal, and look forward to helping make .ORG a stable and secure home for the non-commercial community on the Internet.

Sincerely,

Lynn St. Amour
President and CEO
Internet Society

Notes:

1. Ref. ISOC Application, Sections C12, C13, Contracted Service Providers

2. Ref. ISOC Application, Section C17.13, C17.28

3. Ref. ISOC Application, Sections C28, Figure 54, Figure 55; Appendix N

4. Ref. http://www.icann.org/tlds/org/

5. Planned Outage Time can be used as Extended Planned Outage Time; the total planned outage time per period is the sum of Planned Outage and Extended Planned Outage.

6. Ref. ISOC Application, Section C17.14.2, C17.16.2

7. Ref. ISOC Application, Section 17.16.1 � 17.16.3

8. Ref. ISOC Application, C17.16.1

9. Ref. ISOC Application, C17.3.3

10. Ref. ISOC Application, Section C17.8-7

11. Ref. ISOC Application, Section C15 B

12. This estimate is based on the reports provided by VeriSign, available at http://www.gtldregistries.ORG/reports/2002/apr/index.html/, and referenced in the ISOC application.

13. Ref. ISOC Application, Section C17.3c

14. Ref. ISOC Application, Section C17.3a

15. Ref. ISOC Application, Section C17.10.2 b ii

RM 16

.org Registry Agreement

On 2 December 2002, ICANN and Public Interest Registry entered into an Unsponsored Registry Agreement under which Public Interest Registry operates the .org top-level domain. The agreement and its appendices may be viewed by following the links below:

[Unsponsored TLD Agreement](#)

[Amendment No. 1 to Registry Agreement](#)

[Amendment No. 2 to Registry Agreement](#)

Appendices:

- **A:** [Format and Technical Requirements for Requests to Change TLD Nameservers](#)

- **B:** [Format and Technical Requirements for Requests to Change TLD Contact Information](#)

- **C:** [Functional Specifications](#)

- **D:** [Performance Specifications](#)

- **E:** [Service-Level Agreement](#)

- **F:** [Registry-Registrar Agreement](#)

- **G:** [Fees for Registry Services](#)

- **H:** [Equivalent Access Certification](#)

- **I:** [Registry Code of Conduct](#)

- **J:** [Transition Plan](#)

- **K:** [Names Reserved from Registration](#)

- **N:** [TLD Zone-File Access Agreement](#)

- **O:** [Whois SpecificationPublic Whois](#)

- **P:** [Whois Bulk Data Provisioning](#)

- **Q:** [Whois Data SpecificationICANN](#)

- **R:** [Data Escrow Specification](#)

- **S:** [Data Escrow Agreement](#)

- **T:** [Monthly Registry Reports](#)

- **U:** [Proof-of-Concept Reports](#)
  - [Transition Reports](#)

- **V:** [Initial Consensus Policies](#)

- **W:** [Additional Covenants](#)

- **X:** [Registry Operator's Domain Names](#)

- **Y:** [Sanctions Program](#)

Note: ICANN has [granted Public Interest Registry temporary authorization to offer Redemption Grace Period services](#).

Comments concerning the layout, construction and functionality of this site
should be sent to webmaster@icann.org.

Page updated 30-Aug-2004

.org Registry Agreement: Appendix G

19 August 2003

Registry Operator Maximum Price Schedule

This schedule specifies the maximum price PIR may charge for Registry Services. In a manner consistent with Section 3.4.3 of the Registry Agreement, PIR may charge a lower-than-specified rate for services, including not charging for a specified service. Except as set forth herein or otherwise agreed, PIR shall not be entitled to charge for any registry service not specified in this Appendix G.

1. Maximum Domain-Name Initial Registration Fee

PIR may charge a maximum of US $6.00 per year for each domain name registered (the "Initial Registration Fee") in the Registry TLD during the Term of the Registry Agreement. The Initial Registration Fee shall be paid in full by the ICANN-Accredited Registrar sponsoring the domain name at the time of registration.

2. Maximum Domain-Name Renewal Fee

PIR may charge a maximum of US $6.00 per year for each domain name registration renewal (the "Renewal Fee") in the Registry TLD during the Term of the Registry Agreement. The Renewal Fee shall be paid in full by the ICANN-Accredited Registrar sponsoring the domain name at the time of renewal.

3. Fees for Transfers of Sponsorship of Domain-Name Registrations

a. During the Term of the Registry Agreement, where the sponsorship of a domain name is transferred from one ICANN-Accredited Registrar to another ICANN-Accredited Registrar, PIR may require the registrar receiving the sponsorship to request a renewal of one year for the name. In connection with that extension, PIR may charge a Renewal Fee for the requested extension as provided in item 2 above. The transfer shall result in an extension according to the renewal request, subject to a ten-year maximum on the future term of any domain-name registration. The Renewal Fee shall be paid in full at the time of the transfer by the ICANN-Accredited Registrar receiving sponsorship of the domain name.

b. For a bulk transfer approved by ICANN under Part B of Exhibit D to the Registry-Registrar Agreement, Registry Operator may charge the gaining registrar US $0 (for transfers of 50,000 names or fewer) or US $50,000 (for transfers of more than 50,000 names).

4. Low Cost Services in the Public Interest

The services below are intended to enrich the online efforts of the organizations registering .ORG domain names. PIR may charge a fee for these services, as established according to Subsection 3.4.3 of the Registry Agreement.

a. ORGWatch

This service will be available for each domain name, keyword, or associated term ("Watched Terms") monitored. Any changes to the domain name data for the Watched Terms will result in a notification being generated. This is a value-added service for registrants to request from their provider of choice. The service consists of two monitoring services. 1) Monitor for changes to the domain data of an existing domain to improve the security of domain ownership. 2) For intellectual property owners and other interested parties, monitor for the registration of domain names which may infringe on a registered trademark.

b. ORGLock

The ORGLock service, available for each domain name registry lock or unlock request that is fulfilled, intends to provide registrants with the ability to prevent modifications, transfers, or deletions of domain names without explicit permission from the registrant. The service's main purposes are to prevent malicious domain hijacking and domain transfer errors. The registrant will be contacted before any changes are made to their accounts for confirmation of the requested change. The registry, or registrar, under certain special conditions to be determined at a later date, may override an ORGLock.

c. ORGCloak

PIR contemplates providing a service for each domain or other identifying contact object, a service in conjunction with registrars, that allows organizations to protect portions of their Whois information from the general public. This will protect organizations from undesirable effects, such as spamming, and can be useful to organizations that require a level of anonymity (such as free speech or human rights organizations that operate in politically unfriendly countries). This service will also allow individuals to gain a measure of privacy previously unavailable. The Whois data will remain available, under safeguarding policies and procedures, to qualified entities such as law enforcement bodies and UDRP dispute resolution service providers.

This service will be offered with consultation with the ICANN Governmental Advisory Committee and the .ORG Advisory Council to help ensure that the enforcement of intellectual property rights are not compromised.

d. Identity and Trust Services

PIR anticipates offering digital trust services in conjunction with registrars to benefit domain name registrants, including .ORG registrants. For example, Digital certificates will be available at a minimum of the 40-, 56-, and 128-bit encryption levels. Registrants will need to provide appropriate credentials to verify their organization and their right to use their .ORG domain name.

Certificates give the end users of Web sites a higher level of trust, ensure their privacy, and providing a secure mechanism for any online financial transactions.

PIR expects to offer a distribution mechanism (currently, a Secure-Socket Layer (SSL) web server farm) that will hold a registrant's public certifications and public PGP keys, allowing for secure yet easy access to these crucial pieces of identity.

PIR will provide systems that help register the organization's certification, Internet public identity, and its trust association with its registered business identity, and make them publicly available in a secure fashion. (The status of this service as a Registry Service, or not, will be determined by the parties once implementation details become available.)

5. Additional Fee-Based Services

PIR reserves the right to offer and charge a fee for the following services, as stated below or established according to Subsection 3.4.3 of the Registry Agreement:

a. xWhois Services: These services are intended to provide interested entities enhanced access to the .org Whois. These services are described in Appendix O.

b. Multilingual Domain Registrations: As described in Appendix C, the Registry Operator proposes to introduce services supporting Internationalized Domain Names (IDNs) in the future. Proposed implementation details will be provided to ICANN for its review and approval, consistent with ICANN's overall plans for the introduction of IDNs. This service, when introduced, will allow registrants to register domain names in their native language. PIR will take adequate measures to properly deploy multilingual domain name registrations. This service will increase the availability of the Internet and help bridge the digital divide.

The prior registry operator registered RACE-based IDNs. Prior to introduction of the IDN services described immediately above, Registry Operator may (but is not required to) charge for renewal of these legacy IDNs consistent with item 2 above.

c. Secure Domain Name Registrations: PIR contemplates the introduction of an enhanced registration service, offered through ICANN-Accredited Registrars, utilizing secure processing mechanisms for mission critical registrations to provide additional security measures with respect to modifications to domain name information and/or transfers of a domain name. The maximum fee charged will be US $500 per year per domain name.

d. OrgCentral: This service allows Organizations that manage large numbers of domain names, a way to centrally manage domain names, including renewal and tracking in multiple TLDs, global modification of domain names and contacts, and enhanced security with global lockdown service.

e. Messaging Services: This service allows Organizations to subscribe to

messaging services offered by the registry, providing flexibility and ease of use. (The status of this service as a Registry Service, or not, will be determined by the parties once implementation details become available.)

f. Storage Services: This service allows Organizations to simplify their storage requirements and provisioning through a single source. (The status of this service as a Registry Service, or not, will be determined by the parties once implementation details become available.)

6. Non-Fee-Based Services

PIR will offer several new services in addition to the "standard" registry package. We feel these services will enrich the public's online experience - and at no additional cost.

a. ORGRing

PIR intends to provide a program that allows related organizations to provide navigational links to each other, similar to existing Web rings.

b. DotORG Directory

A free listing service that provides summary information about all organizations that are registered in the .ORG domain. Registrants can choose to opt-in (or opt-out), during or after domain name registration.

c. Registrant Auth_Info Code Assistance

If, for any reason, a registrant has difficulty obtaining the Auth_Info Code for their domain, PIR will provide a mechanism to assist them in obtaining their code from their sponsoring registrar. This facility will give the sponsoring registrar an additional access method for the Auth_Info Code by providing the code automatically to the registrar upon request by the registrant, with notification to the registrar and registrant that such code has been sent by PIR.

d. Domain Auto-Renewal

When a domain reaches its expiration date the registry will automatically renew the domain for one additional year. A registrar has the duration of the auto-renewal grace period to delete the domain and receive a refund for the automatic renewal. PIR's policy will restrict the maximum outstanding expiration period to ten years. No extra fee will be charged for the domain auto-renewal service.

7. Fee for Restoring Deleted Domain Name Registrations

PIR may charge registrars the following maximum prices for each Registered Name that is restored pursuant to the Redemption Grace Period Policy set forth in Appendix C to the Registry Agreement:

- The fee for restoring an unintentionally deleted domain name in the Redemption Grace Period must not exceed US $40.00.

PIR will waive the fee for restoring any Registered Name that was deleted, contrary to the wishes of the Registered Name Holder, as the result of a mistake of the Registry Operator.

Note: the fee for restoring deleted names is separate from, and in addition to, any Renewal Fees that may be charged pursuant to Section 2 of this appendix.

8. Fee Adjustments

The fees listed below are subject to adjustment according to the terms of Sections 3.14.5 and 4.4 of the Registry Agreement, and are also subject to adjustment to account for additional charges that PIR may pass through to ICANN-accredited registrars in accordance with the terms of the Registry Agreement.

Fee Table

Fee Type	Maximum Amount	Per Unit	Fee Subject to Adjustment
Registration Fee	US $6.00	Year	Yes, §§3.14.5, 4.4
Renewal Fee	US $6.00	Year	Yes, §§3.14.5, 4.4
ORGWatch	See § 3.4.3	Watched Term	Yes, § 4.4
ORGLock	See § 3.4.3	Lock or unlock request fulfilled	Yes, § 4.4
ORGCloak	See § 3.4.3	Year per domain or object cloaked	Yes, § 4.4
Identity and Trust Services	See § 3.4.3	TBD	Yes, § 4.4
xWhois Services	See § 3.4.3	TBD	Yes, § 4.4
Multilingual Domains	See § 3.4.3	TBD	Yes, § 4.4
Secure Domain Registrations	US $500.00	Year per domain	Yes, § 4.4
OrgCentral	See § 3.4.3	Year per domain	Yes, § 4.4
Messaging Services	See § 3.4.3	TBD	Yes, § 4.4
Storage Services	See § 3.4.3	TBD	Yes, § 4.4
Redemption Grace Period Restore Fee	US$ 40	Per Restore Command/request	Yes, § 4.4

Earlier drafts:

[23 October 2002](#)

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Page Updated 22-Aug-2003

RM 17

.org Registry Agreement

(8 December 2006)

On 8 December 2006, ICANN and Public Interest Registry entered into an Unsponsored Registry Agreement under which Public Interest Registry operates the .org top-level domain. The agreement and its appendices may be viewed by following the links below.

[.org Registry Agreement](#)

[Amendment No. 1 to .ORG Registry Agreement](#)

[Amendment No. 2 to .ORG Registry Agreement](#)

[Amendment No. 3 to .ORG Registry Agreement](#)

[Amendment No. 4 to .ORG Registry Agreement](#)

[Amendment No. 5 to .ORG Registry Agreement](#)

Appendices

- **1:** [Data Escrow Specification](#)
- **2:** [Registry Data Escrow Agreement](#)
- **3:** [Zone File Access Agreement](#)
- **4:** [Registry Operator's Monthly Report](#)
- **5:** [Whois Specifications](#)
- **6:** [List of Reserved TLD Strings](#)
- **7:** [Functional and Performance Specifications](#)
- **8:** [Registry-Registrar Agreement](#) (Registrars are encouraged to print and sign [the PDF version of the RRA](#))
- **9:** [Approved Services](#)
- **10:** [Service Level Agreement](#)

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Page updated 08-Jun-2010

.ORG Registry Agreement

(8 Dec 2006, amended 16 July 2008)

Registry Agreement

This REGISTRY AGREEMENT (this "Agreement") is entered into as of 18 December 2006 by and between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation ("ICANN"), and Public Interest Registry, a Pennsylvania non-profit corporation.

ARTICLE 1 INTRODUCTION

Section 1.1 <u>Effective Date</u>. The Effective Date for purposes of this Agreement shall be 8 December 2006.

Section 1.2 <u>Top-Level Domain</u>. The Top-Level Domain to which this Agreement applies is .org ("TLD").

Section 1.3 <u>Designation as Registry Operator</u>. Upon the Effective Date, until the Expiration Date as defined in Section 4.1 hereof, ICANN shall continue to designate Public Interest Registry as the sole registry operator for the TLD ("Registry Operator").

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

Section 2.1 <u>Registry Operator's Representations and Warranties</u>.

2. 1(a) <u>Organization; Due Authorization and Execution</u>. Registry Operator is a non-profit corporation, duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, and Registry Operator has all requisite power and authority to enter into this Agreement. All corporate approvals and actions necessary for the entrance by Registry Operator into this Agreement have been obtained and this Agreement has been duly and validly executed and delivered by Registry Operator.

2. 1(b) <u>Statements made During Negotiation Process</u>. The factual statements made in writing by both parties in negotiating this Agreement, were true and correct in all material respects at the time. A violation or breach of this subsection shall not be a basis for termination, rescission or other equitable relief, and, instead shall only give rise to a claim for damages.

Section 2.2 <u>ICANN's Representations and Warranties</u>.

2. 2(a) <u>Organization; Due Authorization and Execution</u>. ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of California. ICANN has all requisite corporate power and authority to enter into this Agreement. All corporate approvals and actions necessary for the entrance by ICANN into this Agreement have been obtained and this Agreement has been duly and validly executed and delivered by ICANN.

ARTICLE 3 COVENANTS

Section 3.1 <u>Covenants of Registry Operator</u>. Registry Operator covenants and agrees with ICANN as follows:

3.1(a) <u>Preserve Security and Stability</u>.

3.1(a)(i) ICANN Temporary Specifications or Policies. Registry Operator shall comply with and implement all specifications or policies established by the ICANN Board of Directors on a temporary basis, if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, so long as the ICANN Board of Directors reasonably determines that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the Stability or Security (as defined in Section 3.1(d)(iv)(G)) of Registry Services or the DNS ("Temporary Specification or Policies"). Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any specification or policy under this provision, the ICANN Board of Directors shall state the period of time for which the specification or policy is temporarily adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the temporary specification or policy and why the Board believes the specification or policy should receive the consensus support of Internet stakeholders. If the period of time for which the specification or policy is adopted exceeds 90 days, the ICANN Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such policy in effect until such time as it shall become a Consensus Policy as described in Section 3.1(b) below. If during such one year period, the temporary policy or specification does not become a Consensus Policy meeting the standard set forth in Section 3.1(b) below, Registry Operator shall no longer be required to comply with or implement such temporary policy or specification.

3.1(b) <u>Consensus Policies</u>.

3.1(b)(i) At all times during the term of this Agreement and subject to the terms hereof, Registry Operator will fully comply with and implement all Consensus Policies found at http://www.icann.org/general/consensus-policies.htm, as of the

Effective Date and as may in the future be developed and adopted in accordance with ICANN's Bylaws and as set forth below.

3.1(b)(ii) "Consensus Policies" are those specifications or policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 3.1(b)(iv) below. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with ICANN's Bylaws, and any Consensus Policy that is adopted through such a revised process and covering those topics listed in Section 3.1(b)(iv) below shall be considered a Consensus Policy for purposes of this Agreement.

3.1(b)(iii) For all purposes under this Agreement, the policies identified at http://www.icann.org/general/consensus-policies.htm shall be treated in the same manner and have the same effect as "Consensus Policies."

3.1(b)(iv) Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following: (1) issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, Security and/or Stability of the Internet or DNS; (2) functional and performance specifications for the provision of Registry Services (as defined in Section 3.1(d)(iii) below); (3) Security and Stability of the registry database for the TLD; (4) registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars; or (5) resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names). Such categories of issues referred to in the preceding sentence shall include, without limitation:

3.1(b)(iv)(A) principles for allocation of registered names in the TLD (e.g., first-come, first-served, timely renewal, holding period after expiration);

3.1(b)(iv)(B) prohibitions on warehousing of or speculation in domain names by registries or registrars;

3.1(b)(iv)(C) reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (a) avoidance of confusion among or misleading of users, (b) intellectual property, or (c) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);

3.1(b)(iv)(D) maintenance of and access to accurate and up-todate information concerning domain name

registrations;

3.1(b)(iv)(E) procedures to avoid disruptions of domain name registration due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination; and

3.1(b)(iv)(F) resolution of disputes regarding whether particular parties may register or maintain registration of particular domain names.

3.1(b)(v) In addition to the other limitations on Consensus Policies, they shall not:

3.1(b)(v)(A) prescribe or limit the price of Registry Services;

3.1(b)(v)(B) modify the standards for the consideration of proposed Registry Services, including the definitions of Security and Stability (set forth below) and the standards applied by ICANN;

3.1(b)(v)(C) for two years following the Effective Date, modify the procedure for the consideration of proposed Registry Services;

3.1(b)(v)(D) modify the terms or conditions for the renewal or termination of this Agreement;

3.1(b)(v)(E) modify ICANN's obligations to Registry Operator under Section 3.2 (a), (b), and (c);

3.1(b)(v)(F) modify the limitations on Temporary Specifications or Consensus Policies;

3.1(b)(v)(G) modify the definition of Registry Services;

3.1(b)(v)(H) modify the terms of Sections 7.2 below; or

3.1(b)(v)(I) alter services that have been implemented pursuant to Section 3.1(d) of this Agreement (unless justified by compelling and just cause based on Security and Stability.

3.1(b)(vi) Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Specifications or Policies in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services (as defined in Section 3.1(d)(iii) below), on the one hand, and Consensus Policies

developed in accordance with this Section 3.1(b) or any Temporary Specifications or Policies established pursuant to Section 3.1(a)(i) above, on the other hand, the Consensus Polices or Temporary Specifications or Policies shall control, notwithstanding any other provisions contained within this Agreement.

3. 1(c) <u>Handling of Registry Data</u>.

3.1(c)(i) <u>Data Escrow</u>. Registry Operator shall establish at its expense a data escrow or mirror site policy for the Registry Data compiled by Registry Operator. Registry Data, as used in this Agreement, shall mean the following: (1) data for domains sponsored by all registrars, consisting of domain name, server name for each nameserver, registrar id, updated date, creation date, expiration date, status information, and DNSSEC DS data (if Registry Operator implements DNSSEC); (2) data for nameservers sponsored by all registrars consisting of server name, each IP address, registrar id, updated date, creation date, expiration date, and status information; (3) data for registrars sponsoring registered domains and nameservers, consisting of registrar id, registrar address, registrar telephone number, registrar e-mail address, whois server, referral URL, updated date and the name, telephone number, and e-mail address of all the registrar's administrative, billing, and technical contacts; (4) domain name registrant data collected by the Registry Operator from registrars as part of or following registration of a domain name; and (5) DNSSEC resource records in the zone (if Registry Operator implements DNSSEC).

The escrow agent or mirror-site manager, and the obligations thereof, shall be mutually agreed upon by ICANN and Registry Operator on commercially reasonable standards that are technically and practically sufficient to allow a successor registry operator to assume management of the TLD. To this end, Registry Operator shall periodically deposit into escrow all Registry Data on a schedule (not more frequently than weekly for a complete set of Registry Data, and daily for incremental updates) and in an electronic format mutually approved from time to time by Registry Operator and ICANN, such approval not to be unreasonably withheld by either party. In addition, Registry Operator will deposit into escrow that data collected from registrars as part of offering Registry Services introduced after the Effective Date of this Agreement. The schedule, content, format, and procedure for escrow deposits shall be as reasonably established by ICANN from time to time, and as set forth in Appendix 1 hereto. Changes to the schedule, content, format, and procedure may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall unreasonably withhold) or through the establishment of a Consensus Policy as outlined in Section 3.1(b) above. The escrow shall be held under an agreement, substantially in the form of Appendix 2, as the same may be revised from time to time, among ICANN, Registry Operator, and the escrow agent.

3.1(c)(ii) Personal Data. Registry Operator shall notify registrars sponsoring registrations in the registry for the TLD of the purposes for which Personal Data (as defined below) submitted to Registry Operator by registrars, if any, is collected, the intended recipients (or categories of recipients) of such Personal Data, and the mechanism for access to and correction of such Personal Data. Registry Operator shall take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars. "Personal Data" shall refer to all data about any identified or identifiable natural person.

3.1(c)(iii) Bulk Zone File Access. Registry Operator shall provide bulk access to the zone files for the registry for the TLD to ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time. Bulk access to the zone files shall be provided to third parties on the terms set forth in the TLD zone file access agreement reasonably established by ICANN, which initially shall be in the form attached as Appendix 3 hereto. Changes to the zone file access agreement may be made upon the mutual written consent of ICANN and Registry Operator (which consent neither party shall unreasonably withhold).

3.1(c)(iv) Monthly Reporting. Within 20 days following the end of each calendar month, Registry Operator shall prepare and deliver to ICANN a report providing such data and in the format specified in Appendix 4. ICANN may audit Registry Operator's books and records relating to data contained in monthly reports from time to time upon reasonable advance written notice, provided that such audits shall not exceed one per quarter. Any such audit shall be at ICANN's cost, unless such audit shall reflect a material discrepancy or discrepancies in the data provided by Registry Operator. In the latter event, Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with such audit, which reimbursement shall be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

3.1(c)(v) Whois Service. Registry Operator shall provide such whois data as set forth in Appendix 5.

3. 1(d) <u>Registry Operations</u>.

3.1(d)(i) <u>Registration Restrictions</u>. Registry Operator shall reserve, and not register any TLD strings (i) appearing on the list of reserved TLD strings attached as Appendix 6 hereto or (ii) located at http://data.iana.org/TLD/tlds-alpha-by-domain.txt for initial (i.e., other than renewal) registration at the second level within the TLD.

3.1(d)(ii) <u>Functional and Performance Specifications</u>. Functional and

Performance Specifications for operation of the TLD shall be as set
forth in Appendix 7 hereto, and shall address without limitation DNS
services; operation of the shared registration system; and
nameserver operations. Registry Operator shall keep technical and
operational records sufficient to evidence compliance with such
specifications for at least one year, which records ICANN may audit
from time to time upon reasonable advance written notice, provided
that such audits shall not exceed one per quarter. Any such audit
shall be at ICANN's cost.

3.1(d)(iii) <u>Registry Services</u>. Registry Services are, for purposes of
this Agreement, defined as the following: (a) those services that are
both (i) operations of the registry critical to the following tasks: the
receipt of data from registrars concerning registrations of domain
names and name servers; provision to registrars of status
information relating to the zone servers for the TLD; dissemination
of TLD zone files; operation of the registry zone servers; and
dissemination of contact and other information concerning domain
name server registrations in the TLD as required by this Agreement;
and (ii) provided by the Registry Operator for the .org registry as of
the Effective Date as set forth in Appendix 9; (b) other products or
services that the Registry Operator is required to provide because of
the establishment of a Consensus Policy (as defined in Section
3.1(b) above); (c) any other products or services that only a registry
operator is capable of providing, by reason of its designation as the
registry operator; and (d) material changes to any Registry Service
within the scope of (a), (b) or (c) above.

3.1(d)(iv) <u>Process for Consideration of Proposed Registry Services</u>.
Following written notification by Registry Operator to ICANN that
Registry Operator may make a change in a Registry Service within
the scope of the preceding paragraph:

> 3.1(d)(iv)(A) ICANN shall have 15 calendar days to make
> a "preliminary determination" whether a Registry Service
> requires further consideration by ICANN because it
> reasonably determines such Registry Service: (i) could
> raise significant Security or Stability issues or (ii) could
> raise significant competition issues.

> 3.1(d)(iv)(B) Registry Operator must provide sufficient
> information at the time of notification to ICANN that it
> may implement such a proposed Registry Service to
> enable ICANN to make an informed "preliminary
> determination." Information provided by Registry
> Operator and marked "CONFIDENTIAL" shall be treated
> as confidential by ICANN. Registry Operator will not
> designate "CONFIDENTIAL" information necessary to
> describe the purpose of the proposed Registry Service
> and the effect on users of the DNS.

3.1(d)(iv)(C) ICANN may seek expert advice during the preliminary determination period (from entities or persons subject to confidentiality agreements) on the competition, Security or Stability implications of the Registry Service in order to make its "preliminary determination." To the extent ICANN determines to disclose confidential information to any such experts, it will provide notice to Registry Operator of the identity of the expert(s) and the information it intends to convey.

3.1(d)(iv)(D) If ICANN determines during the 15 calendar day "preliminary determination" period that the proposed Registry Service, does not raise significant Security or Stability (as defined below), or competition issues, Registry Operator shall be free to deploy it upon such a determination.

3.1(d)(iv)(E) In the event ICANN reasonably determines during the 15 calendar day "preliminary determination" period that the Registry Service might raise significant competition issues, ICANN shall refer the issue to the appropriate governmental competition authority or authorities with jurisdiction over the matter within five business days of making its determination, or two business days following the expiration of such 15 day period, whichever is earlier, with notice to Registry Operator. Any such referral communication shall be posted on ICANN's website on the date of transmittal. Following such referral, ICANN shall have no further responsibility, and Registry Operator shall have no further obligation to ICANN, with respect to any competition issues relating to the Registry Service. If such a referral occurs, the Registry Operator will not deploy the Registry Service until 45 calendar days following the referral, unless earlier cleared by the referred governmental competition authority.

3.1(d)(iv)(F) In the event that ICANN reasonably determines during the 15 calendar day "preliminary determination" period that the proposed Registry Service might raise significant Stability or Security issues (as defined below), ICANN will refer the proposal to a Standing Panel of experts (as defined below) within five business days of making its determination, or two business days following the expiration of such 15 day period, whichever is earlier, and simultaneously invite public comment on the proposal. The Standing Panel shall have 45 calendar days from the referral to prepare a written report regarding the proposed Registry Service's effect on Security or Stability (as defined below), which report (along with a summary of any public

comments) shall be forwarded to the ICANN Board. The report shall set forward the opinions of the Standing Panel, including, but not limited to, a detailed statement of the analysis, reasons, and information upon which the panel has relied in reaching their conclusions, along with the response to any specific questions that were included in the referral from ICANN staff. Upon ICANN's referral to the Standing Panel, Registry Operator may submit additional information or analyses regarding the likely effect on Security or Stability of the Registry Service.

3.1(d)(iv)(G) Upon its evaluation of the proposed Registry Service, the Standing Panel will report on the likelihood and materiality of the proposed Registry Service's effects on Security or Stability, including whether the proposed Registry Service creates a reasonable risk of a meaningful adverse effect on Security or Stability as defined below:

Security: For purposes of this Agreement, an effect on security by the proposed Registry Service shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

Stability: For purposes of this Agreement, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs sponsored by the IETF or (2) creates a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs and relying on Registry Operator's delegation information or provisioning services.

3.1(d)(iv)(H) Following receipt of the Standing Panel's report, which will be posted (with appropriate confidentiality redactions made after consultation with Registry Operator) and available for public comment, the ICANN Board will have 30 calendar days to reach a decision. In the event the ICANN Board reasonably

determines that the proposed Registry Service creates a reasonable risk of a meaningful adverse effect on Stability or Security, Registry Operator will not offer the proposed Registry Service. An unredacted version of the Standing Panel's report shall be provided to Registry Operator upon the posting of the report. The Registry Operator may respond to the report of the Standing Panel or otherwise submit to the ICANN Board additional information or analyses regarding the likely effect on Security or Stability of the Registry Service.

3.1(d)(iv)(I) The Standing Panel shall consist of a total of 20 persons expert in the design, management and implementation of the complex systems and standards-protocols utilized in the Internet infrastructure and DNS (the "Standing Panel"). The members of the Standing Panel will be selected by its Chair. The Chair of the Standing Panel will be a person who is agreeable to both ICANN and the registry constituency of the supporting organization then responsible for generic top level domain registry policies. All members of the Standing Panel and the Chair shall execute an agreement requiring that they shall consider the issues before the panel neutrally and according to the definitions of Security and Stability. For each matter referred to the Standing Panel, the Chair shall select no more than five members from the Standing Panel to evaluate the referred matter, none of which shall have an existing competitive, financial, or legal conflict of interest, and with due regard to the particular technical issues raised by the referral.

3. 1(e) <u>Fees and Payments</u>. Registry Operator shall pay the Registry-Level Fees to ICANN on a quarterly basis in accordance with Section 7.2 hereof.

3. 1(f) <u>Traffic Data</u>. Nothing in this Agreement shall preclude Registry Operator from making commercial use of, or collecting, traffic data regarding domain names or non-existent domain names for purposes such as, without limitation, the determination of the availability and health of the Internet, pinpointing specific points of failure, characterizing attacks and misconfigurations, identifying compromised networks and hosts and promoting the sale of domain names, provided however, that such use does not permit Registry Operator to disclose domain name registrant or end-user information or other Personal Data as defined in Section 3.1(c)(ii) that it collects through providing domain name registration services for any purpose not otherwise authorized by this agreement. In this regard, in the event the TLD registry is a "thick" registry model, the traffic data that may be accessible to and used by Registry Operator shall be limited to the data that would be accessible to a registry operated under a "thin" registry model. The process for the introduction of new Registry Services shall not apply to such traffic data. Nothing contained in this section 3.1(f) shall be deemed to constitute consent or acquiescence by ICANN to an

introduction by Registry Operator of a service employing a universal wildcard function. To the extent that traffic data subject to this provision is made available, access shall be on terms that are nondiscriminatory.

3.1(g) <u>Cooperation</u>. The parties agree to cooperate with each other and share data as necessary to accomplish the terms of this Agreement.

Section 3.2 <u>Covenants of ICANN</u>. ICANN covenants and agrees with Registry Operator as follows:

3.2(a) <u>Open and Transparent</u>. Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2(b) <u>Equitable Treatment</u>. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.2(c) <u>TLD Zone Servers</u>. In the event and to the extent that ICANN is authorized to set policy with regard to an authoritative root server system, it will use best efforts to ensure that (i) the authoritative root will point to the TLD zone servers designated by Registry Operator for the Registry TLD throughout the Term of this Agreement; and (ii) any changes to the TLD zone server designation submitted to ICANN by Registry Operator will be implemented by ICANN within seven days of submission.

3.2(d) <u>Nameserver Changes</u>. Registry Operator may request changes in the nameserver delegation for the Registry TLD. Any such request must be made in a format, and otherwise meet technical requirements, specified from time to time by ICANN. ICANN will use commercially reasonable efforts to have such requests implemented in the Authoritative Root-Server System within seven calendar days of the submission.

3.2(e) <u>Root-zone Information Publication</u>. ICANN's publication of root-zone contact information for the Registry TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN.

ARTICLE 4 TERM OF AGREEMENT

Section 4.1 <u>Term</u>. The initial term of this Agreement shall expire on 30 June 2013, the "Expiration Date," as extended by any renewal terms.

Section 4.2 <u>Renewal</u>. This Agreement shall be renewed upon the expiration of the term set forth in Section 4.1 above and each later term, unless the following has occurred: (i) following notice of breach to Registry Operator in accordance with Section 6.1 and failure to cure such breach within the time period prescribed in Section 6.1, an arbitrator or court has determined that Registry Operator has been in fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); Section 5.2 and (ii) following the final decision of such arbitrator or court, Registry Operator has failed to comply within ten days with the decision of the arbitrator or court, or within such other time

period as may be prescribed by the arbitrator or court. Upon renewal, in the event that the terms of this Agreement are not similar to the terms generally in effect in the Registry Agreements of the 5 most reasonably comparable gTLDs (provided however that if less than five gTLDs are reasonably comparable, then comparison shall be made with such lesser number, and .biz, .com, .info and .net are hereby deemed comparable), renewal shall be upon terms reasonably necessary to render the terms of this Agreement similar to such terms in the Registry Agreements for those other gTLDs. The preceding sentence, however, shall not apply to the terms of this Agreement regarding the standards for the consideration of proposed Registry Services, including the definitions of Security and Stability and the standards applied by ICANN in the consideration process; the terms or conditions for the renewal or termination of this Agreement; ICANN's obligation to Registry Operator under Section 3.2(a), (b) and (c); the limitations on Consensus Policies or Temporary Specifications or Policies; or the definition of Registry Services. In addition, upon renewal, registry fees payable to ICANN may be reasonably modified so long as any increase in such fees shall not exceed the average of the percentage increase in registry fees for the five most reasonably comparable TLDs (or such lesser number as provided above) during the prior three year period.

Section 4.3 <u>Changes</u>. While this Agreement is in effect, the parties agree to engage in good faith negotiations at regular intervals (at least once every three calendar years following the Effective Date) regarding possible changes to the terms of the Agreement, including to Section 7.2 regarding fees and payments to ICANN. In addition, ICANN shall consider and discuss with Registry Operator other appropriate changes to pricing and related terms under the Agreement in the event ICANN shall obtain further independent data from professional experts providing analysis of the pricing of domain name registrations and competitive market considerations. The failure by Registry Operator to agree to an increase in registry fees or other terms shall not constitute a violation of this provision.

Section 4.4 <u>Failure to Perform in Good Faith</u>. In the event Registry Operator shall have been repeatedly and willfully in fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); Section 5.2, and arbitrators in accordance with Section 5.1(b) of this Agreement repeatedly have found Registry Operator to have been in fundamental and material breach of this Agreement, including in at least three separate awards, then the arbitrators shall award such punitive, exemplary or other damages as they may believe appropriate under the circumstances.

ARTICLE 5 DISPUTE RESOLUTION

Section 5.1 <u>Resolution of Disputes</u>.

> 5. 1(a) <u>Cooperative Engagement</u>. In the event of a disagreement between Registry Operator and ICANN arising under or out of this Agreement, either party may by notice to the other invoke the dispute resolution provisions of this Article V. Provided, however, that before either party may initiate arbitration as provided in Section 5.1(b) below, ICANN and Registry Operator must attempt to resolve the dispute by cooperative engagement as set forth in this Section 5.1(a). If either party provides written notice to the other demanding cooperative engagement as set forth in this Section 5.1(a), then each party will, within seven calendar days after such written notice is deemed received in accordance with Section 8.6 hereof, designate a single executive officer as its

representative under this Section 5.1(a) with full authority to act on such party's behalf to resolve the dispute. The designated representatives shall, within 2 business days after being designated, confer by telephone or in person to attempt to resolve the dispute. If they are not able to resolve the dispute during such telephone conference or meeting, they shall further meet in person at a location reasonably designated by ICANN within 7 calendar days after such initial telephone conference or meeting, at which meeting the parties shall attempt to reach a definitive resolution. The time schedule and process set forth in this Section 5.1(a) may be modified with respect to any dispute, but only if both parties agree to a revised time schedule or process in writing in advance. Settlement communications within the scope of this paragraph shall be inadmissible in any arbitration or litigation between the parties.

5. 1(b) <u>Arbitration</u>. Disputes arising under or in connection with this Agreement, including requests for specific performance, shall be resolved through binding arbitration conducted as provided in this Section 5.1(b) pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted in the English language and shall occur in Los Angeles County, California, USA only following the failure to resolve the dispute pursuant to cooperative engagement discussions as set forth in Section 5.1(a) above. There shall be three arbitrators: each party shall choose one arbitrator and, if the two arbitrators are not able to agree on a third arbitrator, the third shall be chosen by the ICC. The prevailing party in the arbitration shall have the right to recover its costs and reasonable attorneys' fees, which the arbitrators shall include in their awards. Any party that seeks to confirm or vacate an arbitration award issued under this Section 5.1(b) may do so only pursuant to the applicable arbitration statutes. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles County, California, USA; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction. For the purpose of aiding the arbitration and/or preserving the rights of the parties during the pendency of arbitration, the parties shall have the right to seek a temporary stay or injunctive relief from the arbitration panel or a court, which shall not be a waiver of this agreement to arbitrate.

Section 5.2 <u>Specific Performance</u>. 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 arbitrators specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

Section 5.3 Limitation of Liability. ICANN's aggregate monetary liability for violations of this Agreement shall not exceed the amount of Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement. Registry Operator's aggregate monetary liability to ICANN for violations of this Agreement shall be limited to fees, and monetary penalties, if any, due and owing to ICANN under this Agreement within the preceding twelve-month period. In no event shall either party be liable for special, indirect, incidental, 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 pursuant to Section 4.4 of

this Agreement. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, REGISTRY OPERATOR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED BY ITSELF, ITS SERVANTS, OR ITS AGENTS OR THE RESULTS OBTAINED FROM THEIR WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 6 TERMINATION PROVISIONS

Section 6.1 <u>Termination by ICANN</u>. ICANN may terminate this Agreement if and only if: (i) Registry Operator fails to cure any fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); or Section 5.2 within thirty (30) calendar days after ICANN gives Registry Operator written notice of the breach, which notice shall include with specificity the details of the alleged breach; and (ii) (a) an arbitrator or court has finally determined that Registry Operator is, or was, in fundamental and material breach and failed to cure such breach within the prescribed time period and (b) following the decision of such arbitrator or court, Registry Operator has failed to comply with the decision of the arbitrator or court.

Section 6.2 <u>Bankruptcy</u>. This Agreement shall automatically terminate in the event Registry Operator shall voluntarily or involuntarily be subject to bankruptcy proceedings, and, in the event of involuntary proceedings, such proceedings are not dismissed within 60 days.

Section 6.3 <u>Transition of Registry upon Termination of Agreement</u>. Upon any termination of this Agreement as provided in Sections 6.1 and 6.2, the parties agree to work cooperatively to facilitate and implement the transition of the registry for the TLD in accordance with this Section 6.3. Registry Operator shall agree to provide ICANN or any successor registry authority that may be designated for the TLD with any data regarding operations of the registry for the TLD necessary to maintain operations that may be reasonably requested in addition to that data escrowed in accordance with Section 3.1(c)(i) hereof.

Section 6.4 <u>Rights in Data</u>. Registry Operator shall not be entitled to claim any intellectual property rights in Registry Data. In the event that Registry Data is released from escrow as set forth in Section 3.1(c)(i), rights, if any, held by Registry Operator in the data shall automatically be licensed on a non-exclusive, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.

Section 6.5 <u>No Reimbursement</u>. Any and all expenditures, capital investments or other investments made by Registry Operator in connection with this Agreement shall be at Registry Operator's own risk and ICANN shall have no obligation to reimburse Registry Operator for any such expense, capital expenditure or investment. Registry Operator shall not be required to make any payments to a successor registry operator by reason of registry fees paid to Registry Operator prior to the effective date of (i) any termination or expiration of this Agreement or (ii) transition of the registry, unless any delay in transition of the registry to a successor operator shall be due to the actions of Registry Operator.

ARTICLE 7 SPECIAL PROVISIONS

Section 7.1 <u>Registry-Registrar Agreement</u>.

7. 1(a) <u>Access to Registry Services</u>. Registry Operator shall make access to Registry Services, including the shared registration system, available to all ICANN-accredited registrars, subject to the terms of the Registry-Registrar Agreement attached as Appendix 8 hereto. Registry Operator shall provide all ICANN-accredited registrars following execution of the Registry-Registrar Agreement, provided registrars are in compliance with such agreement, operational access to Registry Services, including the shared registration system for the TLD. Such nondiscriminatory access shall include without limitation the following:

7.1(a)(i) All registrars (including any registrar affiliated with Registry Operator, if any) can connect to the shared registration system gateway for the TLD via the Internet by utilizing the same maximum number of IP addresses and SSL certificate authentication;

7.1(a)(ii) Registry Operator has made the current version of the registrar toolkit software accessible to all registrars and has made any updates available to all registrars on the same schedule;

7.1(a)(iii) All registrars have equivalent access to customer support personnel via telephone, e-mail and Registry Operator's website;

7.1(a)(iv) All registrars have equivalent access to registry resources to resolve registry/registrar or registrar/registrar disputes and technical and/or administrative customer service issues;

7.1(a)(v) All registrars have equivalent access to data generated by Registry Operator to reconcile their registration activities from Registry Operator's Web and ftp servers;

7.1(a)(vi) All registrars may perform basic automated registrar account management functions using the same registrar tool made available to all registrars by Registry Operator; and

7.1(a)(vii) The shared registration system does not include, for purposes of providing discriminatory access, any algorithms or protocols that differentiate among registrars with respect to functionality, including database access, system priorities and overall performance.

Such Registry-Registrar Agreement may be revised by Registry Operator from time to time, provided however, that any such revisions must be approved in advance by ICANN.

7.1(b) <u>Registry Operator Shall Not Act as Own Registrar</u>. Registry Operator shall not act as a registrar with respect to the TLD. This shall not preclude Registry Operator from registering names within the TLD to itself through a request made to an ICANN-accredited registrar.

7.1(c) <u>Restrictions on Acquisition of Ownership or Controlling Interest in Registrar</u>. Registry Operator shall not acquire, directly or indirectly, control of, or a greater than fifteen percent ownership interest in, any ICANN-accredited

registrar.

Section 7.2 <u>Fees to be Paid to ICANN</u>.

7.2(a) <u>Registry-Level Transaction Fee</u>.

7.2(a)(i) Commencing with the Effective Date of the Agreement through June 30, 2007, Registry Operator shall pay ICANN a fee calculated pursuant to Section 3.14 of the Registry Agreement previously entered into between Registry Operator and ICANN dated 25 May 2001. Commencing on July 1, 2007, Registry Operator shall pay ICANN a Registry-Level Fee. Subject to Sections 7.2(a)(ii) and (iii) below, such fee shall equal the Transaction Fee set forth in the table below multiplied by the number of annual increments of an initial or renewal domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) during the applicable calendar quarter:

YEAR	TRANSACTION FEE
1 July 2007 to 30 June 2008	US$0.15
1 July 2008 to 30 June 2009	US$0.15
1 July 2009 to 30 June 2010	US$0.20
1 July 2010 to 30 June 2011	US$0.20
1 July 2011 to 30 June 2012	US$0.25
1 July 2012 to 30 June 2013	US$0.25

7.2(a)(ii) Commencing in 2009, for calendar quarters during the Term for which the average annual price of registrations during the quarter is between US$3.01 and US$4.99, the Registry-Level Fee shall be the lesser of (a) the transaction fee provided in 7.2(a)(1) or (b) US$0.15 plus US $0.01 for each increase by US$0.20 above $3.01 in the average price of domain name registrations, multiplied by the number of annual increments of an initial or renewal domain name registration during such quarter (including renewals associated with transfers from one ICANN-accredited registrar to another); and

7.2(a)(iii) Following two consecutive calendar quarters during which the average annual price of registrations during the quarter is US$3.00 or less (disregarding for these purposes any registry-

offered discounts or marketing incentives having the short term effect of lowering the average annual price of domain name registrations), Registry Operator may request the parties enter good-faith negotiations to review and renegotiate the fee obligation considering all relevant factors including but not limited to Registry Operator's business needs as well as ICANN's financial requirements.

7.2(b) <u>Payment Schedule</u>. Registry Operator shall pay the Registry-Level Fees specified in Section 7.2(a) and Section 7.2(c), if applicable, by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.

7.2(c) <u>Variable Registry-Level Fee</u>. For fiscal quarters in which ICANN does not collect a variable accreditation fee from all registrars, upon receipt of written notice from ICANN, Registry Operator shall pay ICANN a Variable Registry-Level Fee. The fee will be calculated by ICANN, paid to ICANN by the Registry Operator in accordance with the Payment Schedule in Section 7.2(b), and the Registry Operator will invoice and collect the fees from the registrars who are party to a Registry-Registrar Agreement with Registry Operator. The fee will consist of two components; each component will be calculated by ICANN for each registrar:

7.2(c)(i) The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year but shall not exceed US $0.25.

7.2(c)(ii) The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year, but the sum of the per- registrar fees calculated for all registrars shall not exceed the total Per- Registrar Variable funding established pursuant to the approved 2004- 2005 ICANN Budget.

Provided, however, that Registry Operator shall only be required to pay the fees set forth in Paragraph (c) above, in the event that ICANN elects to collect the Variable Registry-Level Fee from all ICANN-Accredited Registrars. For the avoidance of doubt, Registry Operator shall not required to collect the per-registrar component of the Variable Registry-Level Fee from any registrar unless it is required to do so for all registrars.

7.2(d) <u>Interest on Late Payments</u>. For any payments thirty days or more overdue pursuant to Section 7.2(a), Registry Operator shall pay interest on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

Section 7.3. <u>Pricing for Domain Name Registrations and Registry Services</u>.

(a) <u>Pricing</u>. From the Effective Date through six (6) months following the Effective Date, the price to ICANN-accredited registrars for new and renewal domain name registrations and for transferring a domain name registration from one ICANN-accredited registrar to another, shall not exceed a total fee of US$6.00 (the "Maximum Service Fee"). Commencing on 1 January 2007, the Maximum Service Fee charged during a calendar year for each annual increment of a new and renewal domain name registration and for transferring a domain name registration from one ICANN-accredited registrar to another, may not exceed the Maximum Service Fee during the preceding calendar year multiplied by 1.10. The same Service Fee shall be charged to all ICANN-accredited registrars for new and renewal domain name registrations. Volume discounts and marketing support and incentive programs may be made if the same opportunities to qualify for those discounts and marketing support and incentive programs is available to all ICANN-accredited registrars.

(b) <u>Adjustments to Pricing for Domain Name Registrations</u>. Registry Operator shall provide no less than six months prior notice in advance of any price increase for domain name registrations and shall continue to offer domain name registrations for periods of up to ten years. Registry Operator is not required to give notice of the imposition of the Variable Registry-Level Fee set forth in Section 7.2(c).

ARTICLE 8 MISCELLANEOUS

Section 8.1 <u>Indemnification of ICANN</u>.

8. 1(a) Registry Operator shall indemnify, defend, and hold harmless ICANN (including its directors, officers, employees, and agents) 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: (a) ICANN's reliance, in connection with its decision to delegate the TLD to Registry Operator or to enter into this Agreement, on information provided by Registry Operator in its application for the TLD; (b) Registry Operator's establishment or operation of the registry for the TLD; (c) Registry Operator's provision of Registry Services; (d) collection or handling of Personal Data by Registry Operator; (e) any dispute concerning registration of a domain name within the domain of the TLD for the registry; and (f) duties and obligations of Registry Operator in operating the registry for the TLD; provided that Registry Operator shall not be obligated to indemnify, defend, or hold harmless ICANN to the extent the claim, damage, liability, cost, or expense arose due to a breach by ICANN of any obligation contained in this Agreement. For avoidance of doubt, nothing in this Section 8.1 shall be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for the costs associated with the negotiation or execution of this Agreement, or with the monitoring or management of the parties' respective obligations under this Agreement. 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.

8.1(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the actions or omissions that gave rise to the claim, Registry Operator's aggregate liability to

indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN's total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Section 7.2 hereof for any applicable quarter) by the total number of domain names under registration within all TLDs for which the registry operators thereof that are engaging in the same acts or omissions giving rise to such claim. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims above, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN at set forth in 8.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence.

Section 8.2 <u>Indemnification Procedures</u>. If any third-party claim is commenced that is indemnified under Section 8.1 above, notice thereof shall be given to ICANN as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to the indemnified party to handle and defend the same, at the indemnifying party's sole cost and expense, provided that in all events ICANN shall be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN policies or conduct. ICANN shall cooperate, at its own cost, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising there from; provided, however, that the indemnified party may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising there from. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is indemnified shall be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section, Registry Operator may participate in such defense, at its sole cost and expense, and ICANN shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator.

Section 8.3 <u>No Offset</u>. All payments due under this Agreement shall be made in a timely manner throughout the term of this Agreement and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

Section 8.4 <u>Use of ICANN Name and Logo</u>. ICANN grants to Registry Operator a nonexclusive royalty-free license to state that it is designated by ICANN as the Registry Operator for the Registry TLD and to use a logo specified by ICANN to signify that Registry Operator is an ICANN-designated registry authority. This license may not be assigned or sublicensed by Registry Operator.

Section 8.5 <u>Assignment and Subcontracting</u>. Any assignment of this Agreement shall be effective only upon written agreement by the assignee with the other party to assume the assigning party's obligations under this Agreement. Moreover, neither party may assign this Agreement without the prior written approval of the other party, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement (i) in conjunction with a reorganization or re-incorporation of ICANN, to another nonprofit corporation organized for the same or substantially the same purposes, or (ii) as may be required pursuant to the terms of that certain Memorandum of Understanding

between ICANN and the U.S. Department of Commerce, as the same may be amended from time to time. Registry Operator shall not subcontract portions of the technical operations of the Registry TLD accounting for more than 80% of the aggregate of all Registry TLD operations without ICANN's prior consent in writing. ICANN hereby consents to the continuation of PIR's arrangements with Afilias Limited as PIR's back-end registry services operator. Any such party to whom technical operations may be subcontracted shall comply with Registry Operator's data escrow obligations under Appendix 2. When ICANN's consent to any subcontracting of technical operations under this Section 8.5 is requested, ICANN shall use commercially reasonable best efforts to respond within 15 business days of the receipt of the request from Registry Operator, accompanied by all supporting information and documentation necessary for ICANN to evaluate the request. Such consent by ICANN shall not be unreasonably withheld.

Section 8.6 <u>Amendments and Waivers</u>. No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both 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.

Section 8.7 <u>No Third-Party Beneficiaries</u>. This Agreement shall not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

Section 8.8 <u>Notices, Designations, and Specifications</u>. All notices to be given under or in relation to this Agreement shall 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. Any change in the contact information for notice below shall be given by the party within 30 days of such change. Any notice required by this Agreement shall 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. Whenever this Agreement shall specify a URL address for certain information, Registry Operator shall be deemed to have been given notice of any such information when electronically posted at the designated URL. In the event other means of notice shall become practically achievable, such as notice via a secure website, the parties shall work together to implement such notice means under this Agreement.

    If to ICANN, addressed to:
    Internet Corporation for Assigned Names and Numbers
    4676 Admiralty Way, Suite 330
    Marina Del Rey, California 90292
    Telephone: 1-310-823-9358
    Facsimile: 1-310-823-8649
    Attention: President and CEO
    With a Required Copy to: General Counsel
    Email: (As specified from time to time.)

    If to Registry Operator, addressed to:

Public Interest Registry
1775 Wiehle Avenue, Suite 102A
Reston, VA 20190
Telephone: +1 703-464-7005
Facsimile: +1 703-464-7006
Attention: President and Chief Executive Officer Email: (As specified from time
to time.)

Section 8.9 <u>Language</u>. Notices, designations, determinations, and specifications made
under this Agreement shall be in the English language.

Section 8.10 <u>Counterparts</u>. This Agreement may be executed in one or more counterparts,
each of which shall be deemed an original, but all of which together shall constitute one
and the same instrument.

Section 8.11 <u>Entire Agreement</u>. This Agreement (including its Appendices, which form a
part of it) constitutes the entire agreement of the parties hereto pertaining to the operation
of the TLD and supersedes all prior agreements, understandings, negotiations and
discussions, whether oral or written, between the parties on that subject. In the event of a
conflict between the provisions in the body of this Agreement and any provision in its
Appendices, the provisions in the body of the Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
    Dr. Paul Twomey
    President and CEO
Date:

PUBLIC INTEREST REGISTRY

By: _____
    Edward G. Viltz
    President and CEO
Date:

Comments concerning the layout, construction and functionality of this site
should be sent to webmaster@icann.org.

Page Updated 3-Jan-2007

RM 18

Registry Agreement

This REGISTRY AGREEMENT (this "Agreement") is entered into by and between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation ("ICANN"), and Public Interest Registry, a nonprofit Pennsylvania corporation.

ARTICLE 1 INTRODUCTION

Section 1.1 <u>Effective Date</u>. The Effective Date for purposes of this Agreement shall be 22 August 2013.

Section 1.2 <u>Top-Level Domain</u>. The Top-Level Domain to which this Agreement applies is.org ("TLD").

Section 1.3 <u>Designation as Registry Operator</u>. Upon the Effective Date, and throughout the Term (as defined in Section 4.1 hereof) of this Agreement, unless earlier terminated pursuant to Article 6 hereof, ICANN shall continue to designate Public Interest Registry as the sole registry operator for the TLD ("Registry Operator").

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

Section 2.1 Registry Operator's Representations and Warranties.

2.1 (a) <u>Organization; Due Authorization and Execution</u>. Registry Operator is a corporation, duly organized, validly existing and in good standing under the laws of Pennsylvania, and Registry Operator has all requisite power and authority to enter into this Agreement. All corporate approvals and actions necessary for the entrance by Registry Operator into this Agreement have been obtained and this Agreement has been duly and validly executed and delivered by Registry Operator.

2.1 (b) <u>Statements made During Negotiation Process</u>. The factual statements made in writing by both Parties in negotiating this Agreement, were true and correct in all material respects at the time made. A violation or breach of this subsection shall not be a basis for termination, rescission or other equitable relief, and, instead shall only give rise to a claim for damages.

Section 2.2 <u>ICANN's Representations and Warranties</u>.

2.2 (a) <u>Organization; Due Authorization and Execution</u>. ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of California. ICANN has all requisite corporate power and authority to enter into this Agreement. All corporate approvals and actions necessary for the entrance by ICANN into this Agreement have been obtained and this Agreement has been duly and validly executed and delivered by ICANN.

ARTICLE 3 COVENANTS

Section 3.1 <u>Covenants of Registry Operator</u>. Registry Operator covenants and agrees with ICANN as follows:

3.1 (a) <u>Preserve Security and Stability</u>.

3.1 (a)(i) ICANN Temporary Specifications or Policies. Registry Operator shall comply with and implement all specifications or policies established by the ICANN Board of Directors on a temporary basis, if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, so long as the ICANN Board of Directors reasonably determines that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the Stability or Security (as defined in Section 3.1(d)(iv)(G)) of Registry Services or the DNS ("Temporary Specification or Policies"). Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any specification or policy under this provision, the ICANN Board of Directors shall state the period of time for which the specification or policy is temporarily adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons

for adopting the temporary specification or policy and why the Board believes the specification or policy should receive the consensus support of Internet stakeholders. If the period of time for which the specification or policy is adopted exceeds 90 days, the ICANN Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such policy in effect until such time as it shall become a Consensus Policy as described in Section 3.1(b) below. If during such one year period, the temporary policy or specification does not become a Consensus Policy meeting the standard set forth in Section 3.1(b) below, Registry Operator shall no longer be required to comply with or implement such temporary policy or specification.

3.1 (b) Consensus Policies.

3.1 (b)(i) At all times during the term of this Agreement and subject to the terms hereof, Registry Operator will fully comply with and implement all Consensus Policies found at http://www.icann.org/general/consensus-policies.htm, as of the Effective Date and as may in the future be developed and adopted in accordance with ICANN's Bylaws and as set forth below.

3.1 (b)(ii) "Consensus Policies" are those specifications or policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 3.1(b)(iv) below. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with ICANN's Bylaws, and any Consensus Policy that is adopted through such a revised process and covering those topics listed in Section 3.1(b)(iv) below shall be considered a Consensus Policy for purposes of this Agreement.

3.1 (b)(iii) For all purposes under this Agreement, the policies identified at http://www.icann.org/en/general/consensus-policies.htm shall be treated in the same manner and have the same effect as "Consensus Policies."

3.1 (b)(iv) Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following: (1) issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, Security and/or Stability of the Internet or DNS; (2) functional and performance specifications for the provision of Registry Services (as defined in Section 3.1(d)(iii) below); (3) Security and Stability of the registry database for the TLD; (4) registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars; or (5) resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names). Such categories of issues referred to in the preceding sentence shall include, without limitation:

3.1 (b)(iv)(A) principles for allocation of registered names in the TLD (e.g., first-come, first-served, timely renewal, holding period after expiration);

3.1 (b)(iv)(B) prohibitions on warehousing of or speculation in domain names by registries or registrars;

3.1 (b)(iv)(C) reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (a) avoidance of confusion among or misleading of users, (b) intellectual property, or (c) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);

3.1 (b)(iv)(D) maintenance of and access to accurate and up-to-date information concerning domain name registrations;

3.1 (b)(iv)(E) procedures to avoid disruptions of domain name registration due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination; and

3.1 (b)(iv)(F) resolution of disputes regarding whether particular parties may register or maintain registration of particular domain names.

3.1 (b)(v) In addition to the other limitations on Consensus Policies, they shall not:

3.1 (b)(v)(A) prescribe or limit the price of Registry Services;

3.1 (b)(v)(B) modify the standards for the consideration of proposed Registry Services, including the definitions of Security and Stability (set forth below) and the standards applied by ICANN;

3.1 (b)(v)(C) modify the terms or conditions for the renewal or termination of this Agreement;

3.1 (b)(v)(D) modify ICANN's obligations to Registry Operator under Section 3.2 (a), (b), and (c);

3.1 (b)(v)(E) modify the limitations on Consensus Policies or Temporary Specifications or Policies;

3.1 (b)(v)(F) modify the definition of Registry Services;

3.1 (b)(v)(G) modify the terms of Sections 7.2 below; or

3.1 (b)(v)(H) alter services that have been implemented pursuant to Section 3.1(d) of this Agreement (unless justified by compelling and just cause based on Security and Stability.

3.1 (b)(vi) Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Specifications or Policies in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services (as defined in Section 3.1(d)(iii) below), on the one hand, and Consensus Policies developed in accordance with this Section 3.1(b) or any Temporary Specifications or Policies established pursuant to Section 3.1(a)(i) above, on the other hand, the Consensus Polices or Temporary Specifications or Policies shall control, notwithstanding any other provisions contained within this Agreement.

3.1 (c) <u>Handling of Registry Data</u>.

3.1 (c)(i) <u>Data Escrow</u>. Registry Operator shall establish at its expense a data escrow or mirror site policy for the Registry Data compiled by Registry Operator. Registry Data, as used in this Agreement, shall mean the following: (1) data for domains sponsored by all registrars, consisting of domain name, server name for each nameserver, registrar id, updated date, creation date, expiration date, status information, and DNSSEC delegation signer ("DS") data; (2) data for nameservers sponsored by all registrars consisting of server name, each IP address, registrar id, updated date, creation date, expiration date, and status information; (3) data for registrars sponsoring registered domains and nameservers, consisting of registrar id, registrar address, registrar telephone number, registrar e-mail address, whois server, referral URL, updated date and the name, telephone number, and e-mail address of all the registrar's administrative, billing, and technical contacts; and (4) domain name registrant data collected by the Registry Operator from registrars as part of or following registration of a domain name. The escrow agent or mirror-site manager, and the obligations thereof, shall be mutually agreed upon by ICANN and Registry Operator on commercially reasonable standards that are technically and practically sufficient to allow a successor registry operator to assume management of the TLD. To this end, Registry Operator shall periodically deposit into escrow all Registry Data on a schedule (not more frequently than weekly for a complete set of Registry Data, and daily for incremental updates) and in an electronic format mutually approved from time to time by Registry Operator and ICANN, such approval not to be unreasonably withheld by either party. In addition, Registry Operator will deposit into escrow that data collected from registrars as part of offering Registry Services introduced after the Effective Date of this Agreement. The schedule, content, format, and procedure for escrow deposits shall be as reasonably established by ICANN from time to time, and as set forth in Appendix 1 hereto. Changes to the schedule, content, format, and procedure may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall unreasonably withhold) or through the establishment of a Consensus Policy as outlined in Section 3.1(b) above. The escrow shall be held under an agreement, substantially in the form of Appendix 2, as the same may be revised from time to time, among ICANN, Registry Operator, and the escrow agent.

3.1 (c)(ii) <u>Personal Data</u>. Registry Operator shall notify registrars sponsoring registrations in the registry for the

TLD of the purposes for which Personal Data (as defined below) submitted to Registry Operator by registrars, if any, is collected, the intended recipients (or categories of recipients) of such Personal Data, and the mechanism for access to and correction of such Personal Data. Registry Operator shall take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars. "Personal Data" shall refer to all data about any identified or identifiable natural person.

3.1 (c)(iii) <u>Bulk Zone File Access</u>. Registry Operator shall provide bulk access to the zone files for the registry for the TLD to ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time. Bulk access to the zone files shall be provided to third parties on the terms set forth in the TLD zone file access agreement reasonably established by ICANN, which initially shall be in the form attached as Appendix 3 hereto. Changes to the zone file access agreement may be made upon the mutual written consent of ICANN and Registry Operator (which consent neither party shall unreasonably withhold).

3.1 (c)(iv) <u>Monthly Reporting</u>. Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall prepare and deliver to ICANN a report providing such data and in the format specified in Appendix 4.

3.1 (c)(v) <u>Whois Service</u>. Registry Operator shall provide such whois data as set forth in Appendix 5. Whois output shall be compatible with ICANN's common interface for whois (InterNIC) as such interface exists as of the Effective Date of this Agreement. If requested by ICANN, Registry Operator shall provide a link on the primary website for the TLD to a web page designated by ICANN containing WHOIS policy and education materials.

3.1 (d) <u>Registry Operations</u>.

3.1 (d)(i) <u>Registration Restrictions</u>.

3.1 (d)(i) Registry Operator shall reserve, and not register any TLD strings (a) appearing on the list of reserved TLD strings attached as Appendix 6 hereto or (b) located at http://data.iana.org/TLD/tlds-alpha-by-domain.txt for initial (i.e., other than renewal) registration at the second level within the TLD.

3.1 (d)(ii) <u>Functional and Performance Specifications</u>. Functional and Performance Specifications for operation of the TLD shall be as set forth in Appendix 7 hereto, and shall address without limitation DNS services; operation of the shared registration system; and nameserver operations. Registry Operator shall keep technical and operational records sufficient to evidence compliance with such specifications for at least one year.

3.1 (d)(iii) <u>Registry Services</u>. Registry Services are, for purposes of this Agreement, defined as the following: (a) those services that are both (i) operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; and (ii) provided by the Registry Operator for the.org registry as of the Effective Date as set forth on Appendix 9; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy (as defined in Section 3.1(b) above); (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

3.1 (d)(iv) <u>Process for Consideration of Proposed Registry Services</u>. Following written notification by Registry Operator to ICANN that Registry Operator may make a change in a Registry Service within the scope of the preceding paragraph:

3.1 (d)(iv)(A) ICANN shall have 15 calendar days to make a "preliminary determination" whether a Registry Service requires further consideration by ICANN because it reasonably determines such Registry Service: (i) could raise significant Security or Stability issues or (ii) could raise significant competition issues.

3.1 (d)(iv)(B) Registry Operator must provide sufficient information at the time of notification to ICANN that it may implement such a proposed Registry Service to enable ICANN to make an informed "preliminary determination." Information provided by Registry Operator and marked "CONFIDENTIAL" shall be treated as confidential by ICANN. Registry Operator will not designate "CONFIDENTIAL" information necessary to describe the purpose of the proposed Registry Service and the effect on users of the DNS.

3.1 (d)(iv)(C) ICANN may seek expert advice during the preliminary determination period (from entities or persons subject to confidentiality agreements) on the competition, Security or Stability implications of the Registry Service in order to make its "preliminary determination." To the extent ICANN determines to disclose confidential information to any such experts, it will provide notice to Registry Operator of the identity of the expert(s) and the information it intends to convey.

3.1 (d)(iv)(D) If ICANN determines during the 15 calendar day "preliminary determination" period that the proposed Registry Service, does not raise significant Security or Stability (as defined below), or competition issues, Registry Operator shall be free to deploy it upon such a determination.

3.1 (d)(iv)(E) In the event ICANN reasonably determines during the 15 calendar day "preliminary determination" period that the Registry Service might raise significant competition issues, ICANN shall refer the issue to the appropriate governmental competition authority or authorities with jurisdiction over the matter within five business days of making its determination, or two business days following the expiration of such 15 day period, whichever is earlier, with notice to Registry Operator. Any such referral communication shall be posted on ICANN's website on the date of transmittal. Following such referral, ICANN shall have no further responsibility, and Registry Operator shall have no further obligation to ICANN, with respect to any competition issues relating to the Registry Service. If such a referral occurs, the Registry Operator will not deploy the Registry Service until 45 calendar days following the referral, unless earlier cleared by the referred governmental competition authority.

3.1 (d)(iv)(F) In the event that ICANN reasonably determines during the 15 calendar day "preliminary determination" period that the proposed Registry Service might raise significant Stability or Security issues (as defined below), ICANN will refer the proposal to a Standing Panel of experts (as defined below) within five business days of making its determination, or two business days following the expiration of such 15 day period, whichever is earlier, and simultaneously invite public comment on the proposal. The Standing Panel shall have 45 calendar days from the referral to prepare a written report regarding the proposed Registry Service's effect on Security or Stability (as defined below), which report (along with a summary of any public comments) shall be forwarded to the ICANN Board. The report shall set forward the opinions of the Standing Panel, including, but not limited to, a detailed statement of the analysis, reasons, and information upon which the panel has relied in reaching their conclusions, along with the response to any specific questions that were included in the referral from ICANN staff. Upon ICANN's referral to the Standing Panel, Registry Operator may submit additional information or analyses regarding the likely effect on Security or Stability of the Registry Service.

3.1 (d)(iv)(G) Upon its evaluation of the proposed Registry Service, the Standing Panel will report on the likelihood and materiality of the proposed Registry Service's effects on Security or Stability, including whether the proposed Registry Service creates a reasonable risk of a meaningful adverse effect on Security or Stability as defined below:

Security: For purposes of this Agreement, an effect on security by the proposed Registry Service shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

Stability: For purposes of this Agreement, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs sponsored by the IETF or (2) creates a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body,

such as relevant Standards-Track or Best Current Practice RFCs and relying on Registry Operator's delegation information or provisioning services.

3.1 (d)(iv)(H) Following receipt of the Standing Panel's report, which will be posted (with appropriate confidentiality redactions made after consultation with Registry Operator) and available for public comment, the ICANN Board will have 30 calendar days to reach a decision. In the event the ICANN Board reasonably determines that the proposed Registry Service creates a reasonable risk of a meaningful adverse effect on Stability or Security, Registry Operator will not offer the proposed Registry Service. An unredacted version of the Standing Panel's report shall be provided to Registry Operator upon the posting of the report. The Registry Operator may respond to the report of the Standing Panel or otherwise submit to the ICANN Board additional information or analyses regarding the likely effect on Security or Stability of the Registry Service.

3.1 (d)(iv)(I) The Standing Panel shall consist of a total of 20 persons expert in the design, management and implementation of the complex systems and standards-protocols utilized in the Internet infrastructure and DNS (the "Standing Panel"). The members of the Standing Panel will be selected by its Chair. The Chair of the Standing Panel will be a person who is agreeable to both ICANN and the registry constituency of the supporting organization then responsible for generic top level domain registry policies. All members of the Standing Panel and the Chair shall execute an agreement requiring that they shall consider the issues before the panel neutrally and according to the definitions of Security and Stability. For each matter referred to the Standing Panel, the Chair shall select no more than five members from the Standing Panel to evaluate the referred matter, none of which shall have an existing competitive, financial, or legal conflict of interest, and with due regard to the particular technical issues raised by the referral.

3.1 (e) <u>Fees and Payments</u>. Registry Operator shall pay the Registry-Level Fees to ICANN on a quarterly basis in accordance with Section 7.2 hereof.

3.1 (f) <u>Traffic Data</u>. Nothing in this Agreement shall preclude Registry Operator from making commercial use of, or collecting, traffic data regarding domain names or non-existent domain names for purposes such as, without limitation, the determination of the availability and Security and Stability of the Internet, pinpointing specific points of failure, characterizing attacks and misconfigurations, identifying compromised networks and hosts and promoting the sale of domain names, provided however, that such use does not permit Registry Operator to disclose domain name registrant or end-user information or other Personal Data as defined in Section 3.1(c)(ii) that it collects through providing domain name registration services for any purpose not otherwise authorized by this agreement. In this regard, in the event the TLD registry is a "thick" registry model, the traffic data that may be accessible to and used by Registry Operator shall be limited to the data that would be accessible to a registry operated under a "thin" registry model. The process for the introduction of new Registry Services shall not apply to such traffic data. Nothing contained in this Section 3.1(f) shall be deemed to constitute consent or acquiescence by ICANN to an introduction by Registry Operator of a service employing a universal wildcard function, except that this sentence shall not prohibit the provision of nameservice or any other non-registry service for a domain or zone used for other than registration services to unaffiliated third parties by a single entity (including its affiliates) for domain names registered through an ICANN-accredited registrar. To the extent that traffic data subject to this provision is made available, access shall be on terms that are nondiscriminatory.

Section 3.2 <u>Covenants of ICANN</u>. ICANN covenants and agrees with Registry Operator as follows:

3.2 (a) <u>Open and Transparent</u>. Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2 (b) <u>Equitable Treatment</u>. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.2 (c) <u>TLD Zone Servers</u>. In the event and to the extent that ICANN is authorized to set policy with regard to an authoritative root server system, it will use best efforts to ensure that (i) the authoritative root will point to the TLD zone servers designated by Registry Operator for the Registry TLD throughout the Term of this Agreement;

and (ii) any changes to the TLD zone server designation submitted to ICANN by Registry Operator will be implemented by ICANN within seven days of submission.

3.2 (d) <u>Nameserver Changes</u>. Registry Operator may request changes in the nameserver delegation for the Registry TLD. Any such request must be made in a format, and otherwise meet technical requirements, specified from time to time by ICANN. ICANN will use commercially reasonable efforts to have such requests implemented in the Authoritative Root-Server System within seven calendar days of the submission.

3.2 (e) <u>Root-zone Information Publication</u>. ICANN's publication of root-zone contact information for the Registry TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN.

3.3 <u>Cooperation</u>. The parties agree to cooperate with each other and share data as necessary to accomplish the terms of this Agreement.

3.4 In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth at Appendix 12.

3.5 <u>Contractual and Operational Compliance Audits</u>.

(a) ICANN may from time to time (not to exceed once per calendar quarter) 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 II of this Agreement and its covenants contained in Article III 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 five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its covenants contained in Section 3.1.

(b) Any audit conducted pursuant to Section 3.5(a) will be at ICANN's expense, unless (i) the audit relates to Registry Operator's compliance with Section 3.1(c)(iv) and such audit reveals a material discrepancy or discrepancies in the data provided by Registry Operator, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment. In either such case of (i) or (ii) above, Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with such audit and such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

3.6 <u>Emergency Transition</u>. Registry Operator agrees that in the event that any of the emergency thresholds for registry functions set forth in Section 6 of Appendix 10 attached hereto 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 http://www.icann.org/en/resources/registries/transition-processes>) (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 3.6 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 3.1(c)) 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 3.6.

ARTICLE 4 TERM OF AGREEMENT

Section 4.1 <u>Term</u>. This Agreement shall be effective on the Effective Date and the term shall expire on June 30, 2019 (the "Expiration Date"), subject to extension of such term upon renewal pursuant to Section 4.2 (together, the initial and any renewal terms shall constitute the "Term").

Section 4.2 <u>Renewal</u>. This Agreement shall be renewed upon the expiration of the initial term set forth in Section 4.1 above and each renewal term this Agreement, unless the following has occurred: (i) following notice of breach to Registry Operator in accordance with Section 6.1 and failure to cure such breach within the time period prescribed in Section 6.1, an arbitrator or court has determined that Registry Operator has been in fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); Section 5.2 or Section 7.3 and (ii) following the final decision of such arbitrator or court, Registry Operator has failed to comply within ten days with the decision of the arbitrator or court, or within such other time period as may be prescribed by the arbitrator or court. Upon renewal, in the event that the terms of this Agreement are not similar to the terms generally in effect in the Registry Agreements of the five most reasonably comparable gTLDs (provided however that if less than five gTLDs are reasonably comparable, then comparison shall be made with such lesser number, and .com, .info, .net and .biz are hereby deemed comparable), renewal shall be upon terms reasonably necessary to render the terms of this Agreement similar to such terms in the Registry Agreements for those other gTLDs (the "Renewal Terms and Conditions"). The preceding sentence, however, shall not apply to the terms of this Agreement regarding the price of Registry Services; standards for the consideration of proposed Registry Services, including the definitions of Security and Stability and the standards applied by ICANN in the consideration process; the terms or conditions for the renewal or termination of this Agreement; ICANN's obligation to Registry Operator under Section 3.2(a), (b) and (c); the limitations on Consensus Policies or Temporary Specifications or Policies; or the definition of Registry Services, all of which shall remain unchanged. In addition, upon renewal, in determining the Renewal Terms and Conditions, registry fees payable to ICANN may be reasonably modified so long as any increase in such fees shall not exceed the average of the percentage increase in registry fees for the five most reasonably comparable TLDs (or such lesser number as provided above) during the prior three year period. The parties agree to initiate negotiations with respect to Renewal Terms and Conditions at least six (6) months prior to the Expiration Date or the expiration of any renewal term thereafter in order to determine the Renewal Terms and Conditions for the subsequent renewal term as provided for in this Section 4.2. If the parties cannot agree as to Renewal Terms and Conditions prior to the Expiration Date or the expiration of any renewal term thereafter, as applicable, then, unless the parties mutually agree to extend the Term and continue negotiations, the matter shall be determined pursuant to the dispute resolution provisions of Article 5 hereto. In any such dispute resolution procedure instituted under this Section 4.2, the scope of such procedure shall be to determine the Renewal Terms and Conditions pursuant to the provisions of this Section 4.2.

Section 4.3 <u>Changes</u>. While this Agreement is in effect, the parties agree to engage in good faith negotiations at regular intervals (at least once every three calendar years following the Effective Date) regarding possible changes to the terms of the Agreement, including to Section 7.2 regarding fees and payments to ICANN. In addition, ICANN shall consider and discuss with Registry Operator other appropriate changes to pricing and related terms under the Agreement in the event ICANN shall obtain further independent data from professional experts providing analysis of the pricing of domain name registrations and competitive market considerations. The failure by Registry Operator to agree to an increase in registry fees or other terms shall not constitute a violation of this provision.

Section 4.4 <u>Failure to Perform in Good Faith</u>. In the event Registry Operator shall have been repeatedly and willfully in fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b),

(d) or (e); Section 5.2 or Section 7.3, and arbitrators in accordance with Section 5.1(b) of this Agreement repeatedly have found Registry Operator to have been in fundamental and material breach of this Agreement, including in at least three separate awards, then the arbitrators shall award such punitive, exemplary or other damages as they may believe appropriate under the circumstances.

ARTICLE 5 DISPUTE RESOLUTION

Section 5.1 <u>Resolution of Disputes</u>.

5.1 (a) <u>Mediation</u>. In the event of any dispute arising under or in connection with this Agreement, before either party may initiate arbitration pursuant to Section 5.1(b) below, ICANN and Registry Operator must attempt to resolve the dispute through mediation in accordance with the following terms and conditions:

      (i)   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 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 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).

      (ii)   The mediator shall conduct the mediation in accordance with the rules and procedures 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. 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 5.1(b). The mediator may not testify for either party in any later proceeding relating to 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 the parties have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, either party or the mediator may terminate the mediation at any time and the dispute can then proceed to arbitration pursuant to Section 5.1(b) below. If the parties have not resolved the dispute for any reason by the date that is ninety (90) calendar days following the date of the notice delivered pursuant to Section 5.1(a), the mediation shall automatically terminate (unless extended by agreement of the parties) and the dispute can then proceed to arbitration pursuant to Section 5.1(b) below.

5.1 (b) <u>Arbitration</u>. Disputes arising under or in connection with this Agreement, including requests for specific performance, shall be resolved through binding arbitration conducted as provided in this Section 5.1(b) pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted in the English language and shall occur in Los Angeles County, California, USA only following the failure to resolve the dispute pursuant to cooperative engagement discussions as set forth in Section 5.1(a) above. There shall be three arbitrators: each party shall choose one arbitrator and, if the two arbitrators are not able to agree on a third arbitrator, the third shall be chosen by the ICC. The prevailing party in the arbitration shall have the right to recover its costs and reasonable attorneys' fees, which the arbitrators shall include in their awards. Any party that seeks to confirm or vacate an arbitration award issued under this Section 5.1(b) may do so only pursuant to the applicable arbitration statutes. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles County, California, USA; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction. For the purpose of aiding the arbitration and/or preserving the rights of the parties during the pendency of arbitration, the parties shall have the right to seek a temporary stay or

injunctive relief from the arbitration panel or a court, which shall not be a waiver of this agreement to arbitrate.

Section 5.2 <u>Specific Performance</u>. 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 arbitrators specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

Section 5.3 <u>Limitation of Liability</u>. ICANN's aggregate monetary liability for violations of this Agreement shall 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. Registry Operator's aggregate monetary liability to ICANN for violations of this Agreement shall be limited to an amount equal to the fees, and monetary sanctions under Section 4.4, if any, due and owing to ICANN under this Agreement within the preceding twelve-month period. In no event shall either party be liable for special, indirect, incidental, 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 pursuant to Section 4.4 of this Agreement. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, REGISTRY OPERATOR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED BY ITSELF, ITS SERVANTS, OR ITS AGENTS OR THE RESULTS OBTAINED FROM THEIR WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 6 TERMINATION PROVISIONS

Section 6.1 <u>Termination by ICANN</u>. ICANN may terminate this Agreement if and only if: (i) Registry Operator fails to cure any fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); or Section 5.2 within thirty (30) calendar days after ICANN gives Registry Operator written notice of the breach, which notice shall include with specificity the details of the alleged breach; and (ii) (a) an arbitrator or court has finally determined that Registry Operator is, or was, in fundamental and material breach and failed to cure such breach within the prescribed time period and (b) following the decision of such arbitrator or court, Registry Operator has failed to comply with the decision of the arbitrator or court.

Section 6.2 <u>Bankruptcy</u>. ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) calendar days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) calendar days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

Section 6.3 <u>Change of Control</u>. If pursuant to Section 8.5 ICANN reasonably determines to withhold its consent to a change of control transaction, then upon thirty (30) calendar days notice to Registry Operator, ICANN may terminate this Agreement.

Section 6.4 <u>Transition of Registry upon Termination of Agreement</u>. Upon any termination of this Agreement as provided in Sections 6.1 and 6.2, the parties agree to work cooperatively to facilitate and implement the transition of the registry for the TLD in accordance with this Section 6.4. Registry Operator shall agree to provide ICANN or any successor registry authority that may be designated for the TLD with any data regarding operations of the registry for the TLD necessary to maintain operations that may be reasonably requested in addition to that data escrowed in accordance with Section 3.1(c)(i) hereof.

Section 6.5 <u>Rights in Data</u>. Registry Operator shall not be entitled to claim any intellectual property rights in

Registry Data. In the event that Registry Data is released from escrow as set forth in Section 3.1(c)(i), rights, if any, held by Registry Operator in the data shall automatically be licensed on a non-exclusive, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.

Section 6.6 <u>No Reimbursement</u>. Any and all expenditures, capital investments or other investments made by Registry Operator in connection with this Agreement shall be at Registry Operator's own risk and ICANN shall have no obligation to reimburse Registry Operator for any such expense, capital expenditure or investment. Registry Operator shall not be required to make any payments to a successor registry operator by reason of registry fees paid to Registry Operator prior to the effective date of (i) any termination or expiration of this Agreement or (ii) transition of the registry, unless any delay in transition of the registry to a successor operator shall be due to the actions of Registry Operator.

ARTICLE 7 SPECIAL PROVISIONS

Section 7.1 <u>Registry-Registrar Agreement</u>.

7.1 (a) <u>Access to Registry Services</u>. Registry Operator shall make access to Registry Services, including the shared registration system, available to all ICANN-accredited registrars, subject to the terms of the Registry-Registrar Agreement attached as Appendix 8 hereto. Subject to Section 7.1(e), Registry Operator shall provide all ICANN-accredited registrars following execution of the Registry-Registrar Agreement, provided registrars are in compliance with such agreement, operational access to Registry Services, including the shared registration system for the TLD. Such nondiscriminatory access shall include without limitation the following:

7.1 (a)(i) All registrars (including any registrar affiliated with Registry Operator, if any) can connect to the shared registration system gateway for the TLD via the Internet by utilizing the same maximum number of IP addresses and SSL certificate authentication;

7.1 (a)(ii) Registry Operator has made the current version of the registrar toolkit software accessible to all registrars and has made any updates available to all registrars on the same schedule;

7.1 (a)(iii) All registrars have equivalent access to customer support personnel via telephone, e-mail and Registry Operator's website;

7.1 (a)(iv) All registrars have equivalent access to registry resources to resolve registry/registrar or registrar/registrar disputes and technical and/or administrative customer service issues;

7.1 (a)(v) All registrars have equivalent access to data generated by Registry Operator to reconcile their registration activities from Registry Operator's Web and ftp servers;

7.1 (a)(vi) All registrars may perform basic automated registrar account management functions using the same registrar tool made available to all registrars by Registry Operator; and

7.1 (a)(vii) The shared registration system does not include, for purposes of providing discriminatory access, any algorithms or protocols that differentiate among registrars with respect to functionality, including database access, system priorities and overall performance.

7.1 (a)(viii) Such Registry-Registrar Agreement may be revised by Registry Operator from time to time, provided however, that any such revisions must be approved in advance by ICANN.

Within sixty (60) calendar days of the RAA Adoption Date, Registry Operator will submit to ICANN for approval an amended version of the Registry-Registrar Agreement attached hereto as Appendix 8 (the "Amended RRA"), which will include a provision requiring all ICANN-accredited registrars who are a party to Registry Operator's Registry-Registrar Agreement either to (i) become a party to the form registrar accreditation agreement adopted by the ICANN Board of Directors on 27 June 2013 (the "2013 RAA") within two hundred seventy (270) calendar days after the effective date of the Amended RRA, or (ii) be Suspended (as defined below) by Registry Operator. Once such Amended RRA is approved by ICANN, Registry Operator shall

promptly adopt and require each of the ICANN-accredited registrars that access Registry Services for the TLD to enter into the Amended RRA pursuant to the amendment procedures set forth in Registry Operator's Registry-Registrar Agreement in effect as of the date hereof. In the event that any such registrar does not enter the 2013 RAA with ICANN within such two hundred seventy (270) calendar day period, and Registry Operator is notified of that fact by ICANN in writing (a "Non-Compliant Registrar"), then Registry Operator will Suspend the Non-Compliant Registrar until such time as such Non-Compliant Registrar becomes a party to the 2013 RAA. "RAA Adoption Date" means the date that ICANN notifies Registry Operator that ICANN-accredited registrars that access Registry Services for the TLD accounting for sixty-seven percent (67%) of all registrations in the TLD have executed the 2013 RAA. "Suspend" means to suspend the Non-Compliant Registrar's ability to create or sponsor new domain name registrations in the TLD or initiate inbound transfers of domain names in the TLD. The obligations of Registry Operator as set forth in this paragraph are contingent upon the registry operators for .com, .info, .net and .biz also submitting similar requests to amend their Registry-Registrar Agreements.

7.1(b)   Special Programs. Notwithstanding Section 7.1(a), Registry Operator may for the purpose of supporting the development of the Internet in an underserved geographic region (a region being one or more countries) provide training, technical support, marketing or incentive programs based on the unique needs of registrars primarily focused on serving such geographies to such registrars, so long as Registry Operator does not treat similarly situated registrars differently or apply such programs arbitrarily. In addition, Registry Operator may implement such programs with respect to registrars within a specific geographic region (a region being one or more countries), so long as (i) such region is defined broadly enough to allow multiple registrars to participate and such programs are made available to all such registrars, and (ii) such programs do not favor any registrar in which Registry Operator may have an ownership interest. For purposes of this section, an underserved geographic region is one that, in the reasonable judgment of Registry Operator, is underserved by registry operators based upon an analysis of relevant metrics, including but not limited to broadband penetration, information and technology expenditures, domain penetration, registrar penetration, web hosting penetration, internet usage and number of internet users. Within five (5) calendar days of offering any such programs, Registry Operator shall post a notice of the offering of such program within the registrar facing communication tools of Registry Operator's website (which notice shall include, at a minimum, the terms and conditions of such program and identify the underserved geographic region underlying such program).

7.1 (c) Registry Operator Shall Not Act as Own Registrar. Registry Operator shall not act as a registrar with respect to the TLD. This shall not preclude Registry Operator from registering names within the TLD to itself through a request made to an ICANN-accredited registrar or from becoming an Affiliate of or reseller for an ICANN-accredited registrar. In addition, where there is an imminent threat to the Security and Stability of the TLD or the Internet, this provision shall not preclude Registry Operator, for the purpose of protecting the Security and Stability of the TLD or the Internet, from temporarily preventing the registration of one or more names; provided, as soon as practicable but no later than 3 business days of taking such action, Registry Operator provides ICANN with a written notice of such action, which notice shall list all affected names, state the expected length of time that such names will not be available for registration, and explain why Registry Operator took such action. The contents of such notice shall be treated as confidential to the extent permitted by law. If ICANN disagrees with such action, it will instruct Registry Operator to release such names and Registry Operator shall immediately release such names upon receipt of such written instructions from ICANN.

7.1 (d) 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 not disclose such contracts to any third party other than relevant competition authorities. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues. For the purposes of this Agreement: (i) "Affiliate" means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is

controlled by, or is under common control with, the person or entity specified, and (ii) "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

7.1(e) Compliance Actions. Registry Operator acknowledges that all ICANN-accredited registrars must enter into a registrar accreditation agreement ("RAA") with ICANN and ICANN may take certain compliance actions in response to an emergency or in accordance with the terms of the RAA, including suspension or termination of a registrar's accreditation or suspension of a registrar's ability to create new registered names or initiate inbound transfers of registered names. ICANN may require Registry Operator to take specific actions consistent with ICANN's authority under the terms of the RAA to: (i) suspend or terminate a registrar's ability to create new registered names or (ii) transfer registered names to a registrar designated by ICANN.
Section 7.2 Fees to be Paid to ICANN.

7.2 (a) Registry-Level Transaction Fee. Registry Operator shall pay ICANN a Registry-Level Fee equal to US$0.25 multiplied by the number of annual increments of an initial or renewal domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) during the applicable calendar quarter.

7.2 (b) Payment Schedule. Registry Operator shall pay the Registry-Level Fees specified in Section 7.2(a) and Section 7.2(c) on a quarterly basis to an account designated by ICANN within thirty (30) calendar days following the date of receipt calculated as follows: an invoice shall be deemed to be received: (a) if sent electronically, one (1) calendar day following the date such invoice is sent; or (b) if sent by postal mail, three (3) calendar days following the date in which such invoice was sent.

7.2 (c) Variable Registry-Level Fee. For fiscal quarters in which ICANN does not collect a variable accreditation fee from all registrars, upon receipt of written notice from ICANN, Registry Operator shall pay ICANN a Variable Registry-Level Fee. The fee will be calculated by ICANN, paid to ICANN by the Registry Operator in accordance with the Payment Schedule in Section 7.2(b), and the Registry Operator will invoice and collect the fees from the registrars who are party to a Registry-Registrar Agreement with Registry Operator. The fee will consist of two components; each component will be calculated by ICANN for each registrar:

7.2 (c)(i) The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year but shall not exceed US $0.25.

7.2 (c)(ii) The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year.

Provided, however, that Registry Operator shall only be required to pay the fees set forth in paragraph (c) above, in the event that ICANN elects to collect the Variable Registry-Level Fee from all ICANN-Accredited Registrars. For the avoidance of doubt, Registry Operator shall not be required to collect the per-registrar component of the Variable Registry-Level Fee from any registrar unless it is required to do so for all registrars.

7.2 (d) Interest on Late Payments. For any payments pursuant to Section 7.2(a) thirty days or more overdue past the time period for payment set forth in Section 7.2(b), Registry Operator shall pay interest on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law. Registry Operator shall not be required to pay interest on late payments under Section 7.2(c), provided that Registry Operator is in good faith making reasonably diligent efforts to collect the underlying payments from those registrars party to a Registry-Registrar Agreement with Registry Operator.

Section 7.3. Pricing for Domain Name Registrations and Registry Services.

7.3(a) Pricing. From the Effective Date through 31 December 2013, the price to ICANN-accredited registrars for

new and renewal domain name registrations and for transferring a domain name registration from one ICANN-accredited registrar to another, shall not exceed a total fee of US$8.25 (the "Maximum Service Fee"). Commencing on 1 January 2014, the Maximum Service Fee charged during a calendar year for each annual increment of a new and renewal domain name registration and for transferring a domain name registration from one ICANN-accredited registrar to another, may not exceed the Maximum Service Fee during the preceding calendar year multiplied by 1.10. The same Service Fee shall be charged to all ICANN-accredited registrars for new and renewal domain name registrations. Volume discounts and marketing support and incentive programs may be made if the same opportunities to qualify for those discounts and marketing support and incentive programs is available to all ICANN-accredited registrars.

7.3(b) <u>Adjustments to Pricing for Domain Name Registrations</u>. Registry Operator shall provide no less than six months prior notice in advance of any price increase for domain name registrations and shall continue to offer domain name registrations for periods of up to ten years. Registry Operator is not required to give notice of the imposition of the Variable Registry-Level Fee set forth in Section 7.2(c).

ARTICLE 8 MISCELLANEOUS

Section 8.1 <u>Indemnification of ICANN</u>.

8.1 (a) Registry Operator shall indemnify, defend, and hold harmless ICANN (including its directors, officers, employees, and agents) 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: (a) ICANN's reliance, in connection with its decision to delegate the TLD to Registry Operator or to enter into this Agreement, on information provided by Registry Operator in its application for the TLD; (b) Registry Operator's establishment or operation of the registry for the TLD; (c) Registry Operator's provision of Registry Services; (d) collection or handling of Personal Data by Registry Operator; (e) any dispute concerning registration of a domain name within the domain of the TLD for the registry; and (f) duties and obligations of Registry Operator in operating the registry for the TLD; provided that Registry Operator shall not be obligated to indemnify, defend, or hold harmless ICANN to the extent the claim, damage, liability, cost, or expense arose due to a breach by ICANN of any obligation contained in this Agreement. For avoidance of doubt, nothing in this Section 8.1 shall be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for the costs associated with the negotiation or execution of this Agreement, or with the monitoring or management of the parties' respective obligations under this Agreement. 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.

8.1 (b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the actions or omissions that gave rise to the claim, Registry Operator's aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN's total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Section 7.2 hereof for any applicable quarter) by the total number of domain names under registration within all TLDs for which the registry operators thereof that are engaging in the same acts or omissions giving rise to such claim. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims above, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN at set forth in 8.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence.

Section 8.2 <u>Indemnification Procedures</u>. If ICANN receives notice of any third-party claim is that is indemnified under Section 8.1 above, ICANN shall promptly notify Registry Operator of such claim. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to the indemnified party to handle and defend the same, at the indemnifying party's sole cost and expense, provided that in all events ICANN shall be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN policies or conduct. ICANN shall cooperate, at its own cost, in all reasonable respects

with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising there from; provided, however, that the indemnified party may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising there from. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is indemnified shall be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section, Registry Operator may participate in such defense, at its sole cost and expense, and ICANN shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator.

Section 8.3 <u>No Offset</u>. All payments due under this Agreement shall be made in a timely manner throughout the term of this Agreement and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

Section 8.4 <u>Use of ICANN Name and Logo</u>. ICANN grants to Registry Operator a non-exclusive royalty-free license to state that it is designated by ICANN as the Registry Operator for the Registry TLD and to use a logo specified by ICANN to signify that Registry Operator is an ICANN-designated registry authority. This license may not be assigned or sublicensed by Registry Operator.

Section 8.5 <u>Change of Control; Assignment and Subcontracting</u>. Except as set forth in this Section 8.5, neither party may assign any of its rights and obligations under this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. For purposes of this Section 8.5, a direct or indirect change of control of Registry Operator or any subcontracting arrangement that relates to any critical registry function for the TLD (a "Material Subcontracting Arrangement") shall be deemed an assignment.

8.5(a) Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any assignment or Material Subcontracting Arrangement, and any agreement to assign or subcontract any portion of the operations of the TLD (whether or not a Material Subcontracting Arrangement) 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.

8.5(b) Within thirty (30) calendar days of either such notification pursuant to Section 8.5(a), ICANN may request additional information from Registry Operator establishing (i) compliance with this Agreement and (ii) that the party acquiring such control or entering into such assignment or Material Subcontracting Arrangement (in any 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 (including with respect to financial resources and operational and technical capabilities), in which case Registry Operator must supply the requested information within fifteen (15) calendar days.

8.5(c) Registry Operator agrees that ICANN's consent to any assignment, change of control or Material Subcontracting Arrangement will also be subject to background checks on any proposed Contracting Party (and such Contracting Party's Affiliates).

8.5(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 Material Subcontracting 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, thirty (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.

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

8.5(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 6.3, (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, Material Subcontracting 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 8.5.

Section 8.6 <u>Amendments and Waivers</u>. No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both 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.

Section 8.7 <u>No Third-Party Beneficiaries</u>. This Agreement shall not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

Section 8.8 <u>Notices, Designations, and Specifications</u>. All notices to be given under or in relation to this Agreement shall 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. Any change in the contact information for notice below shall be given by the party within 30 days of such change. Any notice required by this Agreement shall 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. Whenever this Agreement shall specify a URL address for certain information, Registry Operator shall be deemed to have been given notice of any such information when electronically posted at the designated URL. In the event other means of notice shall become practically achievable, such as notice via a secure website, the parties shall work together to implement such notice means under this Agreement.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA
Phone: +1 310 301 5800
FAX: +1 310 823 8649
Attention: President and CEO
With a Required Copy to: General Counsel
Email: (As specified from time to time.)

If to Registry Operator, addressed to:

Public Interest Registry
1775 Wiehle Avenue, Suite 102A
Reston, VA 20190

Telephone: +1 703-464-7005
Facsimile: +1 703-464-7006
Attention: President and Chief Executive Officer
Email: (As specified from time to time.)
Section 8.9 <u>Language</u>. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

Section 8.10 <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 8.11 <u>Entire Agreement</u>. This Agreement (including its Appendices, which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject. In the event of a conflict between the provisions in the body of this Agreement and any provision in its Appendices, the provisions in the body of the Agreement shall control.

<p align="center">[signature page follows]</p>

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
Name: Akram Atallah

Title: Generic Domains Division
Date:

PUBLIC INTEREST REGISTRY

By: _____
Name: David W. Maher

Title: Senior Vice President Law & Policy
Date:

RM 19

ICANN Yokohama Meeting Topic: Introduction of New Top-Level Domains

Posted: 13 June 2000
Deadline for [Public Comments](): 10 July 2000

CONTENTS

I. Background

For several years, there have been proposals to introduce new top-level domains (TLDs) into the Internet Domain Name System (DNS). After a ten-month-long study, on 18 April 2000 the Names Council of the ICANN Domain Name Supporting Organization (DNSO) recommended that ICANN adopt a policy under which new TLDs would be introduced in a measured and responsible manner. The ICANN Board of Directors is expected to consider adopting such a policy at its [meeting on 15-16 July 2000 in Yokohama, Japan]().

A. Present Structure of the Domain-Name System.

The DNS allows users to locate computers on the Internet by a name (e.g., [www.icann.org]()) rather than a harder-to-remember IP address (e.g., [192.0.34.65]()). The DNS, which was introduced in the mid-1980s, is a distributed database containing resource records that allow you to input another computer's domain name, which your computer then maps to the other computer's IP address.

The DNS has a hierarchical structure, with each name composed of a series of "labels" separated by dots. The rightmost label in a name refers to the name's top-level domain (such as .org). Each top-level domain can be divided into many second-level domains (such as icann.org). Second-level domains can be divided into third-level domains (such as www.icann.org and members.icann.org), and so on.

The selection of TLDs within the DNS is defined by the root-zone file, the contents of which are made available to users on the Internet through the authoritative root server system. Under the White Paper, the responsibilities being transferred to ICANN include oversight of operation of that system.

For technical reasons, it is convenient to delegate the operation of each top-level domain to a single organization. Currently, the DNS employs top-level domains consisting of three types:

- The current three-letter codes are referred to as "generic TLDs." Presently these codes are .com, .net, .org, .edu, .int, .mil, and .gov. Descriptions of the intended purposes of these TLDs are set forth in RFC 1591, which was issued in March 1994. No new TLDs in this category have been added since the late 1980s.
- Two-letter codes (such as .de, .jp, and .uk) are used to represent the names of countries and territories and are referred to as "country-code top-level domains," or simply "ccTLDs." The policies governing the establishment, delegation, and operation of ccTLDs are discussed in ICP-1. Under these policies, ccTLDs are established only for two-letter codes appearing on the ISO 3166-1 list. A few of these ccTLDs were established in the 1980s, but most were created in the mid- and late-1990s.
- There is one other top-level domain, .arpa, that has recently been designated to be used for Internet-infrastructure purposes. This top-level domain is managed by the IANA in cooperation with the Internet technical community under the guidance of the Internet Architecture Board.

Within the DNS database, all of the TLDs operate in a similar manner. They are distinguished mainly by their intended use, by which organization operates them, and by who is permitted to register names within them.

B. History of Discussions.

Although many new ccTLDs were established as new countries and territories joined the Internet, no other new TLDs have been established since the late 1980s. During the 1990s, various proposals were made to implement additional generic TLDs in the DNS. These proposals have ranged from adding a few gTLDs to several hundred. Different types of TLDs have been discussed, ranging from TLDs open to registrations by any person or organization for any use ("unrestricted TLDs") to TLDs intended for registrations by particular types of persons or organizations or for particular uses ("restricted" or "chartered" TLDs).

The US Government's June 1998 White Paper, which proposed transitioning the Government's responsibilities for technical coordination of the Internet to a private-sector not-for-profit corporation (now ICANN), noted that the private-sector coordinating corporation should ultimately have the authority necessary to oversee policy for determining the circumstances under which new TLDs are added to the root system. The White Paper noted, however, that:

> "At least in the short run, a prudent concern for the stability of the system suggests that expansion of gTLDs proceed at a deliberate and controlled pace to allow for evaluation of the impact of the new gTLDs and well-reasoned evolution of the domain space. New top level domains could be created to enhance competition and to enable the new corporation to evaluate the functioning, in the new environment, of the root server system and the software systems that enable shared registration."

On 30 April 1999, the World Intellectual Property Organization, which at the request of the US Government had conducted a study of intellectual-property issues in connection with the DNS and the various proposals for its evolution, submitted a report to the ICANN Board of Directors. That report concluded that new gTLDs could be introduced, provided that various measures were adopted to protect intellectual-property rights and that the new TLDs were introduced in a slow and controlled manner that takes into account the efficacy of the proposed measures in reducing existing problems. Among the intellectual-property protections was a proposed mechanism for protecting globally famous names in any new generic TLDs.

At its meeting in Berlin on 27 May 1999, the ICANN Board referred the issues of TLD expansion and globally famous trademarks to the newly formed ICANN Domain Name Supporting Organization (DNSO).

On 25 June 1999, the DNSO Names Council (which manages the process for development of policy recommendations within the DNSO) created a group, known as Working Group C, to study the issues raised by the introduction of new gTLDs. The Names Council also created another group, known as Working Group B, to study issues concerning the protection of famous trademarks in the context of any newly introduced generic TLDs.

C. Names Council Recommendation on New TLDs.

Working Group C submitted its report to the DNSO Names Council on 21 March 2000 and posted the report for public comment. Public comments were solicited and received through the icann.org web-based comment forum and via e-mail to the dnso.org site. Working Group C provided a supplemental report on 17 April 2000.

The Names Council discussed these reports and comments at a telephone conference held on 18/19 April 2000. At that meeting, the Names Council adopted the following statement of its recommendations, by a vote of 16-0 (two members were absent):

> ### DNSO Names Council Statement of 18/19 April 2000 on New gTLDs
>
> "The Names Council determines that the report of Working Group C and related comments indicate that there exists a consensus for the introduction of new gTLDs in a measured and responsible manner. The Names Council therefore recommends to the ICANN Board that it establish a policy for the introduction of new gTLDs in a measured and responsible manner, giving due regard in the implementation of that policy to (a) promoting orderly registration of names during the initial phases; (b) minimizing the use of gTLDs to carry out infringements of intellectual property rights; and (c) recognizing the need for ensuring user confidence in the technical operation of the new TLD and the DNS as a whole.
>
> "Because there is no recent experience in introducing new gTLDs, we recommend to the Board that a limited number of new top-level domains be introduced initially and that the future introduction of additional top-level domains be done only after careful evaluation of the initial introduction. The Names Council takes note of the fact that the WG C report indicates that several types of domains should be considered in the initial introduction, these

being: fully open top-level domains, restricted and chartered top-level domains with limited scope, non-commercial domains and personal domains. Implementation should promote competition in the domain-name registration business at the registry and registrar levels. The Names Council recognizes that any roll-out must not jeopardize the stability of the Internet, and assumes a responsible process for introducing new gTLDs, which includes ensuring that there is close coordination with organizations dealing with Internet protocols and standards.

"To assist the Board in the task of introducing new gTLDs, the Names Council recommends that the ICANN staff invite expressions of interest from parties seeking to operate any new gTLD registry, with an indication as to how they propose to ensure to promote these values.

"We would like to extend our deep appreciation to the substantial number of participants who worked so diligently in Working Groups B and C, and want to thank them for their significant efforts in evaluating the issues that were referred to them. Recognizing the Working Group C has recently approved additional principles and that Working Group B's formal report was provided to us yesterday, we advise the Board that we will be providing supplemental recommendations in the near future."

The Names Council held a telephone conference on 19 May 2000 to discuss the [final report of Working Group B](). The Names Council adopted the following statement, again by a vote of 16-0 (two members were absent):

DNSO Names Council Statement of 19 May 2000 on Famous Trademarks and the Operation of the DNS

"The Names Council recognizes the enormous work undertaken by Working Group B. The Names Council acknowledges that according to its final report, Working Group B has reached consensus on three points, namely:

> 1. Some type of mechanism, yet to be determined, is necessary in connection with famous trademarks and the operation of the Domain Name System.

> 2. There does not appear to be the need for the creation of a universally famous marks list at this point in time.

> 3. The protection afforded to trademark owners should depend upon the type of top-level domains that are added to the root.

"With regards to points (1) and (3), the NC notes that the Working Group members could not reach consensus on the type of mechanism that should be incorporated into the roll-out of new gTLDs (point (1)), which is understandable given their consensus in point (3) that the protection should likely vary depending on the type of top-level domain.

"The NC concludes that there is community consensus and recommends that there should be varying degrees of protection for intellectual property during the startup phase of new top-level domains. Therefore, the NC recommends that the ICANN Board make clear that nothing in the general consensus items, or areas of non-consensus, should be construed as creating immunity from the UDRP or other legal proceeding should a domain name registrant in a chartered top-level domain violate the charter or other legal enforceable rights. The NC notes that the principles of differentiated gTLDs (from WG-C) may provide additional assistance in avoiding confusion.

"With regards to item (2) on universally famous marks, the NC concludes that there is no consensus in the community at the present time that such a list should be adopted by ICANN.

"The NC also recommends to the ICANN Board that it take note of the Working Group B report, including the submissions by participating parties.

"The NC would like to express its gratitude to the hard work of Michael D. Palage, Kathryn Kleiman, and Philip Sheppard in steering the Working Group and seeking to guide them towards consensus on the difficult set of issues they were assigned."

D. Action in Yokohama on New TLDs.

At its 16 July 2000 meeting in Yokohama, the ICANN Board will consider the Names Council's 18/19 April 2000 recommendation that the Board adopt "a policy for the introduction of new gTLDs in a measured and responsible manner . . . ," as well as the Names Council's 19 May 2000 recommendations concerning protection for intellectual property during the startup phase of new top-level domains.

Under Article VI, Section 2(e) of the ICANN bylaws,

> "the Board shall accept the recommendations of a Supporting Organization if the Board finds that the recommended policy (1) furthers the purposes of, and is in the best interest of, the Corporation; (2) is consistent with the Articles and Bylaws; (3) was arrived at through fair and open processes (including participation by representatives of other Supporting Organizations if requested); and (4) is not reasonably opposed by any other Supporting Organization. No recommendation of a Supporting Organization shall be adopted unless the votes in favor of adoption would be sufficient for adoption by the Board without taking account of either the Directors selected by the Supporting Organization or their votes."

The councils of the Address Supporting Organization and the Protocol Supporting Organization have been advised of both statements of the recommendations of the Names Council. The Address Council concluded that there is no address policy issue of concern in connection with the recommendations. The Protocol Council has not expressed any view on the recommendations.

To allow additional community comment on the Names Council's recommendations, ICANN has established a web-based Public Comment Forum and will devote a portion of the public forum in Yokohama on 15 July 2000 to the issue.

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The following section discusses principles that might be followed in the adoption of new TLDs, and solicits comments on specific aspects of those principles.

II. Suggested Principles for the Introduction of New TLDs

The 18/19 April 2000 Names Council statement recommends that the ICANN Board adopt a policy for the introduction of new TLDs. In adopting such a policy, several principles should be addressed. The following discusses various possible principles and poses questions for which community input is specifically sought. Those questions, of course, are not meant to be limiting and the public is invited to submit comments on all aspects of policies for the introduction of new TLDs.

A. The need to maintain the Internet's stability: a "measured and responsible" introduction.

The U.S. Government's White Paper identified four principles that should guide ICANN's activities. Of these, the White Paper made clear that ICANN's primary mission is to preserve the stability of the Internet:

> "The introduction of a new management system [to replace management by the U.S. Government and its contractors] should not disrupt current operations or create competing root systems. During the transition and thereafter, the stability of the Internet should be the first priority of any DNS management system. Security and reliability of the DNS are important aspects of stability, and as a new DNS management system is introduced, a comprehensive security strategy should be developed."

Introducing new TLDs implies a change in the overall structure of the DNS, and it is therefore appropriate to take care to introduce any new TLDs in a manner that does not endanger stability.

To help ensure that introducing new TLDs does not jeopardize the Internet's stability, the Names Council emphasized that the introduction should be done in a "measured and responsible manner." According to the Names Council, care should be taken to solicit the views of technical standards bodies:

> "The Names Council recognizes that any roll-out must not jeopardize the stability of the Internet, and assumes a responsible process for introducing new gTLDs, which includes ensuring that there is close coordination with organizations dealing with Internet protocols and standards."

The Names Council statement also noted that the implementation of a policy for the introduction of new TLDs should give due regard to practical considerations, such as start-up issues (the "land rush" phenomenon of huge query and transaction loads during the first few hours and days of registration) and the possibility that many domain-name disputes would be created. In particular, the Names Council identified:

> "(a) promoting orderly registration of names during the initial phases;

> "(b) minimizing the use of gTLDs to carry out infringements of intellectual property rights; and

> "(c) recognizing the need for ensuring user confidence in the technical operation of the new TLD and the DNS as a whole."

Many have also noted that, as a practical matter, the introduction of new TLDs is not an easily reversible act, since eliminating a TLD (including all domain names registered within it) once it has been created may create significant hardships. For these reasons, some have argued that the TLD introductions should begin with a relatively small group, so that if difficulties arise they are of limited scope and can be effectively addressed before proceeding with additional TLDs.

In view of these considerations, public comment is sought on the following issues:

> **Q1:** In the introduction of new TLDs, what steps should be taken to coordinate with the Internet Engineering Task Force, the Internet Architecture Board, and other organizations dealing with Internet protocols and standards?

> **Q2:** What stability concerns are associated with the initial phases of registration within the TLD?

> **Q3:** What can be done to eliminate or reduce these stability concerns?

> **Q4:** Would these stability concerns be magnified by introducing a large number of TLDs at once?

> **Q5:** Are there any practical means of reversing the introduction of a significant new TLD once it goes into operation?

> **Q6:** Is it feasible to introduce a TLD on a "trial basis," giving clear notice that the TLD might be discontinued after the trial is completed?

> **Q7:** To ensure continued stability, what characteristics should be sought in a proposed TLD and in the organization(s) proposing to sponsor and/or operate it?

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B. A well-controlled, small-scale introduction as a "proof of concept" for possible future introductions.

Recent experience in the introduction of new TLDs is somewhat limited. No new TLD designated as a "generic" TLD has been introduced for over ten years, since before significant commercial use of the Internet began. Although dozens of ccTLDs have been introduced since the onset of commercial use of the Internet in the early 1990s, fewer than 10 of the 245 ccTLDs have as many as 100,000 registrations within them. In view of the limited recent experience, the Names Council's 18/19 April 2000 statement made the following suggestion:

> "[W]e recommend to the Board that a limited number of new top-level domains be introduced initially and that the future introduction of additional top-level domains be done only after careful evaluation of the initial introduction."

Thus, the Names Council recommended that the first group of TLDs introduced serve as a "proof of concept." Although the Names Council did not formally recommend any specific number of new TLDs that should be intorduced in the first group, it did indicate that the first group should be used to evaluate the feasibility and utility of a range of different types of TLDs:

> "The Names Council takes note of the fact that the WG C report indicates that several types of domains should be considered in the initial introduction, these being: fully open top-level domains, restricted and chartered top-level domains with limited scope, non-commercial domains and personal domains."

This recommendation suggests that choices about the particular TLDs to be added in the first group, as well as the resulting number of TLDs, should be made in a manner that promotes effective evaluation of :

- the feasibilty and utility of different types of new TLDs,
- the efficacy of different procedures for launching new TLDs,
- different policies under which the TLDs can be administered in the longer term,
- different operational models for the registry and registrar functions, and
- different institutional structures for the formulation of registration and operation policies within the TLD.

Public comment is therefore sought on the following issues:

> **Q8:** To what extent is the experience gained from introducing gTLDs in the 1980s applicable to present-day circumstances?

> **Q9:** To the extent it is applicable, what are the lessons to be learned from that experience?

> **Q10:** What lessons, if any, can be learned regarding new gTLD introductions from the experience of the ccTLD registries?

> **Q11:** Can lessons relevant to introduction of new TLDs be learned from the recent decisions by a number of them to operate in a globally open manner? If so, what lessons?

> **Q12:** Is the Names Council's recommendation that a "limited number of new top-level domains be introduced initially" a sensible way to minimize risks to Internet stability?

> **Q13:** What steps should be taken to evaluate carefully the initial introduction of TLDs before future introduction of additional TLDs?

> **Q14:** Should a fixed time be established for all the evaluations, or should the time allowed vary depending on the nature of the TLD and other circumstances?

> **Q15:** Should choices regarding the types of TLDs included in the initial introduction seek to promote effective evaluation of:
>
> - the feasibilty and utility of different types of new TLDs?
> - the efficacy of different procedures for launching new TLDs?
> - different policies under which the TLDs can be administered in the longer term?
> - different operational models for the registry and registrar functions?
> - different institutional structures for the formulation of registration and operation policies within the TLD?
> - other factors?

> **Q16:** Should any particular goal for, or limit on, the number of TLDs to be included in the initial introduction be established in advance, or alternatively should the number included in the initial introduction be guided by the extent to which proposals establish sound proofs of concept of varied new TLD attributes?

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C. The purposes for adding new TLDs.

In seems appropriate that the selection of the types of TLDs to be introduced initially reflect an assessment of the purposes for adding new TLDs. In discussions generally within the Internet community over the past several years, as well as in more recent discussions in the DNSO, various advantages of new TLDs have been cited. These advantages can be grouped in three broad categories: enhancement of competition in the provision of registration services, enhancement of the utility of the DNS, and enhancement of the available number of domain names.

1. Enhancing competition for registration services.

One of the main motivations for the change in policy reflected in the White Paper was a "widespread dissatisfaction about the absence of competition in domain name registration." At the time of the White Paper, registrations in the open gTLDs (.com, .net,

and .org) were made by a single source (Network Solutions) at a price fixed by its cooperative agreement with the U. S. Government. Although registrations were also available through over 200 ccTLDs worldwide, the overwhelming majority of those ccTLDs were restricted to registrants that were affiliated with the countries involved and the relatively few "open" ccTLDs were not extensively used.

Since the establishment of ICANN in November 1998, the competitive conditions have changed significantly. Beginning in June 1999, competition was introduced at the registrar level for registration services and now 45 different accredited registrars receive equivalent access to the central registry for .com, .net, and .org. Competition at the registrar level is robust, resulting in prices significantly lower than a year ago and a much larger array of service offerings from which consumers may choose. In addition to this dramatic growth in competition in .com, .net, and .org, competition from the ccTLDs has also increased. Many formerly "closed" ccTLDs have begun to permit registrations by companies not affiliated with their countries; "open" ccTLDs have become more accepted within registrants worldwide.

The encouragement of competition in registration services continues to be a major goal of the Internet community. In its 18/19 April 2000 statement, the Names Council stressed that "[i]mplementation [of new TLDs] should promote competition in the domain-name registration business at the registry and registrar levels."

Although competition has increased markedly in the past year at the registrar level, **the registry** (the authoritative database that maps names within the TLD to IP addresses) for all three "open" gTLDs is still operated by a single company, Network Solutions. This situation limits the effectiveness of overall competition and, even aside from strictly competitive issues, gives rise to concerns over the Internet community's lack of vendor diversity. Some have argued these concerns (competition and vendor diversity) make it appropriate to introduce one or more alternative, fully open, globally available TLDs. Others have argued that these concerns are no longer so pressing as to justify adding new open TLDs. As discussed in detail in point 2 below, they assert that having additional, undifferentiated TLDs would tend to reduce the utility of the DNS by increasing inter-TLD confusion. (E.g., <example.com> would be confused with <example.firm>.)

One concern sometimes raised in this connection is that .com may have become so highly preferred in the market to any other TLD that effective competion among open TLDs is no longer likely. Those raising this concern sometimes point out that .com enjoys a vastly superior market share compared to .net and .org, with .com accounting for 80% of the total registrations in .com, .net, and .org. This predominance of .com registrations continues even though all three TLDs are offered by 45 registrars fiercely trying to sell registrations.

> **Q17:** In view of the current competitive conditions, should the promotion of effective competition in the provision of registration services continue to be a significant motivation for adding fully open TLDs?

> **Q18:** Should the desire for diverse vendors of registry services in open TLDs be an important motivation in adding fully open TLDs?

> **Q19:** Would the introduction of additional undifferentiated TLDs result in increased inter-TLD confusion among Internet users?

> **Q20:** Taking all the relevant factors into account, should one or more fully open TLDs be included in the initial introduction?

> **Q21:** How many?

> **Q22:** How effective would other fully open TLDs be in providing effective competition to .com?

> **Q23:** What can be done to maximize the prospect that new fully open TLDs will be attractive to consumers as alternatives to .com?

> **Q24:** Would the likelihood of effective competition with .com be enhanced by making one or more of the single-character .com domains (which are currently registered to the IANA) available for use as the basis of a third-level registry (i.e. a registry that took registration of names in the form of <example.e.com> or <example.1.com>)? Should the single-character .com domains be made available for possible registry usage in conjunction with the initial group of additional TLDs?

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2. Enhancing the utility of the DNS.

Another motivation frequently cited for introducing new TLDs is that doing so might increase the utility of the DNS. Under this view, the appropriateness of adding new TLDs should be evaluated based on whether addition of the new TLDs:

- would make it easier for Internet users to find the web sites and other Internet resources they are seeking and
- would make it easier for the providers of Internet resources to be found.

This view tends to favor adding special-purpose TLDs and to disfavor adding undifferentiated, open TLDs. To help keep TLDs distinct and meaningful, it has been suggested that TLDs should be given "charters" which define the purposes for which they are intended. These charters are intended to promote the distinctiveness of TLDs over time. Advocates of chartered TLDs note that all the present gTLDs (including .com, .net, and .org) have defined uses, see RFC 1591. The definitions of the uses of .com, .net, and .org, however, have not been enforced since 1996, when it was decided to suspend screening of registrations to reduce delays in processing applications for registration.

The view that enhancement of the utility of the DNS should be a chief goal in introducing new TLDs is reflected by the first three principles outlined in the second additional consensus point of WG-C's 17 April 2000 supplemental report:

"1. Meaning: An application for a TLD should explain the significance of the proposed TLD string, and how the applicant contemplates that the new TLD will be perceived by the relevant population of net users. The application may contemplate that the proposed TLD string will have its primary semantic meaning in a language other than English.

"2. Enforcement: An application for a TLD should explain the mechanism for charter enforcement where relevant and desired.

"3. Differentiation: The selection of a TLD string should not confuse net users, and so TLDs should be clearly differentiated by the string and/or by the marketing and functionality associated with the string."

A few have suggested that these principles (which were approved in WG-C by a vote of 46 yes, 21 no, 1 abstain) preclude the introduction of any new fully open TLDs. These people argue that introducing new unrestricted-use TLDs would not increase the availability of distinctive domain names, but would instead decrease the meaning of domain names generally by encouraging registration of domain names that are distinguished only by unmeaningful TLD labels. While the principles of WG-C's 17 April 2000 supplemental report point strongly toward introducing limited-purpose, distinct TLDs, most of those favoring them urge that they be applied flexibly so as not to rule out the introduction of one or more fully open, undifferentiated TLDs.

Differentiated types of TLDs that have been proposed for introduction under a chartered-TLD approach include:

- restricted-use commercial TLDs, such as .travel (for the travel industry), .movie (for web sites dedicated to particular films), and .banc (for financial institutions).
- TLDs defined by some geographic region, but not qualifying as ccTLDs under current policies.
- a TLD restricted to adult uses (.xxx or .sex).
- TLDs designated for use by particular types of non-commercial organizations, such as .museum and .union. An existing example of this type of TLD is .edu.
- TLDs for use by various affinity groups.
- TLDs intended for advocacy uses, such as .protest.
- a TLD devoted to domains registered by individuals for their personal use.

Some have suggested that differentiated TLDs should be introduced in various systematic ways (e.g., by following a predefined taxonomy). Others have favored introducing each specific TLD according to a proposal by an organization interested in sponsoring the TLD that demonstrates the desire, legitimacy, and resources to introduce and manage the TLD in an appropriate manner.

In view of these considerations, public comment is sought on the following issues:

Q25: Is increasing the utility of the DNS as a resource-location tool an appropriate goal in the introduction of new TLDs?

Q26: Would the introduction of unrestricted, undifferentiated TLDs run counter to this goal?

Q27: If so, are there ways of accommodating the goal of enhancing registry-level competition with the goal of enhancing the utility of the DNS?

Q28: Is the concept of TLD "charters" helpful in promoting the appropriate evolution of the DNS?

Q29: Are the first three principles outlined in the second additional consensus point of WG-C's 17 April 2000 supplemental report (quoted above) appropriate criteria for selecting TLDs to be introduced in the first group?

Q30: Do those principles preclude the introduction of any new fully open TLDs?

Q31: What types of TLDs should be included in the first group of additional TLDs to best test the concept of chartered TLDs?

Q32: Should chartered TLDs be introduced according to a pre-defined system, or should proposals be evaluated on an individualized basis?

Q33: If charter proposals are evaluated on an individualized basis, should any steps should be taken to promote stable and orderly evolution of the DNS overall?

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3. Enhancing the number of available domain names.

A third reason cited for introducing additional TLDs is that doing so would increase the number of domain names available for registration. This rationale is usually based on the premise that "all the good names are already taken" and that adding TLDs would increase the supply of "good" names.

In fact, the number of second-level domain names within a single TLD is quite large (over 10^{98}) and claims that any particular TLD is effectively exhausted are, as a technical matter, misplaced. (Even .com has only approximately 10^8 names registered). Some, however, have noted that the group of useful or desirable names is much smaller than the total theoretically possible. While this observation is correct, even a slight lengthening of possible second-level domain names increases the available possibilities much more dramatically than the addition of new TLDs. For example, under the currently followed format rules increasing second-level domain-name length by one character multiplies the possible domain names by 37, while adding three new TLDs similar to .com, .net, and .org would only double them.

Some participants in the discussion have asserted that adding undifferentiated TLDs for the purpose of increasing the number of available domain names runs counter to the goal of enhancing the distinctness of DNS names. In this view, adding names that differ from existing ones only because they fall into new, undifferentiated TLDs would impair the utility of the DNS. These participants argue that expansion of the DNS name space should not be accomplished by making available additional names that are likely to be confused with existing names, particularly since distinctive TLDs could instead be created.

Q34: Has the inventory of useful and available domain names reached an unacceptably low level?

Q35: Assuming it is important to increase the inventory of available domain names, should that be done by adding TLDs that are not differentiated from the present ones?

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D. Delegation of policy-formulation requirements for special-purpose TLDs.

As envisioned by the White Paper, ICANN is responsible for overall coordination of the DNS. In view of the hierarchical nature of the DNS, however, the responsibility for establishment of policies within TLDs varies depending on the nature of the TLD. Policies for fully open TLDs (such as .com, .net, and .org) are formulated through the ICANN process, which involves participation of all segments of the global Internet community. Policies for other TLDs (such as .edu and the ccTLDs), on the other hand, have been formulated by focused constituencies.

Proponents of limited-purpose TLDs have advocated a "sponsorship" paradigm, in which policy-formulation responsibility for the TLD would be delegated to an organization that allows participation of the affected segments of the relevant communities. The sponsoring organization would have authority to make decisions regarding policies applicable to the TLD, provided they are within the scope of the TLD's charter and comport with requirements concerning interoperability, availability of registration data, and the like intended to ensure that the interests of the overall Internet are served. For example, the TLD .museum might be sponsored by an association of museums and the .union TLD might be sponsored by a group of labor unions. In many respects, the sponsorship paradigm is a generalization of the concepts underlying appointment of managers for ccTLDs under existing ccTLD delegation policy.

According to proponents, the sponsorship paradigm has the advantages of allowing detailed policies for limited-purpose TLDs to be established through an easily manageable process in which those with relevant interests can participate, while allowing the more broadly participatory ICANN process to focus on issues of general interest to the entire Internet community.

Q36: Should the formulation of policies for limited-purpose TLDs be delegated to sponsoring organizations? In all cases or only in some?

Q37: What measures should be employed to encourage or require that a sponsoring organization is appropriately representative of the TLD's intended stakeholders?

Q38: In cases where sponsoring organizations are appointed, what measures should be established to ensure that the interests of the global Internet community are served in the operation of the TLD?

Q39: How should global policy requirements (adherence to a TLD's charter, requirements of representativeness, interoperability requirements, etc.) be enforced?

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E. New TLDs to meet new types of needs.

The 18/19 April Names Council statement recommended that the initial introduction of new TLDs include a variety of types of TLDs. Such a diversity in the initial introduction can provide useful data to determine what types of TLDs should be introduced in the future. In addition, introducing diverse types of special-purpose TLDs provides the opportunity to meet short-term needs for TLDs that are not met by the existing TLDs.

Q40: Are there any types of new TLDs that should not be included in the initial introduction? If any types should be excluded, why?

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F. Start-up challenges and the protection of intellectual property.

The statement adopted by the DNSO Names Council on 18/19 April 2000 urged that, in connection with the implementation of a policy for introducing new TLDs, due regard be given to "promoting orderly registration of names during the initial phases." On 15 May 2000, Working Group B issued its final report, which amplified on the concern that the startup phases of new TLDs can pose special risks to intellectual property and found consensus that some type of mechanism, yet to be determined, is necessary in connection with famous trademarks and the operation of the Domain Name System.

In its statement of 19 May 2000, adopted after considering Working Group B's final report, the Names Council concluded that there is community consensus and recommended that there be varying degrees of protection for intellectual property during the startup phase of new top-level domains.

One method of protecting intellectual property that has been proposed is to prohibit the registration of famous and well-known trademarks. Indeed, the White Paper suggested that ICANN consider adopting "policies that exclude, either pro-actively or retroactively, certain famous trademarks from being used as domain names (in one or more TLDs) except by the designated trademark holder." In its deliberations, Working Group B extensively explored the use of a famous-names list for exclusion and

reached consensus that such a list was not necessary or appropriate at the present time. In its 19 May 2000 statement, the Names Council "conclude[d] that there is no consensus in the community at the present time that such a list should be adopted by ICANN." Thus, it seems clear that measures other than a famous-names list for the protection of intellectual property during the start-up phases of new TLDs must be considered.

The Names Council also concluded that different types of TLDs warrant different types of protection for intellectual property. For example, some have reasoned that more protections are appropriate in a commercial TLD than in one designated for non-commercial uses.

Along with its recommendation for varying intellectual-property protections depending on the type of TLD, the Names Council also recommended that, as a minimum, the basic methods for enforcing infringed rights should always apply. In its 19 May 2000 statement, the Names Council recommended that the existing procedures (the UDRP and conventionally available legal proceedings) should apply where a domain name registrant in a chartered TLD violates the charter or other legal enforceable rights.

Concerns over the effectiveness of the UDRP have prompted some in the DNSO Business Constituency to propose that the policy be evaluated and overhauled before any new TLDs are introduced. For example, as of 13 June 2000 the Business Constituency was considering version 5 of a position paper entitled "A practical approach to new Internet domain names," which (as one option) proposed a multi-phase process under which there would be several prerequisites to the introduction of new TLDs:

"Phase I

"1. Rapidly evaluate the first 12 months operation of the Uniform Dispute Resolution Process (implemented 24 October 1999), and subject to a conclusion that it has been successful in meeting its objectives, proceed to phase II.

"2. Extend the UDRP wef 1st October 2000 to evaluate claims for ownership transfer based on the relevance of a well-known trademark to a charter gTLD. Once implemented proceed to phase II.

"Phase II

"Introduce new gTLDs in a gradual but systematic way as outlined above, testing each proposed gTLD against the principles."

Based on the likely implementation schedule (see below), it is the assessment of the ICANN staff that such a phased approach would result in a delay in the introduction of new TLDs of nine months or more.

Q41: Does the start up of a new TLD pose additional risks to intellectual property rights that warrant additional protections?

Q42: Should the protections afforded intellectual property in the start-up phase of new TLDs differ depending on the type of TLD?

Q43: Is the availability of the UDRP and court proceedings as remedies for violations of enforceable legal rights an appropriate element of protection of intellectual-property rights that should apply to all new TLDs? Are there any other protections that should be made available in all new TLDs, regardless of their type?

Q44: Does the start up of a new TLD pose difficulties for those other than intellectual property owners that should be addressed through special procedures?

Q45: What mechanisms for start up of a new TLD should be followed to ensure that all persons receive a fair chance to obtain registrations?

Q46: Is exclusion of names appearing on a globally famous trademark list a workable method of protecting such marks from infringement at the present time? Would an exclusion mechanism be appropriate in the future?

Q47: Should introduction of new TLDs await completion of an evaluation of the operation of the UDRP and be subject to a finding that the UDRP has been successful in meeting its objectives? How long would such an evaluation likely take to complete?

Q48: Should introduction of new TLDs await extension of the UDRP to cover claims for transfer of domain names based on the relevance of a well-known trademark to a chartered gTLD? How long would implementing such a revision to the UDRP likely take?

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III. Suggested Schedule for the Introduction of New TLDs

The following is a draft schedule for the initial introduction of new TLDs:

13 June 2000 - Initial Postings and Drafts:

- Background.
- Suggested Principles for the Introduction of New TLDs
- Suggested Schedule for the Introduction of New TLDs

- Suggested Data Elements to Be Sought from Organizations Applying to Sponsor or Operate TLDs
- Call for Statements of Interest in Proposing a New TLD

In conjunction with these postings, a web-based public comment forum is established to receive comments on the introduction of new TLDs.

15 July 2000 - ICANN Public Forum, Yokohama

A portion of the Yokohama agenda will be devoted to policies and timelines for the introduction of new TLDs. The public forum is an opportunity for public comment and dialogue, either in person or through the webcast's online remote participation tools.

16 July 2000 - ICANN Board meeting, Yokohama

The ICANN Board will consider the Names Council's 18/19 April 2000 recommendation that the Board adopt "a policy for the introduction of new gTLDs in a measured and responsible manner . . . ," as well as the Names Council's 19 May 2000 recommendations concerning protection for intellectual property during the startup phase of new top-level domains.

1 August 2000 - Call for Proposals

ICANN will issue a formal call for proposals, accompanied by a New TLD Registry Application Form, instructions for filling out the application, and a statement of criteria for the Board's eventual decision.

It is proposed that the New TLD Registry Application Form include the elements shown in Part IV below. Because ICANN will seek heterogeneity and diversity in applicants' TLD models, none of the data elements should be read to restrict or preclude a particular TLD proposal. Comments about these proposed application elements should be posted in the public comment forum.

1 October 2000 - Deadline for Proposals

All proposals received by the 1 October deadline will be made public on the ICANN website as to the data elements in I and III described in Part VI below. Proposals will be posted when received, rather than waiting until 1 October to post. Comments on the proposals will be solicited through the public comment forum that will be created for that purpose. No additional proposals will be accepted after this date.

8 October 2000 - Deadline for Public Comments on Proposals

This deadline will ensure that at least 1 week is available for public comments on all proposals; to the extent that proposals are received prior to 1 October, the comment period will be longer for those proposals.

1 November 2000 - Announcement of Decision

ICANN will announce the decision as to the first group of new TLDs to be added to the DNS root.

1 December 2000 - Completion of Registry Contracts

Deadline for ICANN and the selected registry applicants to sign and publish the new registry contracts.

In connection with the foregoing suggested schedule, public comment on the following topics is especially solicited:

Q49: Does the schedule allow sufficient time for formulation of proposals?

Q50: Does the schedule allow sufficient time for public comment?

Q51: Should all proposals be posted for comment simultaneously to maintain equal time for public comment? Should all proposals be posted for public comment as they are received to allow the greatest possible time for public analysis and comment?

Q52: Should the formal applications be posted in full for public comment? If not, which parts of the applications should remain private?

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IV. Suggested Data Elements to Be Sought from Organizations Applying to Sponsor or Operate TLDs

The following is a general proposal for the data elements that should be requested of those proposing to operate or sponsor new TLDs. The actual application would likely require more detail as to these elements:

I. Information about the Proposed TLD

A. Proposed TLD label (i.e., the string of letters identifying the TLD, such as .com, .net, .org, etc.)

Questions for public comment:

Q53: Should proposals choose a single proposed TLD or numerous possibilities?

Q54: Should ICANN select the TLD labels, should they be proposed by the applicants for new TLD registries, or should they be chosen by a consultative process between the applicants and ICANN?

Q55: Should there be minimum or maximum length requirements for TLD codes? Are restrictions appropriate to avoid possible future conflicts with ISO 3166-1 codes?

Q56: Should there be restrictions on the types of TLD labels that are established (for example, a prohibition of country names)?

Q57: What should be the criteria for selecting between potential TLD labels? Should non-English language TLD labels be favored?

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    B. Type of TLD, such as but not limited to:

        1. Unrestricted (e.g., .com)

        2. Unrestricted with definition or semantic meaning, but no enforcement (e.g., .org)

        3. Restricted to a particular class of registrants or particular uses ("sponsored" or "chartered", e.g., .edu)

Questions for public comment:

Q58: How many new TLDs of each type should be included in the initial introduction?

Q59: Which types of TLDs will best serve the DNS?

Q60: Are there any types of TLDs that ICANN should not consider?

Q61: Which types, if any, are essential to the successful testing period?

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    C. In the case of a restricted TLD, the mechanisms proposed to make the restrictions effective

    D. Requirements for domain name registrants in the Proposed TLD

    E. Purpose, mission, justification for the TLD

        1. What (if anything) will distinguish the proposed TLD from existing or other proposed TLDs?

        2. What market will be served or targeted?

        3. How would introduction of the TLD enhance the utility of the DNS?

        4. For unrestricted TLDs: What will be the value to the broader Internet community? Will the TLD seek to provide competition with existing TLD registries?

        5. For restricted TLDs: What will be the value to the specific community or market to be served?

    F. Why should the proposed TLD be included in the initial introduction of TLDs?

        1. What concepts are likely to be proven/disproven by evaluation of the introduction of this TLD?

        2. By what criteria should the success or lack of success of the TLD be evaluated?

        3. Are there any reasons, other than the desire to evaluate the introduction process, for including the TLD in the initial introduction?

Question for public comment:

Q62: Which other structural factors, if any, should ICANN consider in determining the potential success of a specific TLD proposal?

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    G. Naming conventions within the TLD (i.e. will registrants register second-level domain names, or will the TLD be organized into sub-domains?)

II. Information about the Proposed Sponsor and Operator of the TLD

    A. Company/organization information

1. Company or organization name

2. Address

3. Business locations/offices

4. Names of officers, directors, and executives

5. Annual report or similar document

6. Current business operations

7. Past business operations and experiences

8. Qualifications and experience of financial and business officers

9. Qualifications and experience of technical officers

Questions for public comment:

Q63: Should ICANN accept proposals from companies formed/forming for the purpose of operating or sponsoring a new TLD? If so, how should ICANN determine the competence of the company?

Q64: If a company has significant operational or policy positions not yet filled, how should ICANN evaluate the level of competence of officers and employees?

Q65: How should ICANN evaluate the competence of officers and employees?

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B. Registry business model

1. Capitalization of registry

2. Sources of capital

3. Revenue model (i.e. for-profit or cost-recovery?)

4. Business plan

5. Allocation of registry/registrar functions

a. How will registration services be provided to registrants (i.e. through a single registrar, selected registrars, all ICANN-accredited registrars, or some other model)?

b. Relationship of registry to ICANN-accredited registrars

6. Proposed registration fees

Questions for public comment:

Q66: How much capital should be required? Should it be a fixed amount or should it vary with the type of proposal and the sufficiency of the business plan? How should the sufficiency of capital be evaluated?

Q67: Should ICANN seek diversity in business models as well as TLD types? Which, if any, business models are essential to a successful evaluation phase?

Q68: What measures should be in place to protect registrants from the possibility of a registry operator's business failure?

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C. Technical capabilities

1. Physical plant

a. Hardware

b. Software

c. Facility security

2. Data security and escrow

3. Scalability and load capacity

4. Registry-to-registrar technical and other support

>   5. Registrar-to-registrant technical and other support
>
>   6. Billing and collection operations

Question for public comment:

> **Q69:** What should be the minimum technical requirements to ensure sufficient stability and interoperability?
>
> **Click here to enter the Public Comment Forum on Introduction of New TLDs**

III. Information about the Policies and Procedures Applicable to the TLD

> A. Unrestricted TLDs
>
> > 1. Basic TLD policies (how do they differ from the policies applicable to .com, .net, and .org)?
> >
> > 2. Policies for selection of, and competition among, registrars
> >
> > 3. Measures for protection of intellectual property rights
> >
> > 4. Procedures for start-up phase of TLD
> >
> > 5. Dispute-resolution procedures

Questions for public comment:

> **Q70:** How should ICANN evaluate the sufficiency of proposed intellectual property protections?
>
> **Q71:** What role should ICANN have in the start-up procedures for new unrestricted TLDs?
>
> **Click here to enter the Public Comment Forum on Introduction of New TLDs**

> B. Sponsored/chartered/restricted TLDs
>
> > 1. Basic TLD policies
> >
> > 2. Criteria for registration
> >
> > > a. Enforcement procedures and mechanisms
> > >
> > > b. Appeal process from denial of registration
> >
> > 3. Policies for selection of, and competition among, registrars
> >
> > 4. Measures for protection of intellectual property rights
> >
> > 5. Procedures for start-up phase of TLD
> >
> > 6. Dispute-resolution procedures
> >
> > > a. Intellectual-property disputes
> > >
> > > b. Charter issues

Question for public comment:

> **Q72:** In what ways should the application requirements for sponsored/chartered/restricted TLDs differ from those for open TLDs?
>
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> C. Allocation of policymaking responsibilities
>
> > 1. Is a sponsoring organization proposed to receive policymaking responsibility for the TLD? Or will policies all be made through the ICANN process?
> >
> > 2. If some policies are to made by the sponsoring organization, on what subjects?
> >
> > 3. Relationship of registry operator to policymaking body (i.e. which organization decides which policies?)
> >
> > 4. Policymaking procedures (i.e. how would future changes in registration or registrar policies be made?)
> >
> > 5. Openness, transparency, and representativeness of policymaking process
> >
> > > a. Selection of policy makers

   b. Types of stakeholders represented in the policy-formulation process

<u>Questions for public comment</u>:

Q73: Should ICANN require a statement of policy or should a statement of how policies will be made be sufficient?

Q74: What level of openness, transparency, and representativeness in policymaking should ICANN require?

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V. Call for Statements of Interest in Proposing a New TLD

In its 18/19 April 2000 statement concerning new TLDs, the Names Council stated:

"To assist the Board in the task of introducing new gTLDs, the Names Council recommends that the ICANN staff invite expressions of interest from parties seeking to operate any new gTLD registry."

In accordance with that recommendation, the ICANN staff invites expressions of interest from parties seeking to operate and/or sponsor any new TLD registry. Expressions of interest should be brief (generally no more than ten pages) but descriptive. All submissions should include self-identification, brief description of the structure and purpose of the proposed TLD, and an indication of the likelihood of submitting a formal application for the proposed TLD.

Although those who submit expressions of interest will neither be advantaged nor disadvantaged in the formal application process, as suggested by the Names Council statement the expressions will be used to assist the formulation of appropriate policies concerning the consideration of formal applications.

Please send expressions of interest in electronic form to tld-interest@icann.org. All submissions should be suitable for public posting.

RM 20

Second Annual Meeting of the Board Minutes

16 Nov 2000

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS
MINUTES OF SECOND ANNUAL MEETING (IN MARINA DEL REY)
16 November 2000

The annual meeting of the Board of Directors of the Internet Corporation for Assigned Names and Numbers (ICANN (Internet Corporation for Assigned Names and Numbers)) was held on 16 November 2000 at the Marina Beach Marriott in Marina del Rey, California USA. Directors Esther Dyson (chairman), Amadeu Abril i Abril, Robert Blokzijl, Vinton G. Cerf, Jonathan Cohen, Greg Crew, Philip Davidson, Frank Fitzsimmons, Ken Fockler, Hans Kraaijenbrink, Sang-Hyon Kyong, Jun Murai, Alejandro Pisanty, Michael Roberts, Helmut Schink and Linda S. Wilson were present.

Also present at the meeting was Louis Touton, ICANN (Internet Corporation for Assigned Names and Numbers)'s Vice-President, Secretary, and General Counsel; Andrew McLaughlin, Chief Financial Officer of the Corporation; Christopher Ray, of KPMG; Charles Neuhauser, a consultant to ICANN (Internet Corporation for Assigned Names and Numbers) concerning the New TLD (Top Level Domain) evaluation; and Joe Sims and Paul Goldean, of Jones, Day, Reavis & Pogue. The meeting was open to the public.

The meeting was called to order by Esther Dyson at 17:05 UTC (9:05 am local time). She then handed the chair of the meeting to Michael Roberts.

Audit Committee Report

Dr. Wilson gave a report on behalf of the Audit Committee, which consists of Dr. Wilson, Mr. Crew, and Mr. Davidson. She stated that work had been going forward on completing the audit of ICANN (Internet Corporation for Assigned Names and Numbers)'s financial statements for the 1999-2000 fiscal year. ICANN (Internet Corporation for Assigned Names and Numbers) has retained KPMG as its auditor for this project. She introduced Christopher Ray, the engagement partner at KPMG, to describe the audit.

Mr. Ray presented a summary of the auditor's report to the Board. He noted that the financial statements were free of material misrepresentations except for a qualification relating to ccTLD (Country Code Top Level Domain) accounts receivable, for which the auditors were unable to obtain sufficient verifiable supporting evidence. He stated that more work needs to be done to establish internal controls and segregation of duties, but noted that ICANN (Internet Corporation for Assigned Names and Numbers) is in a typical position for a non-profit in its infancy. In response to a question from Dr. Cerf, Mr. Ray stated that the qualification about ccTLD (Country Code Top Level Domain) accounts receivable would not have any impact on ICANN (Internet Corporation for Assigned Names and Numbers)'s status as a non-profit corporation.

Dr. Wilson reported that the Audit Committee had also reviewed ICANN (Internet Corporation for Assigned Names and Numbers)'s insurance coverage and found it to be appropriate. The Audit Committee recommended retaining the services of KPMG for an audit of fiscal year 2001.

Mr. Roberts noted that, under the bylaws, no formal Board action is required to accept the audit.

At-Large Membership Study

Mr. McLaughlin reviewed the status of the At-Large program, proposing language of a resolution that would provide for posting of a staff-prepared report on implementation of the At-Large Study, inviting public comment on that report, and then reporting to the Board. Mr. Fitzsimmons stated he felt that it is important to have time frames for the steps in the study. Dr. Wilson agreed that time frames are important, but expressed the view that the schedule should be addressed in the implementation report and subsequent public comment.

Dr. Blokzijl moved, with Ms. Dyson's second, that the Board adopt the following resolution:

> Resolved [00.85] that the staff is directed:
>
> > (1) to post for 30 days its recommendations on implementation of Article II, Section 5 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, calling for an At-Large Study,
> >
> > (2) to solicit public comments on the recommendations, including the structure, composition, timetable, and funding of

> the study, and
>
> (3) to report to the Board following the conclusion of the 30-day public comment period.

The Board adopted the resolution by a 16-0-0 vote.

Election of Officers

Mr. Roberts noted that the annual election of corporate officers was next on the agenda. According to **Article VII, Section 2, of the bylaws (/general/archive-bylaws/bylaws-16jul00.htm#VIII-2)**, the Board elects officers on the recommendation of the President. This year, he stated his recommendation of continuing with the current officers. He noted that the previous year the Board had set the goal of periodically reviewing the performance of the corporate officers, but that no such review had yet occurred. His recommendations that the current officers continue is subject to any future review that the Board may conduct. Ms. Dyson expressed her view that the Board generally felt that the existing officers were doing a good job under difficult conditions.

Dr. Cerf moved, with Dr. Blokzijl's second, that the Board adopt the following resolutions:

> Resolved [00.86] that Michael M. Roberts be, and hereby is, elected as President and Chief Executive Officer of the Corporation, to serve at the pleasure of the Board and in accordance with the Bylaws of the Corporation, and shall hold his office until his resignation, removal or other disqualification from service, or until his successor shall be elected and qualified.
>
> Resolved [00.87] that Louis Touton be, and hereby is, elected as Vice President, General Counsel, and Secretary of the Corporation, to serve at the pleasure of the Board and in accordance with the Bylaws of the Corporation, and shall hold his office until his resignation, removal or other disqualification from service, or until his successor shall be elected and qualified.
>
> Resolved [00.88] that Andrew McLaughlin be, and hereby is, elected Chief Financial Officer of the Corporation, to serve at the pleasure of the Board and in accordance with the Bylaws of the Corporation, and shall hold his office until his resignation, removal or

other disqualification from service, or until his successor shall be elected and qualified.

The Board adopted the resolution by a 16-0-0 vote.

Selection of New TLD (Top Level Domain) Proposals for Negotiation

The Board took up the task of selecting proposals for New TLDs from among those proposed in the 47 applications (two of which did not pay the application fee and one of which was withdrawn) submitted by the 2 October 2000 deadline. Four Directors (Mr. Abril i Abril, Dr. Blokzijl, Mr. Crew, and Mr. Davidson) recused themselves from the discussion and consideration of the applications, for the following reasons:

Mr. Abril i Abril recused himself because he serves as an advisor to a member of CORE, which is the sponsoring organization and/or registry operator for several proposals. He noted however that he does not have any financial stake in any of the applicants.

Mr. Crew recused himself based on a business relationship with Melbourne IT, one of the applicants. He noted that his relationship is not related to Melbourne IT's registrar business, nor to the New TLD (Top Level Domain) application in which it participated, but he is chair of a company in which Melbourne IT is a major shareholder. Mr. Crew stated that he has not had any discussions with Melbourne IT or any of the other applicants regarding the formulation of their proposals.

Dr. Blokzijl recused himself because he is on the Board of CentralNIC, which served as a technical advisor to one of the applicants, although he didn't know which applicant it was until just a few days before the meeting.

Mr. Davidson recused himself because his employer, British Telecom, had issued a statement of support for one of the applicants.

Mr. Touton noted that the Board had before it a **Report on New TLD (Top Level Domain) Applications (/tlds/report/)**, which the ICANN (Internet Corporation for Assigned Names and Numbers) staff had prepared with the assistance of consultants and legal counsel, and which was posted on 9 November 2000. The Board had also heard presentations by the

applicants at the ICANN (Internet Corporation for Assigned Names and Numbers) Public Forum on 15 November 2000.

The Board began its consideration of the applications by discussing the methodology it would use in its selection. The **Report on New TLD (Top Level Domain) Applications (/tlds/report/)** discussed the 44 complete applications in eight categories. The Board decided to go through each category and discuss promising candidates for selection. In the process, the sentiment of the Board would be used to place proposals into a conceptual "basket". As the process proceeded, the contents of the basket would be reviewed to evaluate the degree of diversity and the proposals' overall appropriateness for a proof of concept. The Board could then make adjustments by adding or removing proposals from the basket.

The Board then went through the various categories, with Mr. Touton leading the discussion. After several hours (with a break for a presentation by the Governmental Advisory Committee (Advisory Committee) that did not constitute part of the Board meeting), the Board concluded the process with seven proposals in the basket.

At this point, the Directors were asked whether they had any objection to proceeding to a vote on a motion to select the seven proposals that were in the basket. No Director expressed any objection. Ms. Dyson moved, with a second, that the Board adopt the following resolutions:

> Whereas, in resolution 00.46 the Board adopted the Names Council's recommendation that a policy be established for the introduction of new TLDs in a measured and responsible manner;
>
> Whereas, on 3 August 2000 the ICANN (Internet Corporation for Assigned Names and Numbers) staff, acting under the President's direction, posted a "New TLD (Top Level Domain) Application Process Overview";
>
> Whereas, on 15 August 2000 the ICANN (Internet Corporation for Assigned Names and Numbers) staff, again acting under the President's direction, posted Criteria for Assessing TLD (Top Level Domain) Proposals that it would follow in making recommendations to the Board and instructions and forms for the use of applicants in applying to operate or sponsor new TLDs;
>
> Whereas, 47 applications were received by the 2 October 2000 deadline for submission of new TLD (Top Level Domain)

applications;

Whereas, the non-confidential portions of the applications were posted and extensive public comments were received on them;

Whereas, on 10 November 2000, a report evaluating the applications prepared by an evaluation team consisting of ICANN (Internet Corporation for Assigned Names and Numbers) staff and outside advisers was posted on the ICANN (Internet Corporation for Assigned Names and Numbers) web site;

Whereas, many additional written comments were received on the web site, by e-mail, and otherwise;

Whereas, several constituencies of the Domain Name (Domain Name) Supporting Organization (Supporting Organization) have presented positions to the Board;

Whereas, several hours of applicant and public comments were presented at the in-person ICANN (Internet Corporation for Assigned Names and Numbers) public forum held on 16 November 2000;

Resolved [00.89], the Board selects the following proposals for negotiations toward appropriate agreements between ICANN (Internet Corporation for Assigned Names and Numbers) and the registry operator or sponsoring organization, or both: JVTeam (.biz), Afilias (.info), Global Name Registry (.name), RegistryPro (.pro), Museum Domain Management Association (.museum), Société Internationale de Télécommunications Aéronautiques (.aero), Cooperative League of the USA dba National Cooperative Business Association (.coop);

Resolved [00.90], the President and General Counsel are authorized to conduct those negotiations on behalf of ICANN (Internet Corporation for Assigned Names and Numbers) and, subject to further Board approval or ratification, to enter into appropriate agreements; and

Resolved [00.91], the President and General Counsel are authorized to retain legal and other assistance in support of the negotiations and related activities.

The Board adopted the resolution by a 12-0-0 vote. (Four Directors were recused and therefore did not vote.)

At this point, the four recused Directors re-joined the meeting.

Thanks to Departing Directors

Mr. McLaughlin read a draft resolution expressing thanks to Geraldine Capdeboscq, George Conrades, Greg Crew, Esther Dyson, and Eugenio Triana, whose service at Directors ends at the conclusion of the meeting. Mr. Crew and Ms. Dyson gave brief farewell remarks.

Dr. Blokzijl moved, with multiple seconds, that the Board adopt the following resolution:

> Whereas, Geraldine Capdeboscq, George Conrades, Greg Crew, Esther Dyson, and Eugenio Triana have served as Directors of the Internet Corporation for Assigned Names and Numbers from October 1998 to November 16, 2000. In fulfilling their duties on the ICANN (Internet Corporation for Assigned Names and Numbers) Board, these five Directors have acted with energy, dedication, and fortitude in attacking the numerous challenges to ICANN (Internet Corporation for Assigned Names and Numbers) during its startup and transition period. Each has made many sacrifices in his professional and personal life in order to participate fully in the resolution of the difficult issues which the Board has addressed.
>
> Therefore [00.92] their fellow Directors take this opportunity to express their deepest appreciation to Directors Geraldine Capdeboscq, George Conrades, Greg Crew, Esther Dyson, and Eugenio Triana for their extraordinary service to ICANN (Internet Corporation for Assigned Names and Numbers) and the worldwide Internet community. May unbroken packets and a plenitude of bandwidth bless your future efforts!

The Board adopted the resolution by a unanimous (16-0-0) vote.

Ms. Dyson thanked everybody and remarked that the Board had followed a process of forming consensus and that she was delighted that the Board was able to reach unanimity around a group of proposals that will start a continuing process of enlarging the TLD (Top Level Domain) space.

Ad-Hoc Group on Numbering and Addressing

Mr. Kraaijenbrink reported briefly on the status of the Ad-Hoc Group on Numbering and Addressing. He reported that the group was making progress in writing a final report and that it would be appropriate to close the forum at the March meeting in Melbourne.

ccTLD (Country Code Top Level Domain) Agreements

Mr. Abril i Abril inquired about the status of ICANN (Internet Corporation for Assigned Names and Numbers)'s negotiations with ccTLD (Country Code Top Level Domain) managers. Mr. Roberts stated that a report on status would be provided to the Board in the next week.

2001 Meetings

Mr. Roberts gave a report on the arrangements for the Melbourne meeting, which will be held from Saturday, 10 March, to Tuesday, 13 March 2001. He also reported that the next physical meeting after Melbourne would be held at the in Stockholm Conference Center from 1-4 June 2001. This will be immediately prior to, and in the same location as, INET 2001.

There being no further business, the meeting was adjourned at 22:30 UTC (2:30 pm local time).

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Louis Touton
Secretary

Petillion

RM 21

DEC 1 8 2008

Mr. Peter Dengate-Thrush
Chairman of the Board of Directors
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

Dear Chairman Dengate-Thrush:

On October 23, 2008, the Internet Corporation for Assigned Names and Numbers (ICANN) posted for public comment a series of interrelated documents, including a draft applicant guidebook, related to ICANN's efforts to introduce new generic top level domains (gTLDs). The Department of Commerce (Department) appreciates this opportunity to offer the views of the United States government on such an important topic.

Understanding that the introduction of new gTLDs has been a long standing goal of the DNS Project, we believe it is critical to keep in mind the foundational Memorandum of Understanding between the Department and ICANN stipulating as a core principle the need to manage the Internet domain name and addressing system (DNS) in a manner that permits market mechanisms to support competition and consumer choice so that lower costs are realized, innovation is promoted, and user choice and satisfaction are enhanced. While we acknowledge the effort and hard work involved in producing the documents currently out for comment, it is unclear that the threshold question of whether the potential consumer benefits outweigh the potential costs has been adequately addressed and determined. In that regard, we would like to call to your attention a decision of the ICANN Board in October 18, 2006, that called for an economic study to address questions such as:

- whether the domain registration market is one market or whether each TLD functions as a separate market,
- whether registrations in different TLDs are substitutable,
- what are the effects on consumer and pricing behavior of the switching costs involved in moving from one TLD to another,
- what is the effect of the market structure and pricing on new TLD entrants, and
- whether there are other markets with similar issues, and if so how are these issues addressed and by who[sic]?[1]

ICANN needs to complete this economic study and the results should be considered by the community before new gTLDs are introduced.

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[1] ICANN, Special Meeting of the Board Minutes (Oct, 18, 2006)
(http://www.icann.org/en/minutes/minutes-18oct06.htm) (last visited Dec. 11, 2008).

The United States government recognizes that it is ICANN's intention to carefully consider the comments received in this process and initiate further consultations, including a revised applicant guidebook, before introducing new gTLDs. With that in mind, below is a specific list of initial items we believe need to be resolved in the current documents:

- Ensure that the introduction of a potentially large number of new gTLDs, including internationalized top level domains, will not jeopardize the stability and security of DNS;

- Revise the gTLD approval process, the applicant guidebook and the proposed registry agreement to: (1) consider, allow objections for, and retain authority to address any adverse competitive welfare effects that may arise during the approval of new gTLDs applications or the renewal of subsequent contracts; (2) employ mechanisms such as competitive bidding whereby prospective gTLD operators would compete by proposing registry terms, including price and quality commitments, that provide consumer benefit; and (3) impose maximum price caps or other terms that would redound to the benefit of consumers in those cases where competitive bidding mechanisms will not adequately limit the ability of registry operators to exercise market power;[2]

- Demonstrate that ICANN has sufficient capacity to enforce contract compliance with an as-yet-unknown number of new contracting parties, especially in light of outstanding questions regarding existing contracts (such as the proposed amendments to the Registrar Accreditation Agreements and problems with the WHOIS data accuracy reporting system);

- State how ICANN will conduct legal reviews of applications, consider legal objections from third parties, and discharge its responsibility to ensure that the process of introducing new gTLDs respects all relevant national and international law, including intellectual property rights;

- Focus on coordinating technical functions related to the management of the DNS and not on matters more appropriately addressed by governments, such as adjudication of morality, public order and community objections in accordance with international human rights law. The proposed mechanisms to address these topics are inappropriate;

- Create a mechanism that provides for the expansion of the gTLD reserved names list, as appropriate, for technical or infrastructure-related names; and,

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[2] See attached letter from Acting Assistant Attorney General Deborah A. Garza, U.S. Department of Justice, Antitrust Division to Acting Assistant Secretary for Communications and Information Meredith A. Baker, NTIA (dated Dec. 3, 2008).

- Articulate a clear rationale for the proposed fee structure as well as a transparent mechanism, that includes community agreement, for the disposition of excess revenues, should there be any, given ICANN's status as a non-profit entity.

The United States government shares ICANN's commitment to promote competition in the domain name marketplace while ensuring Internet stability and security and looks forward to continuing to participate in this process so that the collective concerns of the community are addressed prior to ICANN moving forward with the introductions of new gTLDs.

Sincerely,

Meredith A. Baker
Acting Assistant Secretary
    for Communications and Information

cc: Dr. Paul Twomey, President and CEO, ICANN

DEPARTMENT OF JUSTICE
Antitrust Division

Deborah A. Garza
Acting Assistant Attorney General

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December 3, 2008

Meredith A. Baker
Acting Assistant Secretary for Communications
 and Information
National Telecommunications and
 Information Administration
United States Department of Commerce
Washington, D.C. 20230

Re: ICANN's Draft RFP for New gTLDs

Dear Ms. Baker:

This letter responds to the United States Department of Commerce's ("DOC") request for advice regarding competition issues raised by the draft request for proposal ("RFP") that would govern the issuance of new generic top level domains ("gTLDs") published by the Internet Corporation for Assigned Names and Numbers ("ICANN"). The Antitrust Division has reviewed the RFP and related materials published on ICANN's website, including a proposed registry agreement that ICANN will require successful applicants to execute. Our analysis of the issues raised by these materials is informed by our extensive experience with competition matters as well as the analysis we conducted in connection with our 2006 review of the revised .com registry agreement.[1]

As we explain below, some new gTLDs envisioned by the RFP likely would have market power, the exercise of which is not adequately addressed by the RFP or other constraints. Moreover, the creation of additional gTLDs is unlikely to constrain the exercise of market power by existing TLDs, especially the .com registry operated by VeriSign. Contrary to ICANN's apparent assumption, competition from existing TLDs – or from new gTLDs created pursuant to the RFP – is not likely to prevent the exercise of market power by new or existing TLD registries.

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[1] *See* Letter from Thomas O. Barnett to John M. R. Kneuer, dated September 6, 2006.

As a result, although new gTLDs may generate some consumer benefits, ICANN should take additional steps to ensure that the process of creating new gTLDs incorporates to the maximum extent possible competition-based mechanisms and also imposes other constraints on the exercise of market power by gTLD operators.

The Division makes two specific recommendations. First, ICANN's general approach to new gTLDs should be revised to give greater consideration to consumer interests. ICANN should more carefully weigh potential consumer harms against potential consumer benefits before adding new gTLDs and renewing new gTLD registry agreements. Second, the RFP process and proposed registry agreement should include provisions that would enable ICANN to constrain new registry operators from exercising market power. In particular, ICANN should establish competitive mechanisms for authorizing new gTLDs and renewals of gTLD registry agreements whereby prospective gTLD operators would compete for gTLDs by proposing registry terms – including maximum fee schedules – that would provide consumer benefits.

Background: Introducing New gTLDs Likely Would Enable the Exercise of Market Power by gTLD Operators and Likely Would Not Constrain the Exercise of Market Power by .com and Other Existing TLDs

Our investigation of the proposed .com agreement generated several findings that bear on the likely effect of creating new gTLDs. First, we found that VeriSign possesses significant market power as the operator of the .com registry because many registrants do not perceive .com and other gTLDs (such as .biz and .info) and country code TLDs ("ccTLDs," such as .uk and .de) to be substitutes. Instead, registrants frequently purchase domains in TLDs other than .com as *complements* to .com domains, not as substitutes for them. In other words, registrants of a particular .com domain (e.g., google.com) will frequently also perceive a need to register the same domain in all or most available TLDs (e.g., google.info and google.biz) because of a desire to expand their presence on the Internet and to protect their brands from being exploited by others.[2]

We also concluded that existing gTLDs likely would not become a competitive threat to .com registrations because the network effects that make .com registrations so valuable to consumers will be difficult for other TLDs to overcome. Due to a first-mover advantage and high brand awareness, .com registrations account for the overwhelming majority of gTLD registrations. As a result, when users do not know the TLD in which a domain is registered, they most often simply append ".com" to a product or company name when attempting to find the

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[2] In this regard, we discovered that .info often seems to have little value as a stand alone gTLD. Many of the increased domain registrations in .info while those registrations were offered for free were simply bundled with purchases of the same domain in other TLDs or registered to existing users of the same domain in .com.

desired website. This phenomenon creates a strong preference for .com.[3] Accordingly, there will continue to be a need for Section 7.3 of the .com registry agreement to replace the discipline that market competition does not provide in this setting, as well as continuing DOC oversight of the .com registry under the Cooperative Agreement, which precludes VeriSign from amending or renewing the .com agreement without DOC approval.

Finally, our investigation of the .com agreement found evidence that other gTLD registry operators may possess a degree of market power. The market power inherent in the other gTLDs is less than the market power in .com, but is still material. The need of many registrants to purchase domains in many or most gTLDs allows each gTLD registry operator to impose costs on registrants that purchase domains simply because a gTLD exists. With respect to existing gTLDs, this power is constrained to some extent by the registry agreements applicable to the other gTLDs. Without those constraints, the gTLD operators likely could profitably charge even higher fees that reflect their market power as to registrants that are willing to pay a premium for their domains, since it appears that the operators may be able to identify those customers and charge discriminatorily high domain registration prices.[4] The fact that some registrants might view different gTLDs as substitutes would not necessarily constrain the gTLD operators from selectively exercising market power vis-a-vis those that are willing to pay a premium.

In light of these findings, we believe that the introduction of new gTLDs under the RFP could impose substantial additional domain registration costs on many consumers and that many new gTLD registry operators may have market power over registrants. Further, the introduction of new gTLDs is not likely to constrain the exercise of market power by existing gTLDs or ameliorate the continuing need for restraints to prevent VeriSign from exercising market power in the sale of .com domains.

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[3] VeriSign has argued that the increasing use of search engines will cause the importance of .com to diminish, but "direct navigation" continues to be a common practice. Computer users who type Internet destinations into their browser bars often assume that a domain is in the .com TLD whenever they are uncertain, due to the greater prevalence of .com names relative to other TLDs. As a result, new registrants often search for alternative domains in .com when their preferred .com domain is unavailable, rather than selecting their preferred domain in another TLD because investment in developing the domain in the new gTLD would likely benefit the owner of the domain in .com.

[4] Registrants that are willing to pay a premium would include those that engage in defensive registrations to protect their trademark or trade name and registrants that make significant investments in their domain names. A registry operator's ability to impose increased prices on registrants willing to pay a premium for domain names in a new gTLD assumes that the registry operator can identify these registrants. The antitrust laws likely would not constrain the unilateral pricing decisions of a gTLD operator whose market power derived from the creation of a new gTLD by ICANN.

<div align="center">*Recommendations*</div>

1.   *ICANN Should Give Greater Consideration to Consumer Interests before Creating New gTLDs and Renewing Registry Agreements*

ICANN is obligated to manage gTLDs in the interests of registrants and to protect the public interest in competition.[5] ICANN appears to have assumed that the introduction of new gTLDs necessarily will enhance competition and promote choice and innovation, without offering any evidence to support that assumption. To our knowledge, ICANN has neither studied competition among gTLDs at the registry level, nor commissioned such a study, despite the ICANN Board of Director's specific direction to do so.[6] On October 18, 2006, the ICANN Board directed ICANN's President to commission an economic study to address questions such as:

- whether the domain registration market is one market or whether each TLD functions as a separate market,
- whether registrations in different TLDs are substitutable,
- what are the effects on consumer and pricing behavior of the switching costs involved in moving from one TLD to another,
- what is the effect of the market structure and pricing on new TLD entrants, and
- whether there are other markets with similar issues, and if so how are these issues addressed and by whom[7]

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[5] *See* Articles of Incorporation of ICANN, 4, as revised November 21, 1998 (http://www.icann.org/en/general/articles.htm); Joint Project Agreement Between the U.S. Department of Commerce and ICANN, Section II.C., dated Sept. 29, 2006 (http://www.icann.org/en/general/JPA-29sep06.pdf).

[6] ICANN has periodically referenced an OECD report published in 2004 as support for its position that introducing new gTLDs may enhance competition at the registry level. The OECD authors relied on data showing a decline in .com, .net, and .org registrations combined with a significant number of registrations in the new .info, .biz, and .name gTLDs during the six-month period immediately following the introduction of the new gTLDs in 2002. S. Paltridge and M. Matsui, OECD's Directorate for Science, Technology and Industry, *Generic Top Level Domains: Market Development and Allocation Issues*, 4, 22 (July 13, 2004). However, the authors acknowledge that the reduction in .com, .net, and .org registrations was at the end of the "internet bubble," and that registrations in those three gTLDs resumed growth during the succeeding six-month period, while registrations in the new gTLDs tailed off and actually declined in .info during the last six months of 2003, the last period for which registration data was available. *Id.* Indeed, with the benefit of additional, more recent information in our investigation of the new .com agreement, we found no indication that the other gTLDs impose a competitive constraint on sales of .com domains or on VeriSign's ability to charge the maximum .com registry price.

[7] ICANN, Special Meeting of the Board Minutes (Oct. 18, 2006) (http://www.icann.org/en/minutes/minutes-18oct06.htm) (last visited Nov. 17, 2008).

The Board recognized that such a study could help in future negotiations with TLD registry operators.[8] Now, more than two years later, ICANN has proposed to introduce a new gTLD approval process, complete with a new gTLD registry operator agreement, apparently without having even begun the requested study.

ICANN should revise its general approach to give greater consideration to potential consumer harms and benefits. The creation of new gTLDs could generate consumer harm. First, approval of new gTLDs would proliferate the number of TLDs in which registrants feel that they must purchase registrations to protect their domain names, increasing their costs.[9] Second, new gTLD operators may be able to exercise market power vis-a-vis some group of customers (e.g., because of a desire to register for defensive purposes or because of investments they make in a domain name).

At the same time, new gTLDs could generate benefits. It is possible, for example, that they would intensify competition among gTLDs other than .com for customers that do not feel compelled to register their domain names in multiple gTLDs. Whether this is likely would require further analysis. In addition, new gTLDs may benefit unique registrant populations that might value a domain in a particular gTLD. An example of this could be a new gTLD that represents a particular community of people, a type of application that ICANN anticipates receiving in response to the RFP. However, we are unaware of any effort by ICANN to quantify this consumer benefit. ICANN has not attempted to distinguish the registrants that might value having a domain in a gTLD other than .com, including a new gTLD, from those registrants that would feel compelled to purchase one or more domains in the new gTLD only because the gTLD was created.

The RFP neither provides for any evaluation of what effect, if any, the new gTLDs will have on competition at the registry level nor allows for objections based on the likely adverse competitive effects of the gTLD. The RFP also does not establish any mechanisms or processes that would minimize the potential for harm from new gTLDs while enabling the potential benefits to be realized. For example, the proposed registry agreement (unlike the .com agreement and other existing gTLD registry agreements) does not include any price caps that would limit the ability of new gTLD registry operators to charge the highest possible prices for domains in the new gTLDs. Similarly, the proposed agreement does not include any restrictions against price discrimination, bundling, and tying. It also does not require registry operators to offer domains pursuant to long term contracts, meaning that registry operators would be free to raise

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[8] *Id.*

[9] The circumstances under which registry operators may impose additional costs on registrants willing to pay a premium for a domain name depends on the registry operator's ability to price discriminate as well as their pricing strategy. The magnitude of the overall increase in costs will likely to some extent depend on the number of new gTLDS introduced as a result of the RFP process.

prices to registrants willing to pay a premium for specific domain names. The proposed registry agreement also allows for the perpetual renewal of every new gTLD registry agreement without regard to competitive effects or consumer-based objections.

ICANN should recognize that new gTLDs, while providing a desired choice for some registrants, are unlikely to restrain the exercise of market power by the .com registry operator and may impose significant costs on registrants, particularly those that will feel compelled to register their domains in the new gTLDs. ICANN should explicitly include this type of analysis as part of its evaluation of each new gTLD application, and should proceed cautiously in authorizing new gTLDs, attempting to assess both the likely costs and benefits of any new gTLD.[10] If ICANN is not prepared to act now to address the competition-related issues identified in this letter, it should at a minimum postpone the introduction of new gTLDs and the adoption of additional perpetually renewing gTLD agreements until it receives and reviews the study that the ICANN Board requested over two years ago.

2. **ICANN Should Revise the RFP Process and the Proposed Registry Agreement to Protect Consumers from the Exercise of Market Power**

ICANN should take steps to protect consumers from the exercise of market power by gTLD operators. First, the new gTLD approval and management process should be amended to reduce the potential adverse results of new gTLDs. The RFP process should require ICANN to consider, allow objections for, and retain authority to address any adverse consumer welfare effects that may arise during the new gTLD approval process and registry agreement renewal process. For example, ICANN should be sensitive to complaints that consumers may feel compelled to register domains in a new gTLD for defensive purposes, without expectation of receiving meaningful value from the new registration other than avoidance of even higher costs that would be incurred to combat third parties' improper use of the registrant's trade name in the new gTLD.

Second, once it has decided to authorize a new gTLD, ICANN should implement a process by which prospective gTLD operators compete for the privilege of operating a particular gTLD by offering terms that benefit consumers. Effectively implementing such a process would require

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[10] ICANN has consistently told us that its primary concern is with DNS management from a technical perspective and that it does not have the expertise or inclination to protect or preserve the public interest in competition and low domain costs, preferring instead to allow government competition authorities to take whatever action might be necessary to address issues of competitive abuse. The problem with ICANN's preferred approach is that the antitrust laws generally do not proscribe a registry operator's unilateral decisions made under the processes established by ICANN – such as, for instance, pricing decisions. *See, e.g., Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 407 (2004) ("The mere possession of monopoly power, and the concomitant charging of monopoly prices, is not . . . unlawful . . . ."). Accordingly, ICANN should create rules fostering a competitive environment to the greatest extent possible.

that ICANN evaluate bids from the perspective of the benefits they provide consumers, not merely the amount bidders are willing to pay to ICANN for the right to operate the gTLD. ICANN's requests for bids should expressly call for bids to specify an initial maximum price that would be charged by the operator for domain registrations, as well as limitations on price increases over time. ICANN should also encourage improved performance by asking bidders to propose any operating specifications that exceed the minimum standards established by ICANN. ICANN's requests for bids should also solicit other proposals for providing consumer benefit, such as commitments not to discriminate in price across registrants (in order to avoid the ability to "hold up" registrants that have made investments in a domain name) and not to require the purchase of other services from the registry operator as a condition of registration (to limit price cap evasion). All such terms should be incorporated in the registry agreement so that ICANN can enforce them.

Third, although a competitive bidding mechanism likely is the best mechanism for simulating a competitive outcome in most circumstances, it may not be effective in all cases. Because ICANN's proposed registry agreement lacks any of the kinds of safeguards included in Section 7.3 of the new .com agreement or other gTLD agreements, ICANN should consider revising the proposed registry agreement, at least for instances where there is not competitive bidding to operate a new gTLD, to include provisions designed to limit the ability of the registry operator to exercise market power, i.e., price caps and commitments against price discrimination and tying. In addition, it may be preferable to require long-term agreements (the .com agreement, for example, requires that the operator offer domains for terms of up to 10 years). If a competitive bidding mechanism is infeasible, protections of this sort would prevent the exercise of market power by the operators of many of the contemplated gTLDs. Even if a competitive bidding mechanism is implemented, moreover, it might still be appropriate to incorporate some protections into the standard registry agreement, to anticipate the possibility that there is not effective competition for a particular gTLD.

Finally, ICANN should require competitive bidding for renewals of a gTLD registry agreement, rather than granting the incumbent operator a perpetual right to renew without competition. Such a mechanism would both assist in disciplining the conduct of the incumbent during the initial term insofar as the incumbent would want to maximize the likelihood of renewal, and ensure the benefits of competition when potential operators bid for the right to operate the gTLD in the renewal term. Instead, ICANN has conformed the proposed registry agreement to the existing gTLD agreements, effectively granting perpetual renewal rights to registry operators without the prospect of periodic rebidding, and without regard to potential adverse competitive effect. Experience with the .net TLD and other gTLDs has shown that competitive bidding in the award of gTLD registry agreements, and periodic rebidding, has served as an effective tool for managing the interests of registrants in gTLDs. Indeed, competitive bidding has resulted in lower domain prices and higher operating specifications than what ICANN has achieved through non-competitive negotiations. In particular, competitive .

bidding prompts bidders to propose and accept registry improvements, higher operating standards, and lower registration fees to win the contract.

Opponents of competitive bidding on renewals have contended that ICANN needs to grant perpetual registry contracts in order to motivate registry operators to invest in their registries. However, incumbent registry operators have an incentive to make investments in order to maintain their competitive advantage in a rebid situation.[11] Thus, the effect on innovation of potential termination of a registry agreement is at worst inconclusive. Further, experience demonstrates that any concern about the risk of transferring a new gTLD registry after a rebid is misplaced. Management and operation of many gTLDs and ccTLDs have been successfully transferred without imposing undue burdens on DNS stability or security. For example, VeriSign successfully transferred the .org registry to the Public Interest Registry in January 2003.

<div align="center">*   *   *</div>

ICANN's approach to TLD management demonstrates that it has adopted an ineffective approach with respect to its obligation to promote competition at the registry level. We respectfully suggest that the DOC refrain from expressing satisfaction with ICANN's progress toward the goal of promoting competition among TLDs unless and until ICANN develops a credible and effective policy that compels it to employ tools such as competitive bidding to manage TLDs in a manner that safeguards the interests of registrants in obtaining high quality domains at the lowest possible prices. To date, we believe that ICANN has not come close to fulfilling its obligations to employ competitive principles in its management of TLD registry operations.

Sincerely,

Deborah A. Garza

cc: Kathy D. Smith, Esq.

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[11] We have identified no registry operator that reduced investment because of potential termination.

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Approved Board Resolutions | Singapore

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20 Jun 2011

1. ## Approval of the New gTLD (generic Top Level Domain) Program

   Whereas, on 28 November 2005, the GNSO (Generic Names Supporting Organization) Council voted unanimously to initiate a policy development process on the introduction of new gTLDs.

   Whereas, the GNSO (Generic Names Supporting Organization) Committee on the Introduction of New gTLDs addressed a range of difficult technical, operational, legal, economic, and policy questions, and facilitated widespread participation and public comment throughout the policy development process.

   Whereas, on 6 September 2007, the GNSO (Generic Names Supporting Organization) Council approved by a supermajority vote a motion supporting the 19 recommendations, as a whole, as set out in the Final Report of the ICANN (Internet Corporation for Assigned Names and Numbers) Generic Names Supporting Organisation on the Introduction of New Generic Top-Level Domains going forward to the ICANN (Internet Corporation for Assigned Names and Numbers) Board
   <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-

08aug07.htm (http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm)>.

Whereas, the Board instructed staff to review the GNSO (Generic Names Supporting Organization) recommendations and determine whether they were capable of implementation, and staff engaged international technical, operational and legal expertise to support the implementation of the policy recommendations and developed implementation plans for the GNSO (Generic Names Supporting Organization)'s policy recommendations.

Whereas, on 26 June 2008, the Board adopted the GNSO (Generic Names Supporting Organization) policy recommendations for the introduction of new gTLDs and directed staff to further develop and complete its detailed implementation plan, continue communication with the community on such work, and provide the Board with a final version of the implementation proposals for the board and community to approve before the launching the new gTLD (generic Top Level Domain) application process <http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171 (/en/minutes/resolutions-26jun08.htm#_Toc76113171)>.

Whereas, staff has made implementation details publicly available in the form of drafts of the gTLD (generic Top Level Domain) Applicant Guidebook and supporting materials for public discussion and comment.

Whereas, the first draft of the Applicant Guidebook was published on 23 October 2008 <http://www.icann.org/en/topics/new-gtlds/comments-en.htm (/en/topics/new-gtlds/comments-en.htm)>, and the Guidebook has undergone continued substantial revisions based on stakeholder input on multiple drafts.

Whereas, the Board has conducted intensive consultations with the Governmental Advisory Committee (Advisory Committee) (including in Brussels in February 2011, in San Francisco in March 2011, by telephone in May 2011, and in Singapore on 19 June 2011), resulting in substantial

agreement on a wide range of issues noted by the GAC (Governmental Advisory Committee), and the Board has directed revisions to the Applicant Guidebook to reflect such agreement.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) received letters from the United States Department of Commerce and the European Commission addressing the issue of registry-registrar cross-ownership, and the Board considered the concerns expressed therein. The Board agrees that the potential abuse of significant market power is a serious concern, and discussions with competition authorities will continue.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) has consulted with the GAC (Governmental Advisory Committee) to find mutually acceptable solutions on areas where the implementation of policy is not consistent with GAC (Governmental Advisory Committee) advice, and where necessary has identified its reasons for not incorporating the advice in particular areas, as required by the Bylaws; see <http://www.icann.ord/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf (/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf)> [PDF, 103 KB].

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) community has dedicated countless hours to the review and consideration of numerous implementation issues, by the submission of public comments, participation in working groups, and other consultations.

Whereas, the Board has listened to the input that has been provided by the community, including the supporting organizations and advisory committees, throughout the implementation process.

Whereas, careful analysis of the obligations under the Affirmation of Commitments and the steps taken throughout the implementation process indicates that ICANN (Internet Corporation for Assigned Names and Numbers) has fulfilled the commitments detailed in the Affirmation

<http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm (/en/documents/affirmation-of-commitments-30sep09-en.htm)>.

Whereas, the Applicant Guidebook posted on 30 May 2011 <http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm (/en/topics/new-gtlds/comments-7-en.htm)> includes updates resulting from public comment and from recent GAC (Governmental Advisory Committee) advice.

Whereas, the draft New gTLDs Communications Plan <http://www.icann.org/en/topics/new-gtlds/new-gtlds-communications-plan-30may11-en.pdf (/en/topics/new-gtlds/new-gtlds-communications-plan-30may11-en.pdf)> [PDF, 486 KB] forms the basis of the global outreach and education activities that will be conducted leading up to and during the execution of the program in each of the ICANN (Internet Corporation for Assigned Names and Numbers) geographic regions.

Whereas, the Draft FY12 Operating Plan and Budget <http://www.icann.org/en/announcements/announcement-17may11-en.htm (/en/announcements/announcement-17may11-en.htm)> includes a New gTLD (generic Top Level Domain) Program Launch Scenario, and the Board is prepared to approve the expenditures included in Section 7 of the Draft FY12 Operating Plan and Budget.

Whereas, the Board considers an applicant support program important to ensuring an inclusive and diverse program, and will direct work to implement a model for providing support to potential applicants from developing countries.

Whereas, the Board's Risk Committee has reviewed a comprehensive risk assessment associated with implementing the New gTLD (generic Top Level Domain) Program, has reviewed the defined strategies for mitigating the identified risks, and will review contingencies as the program moves toward launch.

Whereas, the Board has reviewed the current status and plans for operational readiness and program management

within ICANN (Internet Corporation for Assigned Names and Numbers).

Resolved (2011.06.20.01), the Board authorizes the President and CEO to implement the new gTLD (generic Top Level Domain) program which includes the following elements:

1. the 30 May 2011 version of the Applicant Guidebook <http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm (/en/topics/new-gtlds/comments-7-en.htm)>, subject to the revisions agreed to with the GAC (Governmental Advisory Committee) on 19 June 2011, including: (a) deletion of text in Module 3 concerning GAC (Governmental Advisory Committee) advice to remove references indicating that future Early Warnings or Advice must contain particular information or take specified forms; (b) incorporation of text concerning protection for specific requested Red Cross and IOC names for the top level only during the initial application round, until the GNSO (Generic Names Supporting Organization) and GAC (Governmental Advisory Committee) develop policy advice based on the global public interest, and (c) modification of the "loser pays" provision in the URS (Uniform Rapid Suspension) to apply to complaints involving 15 (instead of 26) or more domain names with the same registrant; the Board authorizes staff to make further updates and changes to the Applicant Guidebook as necessary and appropriate, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process, and to prominently publish notice of such changes;

2. the Draft New gTLDs Communications Plan as posted at <http://www.icann.org/en/topics/new-gtlds/new-gtlds-communications-plan-30may11-en.pdf (/en/topics/new-gtlds/new-gtlds-communications-plan-30may11-en.pdf)> [PDF, 486 KB], as may be revised and elaborated as necessary and appropriate;

3. operational readiness activities to enable the opening of the application process;

4. a program to ensure support for applicants from developing countries, with a form, structure and processes to be determined by the Board in consultation with stakeholders including: (a) consideration of the GAC (Governmental Advisory Committee) recommendation for a fee waiver corresponding to 76 percent of the $185,000 USD evaluation fee, (b) consideration of recommendations of the ALAC (At-Large Advisory Committee) and GNSO (Generic Names Supporting Organization) as chartering organizations of the Joint Applicant Support (JAS) Working Group, (c) designation of a budget of up to $2 million USD for seed funding, and creating opportunities for other parties to provide matching funds, and (d) the review of additional community feedback, advice from ALAC (At-Large Advisory Committee), and recommendations from the GNSO (Generic Names Supporting Organization) following their receipt of a Final Report from the JAS Working Group (requested in time to allow staff to develop an implementation plan for the Board's consideration at its October 2011 meeting in Dakar, Senegal), with the goal of having a sustainable applicant support system in place before the opening of the application window;

5. a process for handling requests for removal of cross-ownership restrictions on operators of existing gTLDs who want to participate in the new gTLD (generic Top Level Domain) program, based on the "Process for Handling Requests for Removal of Cross-Ownership Restrictions for Existing gTLDs" <http://www.icann.org/en/announcements/announcement-02may11-en.htm (/en/announcements/announcement-02may11-en.htm)>, as modified in response to comments <http://www.icann.org/en/tlds/process-cross-ownership-gtlds-en.htm (/en/tlds/process-cross-ownership-gtlds-en.htm)> (a redline of the Process to

the earlier proposal is provided at
<[http://www.icann.org/en/minutes/process-cross-ownership-restrictions-gtlds-20jun11-en.pdf (/en/minutes/process-cross-ownership-restrictions-gtlds-20jun11-en.pdf)](http://www.icann.org/en/minutes/process-cross-ownership-restrictions-gtlds-20jun11-en.pdf)> [PDF, 97 KB]); consideration of modification of existing agreements to allow cross-ownership with respect to the operation of existing gTLDs is deferred pending further discussions including with competition authorities;

6. the expenditures related to the New gTLD (generic Top Level Domain) Program as detailed in section 7 of the Draft FY12 Operating Plan and Budget <[http://www.icann.org/en/announcements/announcement-17may11-en.htm (/en/announcements/announcement-17may11-en.htm)](http://www.icann.org/en/announcements/announcement-17may11-en.htm)>; and

7. the timetable as set forth in the attached graphic <[http://www.icann.org/en/minutes/timeline-new-gtld-program-20jun11.pdf (/en/minutes/timeline-new-gtld-program-20jun11.pdf)](http://www.icann.org/en/minutes/timeline-new-gtld-program-20jun11.pdf)> [PDF, 167 KB], elements of which include the New gTLD (generic Top Level Domain) application window opening on 12 January 2012 and closing on 12 April 2012, with the New gTLD (generic Top Level Domain) Communications Plan beginning immediately.

Resolved (2011.06.20.02), the Board and the GAC (Governmental Advisory Committee) have completed good faith consultations in a timely and efficient manner under the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, Article XI, Section 2.j. As the Board and the GAC (Governmental Advisory Committee) were not able to reach a mutually acceptable solution on a few remaining issues, pursuant to ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, Article XI, Section 2.k, the Board incorporates and adopts as set forth in the document describing the remaining areas of difference between ICANN (Internet Corporation for Assigned Names and Numbers)'s Board and the GAC (Governmental Advisory Committee) <http://www.icann.ord/en/minutes/rationale-gac-response-

new-gtld-20jun11-en.pdf (/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf)> [PDF, 103 KB] the reasons why the GAC (Governmental Advisory Committee) advice was not followed. The Board's statement is without prejudice to the rights or obligations of GAC (Governmental Advisory Committee) members with regard to public policy issues falling within their responsibilities.

Resolved (2011.06.20.03), the Board wishes to express its deep appreciation to the ICANN (Internet Corporation for Assigned Names and Numbers) community, including the members of the GAC (Governmental Advisory Committee), for the extraordinary work it has invested in crafting the New gTLD (generic Top Level Domain) Program in furtherance of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and core values, and counts on the community's ongoing support in executing and reviewing the program.

Rationale for Resolutions 2011.06.20.01-2011.06.20.03

* Note: The Rationale is not final until approved with the minutes of the Board meeting.

Rationale for Approval of the Launch of the New gTLD (generic Top Level Domain) Program (/en/minutes/rationale-board-approval-new-gtld-program-launch-20jun11-en.pdf) [PDF, 624 KB]

RM 23

**REPORT OF DENNIS CARLTON
REGARDING ICANN'S PROPOSED MECHANISM FOR
INTRODUCING NEW gTLDS**

June 5, 2009

I.   INTRODUCTION

A.   QUALIFICATIONS

1.   I am the Katherine Dusak Miller Professor of Economics at the University of Chicago Booth School of Business. I received my A.B. in Applied Mathematics and Economics from Harvard University and my M.S. in Operations Research and Ph.D. in Economics from the Massachusetts Institute of Technology. I have served on the faculties of the Law School and the Department of Economics at The University of Chicago and the Department of Economics at the Massachusetts Institute of Technology.

2.   I specialize in the economics of industrial organization, which is the study of individual markets and includes the study of antitrust and regulatory issues. I am co-author of the book <u>Modern Industrial Organization</u>, a leading text in the field of industrial organization, and I also have published numerous articles in academic journals and books. In addition, I am Co-Editor of the <u>Journal of Law and Economics</u>, a leading journal that publishes research applying economic analysis to industrial organization and legal matters, and serve, or have served, as an editor of a variety of scholarly journals.

3.   In addition to my academic experience, I am a Senior Managing Director of Compass Lexecon, a consulting firm that specializes in the application of economics to legal and regulatory issues. From October 2006 through January 2008, I served as Deputy Assistant Attorney General for Economic Analysis, Antitrust Division, U.S.

Department of Justice, the most senior position in the Antitrust Division held by an economist. I also served as a Commissioner of the Antitrust Modernization Commission, created by the U.S. Congress in 2002 to evaluate U.S. antitrust laws. I have provided expert testimony before various state and federal courts, the U.S. Congress, a variety of state and federal regulatory agencies and foreign tribunals and have served as a consultant to several government agencies including the Department of Justice and the Federal Trade Commission. My curriculum vita is attached as Appendix I to this report.

4.   I have been asked by ICANN to analyze from an economic perspective ICANN's anticipated introduction of new generic top level domain names (gTLDs), and to identify and address the benefits and costs associated with ICANN's proposal. In doing so I evaluate various concerns that have been raised by the Antitrust Division of the U.S. Departments of Justice (DOJ), the National Telecommunications Information Agency (NTIA) of the U.S. Department of Commerce, and comments of third parties submitted to ICANN either in response to its proposal to introduce new gTLDs or in response to my previous two preliminary reports.[1] In conjunction with this analysis, I also address whether price caps that limit prices and future increases in prices charged by registries of these new gTLDs would be necessary to achieve the potential competitive benefits of the new gTLDs.

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1. See letters from Deborah A. Garza to Meredith A. Baker dated December 3, 2008 ("DOJ letter') and from Meredith A. Baker to Peter Dengate-Thrush dated December 18, 2008 ("NTIA letter") The NTIA letter also requests information about the effect of new gTLDs on the stability and security of the Domain Name System, which are not addressed in this report.
(http://www.ntia.doc.gov/reportsarchive_2007_2008.html) For comments received by ICANN see http://forum.icann.org/lists/competition-pricing-prelim and http://forum.icann.org/lists/gtld-guide.

5.   This report combines and updates my two preliminary reports that address ICANN's proposed mechanism for introducing new gTLDs.[2] This report also addresses in part certain comments made in response to my preliminary reports.

B.   OVERVIEW AND SUMMARY

6.   I conclude that ICANN's proposed framework for introducing new gTLDs is likely to facilitate entry and create new competition to the major gTLDs such as *.com*, *.net*, and *.org*. Like other actions that remove artificial restrictions on entry, the likely effect of ICANN's proposal is to increase output, lower price and increase innovation. This conclusion is based on the fundamental principles that competition promotes consumer welfare and restrictions on entry impede competition.

7.   The DOJ, NTIA and a variety of other parties have expressed concerns that the introduction of new gTLDs could harm consumer welfare by creating confusion among consumers and imposing costs of trademark holders by necessitating inefficient "defensive" registration of domain names in new gTLDs. While entry generally promotes consumer welfare, proper account also must be taken for property rights that protect firms' investments in establishing a reputation and brand name. If such property rights are not protected, rivals have an incentive to "free ride" on the reputation created by rivals by imitating trademarks or adopting very similar marks thereby potentially creating consumer confusion. In the absence of alternative mechanisms for protecting trademarks, the expansion in the number of gTLDs could impose costs on trademark

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2.   Preliminary Report of Dennis Carlton Regarding the Impact of New gTLDs on Consumer Welfare, March 2009, and Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries, March 2009.

holders by creating an incentive for them to undertake "defensive" registrations that serve no purpose other than protecting their intellectual property.

8.   This possibility, and the harm to consumer welfare that results, is recognized by existing trademark law and in economic analyses of intellectual property. But to the extent that the introduction of new gTLDs gives rise to intellectual property concerns, they can be addressed through existing dispute resolution mechanisms and appropriately-designed modifications of ICANN procedures for protecting intellectual property. Given the availability of these alternative mechanisms for resolving trademark-related disputes, the draconian remedy of restricting entry would be likely to harm consumer welfare compared to approaches based on these alternatives.

9.   DOJ, NTIA and other commenters suggest that action on ICANN's proposal should be delayed until ICANN completes the economic study it authorized in 2006 to address whether the domain registration market is one economic market or whether each TLD operates as a separate market. While this remains an interesting question deserving of analysis, evaluation of the impact of ICANN's gTLD proposal on consumer welfare does not depend on the answer to this question. Indeed, even if new gTLDs do not compete with *.com* and the other major TLDs for existing registrants, it is likely that consumers would nonetheless realize significant benefits from new gTLDs due to increased competition for new registrants and increased innovation that would likely be fostered by entry.

10.   I also conclude that price caps or ceilings on prices charged by operators of new gTLD registries are not necessary to ensure that consumers benefit from new gTLDs. Proponents of price caps suggest that caps on prices charged for registrations on new gTLDS is necessary because trademark holders could be charged high prices to

protect their trademarks and due to concerns that registrants for new gTLDs could face high prices due to their high costs of switching to other registries.

11.   However, the ability of ICANN to protect trademark holders through existing dispute resolution mechanisms and appropriately-designed modifications of ICANN procedures for protecting intellectual property implies that price caps are not necessary to protect trademark holders. In addition, the fact that registrants for new gTLDs face switching costs also does not provide a rationale for imposing price caps. The rates charged by new gTLDs will face competition from existing registries and other entrants, and operators of new gTLD registries that attempt to act opportunistically by subsequently raising prices face significant risk of harming their reputation and the loss of future customers. Further, the imposition of price caps for new gTLDs may inhibit the development and marketplace acceptance of new gTLDs by limiting the pricing flexibility of entrants to the provision of new registry services without generating significant benefits to registrants of the new gTLDs.

II.   BACKGROUND ON ICANN'S PROPOSAL

A.   ECONOMICS OF THE DOMAIN NAME SYSTEM

12.   Despite the introduction of several new gTLDs in recent years, Internet activity today continues to be dominated by a small number of registries. For example, the *.com* TLD today has more than 80 million registered domain names while *.net* and *.org* respectively have roughly 12 million and 7 million registered domain names.[3] While a handful of new gTLDs have been introduced in recent years, these have achieved only limited success in attracting registrants and Internet activity. For example, *.info* and *.biz*,

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3. ICANN Registry Operator Monthly Reports January 2009.
    (http://www.icann.org/en/tlds/monthly-reports/)

both introduced in 2001, have attracted roughly 5 million and 2 million domain names respectively.[4]

13.   Currently, all agreements between ICANN and the registries operating unsponsored gTLDs include price maximums and limits on permissible future price increases that can be charged to registrars.[5]   Registrars, in turn, charge rates to registrants that are not regulated by ICANN. Registrars typically deal with multiple registries and offer a variety of additional services to registrants such as web site hosting and design.

14.   Registrants that subscribe to a particular Internet domain name face costs when switching registries because the TLD is a component of the domain name which, by definition, cannot be ported across registries. That is, if the registrant that operates the website *cars.com* wants to switch to the *.net* registry, then it must adopt *cars.net* (if available) or adopt another *.net* domain name. Switching costs faced by registrants may create incentives for registries and registrars to act opportunistically by raising prices. However, ex ante competition to attract new registrants, as well as harm to the reputation of the registry and/or registrar, limits their ability to engage in such conduct.

15.   An increase in the number of gTLDs increases the number of alternatives available to consumers, and thus offers the potential for increased competition, reduced prices, and increased output. The availability of new gTLDs also offers increased opportunities for registries and registrars to develop innovative services or business models that could provide significant opportunities for increases in consumer welfare.

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4. Id.
5. See, e.g., Section 7.3 of *.com* Registry Agreement between ICANN and VeriSign, dated March 1, 2006. Unsponsored gTLDs (*.com, .biz, .info, .name, .net, .org, .pro*) have price caps; all sponsored gTLDs (*.aero, .asia, .cat, .coop, .jobs, .mobi, .museum, .tel, .travel*), which in most cases are smaller than the unsponsored gTLDs, have no price caps.

B.   ICANN'S PROPOSED PROCEDURES FOR DEPLOYING NEW GTLDS

16.   ICANN has proposed a framework for authorizing new gTLDs. ICANN's draft Guidebook for applicants details the various phases of the ICANN's review process and the requirements that need to be met for approval.[6] ICANN will evaluate both the technical and financial capabilities of the applicant, the effect of the proposed gTLD on consumer confusion, and the effects of the proposed gTLD on Internet stability.[7]

17.   Objections to gTLD applications can be filed by various parties including existing TLD registries, other applicants, holders of intellectual property rights (such as trademarks) and others.[8] Objections can be made on a limited number of grounds including string confusion, legal rights (e.g. trademark infringement), morality and public order, and community objection.

18.   ICANN has also initiated a process to address the concerns of trademark holders related to the introduction of new gTLDs. ICANN formed the Implementation Recommendation Team ("IRT") which has issued a report, discussed in more detail below, that contains recommendations relating to new trademark protection mechanisms to alleviate these concerns.

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6. See ICANN, New gTLD Program: Second Draft Applicant Guidebook, February 18, 2009 ("Draft Guidebook"), (http://icann.org/en/topics/new-gtlds/comments-2-en.htm).
7. Draft Guidebook, p. 2-2.
8. A party that objects to an application must pay a dispute filing fee, which is expected to be between $1,000 and $5,000. At that time, the applicant has 30 days to respond (and pay the same fee). Both parties will then submit advanced payment to cover the dispute resolution proceedings, with payment refunded to the prevailing party (Draft Guidebook, p. 1-24 to 1-25).

C. SUMMARY OF CONCERNS ABOUT ICANN'S PROPOSAL TO EXPAND gTLDS.

19.   The DOJ, NTIA and various other parties have expressed concerns that the introduction of new gTLDs could harm consumers and/or trademark holders. Broadly summarized, these comments reflect the view that the introduction of new gTLDs will harm consumers (registrants) by creating confusion and by imposing significant costs on trademark holders by forcing them to establish "defensive" registrations with the new gTLDs to protect their trademarks and existing domain names. Comments by the DOJ and other parties also claim that the introduction of new gTLDs might not result in increased competition that would lower prices or improve service to registrants.[9]

20.   For example, the Association of National Advertisers states that new gTLDs will generate higher "costs of brand management and create new opportunities for others to infringe, phish, and engage in other deceptive practices. As a result, brand owners and consumers will be net losers."[10] Similarly, the U.S. Chamber of Commerce concludes that, "the proposed gTLD program […] will compel businesses to invest millions of dollars in defensive domain registrations and litigation […]"[11] The Kende

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9. AT&T expresses similar concerns in their economic report that responds to my two preliminary reports. See Michael Kende "Assessment of ICANN Preliminary Reports on Competition and Pricing", April 17 2009 ("Kende Report") submitted on behalf of AT&T. I am preparing a separate report that addresses aspects of the Kende Report.
10. ANA letter, p. 1. (http://forum.icann.org/lists/gtld-guide/mail2.html) "Phishing" is "a computing scam where the perpetrators try to get sensitive personal information by sending users to fake, but legitimate looking websites." (Source: http://onlinebusiness.about.com/od/onlinebusinessglossary/g/phishing.htm accessed on February 17, 2008)
11. U.S. Chamber of Commerce letter, p.1. (http://forum.icann.org/lists/gtld-guide/index.html)

Report claims "that the proposed introduction of new gTLDs could bring significant additional costs and resource burdens."[12]

21.   The DOJ concludes that "the need of many registrants to purchase domains in many or most gTLDs allows each gTLD registry operator to impose costs on registrants that purchase domains simply because a gTLD exists. […] In light of these findings, we believe that the introduction of new gTLDs under the RFP could impose substantial additional domain registration costs on many consumers and that many new gTLD registry operators may have market power over registrants."[13] The Kende Report also suggests regulating registry prices as registries of new gTLDs could extract high payments from trademark owners because "defensive registrations are much less price sensitive than basic new registrations".[14]

22.   In addition, both the NTIA and DOJ also express concerns regarding ICANN's proposed application and review process itself. Due to concerns that even new gTLDs have market power over its registrants, both DOJ and NTIA recommend ICANN use competitive bidding in assigning new TLDs, with applicants submitting bids that specify maximum prices and permissible price increases.[15] The DOJ and NTIA further recommend that, in instances in which competitive bidding may not be effective, ICANN incorporate provisions directly into their agreement with new registries, such as price restrictions or requirements of long-term contracts with users, to prevent the exercise of

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12. Kende Report, p.11.
13. DOJ letter, p. 3.
14. Kende Report, p.12
15. DOJ letter, p.7 and NTIA letter, p.2.

market power.[16] Finally, the DOJ suggests that ICANN require periodic competitive

bidding for renewal of registry agreements.[17]

III.   CONSUMERS ARE LIKELY TO BENEFIT FROM THE INTRODUCTION OF NEW GTLDS.

23.   The comments by NTIA, DOJ, and others appropriately focus on the

impact of new gTLDs on consumer welfare, but I believe come to the wrong

conclusion.[18] This section shows that, given the availability of alternative mechanisms to

address concerns about consumer confusion and defensive registrations, which are

discussed below, ICANN's plan to introduce new gTLDs is likely to benefit consumers

by facilitating entry which would be expected both to bring new services to consumers

and mitigate market power associated with *.com* and other major TLDs and to increase

innovation. As a result, the proposal by DOJ, NTIA and others to delay or even preclude

deployment of new gTLDs is likely inconsistent with consumer interests. I conclude that

such output restrictions are unnecessary and that the concerns motivating these

restrictions can be addressed without resorting to draconian restrictions on entry, which

essentially would freeze the number of TLDs less than fifteen years after the first

commercial development of the Internet.

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16. I understand that the current proposed agreement between ICANN and new gTLD registries contains a requirement for registries to offer a 10-year registration option to registrants.
17. DOJ letter, p.7 and NTIA letter, p.2.
18. DOJ letter, p. 2, "…ICANN's general approach to new gTLDs should be revised to give greater consideration to consumer interests. ICANN should more carefully weigh potential consumer harms against potential consumer benefits…"

A. POLICIES THAT FOSTER ENTRY HELP ADDRESS CONCERNS ABOUT MARKET POWER ASSOCIATED WITH *.COM*, AND OTHER MAJOR TLDS

24.   The DOJ and others have expressed concern that *.com* and other gTLDs possess market power.[19] To the extent they do, however, ICANN's proposal to expand the number of TLDs available could serve to limit any such concern. As the Horizontal Merger Guidelines note, entry has the potential to "counteract the competitive effects of concern."[20] More generally, entry is recognized to play a central role in maintaining competitive markets.[21] Hence, to the extent that *.com* and other TLDs have any market power today, expansion of the number of TLDs could constrain it in the future.

25.   DOJ claims that "… the creation of additional gTLDs is unlikely to constrain the exercise of market power by existing TLDs…"[22] The DOJ, however, seems to focus on the effect of new TLDs on existing registrants, not on their impact on competition for new registrants. The DOJ, for example, speculates that "the network effects that make *.com* registrations so valuable to consumers will be difficult for other TLDs to overcome."[23] However, any market power associated with *.com* will attract entrants with strategies built around bringing new registrants to the new gTLDs. Restricting the opportunity for entrants to compete for such profits necessarily has the effect of protecting and preserving the profits of the *.com* registry and its registrars.

26.   Both economic theory and empirical evidence indicate the elimination of entry barriers is likely to have a number of beneficial effects on consumer welfare,

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19. See, e.g., DOJ letter, p. 3 and Kende report p17.
20. Horizontal Merger Guidelines of the U.S. Department of Justice and Federal Trade Commission, p. 25.
21. See Carlton, Modern Industrial Organization, 4th ed., pp. 77-82.
22. DOJ letter, p. 1.
23. DOJ letter, p. 2.

including lower prices, expanded output, and increased innovation. The benefits of entry are the increased set of alternatives available to consumers and, more generally, the increased the elasticity of demand faced by existing firms creating an incentive for them to reduce their price. Consumer welfare is enhanced because product variety increases and output expands, resulting in an increase in consumer surplus. An empirical analysis of the effect of entry of new gTLDs, such as *.info* and *.biz*, on output and pricing would likely contribute to our understanding of the effects of entry on consumer welfare, but, as explained below, even if such a study indicated that this entry did not result in a reduction in *.com* registrations or fees, this would not lead to the conclusion that entry was not beneficial.[24]

27.   The DOJ suggests that new gTLDs may not provide substantial competition for *.com* and other existing TLDs, stressing the ubiquity of *.com* and the fact that that *existing* registrants face significant costs of switching to another TLD. Even if this is the case, this logic does not extend to competition between *.com* and new gTLDs to attract *new* registrants. The increase in the number of alternatives available to new registrants provides an incentive for registries for both new and existing gTLDs to reduce prices, improve service quality, and offer innovative services as they compete for new registrants. Note that this benefit holds even if *.com* pricing continues to be regulated through price caps because competition has the potential for inducing registries of regulated TLDs to reduce prices below these caps and to develop new and improved services.

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24. The data on registrations and price necessary to perform such a study are maintained by registries, not by ICANN.

28.   Furthermore, even if entry of new gTLDs did not affect the prices charged by .com and other existing TLDs, entry would still be likely to increase consumer welfare, which NTIA and DOJ appear to ignore. When registrants select a new gTLD instead of an existing one, they reveal that they are better off due to the expansion in the number of available alternatives. That is, the expansion in the number of available alternatives (including both TLDs and the second-level names) alone is itself likely to increase consumer welfare.

29.   Removing entry barriers also is likely to foster innovation. In the absence of competition from new gTLDs, registries and registrars that serve *.com* and other major TLDs face limited incentives to develop new technologies and/or improved services that may help attract new customers. However, absent restriction on new gTLDs, potential new entrants will be motivated to develop new technologies and methods as a way to overcome *.com*'s first mover advantage. This, in turn, increases the incentives to innovate faced by registrars of *.com* and other incumbent registries as they strive to sign up new registrants.[25]

30.   A variety of innovations are likely to be facilitated by expansion of the number of gTLDs. For example:

- A gTLD dedicated to serving the financial services industry might require registrants to provide secure transactions. The certification provided in the gTLD name thus provides valuable information to consumers who desire secure financial transactions over the Internet.

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25. See Carlton and Perloff, Modern Industrial Organization, 4th ed. p. 564.

- A new gTLD may offer International Domain Names so that a URL (e.g., http://www.google.com) can be presented in the language of the region, facilitating the provision of products by registrars in multi-language services.

- New gTLDs are expected to focus efforts at serving high targeted markets, such as the customers and suppliers of a given firm while others, perhaps, will focus on serving a variety of registrants in a given geographic area.[26]

31.   As these examples suggests, many of the benefits of new gTLDs can be realized even if the new gTLD would not compete today on price with existing TLDs. For example, expansion in the number of gTLDs that fostered increased innovation or simply expanded aggregate Internet registrations and utilization would generate improvements in consumer welfare even if the new gTLDs operated in antitrust markets that are distinct from *.com.*   Of course, potential consumer confusion could be reduced to a minimum by having only a single gTLD (*.com*), but it is unlikely that this would be in consumers' interest. I discuss this issue in more detail below.

32.   DOJ expressed concern that "some new gTLDs envisioned by the RFP likely would have market power…"[27]   However, even if true, this fact alone again does not provide a basis for restricting entry. Even if certain new gTLDs possessed some market power, allowing their entry would still enhance consumer welfare, just as entry which results in the creation of a duopoly from a monopoly enhances consumer welfare even though both duopolists typically will have market power. To illustrate this point,

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26. Connecting.NYC Inc. letter to ICANN (http://forum.icann.org/lists/gtld-
    guide/index.html).
27. DOJ letter, p.1.

imagine an industry with several differentiated products, each of which has some market power. It is inconceivable that anyone would find it generally desirable to restrict entry into such an industry based on the view that entry will fail to erode the market power of existing products.

B. NEW gTLDS ARE LIKELY TO BENEFIT CONSUMERS EVEN IF THEY DO NOT COMPETE DIRECTLY WITH *.COM*.

33.   New gTLDs also can enhance consumer welfare by providing information to Internet users that facilitates navigation of the Internet, even if the new gTLDs have limited substitutability with *.com*. This is due to the likelihood that new gTLDs will be designed to serve consumer needs that *.com* does not meet well.   For example, because domain names contain information content that is of value to consumers, some new gTLDs may facilitate consumers' Internet navigation and search by more rapidly directly them to websites with the desired content. For example, company-specific TLDs (e.g., *.Ford*) may facilitate the ability of Ford customers to obtain product information as well as the interaction of suppliers and dealers with Ford. Similarly, new generic TLDs, like .cars, may facilitate the ability of consumers to obtain both generic information about cars as well as the ability to access the websites of car manufacturers, suppliers, and other car consumers that use this gTLD to host their websites.

C. EVALUATION OF ICANN'S PROPOSAL DOES NOT REQUIRE DETAILED STUDY OF SCOPE OF COMPETITION AMONG TLDS.

34.   As noted above, both the DOJ and NTIA recommend that ICANN should postpone the introduction of new gTLDs until it studies the scope of competition among TLDs along the lines that the ICANN Board proposed in 2006.[28] At that time, ICANN

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28. See DOJ letter, p. 6 and NTIA letter, p. 1.

proposed to analyze, among other things: (i) whether each TLD functions as a distinct economic market; (ii) the effects of switching costs involved in moving from one TLD to another; and (iii) the effect of the existing TLD structure on the pricing by entrants.

35. While these issues are of economic interest, analysis of these questions is not necessary for evaluating ICANN's gTLD proposal. Even if *.com* (or any other TLD) today exercises market power, there is no basis to conclude that new gTLDs would not enhance consumer welfare by creating new products and fostering innovation, and would likely promote future competition with *.com* and other TLDs. In addition, the concerns about consumer confusion, cybersquatting and the potential for new gTLDs to motivate new defensive registrations also arise whether existing TLDs constitute distinct antitrust markets or whether they are appropriately considered to be part of a broader market.

D. REQUIRING PROOF OF COMPETITIVE BENEFITS BEFORE AUTHORIZING ENTRY IS LIKELY TO HARM CONSUMER WELFARE.

36. Parties that have commented on ICANN's proposal, including DOJ and NITA, suggest that due to the presence of potential costs to trademark holders and others posed by new gTLDs, the competitive benefits of new gTLDs should be proven before ICANN authorizes their use.[29] For example, NTIA states that "[i]t is unclear that the threshold question of whether the potential consumer benefits outweigh the potential costs has been adequately addressed and determined."[30] This approach is inconsistent with the widely-held view, described above, that the entry benefits consumers by expanding output and lowering price.

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29. See, e.g., DOJ letter, p. 2, NTIA letter, p. 1 and comment submitted by AT&T to ICANN on December 15, 2008 (http://forum.icann.org/lists/gtld-guide/).
30. NTIA letter, p. 1.

37.   Restricting ICANN's ability to expand the number of gTLDs is economically efficient only if costs from new gTLDs, including increased consumer confusion and/or higher costs of monitoring and enforcing trademarks, exceeds the potential benefits to consumers from new gTLDs, which likely include lower prices for domain names, increased output, and increased innovation. As noted above, many of these benefits of new gTLDs and domains established on those gTLDs can be realized even if the new gTLDs do not compete with existing TLDs.

38.   Requiring entrants to justify entry on a cost/benefit basis, however, is likely to result in significant consumer harm because the competitive benefit of new business methods or technologies facilitated by entry can be very hard to predict *a priori*. Economic literature shows that innovations are a principal source of the growth in GNP and consumer welfare over time. Most notably, Robert Solow, who was awarded the 1987 Nobel Prize in Economics for his work on the sources of economic growth, noted in his Nobel Prize lecture that "the rate of growth…depends entirely on the rate of technological process."[31] Following in this tradition, in their well-known book, *Innovation and Growth in the Global Economy,* Gene Grossman and Elhanan Helpman describe innovation as "the engine of long-run growth."[32]

39.   Economic literature also stresses that innovations and new products generate large increases in consumer welfare, while regulatory policies that limit or delay entry and the spread of innovation can substantially reduce welfare. As part of his extensive research on the consumer welfare gains generated by new goods, Jerry

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31. Robert M. Solow, Nobel Prize Lecture, December 8, 1987.
32. Gene Grossman and Elhanan Helpman, 1993, *Innovation and Growth in the Global Economy,* p. 18.

Hausman has found that "the introduction of cellular telephone services has led to gains in consumer welfare which now exceed $25 billion per year," and that the consumer welfare cost of the regulatory delay of this introduction was close to $100 billion.[33] In their volume "The Economics of New Goods," Timothy Bresnahan and Robert Gordon review the economic literature and conclude, "[c]learly, new goods are at the heart of economic progress."[34] In his 2002 paper on consumer welfare gains resulting from the introduction of the minivan, Amil Petrin notes that "…large improvements in consumers' standard of living arise from competition as firms cannibalize each other's profits by seeking new goods that give them some temporary market power."[35]

40.   As this suggests, restrictions on entry are likely to promote consumer welfare under only very unusual circumstances. The imposition of such restrictions, however, is likely to benefit existing market participants by limiting competition from firms offering innovative services and new business models. Actions that protect any market power that *.com* and other gTLDs may possess are unlikely to benefit consumers.

IV.   CONCERNS EXPRESSED ABOUT TRADEMARK PROTECTION DO NOT SUPPORT RESTRICTIONS ON ENTRY.

41.   As noted above, the DOJ and others argue that trademark holders will perceive the need to register domain names with new gTLD registries solely for defensive purposes, in order to avoid costs associated with improper use by others of the their trade name.[36] That is, the DOJ and others argue that entry should be restricted because such competition may increase trademark holders' costs of protecting their

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33. Jerry Hausman, 1998, "New Products and Price Indices," NBER Website, http://www.nber.org/reporter/fall98/hausman_fall98.html.
34. Timothy Bresnahan and Robert Gordon, 1997, *The Economics of New Goods, p. 1.*
35. Amil Petrin, 2002, "Quantifying the Benefits of New Products: The Case of the Minivan," *Journal of Political Economy*, p. 705.
36. See, e.g. DOJ letter, p. 5.

intellectual property. This section shows that while costs associated with defending

trademarks are real, other mechanisms other than preventing entry are available to

address these concerns and that these alternatives can preserve the benefits of increased

competition resulting from entry.

A.   THE ECONOMIC RATIONALE FOR TRADEMARK PROTECTION DOES NOT JUSTIFY RESTRICTING ENTRY OF NEW GTLDS.

42.   Domain names help reduce the costs of searching for information

available on the Internet and registrants select domain names to help attract consumers to

their sites.[37] Thus, registrants face concerns that other similarly-named sites may create

confusion, raise search costs faced by consumers, free ride on the registrant's reputation,

and harm the registrant's ability to attract traffic.

43.   As this suggests, the economic function of domain names is related to the

economic function of trademarks, which also protect the trademark holder's intellectual

property by preventing confusion created by rivals' efforts to free ride on the trademark

holder's reputation. Similarly, registrants have a significant interest in protecting their

domain names from imitation and free riding by others that attempt to utilize a trade

name that is protected or that is confusingly similar to a protected trademark.

44.   In analyzing the economic function of trademarks, William Landes and

Richard Posner explain that:

> …a trademark is a word, symbol, or other signifier used to distinguish a good or service produced by one firm from the goods or services of other firms. To perform its naming function a trademark or brand name...must not be duplicated. To allow another maker of decaffeinated coffee to sell its coffee under the name "Sanka" would destroy the benefit of the

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37. Improvements in search engines could provide another valuable method by which consumers can identify and find websites.

name…If the law does not prevent it, free riding may destroy the information capital embodied in a trademark, and the prospect of free riding may therefore eliminate the incentive to develop a valuable trademark in the first place.[38]

45.   "Generic" terms, however, generally cannot be trademarked.[39] As defined by Landes and Posner, "[a] generic name or term is by definition the name not of a brand but of an entire product: 'airplane' and 'computer' are examples."[40] The lack of legal protection for generic terms is consistent with principles of economic efficiency because granting trademarks for such terms to one firm can raise search costs faced by consumers and hinder competition from other firms. Granting legal protection for generic terms also serves no purpose in protecting incentives for firms to invest in creating a reputation and information capital in the term. As Landes and Posner explain:

> … if a single firm is given the exclusive right to use the word or words that identify an entire product, as distinct from an individual brand of the product, competition with other firms that make the same product will be impaired. Thus, if a particular manufacturer of personal computers could not use the terms "personal computer" or "PC" in its advertising or labeling because another firm had the exclusive rights to these terms, it might have to describe its product as "a machine capable of doing word processing and high-speed calculations and other data manipulations, using a central processing unit," etc…Because it is harder to recall long than short phrases, a lengthy description may well convey less usable information about the firm's product than a single word or a short phrase, so search costs will rise.[41]

46.   Internet domain names can be based both on trademarks (e.g., *Ford.com*) and generic terms (*cars.com*), and the new gTLDs that would be permitted under

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38. W. Landes and R. Posner, The Economic Structure of Intellectual Property Law, Belknap Press of Harvard University Press (2003), pp. 166-168.
39. Landes and Posner, Chapter 7, p. 190. There are exceptions to this general statement. For example, a term can be generic in connection with some goods (and thus not be protected) but can be trademarked for its use in connection with other goods. For example, the word "apple" is generic when applied to fruit but can be trademarked when applied to computers.
40. Landes and Posner, pp. 190-91.
41. Landes and Posner, p. 175.

ICANN's proposal also may include both trademarks (*.Ford*) and generic terms (*.cars*). Economic evaluation of ICANN's proposal raises distinct issues for gTLDs that use generic terms and trademarks and reflects the competing interest of protecting intellectual property of trademark holders and promoting the unrestricted use of generic terms.

47.   Trademark protection extends to domain names so, for example, only Ford has the ability to use and/or prevent others from using domain names such as *Ford.com* and, similarly, register *.Ford* as a gTLD.[42] Congress enacted the Anti-Cybersquatting Consumer Protection Act in 1999 to clarify the role of trademarks in domain names and to prevent "cybersquatting," (i.e., attempts by firms to acquire domain names, including those involving trademarks, for the purpose of reselling them to trademark holders). ICANN also has established mechanisms for resolving domain name disputes that arise in the existing gTLDs; for example, in 1999 it established the its Uniform Dispute Resolution Policy in 1999 which set procedures for resolving disputes over domain names.[43] As discussed further below, ICANN has also initiated a process to address the concerns of trademark holders and improve the mechanisms for resolving disputes about the use of trademarks in domain names.

48.   Nonetheless, as various comments on ICANN's gTLD proposal emphasize, trademark holders still expend effort to monitor unauthorized use of their marks and to enforce their property rights. Many trademark holders are concerned that the introduction of new gTLDs will require additional costs related to monitoring and enforcing the use of these trademarks, including entering into "defensive" registrations

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42. Anti-Cybersquatting Consumer Protection Act, November 1999.
43. Under these procedures, an objector files a complaint with an ICANN-approved dispute resolution service provider which follows ICANN-specified policies and procedures for addressing the complaint.

that serve no efficiency-enhancing purpose and are undertaken only to protect the

trademark holder's intellectual property.[44] At the same time, however, it is important to

note that registrants that use generic terms in domain names also have a private interest to

restrict competition by limiting the use of these terms by rivals in domain names and

gTLDs, although there is limited potential benefit in terms of reduced monitoring and

enforcement costs in such circumstances from limiting the use of generic terms.

49.   Indeed, a significant potential benefit of the introduction of new gTLDs

would be to facilitate expansion in the use of generic terms in domain names. As

discussed above, the use of such terms can promote consumer welfare by reducing search

costs faced by Internet users. For example, the establishment of *.cars* as a gTLD is likely

to facilitate the ability of Internet users to identify information related to automobiles and

is likely to help registrants in attracting Internet visitors.

**B.   ENTRY RESTRICTIONS ARE LIKELY TO BE AN INEFFICIENT
MECHANISM FOR PROTECTING TRADEMARKS.**

50.   While protecting trademarks and intellectual property promote consumer

welfare, economic efficiency requires that trademark holders be protected at the

minimum possible cost. Entry restrictions are unlikely to be the most efficient way of

protecting trademark holders.

51.   Mechanisms currently exist for protecting the use of trademarks in domain

names. As mentioned previously, in addition to trademark law, ICANN maintains the

UPRP for resolving claims that a registrant owns a domain name that infringes an

existing trademark. While a large number of disputes are routinely resolved under these

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44. See, e.g., comments submitted by Microsoft and US Telecom to ICANN, December
    15, 2008 (http://forum.icann.org/lists/gtld-guide/).

procedures, and there may be dissatisfaction with these rules by trademark holders, entry restrictions are an extreme approach to addressing trademark concerns when alternative approaches, such as modifying existing dispute resolution mechanisms, may also help achieve these goals while preserving the benefits of entry to consumers.

52.   For example, the economic literature shows that frivolous requests for gTLDs and/or frivolous challenges of new names can be deterred by requiring the party that loses a challenge to bear the legal cost of both parties. Under such "loser pays" rules, a non-trademark holder that attempted to obtain a domain name or a gTLD based on a trademark would need to pay the legal fees of the trademark holder and related administrative fees if the trademark holder successfully challenges the domain name or gTLD. Such a rule would deter frivolous attempts by non-trademark holders to obtain domain names that are based on trademark terms or are confusingly similar to such terms as well as the need for defensive registrations.[45] Under a more extreme version of the "loser pays" rule, parties with domain names found to violate a trademark can be assessed a penalty.[46]

53.   In addition, ICANN has undertaken a process to evaluate concerns of trademark holders by eliciting recommendations for improving mechanisms for protecting trademark holders' property that help prevent the unauthorized use of trademarks in domain names. In March 2009, ICANN formed the IRT whose purpose is to consider and recommend proposals to help protect the legal rights of trademark owners

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45. J. Hughes and E. Snyder, "Litigation and Settlement Under the English and American Rules: Theory and Evidence," 38 J. Law and Econ. 225 (1995).
46. To ensure that firms have sufficient funds to pay penalties, ICANN could require that a bond be posted at the time a dispute is filed or a domain is registered.

focusing on, but not limited to, issues arising with respect to the introduction of new gTLDs.[47]

54.   The IRT recently has issued a report which proposes new mechanisms for protecting trademark holders. These include: creating a centralized intellectual property clearinghouse to support new gTLD registries; instituting a mechanism for blocking registration of domain names with certain globally protected trademarks (those contained in the Globally Protected Marks List) in both the top and second level domain name space; and creating a venue for expedited proceedings for blatant trademark infringement and abuse. The IRT's recommendations to the ICANN Board are currently under review, and further public comment is anticipated.

55.   Finally, the expansion in the number of TLDs under ICANN's proposal would appear to raise no new issues relating to enforcing and monitoring trademarks that do not arise under the existing domain name system. For example, consider Ford's attempt to protect its domain name *Ford.com*. There are already numerous alternative names it maintains and monitors, including *Fordvehicles.com*, *Lincoln.com,* etc. It is unclear how much the introduction of a new gTLD – say, *.cars* designed for sites related to car– would further increase the required effort and associated costs of monitoring use of Ford marks. The introduction of Ford trademarks in the *.cars* gTLD raises the same concern as in other gTLDs and thus appears to raise no new issues relating to the identification or monitoring of trademarks in domain names.

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47. IRT Report (http://www.icann.org/en/announcements/announcement-4-29may09-en.htm)

C. OPPONENTS APPEAR TO OVERSTATE THE MAGNITUDE OF THE "DEFENSIVE REGISTRATION" CONCERNS.

56.   While concerns regarding the impact of gTLDs on the need for "defensive registrations" merit close attention, relatively little is known about the extent of such registrations. AT&T's economic report claims to document the extent of "defensive registrations" but appears to overstate the magnitude of such concerns. More specifically, the Kende Report presents data from MarkMonitor for five "representative" firms, suggesting that well over 99 percent of the registrations of these firms are "defensive."   Dr. Kende defines defensive registrations as those which "redirect traffic to a core registration" and claims that these serve no purpose other than to "prevent a cybersquatter from registering them."[48]

57.   However, many registrations that "redirect traffic" to other sites serve productive purposes of attracting and retaining Internet traffic, not merely to prevent cybersquatting. Dr. Kende fails to distinguish between these alternative types of "defensive" registrations.[49] For example, the following types of registrations that direct traffic to other sites would help attract traffic and would not be maintained simply to prevent cybersquatting:

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48. Kende Report, p.7. More fully, Dr. Kende defines defensive registrations as follows: "Defensive Registration: These registrations are not unique, in that they do not resolve, or they redirect traffic back to a core registration, or do not contain unique content – for instance registrations that contain typos of a trademarked name. These are registered to prevent a cybersquatter from registering them instead, or are recovered from cybersquatters who registered them first."

49. Dr. Kende has not produced the data or survey forms that provide the basis of his analysis. As a result, it is unclear whether survey respondents consider all registrations that merely redirect traffic to other domains as unproductive "defensive" investments or whether this is Dr. Kende's interpretation.

- Registrations involving trademark names that direct traffic to the website of a corporate parent;

- Registrations involving trademark names no longer in active use;

- Registrations involving trademark names not currently used that may be used in the future;

- Registrations involving common misspellings that redirect traffic to the core site.

58.   To take just one small example, my own firm – Compass Lexecon – currently maintains several dozen registrations in addition to *compasslexecon.com.* These include *compass.com* and *lexecon.com*, which were the registrations maintained by the two companies that merged to form Compass Lexecon.[50] These domains do not currently host content but instead route traffic to *compasslexecon.com*. Maintaining these registrations prevents the potential loss of traffic generated by individuals who may not be aware of the firm's name change. However, these would be considered unproductive "defensive registrations" under the standard adopted by Dr. Kende.

59.   There are a myriad of reasons that firms maintain "defensive" registrations that have little to do with trademark protections.[51] There is no doubt that some registrations are made to prevent trademark abuse. However, Dr. Kende's failure to distinguish "defensive registrations" designed to prevent cybersquatting alone from those that help attract and maintain Internet traffic (while redirecting it to another site) in

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50. In addition, Compass Lexecon maintains a variety of .cc registrations and related registrations that direct traffic to the *compasslexecon.com* site.

51. To cite one additional example, firms may register a variety of "reverse zone" domain names for monitoring the source of Internet traffic. These would be classified as "defensive" by Dr. Kende but are wholly unrelated to trademark protection.

summarizing the MarkMonitor data exaggerates the adverse consequences of ICANN's gTLD proposal.

60.   In addition, the relatively limited success of new TLDs such as *.info* and *.biz* suggests that defensive registrations are less important than suggested by AT&T and other commenters. Since their introduction in 2001, *.info* has attracted 5 million registrants and *.biz* has attracted 2 million, far below the roughly 80 million registrants using *.com*.[52] While some of the registrations for domain names under the new gTLDs may have been made for defensive purposes, the limited number of registrations for new gTLDs indicates that the vast majority of *.com* registrants did not find a compelling reason to undertake defensive registrations in the new gTLDs.

V.   PRICE CAPS ARE UNLIKELY TO GENERATE SIGNIFICANT CONSUMER BENEFITS.

61.   Various parties have suggested that new gTLDs be subject to price caps similar to those faced by *.com* and other major non-sponsored TLDs such as *.net, .org, .info, .biz* and others.[53] The two main concerns motivating this proposal are: (i) that trademark owners' can be charged supracompetitive prices for defensive registrations, and (ii) that incumbent registrants can be charged supracompetitive prices as a result of costs they face from switching to another registry. This section shows that both of these concerns are misplaced.

A.   THE AVAILABLITY OF ALTERNATIVE MECHANISMS OF PROTECTING TRADEMARK HOLDERS IMPLIES THAT PRICE CAPS ARE NOT NECESSARY TO PROECT CONSUMERS.

62.   DOJ and other suggest that price caps on new gTLDs are appropriate because new gTLDs will be able to charge supracompetitive prices because the demand

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52. ICANN Registry Operator Monthly Reports, January 2009.
53. See e.g. NTIA Letter, p.2 and DOJ Letter p.7

for defensive registrations is likely to be "highly inelastic."[54] However, the demand for

such registrations is likely to be highly inelastic only if dispute mechanisms for enforcing

property rights are ineffective.

63.   As discussed above, mechanisms are already in place for resolving

disputes, and ICANN has been actively engaged in proceedings designed to modify and

improve these mechanisms. In the presence of appropriately designed proposals to

protect trademarks, there is no reason to expect that new gTLDs will be able to charge

excessive prices, and no need to impose price caps. As discussed in more detail below,

the imposition of price caps is likely to discourage investment in new gTLDs and

discourage experimentation with new business models with the potential to challenge

.com and other major TLDs for new registrants.

B.   SWITCHING COSTS CREATE INCENTIVES FOR "EX ANTE" COMPETITION AMONG SUPPLIERS.

64.   Registrants that adopt a particular Internet domain name face costs from

switching registries because the use of the TLD in the domain name prevents Internet

addresses from being ported across registries. That is, the holder of a domain name that

wants to switch registries must, at a minimum, adopt a new TLD. Switching costs arise

for a variety of products and industries and the existence of such costs can make

customers, to some degree, beholden to their suppliers. This can create an incentive for

registry operators to act opportunistically by raising prices after a registrant obtains a new

domain name above levels registrars might reasonably expect at the time they obtain their

domain name. Proponents of incorporating price caps for registry services into registry

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54. Kende Report, p. 12.

contracts might argue that such caps eliminate the risk of such opportunistic behavior by registries.

65.   However, competition among suppliers to attract new customers in markets characterized by switching costs limits or eliminates the suppliers' incentive and ability to act opportunistically. For example, a supplier that imposes unexpected or unreasonable price increases will quickly harm its reputation making it more difficult to continue to attract new customers. Therefore, even in the absence of price caps, competition can reduce or eliminate the incentive for suppliers to act opportunistically.

66.   The economic literature recognizes the role of "ex ante" competition in discouraging opportunistic behavior by suppliers of products that embody switching costs. For example, a leading academic study of switching costs notes:

> The monopoly power that firms gain over their respective market segments leads to vigorous competition for market share before consumers have attached themselves to suppliers.[55]

67.   The economic literature further recognizes that a firm that acts opportunistically in dealing with customers facing switching costs is likely to suffer harm to its reputation, which limits its ability to attract new customers in the long-run:

> … every seller has "captive" buyers in the short run. We should not worry about slight degrees of monopoly power; the free market will take care of them faster than antitrust law could do. The seller who exploits its "monopoly" over replacement parts will find himself without many purchasers of his original equipment in the next period.[56]

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55. Klemperer, Paul. "Markets with Consumer Switching Costs" *Quarterly Journal of Economics* 102 (1987), 375-394, p. 377. I reached similar conclusions in my own analysis of the *Kodak* case. Carlton, Dennis. "A General Analysis of Exclusionary Conduct and Refusal to Deal – Why *Aspen* and *Kodak* are Misguided," *Antitrust Law Journal* 68 (2001), 659-683, p. 679.

56. Posner, Richard. Antitrust Law, 2nd Edition. Chicago: University of Chicago Press, 2001, p. 230.

68.   This sentiment is also echoed by Carl Shapiro (1995), the current Deputy Assistant Attorney General in the Antitrust Division of the U.S. Department of Justice, in his analysis of the U.S. Supreme Court's decision in *Eastman Kodak Co. v. Image Technical Services, Inc.*[57] This case involved claims that Kodak violated antitrust laws by limiting its customers' ability to obtain replacement parts from firms other than Kodak. Shapiro concludes that suppliers in growing markets face the strongest incentives to preserve their reputation and thus to avoid opportunistic behavior.[58] This is because, in a growing market, an opportunistic firm risks greater future losses than do similar firms in stable or declining markets. Thus, the rationale for imposing price caps is weakest in rapidly growing industries.

69.   Ex ante competition serves to protect both uninformed consumers, which face greater risk of opportunistic price increases, as well as better informed consumers because both sets of consumers pay the same prices. In addition, other contractual mechanisms can be negotiated to avoid opportunistic behavior by suppliers. For example, firms and customers may enter into long-term contracts with renewal provisions that specify a supplier's ability to change prices over time.

C.   COMPETITION AMONG EXISTING AND NEW TLD REGISTRIES LIMITS CONCERNS ABOUT OPPORTUNISTIC BEHAVIOR.

70.   As early as 1998, the Federal Trade Commission ("FTC") concluded that the existence of switching costs faced by holders of domain names did not raise a significant impediment to the privatization of the Internet Domain Name System. In

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57. Shapiro, Carl. "Aftermarkets and Consumer Welfare: Making Sense of *Kodak,*" *Antitrust Law Journal* 63 (1994), 483-511.
58. Shapiro (1994), p 490.

response to the National Telecommunications and Information Administration's request

for comments on this issue, the FTC concluded:

> It would appear plausible that the absence of domain name portability
> across registries could impose a switching cost on users who change
> registries... It is theoretically possible, therefore, that a supplier could
> raise the future prices to locked-in customers…
>
> The economic analysis of markets with switching costs has identified a
> number of factors that, in appropriate circumstances, can diminish the
> ability and the incentive of a supplier to act opportunistically with respect
> to its locked-in customers….
>
> Overall, we would conclude that while the possibility of supplier
> opportunism exists, the potential benefits to customers from enhanced
> competition – such as possible price reductions and quality improvements
> – argue in favor of [assignment of registries to for-profit firms].[59]

71.   Today, competition among a variety of TLDs reduces concerns about

opportunistic behavior by new gTLD registries that may result from switching costs faced

by registrants of new domain names. First, new gTLD registries face competition from a

wide variety of alternatives, including the major existing TLDs (.com, .net, .org), less

established existing TLDs (e.g., info, .biz), country-code TLDs, sponsored TLDs (such as

.museum, .aero), and other new gTLD entrants. The existence of these alternatives

implies that new gTLDs are unlikely to be successful in attracting a significant number of

new registrants if they engage in opportunistic behavior that harms their reputation.

Under these circumstances, price caps are not necessary to protect registrants using the

new gTLD registries.

72.   Concerns about opportunistic behavior by registry operators are further

limited to the extent that new gTLDs provide services using existing registrars. It would

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59. Comment of the Staffs of the Bureaus of Economics and Competition of the FTC – In
    the Matter of Improvement of Technical Management of Internet Names and
    Addresses" March 23, 1998, p. 3-4.

be expected that registrars' on-going involvement in the provision of domain-name related services leaves them well informed about potentially opportunistic behavior by registry operators and in a position to shift potential customers away from new gTLDs that act in this manner.

73.   The fact that the existing major TLDs are currently subject to price caps further constrains the ability of new gTLD registry operators to charge non-competitive prices. More specifically, the current agreements between the U.S. Department of Commerce, ICANN, and VeriSign cap the price increases that VeriSign can charge registrars for the .com and .net TLDs. Several other non-sponsored TLDs (such as .info and .biz) are also subject to price caps. While the appropriateness of these price caps may be debatable, the existence of the caps limits the prices that new gTLDs can charge by capping the price that the major registry operators can charge.

74.   While the major TLDs are subject to price caps, a number of the new sponsored TLDs, such as *.museum, .travel, and .tel*, are not. I am unaware of any complaints from registrars or end-users that obtain services from these new sponsored TLDs that their registries have acted opportunistically by raising prices significantly to existing customers. This provides further evidence that price caps are not necessary to protect registrants from opportunistic behavior by new gTLD registries.

75.   Finally, the continuing growth of Internet services further reduces concerns about opportunistic behavior by operators of the new gTLD registries. As noted above, incentives for opportunistic behavior are lower in rapidly growing industries. The number of registered domain names as well as aggregate Internet usage has grown dramatically in recent years and is expected to continue its rapid growth. In addition, the

number of Internet users in the U.S. has grown from roughly 31 million in 1997, to 90 million in 2000 and to more than 183 million in 2007.[60] The Internet is projected to continue this growth in the future. For example, total IP traffic is projected to increase six-fold from 2007 to 2012.[61] Under these circumstances, operators of new gTLD registries that acted opportunistically would face the loss of significant future business.

VI. CONCLUSION

76. The benefits of free entry are well-recognized, and the introduction of new gTLDs is likely to benefit consumers by subjecting *.com* and other gTLDs to increased competition, widening choice available to consumers, and facilitating innovation. At the same time, claims that the introduction of new gTLDs will necessitate widespread defensive registrations appear to be exaggerated and are inconsistent with the oft-noted observation that there have been a limited number of registrations on gTLDs introduced in recent years. Existing legal framework and ICANN-established procedures provide mechanisms for protecting trademarks and addressing concerns about consumer confusion. If necessary, various additional mechanisms could be created by ICANN to protect against abuse of existing trademarks. The draconian remedy of precluding entry a as means of preventing the possibility of a need for defensive registrations is unlikely to be an efficient mechanism for dealing with these costs because it deprives consumers of the benefits of entry.

77. In addition, there is no economic rationale for imposing price caps on registries of these new gTLDs. The existing and proposed ICANN procedures that are

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60. Statistical Abstract of the United States 2007: Internet Usage and Online Services (http://www.census.gov)
61. See "Cisco Visual Networking Index – Forecast and Methodology, 2007-12" available at http://newsroom.cisco.com/dlls/2008/prod_061608b.html

designed to protect the rights of trademark holders reduce the need both for defensive registrations as well as price caps to protect trademark holders. Apart from concerns about protecting trademark holders, there are a variety of market mechanisms that protect consumers who face switching costs, such as holders of domain names of new gTLD registries. In the absence of price caps, operators of new gTLD registries that attempt to act opportunistically by raising prices to registrars after registrants sign up for domain names face significant risk of harming their reputation and the loss of future customers. These risks are heightened by the availability of domain names from a wide variety of alternative registries, by the fact that prices charged by the major registries are already subject to price caps, and by the expected continued growth of the Internet. At the same time, requiring new gTLDs to cap their prices limits their flexibility in attempting to attract new customers, conflicting with ICANN's well-considered goal of fostering competition in the provision of registry services by facilitating the introduction of new gTLDs.

78.   In sum, given ICANN's ability and incentive to modify existing procedures and adopt new ones that protect registrants' the property rights, it would be a mistake at this time to address this concern through the draconian remedy of a ban on all new TLDs.

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EMPLOYMENT

COMPASS LEXECON (formerly Lexecon), Chicago, Illinois (2008 – present) Senior Managing Director; LEXECON INC., (1977 – 2006), President 1997 – 2001, Senior Managing Director 2003 - 2006

UNIVERSITY OF CHICAGO, Graduate School of Business, Katherine Dusak Miller Professor of Economics (2008 – present); Professor of Economics (1984 – 2008); Law School, Professor of Economics (1980 – 1984); Department of Economics, Associate Professor (1976 – 1979); Assistant Professor (1979 – 1980).

U.S. DEPARTMENT OF JUSTICE, Washington, District of Columbia (2006 – 2008) Deputy Assistant Attorney General for Economic Analysis, Antitrust Division

MASSACHUSETTS INSTITUTE OF TECHNOLOGY, Cambridge, Massachusetts, Department of Economics (1975 – 1976) Instructor in Economics

OTHER PROFESSIONAL EXPERIENCE

HARVARD UNIVERSITY, Public Policy Summer Course in Economics (1977), Professor

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Keynote Speaker, Japanese Symposium on Competition, sponsored by Japan Fair Trade
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Recipient of Inaugural Robert F. Lanzilotti Prize, awarded by the International Industrial Organization
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Keynote Address to Israel Antitrust Conference, 2008
Lewis Bernstein Memorial Antitrust Lecture, Washington, D.C., 2006
Distinguished Visitor, University of Melbourne, April 2005
Milton Handler Lecture, New York, 2004
Keynote Address to the International Competition Network, Mexico, 2004
Alexander Brody Distinguished Lecture, Yeshiva University, 2000
Ph.D. Thesis chosen to appear in the Garland Series of Outstanding Dissertations in Economics
Recipient of the 1977 P.W.S. Andrews Memorial Prize Essay, best essay in the field of Industrial
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National Science Foundation Grant, 1977 - 1985
Recipient of Post-doctoral Grant from the Lincoln Foundation, 1975
National Science Foundation Fellowship, 1972 - 1975
Phi Beta Kappa, 1971
John Harvard Award, 1970
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<u>PROFESSIONAL AFFILIATIONS AND ACTIVITIES</u>

Co-editor, Journal of Law and Economics, 1980 - present
Visiting Committee, MIT, Department of Economics, 1995 - present
Member, Advisory Board, Economics Research Network, 1996 - present
Member, Advisory Board of Antitrust and Regulation Abstracts, Social Science Research Network,
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Advisory Board, Massachusetts Institute of Technology, Department of Economics, 1999 - present
Co-Editor, Competition Policy International (CPI), 2004 – present
Advisory Board, Journal of Competition Law and Economics   2004- present
Deputy Assistant Attorney General for Economic Analysis, Antitrust Division, U.S. Department
  of Justice, 2006 - 2008
Presidential Appointment to the Antitrust Modernization Commission, March 17, 2004 - 2007
Invited Panelist at Public Hearing on the Retail Banking Sector Inquiry: Payment Cards, before the
      European Commission in Brussels, Belgium, July 17, 2006.
Consultant on Merger Guidelines to the FTC, 2003
Professor, George Mason Institute for Judges, October 2001
Chairman, FTC Round Table on Empirical Industrial Organization (September 11, 2001)
Participant in the Round Table on the Economics of Mergers Between Large ILECS before the
      Federal Communications Commission, February 5, 1999

Member, Steering Committee, Social Science Research Council, Program in Applied Economics, 1997 - 1999
Participant in roundtable discussions on "The Role of Classical Market Power in Joint Venture Analysis," before the Federal Trade Commission, November 19, 1997 and March 17, 1998.
Participant in meetings with Committee of the Federal Reserve on Payment Systems, June 5, 1997
Associate Editor, Regional Science and Urban Economics, 1987 - 1997
Resident Scholar, Board of Governors of the Federal Reserve System, Summer, 1995
Accreditation Committee, Graduate School of Business, Stanford University, 1995
Associate Editor, The International Journal of Industrial Organization, 1991 - 1995
Editorial Board, Intellectual Property Fraud Reporter, 1990 - 1995
Consultant on Merger Guidelines to the U.S. Department of Justice, 1991 - 1992
Member, Advisory Committee to the Bureau of the Census, 1987 - 1990
National Bureau of Economic Research, Research Associate
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BOOKS

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"How Economics Can Improve Antitrust Doctrine Towards Tie-in Sales," (with M. Waldman), <u>Competition Policy International</u>, (Spring 2005).

Preface to: "Law and Economics of the Mexican Competition Laws," by Francisco Gonzalez de Cossio (2005).

"Transaction Costs, Externalities and "Two-Sided" Payment Markets," (with A. Frankel), <u>Columbia Business Law Review</u>, No. 3, Vol. (2005).

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"Why Tie An Essential Good," (with Michael Waldman), in Hahn R. ed., <u>Antitrust Policy and Vertical Restraints</u>, AEI-Brookings, (July 2006).

"Market Definition: Use and Abuse," <u>Competition Policy International</u> (Spring 2007)

Interview with Deputy Assistant Attorney General, <u>The Antitrust Source</u> (February 2007)

Separate Statement of Dennis W. Carlton, in <u>The Report of the Antitrust Modernization Commission</u>, (April 2007)

"Does Antitrust Need to be Modernized?," <u>Journal of Economic Perspectives</u> (Summer 2007)

"The Year in Review: Economics at the Antitrust Division 2006-2007" (with K. Heyer), <u>Review of Industrial Organization</u>, (2007).

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"Barriers to Entry," in W. Collins ed. <u>Issues in Competition Law and Policy</u>, American Bar Association, (2008).

"Product Variety and Demand Uncertainty: Why Mark-ups Vary with Quality," (with James D. Dana Jr.), <u>Journal of Industrial Economics</u> (2008)

"Regulation, Antitrust, and Trinko," (With H. Sider), in eds. J. Kwoka and L. White, <u>The Antitrust Revolution</u>, (2008).

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Infineon Technologies, Inc., Infineon Technologies Holding North America Corp., and Infineon Technologies Corp.: In the United States District Court for the Eastern District of Virginia, Richmond Division, Civil Action No. 3:00CV524, December 20, 2000 (Report), January 19, 2001 (Rebuttal Report), February 6, 2001 (Deposition), May 3, 2001 (Testimony), February 13, 2004 (Supplemental Report).

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Corporation, Transferee: Before the Federal Communications Commission, Washington, D.C., MB Docket No. 02-70, April 26, 2002

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RM 24

**Comments on Michael Kende's Assessment of
Preliminary Reports on Competition and Pricing**

Dennis Carlton
June 5, 2009

I.   INTRODUCTION

A.   TASK

1.   I have been asked by ICANN to respond to the report submitted on

April 17, 2009 by Michael Kende entitled "Assessment of ICANN Preliminary Reports

on Competition and Pricing" prepared on behalf of AT&T.   The Kende report comments

on my March 2009 papers evaluating: (i) the likely impact on consumer welfare of

ICANN's proposed framework for authorizing new gTLDs;[1] and (ii) the appropriate role

of price caps for services provided by new gTLDs.[2]

2.   In the Consumer Welfare report, I concluded that, while the evaluation of

the ICANN proposal requires consideration of both costs and benefits, "… even if new

gTLDs do not compete with *.com* and other major TLDs for existing registrants, it is

likely that consumers would nonetheless realize significant benefits from new gTLDs due

to increased competition for new registrants and increased innovation that would likely

be fostered by entry."[3] In the Price Cap report, I concluded that, in the absence of

intellectual property concerns, "… price caps or ceilings on prices charged by operators

of new gTLDs are unnecessary to insure the potential competitive benefits of the new

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1. Preliminary Report of Dennis Carlton Regarding the Impact of New gTLDs on
    Consumer Welfare (March 2009), hereafter "Consumer Welfare report."
2. Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet
    Registries (March 2009) hereafter "Price Cap report."
3. Consumer Welfare Report, p. 1

gTLDs" and that "imposing price caps on the registries for new TLDs could inhibit the marketplace acceptance of new gTLDs by limiting the pricing flexibility of entrants…"[4]

3. In responding to my reports, Dr. Kende claims that "there is no evidence of the type of beneficial competition that Professor Carlton argues that the proposed gTLD framework will introduce."[5] He further argues that "[t]he economic study that the Board directed the staff to undertake in 2006 […] pointed the way to an appropriate and informed approach by ICANN, which would provide the answers to the questions that were addressed by Professor Carlton in his two preliminary studies."[6]

4. Dr. Kende concludes that new gTLDs would impose costs on trademark holders by requiring "defensive registrations" and that my prior reports "… failed to analyze the present status and satisfaction of trademark holders with the current safeguards…"[7] He further concludes that price caps for new gTLDs would be appropriate due to the "…possibility that registries might [set prices] aimed at customers registering defensively, who may be less price sensitive"[8] Finally, he claims that the absence of price caps for new gTLDs could results in the elimination of price caps for existing registries.[9]

B. SUMMARY OF CONCLUSIONS

5. My major conclusions, explained in further detail in the following sections of this report, are as follows:

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4. Price Cap report, p. 1.
5. Kende, p. 11.
6. Kende, p. 19.
7. Kende, p. 11.
8. Kende, p. 19.
9. Kende, p. 13.

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- There is no basis for Dr. Kende's claim that the study authorized by the ICANN Board in 2006, which proposed to analyze the scope of the market for registration services, is necessary for evaluating whether consumers would benefit from ICANN's proposed framework for introducing new gTLDs. Even if *.com* (or, for that matter, any other TLD) today exercises market power, new gTLDs could enhance consumer welfare by creating new products and fostering innovation, and promoting future competition with *.com* and other TLDs. That is, entry of a new gTLD can be desirable even if the gTLD does not erode any of the market power that *.com* may possess.

- While concerns about consumer confusion and defensive registrations need to be considered, Dr. Kende provides no basis for concluding that restricting the entry of new gTLDs is the best solution to reducing these costs. Alternative mechanisms exist, and others are actively being studied by ICANN, to protect trademark holders while preserving the procompetitive benefits of entry.

- Dr. Kende exaggerates costs associated with ICANN's gTLD proposal. He defines "defensive registrations" as those which direct traffic to other sites, but this definition fails to distinguish between productive registrations which attract and maintain traffic as well as those undertaken only to protect trademarks.

- Finally, I understand that there is no basis for Dr. Kende's claim that the absence of price caps for new gTLDs will require elimination of price caps for existing TLDs.

II. DR. KENDE INCORRECTLY CONCLUDES THAT THE 2006 STUDY AUTHORIZED BY ICANN IS NECESSARY TO UNDERSTAND THE POTENTIAL BENEFITS OF NEW gTLDs.

6.   Dr. Kende asserts that two critical questions for studying the potential benefits of new gTLDs are "whether there is market power in the domain registration market, and whether there is evidence that entry would be sufficient to counteract such market power."[10] He claims that the results of the study requested by the ICANN Board in 2006 "would determine the extent of competition for existing gTLDs and how to identify where expansion would provide economic benefits in the form of choice for Internet users interested in registering a new core domain name."[11] He further claims that "such a study would necessarily have impacted Professor Carlton's conclusions."[12]

7.   Dr. Kende's comments are incorrect and fail to properly recognize the role of entry in promoting consumer welfare in the presence of market power. As I have emphasized previously, new products and services are primary generators of increases in consumer welfare and restrictions on entry will impede innovation.[13]

8.   Even if the new gTLDs authorized under the ICANN proposal would not compete with *.com* for *existing* registrants and did not result in the reduction of the fee for

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10. Kende, p.3.
11. The 2006 ICANN-authorized report was designed to address questions related to whether the domain registration market is one market or whether each TLD functions as a separate market.
12. Kende, p. 2.
13. See "Preliminary Report of Dennis Carlton Regarding the Impact of New gTLDs on Consumer Welfare" pp. 18-19 for a discussion of the economic literature on the importance of product innovation and technological progress.

.com registration below the price cap level, entry would still be likely to benefit consumers by increasing the likelihood of the successful introduction of new and innovative registration services which generate benefits to consumers. Successful new gTLDs also would be expected to lead existing registries to improve the quality of service they provide and to accelerate the introduction of new services in order to continue attracting new registrants.

9.   As this analysis indicates, determining the scope of the market for registry services and the extent of competition between TLDs, as ICANN proposed in 2006, is not critical to the evaluation of the potential benefits from the entry of new gTLDs.

III.   ENTRY RESTRICTIONS ARE AN INEFFICIENT MECHANISM FOR PREVENTING THE MISUSE OF TRADEMARKS

10.   Dr. Kende claims that an overwhelming number of domain names reflect "defensive registrations" that do nothing more than direct traffic back to a "core registration" site. Dr. Kende claims that "[t]hese are registered to prevent a cybersquatter from registering them instead, or are recovered from cybersquatters who registered them first."[14] He claims that gTLDs are likely to impose significant costs on consumers by requiring new defensive registrations which serve no productive purpose other than to prevent trademark abuse.

11.   This section shows (i) that restrictions on entry of new gTLDs are unlikely to be an efficient mechanism for reducing concerns about "cybersquatting" and defensive registrations; and (ii) that Dr. Kende incorrectly suggests that many domain names that merely redirect traffic to another site are unproductive and serve no other purpose than preventing cybersquatting. As such Dr. Kende appears to overstate inefficiencies

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14. Kende, p. 7.

imposed on trademark holders that are likely to result from the introduction of new gTLDs.

A. ENTRY RESTRICTIONS ARE LIKELY TO BE AN INEFFICIENT MECHANISM FOR PROTECTING TRADEMARKS.

12.   Dr. Kende claims that my Consumer Welfare report failed to adequately account for costs that new gTLDs would impose on trademark holders through defensive registrations and that restrictions on the entry of new gTLDs benefits consumers by limiting the need for defensive registrations.[15] While trademark holders' concerns about the potential impact of new gTLDs on the need for defensive registrations merit attention, and while protecting trademarks and intellectual property can promote consumer welfare, economic efficiency requires that trademark holders concerns be addressed at the minimum possible cost. Dr. Kende provides no support for his suggestion that restricting entry is the most efficient way of protecting trademark holders. To carry his example to other markets, the fact that car accidents impose costs does not imply that cars should be banned.

13.   As discussed in my prior report, mechanisms currently exist for protecting the use of trademarks in domain names. For example, ICANN maintains the Uniform Domain Name Dispute Resolution Policy (UDRP) for, among other things, resolving claims that a registrant owns a domain name that infringes an existing trademark. While a large number of disputes are routinely resolved under these procedures, Dr. Kende cites dissatisfaction with these rules by trademark holders.[16]

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15. Kende, p.8.
16. Kende, p.10.

14.   Entry restrictions are an extreme approach to addressing trademark concerns when alternative approaches, such as modifying existing dispute resolution mechanism, may also help achieve these goals while preserving the benefits to consumers of entry. As mentioned in my Consumer Welfare report, for example, implementation of a "user pays" rules in domain name disputes or other changes in dispute resolution mechanisms would help deter trademark infringements and baseless challenges of trademark violations.[17]

15.   In addition, ICANN has instituted a process to address concerns of trademark holders and to improve mechanisms for protecting trademark holders' property and preventing the unauthorized use of trademarks in domain names. In March 2009, ICANN formed the Implementation Recommendation Team ("IRT") whose purpose is to consider and recommend proposals that will help protect the legal rights of trademark owners focusing on, but not limited to, issues arising with respect to the introduction of new gTLDs.[18]

16.   The IRT recently has issued a report which proposes new mechanisms for protecting trademark holders. These include: creating a centralized intellectual property clearinghouse to support new gTLD registries; instituting a mechanism for blocking registration of domain names with certain globally protected trademarks (those included in the Globally Protected Marks List) in both the top and second level domain space; and creating a venue for expedited proceedings for blatant trademark infringement and abuse. The status of these recommendations is under review. Before resorting to the draconian

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17. Consumer Welfare Report, p. 21. A more extreme form of the "loser pays" rule would involve the loser paying a penalty.
18. IRT Report (http://www.icann.org/en/announcements/announcement-4-29may09-en.htm)

remedy of restricting entry, the existing and proposed alternative mechanisms for dealing

with gTLD-related trademark concerns should be pursued.

B. **DR. KENDE INCORRECTLY SUGGESTS THAT ALL "DEFENSIVE" REGISTRATIONS SERVE NO PRODUCTIVE PURPOSE.**

17.   As noted above, Dr. Kende defines "defensive registrations" as those

which "redirect traffic back to a core registration." He claims that defensive registrations

serve no purpose other than to "prevent a cybersquatter from registering them."[19]

Dr. Kende, however, fails to recognize that many domains that "redirect traffic back to a

core registration" are undertaken for reasons wholly unrelated to cybersquatting concerns

and reflect attempts by registrants to attract traffic and efficiently structure the hosting of

Internet content.

18.   According to Dr. Kende, more than 97 percent the registrations by the five

representative firms he reviewed meet his definition of "defensive" registrations.

Dr. Kende, however, has not produced the questionnaire or data that provide the basis of

his analysis. As a result, I cannot determine whether survey respondents to the

MarkMonitor survey consider all registrations that merely redirect traffic to other

domains as unproductive expenditures designed to prevent cybersquatting or whether this

is Dr. Kende's interpretation.

19.   In fact, many registrations that direct traffic to other sites are

complementary to "core" registrations and help attract traffic to a "core" website and are

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19. Kende, p. 7. More fully, Dr. Kende defines defensive registrations as follows:
"*Defensive Registration:* These registrations are not unique, in that they do no
resolve, or they redirect traffic back to a core registration, or do not contain unique
content – for instance registrations that contain typos of a trademarked name. These
are registered to prevent a cybersquatter from registering them instead, or are
recovered from cybersquatters who registered them first."

not merely undertaken to prevent cybersquatting. For example, the following types of registrations that direct traffic to other sites would help attract traffic and would not be maintained simply to prevent cybersquatting:

- Registrations involving trademark names that direct traffic to the website of a corporate parent;

- Registrations involving trademark names no longer in active use;

- Registrations involving trademark names not currently used that may be used in the future;

- Registrations involving common misspellings that redirect traffic to the core site.

20.   To take just one small example, my own firm – Compass Lexecon – currently maintains several dozen registrations in addition to *compasslexecon.com.* These include *compass.com* and *lexecon.com*, which were the registrations maintained by the two companies that merged to form Compass Lexecon.[20] These domains do not currently host content but instead route traffic to compasslexecon.com. Maintaining these registrations prevents the potential loss of traffic generated by individuals who may not be aware of the firm's name change. However, these would be considered unproductive "defensive registrations" under the standard adopted by Dr. Kende.

21.   There are a myriad of reasons that firms maintain registrations that redirect traffic to another site that have little to do with trademark protections. While there is no doubt that some registrations are made to prevent trademark abuse, Dr. Kende's failure to distinguish "defensive registrations" designed to prevent

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20. In addition, Compass Lexecon maintains a variety of .cc registrations and related registrations that direct traffic to the *compasslexecon.com* site.

cybersquatting alone from those that help attract and maintain Internet traffic (while

redirecting it to another site) in summarizing the MarkMonitor data likely exaggerates the

costs associated with ICANN's gTLD proposal.

IV. THERE IS NO BASIS FOR DR. KENDE'S CONCERNS THAT ICANN'S PROPOSAL WILL LEAD TO THE REPEAL OF EXISTING PRICE CAPS.

22.   As noted above, Dr. Kende suggests that the absence of price caps for new

TLDs could result in the elimination of price caps for *.com, .net, .org, .info, .biz and*

others as a result of the "equitable treatment" clause in ICANN agreements.[21] We

understand from ICANN that there is no basis for this concern. The language in this

clause does not require identical treatment among all registries and recognizes that

differences across ICANN contracts with different registries can be "justified by

substantial and reasonable cause." ICANN's contracts with existing TLDs recognize that

different practices may be appropriate for different registries and allow ICANN latitude

to implement different procedures. I am aware of no statement either by ICANN or the

Commerce Department favoring the elimination of price caps specified in existing

registry contracts.

23.   Dr. Kende further claims that price caps for new gTLDs are necessary

because "defensive registrations are much less price sensitive than basic new

registrations."[22] However, the evidence from the introduction of new TLDs does not

support this argument. More specifically, the relatively small number of registrations in

newer TLDs such as *.info* and *.biz*, despite lower registry fees than those for *.com*, is

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[21] For example, the VeriSign agreement with ICANN states in Section 3.2(a) that
    "ICANN shall not apply standards, policies, procedures or practices arbitrarily,
    unjustifiably, or inequitably and shall not single out Registry Operator for disparate
    treatment unless justified by substantial and reasonable cause."
22. Kende, p.12.

inconsistent with Kende's assertion that the demand for defensive registrations by trademark owners is inelastic and thus likely to generate a high price.

V. CONCLUSION

24.　　While evaluation of ICANN's proposal requires the evaluation of both costs and benefits, new gTLDs would yield benefits to consumers even if they did not compete directly with *.com* and did not result in the reduction of *.com* fees below the price cap level. This implies that ICANN's proposed 2006 study, which would have analyzed whether .com or other existing TLDs are separate markets and could exercise market power in the absence of price caps, is superfluous to an assessment of whether consumers would benefit from new gTLDs.

25.　　While Dr. Kende argues that the increase in costs for trademark owners from new TLDs should prohibit their introduction, he provides no evidence that restricting entry is the most efficient method for reducing these costs. ICANN, through the IRT, is currently studying possibilities for more efficient procedures to resolve trademark-related disputes involving registrations. Such improvements to existing procedures can help protect trademark holders while preserving the procompetitive effects of entry. In addition, the data reported by Dr. Kende appear to exaggerate the significance of "defensive" registrations designed to prevent cybersquatting and thus exaggerate the implied need for restricting entry in order to deter trademark abuse.

Petillion

RM 25

MILESTONE: FIRST REGISTRY AGREEMENTS EXECUTED – INTERNET USERS WILL SOON BE ABLE TO NAVIGATE THE WEB IN THEIR NATIVE LANGUAGE

On the opening day of ICANN47 Durban, ICANN signed the first four Registry Agreements with new gTLD applicants. This is a historic moment in the New gTLD Program, which is drawing ever nearer to delegation of the first new gTLDs and the upcoming expansion of the Internet.

All four signed Registry Agreements are for the operation of Internationalized Domain Names (IDN). Two of the Registry Agreements are for strings in Cyrillic, one in Arabic and one in Chinese. Once these and other IDN strings are delegated and become operational, it will mark the first time that people will be able to access and type in a website address for generic Top-Level Domains in their native language. This will expand the Internet not just in the number of generic Top-Level Domains available, but also in the overall accessibility for all people across the globe.

The four signed Registry Agreements are listed below and the will soon be posted on the ICANN.org website.

- International Domain Registry Pty. Ltd.'s شبكة , the Arabic for "Web or Network"
- Core Association's онлайн, Russian for "Online"
- Core Association's сайт, Russian for "Web site"
- Spring Fields, LLC 游戏, Chinese for "Game"

Invitations to begin the Contracting Process will continue on a rolling basis, by prioritization number, for applications that are not subject to any outstanding items that can or do impact eligibility (learn more (/en/announcements-and-media/announcement-4-03jul13-en)).

Applicants wishing to sign a Registry Agreement prior to resolution of certain outstanding issues that may affect the terms of the Agreement, such as GAC Advice, Rights Protection Mechanisms requirements and Post-Delegation Dispute Resolution Proceedings, will need to sign the Supplement to the Registry Agreement allowing ICANN to update executed Registry Agreements to potentially address these unresolved issues.

Read Akram Atallah's Blog Post » (http://blog.icann.org/2013/07/2013-raa-and-rya-signings-kick-off-icann-47-in-durban/)

Learn more about Contracting » (/en/applicants/agb/base-agreement-contracting)

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RM 26

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this "Agreement") is entered into as of 14 July 2013 (the "Effective Date") between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation ("ICANN"), and CORE Association, a Swiss not-for-profit association ("Registry Operator").

ARTICLE 1.

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

1.1 **Domain and Designation**. The Top-Level Domain to which this Agreement applies is онлайн (the "TLD"). Upon the Effective Date and until the earlier of the expiration of the Term (as defined in Section 4.1) or the termination of this Agreement pursuant to Article 4, ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

1.2 **Technical Feasibility of String**. While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

1.3 **Representations and Warranties**.

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

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

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

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the "Continued Operations Instrument"), and such instrument is a binding

obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

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

ARTICLE 2.

COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

2.1   Approved Services; Additional Services. Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the Specification 6 attached hereto ("Specification 6") and such other Registry Services set forth on Exhibit A (collectively, the "Approved Services"). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a material 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 http://www.icann.org/en/registries/rsep/rsep.html, 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.

2.2   Compliance with Consensus Policies and Temporary Policies. Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Polices and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth in Specification 1 attached hereto ("Specification 1").

2.3   Data Escrow. Registry Operator shall comply with the registry data escrow procedures set forth in Specification 2 attached hereto ("Specification 2").

2.4   Monthly Reporting. Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format set forth in Specification 3 attached hereto ("Specification 3").

2.5 **Publication of Registration Data**. Registry Operator shall provide public access to registration data in accordance with Specification 4 attached hereto ("Specification 4").

2.6 **Reserved Names**. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the requirements set forth in Specification 5 attached hereto ("Specification 5"). Registry Operator may at any time establish or modify policies concerning Registry Operator's ability to reserve (i.e., withhold from registration or allocate to Registry Operator, but not register to third parties, delegate, use, activate in the DNS or otherwise make available) or block additional character strings within the TLD at its discretion. Except as specified in Specification 5, if Registry Operator is the registrant for any domain names in the registry TLD, such registrations must be through an ICANN accredited registrar, 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.

2.7 **Registry Interoperability and Continuity**. Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6 attached hereto ("Specification 6").

2.8 **Protection of Legal Rights of Third Parties.** Registry Operator must specify, and comply with, the processes and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth Specification 7 attached hereto ("Specification 7"). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

2.9 **Registrars**.

(a)   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. Subject to the requirements of Specification 11, 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 (the "Registry-Registrar Agreement"). Registry Operator may amend the Registry-Registrar Agreement from time to time; provided, however, that any material revisions thereto must be approved 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 <http://www.icann.org/en/resources/registries/rra-amendment-procedure>, and such revisions may not be adopted and implemented until approved by ICANN.

 (b) 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 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). ICANN reserves the right, but not the obligation, to refer any such contract, related documents, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, related documents, transaction or other arrangement might raise significant competition issues under applicable law. If feasible and appropriate under the circumstances, ICANN will give Registry Operator advance notice prior to making any such referral to a competition authority.

 (c) For the purposes of this Agreement: (i) "Affiliate" means a person or entity that, directly or indirectly, through one or more intermediaries, or in combination with one or more other persons or entities, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

2.10   Pricing for Registry Services.

(a)   With respect to initial domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one (1) to ten (10) years at the discretion of the registrar, but no greater than ten (10) years.

(b)   With respect to renewal of domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e., the price in place prior to any noticed increase) for periods of one (1) to ten (10) years at the discretion of the registrar, but no greater than ten (10) years.

(c)   In addition, Registry Operator must have uniform pricing for renewals of domain name registrations ("Renewal Pricing"). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry

Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a "Qualified Marketing Program" is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator's obligations pursuant to Section 2.10(b).

(d)   Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

2.11   Contractual and Operational Compliance Audits.

(a)   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 during regular business hours and 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 reasonably necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than ten (10) calendar 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. ICANN will treat any information obtained in connection with such audits that is appropriately marked as confidential (as required by Section 7.15) as Confidential Information of Registry Operator in accordance with Section 7.15.

(b)   Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for

all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% in a given quarter to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c)   Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d)   Registry Operator will give ICANN immediate notice of Registry Operator's knowledge of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

2.12   **Continued Operations Instrument**. Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in Specification 8 attached hereto ("Specification 8").

2.13   **Emergency Transition**. 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 <http://www.icann.org/en/resources/registries/transition-processes>) (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.

2.14   Registry Code of Conduct. In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in Specification 9 attached hereto ("Specification 9").

2.15   Cooperation with Economic Studies. 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 related to the operation of the TLD reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold (a) any internal analyses or evaluations prepared by Registry Operator with respect to such data and (b) any data to the extent that the delivery of such data would be in violation of applicable law. Any data delivered to ICANN or its designee pursuant to this Section 2.15 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 and makes anonymous such data, ICANN or its designee may disclose such data to any third party. 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.

2.16   Registry Performance Specifications. Registry Performance Specifications for operation of the TLD will be as set forth in Specification 10 attached hereto ("Specification 10"). Registry Operator shall comply with such Performance Specifications and, for a period of at least one (1) year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

2.17   Additional Public Interest Commitments. Registry Operator shall comply with the public interest commitments set forth in Specification 11 attached hereto ("Specification 11").

2.18   Personal Data. Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the registry-registrar agreement for the TLD of the purposes for which data about any identified or identifiable natural person ("Personal Data") submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

ARTICLE 3.

COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

3.1   Open and Transparent. Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2   Equitable Treatment. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.3   TLD Nameservers. ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at http://www.iana.org/domains/root/ will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

3.4   Root-zone Information Publication. ICANN's publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at http://www.iana.org/domains/root/.

3.5   Authoritative Root Database. To the extent that ICANN is authorized to set policy with regard to an authoritative root server system (the "Authoritative Root Server System"), ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

ARTICLE 4.

TERM AND TERMINATION

4.1   Term. The term of this Agreement will be ten (10) years from the Effective Date (as such term may be extended pursuant to Section 4.2, the "Term").

4.2   Renewal.

(a)   This Agreement will be renewed for successive periods of ten (10) years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

(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 of competent jurisdiction 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 (10) calendar days or such other time period as may be determined by the arbitrator or court of competent jurisdiction; or

(ii)   During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) or a court of competent jurisdiction on at least three (3) separate occasions to have been in (A) fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or (B) breach of its payment obligations under Article 6 of this Agreement.

(b)   Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then-current Term.

4.3   Termination by ICANN.

(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 of competent jurisdiction 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 of competent jurisdiction.

(b)   ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may

request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(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 of competent jurisdiction 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 of competent jurisdiction.

(d)   ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) calendar days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any material property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within sixty (60) calendar days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101, et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e)   ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7 or Sections 2 and 3 of Specification 11, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f)   ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer who is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the

subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g)   ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement as specified in Section 7.5.

4.4   Termination by Registry Operator.

(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 of competent jurisdiction 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 of competent jurisdiction.

(b)   Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

4.5   Transition of Registry upon Termination of Agreement. 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 (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) if Registry Operator demonstrates to ICANN's reasonable satisfaction that (A) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator or its Affiliates for their exclusive use, (B) 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 (C) 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 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 for the maintenance and operation of the TLD, regardless of the reason for termination or expiration of this Agreement.

4.6 **Effect of Termination**. Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

ARTICLE 5.

DISPUTE RESOLUTION

5.1 **Mediation**. 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:

(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, has no ongoing business relationship with either party 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 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).

(b)	The mediator shall conduct the mediation in accordance with the rules and procedures 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. 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.

(c)	Each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator. Each party shall treat information received from the other party pursuant to the mediation 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.

(d)	If the parties have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, either party or the mediator may terminate the mediation at any time and the dispute can then proceed to arbitration pursuant to Section 5.2 below. If the parties have not resolved the dispute for any reason by the date that is ninety (90) calendar days following the date of the notice delivered pursuant to Section 5.1(a), the mediation shall automatically terminate (unless extended by agreement of the parties) and the dispute can then proceed to arbitration pursuant to Section 5.2 below.

**5.2	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 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, (ii) the parties agree in writing to a greater number of arbitrators, or (iii) the dispute arises under Section 7.6 or 7.7. In the case of clauses (i), (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 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.

5.3 **Limitation of Liability**. 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, except with respect to Registry Operator's indemnification obligations pursuant to Section 7.1 and Section 7.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. 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.

5.4 **Specific Performance**. 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 of competent jurisdiction specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

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ARTICLE 6.

FEES

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6.1 **Registry-Level Fees.**

(a) Registry Operator shall pay ICANN a registry-level fee equal to (i) the registry fixed fee of US$6,250 per calendar quarter and (ii) the registry-level transaction fee (collectively, the "Registry-Level Fees"). The registry-level transaction fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US$0.25; provided, however that the registry-level transaction fee shall not apply until and unless more than 50,000 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

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during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator's obligation to pay the quarterly 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 calendar days between the delegation date and the end of the calendar quarter in which the delegation date falls.

(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.

**6.2	Cost Recovery for RSTEP**. 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 http://www.icann.org/en/registries/rsep/. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within fourteen (14) calendar 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.

**6.3	Variable Registry-Level Fee**.

(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 variable registry-level fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year (the "Variable Registry-Level Fee"). 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 that are party to a registry-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,

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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.

(b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US$0.25 per domain name registration (including renewals associated with transfers from one ICANN accredited registrar to another) per year.

6.4 **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) an amount specified by ICANN not to exceed US$0.25 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.

6.5 **Adjustments to Fees.** Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then-current fees set forth in Section 6.1 and Section 6.3 may be adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.5 shall be effective as of the first day of the first calendar quarter following at least thirty (30) days after ICANN's delivery to Registry Operator of such fee adjustment notice.

6.6 **Additional Fee on Late Payments**. For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

ARTICLE 7.

MISCELLANEOUS

7.1 Indemnification of ICANN.

(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 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 of competent jurisdiction or arbitrator.

(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator's aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN's total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator's liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN's reasonable satisfaction, such other registry operators' culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence.

7.2 Indemnification Procedures.
If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry

Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator's sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN's policies, Bylaws or conduct. ICANN shall cooperate, at Registry Operator's cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense.

  7.3 **Defined Terms**. For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

    (a) For the purposes of this Agreement, an effect on "Security" shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

    (b) For purposes of this Agreement, an effect on "Stability" shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments ("RFCs") sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

  7.4 **No Offset**. All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

  7.5 **Change of Control; Assignment and Subcontracting**. Except as set forth in this Section 7.5, neither party may assign any of its rights and obligations under 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 subcontracting arrangement that relates to any Critical Function (as identified in Section 6 of Specification 10) for the TLD (a "Material Subcontracting Arrangement") shall be deemed an assignment.

(a)   Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any assignment or Material Subcontracting Arrangement, and any agreement to assign or subcontract any portion of the operations of the TLD (whether or not a Material Subcontracting Arrangement) 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.

(b)   Within thirty (30) calendar days of either such notification pursuant to Section 7.5(a), ICANN may request additional information from Registry Operator establishing (i) compliance with this Agreement and (ii) that the party acquiring such control or entering into such assignment or Material Subcontracting Arrangement (in any 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 (including with respect to financial resources and operational and technical capabilities), in which case Registry Operator must supply the requested information within fifteen (15) calendar days.

(c)   Registry Operator agrees that ICANN's consent to any assignment, change of control or Material Subcontracting Arrangement will also be subject to background checks on any proposed Contracting Party (and such Contracting Party's Affiliates).

(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 Material Subcontracting 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, thirty (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 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, Material Subcontracting 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. Notwithstanding Section 7.5(a), in the event an assignment is made pursuant to clauses (ii) or (iii) of this Section 7.5(f), the assigning party will provide the other party with prompt notice following any such assignment.

7.6   **Amendments and Waivers**.

(a)   If the ICANN Board of Directors 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 adopt a Special Amendment pursuant to the requirements of and process set forth in this Section 7.6; provided that a Special Amendment may not be a Restricted Amendment.

(b)   Prior to submitting a Special Amendment for Registry Operator Approval, ICANN shall first consult in good faith with the Working Group regarding the form and substance of such 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 proposed amendment to the Applicable Registry Operators in accordance with Section 7.9. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(c)   If, within one hundred eighty (180) calendar days following the expiration of the Posting Period (the "Approval Period"), the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment, but must address the subject 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, such Special Amendment shall be deemed approved (an "Approved Amendment") by the Applicable Registry Operators, 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 Approved Amendment to Registry Operator (the "Amendment Effective Date"). In the event that a Special Amendment does not receive Registry Operator Approval, the Special Amendment shall be deemed not approved by the Applicable Registry Operators (a "Rejected Amendment"). A Rejected Amendment will have no effect on the terms and conditions of this Agreement, 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.

(f)   Notwithstanding the provisions of Section 7.6(e), a Board Amendment shall not be deemed an Approved Amendment if, during the thirty (30) calendar day period following the approval by the ICANN Board of Directors of the Board Amendment, the Working Group, on the behalf of the Applicable Registry Operators, submits to the ICANN Board of Directors an alternative to the Board Amendment (an "Alternative Amendment") that meets the following 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 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) calendar 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 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.

(h)   Registry Operator 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 the date ICANN provided notice to Registry Operator of such Approved 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(j), 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 Exemption 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.

(i)   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.

(j)   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 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, at the prevailing exchange rate published the prior day in the U.S. Edition of the Wall Street Journal for the date such calculation is made by ICANN) 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: (A) an amendment of Specification 1, (B) 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, (C) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (D) 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.

(v)   "Working Group" means representatives of the Applicable Registry Operators and other members of the community that the Registry Stakeholders Group 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(i)).

(k)   Notwithstanding anything in this Section 7.6 to the contrary, (i) 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 (ii) 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).

7.7   Negotiation Process.

(a)   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.

(b)   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").

(c)   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 "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, who has no ongoing business relationship with either party 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, 2.2, 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 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.

(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.

(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).

7.8 **No Third-Party Beneficiaries**. This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

7.9 **General Notices**. Except for notices pursuant to Sections 7.6 and 7.7, 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 Sections 7.6 and 7.7 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. Other than notices under Sections 7.6 or 7.7, 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 electronic mail shall be followed by a copy sent by regular postal mail service within three (3) calendar days. Any notice required by Sections 7.6 or 7.7 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.

> If to ICANN, addressed to:
> Internet Corporation for Assigned Names and Numbers
> 12025 Waterfront Drive, Suite 300
> Los Angeles, CA 90094-2536
> USA
> Telephone: +1-310-301-5800
> Facsimile: +1-310-823-8649
> Attention: President and CEO
>
> With a Required Copy to: General Counsel
> Email: (As specified from time to time.)
>
> If to Registry Operator, addressed to:
> CORE Association
> World Trade Center II, 29 Route de Pre-Bois
> CH-1215, Geneva
> Switzerland
> Telephone: +41-22-929-5744
> Facsimile: +41-22-929-5745
> Attention: Werner Staub, Coordinator of the Permanent Secretariat
> Email: secretariat@corenic.org

7.10   Entire Agreement. This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

7.11   English Language Controls. Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

7.12   Ownership Rights. Nothing contained in this Agreement shall be construed as (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.

7.13   Severability; Conflicts with Laws. 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. 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.

7.14   Court Orders. ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement

7.15   Confidentiality

(a)   Subject to Section 7.15(c), during the Term and for a period of three (3) 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.

(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.

(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.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____

Akram Atallah
President, Generic Domains Divsion

CORE ASSOCIATION

By: _____

Werner Staub
Coordinator of the Permanent Secretariat

EXHIBIT A

Approved Services

The ICANN gTLD Applicant Guidebook (located at http://newgtlds.icann.org/en/applicants/agb) and the RSEP specify processes for consideration of proposed registry services. Registry Operator may provide any service that is required by the terms of this Agreement. In addition, the following services (if any) are specifically identified as having been approved by ICANN prior to the effective date of the Agreement, and Registry Operator may provide such services:

1. **DNS Service – TLD Zone Contents**

   Notwithstanding anything else in this Agreement, as indicated in section 2.2.3.3 of the gTLD Applicant Guidebook, permissible contents for the TLD's zone are:

   1.1. Apex SOA record

   1.2. Apex NS records and in-bailiwick glue for the TLD's DNS servers

   1.3. NS records and in-bailiwick glue for DNS servers of registered names in the TLD

   1.4. DS records for registered names in the TLD

   1.5. Records associated with signing the TLD zone (i.e., RRSIG, DNSKEY, NSEC, and NSEC3)

   (Note: The above language effectively does not allow, among other things, the inclusion of DNS resource records that would enable a dotless domain name (e.g., apex A, AAAA, MX records) in the TLD zone.)

   If Registry Operator wishes to place any other DNS resource record type into its TLD DNS zone, it must describe in detail its proposal and submit a Registry Services Evaluation Process (RSEP) request. This will be evaluated per RSEP to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Registry Operator recognizes and acknowledges that a service based on the use of less-common DNS resource records in the TLD zone, even if approved, might not work as intended for all users due to lack of software support.

2. **Internationalized Domain Names (IDNs)**

   Registry Operator may offer registration of IDNs at the second and lower levels provided that Registry Operator complies with the following requirements:

   2.1. Registry Operator must offer Registrars support for handling IDN registrations in EPP.

2.2. Registry Operator will not offer variant IDNs.

2.3. Registry Operator may offer registration of IDNs in the following languages/scripts (IDN Tables and IDN Registration Rules will be published by the Registry Operator as specified in the ICANN IDN Implementation Guidelines):

    2.3.1. Russian Language

3. Searchable Whois

Notwithstanding anything else in this Agreement, Registry Operator must offer a searchable Whois service compliant with the requirements described in Section 1.10 of Specification 4 of this Agreement. Registry Operator must make available the services only to authenticated users after they logged in by supplying proper credentials (i.e., user name and password). Registry Operator must issue such credentials exclusively to eligible users and institutions that supply sufficient proof of their legitimate interest in this feature (e.g., law enforcement agencies).

SPECIFICATION 1

CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

1. **Consensus Policies**.

    1.1. "***Consensus Policies***" are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this Specification. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.

    1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:

    1.2.1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System ("DNS");

    1.2.2 functional and performance specifications for the provision of Registry Services;

    1.2.3 Security and Stability of the registry database for the TLD;

    1.2.4 registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;

    1.2.5 resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or

    1.2.6 restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.

    1.3. Such categories of issues referred to in Section 1.2 of this Specification shall include, without limitation:

    1.3.1 principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);

    1.3.2 prohibitions on warehousing of or speculation in domain names by registries or registrars;

1.3.3 reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and

1.3.4 maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.

1.4. In addition to the other limitations on Consensus Policies, they shall not:

1.4.1 prescribe or limit the price of Registry Services;

1.4.2 modify the terms or conditions for the renewal or termination of the Registry Agreement;

1.4.3 modify the limitations on Temporary Policies (defined below) or Consensus Policies;

1.4.4 modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or

1.4.5 modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.

2. **Temporary Policies**. Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("***Temporary Policies***").

2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.

2.1.1 ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why

the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.

2.1.2   If the period of time for which the Temporary Policy is adopted exceeds ninety (90) calendar days, the Board shall reaffirm its temporary adoption every ninety (90) calendar days for a total period not to exceed one (1) year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one (1) year period expires or, if during such one (1) year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.

3.   **Notice and Conflicts**. Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Polices or Temporary Policy shall control, but only with respect to subject matter in conflict.

SPECIFICATION 2

DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent ("***Escrow Agent***") for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

PART A – TECHNICAL SPECIFICATIONS

1.   **Deposits**. There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.

   1.1.   "**Full Deposit**" will consist of data that reflects the state of the registry as of 00:00:00 UTC (Coordinated Universal Time) on the day that such Full Deposit is submitted to Escrow Agent.

   1.2.   "**Differential Deposit**" means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., newly added or modified domain names).

2.   **Schedule for Deposits**. Registry Operator will submit a set of escrow files on a daily basis as follows:

   2.1.   Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.

   2.2.   The other six (6) days of the week, a Full Deposit or the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.

3.   **Escrow Format Specification**.

   3.1.   **Deposit's Format**. Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see Part A, Section 9, reference 1 of this Specification and draft-arias-noguchi-dnrd-objects-mapping, see Part A, Section 9, reference 2 of this Specification (collectively, the "DNDE Specification"). The DNDE Specification describes some elements as

optional; Registry Operator will include those elements in the Deposits if they are available. If not already an RFC, Registry Operator will use the most recent draft version of the DNDE Specification available at the Effective Date. Registry Operator may at its election use newer versions of the DNDE Specification after the Effective Date. Once the DNDE Specification is published as an RFC, Registry Operator will implement that version of the DNDE Specification, no later than one hundred eighty (180) calendar days after. UTF-8 character encoding will be used.

3.2. **Extensions**. If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional "extension schemas" shall be defined in a case by case basis to represent that data. These "extension schemas" will be specified as described in Part A, Section 9, reference 2 of this Specification. Data related to the "extensions schemas" will be included in the deposit file described in Part A, Section 3.1 of this Specification. ICANN and the respective Registry Operator shall work together to agree on such new objects' data escrow specifications.

4. **Processing of Deposit files**. The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see Part A, Section 9, reference 3 of this Specification. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see Part A, Section 9, reference 4 of this Specification, that are also royalty-free. The process to follow for the data file in original text format is:

(1) The XML file of the deposit as described in Part A, Section 9, reference 1 of this Specification must be named as the containing file as specified in Section 5 but with the extension xml.

(2) The data file(s) are aggregated in a tarball file named the same as (1) but with extension tar.

(3) A compressed and encrypted OpenPGP Message is created using the tarball file as sole input. The suggested algorithm for compression is ZIP as per RFC 4880. The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.

(4) The file may be split as necessary if, once compressed and encrypted, it is larger than the file size limit agreed with the escrow agent. Every part of a

split file, or the whole file if not split, will be called a processed file in this section.

(5)   A digital signature file will be generated for every processed file using the Registry Operator's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 Section 9, reference 3, and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.

(6)   The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.

(7)   The Escrow Agent will then validate every (processed) transferred data file using the procedure described in Part A, Section 8 of this Specification.

5.   **File Naming Conventions**. Files will be named according to the following convention: {gTLD}_{YYYY-MM-DD}_{type}_S{#}_R{rev}.{ext} where:

5.1.   {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;

5.2.   {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";

5.3.   {type} is replaced by:

        (1)   "full", if the data represents a Full Deposit;

        (2)   "diff", if the data represents a Differential Deposit;

        (3)   "thin", if the data represents a Bulk Registration Data Access file, as specified in Section 3 of Specification 4;

5.4.   {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".

5.5.   {rev} is replaced by the number of revision (or resend) of the file beginning with "0":

5.6. {ext} is replaced by "sig" if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by "ryde".

6. **Distribution of Public Keys**. Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry Operator and ICANN will exchange public keys by the same procedure.

7. **Notification of Deposits**. Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN (using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification (the "Interface Specification")) a written statement (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in Part A, Section 9, reference 1 of this Specification.

   If not already an RFC, Registry Operator will use the most recent draft version of the Interface Specification at the Effective Date. Registry Operator may at its election use newer versions of the Interface Specification after the Effective Date. Once the Interface Specification is published as an RFC, Registry Operator will implement that version of the Interface Specification, no later than one hundred eighty (180) calendar days after such publishing.

8. **Verification Procedure**.

   (1)   The signature file of each processed file is validated.

   (2)   If processed files are pieces of a bigger file, the latter is put together.

   (3)   Each file obtained in the previous step is then decrypted and uncompressed.

   (4)   Each data file contained in the previous step is then validated against the format defined in Part A, Section 9, reference 1 of this Specification.

   (5)   If Part A, Section 9, reference 1 of this Specification includes a verification process, that will be applied at this step.

   If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.

9. **References**.

(1)   Domain Name Data Escrow Specification (work in progress),
        http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow

(2)   Domain Name Registration Data (DNRD) Objects Mapping,
        http://tools.ietf.org/html/draft-arias-noguchi-dnrd-objects-mapping

(3)   OpenPGP Message Format, http://www.rfc-editor.org/rfc/rfc4880.txt

(4)   OpenPGP parameters,
        http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml

(5)   ICANN interfaces for registries and data escrow agents,
        http://tools.ietf.org/html/draft-lozano-icann-registry-interfaces

PART B – LEGAL REQUIREMENTS

1. **Escrow Agent**. Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendments thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated as a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.

2. **Fees**. Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within fifteen (15) calendar days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.

3. **Ownership**. Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed to ICANN or to a party designated in writing by ICANN on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis, for any use related to the operation, maintenance or transition of the TLD.

4. **Integrity and Confidentiality**. Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one (1) year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

    If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow

sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies**. Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.

6. **Release of Deposits**. Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four (24) hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:

    6.1. the Registry Agreement has expired without renewal, or been terminated; or

    6.2. ICANN has not received a notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent within five (5) calendar days after the Deposit's scheduled delivery date; (a) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (b) ICANN has not, within seven (7) calendar days after such notice, received the notification from Escrow Agent; or

    6.3. ICANN has received notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent of failed verification of the latest escrow deposit for a specific date or a notification of a missing deposit, and the notification is for a deposit that should have been made on Sunday (i.e., a Full Deposit); (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven (7) calendar days after such notice, received notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent of verification of a remediated version of such Full Deposit; or

    6.4. ICANN has received five notifications from Escrow Agent within the last thirty (30) calendar days notifying ICANN of either missing or failed escrow deposits that should have been made Monday through Saturday (i.e., a Differential Deposit), and (x) ICANN provided notice to Registry Operator of the receipt of such notifications; and (y) ICANN has not, within seven (7) calendar days after delivery of such notice to Registry Operator, received notification from Escrow Agent of verification of a remediated version of such Differential Deposit; or

6.5. Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or

6.6. Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Agreement; or

6.7. a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN; or

6.8. pursuant to Contractual and Operational Compliance Audits as specified under Section 2.11 of the Agreement.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon expiration or termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits**.

7.1. Within twenty-four (24) hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a notification generated for each Deposit. Reports will be delivered electronically using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification.

7.2. If Escrow Agent discovers that any Deposit fails the verification procedures or if Escrow Agent does not receive any scheduled Deposit, Escrow Agent must notify Registry Operator either by email, fax or phone and ICANN (using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification) of such nonconformity or non-receipt within twenty-four (24) hours after receiving the non-conformant Deposit or the deadline for such Deposit, as applicable. Upon notification of such verification or delivery failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to be delivered and pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.

8. **Amendments**. Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.

9. **Indemnity**. Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members,

and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

SPECIFICATION 3

FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD, using the API described in draft-lozano-icann-registry-interfaces, see Specification 2, Part A, Section 9, reference 5, with the following content.

ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three (3) months after the end of the month to which the reports relate. Unless set forth in this Specification 3, any reference to a specific time refers to Coordinated Universal Time (UTC). Monthly reports shall consist of data that reflects the state of the registry at the end of the month (UTC).

1. **Per-Registrar Transactions Report**. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named "gTLD-transactions-yyyymm.csv", where "gTLD" is the gTLD name; in case of an IDN-TLD, the A-label shall be used; "yyyymm" is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field name	Description
01	registrar-name	Registrar's full corporate name as registered with IANA
02	iana-id	For cases where the registry operator acts as registrar (i.e., without the use of an ICANN accredited registrar) 9999 should be used, otherwise the sponsoring Registrar IANA id should be used as specified in http://www.iana.org/assignments/registrar-ids
03	total-domains	total domain names under sponsorship in any EPP status but pendingCreate that have not been purged
04	total-nameservers	total name servers (either host objects or name server hosts as domain name attributes) associated with domain names registered for the TLD in any EPP status but pendingCreate that have not been purged
05	net-adds-1-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of one (1) year (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
06	net-adds-2-yr	number of domains successfully registered (i.e., not

		in EPP pendingCreate status) with an initial term of two(2) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
07	net-adds-3-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of three (3) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
08	net-adds-4-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of four (4) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
09	net-adds-5-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of five (5) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
10	net-adds-6-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of six (6) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
11	net-adds-7-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of seven (7) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
12	net-adds-8-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of eight (8) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
13	net-adds-9-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of nine (9) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
14	net-adds-10-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of ten (10) years (and not deleted within the add grace period). A transaction must be reported in the month

		the add grace period ends.
15	net-renews-1-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of one (1) year (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
16	net-renews-2-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of two (2) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
17	net-renews-3-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of three (3) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
18	net-renews-4-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of four (4) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
19	net-renews-5-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of five (5) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
20	net-renews-6-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of six (6) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.

21	net-renews-7-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of seven (7) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
22	net-renews-8-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of eight (8) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
23	net-renews-9-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of nine (9) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
24	net-renews-10-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of ten (10) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
25	transfer-gaining-successful	number of domain transfers initiated by this registrar that were successfully completed (either explicitly or automatically approved) and not deleted within the transfer grace period. A transaction must be reported in the month the transfer grace period ends.
26	transfer-gaining-nacked	number of domain transfers initiated by this registrar that were rejected (e.g., EPP transfer op="reject") by the other registrar
27	transfer-losing-successfully	number of domain transfers initiated by another registrar that were successfully completed (either explicitly or automatically approved)
28	transfer-losing-nacked	number of domain transfers initiated by another registrar that this registrar rejected (e.g., EPP transfer op="reject")

29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed (reported in the month where the determination happened)
30	transfer-disputed-lost	number of transfer disputes this registrar lost (reported in the month where the determination happened)
31	transfer-disputed-nodecision	number of transfer disputes involving this registrar with a split or no decision (reported in the month where the determination happened)
32	deleted-domains-grace	domains deleted within the add grace period (does not include names deleted while in EPP pendingCreate status). A deletion must be reported in the month the name is purged.
33	deleted-domains-nograce	domains deleted outside the add grace period (does not include names deleted while in EPP pendingCreate status). A deletion must be reported in the month the name is purged.
34	restored-domains	domain names restored from redemption period
35	restored-noreport	total number of restored names for which the registrar failed to submit a restore report
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (both successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a "header line" as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read "Totals" while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

2. **Registry Functions Activity Report**. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named "gTLD-activity-yyyymm.csv", where "gTLD" is the gTLD name; in case of an IDN-TLD, the A-label shall be used; "yyyymm" is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars at the end of the reporting period
02	ramp-up-registrars	number of registrars that have received a password for access to OT&E at the end of the reporting period
03	pre-ramp-up-registrars	number of registrars that have requested access, but have not yet entered the ramp-up period at the end of the reporting period
04	zfa-passwords	number of active zone file access passwords at the end of the reporting period
05	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
06	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
07	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
08	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
09	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
10	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
11	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
12	srs-dom-check	number of SRS (EPP and any other interface) domain name "check" requests responded during the reporting period
13	srs-dom-create	number of SRS (EPP and any other interface) domain name "create" requests responded during the reporting period
14	srs-dom-delete	number of SRS (EPP and any other interface) domain name "delete" requests responded during the reporting period
15	srs-dom-info	number of SRS (EPP and any other interface) domain name "info" requests responded during the reporting period

Field #	Field Name	Description
16	srs-dom-renew	number of SRS (EPP and any other interface) domain name "renew" requests responded during the reporting period
17	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP "restore" requests delivering a restore report responded during the reporting period
18	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP "restore" requests responded during the reporting period
19	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name "transfer" requests to approve transfers responded during the reporting period
20	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name "transfer" requests to cancel transfers responded during the reporting period
21	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name "transfer" requests to query about a transfer responded during the reporting period
22	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name "transfer" requests to reject transfers responded during the reporting period
23	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name "transfer" requests to request transfers responded during the reporting period
24	srs-dom-update	number of SRS (EPP and any other interface) domain name "update" requests (not including RGP restore requests) responded during the reporting period
25	srs-host-check	number of SRS (EPP and any other interface) host "check" requests responded during the reporting period
26	srs-host-create	number of SRS (EPP and any other interface) host "create" requests responded during the reporting period
27	srs-host-delete	number of SRS (EPP and any other interface) host "delete" requests responded during the reporting period

Field #	Field Name	Description
28	srs-host-info	number of SRS (EPP and any other interface) host "info" requests responded during the reporting period
29	srs-host-update	number of SRS (EPP and any other interface) host "update" requests responded during the reporting period
30	srs-cont-check	number of SRS (EPP and any other interface) contact "check" requests responded during the reporting period
31	srs-cont-create	number of SRS (EPP and any other interface) contact "create" requests responded during the reporting period
32	srs-cont-delete	number of SRS (EPP and any other interface) contact "delete" requests responded during the reporting period
33	srs-cont-info	number of SRS (EPP and any other interface) contact "info" requests responded during the reporting period
34	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact "transfer" requests to approve transfers responded during the reporting period
35	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact "transfer" requests to cancel transfers responded during the reporting period
36	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact "transfer" requests to query about a transfer responded during the reporting period
37	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact "transfer" requests to reject transfers responded during the reporting period
38	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact "transfer" requests to request transfers responded during the reporting period
39	srs-cont-update	number of SRS (EPP and any other interface) contact "update" requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a "header line" as described in section 2 of RFC 4180. No other lines besides the ones

described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

For gTLDs that are part of a single-instance Shared Registry System, the Registry Functions Activity Report may include the total contact or host transactions for all the gTLDs in the system.

SPECIFICATION 4

REGISTRATION DATA PUBLICATION SERVICES

1.   **Registration Data Directory Services**. Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

Registry Operator shall implement a new standard supporting access to domain name registration data (SAC 051) no later than one hundred thirty-five (135) days after it is requested by ICANN if: 1) the IETF produces a standard (i.e., it is published, at least, as a Proposed Standard RFC as specified in RFC 2026); and 2) its implementation is commercially reasonable in the context of the overall operation of the registry.

1.1.   The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.

1.2.   Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.

1.3.   For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

1.4.   The fields specified below set forth the minimum output requirements. Registry Operator may output data fields in addition to those specified below, subject to approval by ICANN, which approval shall not be unreasonably withheld.

1.5.   **Domain Name Data:**

1.5.1   **Query format:** whois EXAMPLE.TLD

1.5.2   **Response format:**

Domain Name: EXAMPLE.TLD
Domain ID: D1234567-TLD

WHOIS Server: whois.example.tld
Referral URL: http://www.example.tld
Updated Date: 2009-05-29T20:13:00Z
Creation Date: 2000-10-08T00:45:00Z
Registry Expiry Date: 2010-10-08T00:44:59Z
Sponsoring Registrar: EXAMPLE REGISTRAR LLC
Sponsoring Registrar IANA ID: 5555555
Domain Status: clientDeleteProhibited
Domain Status: clientRenewProhibited
Domain Status: clientTransferProhibited
Domain Status: serverUpdateProhibited
Registrant ID: 5372808-ERL
Registrant Name: EXAMPLE REGISTRANT
Registrant Organization: EXAMPLE ORGANIZATION
Registrant Street: 123 EXAMPLE STREET
Registrant City: ANYTOWN
Registrant State/Province: AP
Registrant Postal Code: A1A1A1
Registrant Country: EX
Registrant Phone: +1.5555551212
Registrant Phone Ext: 1234
Registrant Fax: +1.5555551213
Registrant Fax Ext: 4321
Registrant Email: EMAIL@EXAMPLE.TLD
Admin ID: 5372809-ERL
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION
Admin Street: 123 EXAMPLE STREET
Admin City: ANYTOWN
Admin State/Province: AP
Admin Postal Code: A1A1A1
Admin Country: EX
Admin Phone: +1.5555551212
Admin Phone Ext: 1234
Admin Fax: +1.5555551213
Admin Fax Ext:
Admin Email: EMAIL@EXAMPLE.TLD
Tech ID: 5372811-ERL
Tech Name: EXAMPLE REGISTRAR TECHNICAL
Tech Organization: EXAMPLE REGISTRAR LLC
Tech Street: 123 EXAMPLE STREET
Tech City: ANYTOWN
Tech State/Province: AP
Tech Postal Code: A1A1A1
Tech Country: EX
Tech Phone: +1.1235551234

Tech Phone Ext: 1234
Tech Fax: +1.5555551213
Tech Fax Ext: 93
Tech Email: EMAIL@EXAMPLE.TLD
Name Server: NS01.EXAMPLEREGISTRAR.TLD
Name Server: NS02.EXAMPLEREGISTRAR.TLD
DNSSEC: signedDelegation
DNSSEC: unsigned
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.6.   **Registrar Data:**

1.6.1   **Query format**: whois "registrar Example Registrar, Inc."

1.6.2   **Response format**:

Registrar Name: Example Registrar, Inc.
Street: 1234 Admiralty Way
City: Marina del Rey
State/Province: CA
Postal Code: 90292
Country: US
Phone Number: +1.3105551212
Fax Number: +1.3105551213
Email: registrar@example.tld
WHOIS Server: whois.example-registrar.tld
Referral URL: http://www.example-registrar.tld
Admin Contact: Joe Registrar
Phone Number: +1.3105551213
Fax Number: +1.3105551213
Email: joeregistrar@example-registrar.tld
Admin Contact: Jane Registrar
Phone Number: +1.3105551214
Fax Number: +1.3105551213
Email: janeregistrar@example-registrar.tld
Technical Contact: John Geek
Phone Number: +1.3105551215
Fax Number: +1.3105551216
Email: johngeek@example-registrar.tld
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7.   **Nameserver Data:**

1.7.1   **Query format**: whois "NS1.EXAMPLE.TLD", whois "nameserver (nameserver name)", or whois "nameserver (IP Address)"

1.7.2   **Response format:**

Server Name: NS1.EXAMPLE.TLD
IP Address: 192.0.2.123 IP
Address: 2001:0DB8::1
Registrar: Example Registrar, Inc.
WHOIS Server: whois.example-registrar.tld
Referral URL: http://www.example-registrar.tld
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.8.   The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers (the extension will be provided as a separate field as shown above), email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

1.9.   In order to be compatible with ICANN's common interface for WHOIS (InterNIC), WHOIS output shall be in the format outline above.

1.10.   **Searchability**. Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.

1.10.1 Registry Operator will offer searchability on the web-based Directory Service.

1.10.2 Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).

1.10.3 Registry Operator will offer exact-match capabilities, at least, on the following fields: registrar id, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).

1.10.4 Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.

1.10.5 Search results will include domain names matching the search criteria.

1.10.6 Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

1.11. Registry Operator shall provide a link on the primary website for the TLD (i.e., the website provided to ICANN for publishing on the ICANN website) to a web page designated by ICANN containing WHOIS policy and educational materials.

2. **Zone File Access**

   2.1. **Third-Party Access**

   2.1.1 **Zone File Access Agreement**. Registry Operator will enter into an agreement with any Internet user, which will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider, which may be ICANN or an ICANN designee (the "CZDA Provider"). Registry Operator (optionally through the CZDA Provider) will provide access to zone file data per Section 2.1.3 of this Specification and do so using the file format described in Section 2.1.4 of this Specification. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 below or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5 below.

   2.1.2 **Credentialing Requirements**. Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address and IP address.

   2.1.3 **Grant of Access**. Each Registry Operator (optionally through the CZDA Provider) will provide the Zone File FTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry's zone data archives. Registry Operator will grant the user a non-exclusive, nontransferable, limited right to access Registry Operator's (optionally CZDA Provider's) Zone File hosting server, and to transfer a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using FTP, or other data transport and access protocols that may be

prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator (or the CZDA Provider) also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4 **File Format Standard**. Registry Operator (optionally through the CZDA Provider) will provide zone files using a subformat of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.

2. Class and Type must use the standard mnemonics and must be in lower case.

3. TTL must be present as a decimal integer.

4. Use of /X and /DDD inside domain names is allowed.

5. All domain names must be in lower case.

6. Must use exactly one tab as separator of fields inside a record.

7. All domain names must be fully qualified.

8. No $ORIGIN directives.

9. No use of "@" to denote current origin.

10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.

11. No $INCLUDE directives.

12. No $TTL directives.

13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.

14. No use of comments.

15. No blank lines.

16. The SOA record should be present at the top and (duplicated at) the end of the zone file.

17. With the exception of the SOA record, all the records in a file must be in alphabetical order.

18. One zone per file. If a TLD divides its DNS data into multiple zones, each goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

    2.1.5 **Use of Data by User**. Registry Operator will permit user to use the zone file for lawful purposes; provided that (a) user takes all reasonable steps to protect against unauthorized access to and use and disclosure of the data and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to, (i) allow, enable, or otherwise support the transmission by email, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than user's own existing customers, or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar.

    2.1.6 **Term of Use**. Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

    2.1.7 **No Fee for Access**. Registry Operator will provide, and CZDA Provider will facilitate, access to the zone file to user at no cost.

2.2. **Co-operation**

    2.2.1 **Assistance**. Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

2.3. **ICANN Access**. Registry Operator shall provide bulk access to the zone files for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time. Access will be provided at least daily. Zone files will include SRS data committed as close as possible to 00:00:00 UTC.

2.4. **Emergency Operator Access**. Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

3. **Bulk Registration Data Access to ICANN**

3.1.   **Periodic Access to Thin Registration Data**. In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

   3.1.1   **Contents**. Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), registrar id (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar repository object id (roid), hostname of registrar Whois server, and URL of registrar.

   3.1.2   **Format**. The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.

   3.1.3   **Access**. Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

3.2.   **Exceptional Access to Thick Registration Data**. In case of a registrar failure, deaccreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data as soon as commercially practicable, but in no event later than five (5) calendar days following ICANN's request. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for download by ICANN in the same manner as the data specified in Section 3.1 of this Specification.

SPECIFICATION 5

SCHEDULE OF RESERVED NAMES

Except to the extent that ICANN otherwise expressly authorizes in writing, and subject to the terms and conditions of this Specification, Registry Operator shall reserve the following labels from initial (i.e., other than renewal) registration within the TLD. If using self-allocation, the Registry Operator must show the registration in the RDDS. In the case of IDN names (as indicated below), IDN variants will be identified according to the registry operator IDN registration policy, where applicable.

1.   **Example.** The ASCII label "EXAMPLE" shall be withheld from registration or allocated to Registry Operator at the second level and at all other levels within the TLD at which Registry Operator offers registrations (such second level and all other levels are collectively referred to herein as, "All Levels"). Such label may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, such withheld or allocated label shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such name without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

2.   **Two-character labels**. All two-character ASCII labels shall be withheld from registration or allocated to Registry Operator at the second level within the TLD. Such labels may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator, provided that such two-character label strings may be released to the extent that Registry Operator reaches agreement with the related government and country-code manager of the string as specified in the ISO 3166-1 alpha-2 standard. The Registry Operator may also propose the release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes, subject to approval by ICANN. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such labels that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

3.   **Reservations for Registry Operations**.

      3.1.   The following ASCII labels must be withheld from registration or allocated to Registry Operator at All Levels for use in connection with the operation of the registry for the TLD: WWW, RDDS and WHOIS. The following ASCII label must be allocated to Registry Operator at All Levels for use in connection with the operation of the registry for the TLD: NIC. Registry Operator may activate WWW, RDDS and WHOIS in the DNS, but must activate NIC in the

DNS, as necessary for the operation of the TLD. None of WWW, RDDS, WHOIS or NIC may be released or registered to any person (other than Registry Operator) or third party. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD all such withheld or allocated names shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

3.2.   Registry Operator may activate in the DNS at All Levels up to one hundred (100) names (plus their IDN variants, where applicable) necessary for the operation or the promotion of the TLD. Registry Operator must act as the Registered Name Holder of such names as that term is defined in the then-current ICANN Registrar Accreditation Agreement (RAA). These activations will be considered Transactions for purposes of Section 6.1 of the Agreement. Registry Operator must either (i) register such names through an ICANN-accredited registrar; or (ii) self-allocate such names and with respect to those names submit to and be responsible to ICANN for compliance with ICANN Consensus Policies and the obligations set forth in Subsections 3.7.7.1 through 3.7.7.12 of the then-current RAA (or any other replacement clause setting out the terms of the registration agreement between a registrar and a registered name holder). At Registry Operator's discretion and in compliance with all other terms of this Agreement, such names may be released for registration to another person or entity.

3.3.   Registry Operator may withhold from registration or allocate to Registry Operator names (including their IDN variants, where applicable) at All Levels in accordance with Section 2.6 of the Agreement. Such names may not be activated in the DNS, but may be released for registration to another person or entity at Registry Operator's discretion. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Upon ICANN's request, Registry Operator shall provide a listing of all names withheld or allocated to Registry Operator pursuant to Section 2.6 of the Agreement. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

4.   **Country and Territory Names**. The country and territory names (including their IDN variants, where applicable) contained in the following internationally recognized lists shall be withheld from registration or allocated to Registry Operator at All Levels:

4.1.   the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European

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Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union <http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm>;

4.2.   the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and

4.3.   the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names (including their IDN variants according to the registry operator IDN registration policy, where applicable) may be released to the extent that Registry Operator reaches agreement with the applicable government(s). Registry Operator must not activate such names in the DNS; provided, that Registry Operator may propose the release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

5.   **International Olympic Committee; International Red Cross and Red Crescent Movement**. As instructed from time to time by ICANN, the names (including their IDN variants, where applicable) relating to the International Olympic Committee, International Red Cross and Red Crescent Movement listed at http://www.icann.org/en/resources/registries/reserved shall be withheld from registration or allocated to Registry Operator at the second level within the TLD. Additional International Olympic Committee, International Red Cross and Red Crescent Movement names (including their IDN variants) may be added to the list upon ten (10) calendar days notice from ICANN to Registry Operator. Such names may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

6.   **Intergovernmental Organizations**. As instructed from time to time by ICANN, Registry Operator will implement the protections mechanism determined by the

ICANN Board of Directors relating to the protection of identifiers for Intergovernmental Organizations. A list of reserved names for this Section 6 is available at http://www.icann.org/en/resources/registries/reserved. Additional names (including their IDN variants) may be added to the list upon ten (10) calendar days notice from ICANN to Registry Operator. Any such protected identifiers for Intergovernmental Organizations may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such protected identifiers shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

SPECIFICATION 6

REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

1.   **Standards Compliance**

1.1.   **DNS**. Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF), including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 4343, and 5966. DNS labels may only include hyphens in the third and fourth position if they represent valid IDNs (as specified above) in their ASCII encoding (e.g., "xn--ndk061n").

1.2.   **EPP**. Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732 (if using host objects), 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.

1.3.   **DNSSEC**. Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions ("DNSSEC"). During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 4641 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants' public-key material. Registry Operator shall publish its DPS following the format described in RFC 6841.

1.4.   **IDN**. If the Registry Operator offers Internationalized Domain Names ("IDNs"), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>,

as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices as specified in the ICANN IDN Guidelines.

1.5. **IPv6**. Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry's name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow "DNS IPv6 Transport Operational Guidelines" as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g., Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six (6) months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

2. **Registry Services**

2.1. **Registry Services**. "Registry Services" are, for purposes of the Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

2.2. **Wildcard Prohibition**. For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a "Name Error" response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry

Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

3. **Registry Continuity**

3.1. **High Availability**. Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator.

3.2. **Extraordinary Event**. Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within twenty-four (24) hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of forty-eight (48) hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. **Business Continuity**. Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

4. **Abuse Mitigation**

4.1. **Abuse Contact**. Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquires related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

4.2. **Malicious Use of Orphan Glue Records**. Registry Operator shall take action to remove orphan glue records (as defined at http://www.icann.org/en/committees/security/sac048.pdf) when provided with evidence in written form that such records are present in connection with malicious conduct.

5. **Supported Initial and Renewal Registration Periods**

    5.1. **Initial Registration Periods**. Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

    5.2. **Renewal Periods**. Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

SPECIFICATION 7

MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms**. Registry Operator shall implement and adhere to the rights protection mechanisms ("RPMs") specified in this Specification. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party's legal rights. Registry Operator will include all RPMs required by this Specification 7 and any additional RPMs developed and implemented by Registry Operator in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements set forth therein each of the mandatory RPMs set forth in the Trademark Clearinghouse as of the date hereof, as posted at [*url to be inserted*] (the "Trademark Clearinghouse Requirements"), which may be revised in immaterial respects by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse. If there is a conflict between the terms and conditions of this Agreement and the Trademark Clearinghouse Requirements, the terms and conditions of this Agreement shall control.

2. **Dispute Resolution Mechanisms**. Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

   a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at [urls to be inserted when final procedure is adopted]). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and

   b. the Uniform Rapid Suspension system ("URS") adopted by ICANN (posted at [url to be inserted]), including the implementation of determinations issued by URS examiners.

SPECIFICATION 8

CONTINUED OPERATIONS INSTRUMENT

1.   The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6th) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in item 50(b) of Attachment to Module 2 – Evaluation Questions and Criteria – of the gTLD Applicant Guidebook, as published and supplemented by ICANN prior to the date hereof (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. If Registry Operator elects to obtain an irrevocable standby letter of credit but the term required above is unobtainable, Registry Operator may obtain a letter of credit with a one-year term and an "evergreen provision," providing for annual extensions, without amendment, for an indefinite number of additional periods until the issuing bank informs ICANN of its final expiration or until ICANN releases the letter of credit as evidenced in writing, if the letter of credit otherwise meets the requirements set forth in item 50(b) of Attachment to Module 2 – Evaluation Questions and Criteria – of the gTLD Applicant Guidebook, as published and supplemented by ICANN prior to the date hereof; provided, however, that if the issuing bank informs ICANN of the expiration of such letter of credit prior to the sixth (6th) anniversary of the Effective Date, such letter of credit must provide that ICANN is entitled to draw the funds secured by the letter of credit prior to such expiration. The letter of credit must require the issuing bank to give ICANN at least thirty (30) calendar days' notice of any such expiration or non-renewal. If the letter of credit expires or is terminated at any time prior to the sixth (6th) anniversary of the Effective Date, Registry Operator will be required to obtain a replacement Continued Operations Instrument. ICANN may draw the funds under the original letter of credit, if the replacement Continued Operations Instrument is not in place prior to the expiration of the original letter of credit. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld).

2.   If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an "Alternative Instrument"). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.

3.   Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an Alternative Instrument that (i) provides for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operator replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such Alternative Instrument(s), and such instrument shall thereafter be considered the Continued Operations Instrument for purposes of this Agreement.

SPECIFICATION 9

REGISTRY OPERATOR CODE OF CONDUCT

1.   In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a "Registry Related Party"), to:

   a.   directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;

   b.   register domain names in its own right, except for names registered through an ICANN accredited registrar; provided, however, that Registry Operator may (a) reserve names from registration pursuant to Section 2.6 of the Agreement and (b) may withhold from registration or allocate to Registry Operator up to one hundred (100) names pursuant to Section 3.2 of Specification 5;

   c.   register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running"); or

   d.   allow any Affiliated registrar to disclose Personal Data about registrants to Registry Operator or any Registry Related Party, except as reasonably necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions.

2.   If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, ensure that such services are offered through a legal entity separate from Registry Operator, and maintain separate books of accounts with respect to its registrar or registrar-reseller operations.

3.   If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will conduct internal reviews at least once per calendar year to ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to

Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification; provided, however, ICANN shall not disclose Confidential Information contained in such results except in accordance with Section 7.15 of the Agreement.

4.   Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.

5.   Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.

6.   Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for the exclusive use of Registry Operator or its Affiliates, (ii) 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 (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

SPECIFICATION 10

REGISTRY PERFORMANCE SPECIFICATIONS

1. **Definitions**

   1.1. **DNS**. Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.

   1.2. **DNSSEC proper resolution**. There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.

   1.3. **EPP**. Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.

   1.4. **IP address**. Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.

   1.5. **Probes**. Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.

   1.6. **RDDS**. Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.

   1.7. **RTT**. Round-Trip Time or RTT refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.

   1.8. **SLR**. Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

2. **Service Level Agreement Matrix**

	Parameter	SLR (monthly basis)
DNS	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
RDDS	RDDS availability	≤ 864 min of downtime (≈ 98%)

	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
EPP	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar periods of unavailable or slow service; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

3. **DNS**

   3.1. **DNS service availability**. Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from "**DNS tests**" to each of their public-DNS registered "**IP addresses**" to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.

   3.2. **DNS name server availability**. Refers to the ability of a public-DNS registered "**IP address**" of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered "**IP address**" of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from "**DNS tests**" to a name server "**IP address**" during a given time, the name server "**IP address**" will be considered unavailable.

   3.3. **UDP DNS resolution RTT**. Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.

   3.4. **TCP DNS resolution RTT**. Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.

   3.5. **DNS resolution RTT**. Refers to either "**UDP DNS resolution RTT**" or "**TCP DNS resolution RTT**".

3.6.   **DNS update time**. Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer "**DNS queries**" with data consistent with the change made. This only applies for changes to DNS information.

3.7.   **DNS test**. Means one non-recursive DNS query sent to a particular "**IP address**" (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a "**DNS resolution RTT**" 5 times higher than the corresponding SLR, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the "**DNS resolution RTT**" or, undefined/unanswered.

3.8.   **Measuring DNS parameters**. Every minute, every DNS probe will make an UDP or TCP "**DNS test**" to each of the public-DNS registered "**IP addresses**" of the name servers of the domain name being monitored. If a "**DNS test**" result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

3.9.   **Collating the results from DNS probes**. The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

3.10.   **Distribution of UDP and TCP queries**. DNS probes will send UDP or TCP "**DNS test**" approximating the distribution of these queries.

3.11.   **Placement of DNS probes**. Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

4.   **RDDS**

4.1.   **RDDS availability**. Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.

4.2. **WHOIS query RTT**. Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.3. **Web-based-WHOIS query RTT**. Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.4. **RDDS query RTT**. Refers to the collective of "**WHOIS query RTT**" and "**Web-based- WHOIS query RTT**".

4.5. **RDDS update time**. Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.

4.6. **RDDS test**. Means one query sent to a particular "**IP address**" of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.

4.7. **Measuring RDDS parameters**. Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered "**IP addresses**" of the servers for each RDDS service of the TLD being monitored and make an "**RDDS test**" to each one. If an "**RDDS test**" result is undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

4.8. **Collating the results from RDDS probes**. The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

4.9. **Placement of RDDS probes**. Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

5. **EPP**

5.1.   **EPP service availability**. Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with "**EPP command RTT**" 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

5.2.   **EPP session-command RTT**. Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.3.   **EPP query-command RTT**. Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

5.4.   **EPP transform-command RTT**. Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.5.   **EPP command RTT**. Refers to "**EPP session-command RTT**", "**EPP query-command RTT**" or "**EPP transform-command RTT**".

5.6.   **EPP test**. Means one EPP command sent to a particular "**IP address**" for one of the EPP servers. Query and transform commands, with the exception of "create", shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the "**EPP command RTT**" or undefined/unanswered.

5.7.   **Measuring EPP parameters**. Every 5 minutes, EPP probes will select one "**IP address**" of the EPP servers of the TLD being monitored and make an

"**EPP test**"; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an "**EPP test**" result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

5.8. **Collating the results from EPP probes**. The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

5.9. **Placement of EPP probes**. Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. **Emergency Thresholds**

The following matrix presents the emergency thresholds that, if reached by any of the services mentioned above for a TLD, would cause the emergency transition of the Registry for the TLD as specified in Section 2.13 of this Agreement.

Critical Function	Emergency Threshold
DNS Service (all servers)	4-hour total downtime / week
DNSSEC proper resolution	4-hour total downtime / week
EPP	24-hour total downtime / week
RDDS (WHOIS/Web-based WHOIS)	24-hour total downtime / week
Data Escrow	Breach of the Registry Agreement as described in Specification 2, Part B, Section 6.

7. **Emergency Escalation**

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between ICANN and Registry Operators and published to Registrars, where relevant to their role in

escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. **Emergency Escalation initiated by ICANN**

Upon reaching 10% of the Emergency thresholds as described in Section 6 of this Specification, ICANN's emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator's emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

7.2. **Emergency Escalation initiated by Registrars**

Registry Operator will maintain an emergency operations department prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the registry for the TLD because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an emergency escalation to the emergency operations department of ICANN. ICANN then may initiate an emergency escalation with the Registry Operator as explained above.

7.3. **Notifications of Outages and Maintenance**

In the event that a Registry Operator plans maintenance, it will provide notice to the ICANN emergency operations department, at least, twenty-four (24) hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per its contractual obligations with ICANN, on services under a service level agreement and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend emergency escalation services for the monitored services involved.

8. <u>Covenants of Performance Measurement</u>

8.1. **No interference**. Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement tests described in this Specification as it would to any other request from an Internet user (for DNS and RDDS) or registrar (for EPP).

8.2.   **ICANN testing registrar**. Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLR**s described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement.

SPECIFICATION 11

PUBLIC INTEREST COMMITMENTS

1. Registry Operator will use only ICANN accredited registrars that are party to the Registrar Accreditation Agreement approved by the ICANN Board of Directors on 27 June 2013 in registering domain names. A list of such registrars shall be maintained by ICANN on ICANN's website.

2. Registry Operator will operate the registry for the TLD in compliance with all commitments, statements of intent and business plans stated in the following sections of Registry Operator's application to ICANN for the TLD, which commitments, statements of intent and business plans are hereby incorporated by reference into this Agreement. Registry Operator's obligations pursuant to this paragraph shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN (posted at [url to be inserted when final procedure is adopted]), which may be revised in immaterial respects by ICANN from time to time (the "PICDRP"). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

   The above Section 2 of this Specification applies to the following sections of Registry Operator's new gTLD application for the TLD (Application ID: 1-862-29948). Nothing in this Section 2 of this Specification shall limit any obligations of Registry Operator under Sections 1 and 3 of this Specification. In the event Section 2 of this Specification conflicts with the requirements of any other provision of the Registry Agreement (including any Section of this Specification), such other provision shall govern.

   - Section 18.b.iv - Registration Rules
   - 18.b.v - Protection of Privacy
   - 18.c - Operating Rules to Minimize Social Costs
   - 22 - Protection of Geographic Names

3. Registry Operator agrees to perform the following specific public interest commitments, which commitments shall be enforceable by ICANN and through the PICDRP. Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

a. Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.

b. Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.

c. Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.

d. Registry Operator of a "Generic String" TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person's or entity's "Affiliates" (as defined in Section 2.9(c) of the Registry Agreement). "Generic String" means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.

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Registry Agreement

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This REGISTRY AGREEMENT (this "Agreement") is entered into by and between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation ("ICANN"), and Afilias Limited, an Irish company limited by shares.

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ARTICLE 1 INTRODUCTION

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Section 1.1 <u>Effective Date</u>. The Effective Date for purposes of this Agreement shall be 22 August 2013.

Section 1.2 <u>Top-Level Domain</u>. The Top-Level Domain to which this Agreement applies is .info ("TLD").

Section 1.3 <u>Designation as Registry Operator</u>. Upon the Effective Date, and throughout the Term (as defined in Section 4.1 hereof) of this Agreement, unless earlier terminated pursuant to Article 6 hereof, ICANN shall continue to designate Afilias Limited as the sole registry operator for the TLD ("Registry Operator").

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ARTICLE 2 REPRESENTATIONS AND WARRANTIES

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Section 2.1 Registry Operator's Representations and Warranties.

2.1 (a) <u>Organization; Due Authorization and Execution</u>. Registry Operator is a corporation, duly organized, validly existing and in good standing under the laws of Ireland, and Registry Operator has all requisite power and authority to enter into this Agreement. All corporate approvals and actions necessary for the entrance by Registry Operator into this Agreement have been obtained and this Agreement has been duly and validly executed and delivered by Registry Operator.

2.1 (b) <u>Statements made During Negotiation Process</u>. The factual statements made in writing by both Parties in negotiating this Agreement, were true and correct in all material respects at the time made. A violation or breach of this subsection shall not be a basis for termination, rescission or other equitable relief, and, instead shall only give rise to a claim for damages.

Section 2.2 <u>ICANN's Representations and Warranties</u>.

2.2 (a) <u>Organization; Due Authorization and Execution</u>. ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of California. ICANN has all requisite corporate power and authority to enter into this Agreement. All corporate approvals and actions necessary for the entrance by ICANN into this Agreement have been obtained and this Agreement has been duly and validly executed and delivered by ICANN.

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ARTICLE 3 COVENANTS

</div>

Section 3.1 <u>Covenants of Registry Operator</u>. Registry Operator covenants and agrees with ICANN as follows:

3.1 (a) <u>Preserve Security and Stability</u>.

3.1 (a)(i) ICANN Temporary Specifications or Policies. Registry Operator shall comply with and implement all specifications or policies established by the ICANN Board of Directors on a temporary basis, if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, so long as the ICANN Board of Directors reasonably determines that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the Stability or Security (as defined in Section 3.1(d)(iv)(G)) of Registry Services or the DNS ("Temporary Specification or Policies"). Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any specification or policy under this provision, the ICANN Board of Directors shall state the period of time for which the specification or policy is temporarily adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the temporary specification or policy and why the Board believes the specification or policy should receive the consensus support of Internet stakeholders. If the period of time for which the specification or policy is adopted exceeds 90 days, the ICANN Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such policy in effect until such time as it shall become a Consensus Policy as described in Section 3.1(b) below. If during such one year period, the temporary policy or specification does not become a Consensus Policy meeting the standard set forth in Section 3.1(b) below, Registry Operator shall no longer be required to comply with or implement such temporary policy or specification.

3.1 (b) <u>Consensus Policies</u>.

3.1 (b)(i) At all times during the term of this Agreement and subject to the terms hereof, Registry Operator will fully comply with and implement all Consensus Policies found at http://www.icann.org/general/consensus-policies.htm, as of the Effective Date and as may in the future be developed and adopted in accordance with ICANN's Bylaws and as set forth below.

3.1 (b)(ii) "Consensus Policies" are those specifications or policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 3.1(b)(iv) below. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with ICANN's Bylaws, and any Consensus Policy that is adopted through such a revised process and covering those topics listed in Section 3.1(b)(iv) below shall be considered a Consensus Policy for purposes of this Agreement.

3.1 (b)(iii) For all purposes under this Agreement, the policies identified at http://www.icann.org/en/general/consensus-policies.htm shall be treated in the same manner and have the same effect as "Consensus Policies."

3.1 (b)(iv) Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following: (1) issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, Security and/or Stability of the Internet or DNS; (2) functional and performance specifications for the provision of Registry Services (as defined in Section 3.1(d)(iii) below); (3) Security and Stability of the registry database for the TLD; (4) registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars; or (5) resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names). Such categories of issues referred to in the preceding sentence shall include, without limitation:

3.1 (b)(iv)(A) principles for allocation of registered names in the TLD (e.g., first-come, first-served, timely renewal, holding period after expiration);

3.1 (b)(iv)(B) prohibitions on warehousing of or speculation in domain names by registries or registrars;

3.1 (b)(iv)(C) reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (a) avoidance of confusion among or misleading of users, (b) intellectual property, or (c) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);

3.1 (b)(iv)(D) maintenance of and access to accurate and up-to-date information concerning domain name registrations;

3.1 (b)(iv)(E) procedures to avoid disruptions of domain name registration due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination; and

3.1 (b)(iv)(F) resolution of disputes regarding whether particular parties may register or maintain registration of particular domain names.

3.1 (b)(v) In addition to the other limitations on Consensus Policies, they shall not:

3.1 (b)(v)(A) prescribe or limit the price of Registry Services;

3.1 (b)(v)(B) modify the standards for the consideration of proposed Registry Services, including the definitions of Security and Stability (set forth below) and the standards applied by ICANN;

3.1 (b)(v)(C) modify the terms or conditions for the renewal or termination of this Agreement;

3.1 (b)(v)(D) modify ICANN's obligations to Registry Operator under Section 3.2 (a), (b), and (c);

3.1 (b)(v)(E) modify the limitations on Consensus Policies or Temporary Specifications or Policies;

3.1 (b)(v)(F) modify the definition of Registry Services;

3.1 (b)(v)(G) modify the terms of Sections 7.2 below; or

3.1 (b)(v)(H) alter services that have been implemented pursuant to Section 3.1(d) of this Agreement (unless justified by compelling and just cause based on Security and Stability.

3.1 (b)(vi) Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Specifications or Policies in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services (as defined in Section 3.1(d)(iii) below), on the one hand, and Consensus Policies developed in accordance with this Section 3.1(b) or any Temporary Specifications or Policies established pursuant to Section 3.1(a)(i) above, on the other hand, the Consensus Polices or Temporary Specifications or Policies shall control, notwithstanding any other provisions contained within this Agreement.

3.1 (c) <u>Handling of Registry Data</u>.

3.1 (c)(i) <u>Data Escrow</u>. Registry Operator shall establish at its expense a data escrow or mirror site policy for the Registry Data compiled by Registry Operator. Registry Data, as used in this Agreement, shall mean the following: (1) data for domains sponsored by all registrars, consisting of domain name, server name for each nameserver, registrar id, updated date, creation date, expiration date, status information, and DNSSEC delegation signer ("DS") data; (2) data for nameservers sponsored by all registrars consisting of server name, each IP address, registrar id, updated date, creation date, expiration date, and status information; (3) data for registrars sponsoring registered domains and nameservers, consisting of registrar id, registrar address, registrar telephone number, registrar e-mail address, whois server, referral URL, updated date and the name, telephone number, and e-mail address of all the registrar's administrative, billing, and technical contacts; and (4) domain name registrant data collected by the Registry Operator from registrars as part of or following registration of a domain name. The escrow agent or mirror-site manager, and the obligations thereof, shall be mutually agreed upon by ICANN and Registry Operator on commercially reasonable standards that are technically and practically sufficient to allow a successor registry operator to assume management of the TLD. To this end, Registry Operator shall periodically deposit into escrow all Registry Data on a schedule (not more frequently than weekly for a complete set of Registry Data, and daily for incremental updates) and in an electronic format mutually approved from time to time by Registry Operator and ICANN, such approval not to be unreasonably withheld by either party. In addition, Registry Operator will deposit into escrow that data collected from registrars as part of offering Registry Services introduced after the Effective Date of this Agreement. The schedule, content, format, and procedure for escrow deposits shall be as reasonably established by ICANN from time to time, and as set forth in Appendix 1 hereto. Changes to the schedule, content, format, and procedure may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall unreasonably withhold) or through the establishment of a Consensus Policy as outlined in Section 3.1(b) above. The escrow shall be held under an agreement, substantially in the form of Appendix 2, as the same may be revised from time to time, among ICANN, Registry Operator, and the escrow agent.

3.1 (c)(ii) <u>Personal Data</u>. Registry Operator shall notify registrars sponsoring registrations in the registry for the TLD of the purposes for which Personal Data (as defined below) submitted to Registry Operator by registrars, if any, is collected, the intended recipients (or categories of recipients) of such Personal Data, and the mechanism for access to and correction of such Personal Data. Registry Operator shall take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars. "Personal Data" shall refer to all data about any identified or identifiable natural person.

3.1 (c)(iii) <u>Bulk Zone File Access</u>. Registry Operator shall provide bulk access to the zone files for the registry for the TLD to ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time. Bulk access to the zone files shall be provided to third parties on the terms set forth in the TLD zone file access agreement reasonably established by ICANN, which initially shall be in the form attached as Appendix 3 hereto. Changes to the zone file access agreement may be made upon the mutual written consent of ICANN and Registry Operator (which consent neither party shall unreasonably withhold).

3.1 (c)(iv) <u>Monthly Reporting</u>. Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall prepare and deliver to ICANN a report providing such data and in the format specified in Appendix 4.

3.1 (c)(v) <u>Whois Service</u>. Registry Operator shall provide such whois data as set forth in Appendix 5. Whois output shall be compatible with ICANN's common interface for whois (InterNIC) as such interface exists as of the Effective Date of this Agreement. If requested by ICANN, Registry Operator shall provide a link on the primary website for the TLD to a web page designated by ICANN containing WHOIS policy and education materials.

3.1 (d) <u>Registry Operations</u>.

3.1 (d)(i) <u>Registration Restrictions</u>.

3.1 (d)(i) Registry Operator shall reserve, and not register any TLD strings (a) appearing on the list of reserved TLD strings attached as Appendix 6 hereto or (b) located at http://data.iana.org/TLD/tlds-alpha-by-domain.txt for initial (i.e.,

other than renewal) registration at the second level within the TLD.

3.1 (d)(ii) <u>Functional and Performance Specifications</u>. Functional and Performance Specifications for operation of the TLD shall be as set forth in Appendix 7 hereto, and shall address without limitation DNS services; operation of the shared registration system; and nameserver operations. Registry Operator shall keep technical and operational records sufficient to evidence compliance with such specifications for at least one year.

3.1 (d)(iii) <u>Registry Services</u>. Registry Services are, for purposes of this Agreement, defined as the following: (a) those services that are both (i) operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; and (ii) provided by the Registry Operator for the .info registry as of the Effective Date as set forth on Appendix 9; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy (as defined in Section 3.1(b) above); (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

3.1 (d)(iv) <u>Process for Consideration of Proposed Registry Services</u>. Following written notification by Registry Operator to ICANN that Registry Operator may make a change in a Registry Service within the scope of the preceding paragraph:

3.1 (d)(iv)(A) ICANN shall have 15 calendar days to make a "preliminary determination" whether a Registry Service requires further consideration by ICANN because it reasonably determines such Registry Service: (i) could raise significant Security or Stability issues or (ii) could raise significant competition issues.

3.1 (d)(iv)(B) Registry Operator must provide sufficient information at the time of notification to ICANN that it may implement such a proposed Registry Service to enable ICANN to make an informed "preliminary determination." Information provided by Registry Operator and marked "CONFIDENTIAL" shall be treated as confidential by ICANN. Registry Operator will not designate "CONFIDENTIAL" information necessary to describe the purpose of the proposed Registry Service and the effect on users of the DNS.

3.1 (d)(iv)(C) ICANN may seek expert advice during the preliminary determination period (from entities or persons subject to confidentiality agreements) on the competition, Security or Stability implications of the Registry Service in order to make its "preliminary determination." To the extent ICANN determines to disclose confidential information to any such experts, it will provide notice to Registry Operator of the identity of the expert(s) and the information it intends to convey.

3.1 (d)(iv)(D) If ICANN determines during the 15 calendar day "preliminary determination" period that the proposed Registry Service, does not raise significant Security or Stability (as defined below), or competition issues, Registry Operator shall be free to deploy it upon such a determination.

3.1 (d)(iv)(E) In the event ICANN reasonably determines during the 15 calendar day "preliminary determination" period that the Registry Service might raise significant competition issues, ICANN shall refer the issue to the appropriate governmental competition authority or authorities with jurisdiction over the matter within five business days of making its determination, or two business days following the expiration of such 15 day period, whichever is earlier, with notice to Registry Operator. Any such referral communication shall be posted on ICANN's website on the date of transmittal. Following such referral, ICANN shall have no further responsibility, and Registry Operator shall have no further obligation to ICANN, with respect to any competition issues relating to the Registry Service. If such a referral occurs, the Registry Operator will not deploy the Registry Service until 45 calendar days following the referral, unless earlier cleared by the referred governmental competition authority.

3.1 (d)(iv)(F) In the event that ICANN reasonably determines during the 15 calendar day "preliminary determination" period that the proposed Registry Service might raise significant Stability or Security issues (as defined below), ICANN will refer the proposal to a Standing Panel of experts (as defined below) within five business days of making its determination, or two business days following the expiration of such 15 day period, whichever is earlier, and simultaneously invite public comment on the proposal. The Standing Panel shall have 45 calendar days from the referral to prepare a written report regarding the proposed Registry Service's effect on Security or Stability (as defined below), which report (along with a summary of any public comments) shall be forwarded to the ICANN Board. The report shall set forward the opinions of the Standing Panel, including, but not limited to, a detailed statement of the analysis, reasons, and information upon which the panel has relied in reaching their conclusions, along with the response to any specific questions that were included in the referral from ICANN staff. Upon ICANN's referral to the

Standing Panel, Registry Operator may submit additional information or analyses regarding the likely effect on Security or Stability of the Registry Service.

3.1 (d)(iv)(G) Upon its evaluation of the proposed Registry Service, the Standing Panel will report on the likelihood and materiality of the proposed Registry Service's effects on Security or Stability, including whether the proposed Registry Service creates a reasonable risk of a meaningful adverse effect on Security or Stability as defined below:

Security: For purposes of this Agreement, an effect on security by the proposed Registry Service shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

Stability: For purposes of this Agreement, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs sponsored by the IETF or (2) creates a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs and relying on Registry Operator's delegation information or provisioning services.

3.1 (d)(iv)(H) Following receipt of the Standing Panel's report, which will be posted (with appropriate confidentiality redactions made after consultation with Registry Operator) and available for public comment, the ICANN Board will have 30 calendar days to reach a decision. In the event the ICANN Board reasonably determines that the proposed Registry Service creates a reasonable risk of a meaningful adverse effect on Stability or Security, Registry Operator will not offer the proposed Registry Service. An unredacted version of the Standing Panel's report shall be provided to Registry Operator upon the posting of the report. The Registry Operator may respond to the report of the Standing Panel or otherwise submit to the ICANN Board additional information or analyses regarding the likely effect on Security or Stability of the Registry Service.

3.1 (d)(iv)(I) The Standing Panel shall consist of a total of 20 persons expert in the design, management and implementation of the complex systems and standards-protocols utilized in the Internet infrastructure and DNS (the "Standing Panel"). The members of the Standing Panel will be selected by its Chair. The Chair of the Standing Panel will be a person who is agreeable to both ICANN and the registry constituency of the supporting organization then responsible for generic top level domain registry policies. All members of the Standing Panel and the Chair shall execute an agreement requiring that they shall consider the issues before the panel neutrally and according to the definitions of Security and Stability. For each matter referred to the Standing Panel, the Chair shall select no more than five members from the Standing Panel to evaluate the referred matter, none of which shall have an existing competitive, financial, or legal conflict of interest, and with due regard to the particular technical issues raised by the referral.

3.1 (e) <u>Fees and Payments</u>. Registry Operator shall pay the Registry-Level Fees to ICANN on a quarterly basis in accordance with Section 7.2 hereof.

3.1 (f) <u>Traffic Data</u>. Nothing in this Agreement shall preclude Registry Operator from making commercial use of, or collecting, traffic data regarding domain names or non-existent domain names for purposes such as, without limitation, the determination of the availability and Security and Stability of the Internet, pinpointing specific points of failure, characterizing attacks and misconfigurations, identifying compromised networks and hosts and promoting the sale of domain names, provided however, that such use does not permit Registry Operator to disclose domain name registrant or end-user information or other Personal Data as defined in Section 3.1(c)(ii) that it collects through providing domain name registration services for any purpose not otherwise authorized by this agreement. In this regard, in the event the TLD registry is a "thick" registry model, the traffic data that may be accessible to and used by Registry Operator shall be limited to the data that would be accessible to a registry operated under a "thin" registry model. The process for the introduction of new Registry Services shall not apply to such traffic data. Nothing contained in this Section 3.1(f) shall be deemed to constitute consent or acquiescence by ICANN to an introduction by Registry Operator of a service employing a universal wildcard function, except that this sentence shall not prohibit the provision of nameservice or any other non-registry service for a domain or zone used for other than registration services to unaffiliated third parties by a single entity (including its affiliates) for domain names registered through an ICANN-accredited registrar. To the extent that traffic data subject to this provision is made available, access shall be on terms that are nondiscriminatory.

Section 3.2 <u>Covenants of ICANN</u>. ICANN covenants and agrees with Registry Operator as follows:

3.2 (a) <u>Open and Transparent</u>. Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2 (b) <u>Equitable Treatment</u>. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.2 (c) <u>TLD Zone Servers</u>. In the event and to the extent that ICANN is authorized to set policy with regard to an authoritative root server system, it will use best efforts to ensure that (i) the authoritative root will point to the TLD zone servers designated by Registry Operator for the Registry TLD throughout the Term of this Agreement; and (ii) any changes to the TLD zone server designation submitted to ICANN by Registry Operator will be implemented by ICANN within seven days of submission.

3.2 (d) <u>Nameserver Changes</u>. Registry Operator may request changes in the nameserver delegation for the Registry TLD. Any such request must be made in a format, and otherwise meet technical requirements, specified from time to time by ICANN. ICANN will use commercially reasonable efforts to have such requests implemented in the Authoritative Root-Server System within seven calendar days of the submission.

3.2 (e) <u>Root-zone Information Publication</u>. ICANN's publication of root-zone contact information for the Registry TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN.

3.3 <u>Cooperation</u>. The parties agree to cooperate with each other and share data as necessary to accomplish the terms of this Agreement.

3.4 In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth at Appendix 12.
3.5 <u>Contractual and Operational Compliance Audits</u>.

(a) ICANN may from time to time (not to exceed once per calendar quarter) 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 II of this Agreement and its covenants contained in Article III 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 five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its covenants contained in Section 3.1.
(b) Any audit conducted pursuant to Section 3.5(a) will be at ICANN's expense, unless (i) the audit relates to Registry Operator's compliance with Section 3.1(c)(iv) and such audit reveals a material discrepancy or discrepancies in the data provided by Registry Operator, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment. In either such case of (i) or (ii) above, Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with such audit and such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

3.6 <u>Emergency Transition</u>. Registry Operator agrees that in the event that any of the emergency thresholds for registry functions set forth in Section 6 of Appendix 10 attached hereto 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 http://www.icann.org/en/resources/registries/transition-processes>) (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 3.6 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 3.1(c)) 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 3.6.

ARTICLE 4 TERM OF AGREEMENT

Section 4.1 <u>Term</u>. This Agreement shall be effective on the Effective Date and the term shall expire on June 30, 2019 (the "Expiration Date"), subject to extension of such term upon renewal pursuant to Section 4.2 (together, the initial and any renewal terms shall constitute the "Term").

Section 4.2 <u>Renewal</u>. This Agreement shall be renewed upon the expiration of the initial term set forth in Section 4.1 above and each renewal term this Agreement, unless the following has occurred: (i) following notice of breach to Registry Operator in accordance with Section 6.1 and failure to cure such breach within the time period prescribed in Section 6.1, an arbitrator or court has determined that Registry Operator has been in fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); Section 5.2 or Section 7.3 and (ii) following the final decision of such arbitrator or court, Registry Operator has failed to comply within ten days with the decision of the arbitrator or court, or within such other time period as may be prescribed by the arbitrator or court. Upon renewal, in the event that the terms of this Agreement are not similar to the terms generally in effect in the Registry Agreements of the five most reasonably comparable gTLDs (provided however that if less than five gTLDs are reasonably comparable, then comparison shall be made with such lesser number, and .com, .biz, .net and .org are hereby deemed comparable), renewal shall be upon terms reasonably necessary to render the terms of this Agreement similar to such terms in the Registry Agreements for those other gTLDs (the "Renewal Terms and Conditions"). The preceding sentence, however, shall not apply to the terms of this Agreement regarding the price of Registry Services; standards for the consideration of proposed Registry Services, including the definitions of Security and Stability and the standards applied by ICANN in the consideration process; the terms or conditions for the renewal or termination of this Agreement; ICANN's obligation to Registry Operator under Section 3.2(a), (b) and (c); the limitations on Consensus Policies or Temporary Specifications or Policies; or the definition of Registry Services, all of which shall remain unchanged. In addition, upon renewal, in determining the Renewal Terms and Conditions, registry fees payable to ICANN may be reasonably modified so long as any increase in such fees shall not exceed the average of the percentage increase in registry fees for the five most reasonably comparable TLDs (or such lesser number as provided above) during the prior three year period. The parties agree to initiate negotiations with respect to Renewal Terms and Conditions at least six (6) months prior to the Expiration Date or the expiration of any renewal term thereafter in order to determine the Renewal Terms and Conditions for the subsequent renewal term as provided for in this Section 4.2. If the parties cannot agree as to Renewal Terms and Conditions prior to the Expiration Date or the expiration of any renewal term thereafter, as applicable, then, unless the parties mutually agree to extend the Term and continue negotiations, the matter shall be determined pursuant to the dispute resolution provisions of Article 5 hereto. In any such dispute resolution procedure instituted under this Section 4.2, the scope of such procedure shall be to determine the Renewal Terms and Conditions pursuant to the provisions of this Section 4.2.

Section 4.3 <u>Changes</u>. While this Agreement is in effect, the parties agree to engage in good faith negotiations at regular intervals (at least once every three calendar years following the Effective Date) regarding possible changes to the terms of the Agreement, including to Section 7.2 regarding fees and payments to ICANN. In addition, ICANN shall consider and discuss with Registry Operator other appropriate changes to pricing and related terms under the Agreement in the event ICANN shall obtain further independent data from professional experts providing analysis of the pricing of domain name registrations and competitive market considerations. The failure by Registry Operator to agree to an increase in registry fees or other terms shall not constitute a violation of this provision.

Section 4.4 <u>Failure to Perform in Good Faith</u>. In the event Registry Operator shall have been repeatedly and willfully in fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); Section 5.2 or Section 7.3, and arbitrators in accordance with Section 5.1(b) of this Agreement repeatedly have found Registry Operator to have been in fundamental and material breach of this Agreement, including in at least three separate awards, then the arbitrators shall award such punitive, exemplary or other damages as they may believe appropriate under the circumstances.

ARTICLE 5 DISPUTE RESOLUTION

Section 5.1 <u>Resolution of Disputes</u>.

5.1 (a) <u>Mediation</u>. In the event of any dispute arising under or in connection with this Agreement, before either party may initiate arbitration pursuant to Section 5.1(b) below, ICANN and Registry Operator must attempt to resolve the dispute through mediation in accordance with the following terms and conditions:

(i)   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 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 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).

(ii)   The mediator shall conduct the mediation in accordance with the rules and procedures 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. 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 5.1(b). The mediator may not testify for either party in any later proceeding relating to 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 the parties have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, either party or the mediator may terminate the mediation at any time and the dispute can then proceed to arbitration pursuant to Section 5.1(b) below. If the parties have not resolved the dispute for any reason by the date that is ninety (90) calendar days following the date of the notice delivered pursuant to Section 5.1(a), the mediation shall automatically terminate (unless extended by agreement of the parties) and the dispute can then proceed to arbitration pursuant to Section 5.1(b) below.

5.1 (b) Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, shall be resolved through binding arbitration conducted as provided in this Section 5.1(b) pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted in the English language and shall occur in Los Angeles County, California, USA only following the failure to resolve the dispute pursuant to cooperative engagement discussions as set forth in Section 5.1(a) above. There shall be three arbitrators: each party shall choose one arbitrator and, if the two arbitrators are not able to agree on a third arbitrator, the third shall be chosen by the ICC. The prevailing party in the arbitration shall have the right to recover its costs and reasonable attorneys' fees, which the arbitrators shall include in their awards. Any party that seeks to confirm or vacate an arbitration award issued under this Section 5.1(b) may do so only pursuant to the applicable arbitration statutes. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles County, California, USA; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction. For the purpose of aiding the arbitration and/or preserving the rights of the parties during the pendency of arbitration, the parties shall have the right to seek a temporary stay or injunctive relief from the arbitration panel or a court, which shall not be a waiver of this agreement to arbitrate.

Section 5.2 Specific Performance. 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 arbitrators specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

Section 5.3 Limitation of Liability. ICANN's aggregate monetary liability for violations of this Agreement shall 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. Registry Operator's aggregate monetary liability to ICANN for violations of this Agreement shall be limited to an amount equal to the fees, and monetary sanctions under Section 4.4, if any, due and owing to ICANN under this Agreement within the preceding twelve-month period. In no event shall either party be liable for special, indirect, incidental, 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 pursuant to Section 4.4 of this Agreement. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, REGISTRY OPERATOR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED BY ITSELF, ITS SERVANTS, OR ITS AGENTS OR THE RESULTS OBTAINED FROM THEIR WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 6 TERMINATION PROVISIONS

Section 6.1 <u>Termination by ICANN</u>. ICANN may terminate this Agreement if and only if: (i) Registry Operator fails to cure any fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); or Section 5.2 within thirty (30) calendar days after ICANN gives Registry Operator written notice of the breach, which notice shall include with specificity the details of the alleged breach; and (ii) (a) an arbitrator or court has finally determined that Registry Operator is, or was, in fundamental and material breach and failed to cure such breach within the prescribed time period and (b) following the decision of such arbitrator or court, Registry Operator has failed to comply with the decision of the arbitrator or court.

Section 6.2 <u>Bankruptcy</u>. ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) calendar days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) calendar days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

Section 6.3 <u>Change of Control</u>. If pursuant to Section 8.5 ICANN reasonably determines to withhold its consent to a change of control transaction, then upon thirty (30) calendar days notice to Registry Operator, ICANN may terminate this Agreement.

Section 6.4 <u>Transition of Registry upon Termination of Agreement</u>. Upon any termination of this Agreement as provided in Sections 6.1 and 6.2, the parties agree to work cooperatively to facilitate and implement the transition of the registry for the TLD in accordance with this Section 6.4. Registry Operator shall agree to provide ICANN or any successor registry authority that may be designated for the TLD with any data regarding operations of the registry for the TLD necessary to maintain operations that may be reasonably requested in addition to that data escrowed in accordance with Section 3.1(c)(i) hereof.

Section 6.5 <u>Rights in Data</u>. Registry Operator shall not be entitled to claim any intellectual property rights in Registry Data. In the event that Registry Data is released from escrow as set forth in Section 3.1(c)(i), rights, if any, held by Registry Operator in the data shall automatically be licensed on a non-exclusive, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.

Section 6.6 <u>No Reimbursement</u>. Any and all expenditures, capital investments or other investments made by Registry Operator in connection with this Agreement shall be at Registry Operator's own risk and ICANN shall have no obligation to reimburse Registry Operator for any such expense, capital expenditure or investment. Registry Operator shall not be required to make any payments to a successor registry operator by reason of registry fees paid to Registry Operator prior to the effective date of (i) any termination or expiration of this Agreement or (ii) transition of the registry, unless any delay in transition of the registry to a successor operator shall be due to the actions of Registry Operator.

ARTICLE 7 SPECIAL PROVISIONS

Section 7.1 <u>Registry-Registrar Agreement</u>.

7.1 (a) <u>Access to Registry Services</u>. Registry Operator shall make access to Registry Services, including the shared registration system, available to all ICANN-accredited registrars, subject to the terms of the Registry-Registrar Agreement attached as Appendix 8 hereto. Subject to Section 7.1(e), Registry Operator shall provide all ICANN-accredited registrars following execution of the Registry-Registrar Agreement, provided registrars are in compliance with such agreement, operational access to Registry Services, including the shared registration system for the TLD. Such nondiscriminatory access shall include without limitation the following:

7.1 (a)(i) All registrars (including any registrar affiliated with Registry Operator, if any) can connect to the shared registration system gateway for the TLD via the Internet by utilizing the same maximum number of IP addresses and SSL certificate authentication;

7.1 (a)(ii) Registry Operator has made the current version of the registrar toolkit software accessible to all registrars and has made any updates available to all registrars on the same schedule;

7.1 (a)(iii) All registrars have equivalent access to customer support personnel via telephone, e-mail and Registry Operator's website;

7.1 (a)(iv) All registrars have equivalent access to registry resources to resolve registry/registrar or registrar/registrar disputes and technical and/or administrative customer service issues;

7.1 (a)(v) All registrars have equivalent access to data generated by Registry Operator to reconcile their registration activities from Registry Operator's Web and ftp servers;

7.1 (a)(vi) All registrars may perform basic automated registrar account management functions using the same registrar tool made available to all registrars by Registry Operator; and

7.1 (a)(vii) The shared registration system does not include, for purposes of providing discriminatory access, any algorithms or protocols that differentiate among registrars with respect to functionality, including database access, system priorities and overall performance.

7.1 (a)(viii) Such Registry-Registrar Agreement may be revised by Registry Operator from time to time, provided however, that any such revisions must be approved in advance by ICANN.

Within sixty (60) calendar days of the RAA Adoption Date, Registry Operator will submit to ICANN for approval an amended version of the Registry-Registrar Agreement attached hereto as Appendix 8 (the "Amended RRA"), which will include a provision requiring all ICANN-accredited registrars who are a party to Registry Operator's Registry-Registrar Agreement either to (i) become a party to the form registrar accreditation agreement adopted by the ICANN Board of Directors on 27 June 2013 (the "2013 RAA") within two hundred seventy (270) calendar days after the effective date of the Amended RRA, or (ii) be Suspended (as defined below) by Registry Operator. Once such Amended RRA is approved by ICANN, Registry Operator shall promptly adopt and require each of the ICANN-accredited registrars that access Registry Services for the TLD to enter into the Amended RRA pursuant to the amendment procedures set forth in Registry Operator's Registry-Registrar Agreement in effect as of the date hereof. In the event that any such registrar does not enter the 2013 RAA with ICANN within such two hundred seventy (270) calendar day period, and Registry Operator is notified of that fact by ICANN in writing (a "Non-Compliant Registrar"), then Registry Operator will Suspend the Non-Compliant Registrar until such time as such Non-Compliant Registrar becomes a party to the 2013 RAA. "RAA Adoption Date" means the date that ICANN notifies Registry Operator that ICANN-accredited registrars that access Registry Services for the TLD accounting for sixty-seven percent (67%) of all registrations in the TLD have executed the 2013 RAA. "Suspend" means to suspend the Non-Compliant Registrar's ability to create or sponsor new domain name registrations in the TLD or initiate inbound transfers of domain names in the TLD. The obligations of Registry Operator as set forth in this paragraph are contingent upon the registry operators for .com, .biz, .net and .org also submitting similar requests to amend their Registry-Registrar Agreements.

7.1(b) <u>Special Programs</u>. Notwithstanding Section 7.1(a), Registry Operator may for the purpose of supporting the development of the Internet in an underserved geographic region (a region being one or more countries) provide training, technical support, marketing or incentive programs based on the unique needs of registrars primarily focused on serving such geographies to such registrars, so long as Registry Operator does not treat similarly situated registrars differently or apply such programs arbitrarily. In addition, Registry Operator may implement such programs with respect to registrars within a specific geographic region (a region being one or more countries), so long as (i) such region is defined broadly enough to allow multiple registrars to participate and such programs are made available to all such registrars, and (ii) such programs do not favor any registrar in which Registry Operator may have an ownership interest. For purposes of this section, an underserved geographic region is one that, in the reasonable judgment of Registry Operator, is underserved by registry operators based upon an analysis of relevant metrics, including but not limited to broadband penetration, information and technology expenditures, domain penetration, registrar penetration, web hosting penetration, internet usage and number of internet users. Within five (5) calendar days of offering any such programs, Registry Operator shall post a notice of the offering of such program within the registrar facing communication tools of Registry Operator's website (which notice shall include, at a minimum, the terms and conditions of such program and identify the underserved geographic region underlying such program).

7.1 (c) <u>Registry Operator Shall Not Act as Own Registrar</u>. Registry Operator shall not act as a registrar with respect to the TLD. This shall not preclude Registry Operator from registering names within the TLD to itself through a request made to an ICANN-accredited registrar or from becoming an Affiliate of or reseller for an ICANN-accredited registrar. In addition, where there is an imminent threat to the Security and Stability of the TLD or the Internet, this provision shall not preclude Registry Operator, for the purpose of protecting the Security and Stability of the TLD or the Internet, from temporarily preventing the registration of one or more names; provided, as soon as practicable but no later than 3 business days of taking such action, Registry Operator provides ICANN with a written notice of such action, which notice shall list all affected names, state the expected length of time that such names will not be available for registration, and explain why Registry Operator took such action. The contents of such notice shall be treated as confidential to the extent permitted by law. If ICANN disagrees with such action, it will instruct Registry Operator to release such names and Registry Operator shall immediately release such names upon receipt of such written instructions from ICANN.

7.1 (d) 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 not disclose such contracts to any third party other than relevant competition authorities. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues. For the purposes of this Agreement: (i) "Affiliate" means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

7.1(e) Compliance Actions. Registry Operator acknowledges that all ICANN-accredited registrars must enter into a registrar accreditation agreement ("RAA") with ICANN and ICANN may take certain compliance actions in response to an emergency or in accordance with the terms of the RAA, including suspension or termination of a registrar's accreditation or suspension of a registrar's ability to create new registered names or initiate inbound transfers of registered names. ICANN may require Registry Operator to take specific actions consistent with ICANN's authority under the terms of the RAA to: (i) suspend or terminate a registrar's ability to create new registered names or (ii) transfer registered names to a registrar designated by ICANN.

Section 7.2 Fees to be Paid to ICANN.

7.2 (a) Registry-Level Transaction Fee. Registry Operator shall pay ICANN a Registry-Level Fee equal to US$0.25 multiplied by the number of annual increments of an initial or renewal domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) during the applicable calendar quarter.

7.2 (b) Payment Schedule. Registry Operator shall pay the Registry-Level Fees specified in Section 7.2(a) and Section 7.2(c) on a quarterly basis to an account designated by ICANN within thirty (30) calendar days following the date of receipt calculated as follows: an invoice shall be deemed to be received: (a) if sent electronically, one (1) calendar day following the date such invoice is sent; or (b) if sent by postal mail, three (3) calendar days following the date in which such invoice was sent.

7.2 (c) Variable Registry-Level Fee. For fiscal quarters in which ICANN does not collect a variable accreditation fee from all registrars, upon receipt of written notice from ICANN, Registry Operator shall pay ICANN a Variable Registry-Level Fee. The fee will be calculated by ICANN, paid to ICANN by the Registry Operator in accordance with the Payment Schedule in Section 7.2(b), and the Registry Operator will invoice and collect the fees from the registrars who are party to a Registry-Registrar Agreement with Registry Operator. The fee will consist of two components; each component will be calculated by ICANN for each registrar:

7.2 (c)(i) The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year but shall not exceed US $0.25.

7.2 (c)(ii) The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year.

Provided, however, that Registry Operator shall only be required to pay the fees set forth in paragraph (c) above, in the event that ICANN elects to collect the Variable Registry-Level Fee from all ICANN-Accredited Registrars. For the avoidance of doubt, Registry Operator shall not be required to collect the per-registrar component of the Variable Registry-Level Fee from any registrar unless it is required to do so for all registrars.

7.2 (d) Interest on Late Payments. For any payments pursuant to Section 7.2(a) thirty days or more overdue past the time period for payment set forth in Section 7.2(b), Registry Operator shall pay interest on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law. Registry Operator shall not be required to pay interest on late payments under Section 7.2(c), provided that Registry Operator is in good faith making reasonably diligent efforts to collect the underlying payments from those registrars party to a Registry-Registrar Agreement with Registry Operator.

Section 7.3. Pricing for Domain Name Registrations and Registry Services.

7.3(a) <u>Pricing</u>. From the Effective Date through 31 August 2013, the price to ICANN-accredited registrars for new and renewal domain name registrations and for transferring a domain name registration from one ICANN-accredited registrar to another, shall not exceed a total fee of US$7.42 (the "Maximum Service Fee"). Commencing on 1 September 2013, the Maximum Service Fee shall not exceed a total of US $8.16. Commencing on 1 January 2014, the Maximum Service Fee charged during a calendar year for each annual increment of a new and renewal domain name registration and for transferring a domain name registration from one ICANN-accredited registrar to another, may not exceed the Maximum Service Fee during the preceding calendar year multiplied by 1.10. The same Service Fee shall be charged to all ICANN-accredited registrars for new and renewal domain name registrations. Volume discounts and marketing support and incentive programs may be made if the same opportunities to qualify for those discounts and marketing support and incentive programs is available to all ICANN-accredited registrars.

7.3(b) <u>Adjustments to Pricing for Domain Name Registrations</u>. Registry Operator shall provide no less than six months prior notice in advance of any price increase for domain name registrations and shall continue to offer domain name registrations for periods of up to ten years. Registry Operator is not required to give notice of the imposition of the Variable Registry-Level Fee set forth in Section 7.2(c).

ARTICLE 8 MISCELLANEOUS

Section 8.1 <u>Indemnification of ICANN</u>.

8.1 (a) Registry Operator shall indemnify, defend, and hold harmless ICANN (including its directors, officers, employees, and agents) 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: (a) ICANN's reliance, in connection with its decision to delegate the TLD to Registry Operator or to enter into this Agreement, on information provided by Registry Operator in its application for the TLD; (b) Registry Operator's establishment or operation of the registry for the TLD; (c) Registry Operator's provision of Registry Services; (d) collection or handling of Personal Data by Registry Operator; (e) any dispute concerning registration of a domain name within the domain of the TLD for the registry; and (f) duties and obligations of Registry Operator in operating the registry for the TLD; provided that Registry Operator shall not be obligated to indemnify, defend, or hold harmless ICANN to the extent the claim, damage, liability, cost, or expense arose due to a breach by ICANN of any obligation contained in this Agreement. For avoidance of doubt, nothing in this Section 8.1 shall be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for the costs associated with the negotiation or execution of this Agreement, or with the monitoring or management of the parties' respective obligations under this Agreement. 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.

8.1 (b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the actions or omissions that gave rise to the claim, Registry Operator's aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN's total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Section 7.2 hereof for any applicable quarter) by the total number of domain names under registration within all TLDs for which the registry operators thereof that are engaging in the same acts or omissions giving rise to such claim. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims above, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN at set forth in 8.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence.

Section 8.2 <u>Indemnification Procedures</u>. If ICANN receives notice of any third-party claim is that is indemnified under Section 8.1 above, ICANN shall promptly notify Registry Operator of such claim. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to the indemnified party to handle and defend the same, at the indemnifying party's sole cost and expense, provided that in all events ICANN shall be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN policies or conduct. ICANN shall cooperate, at its own cost, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising there from; provided, however, that the indemnified party may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising there from. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is indemnified shall be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section, Registry Operator may participate in such defense, at its sole cost and expense, and ICANN shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator.

Section 8.3 <u>No Offset</u>. All payments due under this Agreement shall be made in a timely manner throughout the term of this Agreement and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

Section 8.4 <u>Use of ICANN Name and Logo</u>. ICANN grants to Registry Operator a non-exclusive royalty-free license to state that it is designated by ICANN as the Registry Operator for the Registry TLD and to use a logo specified by ICANN to signify that Registry Operator is an ICANN-designated registry authority. This license may not be assigned or sublicensed by Registry Operator.

Section 8.5 <u>Change of Control; Assignment and Subcontracting</u>. Except as set forth in this Section 8.5, neither party may assign any of its rights and obligations under this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. For purposes of this Section 8.5, a direct or indirect change of control of Registry Operator or any subcontracting arrangement that relates to any critical registry function for the TLD (a "Material Subcontracting Arrangement") shall be deemed an assignment.

8.5(a) Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any assignment or Material Subcontracting Arrangement, and any agreement to assign or subcontract any portion of the operations of the TLD (whether or not a Material Subcontracting Arrangement) 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.

8.5(b) Within thirty (30) calendar days of either such notification pursuant to Section 8.5(a), ICANN may request additional information from Registry Operator establishing (i) compliance with this Agreement and (ii) that the party acquiring such control or entering into such assignment or Material Subcontracting Arrangement (in any 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 (including with respect to financial resources and operational and technical capabilities), in which case Registry Operator must supply the requested information within fifteen (15) calendar days.

8.5(c) Registry Operator agrees that ICANN's consent to any assignment, change of control or Material Subcontracting Arrangement will also be subject to background checks on any proposed Contracting Party (and such Contracting Party's Affiliates).

8.5(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 Material Subcontracting 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, thirty (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.

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

8.5(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 6.3, (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, Material Subcontracting 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 8.5.

Section 8.6 <u>Amendments and Waivers</u>. No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both 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.

Section 8.7 <u>No Third-Party Beneficiaries</u>. This Agreement shall not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

Section 8.8 <u>Notices, Designations, and Specifications</u>. All notices to be given under or in relation to this Agreement shall 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. Any change in the contact information for notice below shall be given by the party within 30 days of such change. Any notice required by this Agreement shall 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. Whenever this Agreement shall specify a URL address for certain information, Registry Operator shall be deemed to have been given notice of any such information when electronically posted at the designated URL. In the event other means of notice shall become practically achievable, such as notice via a secure website, the parties shall work together to implement such notice means under this Agreement.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA
Phone: +1 310 301 5800
FAX: +1 310 823 8649
Attention: President and CEO
With a Required Copy to: General Counsel
Email: (As specified from time to time.)

If to Registry Operator, addressed to:

Afilias Limited
Office 110, 52 Broomhill Road
Tallaght
Dublin24, Ireland
Attn: CEO
With a Required Copy to: General Counsel
Telephone: +353.1.431.0511
Facsimile: +353.1.431.0557
Email: (As specified from time to time.)

Section 8.9 <u>Language</u>. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

Section 8.10 <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 8.11 <u>Entire Agreement</u>. This Agreement (including its Appendices, which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject. In the event of a conflict between the provisions in the body of this Agreement and any provision in its Appendices, the provisions in the body of the Agreement shall control.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
Name: Akram Atallah

Title: President, Generic Domains Division
Date:

AFILIAS LIMITED

By: _____
Name: Thomas Wade

Title: Chief Financial Officer
Date:

RM 28

Registry Agreement

This REGISTRY AGREEMENT (this "Agreement") is entered into by and between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation ("ICANN"), and NeuStar, Inc. a Delaware corporation.

ARTICLE 1 INTRODUCTION

Section 1.1 <u>Effective Date</u>. The Effective Date for purposes of this Agreement shall be 22 August 2013.

Section 1.2 <u>Top-Level Domain</u>. The Top-Level Domain to which this Agreement applies is .biz ("TLD").

Section 1.3 <u>Designation as Registry Operator</u>. Upon the Effective Date, and throughout the Term (as defined in Section 4.1 hereof) of this Agreement, unless earlier terminated pursuant to Article 6 hereof, ICANN shall continue to designate NeuStar, Inc. as the sole registry operator for the TLD ("Registry Operator").

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

Section 2.1 Registry Operator's Representations and Warranties.

2.1 (a) <u>Organization; Due Authorization and Execution</u>. Registry Operator is a corporation, duly organized, validly existing and in good standing under the laws of Delaware, and Registry Operator has all requisite power and authority to enter into this Agreement. All corporate approvals and actions necessary for the entrance by Registry Operator into this Agreement have been obtained and this Agreement has been duly and validly executed and delivered by Registry Operator.

2.1 (b) <u>Statements made During Negotiation Process</u>. The factual statements made in writing by both Parties in negotiating this Agreement, were true and correct in all material respects at the time made. A violation or breach of this subsection shall not be a basis for termination, rescission or other equitable relief, and, instead shall only give rise to a claim for damages.

Section 2.2 <u>ICANN's Representations and Warranties</u>.

2.2 (a) <u>Organization; Due Authorization and Execution</u>. ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of California. ICANN has all requisite corporate power and authority to enter into this Agreement. All corporate approvals and actions necessary for the entrance by ICANN into this Agreement have been obtained and this Agreement has been duly and validly executed and delivered by ICANN.

ARTICLE 3 COVENANTS

Section 3.1 <u>Covenants of Registry Operator</u>. Registry Operator covenants and agrees with ICANN as follows:

3.1 (a) <u>Preserve Security and Stability</u>.

3.1 (a)(i) ICANN Temporary Specifications or Policies. Registry Operator shall comply with and implement all specifications or policies established by the ICANN Board of Directors on a temporary basis, if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, so long as the ICANN Board of Directors reasonably determines that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the Stability or Security (as defined in Section 3.1(d)(iv)(G)) of Registry Services or the DNS ("Temporary Specification or Policies"). Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any specification or policy under this provision, the ICANN Board of Directors shall state the period of time for which the specification or policy is temporarily adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the temporary specification or policy and why the Board believes the specification or policy should receive the consensus support of Internet stakeholders. If the period of time for which the specification or policy is adopted exceeds 90 days, the ICANN Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such policy in effect until such time as it shall become a Consensus Policy as described in Section 3.1(b) below. If during such one year period, the temporary policy or specification does not become a Consensus Policy meeting the standard set forth in Section 3.1(b) below, Registry Operator shall no longer be required to comply with or implement such temporary policy or specification.

3.1 (b) <u>Consensus Policies</u>.

3.1 (b)(i) At all times during the term of this Agreement and subject to the terms hereof, Registry Operator will fully comply with and implement all Consensus Policies found at http://www.icann.org/general/consensus-policies.htm, as of the Effective Date and as may in the future be developed and adopted in accordance with ICANN's Bylaws and as set forth below.

3.1 (b)(ii) "Consensus Policies" are those specifications or policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 3.1(b)(iv) below. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with ICANN's Bylaws, and any Consensus Policy that is adopted through such a revised process and covering those topics listed in Section 3.1(b)(iv) below shall be considered a Consensus Policy for purposes of this Agreement.

3.1 (b)(iii) For all purposes under this Agreement, the policies identified at http://www.icann.org/en/general/consensus-policies.htm shall be treated in the same manner and have the same effect as "Consensus Policies."

3.1 (b)(iv) Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following: (1) issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, Security and/or Stability of the Internet or DNS; (2) functional and performance specifications for the provision of Registry Services (as defined in Section 3.1(d)(iii) below); (3) Security and Stability of the registry database for the TLD; (4) registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars; or (5) resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names). Such categories of issues referred to in the preceding sentence shall include, without limitation:

3.1 (b)(iv)(A) principles for allocation of registered names in the TLD (e.g., first-come, first-served, timely renewal, holding period after expiration);

3.1 (b)(iv)(B) prohibitions on warehousing of or speculation in domain names by registries or registrars;

3.1 (b)(iv)(C) reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (a) avoidance of confusion among or misleading of users, (b) intellectual property, or (c) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);

3.1 (b)(iv)(D) maintenance of and access to accurate and up-to-date information concerning domain name registrations;

3.1 (b)(iv)(E) procedures to avoid disruptions of domain name registration due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination; and

3.1 (b)(iv)(F) resolution of disputes regarding whether particular parties may register or maintain registration of particular domain names.

3.1 (b)(v) In addition to the other limitations on Consensus Policies, they shall not:

3.1 (b)(v)(A) prescribe or limit the price of Registry Services;

3.1 (b)(v)(B) modify the standards for the consideration of proposed Registry Services, including the definitions of Security and Stability (set forth below) and the standards applied by ICANN;

3.1 (b)(v)(C) modify the terms or conditions for the renewal or termination of this Agreement;

3.1 (b)(v)(D) modify ICANN's obligations to Registry Operator under Section 3.2 (a), (b), and (c);

3.1 (b)(v)(E) modify the limitations on Consensus Policies or Temporary Specifications or Policies;

3.1 (b)(v)(F) modify the definition of Registry Services;

3.1 (b)(v)(G) modify the terms of Sections 7.2 below; or

3.1 (b)(v)(H) alter services that have been implemented pursuant to Section 3.1(d) of this Agreement (unless justified by compelling and just cause based on Security and Stability.

3.1 (b)(vi) Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Specifications or Policies in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services (as defined in Section 3.1(d)(iii) below), on the one hand, and Consensus Policies developed in accordance with this Section 3.1(b) or any Temporary Specifications or Policies established pursuant to Section 3.1(a)(i) above, on the other hand, the Consensus Polices or Temporary Specifications or Policies shall control, notwithstanding any other provisions contained within this Agreement.

3.1 (c) <u>Handling of Registry Data</u>.

3.1 (c)(i) <u>Data Escrow</u>. Registry Operator shall establish at its expense a data escrow or mirror site policy for the Registry Data compiled by Registry Operator. Registry Data, as used in this Agreement, shall mean the following: (1) data for domains sponsored by all registrars, consisting of domain name, server name for each nameserver, registrar id, updated date, creation date, expiration date, status information, and DNSSEC delegation signer ("DS") data; (2) data for nameservers sponsored by all registrars consisting of server name, each IP address, registrar id, updated date, creation date, expiration date, and status information; (3) data for registrars sponsoring registered domains and nameservers, consisting of registrar id, registrar address, registrar telephone number, registrar e-mail address, whois server, referral URL, updated date and the name, telephone number, and e-mail address of all the registrar's administrative, billing, and technical contacts; and (4) domain name registrant data collected by the Registry Operator from registrars as part of or following registration of a domain name. The escrow agent or mirror-site manager, and the obligations thereof, shall be mutually agreed upon by ICANN and Registry Operator on commercially reasonable standards that are technically and practically sufficient to allow a successor registry operator to assume management of the TLD. To this end, Registry Operator shall periodically deposit into escrow all Registry Data on a schedule (not more frequently than weekly for a complete set of Registry Data, and daily for incremental updates) and in an electronic format mutually approved from time to time by Registry Operator and ICANN, such approval not to be unreasonably withheld by either party. In addition, Registry Operator will deposit into escrow that data collected from registrars as part of offering Registry Services introduced after the Effective Date of this Agreement. The schedule, content, format, and procedure for escrow deposits shall be as reasonably established by ICANN from time to time, and as set forth in Appendix 1 hereto. Changes to the schedule, content, format, and procedure may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall unreasonably withhold) or through the establishment of a Consensus Policy as outlined in Section 3.1(b) above. The escrow shall be held under an agreement, substantially in the form of Appendix 2, as the same may be revised from time to time, among ICANN, Registry Operator, and the escrow agent.

3.1 (c)(ii) <u>Personal Data</u>. Registry Operator shall notify registrars sponsoring registrations in the registry for the TLD of the purposes for which Personal Data (as defined below) submitted to Registry Operator by registrars, if any, is collected, the intended recipients (or categories of recipients) of such Personal Data, and the mechanism for access to and correction of such Personal Data. Registry Operator shall take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars. "Personal Data" shall refer to all data about any identified or identifiable natural person.

3.1 (c)(iii) <u>Bulk Zone File Access</u>. Registry Operator shall provide bulk access to the zone files for the registry for the TLD to ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time. Bulk access to the zone files shall be provided to third parties on the terms set forth in the TLD zone file access agreement reasonably established by ICANN, which initially shall be in the form attached as Appendix 3 hereto. Changes to the zone file access agreement may be made upon the mutual written consent of ICANN and Registry Operator (which consent neither party shall unreasonably withhold).

3.1 (c)(iv) <u>Monthly Reporting</u>. Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall prepare and deliver to ICANN a report providing such data and in the format specified in Appendix 4.

3.1 (c)(v) <u>Whois Service</u>. Registry Operator shall provide such whois data as set forth in Appendix 5. Whois output shall be compatible with ICANN's common interface for whois (InterNIC) as such interface exists as of the Effective Date of this Agreement. If requested by ICANN, Registry Operator shall provide a link on the primary website for the TLD to a web page designated by ICANN containing WHOIS policy and education materials.

3.1 (d) <u>Registry Operations</u>.

3.1 (d)(i) <u>Registration Restrictions</u>.

3.1 (d)(i)(A) Registry Operator shall reserve, and not register any TLD strings (i) appearing on the list of reserved TLD strings attached as Appendix 6 hereto or (ii) located at http://data.iana.org/TLD/tlds-alpha-by-domain.txt for initial (i.e.,

other than renewal) registration at the second level within the TLD.

3.1(d)(i)(B) Registry Operator shall apply, monitor, and enforce the restrictions on registration in the Registry TLD. Appendix 11 sets forth the restrictions to be applied and sets forth the manner by which these restrictions shall be applied, monitored, and enforced. Changes to the restrictions may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall unreasonably withhold).

3.1 (d)(ii) Functional and Performance Specifications. Functional and Performance Specifications for operation of the TLD shall be as set forth in Appendix 7 hereto, and shall address without limitation DNS services; operation of the shared registration system; and nameserver operations. Registry Operator shall keep technical and operational records sufficient to evidence compliance with such specifications for at least one year.

3.1 (d)(iii) Registry Services. Registry Services are, for purposes of this Agreement, defined as the following: (a) those services that are both (i) operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; and (ii) provided by the Registry Operator for the .biz registry as of the Effective Date as set forth on Appendix 9; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy (as defined in Section 3.1(b) above); (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

3.1 (d)(iv) Process for Consideration of Proposed Registry Services. Following written notification by Registry Operator to ICANN that Registry Operator may make a change in a Registry Service within the scope of the preceding paragraph:

3.1 (d)(iv)(A) ICANN shall have 15 calendar days to make a "preliminary determination" whether a Registry Service requires further consideration by ICANN because it reasonably determines such Registry Service: (i) could raise significant Security or Stability issues or (ii) could raise significant competition issues.

3.1 (d)(iv)(B) Registry Operator must provide sufficient information at the time of notification to ICANN that it may implement such a proposed Registry Service to enable ICANN to make an informed "preliminary determination." Information provided by Registry Operator and marked "CONFIDENTIAL" shall be treated as confidential by ICANN. Registry Operator will not designate "CONFIDENTIAL" information necessary to describe the purpose of the proposed Registry Service and the effect on users of the DNS.

3.1 (d)(iv)(C) ICANN may seek expert advice during the preliminary determination period (from entities or persons subject to confidentiality agreements) on the competition, Security or Stability implications of the Registry Service in order to make its "preliminary determination." To the extent ICANN determines to disclose confidential information to any such experts, it will provide notice to Registry Operator of the identity of the expert(s) and the information it intends to convey.

3.1 (d)(iv)(D) If ICANN determines during the 15 calendar day "preliminary determination" period that the proposed Registry Service, does not raise significant Security or Stability (as defined below), or competition issues, Registry Operator shall be free to deploy it upon such a determination.

3.1 (d)(iv)(E) In the event ICANN reasonably determines during the 15 calendar day "preliminary determination" period that the Registry Service might raise significant competition issues, ICANN shall refer the issue to the appropriate governmental competition authority or authorities with jurisdiction over the matter within five business days of making its determination, or two business days following the expiration of such 15 day period, whichever is earlier, with notice to Registry Operator. Any such referral communication shall be posted on ICANN's website on the date of transmittal. Following such referral, ICANN shall have no further responsibility, and Registry Operator shall have no further obligation to ICANN, with respect to any competition issues relating to the Registry Service. If such a referral occurs, the Registry Operator will not deploy the Registry Service until 45 calendar days following the referral, unless earlier cleared by the referred governmental competition authority.

3.1 (d)(iv)(F) In the event that ICANN reasonably determines during the 15 calendar day "preliminary determination" period that the proposed Registry Service might raise significant Stability or Security issues (as defined below), ICANN will refer the proposal to a Standing Panel of experts (as defined below) within five business days of making its determination, or two business days following the expiration of such 15 day period, whichever is earlier, and simultaneously invite public comment on the proposal. The Standing Panel shall have 45 calendar days from the referral to prepare a written report regarding the proposed Registry Service's effect on Security or Stability (as defined

below), which report (along with a summary of any public comments) shall be forwarded to the ICANN Board. The report shall set forward the opinions of the Standing Panel, including, but not limited to, a detailed statement of the analysis, reasons, and information upon which the panel has relied in reaching their conclusions, along with the response to any specific questions that were included in the referral from ICANN staff. Upon ICANN's referral to the Standing Panel, Registry Operator may submit additional information or analyses regarding the likely effect on Security or Stability of the Registry Service.

3.1 (d)(iv)(G) Upon its evaluation of the proposed Registry Service, the Standing Panel will report on the likelihood and materiality of the proposed Registry Service's effects on Security or Stability, including whether the proposed Registry Service creates a reasonable risk of a meaningful adverse effect on Security or Stability as defined below:

Security: For purposes of this Agreement, an effect on security by the proposed Registry Service shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

Stability: For purposes of this Agreement, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs sponsored by the IETF or (2) creates a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs and relying on Registry Operator's delegation information or provisioning services.

3.1 (d)(iv)(H) Following receipt of the Standing Panel's report, which will be posted (with appropriate confidentiality redactions made after consultation with Registry Operator) and available for public comment, the ICANN Board will have 30 calendar days to reach a decision. In the event the ICANN Board reasonably determines that the proposed Registry Service creates a reasonable risk of a meaningful adverse effect on Stability or Security, Registry Operator will not offer the proposed Registry Service. An unredacted version of the Standing Panel's report shall be provided to Registry Operator upon the posting of the report. The Registry Operator may respond to the report of the Standing Panel or otherwise submit to the ICANN Board additional information or analyses regarding the likely effect on Security or Stability of the Registry Service.

3.1 (d)(iv)(I) The Standing Panel shall consist of a total of 20 persons expert in the design, management and implementation of the complex systems and standards-protocols utilized in the Internet infrastructure and DNS (the "Standing Panel"). The members of the Standing Panel will be selected by its Chair. The Chair of the Standing Panel will be a person who is agreeable to both ICANN and the registry constituency of the supporting organization then responsible for generic top level domain registry policies. All members of the Standing Panel and the Chair shall execute an agreement requiring that they shall consider the issues before the panel neutrally and according to the definitions of Security and Stability. For each matter referred to the Standing Panel, the Chair shall select no more than five members from the Standing Panel to evaluate the referred matter, none of which shall have an existing competitive, financial, or legal conflict of interest, and with due regard to the particular technical issues raised by the referral.

3.1 (e) <u>Fees and Payments</u>. Registry Operator shall pay the Registry-Level Fees to ICANN on a quarterly basis in accordance with Section 7.2 hereof.

3.1 (f) <u>Traffic Data</u>. Nothing in this Agreement shall preclude Registry Operator from making commercial use of, or collecting, traffic data regarding domain names or non-existent domain names for purposes such as, without limitation, the determination of the availability and Security and Stability of the Internet, pinpointing specific points of failure, characterizing attacks and misconfigurations, identifying compromised networks and hosts and promoting the sale of domain names, provided however, that such use does not permit Registry Operator to disclose domain name registrant or end-user information or other Personal Data as defined in Section 3.1(c)(ii) that it collects through providing domain name registration services for any purpose not otherwise authorized by this agreement. In this regard, in the event the TLD registry is a "thick" registry model, the traffic data that may be accessible to and used by Registry Operator shall be limited to the data that would be accessible to a registry operated under a "thin" registry model. The process for the introduction of new Registry Services shall not apply to such traffic data. Nothing contained in this Section 3.1(f) shall be deemed to constitute consent or acquiescence by ICANN to an introduction by Registry Operator of a service employing a universal wildcard function, except that this sentence shall not prohibit the provision of nameservice or any other non-registry service for a domain or zone used for other than registration services to unaffiliated third parties by a single entity (including its affiliates) for domain names registered through an ICANN-accredited registrar. To the extent that traffic data subject to this provision is made available, access shall be on terms that are nondiscriminatory.

Section 3.2 <u>Covenants of ICANN</u>. ICANN covenants and agrees with Registry Operator as follows:

3.2 (a) <u>Open and Transparent</u>. Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2 (b) <u>Equitable Treatment</u>. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.2 (c) <u>TLD Zone Servers</u>. In the event and to the extent that ICANN is authorized to set policy with regard to an authoritative root server system, it will use best efforts to ensure that (i) the authoritative root will point to the TLD zone servers designated by Registry Operator for the Registry TLD throughout the Term of this Agreement; and (ii) any changes to the TLD zone server designation submitted to ICANN by Registry Operator will be implemented by ICANN within seven days of submission.

3.2 (d) <u>Nameserver Changes</u>. Registry Operator may request changes in the nameserver delegation for the Registry TLD. Any such request must be made in a format, and otherwise meet technical requirements, specified from time to time by ICANN. ICANN will use commercially reasonable efforts to have such requests implemented in the Authoritative Root-Server System within seven calendar days of the submission.

3.2 (e) <u>Root-zone Information Publication</u>. ICANN's publication of root-zone contact information for the Registry TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN.

3.3 <u>Cooperation</u>. The parties agree to cooperate with each other and share data as necessary to accomplish the terms of this Agreement.

3.4 In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth at Appendix 12.

3.5   <u>Contractual and Operational Compliance Audits</u>.

(a) ICANN may from time to time (not to exceed once per calendar quarter) 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 II of this Agreement and its covenants contained in Article III 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 five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its covenants contained in Section 3.1.

(b) Any audit conducted pursuant to Section 3.5(a) will be at ICANN's expense, unless (i) the audit relates to Registry Operator's compliance with Section 3.1(c)(iv) and such audit reveals a material discrepancy or discrepancies in the data provided by Registry Operator, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment. In either such case of (i) or (ii) above, Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with such audit and such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

3.6 <u>Emergency Transition</u>. Registry Operator agrees that in the event that any of the emergency thresholds for registry functions set forth in Section 6 of Appendix 10 attached hereto 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 http://www.icann.org/en/resources/registries/transition-processes>) (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 3.6 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 3.1(c)) 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 3.6.

ARTICLE 4 TERM OF AGREEMENT

Section 4.1 <u>Term</u>. This Agreement shall be effective on the Effective Date and the term shall expire on June 30, 2019 (the "Expiration Date"), subject to extension of such term upon renewal pursuant to Section 4.2 (together, the initial and any renewal terms shall constitute the "Term").

Section 4.2 <u>Renewal</u>. This Agreement shall be renewed upon the expiration of the initial term set forth in Section 4.1 above and each renewal term this Agreement, unless the following has occurred: (i) following notice of breach to Registry Operator in accordance with Section 6.1 and failure to cure such breach within the time period prescribed in Section 6.1, an arbitrator or court has determined that Registry Operator has been in fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); Section 5.2 or Section 7.3 and (ii) following the final decision of such arbitrator or court, Registry Operator has failed to comply within ten days with the decision of the arbitrator or court, or within such other time period as may be prescribed by the arbitrator or court. Upon renewal, in the event that the terms of this Agreement are not similar to the terms generally in effect in the Registry Agreements of the five most reasonably comparable gTLDs (provided however that if less than five gTLDs are reasonably comparable, then comparison shall be made with such lesser number, and .com, .info, .net and .org are hereby deemed comparable), renewal shall be upon terms reasonably necessary to render the terms of this Agreement similar to such terms in the Registry Agreements for those other gTLDs (the "Renewal Terms and Conditions"). The preceding sentence, however, shall not apply to the terms of this Agreement regarding the price of Registry Services; standards for the consideration of proposed Registry Services, including the definitions of Security and Stability and the standards applied by ICANN in the consideration process; the terms or conditions for the renewal or termination of this Agreement; ICANN's obligation to Registry Operator under Section 3.2(a), (b) and (c); the limitations on Consensus Policies or Temporary Specifications or Policies; or the definition of Registry Services, all of which shall remain unchanged. In addition, upon renewal, in determining the Renewal Terms and Conditions, registry fees payable to ICANN may be reasonably modified so long as any increase in such fees shall not exceed the average of the percentage increase in registry fees for the five most reasonably comparable TLDs (or such lesser number as provided above) during the prior three year period. The parties agree to initiate negotiations with respect to Renewal Terms and Conditions at least six (6) months prior to the Expiration Date or the expiration of any renewal term thereafter in order to determine the Renewal Terms and Conditions for the subsequent renewal term as provided for in this Section 4.2. If the parties cannot agree as to Renewal Terms and Conditions prior to the Expiration Date or the expiration of any renewal term thereafter, as applicable, then, unless the parties mutually agree to extend the Term and continue negotiations, the matter shall be determined pursuant to the dispute resolution provisions of Article 5 hereto. In any such dispute resolution procedure instituted under this Section 4.2, the scope of such procedure shall be to determine the Renewal Terms and Conditions pursuant to the provisions of this Section 4.2.

Section 4.3 <u>Changes</u>. While this Agreement is in effect, the parties agree to engage in good faith negotiations at regular intervals (at least once every three calendar years following the Effective Date) regarding possible changes to the terms of the Agreement, including to Section 7.2 regarding fees and payments to ICANN. In addition, ICANN shall consider and discuss with Registry Operator other appropriate changes to pricing and related terms under the Agreement in the event ICANN shall obtain further independent data from professional experts providing analysis of the pricing of domain name registrations and competitive market considerations. The failure by Registry Operator to agree to an increase in registry fees or other terms shall not constitute a violation of this provision.

Section 4.4 <u>Failure to Perform in Good Faith</u>. In the event Registry Operator shall have been repeatedly and willfully in fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); Section 5.2 or Section 7.3, and arbitrators in accordance with Section 5.1(b) of this Agreement repeatedly have found Registry Operator to have been in fundamental and material breach of this Agreement, including in at least three separate awards, then the arbitrators shall award such punitive, exemplary or other damages as they may believe appropriate under the circumstances.

ARTICLE 5 DISPUTE RESOLUTION

Section 5.1 <u>Resolution of Disputes</u>.

5.1 (a) <u>Mediation</u>. In the event of any dispute arising under or in connection with this Agreement, before either party may initiate arbitration pursuant to Section 5.1(b) below, ICANN and Registry Operator must attempt to resolve the dispute through mediation in accordance with the following terms and conditions:

(i)   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 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 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).

(ii)   The mediator shall conduct the mediation in accordance with the rules and procedures 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. 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 5.1(b). The mediator may not testify for either party in any later proceeding relating to 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 the parties have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, either party or the mediator may terminate the mediation at any time and the dispute can then proceed to arbitration pursuant to Section 5.1(b) below. If the parties have not resolved the dispute for any reason by the date that is ninety (90) calendar days following the date of the notice delivered pursuant to Section 5.1(a), the mediation shall automatically terminate (unless extended by agreement of the parties) and the dispute can then proceed to arbitration pursuant to Section 5.1(b) below.

5.1 (b) <u>Arbitration</u>. Disputes arising under or in connection with this Agreement, including requests for specific performance, shall be resolved through binding arbitration conducted as provided in this Section 5.1(b) pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted in the English language and shall occur in Los Angeles County, California, USA only following the failure to resolve the dispute pursuant to cooperative engagement discussions as set forth in Section 5.1(a) above. There shall be three arbitrators: each party shall choose one arbitrator and, if the two arbitrators are not able to agree on a third arbitrator, the third shall be chosen by the ICC. The prevailing party in the arbitration shall have the right to recover its costs and reasonable attorneys' fees, which the arbitrators shall include in their awards. Any party that seeks to confirm or vacate an arbitration award issued under this Section 5.1(b) may do so only pursuant to the applicable arbitration statutes. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles County, California, USA; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction. For the purpose of aiding the arbitration and/or preserving the rights of the parties during the pendency of arbitration, the parties shall have the right to seek a temporary stay or injunctive relief from the arbitration panel or a court, which shall not be a waiver of this agreement to arbitrate.

Section 5.2 <u>Specific Performance</u>. 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 arbitrators specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

Section 5.3 <u>Limitation of Liability</u>. ICANN's aggregate monetary liability for violations of this Agreement shall 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. Registry Operator's aggregate monetary liability to ICANN for violations of this Agreement shall be limited to an amount equal to the fees, and monetary sanctions under Section 4.4, if any, due and owing to ICANN under this Agreement within the preceding twelve-month period. In no event shall either party be liable for special, indirect, incidental, 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 pursuant to Section 4.4 of this Agreement. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, REGISTRY OPERATOR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED BY ITSELF, ITS SERVANTS, OR ITS AGENTS OR THE RESULTS OBTAINED FROM THEIR WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 6 TERMINATION PROVISIONS

Section 6.1 <u>Termination by ICANN</u>. ICANN may terminate this Agreement if and only if: (i) Registry Operator fails to cure any fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); or Section 5.2 within thirty (30) calendar days after ICANN gives Registry Operator written notice of the breach, which notice shall include with specificity the details of the alleged breach; and (ii) (a) an arbitrator or court has finally determined that Registry Operator is, or was, in fundamental and material breach and failed to cure such breach within the prescribed time period and (b) following the decision of such arbitrator or court, Registry Operator has failed to comply with the decision of the arbitrator or court.

Section 6.2 <u>Bankruptcy</u>. ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) calendar days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) calendar days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

Section 6.3 <u>Change of Control</u>. If pursuant to Section 8.5 ICANN reasonably determines to withhold its consent to a change of control transaction, then upon thirty (30) calendar days notice to Registry Operator, ICANN may terminate this Agreement.

Section 6.4 <u>Transition of Registry upon Termination of Agreement</u>. Upon any termination of this Agreement as provided in Sections 6.1 and 6.2, the parties agree to work cooperatively to facilitate and implement the transition of the registry for the TLD in accordance with this Section 6.4. Registry Operator shall agree to provide ICANN or any successor registry authority that may be designated for the TLD with any data regarding operations of the registry for the TLD necessary to maintain operations that may be reasonably requested in addition to that data escrowed in accordance with Section 3.1(c)(i) hereof.

Section 6.5 <u>Rights in Data</u>. Registry Operator shall not be entitled to claim any intellectual property rights in Registry Data. In the event that Registry Data is released from escrow as set forth in Section 3.1(c)(i), rights, if any, held by Registry Operator in the data shall automatically be licensed on a non-exclusive, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.

Section 6.6 <u>No Reimbursement</u>. Any and all expenditures, capital investments or other investments made by Registry Operator in connection with this Agreement shall be at Registry Operator's own risk and ICANN shall have no obligation to reimburse Registry Operator for any such expense, capital expenditure or investment. Registry Operator shall not be required to make any payments to a successor registry operator by reason of registry fees paid to Registry Operator prior to the effective date of (i) any termination or expiration of this Agreement or (ii) transition of the registry, unless any delay in transition of the registry to a successor operator shall be due to the actions of Registry Operator.

ARTICLE 7 SPECIAL PROVISIONS

Section 7.1 <u>Registry-Registrar Agreement</u>.

7.1 (a) <u>Access to Registry Services</u>. Registry Operator shall make access to Registry Services, including the shared registration system, available to all ICANN-accredited registrars, subject to the terms of the Registry-Registrar Agreement attached as Appendix 8 hereto. Subject to Section 7.1(e), Registry Operator shall provide all ICANN-accredited registrars following execution of the Registry-Registrar Agreement, provided registrars are in compliance with such agreement, operational access to Registry Services, including the shared registration system for the TLD. Such nondiscriminatory access shall include without limitation the following:

7.1 (a)(i) All registrars (including any registrar affiliated with Registry Operator, if any) can connect to the shared registration system gateway for the TLD via the Internet by utilizing the same maximum number of IP addresses and SSL certificate authentication;

7.1 (a)(ii) Registry Operator has made the current version of the registrar toolkit software accessible to all registrars and has made any updates available to all registrars on the same schedule;

7.1 (a)(iii) All registrars have equivalent access to customer support personnel via telephone, e-mail and Registry Operator's website;

7.1 (a)(iv) All registrars have equivalent access to registry resources to resolve registry/registrar or registrar/registrar disputes and technical and/or administrative customer service issues;

7.1 (a)(v) All registrars have equivalent access to data generated by Registry Operator to reconcile their registration activities from Registry Operator's Web and ftp servers;

7.1 (a)(vi) All registrars may perform basic automated registrar account management functions using the same registrar tool made available to all registrars by Registry Operator; and

7.1 (a)(vii) The shared registration system does not include, for purposes of providing discriminatory access, any algorithms or protocols that differentiate among registrars with respect to functionality, including database access, system priorities and overall performance.

7.1 (a)(viii) Such Registry-Registrar Agreement may be revised by Registry Operator from time to time, provided however, that any such revisions must be approved in advance by ICANN.

Within sixty (60) calendar days of the RAA Adoption Date, Registry Operator will submit to ICANN for approval an amended version of the Registry-Registrar Agreement attached hereto as Appendix 8 (the "Amended RRA"), which will include a provision requiring all ICANN-accredited registrars who are a party to Registry Operator's Registry-Registrar Agreement either to (i) become a party to the form registrar accreditation agreement adopted by the ICANN Board of Directors on 27 June 2013 (the "2013 RAA") within two hundred seventy (270) calendar days after the effective date of the Amended RRA, or (ii) be Suspended (as defined below) by Registry Operator. Once such Amended RRA is approved by ICANN, Registry Operator shall promptly adopt and require each of the ICANN-accredited registrars that access Registry Services for the TLD to enter into the Amended RRA pursuant to the amendment procedures set forth in Registry Operator's Registry-Registrar Agreement in effect as of the date hereof. In the event that any such registrar does not enter the 2013 RAA with ICANN within such two hundred seventy (270) calendar day period, and Registry Operator is notified of that fact by ICANN in writing (a "Non-Compliant Registrar"), then Registry Operator will Suspend the Non-Compliant Registrar until such time as such Non-Compliant Registrar becomes a party to the 2013 RAA. "RAA Adoption Date" means the date that ICANN notifies Registry Operator that ICANN-accredited registrars that access Registry Services for the TLD accounting for sixty-seven percent (67%) of all registrations in the TLD have executed the 2013 RAA. "Suspend" means to suspend the Non-Compliant Registrar's ability to create or sponsor new domain name registrations in the TLD or initiate inbound transfers of domain names in the TLD. The obligations of Registry Operator as set forth in this paragraph are contingent upon the registry operators for.com, .info, .net and .org also submitting similar requests to amend their Registry-Registrar Agreements.

7.1(b)   Special Programs. Notwithstanding Section 7.1(a), Registry Operator may for the purpose of supporting the development of the Internet in an underserved geographic region (a region being one or more countries) provide training, technical support, marketing or incentive programs based on the unique needs of registrars primarily focused on serving such geographies to such registrars, so long as Registry Operator does not treat similarly situated registrars differently or apply such programs arbitrarily. In addition, Registry Operator may implement such programs with respect to registrars within a specific geographic region (a region being one or more countries), so long as (i) such region is defined broadly enough to allow multiple registrars to participate and such programs are made available to all such registrars, and (ii) such programs do not favor any registrar in which Registry Operator may have an ownership interest. For purposes of this section, an underserved geographic region is one that, in the reasonable judgment of Registry Operator, is underserved by registry operators based upon an analysis of relevant metrics, including but not limited to broadband penetration, information and technology expenditures, domain penetration, registrar penetration, web hosting penetration, internet usage and number of internet users. Within five (5) calendar days of offering any such programs, Registry Operator shall post a notice of the offering of such program within the registrar facing communication tools of Registry Operator's website (which notice shall include, at a minimum, the terms and conditions of such program and identify the underserved geographic region underlying such program).

7.1 (c) Registry Operator Shall Not Act as Own Registrar. Registry Operator shall not act as a registrar with respect to the TLD. This shall not preclude Registry Operator from registering names within the TLD to itself through a request made to an ICANN-accredited registrar or from becoming an Affiliate of or reseller for an ICANN-accredited registrar. In addition, where there is an imminent threat to the Security and Stability of the TLD or the Internet, this provision shall not preclude Registry Operator, for the purpose of protecting the Security and Stability of the TLD or the Internet, from temporarily preventing the registration of one or more names; provided, as soon as practicable but no later than 3 business days of taking such action, Registry Operator provides ICANN with a written notice of such action, which notice shall list all affected names, state the expected length of time that such names will not be available for registration, and explain why Registry Operator took such action. The contents of such notice shall be treated as

confidential to the extent permitted by law. If ICANN disagrees with such action, it will instruct Registry Operator to release such names and Registry Operator shall immediately release such names upon receipt of such written instructions from ICANN.

7.1 (d) 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 not disclose such contracts to any third party other than relevant competition authorities. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues. For the purposes of this Agreement: (i) "Affiliate" means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

7.1(e) Compliance Actions. Registry Operator acknowledges that all ICANN-accredited registrars must enter into a registrar accreditation agreement ("RAA") with ICANN and ICANN may take certain compliance actions in response to an emergency or in accordance with the terms of the RAA, including suspension or termination of a registrar's accreditation or suspension of a registrar's ability to create new registered names or initiate inbound transfers of registered names. ICANN may require Registry Operator to take specific actions consistent with ICANN's authority under the terms of the RAA to: (i) suspend or terminate a registrar's ability to create new registered names or (ii) transfer registered names to a registrar designated by ICANN.
Section 7.2 Fees to be Paid to ICANN.

7.2 (a) Registry-Level Transaction Fee. Registry Operator shall pay ICANN a Registry-Level Fee equal to US$0.25 multiplied by the number of annual increments of an initial or renewal domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) during the applicable calendar quarter.

7.2 (b) Payment Schedule. Registry Operator shall pay the Registry-Level Fees specified in Section 7.2(a) and Section 7.2(c) on a quarterly basis to an account designated by ICANN within thirty (30) calendar days following the date of receipt calculated as follows: an invoice shall be deemed to be received: (a) if sent electronically, one (1) calendar day following the date such invoice is sent; or (b) if sent by postal mail, three (3) calendar days following the date in which such invoice was sent.

7.2 (c) Variable Registry-Level Fee. For fiscal quarters in which ICANN does not collect a variable accreditation fee from all registrars, upon receipt of written notice from ICANN, Registry Operator shall pay ICANN a Variable Registry-Level Fee. The fee will be calculated by ICANN, paid to ICANN by the Registry Operator in accordance with the Payment Schedule in Section 7.2(b), and the Registry Operator will invoice and collect the fees from the registrars who are party to a Registry-Registrar Agreement with Registry Operator. The fee will consist of two components; each component will be calculated by ICANN for each registrar:

7.2 (c)(i) The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year but shall not exceed US $0.25.

7.2 (c)(ii) The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year.

Provided, however, that Registry Operator shall only be required to pay the fees set forth in paragraph (c) above, in the event that ICANN elects to collect the Variable Registry-Level Fee from all ICANN-Accredited Registrars. For the avoidance of doubt, Registry Operator shall not be required to collect the per-registrar component of the Variable Registry-Level Fee from any registrar unless it is required to do so for all registrars.

7.2 (d) Interest on Late Payments. For any payments pursuant to Section 7.2(a) thirty days or more overdue past the time period for payment set forth in Section 7.2(b), Registry Operator shall pay interest on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law. Registry Operator shall not be required to pay interest on late payments under Section 7.2(c), provided that Registry Operator is in good faith making reasonably diligent efforts to collect the underlying payments from those registrars party to a Registry-Registrar Agreement with Registry Operator.

Section 7.3. <u>Pricing for Domain Name Registrations and Registry Services</u>.

7.3(a) <u>Pricing</u>. From the Effective Date through 31 August 2013, the price to ICANN-accredited registrars for new and renewal domain name registrations and for transferring a domain name registration from one ICANN-accredited registrar to another, shall not exceed a total fee of US$7.85 (the "Maximum Service Fee"). Commencing on 1 September 2013, the Maximum Service Fee shall not exceed a total fee of US$8.63. Commencing on 1 January 2014, the Maximum Service Fee charged during a calendar year for each annual increment of a new and renewal domain name registration and for transferring a domain name registration from one ICANN-accredited registrar to another, may not exceed the Maximum Service Fee during the preceding calendar year multiplied by 1.10. The same Service Fee shall be charged to all ICANN-accredited registrars for new and renewal domain name registrations. Volume discounts and marketing support and incentive programs may be made if the same opportunities to qualify for those discounts and marketing support and incentive programs is available to all ICANN-accredited registrars.

7.3(b) <u>Adjustments to Pricing for Domain Name Registrations</u>. Registry Operator shall provide no less than six months prior notice in advance of any price increase for domain name registrations and shall continue to offer domain name registrations for periods of up to ten years. Registry Operator is not required to give notice of the imposition of the Variable Registry-Level Fee set forth in Section 7.2(c).

ARTICLE 8 MISCELLANEOUS

Section 8.1 <u>Indemnification of ICANN</u>.

8.1 (a) Registry Operator shall indemnify, defend, and hold harmless ICANN (including its directors, officers, employees, and agents) 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: (a) ICANN's reliance, in connection with its decision to delegate the TLD to Registry Operator or to enter into this Agreement, on information provided by Registry Operator in its application for the TLD; (b) Registry Operator's establishment or operation of the registry for the TLD; (c) Registry Operator's provision of Registry Services; (d) collection or handling of Personal Data by Registry Operator; (e) any dispute concerning registration of a domain name within the domain of the TLD for the registry; and (f) duties and obligations of Registry Operator in operating the registry for the TLD; provided that Registry Operator shall not be obligated to indemnify, defend, or hold harmless ICANN to the extent the claim, damage, liability, cost, or expense arose due to a breach by ICANN of any obligation contained in this Agreement. For avoidance of doubt, nothing in this Section 8.1 shall be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for the costs associated with the negotiation or execution of this Agreement, or with the monitoring or management of the parties' respective obligations under this Agreement. 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.

8.1 (b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the actions or omissions that gave rise to the claim, Registry Operator's aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN's total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Section 7.2 hereof for any applicable quarter) by the total number of domain names under registration within all TLDs for which the registry operators thereof that are engaging in the same acts or omissions giving rise to such claim. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims above, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN at set forth in 8.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence.

Section 8.2 <u>Indemnification Procedures</u>. If ICANN receives notice of any third-party claim is that is indemnified under Section 8.1 above, ICANN shall promptly notify Registry Operator of such claim. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to the indemnified party to handle and defend the same, at the indemnifying party's sole cost and expense, provided that in all events ICANN shall be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN policies or conduct. ICANN shall cooperate, at its own cost, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising there from; provided, however, that the indemnified party may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising there from. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is indemnified shall be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section, Registry Operator may participate in such defense, at its sole cost and

expense, and ICANN shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator.

Section 8.3 <u>No Offset</u>. All payments due under this Agreement shall be made in a timely manner throughout the term of this Agreement and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

Section 8.4 <u>Use of ICANN Name and Logo</u>. ICANN grants to Registry Operator a non-exclusive royalty-free license to state that it is designated by ICANN as the Registry Operator for the Registry TLD and to use a logo specified by ICANN to signify that Registry Operator is an ICANN-designated registry authority. This license may not be assigned or sublicensed by Registry Operator.

Section 8.5 <u>Change of Control; Assignment and Subcontracting</u>. Except as set forth in this Section 8.5, neither party may assign any of its rights and obligations under this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. For purposes of this Section 8.5, a direct or indirect change of control of Registry Operator or any subcontracting arrangement that relates to any critical registry function for the TLD (a "Material Subcontracting Arrangement") shall be deemed an assignment.

8.5(a) Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any assignment or Material Subcontracting Arrangement, and any agreement to assign or subcontract any portion of the operations of the TLD (whether or not a Material Subcontracting Arrangement) 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.

8.5(b) Within thirty (30) calendar days of either such notification pursuant to Section 8.5(a), ICANN may request additional information from Registry Operator establishing (i) compliance with this Agreement and (ii) that the party acquiring such control or entering into such assignment or Material Subcontracting Arrangement (in any 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 (including with respect to financial resources and operational and technical capabilities), in which case Registry Operator must supply the requested information within fifteen (15) calendar days.

8.5(c) Registry Operator agrees that ICANN's consent to any assignment, change of control or Material Subcontracting Arrangement will also be subject to background checks on any proposed Contracting Party (and such Contracting Party's Affiliates).

8.5(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 Material Subcontracting 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, thirty (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.

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

8.5(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 6.3, (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, Material Subcontracting 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 8.5.

Section 8.6 <u>Amendments and Waivers</u>. No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both 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.

Section 8.7 <u>No Third-Party Beneficiaries</u>. This Agreement shall not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

Section 8.8 <u>Notices, Designations, and Specifications</u>. All notices to be given under or in relation to this Agreement shall 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. Any change in the contact information for notice below shall be given by the party within 30 days of such change. Any notice required by this Agreement shall 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. Whenever this Agreement shall specify a URL address for certain information, Registry Operator shall be deemed to have been given notice of any such information when electronically posted at the designated URL. In the event other means of notice shall become practically achievable, such as notice via a secure website, the parties shall work together to implement such notice means under this Agreement.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA
Phone: +1 310 301 5800
FAX: +1 310 823 8649
Attention: President and CEO
With a Required Copy to: General Counsel
Email: (As specified from time to time.)

If to Registry Operator, addressed to:

NeuStar, Inc.
21575 Ridgetop Circle, Sterling, VA 20166
Telephone: 1-571-434-5400
Facsimile: 1-571-434-5735
Attention: V.P. Business Affairs, Enterprise Services.
With a Required Copy to: General Counsel
Email: (As specified from time to time.)
Section 8.9 <u>Language</u>. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

Section 8.10 <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 8.11 <u>Entire Agreement</u>. This Agreement (including its Appendices, which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject. In the event of a conflict between the provisions in the body of this Agreement and any provision in its Appendices, the provisions in the body of the Agreement shall control.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
Name: Akram Atallah

Title: President, Generic Domains Division
Date:

NEUSTAR, INC.

By: _____
Name: Bradley D. Smith

Title: Controller
Date:

RM 29

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this "Agreement") is entered into as of 30 June 2019 (the "Effective Date") between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation ("ICANN"), and Public Interest Registry, a Pennsylvania non-profit corporation ("Registry Operator").

ARTICLE 1.

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

1.1   Domain and Designation. The Top-Level Domain to which this Agreement applies is **.org** (the "TLD"). Upon the Effective Date and until the earlier of the expiration of the Term (as defined in Section 4.1) or the termination of this Agreement pursuant to Article 4, ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

1.2   Technical Feasibility of String. While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

1.3   Representations and Warranties.

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

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

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

(iii)   Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the "Continued Operations Instrument"), and such instrument is a binding

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obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

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

ARTICLE 2.

COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

2.1   Approved Services; Additional Services. Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the Specification 6 attached hereto ("Specification 6") and such other Registry Services set forth on Exhibit A (collectively, the "Approved Services"). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a material 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 http://www.icann.org/en/registries/rsep/rsep.html, 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.

2.2   Compliance with Consensus Policies and Temporary Policies. Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Polices and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth in Specification 1 attached hereto ("Specification 1").

2.3   Data Escrow. Registry Operator shall comply with the registry data escrow procedures set forth in Specification 2 attached hereto ("Specification 2") within fourteen (14) calendar days after delegation.

2.4   Monthly Reporting. Within twenty (20) calendar days following the end of each calendar month, commencing with the first calendar month in which the TLD is delegated in the root zone, Registry Operator shall deliver to ICANN reports in the format

set forth in Specification 3 attached hereto ("Specification 3"); provided, however, that if the TLD is delegated in the root zone after the fifteenth (15th) calendar day of the calendar month, Registry Operator may defer the delivery of the reports for such first calendar month and instead deliver to ICANN such month's reports no later than the time that Registry Operator is required to deliver the reports for the immediately following calendar month. Registry Operator must include in the Per-Registrar Transactions Report any domain name created during pre-delegation testing that has not been deleted as of the time of delegation (notably but not limited to domains registered by Registrar IDs 9995 and/or 9996).

2.5 **Publication of Registration Data**. Registry Operator shall provide public access to registration data in accordance with Specification 4 attached hereto ("Specification 4").

2.6 **Reserved Names**. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the requirements set forth in Specification 5 attached hereto ("Specification 5"). Registry Operator may at any time establish or modify policies concerning Registry Operator's ability to reserve (i.e., withhold from registration or allocate to Registry Operator, but not register to third parties, delegate, use, activate in the DNS or otherwise make available) or block additional character strings within the TLD at its discretion. Except as specified in Specification 5, if Registry Operator is the registrant for any domain names in the registry TLD, such registrations must be through an ICANN accredited registrar, 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.

2.7 **Registry Interoperability and Continuity**. Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6 attached hereto ("Specification 6").

2.8 **Protection of Legal Rights of Third Parties.** Registry Operator must specify, and comply with, the processes and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth Specification 7 attached hereto ("Specification 7"). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

2.9   Registrars.

(a)   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. Subject to the requirements of Specification 11, 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 (the "Registry-Registrar Agreement"). Registry Operator may amend the Registry-Registrar Agreement from time to time; provided, however, that any material revisions thereto must be approved 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 <http://www.icann.org/en/resources/registries/rra-amendment-procedure>, and such revisions may not be adopted and implemented until approved by ICANN. Notwithstanding the foregoing provisions of this Section 2.9(a), any change to the Registry-Registrar Agreement that relates exclusively to the fee charged by Registry Operator to register domain names in the TLD will not be subject to the notice and approval process specified in this Section 2.9(a), but will be subject to the requirements in Section 2.10 below.

(b)   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 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). ICANN reserves the right, but not the obligation, to refer any such contract,

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related documents, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, related documents, transaction or other arrangement might raise significant competition issues under applicable law. If feasible and appropriate under the circumstances, ICANN will give Registry Operator advance notice prior to making any such referral to a competition authority.

(c)   For the purposes of this Agreement: (i) "Affiliate" means a person or entity that, directly or indirectly, through one or more intermediaries, or in combination with one or more other persons or entities, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

2.10   Pricing for Registry Services.

(a)   With respect to initial domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed the Registry-Registrar Agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one (1) to ten (10) years at the discretion of the registrar, but no greater than ten (10) years.

(b)   With respect to renewal of domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed the Registry-Registrar Agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e., the price

in place prior to any noticed increase) for periods of one (1) to ten (10) years at the discretion of the registrar, but no greater than ten (10) years.

(c)   In addition, Registry Operator must have uniform pricing for renewals of domain name registrations ("Renewal Pricing"). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a "Qualified Marketing Program" is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator's obligations pursuant to Section 2.10(b).

(d)   Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

2.11   Contractual and Operational Compliance Audits.

(a)   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 during regular business hours and 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 reasonably necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than ten (10) calendar 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. ICANN will treat any information obtained in connection with such audits that is appropriately marked as confidential (as required by Section 7.15) as Confidential Information of Registry Operator in accordance with Section 7.15.

(b)   Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% in a given quarter to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c)   Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d)   Registry Operator will give ICANN immediate notice of Registry Operator's knowledge of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

2.12   Continued Operations Instrument. Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in Specification 8 attached hereto ("Specification 8").

2.13   Emergency Transition. 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 <http://www.icann.org/en/resources/registries/transition-processes>) (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.

2.14 **Registry Code of Conduct**. In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in Specification 9 attached hereto ("Specification 9").

2.15 **Cooperation with Economic Studies**. 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 related to the operation of the TLD reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold (a) any internal analyses or evaluations prepared by Registry Operator with respect to such data and (b) any data to the extent that the delivery of such data would be in violation of applicable law. Any data delivered to ICANN or its designee pursuant to this Section 2.15 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 and makes anonymous such data, ICANN or its designee may disclose such data to any third party. 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.

2.16 **Registry Performance Specifications**. Registry Performance Specifications for operation of the TLD will be as set forth in Specification 10 attached hereto ("Specification 10"). Registry Operator shall comply with such Performance Specifications and, for a period of at least one (1) year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

2.17   Additional Public Interest Commitments. Registry Operator shall comply with the public interest commitments set forth in Specification 11 attached hereto ("Specification 11").

2.18   Personal Data. Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the Registry-Registrar Agreement for the TLD of the purposes for which data about any identified or identifiable natural person ("Personal Data") submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

ARTICLE 3.

COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

3.1   Open and Transparent. Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2   Equitable Treatment. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.3   TLD Nameservers. ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at http://www.iana.org/domains/root/ will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

3.4   Root-zone Information Publication. ICANN's publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at http://www.iana.org/domains/root/.

3.5   Authoritative Root Database. To the extent that ICANN is authorized to set policy with regard to an authoritative root server system (the "Authoritative Root Server System"), ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly

available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

ARTICLE 4.

TERM AND TERMINATION

4.1 **Term**. The term of this Agreement will be ten (10) years from the Effective Date (as such term may be extended pursuant to Section 4.2, the "Term").

4.2 **Renewal**.

(a) This Agreement will be renewed for successive periods of ten (10) years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

(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 of competent jurisdiction 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 (10) calendar days or such other time period as may be determined by the arbitrator or court of competent jurisdiction; or

(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) or a court of competent jurisdiction on at least three (3) separate occasions to have been in (A) fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or (B) breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then-current Term.

4.3 **Termination by ICANN**.

(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 of competent jurisdiction 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 of competent jurisdiction.

(b)   ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(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 of competent jurisdiction 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 of competent jurisdiction.

(d)   ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) calendar days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any material property of Registry Operator that, if levied, would reasonably be expected to materially and adversely affect Registry Operator's ability to operate the registry for the TLD, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within sixty (60) calendar days of their commencement (if such proceedings are instituted by Registry Operator or its Affiliates) or one hundred and eighty (180) calendar days of their commencement (if such proceedings are instituted by a third party against Registry Operator), or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section

101, et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e)   ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to a determination by any PDDRP panel or RRDRP panel under Section 2 of Specification 7 or a determination by any PICDRP panel under Section 2, Section 3 or any other applicable Section of Specification 11, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f)   ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer who is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g)   ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement as specified in Section 7.5.

4.4   Termination by Registry Operator.

(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 of competent jurisdiction 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 of competent jurisdiction.

(b)   Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

4.5   Transition of Registry upon Termination of Agreement. 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 (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) if Registry Operator demonstrates to ICANN's reasonable satisfaction that (A) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator or its Affiliates for their exclusive use, (B) 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 (C) 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 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 for the maintenance and operation of the TLD, regardless of the reason for termination or expiration of this Agreement.

4.6   **Effect of Termination**. Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

ARTICLE 5.

DISPUTE RESOLUTION

5.1   **Mediation**. 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:

(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, has no ongoing business relationship with either party 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 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).

(b)   The mediator shall conduct the mediation in accordance with the rules and procedures 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. 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.

(c)   Each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator. Each party shall treat information received from the other party pursuant to the mediation 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.

(d)   If the parties have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, either party or the mediator may terminate the mediation at any time and the dispute can then proceed to arbitration pursuant to Section 5.2 below. If the parties have not resolved the dispute for any reason by the date that is ninety (90) calendar days following the date of the notice delivered pursuant to Section 5.1(a), the mediation shall automatically terminate (unless extended by agreement of the parties) and the dispute can then proceed to arbitration pursuant to Section 5.2 below.

5.2   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 "ICC"). 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, (ii) the parties agree in writing to a greater number of arbitrators, or (iii) the dispute arises under Section 7.6 or

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7.7. In the case of clauses (i), (ii) or (iii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party nominating one arbitrator for confirmation by the ICC and the two selected arbitrators nominating the third arbitrator for confirmation by the ICC. For an arbitration in front of a sole arbitrator, Registry Operator and ICANN may, by mutual agreement, nominate the sole arbitrator for confirmation by the ICC. If the parties fail to nominate a sole arbitrator or, in the case of an arbitration in front of three arbitrators, either party fails to nominate an arbitrator, in each case within thirty (30) calendar days from the date when a party's request for arbitration has been received by the other party, or within such additional time as may be allowed by the Secretariat of the Court of the ICC, the arbitrator(s) shall be appointed by the ICC. If any nominated arbitrator is not confirmed by the ICC, the party or persons that appointed such arbitrator shall promptly nominate a replacement arbitrator for confirmation by the ICC. 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 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.

    5.3   **Limitation of Liability**. 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, except with respect to Registry Operator's indemnification obligations pursuant to Section 7.1 and Section 7.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. 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.

5.4 **Specific Performance**. 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 of competent jurisdiction specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

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ARTICLE 6.

FEES

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6.1 **Registry-Level Fees.**

(a) Registry Operator shall pay ICANN a registry-level fee equal to (i) the registry fixed fee of US$6,250 per calendar quarter and (ii) the registry-level transaction fee (collectively, the "Registry-Level Fees"). The registry-level transaction fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US$0.25; provided, however that the registry-level transaction fee shall not apply until and unless more than 50,000 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 to each quarter in which the Transaction Threshold has not been met. Registry Operator's obligation to pay the quarterly 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 calendar days between the delegation date and the end of the calendar quarter in which the delegation date falls.

(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.

6.2 **Cost Recovery for RSTEP**. 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 http://www.icann.org/en/registries/rsep/. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within fourteen (14) calendar 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.

6.3   Variable Registry-Level Fee.

(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 variable registry-level fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year (the "Variable Registry-Level Fee"). 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 that are party to a Registry-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.

(b)   The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US$0.25 per domain name registration (including renewals associated with transfers from one ICANN accredited registrar to another) per year.

6.4   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 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.

6.5   Adjustments to Fees. Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then-current fees set forth in Section 6.1 and Section 6.3 may be adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.5 shall be effective as of the first day of the first calendar quarter following at least thirty (30) days after ICANN's delivery to Registry Operator of such fee adjustment notice.

6.6   Additional Fee on Late Payments. For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

6.7   Fee Reduction Waiver. In ICANN's sole discretion, ICANN may reduce the amount of registry fees payable hereunder by Registry Operator for any period of time ("Fee Reduction Waiver"). Any such Fee Reduction Waiver may, as determined by ICANN in its sole discretion, be (a) limited in duration and (b) conditioned upon Registry Operator's acceptance of the terms and conditions set forth in such waiver.   A Fee Reduction Waiver shall not be effective unless executed in writing by ICANN as contemplated by Section 7.6(i). ICANN will provide notice of any Fee Reduction Waiver to Registry Operator in accordance with Section 7.9.

ARTICLE 7.

MISCELLANEOUS

7.1   Indemnification of ICANN.

(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 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 of competent jurisdiction or arbitrator.

(b)   For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator's aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN's total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator's liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN's reasonable satisfaction, such other registry operators' culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence.

7.2   **Indemnification Procedures.** If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator's sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN's policies, Bylaws or

conduct. ICANN shall cooperate, at Registry Operator's cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense.

7.3   Defined Terms. For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

(a)   For the purposes of this Agreement, an effect on "Security" shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

(b)   For purposes of this Agreement, an effect on "Stability" shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments ("RFCs") sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

7.4   No Offset. All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

7.5   Change of Control; Assignment and Subcontracting. Except as set forth in this Section 7.5, neither party may assign any of its rights and obligations under 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 subcontracting arrangement that relates to any Critical Function (as identified in Section 6 of Specification 10) for the TLD (a "Material Subcontracting Arrangement") shall be deemed an assignment.

(a)   Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any assignment or Material Subcontracting Arrangement, and any agreement to assign or subcontract any portion of the operations of the TLD (whether or not a Material Subcontracting Arrangement) 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.

(b)   Within thirty (30) calendar days of either such notification pursuant to Section 7.5(a), ICANN may request additional information from Registry Operator establishing (i) compliance with this Agreement and (ii) that the party acquiring such control or entering into such assignment or Material Subcontracting Arrangement (in any 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 (including with respect to financial resources and operational and technical capabilities), in which case Registry Operator must supply the requested information within fifteen (15) calendar days.

(c)   Registry Operator agrees that ICANN's consent to any assignment, change of control or Material Subcontracting Arrangement will also be subject to background checks on any proposed Contracting Party (and such Contracting Party's Affiliates).

(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 Material Subcontracting 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, thirty (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 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 an Affiliated Assignee, as that term is defined herein below, upon such Affiliated Assignee's express written

assumption of the terms and conditions of this Agreement, and (iv) ICANN shall be deemed to have consented to any assignment, Material Subcontracting 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. Notwithstanding Section 7.5(a), in the event an assignment is made pursuant to clauses (ii) or (iii) of this Section 7.5(f), the assigning party will provide the other party with prompt notice following any such assignment. For the purposes of this Section 7.5(f), (A) "Affiliated Assignee" means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (B) "control" (including the terms "controlled by" and "under common control with") shall have the same meaning specified in Section 2.9(c) of this Agreement.

7.6   Amendments and Waivers.

(a)   If the ICANN Board of Directors 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 adopt a Special Amendment pursuant to the requirements of and process set forth in this Section 7.6; provided that a Special Amendment may not be a Restricted Amendment.

(b)   Prior to submitting a Special Amendment for Registry Operator Approval, ICANN shall first consult in good faith with the Working Group regarding the form and substance of such 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 proposed amendment to the Applicable Registry Operators in accordance with Section 7.9. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(c)   If, within one hundred eighty (180) calendar days following the expiration of the Posting Period (the "Approval Period"), the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment, but must address the subject 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, such Special Amendment shall be deemed approved (an "Approved Amendment") by the

Applicable Registry Operators, 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 Approved Amendment to Registry Operator (the "Amendment Effective Date"). In the event that a Special Amendment does not receive Registry Operator Approval, the Special Amendment shall be deemed not approved by the Applicable Registry Operators (a "Rejected Amendment"). A Rejected Amendment will have no effect on the terms and conditions of this Agreement, 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.

(f)   Notwithstanding the provisions of Section 7.6(e), a Board Amendment shall not be deemed an Approved Amendment if, during the thirty (30) calendar day period following the approval by the ICANN Board of Directors of the Board Amendment, the

Working Group, on the behalf of the Applicable Registry Operators, submits to the ICANN Board of Directors an alternative to the Board Amendment (an "Alternative Amendment") that meets the following 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 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) calendar 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 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.

(h)　　Registry Operator 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 the date ICANN provided notice to Registry Operator of such Approved 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(j), 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 Exemption 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.

(i)　　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.

(j)　　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 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, at the prevailing exchange rate published the prior day in the U.S. Edition of the Wall Street Journal for the date such calculation is made by ICANN) 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: (A) an amendment of Specification 1, (B) 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, (C) an amendment to

the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (D) 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.

(v)   "Working Group" means representatives of the Applicable Registry Operators and other members of the community that the Registry Stakeholders Group 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(i)).

(k)   Notwithstanding anything in this Section 7.6 to the contrary, (i) 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 (ii) 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).

7.7   **Negotiation Process**.

(a)   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.

(b)   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").

(c)   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 "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, who has no ongoing business relationship with either party 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

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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, 2.2, 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; 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 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.

(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.

(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).

7.8   No Third-Party Beneficiaries. This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

7.9   General Notices. Except for notices pursuant to Sections 7.6 and 7.7, 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 Sections 7.6 and 7.7 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. Other than notices under Sections 7.6 or 7.7, 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 electronic mail shall be followed by a copy sent by regular postal mail service within three (3) calendar days. Any notice required by Sections 7.6 or 7.7 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.

> If to ICANN, addressed to:
> Internet Corporation for Assigned Names and Numbers
> 12025 Waterfront Drive, Suite 300
> Los Angeles, CA 90094-2536
> USA
> Telephone: +1-310-301-5800
> Facsimile: +1-310-823-8649
> Attention: President and CEO
>
> With a Required Copy to: General Counsel
> Email: (As specified from time to time.)
>
> If to Registry Operator, addressed to:
> Public Interest Registry
> 1775 Wiehle Avenue, Suite 100
> Reston, VA 20190
> USA
>
> Telephone: +1-703-889-5778
> With a Required Copy to: General Counsel
> Email: (As specified from time to time.)

7.10   **Entire Agreement**. This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

7.11   **English Language Controls**. Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

7.12   **Ownership Rights**. Nothing contained in this Agreement shall be construed as (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.

7.13   **Severability; Conflicts with Laws**. 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. 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.

7.14   **Court Orders**. ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement

7.15   **Confidentiality**

(a)   Subject to Section 7.15(c), during the Term and for a period of three (3) 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.

(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.

(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.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
        Cyrus Namazi
        Senior Vice President, Global Domains Division

PUBLIC INTEREST REGISTRY

By: _____
        Jonathon Nevett
        President and CEO

EXHIBIT A

Approved Services

The ICANN gTLD Applicant Guidebook (located at http://newgtlds.icann.org/en/applicants/agb) and the RSEP specify processes for consideration of proposed registry services. Registry Operator may provide any service that is required by the terms of this Agreement. In addition, the following services (if any) are specifically identified as having been approved by ICANN prior to the effective date of the Agreement, and Registry Operator may provide such services:

1. **DNS Service – TLD Zone Contents**

Notwithstanding anything else in this Agreement, as indicated in section 2.2.3.3 of the gTLD Applicant Guidebook, permissible contents for the TLD's DNS service are:

1.1. For the "Internet" (IN) Class:

    1.1.1. Apex SOA record

    1.1.2. Apex NS records and in-bailiwick glue for the TLD's DNS servers

    1.1.3. NS records and in-bailiwick glue for DNS servers of registered names in the TLD

    1.1.4. DS records for registered names in the TLD

    1.1.5. Records associated with signing the TLD zone (e.g., RRSIG, DNSKEY, NSEC, NSEC3PARAM and NSEC3)

    1.1.6. Apex TXT record for zone versioning purposes

    1.1.7. Apex TYPE65534 record for automatic dnssec signing signaling

1.2. For the "Chaos" (CH) Class:

    1.2.1. TXT records for server version/identification (e.g., TXT records for "version.bind.", "id.server.", "authors.bind" and/or "hostname.bind.")

(Note: The above language effectively does not allow, among other things, the inclusion of DNS resource records that would enable a dotless domain name (e.g., apex A, AAAA, MX records) in the TLD zone.)

If Registry Operator wishes to place any DNS resource record type or class into its TLD DNS service (other than those listed in Sections 1.1 or 1.2 above), it must describe in detail

its proposal and submit a Registry Services Evaluation Process (RSEP) request. This will be evaluated per RSEP to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Registry Operator recognizes and acknowledges that a service based on the use of less-common DNS resource records and/or classes in the TLD zone, even if approved, might not work as intended for all users due to lack of software support.

2. Anti-Abuse

Registry Operator may suspend, delete or otherwise make changes to domain names in compliance with its anti-abuse policy.

3. Searchable Whois

Notwithstanding anything else in this Agreement, Registry Operator must offer a searchable Whois service compliant with the requirements described in Section 1.10 of Specification 4 of this Agreement. Registry Operator must make available the services only to authenticated users after they logged in by supplying proper credentials (e.g., user name and password). Registry Operator must issue such credentials exclusively to eligible users and institutions that supply sufficient proof of their legitimate interest in this feature (e.g., law enforcement agencies). Registry Operator shall use rate-limiting to prevent abuse of the searchable Whois service.

4. Internationalized Domain Names (IDNs)

Registry Operator may offer registration of IDNs at the second and lower levels provided that Registry Operator complies with the following requirements:

4.1.   Registry Operator must offer Registrars support for handling IDN registrations in EPP.

4.2.   Registry Operator must handle variant IDNs as follows:

    4.2.1.   Variant IDNs (as defined in the Registry Operator's IDN tables and IDN Registration Rules) will be blocked from registration.

4.3.   Registry Operator may offer registration of IDNs in the following languages/scripts (IDN Tables and IDN Registration Rules will be published by the Registry Operator as specified in the ICANN IDN Implementation Guidelines):

    4.3.1 Belarusian language

    4.3.2 Bosnian language

    4.3.3 Bulgarian language

    4.3.4 Chinese Simplified language

4.3.5 Chinese Traditional language

4.3.6 Danish language

4.3.7 German language

4.3.8 Hungarian language

4.3.9 Icelandic language

4.3.10 Korean language

4.3.11 Latvian language

4.3.12 Lithuanian language

4.3.13 Macedonian language

4.3.14 Polish language

4.3.15 Russian language

4.3.16 Serbian language

4.3.17 Spanish language

4.3.18 Swedish language

4.3.19 Ukrainian language

5. **ORG Single and Two Character Phased Allocation Program ("Phased Allocation Program")**

The domain names included within the scope of the Phased Allocation Program shall be limited to single and two-character .ORG domain names, which Registry Operator may allocate. Registry Operator reserves the right to allocate less than all of the previously reserved single and two-character .ORG domain names.

6. **Bulk Transfer After Partial Portfolio Acquisition**

Bulk Transfer After Partial Portfolio Acquisition ("BTAPPA") is a registry service available to consenting registrars in the circumstance where (i) one ICANN-accredited registrar purchases, by means of a stock or asset purchase, merger or similar transaction, a portion but not all, of another ICANN-accredited registrar's domain name portfolio in the TLD or (ii) a newly accredited registrar (gaining registrar) requests a transfer of all domain names from the losing registrar for which the gaining registrar has served as the reseller. Upon completion of the transfer, the gaining registrar is the new sponsoring registrar. The gaining registrar must certify the BTAPPA would not otherwise qualify under ICANN's Transfer Policy.

At least fifteen days before completing a BTAPPA, the losing registrar must provide written notice of the bulk change of sponsorship to all domain name registrants for names involved in the BTAPPA. The notice must include an explanation of how the RDDS record will change after the BTAPPA occurs and customer support and technical contact information of the gaining registrar.

The losing registrar's existing Registration Agreement with customers must permit the transfer of domain names in the event of acquisition by another party. A single BTAPPA request may be submitted for transfers from multiple losing registrars provided they are Affiliated Registrars as defined by the 2013 or subsequent Registrar Accreditation Agreement.

The expiration dates of transferred registrations are not affected and, therefore, there are no ICANN fees. Once the BTAPPA is complete, there is no grace period to reverse the transfer.

Domain names in the following EPP statuses at the time of the BTAPPA execution shall not be transferred:

- Base statuses: pendingTransfer, pendingDelete.
- Redemption Grace Period ("RGP") statuses: redemptionPeriod, pendingRestore, pendingDelete.

Domain names that are within a grace period window are subject to BTAPPA, but Registry Operator may decline to provide a credit for those names deleted after the BTAPPA and prior to the expiration of the applicable grace period window.

Registry Operator must reject a BTAPPA request if there is reasonable evidence that a transfer under BTAPPA is being requested in order to avoid fees otherwise due to Registry Operator or ICANN. Registry Operator has discretion to reject a BTAPPA request if a registrar with common ownership or management or both has already requested BTAPPA service within the preceding six-month period.

7. Registry Lock

Registry Operator may offer the Registry Lock service, which is a registry service that allows an authorized representative from the sponsoring Registrar to request the activation or deactivation of any of the following EPP statuses: serverUpdateProhibited, serverDeleteProhibited and/or serverTransferProhibited.

SPECIFICATION 1

CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

1. **Consensus Policies**.

   1.1. "***Consensus Policies***" are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this Specification. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.

   1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:

   1.2.1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System ("DNS");

   1.2.2 functional and performance specifications for the provision of Registry Services;

   1.2.3 Security and Stability of the registry database for the TLD;

   1.2.4 registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;

   1.2.5 resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or

   1.2.6 restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.

   1.3. Such categories of issues referred to in Section 1.2 of this Specification shall include, without limitation:

   1.3.1 principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);

   1.3.2 prohibitions on warehousing of or speculation in domain names by registries or registrars;

1.3.3 reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and

1.3.4 maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.

1.4. In addition to the other limitations on Consensus Policies, they shall not:

1.4.1 prescribe or limit the price of Registry Services;

1.4.2 modify the terms or conditions for the renewal or termination of the Registry Agreement;

1.4.3 modify the limitations on Temporary Policies (defined below) or Consensus Policies;

1.4.4 modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or

1.4.5 modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.

2. **Temporary Policies**. Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("*Temporary Policies*").

2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.

2.1.1 ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why

the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.

2.1.2   If the period of time for which the Temporary Policy is adopted exceeds ninety (90) calendar days, the Board shall reaffirm its temporary adoption every ninety (90) calendar days for a total period not to exceed one (1) year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one (1) year period expires or, if during such one (1) year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.

3.   **Notice and Conflicts**. Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Polices or Temporary Policy shall control, but only with respect to subject matter in conflict.

SPECIFICATION 2

DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent ("***Escrow Agent***") for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

PART A – TECHNICAL SPECIFICATIONS

1. **Deposits**. There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.

    1.1. "**Full Deposit**" will consist of data that reflects the state of the registry as of 00:00:00 UTC (Coordinated Universal Time) on the day that such Full Deposit is submitted to Escrow Agent.

    1.2. "**Differential Deposit**" means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., all additions, modifications or removals of data).

2. **Schedule for Deposits**. Registry Operator will submit a set of escrow files on a daily basis as follows:

    2.1. Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.

    2.2. The other six (6) days of the week, a Full Deposit or the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.

3. **Escrow Format Specification**.

    3.1. **Deposit's Format**. Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see Part A, Section 9, reference 1 of this Specification and draft-arias-noguchi-dnrd-objects-mapping, see Part A, Section 9, reference 2 of this Specification (collectively, the "DNDE Specification"). The DNDE Specification describes some elements as

optional; Registry Operator will include those elements in the Deposits if they are available. If not already an RFC, Registry Operator will use the most recent draft version of the DNDE Specification available at the Effective Date. Registry Operator may at its election use newer versions of the DNDE Specification after the Effective Date. Once the DNDE Specification is published as an RFC, Registry Operator will implement that version of the DNDE Specification, no later than one hundred eighty (180) calendar days after. UTF-8 character encoding will be used.

3.2. **Extensions**. If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional "extension schemas" shall be defined in a case by case basis to represent that data. These "extension schemas" will be specified as described in Part A, Section 9, reference 2 of this Specification. Data related to the "extensions schemas" will be included in the deposit file described in Part A, Section 3.1 of this Specification. ICANN and the respective Registry Operator shall work together to agree on such new objects' data escrow specifications.

4. **Processing of Deposit files**. The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see Part A, Section 9, reference 3 of this Specification. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see Part A, Section 9, reference 4 of this Specification, that are also royalty-free. The process to follow for the data file in original text format is:

(1) The XML file of the deposit as described in Part A, Section 9, reference 1 of this Specification must be named as the containing file as specified in Section 5 but with the extension xml.

(2) The data file(s) are aggregated in a tarball file named the same as (1) but with extension tar.

(3) A compressed and encrypted OpenPGP Message is created using the tarball file as sole input. The suggested algorithm for compression is ZIP as per RFC 4880. The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.

(4) The file may be split as necessary if, once compressed and encrypted, it is larger than the file size limit agreed with the escrow agent. Every part of a

split file, or the whole file if not split, will be called a processed file in this section.

(5) A digital signature file will be generated for every processed file using the Registry Operator's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 Section 9, reference 3, and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.

(6) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.

(7) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in Part A, Section 8 of this Specification.

5. **File Naming Conventions**. Files will be named according to the following convention: {gTLD}_{YYYY-MM-DD}_{type}_S{#}_R{rev}.{ext} where:

5.1. {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;

5.2. {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";

5.3. {type} is replaced by:

(1) "full", if the data represents a Full Deposit;

(2) "diff", if the data represents a Differential Deposit;

(3) "thin", if the data represents a Bulk Registration Data Access file, as specified in Section 3 of Specification 4;

(4) "thick-{gurid}", if the data represent Thick Registration Data from a specific registrar, as defined in Section 3.2 of Specification 4. The {gurid} element must be replaced with the IANA Registrar ID associated with the data.

5.4. {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".

5.5.   {rev} is replaced by the number of revision (or resend) of the file beginning with "0":

5.6.   {ext} is replaced by "sig" if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by "ryde".

6.   **Distribution of Public Keys**. Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry Operator and ICANN will exchange public keys by the same procedure.

7.   **Notification of Deposits**. Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN (using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification (the "Interface Specification")) a written statement from Registry Operator (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. The preparation and submission of this statement must be performed by the Registry Operator or its designee, provided that such designee may not be the Escrow Agent or any of Escrow Agent's Affiliates. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in Part A, Section 9, reference 1 of this Specification.

If not already an RFC, Registry Operator will use the most recent draft version of the Interface Specification at the Effective Date. Registry Operator may at its election use newer versions of the Interface Specification after the Effective Date. Once the Interface Specification is published as an RFC, Registry Operator will implement that version of the Interface Specification, no later than one hundred eighty (180) calendar days after such publishing.

8.   **Verification Procedure**.

(1)   The signature file of each processed file is validated.

(2)   If processed files are pieces of a bigger file, the latter is put together.

(3)   Each file obtained in the previous step is then decrypted and uncompressed.

(4)   Each data file contained in the previous step is then validated against the format defined in Part A, Section 9, reference 1 of this Specification.

(5) The data escrow agent extended verification process, as defined below in reference 2 of Part A of this Specification 2, as well as any other data escrow verification process contained in such reference.

If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.

9. **<u>References</u>**.

(1) Domain Name Data Escrow Specification (work in progress), http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow

(2) Domain Name Registration Data (DNRD) Objects Mapping, http://tools.ietf.org/html/draft-arias-noguchi-dnrd-objects-mapping

(3) OpenPGP Message Format, http://www.rfc-editor.org/rfc/rfc4880.txt

(4) OpenPGP parameters, http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml

(5) ICANN interfaces for registries and data escrow agents, http://tools.ietf.org/html/draft-lozano-icann-registry-interfaces

PART B – LEGAL REQUIREMENTS

1. **Escrow Agent**. Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendments thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated as a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.

2. **Fees**. Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within fifteen (15) calendar days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.

3. **Ownership**. Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed to ICANN or to a party designated in writing by ICANN on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis, for any use related to the operation, maintenance or transition of the TLD.

4. **Integrity and Confidentiality**. Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one (1) year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

    If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow

sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies**. Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.

6. **Release of Deposits**. Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four (24) hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:

    6.1. the Registry Agreement has expired without renewal, or been terminated; or

    6.2. ICANN has not received a notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent within five (5) calendar days after the Deposit's scheduled delivery date; (a) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (b) ICANN has not, within seven (7) calendar days after such notice, received the notification from Escrow Agent; or

    6.3. ICANN has received notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent of failed verification of the latest escrow deposit for a specific date or a notification of a missing deposit, and the notification is for a deposit that should have been made on Sunday (i.e., a Full Deposit); (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven (7) calendar days after such notice, received notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent of verification of a remediated version of such Full Deposit; or

    6.4. ICANN has received five notifications from Escrow Agent within the last thirty (30) calendar days notifying ICANN of either missing or failed escrow deposits that should have been made Monday through Saturday (i.e., a Differential Deposit), and (x) ICANN provided notice to Registry Operator of the receipt of such notifications; and (y) ICANN has not, within seven (7) calendar days after delivery of such notice to Registry Operator, received notification from Escrow Agent of verification of a remediated version of such Differential Deposit; or

6.5. Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or

6.6. Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Agreement; or

6.7. a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN; or

6.8. pursuant to Contractual and Operational Compliance Audits as specified under Section 2.11 of the Agreement.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon expiration or termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits**.

7.1. Within twenty-four (24) hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a notification generated for each Deposit. Reports will be delivered electronically using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification.

7.2. If Escrow Agent discovers that any Deposit fails the verification procedures or if Escrow Agent does not receive any scheduled Deposit, Escrow Agent must notify Registry Operator either by email, fax or phone and ICANN (using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification) of such nonconformity or non-receipt within twenty-four (24) hours after receiving the non-conformant Deposit or the deadline for such Deposit, as applicable. Upon notification of such verification or delivery failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to be delivered and pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.

8. **Amendments**. Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.

9. **Indemnity**. Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members,

and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

SPECIFICATION 3

FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD, using the API described in draft-lozano-icann-registry-interfaces, see Specification 2, Part A, Section 9, reference 5, with the following content.

ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three (3) months after the end of the month to which the reports relate. Unless set forth in this Specification 3, any reference to a specific time refers to Coordinated Universal Time (UTC). Monthly reports shall consist of data that reflects the state of the registry at the end of the month (UTC).

1. **Per-Registrar Transactions Report**. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named "gTLD-transactions-yyyymm.csv", where "gTLD" is the gTLD name; in case of an IDN-TLD, the A-label shall be used; "yyyymm" is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field name	Description
01	registrar-name	Registrar's full corporate name as registered with IANA
02	iana-id	For cases where the registry operator acts as registrar (i.e., without the use of an ICANN accredited registrar) either 9998 or 9999 should be used depending on registration type (as described in Specification 5), otherwise the sponsoring Registrar IANA id should be used as specified in http://www.iana.org/assignments/registrar-ids
03	total-domains	total domain names under sponsorship in any EPP status but pendingCreate that have not been purged
04	total-nameservers	total name servers (either host objects or name server hosts as domain name attributes) associated with domain names registered for the TLD in any EPP status but pendingCreate that have not been purged
05	net-adds-1-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of one (1) year (and not deleted within the

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		add grace period). A transaction must be reported in the month the add grace period ends.
06	net-adds-2-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of two(2) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
07	net-adds-3-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of three (3) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
08	net-adds-4-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of four (4) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
09	net-adds-5-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of five (5) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
10	net-adds-6-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of six (6) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
11	net-adds-7-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of seven (7) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
12	net-adds-8-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of eight (8) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
13	net-adds-9-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of nine (9) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.

14	net-adds-10-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of ten (10) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
15	net-renews-1-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of one (1) year (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
16	net-renews-2-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of two (2) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
17	net-renews-3-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of three (3) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
18	net-renews-4-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of four (4) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
19	net-renews-5-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of five (5) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
20	net-renews-6-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of six

		(6) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
21	net-renews-7-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of seven (7) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
22	net-renews-8-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of eight (8) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
23	net-renews-9-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of nine (9) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
24	net-renews-10-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of ten (10) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
25	transfer-gaining-successful	number of domain transfers initiated by this registrar that were successfully completed (either explicitly or automatically approved) and not deleted within the transfer grace period. A transaction must be reported in the month the transfer grace period ends.
26	transfer-gaining-nacked	number of domain transfers initiated by this registrar that were rejected (e.g., EPP transfer op="reject") by the other registrar

27	transfer-losing-successful	number of domain transfers initiated by another registrar that were successfully completed (either explicitly or automatically approved)
28	transfer-losing-nacked	number of domain transfers initiated by another registrar that this registrar rejected (e.g., EPP transfer op="reject")
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed (reported in the month where the determination happened)
30	transfer-disputed-lost	number of transfer disputes this registrar lost (reported in the month where the determination happened)
31	transfer-disputed-nodecision	number of transfer disputes involving this registrar with a split or no decision (reported in the month where the determination happened)
32	deleted-domains-grace	domains deleted within the add grace period (does not include names deleted while in EPP pendingCreate status). A deletion must be reported in the month the name is purged.
33	deleted-domains-nograce	domains deleted outside the add grace period (does not include names deleted while in EPP pendingCreate status). A deletion must be reported in the month the name is purged.
34	restored-domains	domain names restored during reporting period
35	restored-noreport	total number of restored names for which a restore report is required by the registry, but the registrar failed to submit it
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (both successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a "header line" as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read "Totals" while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

2. **Registry Functions Activity Report**. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named "gTLD-activity-yyyymm.csv", where "gTLD" is the gTLD name; in case of an IDN-TLD, the A-label shall be used; "yyyymm" is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars in the production system at the end of the reporting period
02	zfa-passwords	number of active zone file access passwords at the end of the reporting period; "CZDS" may be used instead of the number of active zone file access passwords, if the Centralized Zone Data Service (CZDS) is used to provide the zone file to the end user
03	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
04	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
05	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
06	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
07	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
08	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
09	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
10	srs-dom-check	number of SRS (EPP and any other interface) domain name "check" requests responded during the reporting period
11	srs-dom-create	number of SRS (EPP and any other interface) domain name "create" requests responded during the reporting period

Field #	Field Name	Description
12	srs-dom-delete	number of SRS (EPP and any other interface) domain name "delete" requests responded during the reporting period
13	srs-dom-info	number of SRS (EPP and any other interface) domain name "info" requests responded during the reporting period
14	srs-dom-renew	number of SRS (EPP and any other interface) domain name "renew" requests responded during the reporting period
15	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP "restore" requests delivering a restore report responded during the reporting period
16	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP "restore" requests responded during the reporting period
17	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name "transfer" requests to approve transfers responded during the reporting period
18	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name "transfer" requests to cancel transfers responded during the reporting period
19	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name "transfer" requests to query about a transfer responded during the reporting period
20	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name "transfer" requests to reject transfers responded during the reporting period
21	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name "transfer" requests to request transfers responded during the reporting period
22	srs-dom-update	number of SRS (EPP and any other interface) domain name "update" requests (not including RGP restore requests) responded during the reporting period

Field #	Field Name	Description
23	srs-host-check	number of SRS (EPP and any other interface) host "check" requests responded during the reporting period
24	srs-host-create	number of SRS (EPP and any other interface) host "create" requests responded during the reporting period
25	srs-host-delete	number of SRS (EPP and any other interface) host "delete" requests responded during the reporting period
26	srs-host-info	number of SRS (EPP and any other interface) host "info" requests responded during the reporting period
27	srs-host-update	number of SRS (EPP and any other interface) host "update" requests responded during the reporting period
28	srs-cont-check	number of SRS (EPP and any other interface) contact "check" requests responded during the reporting period
29	srs-cont-create	number of SRS (EPP and any other interface) contact "create" requests responded during the reporting period
30	srs-cont-delete	number of SRS (EPP and any other interface) contact "delete" requests responded during the reporting period
31	srs-cont-info	number of SRS (EPP and any other interface) contact "info" requests responded during the reporting period
32	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact "transfer" requests to approve transfers responded during the reporting period
33	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact "transfer" requests to cancel transfers responded during the reporting period
34	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact "transfer" requests to query about a transfer responded during the reporting period
35	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact "transfer" requests to reject transfers responded during the reporting period

Field #	Field Name	Description
36	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact "transfer" requests to request transfers responded during the reporting period
37	srs-cont-update	number of SRS (EPP and any other interface) contact "update" requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a "header line" as described in section 2 of RFC 4180. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

For gTLDs that are part of a single-instance Shared Registry System, the Registry Functions Activity Report may include the total contact or host transactions for all the gTLDs in the system.

SPECIFICATION 4

REGISTRATION DATA PUBLICATION SERVICES

1.   **Registration Data Directory Services**. Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

Registry Operator shall implement a new standard supporting access to domain name registration data (SAC 051) no later than one hundred thirty-five (135) days after it is requested by ICANN if: 1) the IETF produces a standard (i.e., it is published, at least, as a Proposed Standard RFC as specified in RFC 2026); and 2) its implementation is commercially reasonable in the context of the overall operation of the registry.

1.1.   The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.

1.2.   Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.

1.3.   For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

1.4.   The fields specified below set forth the minimum output requirements. Registry Operator may output data fields in addition to those specified below, subject to approval by ICANN, which approval shall not be unreasonably withheld.

1.5.   **Domain Name Data:**

1.5.1   **Query format:** whois EXAMPLE.TLD

1.5.2   **Response format:**

Domain Name: EXAMPLE.TLD
Domain ID: D1234567-TLD

WHOIS Server: whois.example.tld
Referral URL: http://www.example.tld
Updated Date: 2009-05-29T20:13:00Z
Creation Date: 2000-10-08T00:45:00Z
Registry Expiry Date: 2010-10-08T00:44:59Z
Sponsoring Registrar: EXAMPLE REGISTRAR LLC
Sponsoring Registrar IANA ID: 5555555
Domain Status: clientDeleteProhibited
Domain Status: clientRenewProhibited
Domain Status: clientTransferProhibited
Domain Status: serverUpdateProhibited
Registrant ID: 5372808-ERL
Registrant Name: EXAMPLE REGISTRANT
Registrant Organization: EXAMPLE ORGANIZATION
Registrant Street: 123 EXAMPLE STREET
Registrant City: ANYTOWN
Registrant State/Province: AP
Registrant Postal Code: A1A1A1
Registrant Country: EX
Registrant Phone: +1.5555551212
Registrant Phone Ext: 1234
Registrant Fax: +1.5555551213
Registrant Fax Ext: 4321
Registrant Email: EMAIL@EXAMPLE.TLD
Admin ID: 5372809-ERL
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION
Admin Street: 123 EXAMPLE STREET
Admin City: ANYTOWN
Admin State/Province: AP
Admin Postal Code: A1A1A1
Admin Country: EX
Admin Phone: +1.5555551212
Admin Phone Ext: 1234
Admin Fax: +1.5555551213
Admin Fax Ext:
Admin Email: EMAIL@EXAMPLE.TLD
Tech ID: 5372811-ERL
Tech Name: EXAMPLE REGISTRAR TECHNICAL
Tech Organization: EXAMPLE REGISTRAR LLC
Tech Street: 123 EXAMPLE STREET
Tech City: ANYTOWN
Tech State/Province: AP
Tech Postal Code: A1A1A1
Tech Country: EX
Tech Phone: +1.1235551234

Tech Phone Ext: 1234
Tech Fax: +1.5555551213
Tech Fax Ext: 93
Tech Email: EMAIL@EXAMPLE.TLD
Name Server: NS01.EXAMPLEREGISTRAR.TLD
Name Server: NS02.EXAMPLEREGISTRAR.TLD
DNSSEC: signedDelegation
DNSSEC: unsigned
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.6. **Registrar Data:**

1.6.1 **Query format**: whois "registrar Example Registrar, Inc."

1.6.2 **Response format**:

Registrar Name: Example Registrar, Inc.
Street: 1234 Admiralty Way
City: Marina del Rey
State/Province: CA
Postal Code: 90292
Country: US
Phone Number: +1.3105551212
Fax Number: +1.3105551213
Email: registrar@example.tld
WHOIS Server: whois.example-registrar.tld
Referral URL: http://www.example-registrar.tld
Admin Contact: Joe Registrar
Phone Number: +1.3105551213
Fax Number: +1.3105551213
Email: joeregistrar@example-registrar.tld
Admin Contact: Jane Registrar
Phone Number: +1.3105551214
Fax Number: +1.3105551213
Email: janeregistrar@example-registrar.tld
Technical Contact: John Geek
Phone Number: +1.3105551215
Fax Number: +1.3105551216
Email: johngeek@example-registrar.tld
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. **Nameserver Data:**

1.7.1 **Query format**: whois "nameserver (nameserver name)", or whois "nameserver (IP Address)." For example: whois "nameserver NS1.EXAMPLE.TLD".

1.7.2 **Response format:**

> Server Name: NS1.EXAMPLE.TLD
> IP Address: 192.0.2.123
> IP Address: 2001:0DB8::1
> Registrar: Example Registrar, Inc.
> WHOIS Server: whois.example-registrar.tld
> Referral URL: http://www.example-registrar.tld
> >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.8. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers (the extension will be provided as a separate field as shown above), email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

1.9. In order to be compatible with ICANN's common interface for WHOIS (InterNIC), WHOIS output shall be in the format outline above.

1.10. **Searchability**. Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.

1.10.1 Registry Operator will offer searchability on the web-based Directory Service.

1.10.2 Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).

1.10.3 Registry Operator will offer exact-match capabilities, at least, on the following fields: Registrar ID, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).

1.10.4 Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.

1.10.5 Search results will include domain names matching the search criteria.

1.10.6 Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate

authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

1.11. Registry Operator shall provide a link on the primary website for the TLD (i.e., the website provided to ICANN for publishing on the ICANN website) to a web page designated by ICANN containing WHOIS policy and educational materials.

2. **Zone File Access**

2.1. **Third-Party Access**

2.1.1 **Zone File Access Agreement**. Registry Operator will enter into an agreement with any Internet user, which will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider, which may be ICANN or an ICANN designee (the "CZDA Provider"). Registry Operator (optionally through the CZDA Provider) will provide access to zone file data per Section 2.1.3 of this Specification and do so using the file format described in Section 2.1.4 of this Specification. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 below or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5 below.

2.1.2 **Credentialing Requirements**. Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address and IP address.

2.1.3 **Grant of Access**. Each Registry Operator (optionally through the CZDA Provider) will provide the Zone File SFTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry's zone data archives. Registry Operator will grant the user a non-exclusive, nontransferable, limited right to access Registry Operator's (optionally CZDA Provider's) Zone File hosting server, and to transfer

a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using SFTP, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator (or the CZDA Provider) also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4   **File Format Standard**. Registry Operator (optionally through the CZDA Provider) will provide zone files using a subformat of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1.   Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.

2.   Class and Type must use the standard mnemonics and must be in lower case.

3.   TTL must be present as a decimal integer.

4.   Use of \X and \DDD inside domain names is allowed.

5.   All domain names must be in lower case.

6.   Must use exactly one tab as separator of fields inside a record.

7.   All domain names must be fully qualified.

8.   No $ORIGIN directives.

9.   No use of "@" to denote current origin.

10.   No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.

11.   No $INCLUDE directives.

12.   No $TTL directives.

13.   No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.

14.   No use of comments.

15.   No blank lines.

16.   The SOA record should be present at the top and (duplicated at) the end of the zone file.

17.   With the exception of the SOA record, all the records in a file must be in alphabetical order.

18.   One zone per file. If a TLD divides its DNS data into multiple zones, each zone goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

2.1.5   **Use of Data by User**. Registry Operator will permit user to use the zone file for lawful purposes; provided that (a) user takes all reasonable steps to protect against unauthorized access to, use of, and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to (i) allow, enable or otherwise support any marketing activities to entities other than the user's existing customers, regardless of the medium used (such media include but are not limited to transmission by e-mail, telephone, facsimile, postal mail, SMS, and wireless alerts of mass unsolicited, commercial advertising or solicitations to entities), (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar, or (iii) interrupt, disrupt or interfere in the normal business operations of any registrant.

2.1.6   **Term of Use**. Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

2.1.7   **No Fee for Access**. Registry Operator will provide, and CZDA Provider will facilitate, access to the zone file to user at no cost.

2.2.   **Co-operation**

2.2.1   **Assistance**. Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

2.3.   **ICANN Access**. Registry Operator shall provide bulk access to the zone files for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time. Access will be provided at least daily. Zone files will include SRS data committed as close as possible to 00:00:00 UTC.

2.4.   **Emergency Operator Access**. Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

3.   **Bulk Registration Data Access to ICANN**

3.1.   **Periodic Access to Thin Registration Data**. In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

3.1.1   **Contents**. Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), Registrar ID (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar id (IANA ID), hostname of registrar Whois server, and URL of registrar.

3.1.2   **Format**. The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.

3.1.3   **Access**. Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

3.2.   **Exceptional Access to Thick Registration Data**. In case of a registrar failure, deaccreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data as soon as commercially practicable, but in no event later than five (5) calendar days following ICANN's request. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for

download by ICANN in the same manner as the data specified in Section 3.1 of this Specification.

SPECIFICATION 5

SCHEDULE OF RESERVED NAMES

Except to the extent that ICANN otherwise expressly authorizes in writing, and subject to the terms and conditions of this Specification, Registry Operator shall reserve the following labels from initial (i.e., other than renewal) registration within the TLD. If using self-allocation, the Registry Operator must show the registration in the RDDS. In the case of IDN names (as indicated below), IDN variants will be identified according to the registry operator IDN registration policy, where applicable.

1.   **Example.** The ASCII label "EXAMPLE" shall be withheld from registration or allocated to Registry Operator at the second level and at all other levels within the TLD at which Registry Operator offers registrations (such second level and all other levels are collectively referred to herein as, "All Levels"). Such label may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, such withheld or allocated label shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such name without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

2.   **Two-character labels**. All two-character ASCII labels shall be withheld from registration or allocated to Registry Operator at the second level within the TLD. Such labels may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator, provided that such two-character label strings may be released to the extent that Registry Operator reaches agreement with the related government and country-code manager of the string as specified in the ISO 3166-1 alpha-2 standard. The Registry Operator may also propose the release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes, subject to approval by ICANN. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such labels that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

3.   **Reservations for Registry Operations**.

   3.1.   The following ASCII labels must be withheld from registration or allocated to Registry Operator at All Levels for use in connection with the operation of the registry for the TLD: WWW, RDDS and WHOIS. The following ASCII label must be allocated to Registry Operator upon delegation into the root zone at All Levels for use in connection with the operation of the registry for the TLD: NIC. Registry Operator may activate WWW, RDDS and WHOIS in the DNS,

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but must activate NIC in the DNS, as necessary for the operation of the TLD (in accordance with the provisions of Exhibit A, the ASCII label NIC must be provisioned in the DNS as a zone cut using NS resource records). None of WWW, RDDS, WHOIS or NIC may be released or registered to any person (other than Registry Operator) or third party. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD all such withheld or allocated names shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement. Such domains shall be identified by Registrar ID 9999.

3.1.1 If Exhibit A to the Agreement specifically provides that Registry Operator may offer registration of IDNs, Registry Operator may also activate a language-specific translation or transliteration of the term "NIC" or an abbreviation for the translation of the term "Network Information Center" in the DNS in accordance with Registry Operator's IDN Tables and IDN Registration Rules. Such translation, transliteration or abbreviation may be reserved by Registry Operator and used in addition to the label NIC to provide any required registry functions. For the avoidance of doubt, Registry Operator is required to activate the ASCII label NIC pursuant to Section 3.1 of this Specification 3.

3.2. Registry Operator may activate in the DNS at All Levels up to one hundred (100) names (plus their IDN variants, where applicable) necessary for the operation or the promotion of the TLD. Registry Operator must act as the Registered Name Holder of such names as that term is defined in the then-current ICANN Registrar Accreditation Agreement (RAA). These activations will be considered Transactions for purposes of Section 6.1 of the Agreement. Registry Operator must either (i) register such names through an ICANN accredited registrar; or (ii) self-allocate such names and with respect to those names submit to and be responsible to ICANN for compliance with ICANN Consensus Policies and the obligations set forth in Subsections 3.7.7.1 through 3.7.7.12 of the then-current RAA (or any other replacement clause setting out the terms of the registration agreement between a registrar and a registered name holder). If Registry Operator chooses option (ii) above, it shall identify these transactions using Registrar ID 9998. At Registry Operator's discretion and in compliance with all other terms of this Agreement, including the RPMs set forth in Specification 7, such names may be released for registration to another person or entity.

3.3. Registry Operator may withhold from registration or allocate to Registry Operator names (including their IDN variants, where applicable) at All Levels in accordance with Section 2.6 of the Agreement. Such names may not be activated in the DNS, but may be released for registration to Registry

Operator or another person or entity at Registry Operator's discretion, subject to compliance with all the terms of this Agreement, including applicable RPMs set forth in Specification 7. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Upon ICANN's request, Registry Operator shall provide a listing of all names withheld or allocated to Registry Operator pursuant to Section 2.6 of the Agreement. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

3.4.   Effective upon the conclusion of the No-Activation Period specified in Section 6.1 of Specification 6, Registry Operator shall allocate the domain name "icann-sla-monitoring.<tld>" to the ICANN testing registrar (as such registrar is described in Section 8.2 of Specification 10). If such domain name is not available for registration in the TLD or is otherwise inconsistent with the registration policies of the TLD, Registry Operator may allocate a different domain name to the ICANN testing registrar in consultation with ICANN. The allocation of any such alternative domain name will be communicated to ICANN following such consultation. The allocation of the domain name "icann-sla-monitoring.<tld>" to the ICANN testing registrar will not (i) be considered a Transaction for purposes of Section 6.1 of the Agreement, (ii) count towards the one hundred domain names available to Registry Operator under Section 3.2 of this Specification 5, or (iii) adversely affect Registry Operator's qualification as a .BRAND TLD pursuant to Specification 13 (.BRAND TLD Provisions) hereto (as applicable).

4.   **Country and Territory Names**. The country and territory names (including their IDN variants, where applicable) contained in the following internationally recognized lists shall be withheld from registration or allocated to Registry Operator at All Levels:

4.1.   the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union <http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm>;

4.2.   the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and

4.3.   the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names (including their IDN variants according to the registry operator IDN registration policy, where applicable) may be released to the extent that Registry Operator reaches agreement with the applicable government(s). Registry Operator must not activate such names in the DNS; provided, that Registry Operator may propose the release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

5.   **International Olympic Committee; International Red Cross and Red Crescent Movement**. As instructed from time to time by ICANN, the names (including their IDN variants, where applicable) relating to the International Olympic Committee, International Red Cross and Red Crescent Movement listed at http://www.icann.org/en/resources/registries/reserved shall be withheld from registration or allocated to Registry Operator at the second level within the TLD. Additional International Olympic Committee, International Red Cross and Red Crescent Movement names (including their IDN variants) may be added to the list upon ten (10) calendar days notice from ICANN to Registry Operator. Such names may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

6.   **Intergovernmental Organizations**. As instructed from time to time by ICANN, Registry Operator will implement the protections mechanism determined by the ICANN Board of Directors relating to the protection of identifiers for Intergovernmental Organizations. A list of reserved names for this Section 6 is available at http://www.icann.org/en/resources/registries/reserved. Additional names (including their IDN variants) may be added to the list upon ten (10) calendar days notice from ICANN to Registry Operator. Any such protected identifiers for Intergovernmental Organizations may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such protected identifiers shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use

of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

SPECIFICATION 6

REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

1. **Standards Compliance**

   1.1. **DNS**. Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF), including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1123, 1982, 2181, 2182, 3226, 3596, 3597, 4343, 5966 and 6891. DNS labels may only include hyphens in the third and fourth position if they represent valid IDNs (as specified above) in their ASCII encoding (e.g., "xn--ndk061n").

   1.2. **EPP**. Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732 (if using host objects), 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.

   1.3. **DNSSEC**. Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions ("DNSSEC"). For the absence of doubt, Registry Operator shall sign the zone file of <TLD> and zone files used for in-bailiwick glue for the TLD's DNS servers. During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 6781 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants' public-key material. Registry Operator shall publish its DPS following the format described in RFC 6841. DNSSEC validation must be active and use the IANA DNS Root Key Signing Key set (available at https://www.iana.org/dnssec/files) as a trust anchor for Registry Operator's Registry Services making use of data obtained via DNS responses.

1.4. **IDN**. If the Registry Operator offers Internationalized Domain Names ("IDNs"), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices.

1.5. **IPv6**. Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry's name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow "DNS IPv6 Transport Operational Guidelines" as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g., Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six (6) months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

1.6. **IANA Rootzone Database**. In order to ensure that authoritative information about the TLD remains publicly available, Registry Operator shall submit a change request to the IANA functions operator updating any outdated or inaccurate DNS or WHOIS records of the TLD. Registry Operator shall use commercially reasonable efforts to submit any such change request no later than seven (7) calendar days after the date any such DNS or WHOIS records becomes outdated or inaccurate. Registry Operator must submit all change requests in accordance with the procedures set forth at <http://www.iana.org/domains/root>.

1.7. **Network Ingress Filtering**. Registry Operator shall implement network ingress filtering checks for its Registry Services as described in BCP 38 and BCP 84, which ICANN will also implement.

2. **Registry Services**

2.1. **Registry Services**. "Registry Services" are, for purposes of the Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other

products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

2.2. **Wildcard Prohibition**. For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a "Name Error" response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

3. **Registry Continuity**

3.1. **High Availability**. Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator. Registry Operator's emergency operations department shall be available at all times to respond to extraordinary occurrences.

3.2. **Extraordinary Event**. Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within twenty-four (24) hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of forty-eight (48) hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. **Business Continuity**. Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide

the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

4. **Abuse Mitigation**

4.1. **Abuse Contact**. Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

4.2. **Malicious Use of Orphan Glue Records**. Registry Operator shall take action to remove orphan glue records (as defined at http://www.icann.org/en/committees/security/sac048.pdf) when provided with evidence in written form that such records are present in connection with malicious conduct.

5. **Supported Initial and Renewal Registration Periods**

5.1. **Initial Registration Periods**. Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

5.2. **Renewal Periods**. Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

6. **Name Collision Occurrence Management**

6.1. **No-Activation Period.** Registry Operator shall not activate any names in the DNS zone for the Registry TLD (except for "NIC") until at least 120 calendar days after the effective date of this agreement. Registry Operator may allocate names (subject to subsection 6.2 below) during this period only if Registry Operator causes registrants to be clearly informed of the inability to activate names until the No-Activation Period ends.

6.2. **Name Collision Occurrence Assessment**

6.2.1 Registry Operator shall not activate any names in the DNS zone for the Registry TLD except in compliance with a Name Collision Occurrence Assessment provided by ICANN regarding the Registry TLD. Registry

Operator will either (A) implement the mitigation measures described in its Name Collision Occurrence Assessment before activating any second-level domain name, or (B) block those second-level domain names for which the mitigation measures as described in the Name Collision Occurrence Assessment have not been implemented and proceed with activating names that are not listed in the Assessment.

6.2.2   Notwithstanding subsection 6.2.1, Registry Operator may proceed with activation of names in the DNS zone without implementation of the measures set forth in Section 6.2.1 only if (A) ICANN determines that the Registry TLD is eligible for this alternative path to activation of names; and (B) Registry Operator blocks all second-level domain names identified by ICANN and set forth at <http://newgtlds.icann.org/en/announcements-and-media/announcement-2-17nov13-en> as such list may be modified by ICANN from time to time. Registry Operator may activate names pursuant to this subsection and later activate names pursuant to subsection 6.2.1.

6.2.3   The sets of names subject to mitigation or blocking pursuant to Sections 6.2.1 and 6.2.2 will be based on ICANN analysis of DNS information including "Day in the Life of the Internet" data maintained by the DNS Operations, Analysis, and Research Center (DNS-OARC) <https://www.dns-oarc.net/oarc/data/ditl>.

6.2.4   Registry Operator may participate in the development by the ICANN community of a process for determining whether and how these blocked names may be released.

6.2.5   If ICANN determines that the TLD is ineligible for the alternative path to activation of names, ICANN may elect not to delegate the TLD pending completion of the final Name Collision Occurrence Assessment for the TLD, and Registry Operator's completion of all required mitigation measures. Registry Operator understands that the mitigation measures required by ICANN as a condition to activation of names in the DNS zone for the TLD may include, without limitation, mitigation measures such as those described in Section 3.2 of the New gTLD Name Collision Occurrence Management Plan approved by the ICANN Board New gTLD Program Committee (NGPC) on 7 October 2013 as found at <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-07oct13-en.pdf>.

6.3. **Name Collision Report Handling**

    6.3.1   During the first two years after delegation of the TLD, Registry Operator's emergency operations department shall be available to receive reports, relayed by ICANN, alleging demonstrably severe harm from collisions with overlapping use of the names outside of the authoritative DNS.

    6.3.2   Registry Operator shall develop an internal process for handling in an expedited manner reports received pursuant to subsection 6.3.1 under which Registry Operator may, to the extent necessary and appropriate, remove a recently activated name from the TLD zone for a period of up to two years in order to allow the affected party to make changes to its systems.

SPECIFICATION 7

MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms**. Registry Operator shall implement and adhere to the rights protection mechanisms ("RPMs") specified in this Specification. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party's legal rights. Registry Operator will include all RPMs required by this Specification 7 and any additional RPMs developed and implemented by Registry Operator in the Registry-Registrar Agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements set forth therein each of the mandatory RPMs set forth in the Trademark Clearinghouse as of the date hereof, as posted at http://www.icann.org/en/resources/registries/tmch-requirements (the "Trademark Clearinghouse Requirements"), which may be revised in immaterial respects by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse. If there is a conflict between the terms and conditions of this Agreement and the Trademark Clearinghouse Requirements, the terms and conditions of this Agreement shall control. Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar authorizing such registrar(s) to register domain names in the TLD as follows:

    a. if Registry Operator conducts a Qualified Launch Program or is authorized by ICANN to conduct an Approved Launch Program (as those terms are defined in the Trademark Clearinghouse Requirements), Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar prior to allocating any domain names pursuant to such Qualified Launch Program or Approved Launch Program, as applicable;

    b. if Registry Operator does not conduct a Qualified Launch Program or is not authorized by ICANN to conduct an Approved Launch Program, Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar at least thirty (30) calendar days prior to the expiration date of the Sunrise Period (as defined in the Trademark Clearinghouse Requirements) for the TLD; or

    c. if this Agreement contains a Specification 13, Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar prior to the Claims Commencement Date (as defined in Specification 13).

Nothing in this Specification 7 shall limit or waive any other obligations or requirements of this Agreement applicable to Registry Operator, including Section 2.9(a) and Specification 9.

2. **Dispute Resolution Mechanisms**. Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at http://www.icann.org/en/resources/registries/pddrp and http://www.icann.org/en/resources/registries/rrdrp, respectively). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and

b. the Uniform Rapid Suspension system ("URS") adopted by ICANN (posted at http://www.icann.org/en/resources/registries/urs), including the implementation of determinations issued by URS examiners.

SPECIFICATION 8

CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6th) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in item 50(b) of Attachment to Module 2 – Evaluation Questions and Criteria – of the gTLD Applicant Guidebook, as published and supplemented by ICANN prior to the date hereof (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. If Registry Operator elects to obtain an irrevocable standby letter of credit but the term required above is unobtainable, Registry Operator may obtain a letter of credit with a one-year term and an "evergreen provision," providing for annual extensions, without amendment, for an indefinite number of additional periods until the issuing bank informs ICANN of its final expiration or until ICANN releases the letter of credit as evidenced in writing, if the letter of credit otherwise meets the requirements set forth in item 50(b) of Attachment to Module 2 – Evaluation Questions and Criteria – of the gTLD Applicant Guidebook, as published and supplemented by ICANN prior to the date hereof; provided, however, that if the issuing bank informs ICANN of the expiration of such letter of credit prior to the sixth (6th) anniversary of the Effective Date, such letter of credit must provide that ICANN is entitled to draw the funds secured by the letter of credit prior to such expiration. The letter of credit must require the issuing bank to give ICANN at least thirty (30) calendar days' notice of any such expiration or non-renewal. If the letter of credit expires or is terminated at any time prior to the sixth (6th) anniversary of the Effective Date, Registry Operator will be required to obtain a replacement Continued Operations Instrument. ICANN may draw the funds under the original letter of credit, if the replacement Continued Operations Instrument is not in place prior to the expiration of the original letter of credit. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld).

2.   If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an "Alternative Instrument"). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.

3.   Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an Alternative Instrument that (i) provides for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operator replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such Alternative Instrument(s), and such instrument shall thereafter be considered the Continued Operations Instrument for purposes of this Agreement.

SPECIFICATION 9

REGISTRY OPERATOR CODE OF CONDUCT

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a "Registry Related Party"), to:

    a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;

    b. register domain names in its own right, except for names registered through an ICANN accredited registrar; provided, however, that Registry Operator may (a) reserve names from registration pursuant to Section 2.6 of the Agreement and (b) may withhold from registration or allocate to Registry Operator up to one hundred (100) names pursuant to Section 3.2 of Specification 5;

    c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running"); or

    d. allow any Affiliated registrar to disclose Personal Data about registrants to Registry Operator or any Registry Related Party, except as reasonably necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions.

2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, ensure that such services are offered through a legal entity separate from Registry Operator, and maintain separate books of accounts with respect to its registrar or registrar-reseller operations.

3. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will conduct internal reviews at least once per calendar year to ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to

Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification; provided, however, ICANN shall not disclose Confidential Information contained in such results except in accordance with Section 7.15 of the Agreement.

4.   Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.

5.   Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.

6.   Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for the exclusive use of Registry Operator or its Affiliates, (ii) 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 (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

SPECIFICATION 10

REGISTRY PERFORMANCE SPECIFICATIONS

1. **Definitions**

   1.1. **DNS**. Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.

   1.2. **DNSSEC proper resolution**. There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.

   1.3. **EPP**. Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.

   1.4. **IP address**. Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.

   1.5. **Probes**. Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.

   1.6. **RDDS**. Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.

   1.7. **RTT**. Round-Trip Time or RTT refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.

   1.8. **SLR**. Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

2. **Service Level Agreement Matrix**

	Parameter	SLR (monthly basis)
DNS	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime ($\approx 99\%$)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
RDDS	RDDS availability	≤ 864 min of downtime ($\approx 98\%$)

	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
EPP	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar periods of unavailable or slow service; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

3. **DNS**

3.1. **DNS service availability**. Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from "**DNS tests**" to each of their public-DNS registered "**IP addresses**" to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.

3.2. **DNS name server availability**. Refers to the ability of a public-DNS registered "**IP address**" of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered "**IP address**" of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from "**DNS tests**" to a name server "**IP address**" during a given time, the name server "**IP address**" will be considered unavailable.

3.3. **UDP DNS resolution RTT**. Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.

3.4. **TCP DNS resolution RTT**. Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.

3.5. **DNS resolution RTT**. Refers to either "**UDP DNS resolution RTT**" or "**TCP DNS resolution RTT**".

3.6. **DNS update time**. Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer "**DNS queries**" with data consistent with the change made. This only applies for changes to DNS information.

3.7. **DNS test**. Means one non-recursive DNS query sent to a particular "**IP address**" (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a "**DNS resolution RTT**" 5 times higher than the corresponding SLR, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the "**DNS resolution RTT**" or, undefined/unanswered.

3.8. **Measuring DNS parameters**. Every minute, every DNS probe will make an UDP or TCP "**DNS test**" to each of the public-DNS registered "**IP addresses**" of the name servers of the domain name being monitored. If a "**DNS test**" result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

3.9. **Collating the results from DNS probes**. The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

3.10. **Distribution of UDP and TCP queries**. DNS probes will send UDP or TCP "**DNS test**" approximating the distribution of these queries.

3.11. **Placement of DNS probes**. Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

4. **RDDS**

4.1. **RDDS availability**. Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.

4.2.   **WHOIS query RTT**. Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.3.   **Web-based-WHOIS query RTT**. Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.4.   **RDDS query RTT**. Refers to the collective of "**WHOIS query RTT**" and "**Web-based- WHOIS query RTT**".

4.5.   **RDDS update time**. Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.

4.6.   **RDDS test**. Means one query sent to a particular "**IP address**" of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.

4.7.   **Measuring RDDS parameters**. Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered "**IP addresses**" of the servers for each RDDS service of the TLD being monitored and make an "**RDDS test**" to each one. If an "**RDDS test**" result is undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

4.8.   **Collating the results from RDDS probes**. The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

4.9.   **Placement of RDDS probes**. Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

5.   **EPP**

   5.1.   **EPP service availability**. Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with "**EPP command RTT**" 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

   5.2.   **EPP session-command RTT**. Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

   5.3.   **EPP query-command RTT**. Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

   5.4.   **EPP transform-command RTT**. Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

   5.5.   **EPP command RTT**. Refers to "**EPP session-command RTT**", "**EPP query-command RTT**" or "**EPP transform-command RTT**".

   5.6.   **EPP test**. Means one EPP command sent to a particular "**IP address**" for one of the EPP servers. Query and transform commands, with the exception of "create", shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the "**EPP command RTT**" or undefined/unanswered.

5.7. **Measuring EPP parameters**. Every 5 minutes, EPP probes will select one "**IP address**" of the EPP servers of the TLD being monitored and make an "**EPP test**"; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an "**EPP test**" result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

5.8. **Collating the results from EPP probes**. The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

5.9. **Placement of EPP probes**. Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. **Emergency Thresholds**

The following matrix presents the emergency thresholds that, if reached by any of the services mentioned above for a TLD, would cause the emergency transition of the Registry for the TLD as specified in Section 2.13 of this Agreement.

Critical Function	Emergency Threshold
DNS Service	4-hour total downtime / week
DNSSEC proper resolution	4-hour total downtime / week
EPP	24-hour total downtime / week
RDDS	24-hour total downtime / week
Data Escrow	Reaching any of the criteria for the release of deposits described in Specification 2, Part B, Section 6.2 through Section 6.6.

7. **Emergency Escalation**

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between

ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. Emergency Escalation initiated by ICANN

Upon reaching 10% of the Emergency thresholds as described in Section 6 of this Specification, ICANN's emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator's emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

7.2. Emergency Escalation initiated by Registrars

Registry Operator will maintain an emergency operations department prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the registry for the TLD because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an emergency escalation to the emergency operations department of ICANN. ICANN then may initiate an emergency escalation with the Registry Operator as explained above.

7.3. Notifications of Outages and Maintenance

In the event that a Registry Operator plans maintenance, it will provide notice to the ICANN emergency operations department, at least, twenty-four (24) hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per its contractual obligations with ICANN, on services under a service level agreement and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend emergency escalation services for the monitored services involved.

8. Covenants of Performance Measurement

8.1. **No interference**. Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement

tests described in this Specification as it would to any other request from an Internet user (for DNS and RDDS) or registrar (for EPP).

8.2. **ICANN testing registrar**. Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLR**s described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement. Registry Operator shall identify these transactions using Registrar ID 9997.

SPECIFICATION 11

PUBLIC INTEREST COMMITMENTS

1. Registry Operator will use only ICANN accredited registrars that are party to the Registrar Accreditation Agreement approved by the ICANN Board of Directors on 27 June 2013 in registering domain names. A list of such registrars shall be maintained by ICANN on ICANN's website.

2. (Intentionally omitted.)

3. Registry Operator agrees to perform the following specific public interest commitments, which commitments shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN (posted at http://www.icann.org/en/resources/registries/picdrp), which may be revised in immaterial respects by ICANN from time to time (the "PICDRP"). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

   a. Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.

   b. Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.

   c. Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-

discrimination by establishing, publishing and adhering to clear registration policies.

d. Registry Operator of a "Generic String" TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person's or entity's "Affiliates" (as defined in Section 2.9(c) of the Registry Agreement). "Generic String" means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.

ADDENDUM TO REGISTRY AGREEMENT

This Addendum to that certain Registry Agreement, dated as of 30 June 2019, for the **.org** Top-Level Domain (the "<u>Registry Agreement</u>"), by and between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation ("<u>ICANN</u>"), and Public Interest Registry, a Pennsylvania nonprofit corporation ("<u>Registry Operator</u>"), is dated as of 30 June 2019 and is by and among ICANN and Registry Operator ("<u>Addendum</u>"). ICANN and Registry Operator are hereinafter referred to collectively as the "<u>Parties</u>" and individually as a "<u>Party</u>." Capitalized terms used and not defined herein will have the respective meanings given thereto in the Registry Agreement.

WHEREAS, the Parties previously entered into a registry agreement, dated 22 August 2013;

WHEREAS, the Registry Agreement has certain provisions that are not applicable to a previously delegated top level domain, such as the TLD;

WHEREAS, the purpose of this Addendum is to amend the Registry Agreement in order to modify the provisions that are not applicable to the TLD; and

WHEREAS, pursuant to Section 7.6 of the Registry Agreement, the parties may enter into bilateral amendments and modifications to the Registry Agreement negotiated solely between the Parties.

NOW, THEREFORE, in consideration of the above recitals acknowledged herein by reference, the Parties, intending to be legally bound hereby, do agree as follows:

1. No Approved Amendment pursuant to Section 7.6 or Section 7.7 of the Registry Agreement shall amend or modify the specific terms of the Registry Agreement that are modified or amended pursuant to Section 2 of this Addendum (such terms, "<u>Addendum Terms</u>"); provided that the foregoing shall not apply to any other terms of any provision of the Registry Agreement, including the remaining unmodified terms of any Sections of the Registry Agreement that include the Addendum Terms. If an Approved Amendment is approved in accordance with Section 7.6 or Section 7.7 that would amend or modify any terms of the Registry Agreement that are modified by the Addendum Terms, ICANN and the Registry Operator agree to (i) enter into good faith discussions regarding whether an amendment to such Addendum Terms is appropriate in light of such Approved Amendment and (ii) mutually agree (such agreement not to be unreasonably withheld, conditioned or delayed) on an appropriate amendment to this Addendum or the Registry Agreement.

2. The following Sections of the Registry Agreement are hereby modified by the Addendum Terms set forth in the column across from such Section.

Section	Addendum Terms
1.1	The following terms of Section 1.1 shall be of no force or effect: ", subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone"
1.3(a)(i)	The terms of Section 1.3(a)(i) are hereby amended and restated in their entirety as follows: "all material information provided and statements made in writing during the negotiation of this Agreement were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN; and"
1.3(a)(iii)	The terms of Section 1.3(a)(iii) shall be of no force or effect.
2.3	The following terms of Section 2.3 are hereby amended and restated in their entirety as follows: "**Data Escrow**. Registry Operator shall comply with the registry data escrow procedures set forth in Specification 2 attached hereto ("Specification 2")."
2.4	The terms of Section 2.4 are hereby amended and restated in their entirety as follows: "**Monthly Reporting**. Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format set forth in Specification 3 attached hereto ("Specification 3")."
2.8	The terms of the first sentence of Section 2.8 are hereby amended and restated in their entirety as follows: "Registry Operator must comply with the processes and procedures for ongoing protection of the legal rights of third parties as set forth Specification 7 attached hereto ("Specification 7")."
2.9	The terms of Section 2.9(a) shall be modified to include the following at the end of the provision: "The Registry-Registrar Agreement referred to in this Section

Section	Addendum Terms
	2.9(a) is the last Registry-Registrar Agreement for the TLD approved by ICANN pursuant to the registry agreement for the TLD that immediately preceded this Agreement."
2.12	The terms of Section 2.12 shall be of no force or effect.
2.13	The following terms of Section 2.13 shall be of no force or effect: "In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument."
2.15	The following term of the first sentence of Section 2.15 shall be of no force or effect: "new"
4.1	The terms of Section 4.1 are hereby amended and restated in their entirety as follows: "This Agreement shall be effective on the Effective Date and the term shall expire on 30 June 2029 (the "Expiration Date"), subject to extension of such term upon renewal pursuant to Section 4.2 (together, the initial and any renewal terms shall constitute the "Term")."
4.3(b)	The terms of Section 4.3(b) shall be of no force or effect.
4.3(c)	The terms of Section 4.3(c) shall be of no force or effect.
4.5	The following terms of Section 4.5 shall be of no force or effect: "In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument for the maintenance and operation of the TLD, regardless of the reason for termination or expiration of this Agreement."
4.6	The reference to "Section 2.12" in Section 4.6 shall be of no force or effect.
6.1(a)	The terms of Section 6.1(a) are hereby amended and restated in their entirety as follows: "(a) Registry Operator shall pay ICANN a registry-level fee equal to (i) the registry fixed fee of US$6,250 per calendar

Section	Addendum Terms
	quarter and (ii) the registry-level transaction fee (collectively, the "Registry-Level Fees"). The registry-level transaction fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US$0.25; provided, however that the registry-level transaction fee shall not apply until and unless more than 50,000 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 to each quarter in which the Transaction Threshold has not been met. Registry Operator's obligation to pay the quarterly registry-level fixed fee will begin on the Effective Date."
6.4	The terms of Section 6.4 shall be of no force or effect.
Specification 1, § 2	The terms of the first sentence of Specification 1, Section 2 are hereby amended and restated in their entirety as follows: "**Temporary Policies**. Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the Stability or Security of Registry Services or the DNS ("Temporary Policies")."
Specification 5, § 2	The terms of Section 2 of Specification 5 are hereby amended and restated in their entirety as follows. "**Two Character Labels**. All two character labels that were previously reserved by Registry Operator pursuant to prior registry agreements between Registry Operator and ICANN may be allocated through ICANN-accredited registrars pursuant to the phased allocation program set forth in Exhibit A, subject to the following: 2.1 <u>Registration Policy</u>: For all new registrations after the Effective Date, Registry Operator must include a

Section	Addendum Terms
	provision in its publicly available registration policy requiring a representation that the registrant of a letter/letter two-character ASCII label will take steps to ensure against misrepresenting or falsely implying that the registrant or its business is affiliated with a government or country-code manager if such affiliation, sponsorship or endorsement does not exist. 2.2 <u>Post-Registration Complaint Investigation</u>. Registry Operator shall take reasonable steps to investigate and respond to any reports from governmental agencies and ccTLD operators of conduct that causes confusion with the corresponding country code in connection with the use of a letter/letter two-character ACSCII domain. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law."
Specification 5, § 3.1.1	The terms of Section 3.1.1 of Specification 5 are hereby amended and restated in their entirety as follows: "If Exhibit A to the Agreement specifically provides that Registry Operator may offer registration of IDNs, Registry Operator may also activate a language-specific translation or transliteration of the term "NIC" or an abbreviation for the translation of the term "Network Information Center" in the DNS in accordance with Registry Operator's IDN Tables and IDN Registration Rules. Such translation, transliteration or abbreviation may be reserved by Registry Operator and used in addition to the label NIC to provide any required registry functions. For the avoidance of doubt, Registry Operator is required to activate the ASCII label NIC pursuant to Section 3.1 of this Specification 5."
Specification 5, § 3.2	The terms of Section 3.2 of Specification 5 shall be of no force or effect.
Specification 5, § 3.4	The terms of Section 3.4 of Specification 5 are hereby amended and restated in their entirety as follows: "Registry Operator shall allocate the domain name "icann-sla-monitoring.<tld>" to the ICANN testing registrar (as such registrar is described in Section 8.2 of Specification 10). If such domain name is not available for registration in the TLD or is otherwise inconsistent with the registration policies of the TLD,

Section	Addendum Terms
	Registry Operator may allocate a different domain name to the ICANN testing registrar in consultation with ICANN. The allocation of any such alternative domain name will be communicated to ICANN following such consultation. The allocation of the domain name "icann-sla-monitoring.<tld>" to the ICANN testing registrar will not be considered a Transaction for purposes of Section 6.1 of the Agreement."
Specification 5, § 5	The terms of Section 5 of Specification 5 shall be of no force or effect.
Specification 5, § 6	The terms of Section 6 of Specification 5 shall be of no force or effect.
Specification 6, § 6	The terms of Section 6 of Specification 6 shall be of no force or effect.
Specification 7, § 1	The terms of Section 1 of Specification 7 are hereby amended and restated in their entirety as follows: "**Rights Protection Mechanisms**. Registry Operator shall implement and adhere to the rights protection mechanisms ("RPMs") specified in this Specification. In addition to such RPMs, Registry Operator may develop and implement RPMs that discourage or prevent registration of domain names that violate or abuse another party's legal rights. Registry Operator will include all RPMs required by this Specification 7 and any additional RPMs developed and implemented by Registry Operator in the Registry-Registrar Agreement entered into by ICANN-accredited registrars authorized to register names in the TLD."
Specification 8	The terms of Specification 8 shall be of no force or effect.
Specification 9, § 1(b)	The terms of Section 1(b) of Specification 9 are hereby amended and restated in their entirety as follows: "register domain names in its own right, except for names registered through an ICANN accredited registrar; provided, however, that Registry Operator may reserve names from registration pursuant to Section 2.6 of the Agreement;"

3. This Addendum shall constitute an integral part of the Registry Agreement.

Notwithstanding Section 7.10 of the Registry Agreement, the Registry Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) and this Addendum constitute the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject. The Registry Agreement and this Addendum shall at all times be read together.

4. Except as specifically provided for in this Addendum, all of the terms of the Registry Agreement shall remain unchanged and in full force and effect, and, to the extent applicable, such terms shall apply to this Addendum as if it formed part of the Registry Agreement.

5. This Addendum may be executed and delivered (including by electronic transmission) in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
         Cyrus Namazi
         Senior Vice President, Global Domains Division

PUBLIC INTEREST REGISTRY

By: _____
         Jonathon Nevett
         President and CEO

RM 30

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this "Agreement") is entered into as of 30 June 2019 (the "Effective Date") between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation ("ICANN"), and Afilias Limited, an Irish private company limited by shares ("Registry Operator").

ARTICLE 1.

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

1.1   Domain and Designation. The Top-Level Domain to which this Agreement applies is **.info** (the "TLD"). Upon the Effective Date and until the earlier of the expiration of the Term (as defined in Section 4.1) or the termination of this Agreement pursuant to Article 4, ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

1.2   Technical Feasibility of String. While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

1.3   Representations and Warranties.

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

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

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

(iii)   Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the "Continued Operations Instrument"), and such instrument is a binding

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obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

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

ARTICLE 2.

COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

2.1   Approved Services; Additional Services. Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the Specification 6 attached hereto ("Specification 6") and such other Registry Services set forth on Exhibit A (collectively, the "Approved Services"). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a material 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 http://www.icann.org/en/registries/rsep/rsep.html, 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.

2.2   Compliance with Consensus Policies and Temporary Policies. Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Polices and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth in Specification 1 attached hereto ("Specification 1").

2.3   Data Escrow. Registry Operator shall comply with the registry data escrow procedures set forth in Specification 2 attached hereto ("Specification 2") within fourteen (14) calendar days after delegation.

2.4   Monthly Reporting. Within twenty (20) calendar days following the end of each calendar month, commencing with the first calendar month in which the TLD is delegated in the root zone, Registry Operator shall deliver to ICANN reports in the format

set forth in Specification 3 attached hereto ("Specification 3"); provided, however, that if the TLD is delegated in the root zone after the fifteenth (15th) calendar day of the calendar month, Registry Operator may defer the delivery of the reports for such first calendar month and instead deliver to ICANN such month's reports no later than the time that Registry Operator is required to deliver the reports for the immediately following calendar month. Registry Operator must include in the Per-Registrar Transactions Report any domain name created during pre-delegation testing that has not been deleted as of the time of delegation (notably but not limited to domains registered by Registrar IDs 9995 and/or 9996).

2.5 **Publication of Registration Data**. Registry Operator shall provide public access to registration data in accordance with Specification 4 attached hereto ("Specification 4").

2.6 **Reserved Names**. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the requirements set forth in Specification 5 attached hereto ("Specification 5"). Registry Operator may at any time establish or modify policies concerning Registry Operator's ability to reserve (i.e., withhold from registration or allocate to Registry Operator, but not register to third parties, delegate, use, activate in the DNS or otherwise make available) or block additional character strings within the TLD at its discretion. Except as specified in Specification 5, if Registry Operator is the registrant for any domain names in the registry TLD, such registrations must be through an ICANN accredited registrar, 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.

2.7 **Registry Interoperability and Continuity**. Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6 attached hereto ("Specification 6").

2.8 **Protection of Legal Rights of Third Parties.** Registry Operator must specify, and comply with, the processes and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth Specification 7 attached hereto ("Specification 7"). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

2.9 **Registrars**.

(a)	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. Subject to the requirements of Specification 11, 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 (the "Registry-Registrar Agreement"). Registry Operator may amend the Registry-Registrar Agreement from time to time; provided, however, that any material revisions thereto must be approved 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 <http://www.icann.org/en/resources/registries/rra-amendment-procedure>, and such revisions may not be adopted and implemented until approved by ICANN. Notwithstanding the foregoing provisions of this Section 2.9(a), any change to the Registry-Registrar Agreement that relates exclusively to the fee charged by Registry Operator to register domain names in the TLD will not be subject to the notice and approval process specified in this Section 2.9(a), but will be subject to the requirements in Section 2.10 below.

(b)	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 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). ICANN reserves the right, but not the obligation, to refer any such contract,

related documents, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, related documents, transaction or other arrangement might raise significant competition issues under applicable law. If feasible and appropriate under the circumstances, ICANN will give Registry Operator advance notice prior to making any such referral to a competition authority.

(c)   For the purposes of this Agreement: (i) "Affiliate" means a person or entity that, directly or indirectly, through one or more intermediaries, or in combination with one or more other persons or entities, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

2.10   Pricing for Registry Services.

(a)   With respect to initial domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed the Registry-Registrar Agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one (1) to ten (10) years at the discretion of the registrar, but no greater than ten (10) years.

(b)   With respect to renewal of domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed the Registry-Registrar Agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e., the price

in place prior to any noticed increase) for periods of one (1) to ten (10) years at the discretion of the registrar, but no greater than ten (10) years.

(c)   In addition, Registry Operator must have uniform pricing for renewals of domain name registrations ("Renewal Pricing"). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a "Qualified Marketing Program" is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator's obligations pursuant to Section 2.10(b).

(d)   Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

2.11   Contractual and Operational Compliance Audits.

(a)   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 during regular business hours and 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 reasonably necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than ten (10) calendar 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. ICANN will treat any information obtained in connection with such audits that is appropriately marked as confidential (as required by Section 7.15) as Confidential Information of Registry Operator in accordance with Section 7.15.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% in a given quarter to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of Registry Operator's knowledge of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

2.12 Continued Operations Instrument. Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in Specification 8 attached hereto ("Specification 8").

2.13 Emergency Transition. 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 <http://www.icann.org/en/resources/registries/transition-processes>) (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.

   2.14   Registry Code of Conduct. In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in Specification 9 attached hereto ("Specification 9").

   2.15   Cooperation with Economic Studies. 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 related to the operation of the TLD reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold (a) any internal analyses or evaluations prepared by Registry Operator with respect to such data and (b) any data to the extent that the delivery of such data would be in violation of applicable law. Any data delivered to ICANN or its designee pursuant to this Section 2.15 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 and makes anonymous such data, ICANN or its designee may disclose such data to any third party. 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.

   2.16   Registry Performance Specifications. Registry Performance Specifications for operation of the TLD will be as set forth in Specification 10 attached hereto ("Specification 10"). Registry Operator shall comply with such Performance Specifications and, for a period of at least one (1) year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

2.17   Additional Public Interest Commitments. Registry Operator shall comply with the public interest commitments set forth in Specification 11 attached hereto ("Specification 11").

2.18   Personal Data. Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the Registry-Registrar Agreement for the TLD of the purposes for which data about any identified or identifiable natural person ("Personal Data") submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

ARTICLE 3.

COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

3.1   Open and Transparent. Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2   Equitable Treatment. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.3   TLD Nameservers. ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at http://www.iana.org/domains/root/ will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

3.4   Root-zone Information Publication. ICANN's publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at http://www.iana.org/domains/root/.

3.5   Authoritative Root Database. To the extent that ICANN is authorized to set policy with regard to an authoritative root server system (the "Authoritative Root Server System"), ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly

available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

ARTICLE 4.

TERM AND TERMINATION

4.1   Term. The term of this Agreement will be ten (10) years from the Effective Date (as such term may be extended pursuant to Section 4.2, the "Term").

4.2   Renewal.

(a)   This Agreement will be renewed for successive periods of ten (10) years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

(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 of competent jurisdiction 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 (10) calendar days or such other time period as may be determined by the arbitrator or court of competent jurisdiction; or

(ii)   During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) or a court of competent jurisdiction on at least three (3) separate occasions to have been in (A) fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or (B) breach of its payment obligations under Article 6 of this Agreement.

(b)   Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then-current Term.

4.3   Termination by ICANN.

(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 of competent jurisdiction 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 of competent jurisdiction.

(b)   ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(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 of competent jurisdiction 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 of competent jurisdiction.

(d)   ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) calendar days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any material property of Registry Operator that, if levied, would reasonably be expected to materially and adversely affect Registry Operator's ability to operate the registry for the TLD, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within sixty (60) calendar days of their commencement (if such proceedings are instituted by Registry Operator or its Affiliates) or one hundred and eighty (180) calendar days of their commencement (if such proceedings are instituted by a third party against Registry Operator), or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section

101, et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e)   ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to a determination by any PDDRP panel or RRDRP panel under Section 2 of Specification 7 or a determination by any PICDRP panel under Section 2, Section 3 or any other applicable Section of Specification 11, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f)   ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer who is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g)   ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement as specified in Section 7.5.

4.4   Termination by Registry Operator.

(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 of competent jurisdiction 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 of competent jurisdiction.

(b)   Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

4.5   Transition of Registry upon Termination of Agreement. 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 (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) if Registry Operator demonstrates to ICANN's reasonable satisfaction that (A) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator or its Affiliates for their exclusive use, (B) 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 (C) 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 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 for the maintenance and operation of the TLD, regardless of the reason for termination or expiration of this Agreement.

      4.6   **Effect of Termination**. Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

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ARTICLE 5.

DISPUTE RESOLUTION

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      5.1   **Mediation**. 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:

(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, has no ongoing business relationship with either party 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 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).

(b)   The mediator shall conduct the mediation in accordance with the rules and procedures 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. 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.

(c)   Each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator. Each party shall treat information received from the other party pursuant to the mediation 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.

(d)   If the parties have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, either party or the mediator may terminate the mediation at any time and the dispute can then proceed to arbitration pursuant to Section 5.2 below. If the parties have not resolved the dispute for any reason by the date that is ninety (90) calendar days following the date of the notice delivered pursuant to Section 5.1(a), the mediation shall automatically terminate (unless extended by agreement of the parties) and the dispute can then proceed to arbitration pursuant to Section 5.2 below.

5.2   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 "ICC"). 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, (ii) the parties agree in writing to a greater number of arbitrators, or (iii) the dispute arises under Section 7.6 or

7.7. In the case of clauses (i), (ii) or (iii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party nominating one arbitrator for confirmation by the ICC and the two selected arbitrators nominating the third arbitrator for confirmation by the ICC. For an arbitration in front of a sole arbitrator, Registry Operator and ICANN may, by mutual agreement, nominate the sole arbitrator for confirmation by the ICC. If the parties fail to nominate a sole arbitrator or, in the case of an arbitration in front of three arbitrators, either party fails to nominate an arbitrator, in each case within thirty (30) calendar days from the date when a party's request for arbitration has been received by the other party, or within such additional time as may be allowed by the Secretariat of the Court of the ICC, the arbitrator(s) shall be appointed by the ICC. If any nominated arbitrator is not confirmed by the ICC, the party or persons that appointed such arbitrator shall promptly nominate a replacement arbitrator for confirmation by the ICC. 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 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.

    5.3   **Limitation of Liability**. 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, except with respect to Registry Operator's indemnification obligations pursuant to Section 7.1 and Section 7.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party

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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.

5.4   Specific Performance. 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 of competent jurisdiction specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

ARTICLE 6.

FEES

6.1   Registry-Level Fees.

(a)   Registry Operator shall pay ICANN a registry-level fee equal to (i) the registry fixed fee of US$6,250 per calendar quarter and (ii) the registry-level transaction fee (collectively, the "Registry-Level Fees"). The registry-level transaction fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US$0.25; provided, however that the registry-level transaction fee shall not apply until and unless more than 50,000 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 to each quarter in which the Transaction Threshold has not been met. Registry Operator's obligation to pay the quarterly 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 calendar days between the delegation date and the end of the calendar quarter in which the delegation date falls.

(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.

6.2   Cost Recovery for RSTEP. 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 http://www.icann.org/en/registries/rsep/. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within fourteen (14) calendar 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.

     6.3   **Variable Registry-Level Fee**.

     (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 variable registry-level fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year (the "Variable Registry-Level Fee"). 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 that are party to a Registry-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.

     (b)   The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US$0.25 per domain name registration (including renewals associated with transfers from one ICANN accredited registrar to another) per year.

6.4   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 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.

6.5   Adjustments to Fees. Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then-current fees set forth in Section 6.1 and Section 6.3 may be adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.5 shall be effective as of the first day of the first calendar quarter following at least thirty (30) days after ICANN's delivery to Registry Operator of such fee adjustment notice.

6.6   Additional Fee on Late Payments. For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

6.7   Fee Reduction Waiver. In ICANN's sole discretion, ICANN may reduce the amount of registry fees payable hereunder by Registry Operator for any period of time ("Fee Reduction Waiver"). Any such Fee Reduction Waiver may, as determined by ICANN in its sole discretion, be (a) limited in duration and (b) conditioned upon Registry Operator's acceptance of the terms and conditions set forth in such waiver.   A Fee Reduction Waiver shall not be effective unless executed in writing by ICANN as contemplated by Section 7.6(i). ICANN will provide notice of any Fee Reduction Waiver to Registry Operator in accordance with Section 7.9.

ARTICLE 7.

MISCELLANEOUS

7.1   Indemnification of ICANN.

(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 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 of competent jurisdiction or arbitrator.

(b)   For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator's aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN's total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator's liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN's reasonable satisfaction, such other registry operators' culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence.

    7.2   Indemnification Procedures. If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator's sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN's policies, Bylaws or

conduct. ICANN shall cooperate, at Registry Operator's cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense.

       7.3   **Defined Terms**. For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

       (a)   For the purposes of this Agreement, an effect on "Security" shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

       (b)   For purposes of this Agreement, an effect on "Stability" shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments ("RFCs") sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

       7.4   **No Offset**. All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

       7.5   **Change of Control; Assignment and Subcontracting**. Except as set forth in this Section 7.5, neither party may assign any of its rights and obligations under 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 subcontracting arrangement that relates to any Critical Function (as identified in Section 6 of Specification 10) for the TLD (a "Material Subcontracting Arrangement") shall be deemed an assignment.

(a)   Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any assignment or Material Subcontracting Arrangement, and any agreement to assign or subcontract any portion of the operations of the TLD (whether or not a Material Subcontracting Arrangement) 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.

(b)   Within thirty (30) calendar days of either such notification pursuant to Section 7.5(a), ICANN may request additional information from Registry Operator establishing (i) compliance with this Agreement and (ii) that the party acquiring such control or entering into such assignment or Material Subcontracting Arrangement (in any 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 (including with respect to financial resources and operational and technical capabilities), in which case Registry Operator must supply the requested information within fifteen (15) calendar days.

(c)   Registry Operator agrees that ICANN's consent to any assignment, change of control or Material Subcontracting Arrangement will also be subject to background checks on any proposed Contracting Party (and such Contracting Party's Affiliates).

(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 Material Subcontracting 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, thirty (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 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 an Affiliated Assignee, as that term is defined herein below, upon such Affiliated Assignee's express written

assumption of the terms and conditions of this Agreement, and (iv) ICANN shall be deemed to have consented to any assignment, Material Subcontracting 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. Notwithstanding Section 7.5(a), in the event an assignment is made pursuant to clauses (ii) or (iii) of this Section 7.5(f), the assigning party will provide the other party with prompt notice following any such assignment. For the purposes of this Section 7.5(f), (A) "Affiliated Assignee" means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (B) "control" (including the terms "controlled by" and "under common control with") shall have the same meaning specified in Section 2.9(c) of this Agreement.

7.6   Amendments and Waivers.

(a)   If the ICANN Board of Directors 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 adopt a Special Amendment pursuant to the requirements of and process set forth in this Section 7.6; provided that a Special Amendment may not be a Restricted Amendment.

(b)   Prior to submitting a Special Amendment for Registry Operator Approval, ICANN shall first consult in good faith with the Working Group regarding the form and substance of such 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 proposed amendment to the Applicable Registry Operators in accordance with Section 7.9. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(c)   If, within one hundred eighty (180) calendar days following the expiration of the Posting Period (the "Approval Period"), the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment, but must address the subject 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, such Special Amendment shall be deemed approved (an "Approved Amendment") by the

Applicable Registry Operators, 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 Approved Amendment to Registry Operator (the "Amendment Effective Date"). In the event that a Special Amendment does not receive Registry Operator Approval, the Special Amendment shall be deemed not approved by the Applicable Registry Operators (a "Rejected Amendment"). A Rejected Amendment will have no effect on the terms and conditions of this Agreement, 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.

(f)   Notwithstanding the provisions of Section 7.6(e), a Board Amendment shall not be deemed an Approved Amendment if, during the thirty (30) calendar day period following the approval by the ICANN Board of Directors of the Board Amendment, the

Working Group, on the behalf of the Applicable Registry Operators, submits to the ICANN Board of Directors an alternative to the Board Amendment (an "Alternative Amendment") that meets the following 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 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) calendar 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 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.

(h)   Registry Operator 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 the date ICANN provided notice to Registry Operator of such Approved 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(j), 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 Exemption 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.

(i)   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.

(j)   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 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, at the prevailing exchange rate published the prior day in the U.S. Edition of the Wall Street Journal for the date such calculation is made by ICANN) 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: (A) an amendment of Specification 1, (B) 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, (C) an amendment to

the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (D) 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.

(v)   "Working Group" means representatives of the Applicable Registry Operators and other members of the community that the Registry Stakeholders Group 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(i)).

(k)   Notwithstanding anything in this Section 7.6 to the contrary, (i) 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 (ii) 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).

7.7   Negotiation Process.

(a)   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.

(b)   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").

(c)   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 "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, who has no ongoing business relationship with either party 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, 2.2, 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; 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 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.

(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.

(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).

7.8   No Third-Party Beneficiaries. This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

7.9   General Notices. Except for notices pursuant to Sections 7.6 and 7.7, 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 Sections 7.6 and 7.7 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. Other than notices under Sections 7.6 or 7.7, 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 electronic mail shall be followed by a copy sent by regular postal mail service within three (3) calendar days. Any notice required by Sections 7.6 or 7.7 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.

> If to ICANN, addressed to:
> Internet Corporation for Assigned Names and Numbers
> 12025 Waterfront Drive, Suite 300
> Los Angeles, CA 90094-2536
> USA
> Telephone: +1-310-301-5800
> Facsimile: +1-310-823-8649
> Attention: President and CEO
>
> With a Required Copy to: General Counsel
> Email: (As specified from time to time.)
>
> If to Registry Operator, addressed to:
> Afilias Limited
> 4th Floor, International House
> 3 Harbourmaster Place
> IFSC
> Dublin D01 K8F1
> Ireland
> Attn: CEO

With a Required Copy to: General Counsel
Telephone: +353.1.854.1100
Facsimile: +353.1.791.8569
Email: (As specified from time to time.)

7.10 Entire Agreement. This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

7.11 English Language Controls. Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

7.12 Ownership Rights. Nothing contained in this Agreement shall be construed as (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.

7.13 Severability; Conflicts with Laws. 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. 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.

7.14 Court Orders. ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement

7.15 Confidentiality

(a)   Subject to Section 7.15(c), during the Term and for a period of three (3) 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.

(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.

(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.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
           Cyrus Namazi
           Senior Vice President, Global Domains Division

AFILIAS LIMITED

By: _____
           Huw Spiers
           Chief Financial Officer

EXHIBIT A

Approved Services

The ICANN gTLD Applicant Guidebook (located at http://newgtlds.icann.org/en/applicants/agb) and the RSEP specify processes for consideration of proposed registry services. Registry Operator may provide any service that is required by the terms of this Agreement. In addition, the following services (if any) are specifically identified as having been approved by ICANN prior to the effective date of the Agreement, and Registry Operator may provide such services:

1. **DNS Service – TLD Zone Contents**

Notwithstanding anything else in this Agreement, as indicated in section 2.2.3.3 of the gTLD Applicant Guidebook, permissible contents for the TLD's DNS service are:

1.1. For the "Internet" (IN) Class:

    1.1.1. Apex SOA record

    1.1.2. Apex NS records and in-bailiwick glue for the TLD's DNS servers

    1.1.3. NS records and in-bailiwick glue for DNS servers of registered names in the TLD

    1.1.4. DS records for registered names in the TLD

    1.1.5. Records associated with signing the TLD zone (e.g., RRSIG, DNSKEY, NSEC, NSEC3PARAM and NSEC3)

    1.1.6. Apex TXT record for zone versioning purposes

    1.1.7. Apex TYPE65534 record for automatic dnssec signing signaling

1.2. For the "Chaos" (CH) Class:

    1.2.1. TXT records for server version/identification (e.g., TXT records for "version.bind.", "id.server.", "authors.bind" and/or "hostname.bind.")

(Note: The above language effectively does not allow, among other things, the inclusion of DNS resource records that would enable a dotless domain name (e.g., apex A, AAAA, MX records) in the TLD zone.)

If Registry Operator wishes to place any DNS resource record type or class into its TLD DNS service (other than those listed in Sections 1.1 or 1.2 above), it must describe in detail its

proposal and submit a Registry Services Evaluation Process (RSEP) request. This will be evaluated per RSEP to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Registry Operator recognizes and acknowledges that a service based on the use of less-common DNS resource records and/or classes in the TLD zone, even if approved, might not work as intended for all users due to lack of software support.

2. **Anti-Abuse**

Registry Operator may suspend, delete or otherwise make changes to domain names in compliance with its anti-abuse policy.

3. **Implementation Period**

Registry Operator will have a 270 calendar days grace period, beginning on the Effective Date, to work with ICANN and backend providers to ensure that all technical operations and obligations have transitioned from the previous registry agreement for the TLD to this Registry Agreement.

4. **Registry Lock**

Registry Operator may offer the Registry Lock service, which is a registry service that allows an authorized representative from the sponsoring Registrar to request the activation or deactivation of any of the following EPP statuses: serverUpdateProhibited, serverDeleteProhibited and/or serverTransferProhibited.

5. **Bulk Transfer After Partial Portfolio Acquisition**

Bulk Transfer After Partial Portfolio Acquisition ("BTAPPA") is a registry service available to consenting registrars in the circumstance where (i) one ICANN-accredited registrar purchases, by means of a stock or asset purchase, merger or similar transaction, a portion but not all, of another ICANN-accredited registrar's domain name portfolio in the TLD or (ii) a newly accredited registrar (gaining registrar) requests a transfer of all domain names from the losing registrar for which the gaining registrar has served as the reseller. Upon completion of the transfer, the gaining registrar is the new sponsoring registrar. The gaining registrar must certify the BTAPPA would not otherwise qualify under ICANN's Transfer Policy.

At least fifteen days before completing a BTAPPA, the losing registrar must provide written notice of the bulk change of sponsorship to all domain name registrants for names involved in the BTAPPA. The notice must include an explanation of how the RDDS record will change after the BTAPPA occurs and customer support and technical contact information of the gaining registrar.

The losing registrar's existing Registration Agreement with customers must permit the transfer of domain names in the event of acquisition by another party. A single BTAPPA

request may be submitted for transfers from multiple losing registrars provided they are Affiliated Registrars as defined by the 2013 or subsequent Registrar Accreditation Agreement.

The expiration dates of transferred registrations are not affected and, therefore, there are no ICANN fees. Once the BTAPPA is complete, there is no grace period to reverse the transfer.

Domain names in the following EPP statuses at the time of the BTAPPA execution shall not be transferred:

- Base statuses: pendingTransfer, pendingDelete.
- Redemption Grace Period ("RGP") statuses: redemptionPeriod, pendingRestore, pendingDelete.

Domain names that are within a grace period window are subject to BTAPPA, but Registry Operator may decline to provide a credit for those names deleted after the BTAPPA and prior to the expiration of the applicable grace period window.

Registry Operator must reject a BTAPPA request if there is reasonable evidence that a transfer under BTAPPA is being requested in order to avoid fees otherwise due to Registry Operator or ICANN. Registry Operator has discretion to reject a BTAPPA request if a registrar with common ownership or management or both has already requested BTAPPA service within the preceding six-month period.

6. Whois Contact Lookup

Registry Operator may offer the Whois contact lookup service, which is a service that extends the functionality specified in Specification 4 by allowing the end-user to look up for Contact data using the contact ROID as the lookup key:

> *Query format*: whois "contact 5372809-ERL"

> *Response format*:

>> Contact ID: 5372808-ERL
>> Name: EXAMPLE REGISTRANT
>> Organization: EXAMPLE ORGANIZATION
>> Street: 123 EXAMPLE STREET
>> City: ANYTOWN
>> State/Province: AP
>> Postal Code: A1A1A1
>> Country: EX
>> Phone: +1.5555551212
>> Phone Ext: 1234
>> Fax: +1.5555551213

Fax Ext: 4321
Email: EMAIL@EXAMPLE.TLD
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

7. Internationalized Domain Names (IDNs)

Registry Operator may offer registration of IDNs at the second and lower levels provided that Registry Operator complies with the following requirements:

7.1   Registry Operator must offer Registrars support for handling IDN registrations in EPP.

7.2   Registry Operator must handle variant IDNs as follows:

7.2.1   By default variant IDNs (as defined in the Registry Operator's IDN tables and IDN Registration Rules) must be blocked from registration.

7.2.2   Variant IDNs may be activated when requested by the sponsoring Registrar of the canonical name as described in the IDN Tables and IDN Registration Rules.

7.2.3   Active variant IDNs must be provisioned in the TLD's DNS zone file as zone cuts using the same NS resource records as the canonical name.

7.3   Registry Operator may offer registration of IDNs in the following languages/scripts (IDN Tables and IDN Registration Rules will be published by the Registry Operator as specified in the ICANN IDN Implementation Guidelines):

7.3.1   Arabic language

7.3.2   Belarusian language

7.3.3   Bosnian language

7.3.4   Bulgarian language

7.3.5   Chinese (Simplified) language

7.3.6   Chinese (Traditional) language

7.3.7   Danish language

7.3.8   Finnish language

7.3.9   French language

7.3.10 German language

7.3.11 Hindi language

7.3.12 Hungarian language

7.3.13 Icelandic language

7.3.14 Italian language

7.3.15 Korean language

7.3.16 Latvian language

7.3.17 Lithuanian language

7.3.18 Macedonian language

7.3.19 Montenegrin language

7.3.20 Polish language

7.3.21 Portuguese language

7.3.22 Russian language

7.3.23 Serbian language

7.3.24 Spanish language

7.3.25 Swedish language

7.3.26 Ukrainian language

8. Registration Validation per Applicable Law

Registry Operator may perform registration validation to comply with applicable local law in a given jurisdiction. The registration validation process, by which the Registry Operator subjects domain name registrations to validation, will be subject to the criteria required by the applicable local law in the jurisdiction. Domain names that are subject to the registration validation process in the subject jurisdiction that do not pass registration validation in that jurisdiction may be suspended, deleted or otherwise updated by the Registry Operator as required by applicable local law.

SPECIFICATION 1

CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

1. **Consensus Policies**.

   1.1. "***Consensus Policies***" are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this Specification. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.

   1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:

       1.2.1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System ("DNS");

       1.2.2 functional and performance specifications for the provision of Registry Services;

       1.2.3 Security and Stability of the registry database for the TLD;

       1.2.4 registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;

       1.2.5 resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or

       1.2.6 restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.

   1.3. Such categories of issues referred to in Section 1.2 of this Specification shall include, without limitation:

       1.3.1 principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);

       1.3.2 prohibitions on warehousing of or speculation in domain names by registries or registrars;

1.3.3 reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and

1.3.4 maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.

1.4. In addition to the other limitations on Consensus Policies, they shall not:

1.4.1 prescribe or limit the price of Registry Services;

1.4.2 modify the terms or conditions for the renewal or termination of the Registry Agreement;

1.4.3 modify the limitations on Temporary Policies (defined below) or Consensus Policies;

1.4.4 modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or

1.4.5 modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.

2. **Temporary Policies**. Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("***Temporary Policies***").

2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.

2.1.1 ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why

the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.

2.1.2   If the period of time for which the Temporary Policy is adopted exceeds ninety (90) calendar days, the Board shall reaffirm its temporary adoption every ninety (90) calendar days for a total period not to exceed one (1) year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one (1) year period expires or, if during such one (1) year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.

3.   **Notice and Conflicts**. Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Polices or Temporary Policy shall control, but only with respect to subject matter in conflict.

SPECIFICATION 2

DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent ("***Escrow Agent***") for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

PART A – TECHNICAL SPECIFICATIONS

1. **Deposits**. There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.

    1.1. "**Full Deposit**" will consist of data that reflects the state of the registry as of 00:00:00 UTC (Coordinated Universal Time) on the day that such Full Deposit is submitted to Escrow Agent.

    1.2. "**Differential Deposit**" means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., all additions, modifications or removals of data).

2. **Schedule for Deposits**. Registry Operator will submit a set of escrow files on a daily basis as follows:

    2.1. Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.

    2.2. The other six (6) days of the week, a Full Deposit or the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.

3. **Escrow Format Specification**.

    3.1. **Deposit's Format**. Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see Part A, Section 9, reference 1 of this Specification and draft-arias-noguchi-dnrd-objects-mapping, see Part A, Section 9, reference 2 of this Specification (collectively, the "DNDE Specification"). The DNDE Specification describes some elements as

optional; Registry Operator will include those elements in the Deposits if they are available. If not already an RFC, Registry Operator will use the most recent draft version of the DNDE Specification available at the Effective Date. Registry Operator may at its election use newer versions of the DNDE Specification after the Effective Date. Once the DNDE Specification is published as an RFC, Registry Operator will implement that version of the DNDE Specification, no later than one hundred eighty (180) calendar days after. UTF-8 character encoding will be used.

3.2. **Extensions**. If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional "extension schemas" shall be defined in a case by case basis to represent that data. These "extension schemas" will be specified as described in Part A, Section 9, reference 2 of this Specification. Data related to the "extensions schemas" will be included in the deposit file described in Part A, Section 3.1 of this Specification. ICANN and the respective Registry Operator shall work together to agree on such new objects' data escrow specifications.

4. **Processing of Deposit files**. The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see Part A, Section 9, reference 3 of this Specification. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see Part A, Section 9, reference 4 of this Specification, that are also royalty-free. The process to follow for the data file in original text format is:

(1) The XML file of the deposit as described in Part A, Section 9, reference 1 of this Specification must be named as the containing file as specified in Section 5 but with the extension xml.

(2) The data file(s) are aggregated in a tarball file named the same as (1) but with extension tar.

(3) A compressed and encrypted OpenPGP Message is created using the tarball file as sole input. The suggested algorithm for compression is ZIP as per RFC 4880. The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.

(4) The file may be split as necessary if, once compressed and encrypted, it is larger than the file size limit agreed with the escrow agent. Every part of a

split file, or the whole file if not split, will be called a processed file in this section.

(5) A digital signature file will be generated for every processed file using the Registry Operator's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 Section 9, reference 3, and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.

(6) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.

(7) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in Part A, Section 8 of this Specification.

5. **File Naming Conventions**. Files will be named according to the following convention: {gTLD}_{YYYY-MM-DD}_{type}_S{#}_R{rev}.{ext} where:

5.1. {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;

5.2. {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";

5.3. {type} is replaced by:

(1) "full", if the data represents a Full Deposit;

(2) "diff", if the data represents a Differential Deposit;

(3) "thin", if the data represents a Bulk Registration Data Access file, as specified in Section 3 of Specification 4;

(4) "thick-{gurid}", if the data represent Thick Registration Data from a specific registrar, as defined in Section 3.2 of Specification 4. The {gurid} element must be replaced with the IANA Registrar ID associated with the data.

5.4. {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".

5.5.   {rev} is replaced by the number of revision (or resend) of the file beginning with "0":

5.6.   {ext} is replaced by "sig" if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by "ryde".

6.   **Distribution of Public Keys**. Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry Operator and ICANN will exchange public keys by the same procedure.

7.   **Notification of Deposits**. Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN (using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification (the "Interface Specification")) a written statement from Registry Operator (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. The preparation and submission of this statement must be performed by the Registry Operator or its designee, provided that such designee may not be the Escrow Agent or any of Escrow Agent's Affiliates. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in Part A, Section 9, reference 1 of this Specification.

If not already an RFC, Registry Operator will use the most recent draft version of the Interface Specification at the Effective Date. Registry Operator may at its election use newer versions of the Interface Specification after the Effective Date. Once the Interface Specification is published as an RFC, Registry Operator will implement that version of the Interface Specification, no later than one hundred eighty (180) calendar days after such publishing.

8.   **Verification Procedure**.

(1)   The signature file of each processed file is validated.

(2)   If processed files are pieces of a bigger file, the latter is put together.

(3)   Each file obtained in the previous step is then decrypted and uncompressed.

(4)   Each data file contained in the previous step is then validated against the format defined in Part A, Section 9, reference 1 of this Specification.

(5)   The data escrow agent extended verification process, as defined below in reference 2 of Part A of this Specification 2, as well as any other data escrow verification process contained in such reference.

If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.

9.   **References**.

(1)   Domain Name Data Escrow Specification (work in progress), http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow

(2)   Domain Name Registration Data (DNRD) Objects Mapping, http://tools.ietf.org/html/draft-arias-noguchi-dnrd-objects-mapping

(3)   OpenPGP Message Format, http://www.rfc-editor.org/rfc/rfc4880.txt

(4)   OpenPGP parameters, http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml

(5)   ICANN interfaces for registries and data escrow agents, http://tools.ietf.org/html/draft-lozano-icann-registry-interfaces

PART B – LEGAL REQUIREMENTS

1. **Escrow Agent**. Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendments thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated as a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.

2. **Fees**. Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within fifteen (15) calendar days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.

3. **Ownership**. Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed to ICANN or to a party designated in writing by ICANN on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis, for any use related to the operation, maintenance or transition of the TLD.

4. **Integrity and Confidentiality**. Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one (1) year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow

sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5.   **Copies**. Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.

6.   **Release of Deposits**. Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four (24) hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:

6.1.   the Registry Agreement has expired without renewal, or been terminated; or

6.2.   ICANN has not received a notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent within five (5) calendar days after the Deposit's scheduled delivery date; (a) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (b) ICANN has not, within seven (7) calendar days after such notice, received the notification from Escrow Agent; or

6.3.   ICANN has received notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent of failed verification of the latest escrow deposit for a specific date or a notification of a missing deposit, and the notification is for a deposit that should have been made on Sunday (i.e., a Full Deposit); (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven (7) calendar days after such notice, received notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent of verification of a remediated version of such Full Deposit; or

6.4.   ICANN has received five notifications from Escrow Agent within the last thirty (30) calendar days notifying ICANN of either missing or failed escrow deposits that should have been made Monday through Saturday (i.e., a Differential Deposit), and (x) ICANN provided notice to Registry Operator of the receipt of such notifications; and (y) ICANN has not, within seven (7) calendar days after delivery of such notice to Registry Operator, received notification from Escrow Agent of verification of a remediated version of such Differential Deposit; or

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6.5.   Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or

6.6.   Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Agreement; or

6.7.   a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN; or

6.8.   pursuant to Contractual and Operational Compliance Audits as specified under Section 2.11 of the Agreement.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon expiration or termination of the Registry Agreement or the Escrow Agreement.

7.   **Verification of Deposits**.

7.1.   Within twenty-four (24) hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a notification generated for each Deposit. Reports will be delivered electronically using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification.

7.2.   If Escrow Agent discovers that any Deposit fails the verification procedures or if Escrow Agent does not receive any scheduled Deposit, Escrow Agent must notify Registry Operator either by email, fax or phone and ICANN (using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification) of such nonconformity or non-receipt within twenty-four (24) hours after receiving the non-conformant Deposit or the deadline for such Deposit, as applicable. Upon notification of such verification or delivery failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to be delivered and pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.

8.   **Amendments**. Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.

9.   **Indemnity**. Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members,

and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

SPECIFICATION 3

FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD, using the API described in draft-lozano-icann-registry-interfaces, see Specification 2, Part A, Section 9, reference 5, with the following content.

ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three (3) months after the end of the month to which the reports relate. Unless set forth in this Specification 3, any reference to a specific time refers to Coordinated Universal Time (UTC). Monthly reports shall consist of data that reflects the state of the registry at the end of the month (UTC).

1. **Per-Registrar Transactions Report**. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named "gTLD-transactions-yyyymm.csv", where "gTLD" is the gTLD name; in case of an IDN-TLD, the A-label shall be used; "yyyymm" is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field name	Description
01	registrar-name	Registrar's full corporate name as registered with IANA
02	iana-id	For cases where the registry operator acts as registrar (i.e., without the use of an ICANN accredited registrar) either 9998 or 9999 should be used depending on registration type (as described in Specification 5), otherwise the sponsoring Registrar IANA id should be used as specified in http://www.iana.org/assignments/registrar-ids
03	total-domains	total domain names under sponsorship in any EPP status but pendingCreate that have not been purged
04	total-nameservers	total name servers (either host objects or name server hosts as domain name attributes) associated with domain names registered for the TLD in any EPP status but pendingCreate that have not been purged
05	net-adds-1-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of one (1) year (and not deleted within the

		add grace period). A transaction must be reported in the month the add grace period ends.
06	net-adds-2-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of two(2) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
07	net-adds-3-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of three (3) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
08	net-adds-4-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of four (4) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
09	net-adds-5-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of five (5) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
10	net-adds-6-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of six (6) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
11	net-adds-7-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of seven (7) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
12	net-adds-8-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of eight (8) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
13	net-adds-9-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of nine (9) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.

14	net-adds-10-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of ten (10) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
15	net-renews-1-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of one (1) year (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
16	net-renews-2-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of two (2) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
17	net-renews-3-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of three (3) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
18	net-renews-4-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of four (4) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
19	net-renews-5-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of five (5) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
20	net-renews-6-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of six

21	net-renews-7-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of seven (7) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
		(6) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
21	net-renews-7-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of seven (7) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
22	net-renews-8-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of eight (8) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
23	net-renews-9-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of nine (9) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
24	net-renews-10-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of ten (10) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
25	transfer-gaining-successful	number of domain transfers initiated by this registrar that were successfully completed (either explicitly or automatically approved) and not deleted within the transfer grace period. A transaction must be reported in the month the transfer grace period ends.
26	transfer-gaining-nacked	number of domain transfers initiated by this registrar that were rejected (e.g., EPP transfer op="reject") by the other registrar

27	transfer-losing-successful	number of domain transfers initiated by another registrar that were successfully completed (either explicitly or automatically approved)
28	transfer-losing-nacked	number of domain transfers initiated by another registrar that this registrar rejected (e.g., EPP transfer op="reject")
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed (reported in the month where the determination happened)
30	transfer-disputed-lost	number of transfer disputes this registrar lost (reported in the month where the determination happened)
31	transfer-disputed-nodecision	number of transfer disputes involving this registrar with a split or no decision (reported in the month where the determination happened)
32	deleted-domains-grace	domains deleted within the add grace period (does not include names deleted while in EPP pendingCreate status). A deletion must be reported in the month the name is purged.
33	deleted-domains-nograce	domains deleted outside the add grace period (does not include names deleted while in EPP pendingCreate status). A deletion must be reported in the month the name is purged.
34	restored-domains	domain names restored during reporting period
35	restored-noreport	total number of restored names for which a restore report is required by the registry, but the registrar failed to submit it
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (both successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a "header line" as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read "Totals" while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

2. **Registry Functions Activity Report**. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named "gTLD-activity-yyyymm.csv", where "gTLD" is the gTLD name; in case of an IDN-TLD, the A-label shall be used; "yyyymm" is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars in the production system at the end of the reporting period
02	zfa-passwords	number of active zone file access passwords at the end of the reporting period; "CZDS" may be used instead of the number of active zone file access passwords, if the Centralized Zone Data Service (CZDS) is used to provide the zone file to the end user
03	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
04	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
05	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
06	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
07	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
08	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
09	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
10	srs-dom-check	number of SRS (EPP and any other interface) domain name "check" requests responded during the reporting period
11	srs-dom-create	number of SRS (EPP and any other interface) domain name "create" requests responded during the reporting period

Field #	Field Name	Description
12	srs-dom-delete	number of SRS (EPP and any other interface) domain name "delete" requests responded during the reporting period
13	srs-dom-info	number of SRS (EPP and any other interface) domain name "info" requests responded during the reporting period
14	srs-dom-renew	number of SRS (EPP and any other interface) domain name "renew" requests responded during the reporting period
15	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP "restore" requests delivering a restore report responded during the reporting period
16	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP "restore" requests responded during the reporting period
17	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name "transfer" requests to approve transfers responded during the reporting period
18	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name "transfer" requests to cancel transfers responded during the reporting period
19	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name "transfer" requests to query about a transfer responded during the reporting period
20	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name "transfer" requests to reject transfers responded during the reporting period
21	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name "transfer" requests to request transfers responded during the reporting period
22	srs-dom-update	number of SRS (EPP and any other interface) domain name "update" requests (not including RGP restore requests) responded during the reporting period

Field #	Field Name	Description
23	srs-host-check	number of SRS (EPP and any other interface) host "check" requests responded during the reporting period
24	srs-host-create	number of SRS (EPP and any other interface) host "create" requests responded during the reporting period
25	srs-host-delete	number of SRS (EPP and any other interface) host "delete" requests responded during the reporting period
26	srs-host-info	number of SRS (EPP and any other interface) host "info" requests responded during the reporting period
27	srs-host-update	number of SRS (EPP and any other interface) host "update" requests responded during the reporting period
28	srs-cont-check	number of SRS (EPP and any other interface) contact "check" requests responded during the reporting period
29	srs-cont-create	number of SRS (EPP and any other interface) contact "create" requests responded during the reporting period
30	srs-cont-delete	number of SRS (EPP and any other interface) contact "delete" requests responded during the reporting period
31	srs-cont-info	number of SRS (EPP and any other interface) contact "info" requests responded during the reporting period
32	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact "transfer" requests to approve transfers responded during the reporting period
33	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact "transfer" requests to cancel transfers responded during the reporting period
34	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact "transfer" requests to query about a transfer responded during the reporting period
35	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact "transfer" requests to reject transfers responded during the reporting period

Field #	Field Name	Description
36	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact "transfer" requests to request transfers responded during the reporting period
37	srs-cont-update	number of SRS (EPP and any other interface) contact "update" requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a "header line" as described in section 2 of RFC 4180. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

For gTLDs that are part of a single-instance Shared Registry System, the Registry Functions Activity Report may include the total contact or host transactions for all the gTLDs in the system.

SPECIFICATION 4

REGISTRATION DATA PUBLICATION SERVICES

1. **Registration Data Directory Services**. Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

   Registry Operator shall implement a new standard supporting access to domain name registration data (SAC 051) no later than one hundred thirty-five (135) days after it is requested by ICANN if: 1) the IETF produces a standard (i.e., it is published, at least, as a Proposed Standard RFC as specified in RFC 2026); and 2) its implementation is commercially reasonable in the context of the overall operation of the registry.

   1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.

   1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.

   1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

   1.4. The fields specified below set forth the minimum output requirements. Registry Operator may output data fields in addition to those specified below, subject to approval by ICANN, which approval shall not be unreasonably withheld.

   1.5. **Domain Name Data:**

      1.5.1 **Query format:** whois EXAMPLE.TLD

      1.5.2 **Response format:**

      Domain Name: EXAMPLE.TLD
      Domain ID: D1234567-TLD

WHOIS Server: whois.example.tld
Referral URL: http://www.example.tld
Updated Date: 2009-05-29T20:13:00Z
Creation Date: 2000-10-08T00:45:00Z
Registry Expiry Date: 2010-10-08T00:44:59Z
Sponsoring Registrar: EXAMPLE REGISTRAR LLC
Sponsoring Registrar IANA ID: 5555555
Domain Status: clientDeleteProhibited
Domain Status: clientRenewProhibited
Domain Status: clientTransferProhibited
Domain Status: serverUpdateProhibited
Registrant ID: 5372808-ERL
Registrant Name: EXAMPLE REGISTRANT
Registrant Organization: EXAMPLE ORGANIZATION
Registrant Street: 123 EXAMPLE STREET
Registrant City: ANYTOWN
Registrant State/Province: AP
Registrant Postal Code: A1A1A1
Registrant Country: EX
Registrant Phone: +1.5555551212
Registrant Phone Ext: 1234
Registrant Fax: +1.5555551213
Registrant Fax Ext: 4321
Registrant Email: EMAIL@EXAMPLE.TLD
Admin ID: 5372809-ERL
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION
Admin Street: 123 EXAMPLE STREET
Admin City: ANYTOWN
Admin State/Province: AP
Admin Postal Code: A1A1A1
Admin Country: EX
Admin Phone: +1.5555551212
Admin Phone Ext: 1234
Admin Fax: +1.5555551213
Admin Fax Ext:
Admin Email: EMAIL@EXAMPLE.TLD
Tech ID: 5372811-ERL
Tech Name: EXAMPLE REGISTRAR TECHNICAL
Tech Organization: EXAMPLE REGISTRAR LLC
Tech Street: 123 EXAMPLE STREET
Tech City: ANYTOWN
Tech State/Province: AP
Tech Postal Code: A1A1A1
Tech Country: EX
Tech Phone: +1.1235551234

Tech Phone Ext: 1234
Tech Fax: +1.5555551213
Tech Fax Ext: 93
Tech Email: EMAIL@EXAMPLE.TLD
Name Server: NS01.EXAMPLEREGISTRAR.TLD
Name Server: NS02.EXAMPLEREGISTRAR.TLD
DNSSEC: signedDelegation
DNSSEC: unsigned
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.6. **Registrar Data:**

1.6.1 **Query format**: whois "registrar Example Registrar, Inc."

1.6.2 **Response format**:

Registrar Name: Example Registrar, Inc.
Street: 1234 Admiralty Way
City: Marina del Rey
State/Province: CA
Postal Code: 90292
Country: US
Phone Number: +1.3105551212
Fax Number: +1.3105551213
Email: registrar@example.tld
WHOIS Server: whois.example-registrar.tld
Referral URL: http://www.example-registrar.tld
Admin Contact: Joe Registrar
Phone Number: +1.3105551213
Fax Number: +1.3105551213
Email: joeregistrar@example-registrar.tld
Admin Contact: Jane Registrar
Phone Number: +1.3105551214
Fax Number: +1.3105551213
Email: janeregistrar@example-registrar.tld
Technical Contact: John Geek
Phone Number: +1.3105551215
Fax Number: +1.3105551216
Email: johngeek@example-registrar.tld
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. **Nameserver Data:**

1.7.1 **Query format**: whois "nameserver (nameserver name)", or whois "nameserver (IP Address)." For example: whois "nameserver NS1.EXAMPLE.TLD".

1.7.2 **Response format:**

> Server Name: NS1.EXAMPLE.TLD
> IP Address: 192.0.2.123
> IP Address: 2001:0DB8::1
> Registrar: Example Registrar, Inc.
> WHOIS Server: whois.example-registrar.tld
> Referral URL: http://www.example-registrar.tld
> >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.8. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers (the extension will be provided as a separate field as shown above), email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

1.9. In order to be compatible with ICANN's common interface for WHOIS (InterNIC), WHOIS output shall be in the format outline above.

1.10. **Searchability**. Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.

1.10.1 Registry Operator will offer searchability on the web-based Directory Service.

1.10.2 Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).

1.10.3 Registry Operator will offer exact-match capabilities, at least, on the following fields: Registrar ID, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).

1.10.4 Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.

1.10.5 Search results will include domain names matching the search criteria.

1.10.6 Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate

authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

1.11. Registry Operator shall provide a link on the primary website for the TLD (i.e., the website provided to ICANN for publishing on the ICANN website) to a web page designated by ICANN containing WHOIS policy and educational materials.

2.   Zone File Access

2.1.   Third-Party Access

2.1.1   **Zone File Access Agreement**. Registry Operator will enter into an agreement with any Internet user, which will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider, which may be ICANN or an ICANN designee (the "CZDA Provider"). Registry Operator (optionally through the CZDA Provider) will provide access to zone file data per Section 2.1.3 of this Specification and do so using the file format described in Section 2.1.4 of this Specification. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 below or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5 below.

2.1.2   **Credentialing Requirements**. Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address and IP address.

2.1.3   **Grant of Access**. Each Registry Operator (optionally through the CZDA Provider) will provide the Zone File SFTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry's zone data archives. Registry Operator will grant the user a non-exclusive, nontransferable, limited right to access Registry Operator's (optionally CZDA Provider's) Zone File hosting server, and to transfer

a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using SFTP, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator (or the CZDA Provider) also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4 **File Format Standard**. Registry Operator (optionally through the CZDA Provider) will provide zone files using a subformat of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.

2. Class and Type must use the standard mnemonics and must be in lower case.

3. TTL must be present as a decimal integer.

4. Use of \X and \DDD inside domain names is allowed.

5. All domain names must be in lower case.

6. Must use exactly one tab as separator of fields inside a record.

7. All domain names must be fully qualified.

8. No $ORIGIN directives.

9. No use of "@" to denote current origin.

10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.

11. No $INCLUDE directives.

12. No $TTL directives.

13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.

14. No use of comments.

15. No blank lines.

16. The SOA record should be present at the top and (duplicated at) the end of the zone file.

17. With the exception of the SOA record, all the records in a file must be in alphabetical order.

18. One zone per file. If a TLD divides its DNS data into multiple zones, each zone goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

2.1.5 **Use of Data by User**. Registry Operator will permit user to use the zone file for lawful purposes; provided that (a) user takes all reasonable steps to protect against unauthorized access to, use of, and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to (i) allow, enable or otherwise support any marketing activities to entities other than the user's existing customers, regardless of the medium used (such media include but are not limited to transmission by e-mail, telephone, facsimile, postal mail, SMS, and wireless alerts of mass unsolicited, commercial advertising or solicitations to entities), (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar, or (iii) interrupt, disrupt or interfere in the normal business operations of any registrant.

2.1.6 **Term of Use**. Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

2.1.7 **No Fee for Access**. Registry Operator will provide, and CZDA Provider will facilitate, access to the zone file to user at no cost.

2.2. **Co-operation**

2.2.1 **Assistance**. Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

2.3. **ICANN Access**. Registry Operator shall provide bulk access to the zone files for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time. Access will be provided at least daily. Zone files will include SRS data committed as close as possible to 00:00:00 UTC.

2.4.   **Emergency Operator Access**. Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

3.   **Bulk Registration Data Access to ICANN**

3.1.   **Periodic Access to Thin Registration Data**. In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

3.1.1   **Contents**. Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), Registrar ID (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar id (IANA ID), hostname of registrar Whois server, and URL of registrar.

3.1.2   **Format**. The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.

3.1.3   **Access**. Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

3.2.   **Exceptional Access to Thick Registration Data**. In case of a registrar failure, deaccreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data as soon as commercially practicable, but in no event later than five (5) calendar days following ICANN's request. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for

download by ICANN in the same manner as the data specified in Section 3.1 of this Specification.

SPECIFICATION 5

SCHEDULE OF RESERVED NAMES

Except to the extent that ICANN otherwise expressly authorizes in writing, and subject to the terms and conditions of this Specification, Registry Operator shall reserve the following labels from initial (i.e., other than renewal) registration within the TLD. If using self-allocation, the Registry Operator must show the registration in the RDDS. In the case of IDN names (as indicated below), IDN variants will be identified according to the registry operator IDN registration policy, where applicable.

1.   **Example.** The ASCII label "EXAMPLE" shall be withheld from registration or allocated to Registry Operator at the second level and at all other levels within the TLD at which Registry Operator offers registrations (such second level and all other levels are collectively referred to herein as, "All Levels"). Such label may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, such withheld or allocated label shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such name without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

2.   **Two-character labels**. All two-character ASCII labels shall be withheld from registration or allocated to Registry Operator at the second level within the TLD. Such labels may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator, provided that such two-character label strings may be released to the extent that Registry Operator reaches agreement with the related government and country-code manager of the string as specified in the ISO 3166-1 alpha-2 standard. The Registry Operator may also propose the release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes, subject to approval by ICANN. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such labels that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

3.   **Reservations for Registry Operations**.

     3.1.   The following ASCII labels must be withheld from registration or allocated to Registry Operator at All Levels for use in connection with the operation of the registry for the TLD: WWW, RDDS and WHOIS. The following ASCII label must be allocated to Registry Operator upon delegation into the root zone at All Levels for use in connection with the operation of the registry for the TLD: NIC. Registry Operator may activate WWW, RDDS and WHOIS in the DNS,

but must activate NIC in the DNS, as necessary for the operation of the TLD (in accordance with the provisions of Exhibit A, the ASCII label NIC must be provisioned in the DNS as a zone cut using NS resource records). None of WWW, RDDS, WHOIS or NIC may be released or registered to any person (other than Registry Operator) or third party. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD all such withheld or allocated names shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement. Such domains shall be identified by Registrar ID 9999.

3.1.1   If Exhibit A to the Agreement specifically provides that Registry Operator may offer registration of IDNs, Registry Operator may also activate a language-specific translation or transliteration of the term "NIC" or an abbreviation for the translation of the term "Network Information Center" in the DNS in accordance with Registry Operator's IDN Tables and IDN Registration Rules. Such translation, transliteration or abbreviation may be reserved by Registry Operator and used in addition to the label NIC to provide any required registry functions. For the avoidance of doubt, Registry Operator is required to activate the ASCII label NIC pursuant to Section 3.1 of this Specification 3.

3.2.   Registry Operator may activate in the DNS at All Levels up to one hundred (100) names (plus their IDN variants, where applicable) necessary for the operation or the promotion of the TLD. Registry Operator must act as the Registered Name Holder of such names as that term is defined in the then-current ICANN Registrar Accreditation Agreement (RAA). These activations will be considered Transactions for purposes of Section 6.1 of the Agreement. Registry Operator must either (i) register such names through an ICANN accredited registrar; or (ii) self-allocate such names and with respect to those names submit to and be responsible to ICANN for compliance with ICANN Consensus Policies and the obligations set forth in Subsections 3.7.7.1 through 3.7.7.12 of the then-current RAA (or any other replacement clause setting out the terms of the registration agreement between a registrar and a registered name holder). If Registry Operator chooses option (ii) above, it shall identify these transactions using Registrar ID 9998. At Registry Operator's discretion and in compliance with all other terms of this Agreement, including the RPMs set forth in Specification 7, such names may be released for registration to another person or entity.

3.3.   Registry Operator may withhold from registration or allocate to Registry Operator names (including their IDN variants, where applicable) at All Levels in accordance with Section 2.6 of the Agreement. Such names may not be activated in the DNS, but may be released for registration to Registry

Operator or another person or entity at Registry Operator's discretion, subject to compliance with all the terms of this Agreement, including applicable RPMs set forth in Specification 7. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Upon ICANN's request, Registry Operator shall provide a listing of all names withheld or allocated to Registry Operator pursuant to Section 2.6 of the Agreement. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

3.4.   Effective upon the conclusion of the No-Activation Period specified in Section 6.1 of Specification 6, Registry Operator shall allocate the domain name "icann-sla-monitoring.<tld>" to the ICANN testing registrar (as such registrar is described in Section 8.2 of Specification 10). If such domain name is not available for registration in the TLD or is otherwise inconsistent with the registration policies of the TLD, Registry Operator may allocate a different domain name to the ICANN testing registrar in consultation with ICANN. The allocation of any such alternative domain name will be communicated to ICANN following such consultation. The allocation of the domain name "icann-sla-monitoring.<tld>" to the ICANN testing registrar will not (i) be considered a Transaction for purposes of Section 6.1 of the Agreement, (ii) count towards the one hundred domain names available to Registry Operator under Section 3.2 of this Specification 5, or (iii) adversely affect Registry Operator's qualification as a .BRAND TLD pursuant to Specification 13 (.BRAND TLD Provisions) hereto (as applicable).

4.   **Country and Territory Names**. The country and territory names (including their IDN variants, where applicable) contained in the following internationally recognized lists shall be withheld from registration or allocated to Registry Operator at All Levels:

4.1.   the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union <http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm>;

4.2.   the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and

4.3.   the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names (including their IDN variants according to the registry operator IDN registration policy, where applicable) may be released to the extent that Registry Operator reaches agreement with the applicable government(s). Registry Operator must not activate such names in the DNS; provided, that Registry Operator may propose the release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

5.   **International Olympic Committee; International Red Cross and Red Crescent Movement**. As instructed from time to time by ICANN, the names (including their IDN variants, where applicable) relating to the International Olympic Committee, International Red Cross and Red Crescent Movement listed at http://www.icann.org/en/resources/registries/reserved shall be withheld from registration or allocated to Registry Operator at the second level within the TLD. Additional International Olympic Committee, International Red Cross and Red Crescent Movement names (including their IDN variants) may be added to the list upon ten (10) calendar days notice from ICANN to Registry Operator. Such names may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

6.   **Intergovernmental Organizations**. As instructed from time to time by ICANN, Registry Operator will implement the protections mechanism determined by the ICANN Board of Directors relating to the protection of identifiers for Intergovernmental Organizations. A list of reserved names for this Section 6 is available at http://www.icann.org/en/resources/registries/reserved. Additional names (including their IDN variants) may be added to the list upon ten (10) calendar days notice from ICANN to Registry Operator. Any such protected identifiers for Intergovernmental Organizations may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such protected identifiers shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use

of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

SPECIFICATION 6

REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

1.   **Standards Compliance**

   1.1.   **DNS**. Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF), including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1123, 1982, 2181, 2182, 3226, 3596, 3597, 4343, 5966 and 6891. DNS labels may only include hyphens in the third and fourth position if they represent valid IDNs (as specified above) in their ASCII encoding (e.g., "xn--ndk061n").

   1.2.   **EPP**. Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732 (if using host objects), 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.

   1.3.   **DNSSEC**. Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions ("DNSSEC"). For the absence of doubt, Registry Operator shall sign the zone file of <TLD> and zone files used for in-bailiwick glue for the TLD's DNS servers. During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 6781 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants' public-key material. Registry Operator shall publish its DPS following the format described in RFC 6841. DNSSEC validation must be active and use the IANA DNS Root Key Signing Key set (available at https://www.iana.org/dnssec/files) as a trust anchor for Registry Operator's Registry Services making use of data obtained via DNS responses.

1.4. **IDN**. If the Registry Operator offers Internationalized Domain Names ("IDNs"), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices.

1.5. **IPv6**. Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry's name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow "DNS IPv6 Transport Operational Guidelines" as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g., Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six (6) months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

1.6. **IANA Rootzone Database**. In order to ensure that authoritative information about the TLD remains publicly available, Registry Operator shall submit a change request to the IANA functions operator updating any outdated or inaccurate DNS or WHOIS records of the TLD. Registry Operator shall use commercially reasonable efforts to submit any such change request no later than seven (7) calendar days after the date any such DNS or WHOIS records becomes outdated or inaccurate. Registry Operator must submit all change requests in accordance with the procedures set forth at <http://www.iana.org/domains/root>.

1.7. **Network Ingress Filtering**. Registry Operator shall implement network ingress filtering checks for its Registry Services as described in BCP 38 and BCP 84, which ICANN will also implement.

2. **Registry Services**

2.1. **Registry Services**. "Registry Services" are, for purposes of the Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other

products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

2.2. **Wildcard Prohibition**. For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a "Name Error" response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

3. **Registry Continuity**

3.1. **High Availability**. Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator. Registry Operator's emergency operations department shall be available at all times to respond to extraordinary occurrences.

3.2. **Extraordinary Event**. Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within twenty-four (24) hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of forty-eight (48) hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. **Business Continuity**. Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide

the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

4.   **Abuse Mitigation**

4.1.   **Abuse Contact**. Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

4.2.   **Malicious Use of Orphan Glue Records**. Registry Operator shall take action to remove orphan glue records (as defined at http://www.icann.org/en/committees/security/sac048.pdf) when provided with evidence in written form that such records are present in connection with malicious conduct.

5.   **Supported Initial and Renewal Registration Periods**

5.1.   **Initial Registration Periods**. Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

5.2.   **Renewal Periods**. Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

6.   **Name Collision Occurrence Management**

6.1.   **No-Activation Period.** Registry Operator shall not activate any names in the DNS zone for the Registry TLD (except for "NIC") until at least 120 calendar days after the effective date of this agreement. Registry Operator may allocate names (subject to subsection 6.2 below) during this period only if Registry Operator causes registrants to be clearly informed of the inability to activate names until the No-Activation Period ends.

6.2.   **Name Collision Occurrence Assessment**

6.2.1   Registry Operator shall not activate any names in the DNS zone for the Registry TLD except in compliance with a Name Collision Occurrence Assessment provided by ICANN regarding the Registry TLD. Registry

Operator will either (A) implement the mitigation measures described in its Name Collision Occurrence Assessment before activating any second-level domain name, or (B) block those second-level domain names for which the mitigation measures as described in the Name Collision Occurrence Assessment have not been implemented and proceed with activating names that are not listed in the Assessment.

6.2.2   Notwithstanding subsection 6.2.1, Registry Operator may proceed with activation of names in the DNS zone without implementation of the measures set forth in Section 6.2.1 only if (A) ICANN determines that the Registry TLD is eligible for this alternative path to activation of names; and (B) Registry Operator blocks all second-level domain names identified by ICANN and set forth at <http://newgtlds.icann.org/en/announcements-and-media/announcement-2-17nov13-en> as such list may be modified by ICANN from time to time. Registry Operator may activate names pursuant to this subsection and later activate names pursuant to subsection 6.2.1.

6.2.3   The sets of names subject to mitigation or blocking pursuant to Sections 6.2.1 and 6.2.2 will be based on ICANN analysis of DNS information including "Day in the Life of the Internet" data maintained by the DNS Operations, Analysis, and Research Center (DNS-OARC) <https://www.dns-oarc.net/oarc/data/ditl>.

6.2.4   Registry Operator may participate in the development by the ICANN community of a process for determining whether and how these blocked names may be released.

6.2.5   If ICANN determines that the TLD is ineligible for the alternative path to activation of names, ICANN may elect not to delegate the TLD pending completion of the final Name Collision Occurrence Assessment for the TLD, and Registry Operator's completion of all required mitigation measures. Registry Operator understands that the mitigation measures required by ICANN as a condition to activation of names in the DNS zone for the TLD may include, without limitation, mitigation measures such as those described in Section 3.2 of the New gTLD Name Collision Occurrence Management Plan approved by the ICANN Board New gTLD Program Committee (NGPC) on 7 October 2013 as found at <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-07oct13-en.pdf>.

6.3.   **Name Collision Report Handling**

6.3.1   During the first two years after delegation of the TLD, Registry Operator's emergency operations department shall be available to receive reports, relayed by ICANN, alleging demonstrably severe harm from collisions with overlapping use of the names outside of the authoritative DNS.

6.3.2   Registry Operator shall develop an internal process for handling in an expedited manner reports received pursuant to subsection 6.3.1 under which Registry Operator may, to the extent necessary and appropriate, remove a recently activated name from the TLD zone for a period of up to two years in order to allow the affected party to make changes to its systems.

SPECIFICATION 7

MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms**. Registry Operator shall implement and adhere to the rights protection mechanisms ("RPMs") specified in this Specification. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party's legal rights. Registry Operator will include all RPMs required by this Specification 7 and any additional RPMs developed and implemented by Registry Operator in the Registry-Registrar Agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements set forth therein each of the mandatory RPMs set forth in the Trademark Clearinghouse as of the date hereof, as posted at http://www.icann.org/en/resources/registries/tmch-requirements (the "Trademark Clearinghouse Requirements"), which may be revised in immaterial respects by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse. If there is a conflict between the terms and conditions of this Agreement and the Trademark Clearinghouse Requirements, the terms and conditions of this Agreement shall control. Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar authorizing such registrar(s) to register domain names in the TLD as follows:

    a. if Registry Operator conducts a Qualified Launch Program or is authorized by ICANN to conduct an Approved Launch Program (as those terms are defined in the Trademark Clearinghouse Requirements), Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar prior to allocating any domain names pursuant to such Qualified Launch Program or Approved Launch Program, as applicable;

    b. if Registry Operator does not conduct a Qualified Launch Program or is not authorized by ICANN to conduct an Approved Launch Program, Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar at least thirty (30) calendar days prior to the expiration date of the Sunrise Period (as defined in the Trademark Clearinghouse Requirements) for the TLD; or

    c. if this Agreement contains a Specification 13, Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar prior to the Claims Commencement Date (as defined in Specification 13).

Nothing in this Specification 7 shall limit or waive any other obligations or requirements of this Agreement applicable to Registry Operator, including Section 2.9(a) and Specification 9.

2. **Dispute Resolution Mechanisms**. Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

    a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at http://www.icann.org/en/resources/registries/pddrp and http://www.icann.org/en/resources/registries/rrdrp, respectively). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and

    b. the Uniform Rapid Suspension system ("URS") adopted by ICANN (posted at http://www.icann.org/en/resources/registries/urs), including the implementation of determinations issued by URS examiners.

SPECIFICATION 8

CONTINUED OPERATIONS INSTRUMENT

1.   The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6th) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in item 50(b) of Attachment to Module 2 – Evaluation Questions and Criteria – of the gTLD Applicant Guidebook, as published and supplemented by ICANN prior to the date hereof (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. If Registry Operator elects to obtain an irrevocable standby letter of credit but the term required above is unobtainable, Registry Operator may obtain a letter of credit with a one-year term and an "evergreen provision," providing for annual extensions, without amendment, for an indefinite number of additional periods until the issuing bank informs ICANN of its final expiration or until ICANN releases the letter of credit as evidenced in writing, if the letter of credit otherwise meets the requirements set forth in item 50(b) of Attachment to Module 2 – Evaluation Questions and Criteria – of the gTLD Applicant Guidebook, as published and supplemented by ICANN prior to the date hereof; provided, however, that if the issuing bank informs ICANN of the expiration of such letter of credit prior to the sixth (6th) anniversary of the Effective Date, such letter of credit must provide that ICANN is entitled to draw the funds secured by the letter of credit prior to such expiration. The letter of credit must require the issuing bank to give ICANN at least thirty (30) calendar days' notice of any such expiration or non-renewal. If the letter of credit expires or is terminated at any time prior to the sixth (6th) anniversary of the Effective Date, Registry Operator will be required to obtain a replacement Continued Operations Instrument. ICANN may draw the funds under the original letter of credit, if the replacement Continued Operations Instrument is not in place prior to the expiration of the original letter of credit. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld).

2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an "Alternative Instrument"). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.

3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an Alternative Instrument that (i) provides for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operator replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such Alternative Instrument(s), and such instrument shall thereafter be considered the Continued Operations Instrument for purposes of this Agreement.

SPECIFICATION 9

REGISTRY OPERATOR CODE OF CONDUCT

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a "Registry Related Party"), to:

    a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;

    b. register domain names in its own right, except for names registered through an ICANN accredited registrar; provided, however, that Registry Operator may (a) reserve names from registration pursuant to Section 2.6 of the Agreement and (b) may withhold from registration or allocate to Registry Operator up to one hundred (100) names pursuant to Section 3.2 of Specification 5;

    c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running"); or

    d. allow any Affiliated registrar to disclose Personal Data about registrants to Registry Operator or any Registry Related Party, except as reasonably necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions.

2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, ensure that such services are offered through a legal entity separate from Registry Operator, and maintain separate books of accounts with respect to its registrar or registrar-reseller operations.

3. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will conduct internal reviews at least once per calendar year to ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to

Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification; provided, however, ICANN shall not disclose Confidential Information contained in such results except in accordance with Section 7.15 of the Agreement.

4.   Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.

5.   Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.

6.   Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for the exclusive use of Registry Operator or its Affiliates, (ii) 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 (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

SPECIFICATION 10

REGISTRY PERFORMANCE SPECIFICATIONS

1.   **Definitions**

   1.1.   **DNS**. Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.

   1.2.   **DNSSEC proper resolution**. There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.

   1.3.   **EPP**. Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.

   1.4.   **IP address**. Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.

   1.5.   **Probes**. Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.

   1.6.   **RDDS**. Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.

   1.7.   **RTT**. Round-Trip Time or RTT refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.

   1.8.   **SLR**. Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

2.   **Service Level Agreement Matrix**

	Parameter	SLR (monthly basis)
DNS	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
RDDS	RDDS availability	≤ 864 min of downtime (≈ 98%)

	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
EPP	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar periods of unavailable or slow service; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

3. **DNS**

3.1. **DNS service availability**. Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from "**DNS tests**" to each of their public-DNS registered "**IP addresses**" to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.

3.2. **DNS name server availability**. Refers to the ability of a public-DNS registered "**IP address**" of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered "**IP address**" of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from "**DNS tests**" to a name server "**IP address**" during a given time, the name server "**IP address**" will be considered unavailable.

3.3. **UDP DNS resolution RTT**. Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.

3.4. **TCP DNS resolution RTT**. Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.

3.5. **DNS resolution RTT**. Refers to either "**UDP DNS resolution RTT**" or "**TCP DNS resolution RTT**".

3.6. **DNS update time**. Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer "**DNS queries**" with data consistent with the change made. This only applies for changes to DNS information.

3.7. **DNS test**. Means one non-recursive DNS query sent to a particular "**IP address**" (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a "**DNS resolution RTT**" 5 times higher than the corresponding SLR, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the "**DNS resolution RTT**" or, undefined/unanswered.

3.8. **Measuring DNS parameters**. Every minute, every DNS probe will make an UDP or TCP "**DNS test**" to each of the public-DNS registered "**IP addresses**" of the name servers of the domain name being monitored. If a "**DNS test**" result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

3.9. **Collating the results from DNS probes**. The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

3.10. **Distribution of UDP and TCP queries**. DNS probes will send UDP or TCP "**DNS test**" approximating the distribution of these queries.

3.11. **Placement of DNS probes**. Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

4. **RDDS**

4.1. **RDDS availability**. Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.

4.2. **WHOIS query RTT**. Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.3. **Web-based-WHOIS query RTT**. Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.4. **RDDS query RTT**. Refers to the collective of "**WHOIS query RTT**" and "**Web-based- WHOIS query RTT**".

4.5. **RDDS update time**. Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.

4.6. **RDDS test**. Means one query sent to a particular "**IP address**" of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.

4.7. **Measuring RDDS parameters**. Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered "**IP addresses**" of the servers for each RDDS service of the TLD being monitored and make an "**RDDS test**" to each one. If an "**RDDS test**" result is undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

4.8. **Collating the results from RDDS probes**. The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

4.9. **Placement of RDDS probes**. Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

5. **EPP**

   5.1. **EPP service availability**. Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with "**EPP command RTT**" 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

   5.2. **EPP session-command RTT**. Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

   5.3. **EPP query-command RTT**. Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

   5.4. **EPP transform-command RTT**. Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

   5.5. **EPP command RTT**. Refers to "**EPP session-command RTT**", "**EPP query-command RTT**" or "**EPP transform-command RTT**".

   5.6. **EPP test**. Means one EPP command sent to a particular "**IP address**" for one of the EPP servers. Query and transform commands, with the exception of "create", shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the "**EPP command RTT**" or undefined/unanswered.

5.7. **Measuring EPP parameters**. Every 5 minutes, EPP probes will select one "**IP address**" of the EPP servers of the TLD being monitored and make an "**EPP test**"; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an "**EPP test**" result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

5.8. **Collating the results from EPP probes**. The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

5.9. **Placement of EPP probes**. Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. **Emergency Thresholds**

The following matrix presents the emergency thresholds that, if reached by any of the services mentioned above for a TLD, would cause the emergency transition of the Registry for the TLD as specified in Section 2.13 of this Agreement.

Critical Function	Emergency Threshold
DNS Service	4-hour total downtime / week
DNSSEC proper resolution	4-hour total downtime / week
EPP	24-hour total downtime / week
RDDS	24-hour total downtime / week
Data Escrow	Reaching any of the criteria for the release of deposits described in Specification 2, Part B, Section 6.2 through Section 6.6.

7. **Emergency Escalation**

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between

ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. **Emergency Escalation initiated by ICANN**

Upon reaching 10% of the Emergency thresholds as described in Section 6 of this Specification, ICANN's emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator's emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

7.2. **Emergency Escalation initiated by Registrars**

Registry Operator will maintain an emergency operations department prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the registry for the TLD because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an emergency escalation to the emergency operations department of ICANN. ICANN then may initiate an emergency escalation with the Registry Operator as explained above.

7.3. **Notifications of Outages and Maintenance**

In the event that a Registry Operator plans maintenance, it will provide notice to the ICANN emergency operations department, at least, twenty-four (24) hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per its contractual obligations with ICANN, on services under a service level agreement and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend emergency escalation services for the monitored services involved.

8. **Covenants of Performance Measurement**

8.1. **No interference**. Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement

tests described in this Specification as it would to any other request from an Internet user (for DNS and RDDS) or registrar (for EPP).

8.2.   **ICANN testing registrar**. Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLR**s described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement. Registry Operator shall identify these transactions using Registrar ID 9997.

SPECIFICATION 11

PUBLIC INTEREST COMMITMENTS

1. Registry Operator will use only ICANN accredited registrars that are party to the Registrar Accreditation Agreement approved by the ICANN Board of Directors on 27 June 2013 in registering domain names. A list of such registrars shall be maintained by ICANN on ICANN's website.

2. (Intentionally omitted.)

3. Registry Operator agrees to perform the following specific public interest commitments, which commitments shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN (posted at http://www.icann.org/en/resources/registries/picdrp), which may be revised in immaterial respects by ICANN from time to time (the "PICDRP"). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

    a. Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.

    b. Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.

    c. Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-

discrimination by establishing, publishing and adhering to clear registration policies.

d. Registry Operator of a "Generic String" TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person's or entity's "Affiliates" (as defined in Section 2.9(c) of the Registry Agreement). "Generic String" means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.

ADDENDUM TO REGISTRY AGREEMENT

This Addendum to that certain Registry Agreement, dated as of 30 June 2019, for the **.info** Top-Level Domain (the "Registry Agreement"), by and between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation ("ICANN"), and Afilias Limited, an Irish private company limited by shares ("Registry Operator"), is dated as of 30 June 2019 and is by and among ICANN and Registry Operator ("Addendum"). ICANN and Registry Operator are hereinafter referred to collectively as the "Parties" and individually as a "Party." Capitalized terms used and not defined herein will have the respective meanings given thereto in the Registry Agreement.

WHEREAS, the Parties previously entered into a registry agreement, dated 22 August 2013;

WHEREAS, the Registry Agreement has certain provisions that are not applicable to a previously delegated top level domain, such as the TLD;

WHEREAS, the purpose of this Addendum is to amend the Registry Agreement in order to modify the provisions that are not applicable to the TLD; and

WHEREAS, pursuant to Section 7.6 of the Registry Agreement, the parties may enter into bilateral amendments and modifications to the Registry Agreement negotiated solely between the Parties.

NOW, THEREFORE, in consideration of the above recitals acknowledged herein by reference, the Parties, intending to be legally bound hereby, do agree as follows:

1. No Approved Amendment pursuant to Section 7.6 or Section 7.7 of the Registry Agreement shall amend or modify the specific terms of the Registry Agreement that are modified or amended pursuant to Section 2 of this Addendum (such terms, "Addendum Terms"); provided that the foregoing shall not apply to any other terms of any provision of the Registry Agreement, including the remaining unmodified terms of any Sections of the Registry Agreement that include the Addendum Terms. If an Approved Amendment is approved in accordance with Section 7.6 or Section 7.7 that would amend or modify any terms of the Registry Agreement that are modified by the Addendum Terms, ICANN and the Registry Operator agree to (i) enter into good faith discussions regarding whether an amendment to such Addendum Terms is appropriate in light of such Approved Amendment and (ii) mutually agree (such agreement not to be unreasonably withheld, conditioned or delayed) on an appropriate amendment to this Addendum or the Registry Agreement.

2. The following Sections of the Registry Agreement are hereby modified by the Addendum Terms set forth in the column across from such Section.

Section	Addendum Terms
1.1	The following terms of Section 1.1 shall be of no force or effect: ", subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone"
1.3(a)(i)	The terms of Section 1.3(a)(i) are hereby amended and restated in their entirety as follows: "all material information provided and statements made in writing during the negotiation of this Agreement were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN; and"
1.3(a)(iii)	The terms of Section 1.3(a)(iii) shall be of no force or effect.
2.3	The following terms of Section 2.3 are hereby amended and restated in their entirety as follows: "**Data Escrow**. Registry Operator shall comply with the registry data escrow procedures set forth in Specification 2 attached hereto ("Specification 2")."
2.4	The terms of Section 2.4 are hereby amended and restated in their entirety as follows: "**Monthly Reporting**. Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format set forth in Specification 3 attached hereto ("Specification 3").
2.8	The terms of the first sentence of Section 2.8 are hereby amended and restated in their entirety as follows: "Registry Operator must comply with the processes and procedures for ongoing protection of the legal rights of third parties as set forth Specification 7 attached hereto ("Specification 7")."
2.9	The terms of Section 2.9(a) shall be modified to include the following at the end of the provision: "The Registry-Registrar Agreement referred to in this Section 2.9(a) is the last Registry-Registrar Agreement for the TLD approved by ICANN pursuant to the registry agreement for the TLD that immediately

Section	Addendum Terms
	preceded this Agreement."
2.12	The terms of Section 2.12 shall be of no force or effect.
2.13	The following terms of Section 2.13 shall be of no force or effect: "In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument."
2.15	The following term of the first sentence of Section 2.15 shall be of no force or effect: "new"
4.3(b)	The terms of Section 4.3(b) shall be of no force or effect.
4.3(c)	The terms of Section 4.3(c) shall be of no force or effect.
4.5	The following terms of Section 4.5 shall be of no force or effect: "In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument for the maintenance and operation of the TLD, regardless of the reason for termination or expiration of this Agreement."
4.6	The reference to "Section 2.12" in Section 4.6 shall be of no force or effect.
6.1(a)	The terms of Section 6.1(a) are hereby amended and restated in their entirety as follows: "(a) Registry Operator shall pay ICANN a registry-level fee equal to (i) the registry fixed fee of US$6,250 per calendar quarter and (ii) the registry-level transaction fee (collectively, the "Registry-Level Fees"). The registry-level transaction fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US$0.25; provided, however that the registry-level transaction fee shall not apply until and unless more than 50,000 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 to each quarter in which the Transaction Threshold has not been met. Registry Operator's obligation to pay the

Section	Addendum Terms
	quarterly registry-level fixed fee will begin on the Effective Date."
6.4	The terms of Section 6.4 shall be of no force or effect.
Specification 1, § 2	The terms of the first sentence of Specification 1, Section 2 are hereby amended and restated in their entirety as follows: "**Temporary Policies**. Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the Stability or Security of Registry Services or the DNS ("Temporary Policies")."
Specification 5, § 2	The terms of Section 2 of Specification 5 are hereby amended and restated in their entirety as follows: "**Two Character Labels**. All two character labels that were previously reserved by Registry Operator pursuant to prior registry agreements between Registry Operator and ICANN may be allocated through ICANN-accredited registrars, subject to the following: 2.1 <u>Registration Policy</u>: For all new registrations after the Effective Date, Registry Operator must include a provision in its publicly available registration policy requiring a representation that the registrant of a letter/letter two-character ASCII label will take steps to ensure against misrepresenting or falsely implying that the registrant or its business is affiliated with a government or country-code manager if such affiliation, sponsorship or endorsement does not exist. 2.2 <u>Post-Registration Complaint Investigation</u>. Registry Operator shall take reasonable steps to investigate and respond to any reports from governmental agencies and ccTLD operators of conduct that causes confusion with the corresponding country code in connection with the use of a letter/letter two-character ACSCII domain. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law."
Specification 5, § 3.1.1	The terms of Section 3.1.1 of Specification 5 are hereby amended and restated in their entirety as follows:

Section	Addendum Terms
	"3.1.1 If Exhibit A to the Agreement specifically provides that Registry Operator may offer registration of IDNs, Registry Operator may also activate a language-specific translation or transliteration of the term "NIC" or an abbreviation for the translation of the term "Network Information Center" in the DNS in accordance with Registry Operator's IDN Tables and IDN Registration Rules. Such translation, transliteration or abbreviation may be reserved by Registry Operator and used in addition to the label NIC to provide any required registry functions. For the avoidance of doubt, Registry Operator is required to activate the ASCII label NIC pursuant to Section 3.1 of this Specification 5."
Specification 5, § 3.2	The terms of Section 3.2 of Specification 5 shall be of no force or effect.
Specification 5, § 3.4	The terms of Section 3.4 of Specification 5 are hereby amended and restated in their entirety as follows: "Registry Operator shall allocate the domain name "icann-sla-monitoring.<tld>" to the ICANN testing registrar (as such registrar is described in Section 8.2 of Specification 10). If such domain name is not available for registration in the TLD or is otherwise inconsistent with the registration policies of the TLD, Registry Operator may allocate a different domain name to the ICANN testing registrar in consultation with ICANN. The allocation of any such alternative domain name will be communicated to ICANN following such consultation. The allocation of the domain name "icann-sla-monitoring.<tld>" to the ICANN testing registrar will not be considered a Transaction for purposes of Section 6.1 of the Agreement."
Specification 5, § 5	The terms of Section 5 of Specification 5 shall be of no force or effect.
Specification 5, § 6	The terms of Section 6 of Specification 5 shall be of no force or effect.
Specification 6, § 6	The terms of Section 6 of Specification 6 shall be of no force or effect.
Specification 7, § 1	The terms of Section 1 of Specification 7 are hereby amended and restated in their entirety as follows: "**Rights Protection Mechanisms**. Registry Operator shall implement and adhere to the rights protection mechanisms ("RPMs") specified in this Specification. In addition to such RPMs, Registry Operator may develop and implement RPMs that discourage or prevent registration of domain names that violate or abuse another party's legal rights. Registry

Section	Addendum Terms
	Operator will include all RPMs required by this Specification 7 and any additional RPMs developed and implemented by Registry Operator in the Registry-Registrar Agreement entered into by ICANN-accredited registrars authorized to register names in the TLD."
Specification 8	The terms of Specification 8 shall be of no force or effect.
Specification 9, § 1(b)	The terms of Section 1(b) of Specification 9 are hereby amended and restated in their entirety as follows: "register domain names in its own right, except for names registered through an ICANN accredited registrar; provided, however, that Registry Operator may reserve names from registration pursuant to Section 2.6 of the Agreement;"

3. This Addendum shall constitute an integral part of the Registry Agreement. Notwithstanding Section 7.10 of the Registry Agreement, the Registry Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) and this Addendum constitute the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject. The Registry Agreement and this Addendum shall at all times be read together.

4. Except as specifically provided for in this Addendum, all of the terms of the Registry Agreement shall remain unchanged and in full force and effect, and, to the extent applicable, such terms shall apply to this Addendum as if it formed part of the Registry Agreement.

5. This Addendum may be executed and delivered (including by electronic transmission) in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
     Cyrus Namazi
     Senior Vice President, Global Domains Division

AFILIAS LIMITED

By: _____
     Huw Spiers
     Chief Financial Officer

Amendment No. 1 to Registry Agreement

The Internet Corporation for Assigned Names and Numbers and Afilias Limited agree, effective as of _____ ("Amendment No. 1 Effective Date"), that the modification set forth in this amendment No. 1 (the "Amendment") is made to the 30 June 2019 .info Registry Agreement between the parties, as amended (the "Agreement").

The parties hereby agree to amend Exhibit A of the Agreement by adding the following new text as a new Section 9:

[START NEW TEXT]

"**9.   Dropzone Service**

Registry Operator may offer the Dropzone service, which is a Registry Service that will manage the release of domain names that have reached the end of their life cycle.

The Dropzone is a separate system, parallel to the main EPP system, that will manage on a daily basis the release of domain names that have been purged for a short period of time, called the Dropzone. Any TLD-accredited registrars may use the Dropzone to register a recently-purged domain name.

On a daily basis, at the end of the Dropzone period, the Registry will execute an awarding process, which will select, per domain name, the first domain creation request submitted (first come, first serve)."

 [END NEW TEXT]

The parties agree that, except as set forth in this Amendment and any prior duly authorized and executed amendments, the current terms and conditions of the Agreement will remain in full force and effect. All capitalized terms not defined will have the meaning given to them in the Agreement. This Amendment may be executed in counterparts, each of which shall be deemed an original, and all of such counterparts taken together shall constitute one and the same instrument.

ACCEPTED AND AGREED:

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
         Göran Marby
         President and Chief Executive Officer

AFILIAS LIMITED

By: _____
         Huw Spiers
         CFO

RM 31

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this "Agreement") is entered into as of 30 June 2019 (the "Effective Date") between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation ("ICANN"), and Registry Services, LLC, a Delaware limited liability company ("Registry Operator").

ARTICLE 1.

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

1.1   Domain and Designation. The Top-Level Domain to which this Agreement applies is **.biz** (the "TLD"). Upon the Effective Date and until the earlier of the expiration of the Term (as defined in Section 4.1) or the termination of this Agreement pursuant to Article 4, ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

1.2   Technical Feasibility of String. While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

1.3   Representations and Warranties.

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

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

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

(iii)   Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the "Continued Operations Instrument"), and such instrument is a binding

obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

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

ARTICLE 2.

COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

2.1 Approved Services; Additional Services. Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 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 material 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 http://www.icann.org/en/registries/rsep/rsep.html, 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.

2.2 Compliance with Consensus Policies and Temporary Policies. Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Polices and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth in Specification 1 attached hereto ("Specification 1").

2.3 Data Escrow. Registry Operator shall comply with the registry data escrow procedures set forth in Specification 2 attached hereto ("Specification 2") within fourteen (14) calendar days after delegation.

2.4 Monthly Reporting. Within twenty (20) calendar days following the end of each calendar month, commencing with the first calendar month in which the TLD is delegated in the root zone, Registry Operator shall deliver to ICANN reports in the format

set forth in Specification 3 attached hereto ("Specification 3"); provided, however, that if the TLD is delegated in the root zone after the fifteenth (15th) calendar day of the calendar month, Registry Operator may defer the delivery of the reports for such first calendar month and instead deliver to ICANN such month's reports no later than the time that Registry Operator is required to deliver the reports for the immediately following calendar month. Registry Operator must include in the Per-Registrar Transactions Report any domain name created during pre-delegation testing that has not been deleted as of the time of delegation (notably but not limited to domains registered by Registrar IDs 9995 and/or 9996).

2.5 **Publication of Registration Data**. Registry Operator shall provide public access to registration data in accordance with Specification 4 attached hereto ("Specification 4").

2.6 **Reserved Names**. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the requirements set forth in Specification 5 attached hereto ("Specification 5"). Registry Operator may at any time establish or modify policies concerning Registry Operator's ability to reserve (i.e., withhold from registration or allocate to Registry Operator, but not register to third parties, delegate, use, activate in the DNS or otherwise make available) or block additional character strings within the TLD at its discretion. Except as specified in Specification 5, if Registry Operator is the registrant for any domain names in the registry TLD, such registrations must be through an ICANN accredited registrar, 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.

2.7 **Registry Interoperability and Continuity**. Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6 attached hereto ("Specification 6").

2.8 **Protection of Legal Rights of Third Parties.** Registry Operator must specify, and comply with, the processes and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth Specification 7 attached hereto ("Specification 7"). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

2.9   Registrars.

(a)   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. Subject to the requirements of Specification 11, 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 (the "Registry-Registrar Agreement"). Registry Operator may amend the Registry-Registrar Agreement from time to time; provided, however, that any material revisions thereto must be approved 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 <http://www.icann.org/en/resources/registries/rra-amendment-procedure>, and such revisions may not be adopted and implemented until approved by ICANN. Notwithstanding the foregoing provisions of this Section 2.9(a), any change to the Registry-Registrar Agreement that relates exclusively to the fee charged by Registry Operator to register domain names in the TLD will not be subject to the notice and approval process specified in this Section 2.9(a), but will be subject to the requirements in Section 2.10 below.

(b)   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 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). ICANN reserves the right, but not the obligation, to refer any such contract,

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related documents, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, related documents, transaction or other arrangement might raise significant competition issues under applicable law. If feasible and appropriate under the circumstances, ICANN will give Registry Operator advance notice prior to making any such referral to a competition authority.

(c)   For the purposes of this Agreement: (i) "Affiliate" means a person or entity that, directly or indirectly, through one or more intermediaries, or in combination with one or more other persons or entities, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

2.10   Pricing for Registry Services.

(a)   With respect to initial domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed the Registry-Registrar Agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one (1) to ten (10) years at the discretion of the registrar, but no greater than ten (10) years.

(b)   With respect to renewal of domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed the Registry-Registrar Agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e., the price

in place prior to any noticed increase) for periods of one (1) to ten (10) years at the discretion of the registrar, but no greater than ten (10) years.

(c)   In addition, Registry Operator must have uniform pricing for renewals of domain name registrations ("Renewal Pricing"). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a "Qualified Marketing Program" is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator's obligations pursuant to Section 2.10(b).

(d)   Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

2.11   Contractual and Operational Compliance Audits.

(a)   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 during regular business hours and 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 reasonably necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than ten (10) calendar 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. ICANN will treat any information obtained in connection with such audits that is appropriately marked as confidential (as required by Section 7.15) as Confidential Information of Registry Operator in accordance with Section 7.15.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% in a given quarter to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of Registry Operator's knowledge of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

2.12 Continued Operations Instrument. Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in Specification 8 attached hereto ("Specification 8").

2.13 Emergency Transition. 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 <http://www.icann.org/en/resources/registries/transition-processes>) (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.

    2.14   **Registry Code of Conduct**. In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in Specification 9 attached hereto ("Specification 9").

    2.15   **Cooperation with Economic Studies**. 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 related to the operation of the TLD reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold (a) any internal analyses or evaluations prepared by Registry Operator with respect to such data and (b) any data to the extent that the delivery of such data would be in violation of applicable law. Any data delivered to ICANN or its designee pursuant to this Section 2.15 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 and makes anonymous such data, ICANN or its designee may disclose such data to any third party. 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.

    2.16   **Registry Performance Specifications**. Registry Performance Specifications for operation of the TLD will be as set forth in Specification 10 attached hereto ("Specification 10"). Registry Operator shall comply with such Performance Specifications and, for a period of at least one (1) year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

2.17   Additional Public Interest Commitments. Registry Operator shall comply with the public interest commitments set forth in Specification 11 attached hereto ("Specification 11").

2.18   Personal Data. Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the Registry-Registrar Agreement for the TLD of the purposes for which data about any identified or identifiable natural person ("Personal Data") submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

ARTICLE 3.

COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

3.1   Open and Transparent. Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2   Equitable Treatment. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.3   TLD Nameservers. ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at http://www.iana.org/domains/root/ will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

3.4   Root-zone Information Publication. ICANN's publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at http://www.iana.org/domains/root/.

3.5   Authoritative Root Database. To the extent that ICANN is authorized to set policy with regard to an authoritative root server system (the "Authoritative Root Server System"), ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly

available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

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ARTICLE 4.

TERM AND TERMINATION

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4.1   Term. The term of this Agreement will be ten (10) years from the Effective Date (as such term may be extended pursuant to Section 4.2, the "Term").

4.2   Renewal.

(a)   This Agreement will be renewed for successive periods of ten (10) years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

(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 of competent jurisdiction 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 (10) calendar days or such other time period as may be determined by the arbitrator or court of competent jurisdiction; or

(ii)   During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) or a court of competent jurisdiction on at least three (3) separate occasions to have been in (A) fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or (B) breach of its payment obligations under Article 6 of this Agreement.

(b)   Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then-current Term.

4.3   Termination by ICANN.

(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 of competent jurisdiction 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 of competent jurisdiction.

(b)   ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(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 of competent jurisdiction 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 of competent jurisdiction.

(d)   ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) calendar days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any material property of Registry Operator that, if levied, would reasonably be expected to materially and adversely affect Registry Operator's ability to operate the registry for the TLD, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within sixty (60) calendar days of their commencement (if such proceedings are instituted by Registry Operator or its Affiliates) or one hundred and eighty (180) calendar days of their commencement (if such proceedings are instituted by a third party against Registry Operator), or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section

101, et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e)   ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to a determination by any PDDRP panel or RRDRP panel under Section 2 of Specification 7 or a determination by any PICDRP panel under Section 2, Section 3 or any other applicable Section of Specification 11, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f)   ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer who is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g)   ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement as specified in Section 7.5.

4.4   Termination by Registry Operator.

(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 of competent jurisdiction 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 of competent jurisdiction.

(b)   Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

4.5   Transition of Registry upon Termination of Agreement. 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 (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) if Registry Operator demonstrates to ICANN's reasonable satisfaction that (A) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator or its Affiliates for their exclusive use, (B) 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 (C) 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 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 for the maintenance and operation of the TLD, regardless of the reason for termination or expiration of this Agreement.

4.6   **Effect of Termination**. Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

ARTICLE 5.

DISPUTE RESOLUTION

5.1   **Mediation**. 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:

(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, has no ongoing business relationship with either party 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 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).

(b)   The mediator shall conduct the mediation in accordance with the rules and procedures 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. 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.

(c)   Each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator. Each party shall treat information received from the other party pursuant to the mediation 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.

(d)   If the parties have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, either party or the mediator may terminate the mediation at any time and the dispute can then proceed to arbitration pursuant to Section 5.2 below. If the parties have not resolved the dispute for any reason by the date that is ninety (90) calendar days following the date of the notice delivered pursuant to Section 5.1(a), the mediation shall automatically terminate (unless extended by agreement of the parties) and the dispute can then proceed to arbitration pursuant to Section 5.2 below.

5.2   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 "ICC"). 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, (ii) the parties agree in writing to a greater number of arbitrators, or (iii) the dispute arises under Section 7.6 or

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7.7. In the case of clauses (i), (ii) or (iii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party nominating one arbitrator for confirmation by the ICC and the two selected arbitrators nominating the third arbitrator for confirmation by the ICC. For an arbitration in front of a sole arbitrator, Registry Operator and ICANN may, by mutual agreement, nominate the sole arbitrator for confirmation by the ICC. If the parties fail to nominate a sole arbitrator or, in the case of an arbitration in front of three arbitrators, either party fails to nominate an arbitrator, in each case within thirty (30) calendar days from the date when a party's request for arbitration has been received by the other party, or within such additional time as may be allowed by the Secretariat of the Court of the ICC, the arbitrator(s) shall be appointed by the ICC. If any nominated arbitrator is not confirmed by the ICC, the party or persons that appointed such arbitrator shall promptly nominate a replacement arbitrator for confirmation by the ICC. 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 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.

      5.3   **Limitation of Liability**. 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, except with respect to Registry Operator's indemnification obligations pursuant to Section 7.1 and Section 7.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. 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.

5.4 **Specific Performance**. 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 of competent jurisdiction specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

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ARTICLE 6.

FEES

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6.1 **Registry-Level Fees.**

(a) Registry Operator shall pay ICANN a registry-level fee equal to (i) the registry fixed fee of US$6,250 per calendar quarter and (ii) the registry-level transaction fee (collectively, the "Registry-Level Fees"). The registry-level transaction fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US$0.25; provided, however that the registry-level transaction fee shall not apply until and unless more than 50,000 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 to each quarter in which the Transaction Threshold has not been met. Registry Operator's obligation to pay the quarterly 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 calendar days between the delegation date and the end of the calendar quarter in which the delegation date falls.

(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.

6.2 **Cost Recovery for RSTEP**. 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 http://www.icann.org/en/registries/rsep/. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within fourteen (14) calendar 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.

      6.3   **Variable Registry-Level Fee**.

      (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 variable registry-level fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year (the "Variable Registry-Level Fee"). 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 that are party to a Registry-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.

      (b)   The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US$0.25 per domain name registration (including renewals associated with transfers from one ICANN accredited registrar to another) per year.

6.4   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 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.

6.5   Adjustments to Fees. Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then-current fees set forth in Section 6.1 and Section 6.3 may be adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.5 shall be effective as of the first day of the first calendar quarter following at least thirty (30) days after ICANN's delivery to Registry Operator of such fee adjustment notice.

6.6   Additional Fee on Late Payments. For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

6.7   Fee Reduction Waiver. In ICANN's sole discretion, ICANN may reduce the amount of registry fees payable hereunder by Registry Operator for any period of time ("Fee Reduction Waiver"). Any such Fee Reduction Waiver may, as determined by ICANN in its sole discretion, be (a) limited in duration and (b) conditioned upon Registry Operator's acceptance of the terms and conditions set forth in such waiver.   A Fee Reduction Waiver shall not be effective unless executed in writing by ICANN as contemplated by Section 7.6(i). ICANN will provide notice of any Fee Reduction Waiver to Registry Operator in accordance with Section 7.9.

ARTICLE 7.

MISCELLANEOUS

7.1   Indemnification of ICANN.

(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 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 of competent jurisdiction or arbitrator.

(b)   For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator's aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN's total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator's liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN's reasonable satisfaction, such other registry operators' culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence.

7.2   Indemnification Procedures. If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator's sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN's policies, Bylaws or

conduct. ICANN shall cooperate, at Registry Operator's cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense.

      7.3   **Defined Terms**. For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

      (a)   For the purposes of this Agreement, an effect on "Security" shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

      (b)   For purposes of this Agreement, an effect on "Stability" shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments ("RFCs") sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

      7.4   **No Offset**. All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

      7.5   **Change of Control; Assignment and Subcontracting**. Except as set forth in this Section 7.5, neither party may assign any of its rights and obligations under 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 subcontracting arrangement that relates to any Critical Function (as identified in Section 6 of Specification 10) for the TLD (a "Material Subcontracting Arrangement") shall be deemed an assignment.

(a)   Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any assignment or Material Subcontracting Arrangement, and any agreement to assign or subcontract any portion of the operations of the TLD (whether or not a Material Subcontracting Arrangement) 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.

(b)   Within thirty (30) calendar days of either such notification pursuant to Section 7.5(a), ICANN may request additional information from Registry Operator establishing (i) compliance with this Agreement and (ii) that the party acquiring such control or entering into such assignment or Material Subcontracting Arrangement (in any 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 (including with respect to financial resources and operational and technical capabilities), in which case Registry Operator must supply the requested information within fifteen (15) calendar days.

(c)   Registry Operator agrees that ICANN's consent to any assignment, change of control or Material Subcontracting Arrangement will also be subject to background checks on any proposed Contracting Party (and such Contracting Party's Affiliates).

(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 Material Subcontracting 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, thirty (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 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 an Affiliated Assignee, as that term is defined herein below, upon such Affiliated Assignee's express written

assumption of the terms and conditions of this Agreement, and (iv) ICANN shall be deemed to have consented to any assignment, Material Subcontracting 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. Notwithstanding Section 7.5(a), in the event an assignment is made pursuant to clauses (ii) or (iii) of this Section 7.5(f), the assigning party will provide the other party with prompt notice following any such assignment. For the purposes of this Section 7.5(f), (A) "Affiliated Assignee" means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (B) "control" (including the terms "controlled by" and "under common control with") shall have the same meaning specified in Section 2.9(c) of this Agreement.

> **7.6**   **Amendments and Waivers**.

> (a)   If the ICANN Board of Directors 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 adopt a Special Amendment pursuant to the requirements of and process set forth in this Section 7.6; provided that a Special Amendment may not be a Restricted Amendment.

> (b)   Prior to submitting a Special Amendment for Registry Operator Approval, ICANN shall first consult in good faith with the Working Group regarding the form and substance of such 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 proposed amendment to the Applicable Registry Operators in accordance with Section 7.9. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

> (c)   If, within one hundred eighty (180) calendar days following the expiration of the Posting Period (the "Approval Period"), the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment, but must address the subject 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, such Special Amendment shall be deemed approved (an "Approved Amendment") by the

Applicable Registry Operators, 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 Approved Amendment to Registry Operator (the "Amendment Effective Date"). In the event that a Special Amendment does not receive Registry Operator Approval, the Special Amendment shall be deemed not approved by the Applicable Registry Operators (a "Rejected Amendment"). A Rejected Amendment will have no effect on the terms and conditions of this Agreement, 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.

(f)   Notwithstanding the provisions of Section 7.6(e), a Board Amendment shall not be deemed an Approved Amendment if, during the thirty (30) calendar day period following the approval by the ICANN Board of Directors of the Board Amendment, the

Working Group, on the behalf of the Applicable Registry Operators, submits to the ICANN Board of Directors an alternative to the Board Amendment (an "Alternative Amendment") that meets the following 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 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) calendar 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 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.

(h) Registry Operator 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 the date ICANN provided notice to Registry Operator of such Approved 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(j), 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 Exemption 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.

(i)   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.

(j)   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 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, at the prevailing exchange rate published the prior day in the U.S. Edition of the Wall Street Journal for the date such calculation is made by ICANN) 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: (A) an amendment of Specification 1, (B) 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, (C) an amendment to

the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (D) 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.

(v) "Working Group" means representatives of the Applicable Registry Operators and other members of the community that the Registry Stakeholders Group 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(i)).

(k) Notwithstanding anything in this Section 7.6 to the contrary, (i) 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 (ii) 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).

7.7   Negotiation Process.

(a) 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.

(b) 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").

(c) 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 "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, who has no ongoing business relationship with either party 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

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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, 2.2, 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; 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 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.

(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.

(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).

7.8   No Third-Party Beneficiaries. This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

7.9   General Notices. Except for notices pursuant to Sections 7.6 and 7.7, 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 Sections 7.6 and 7.7 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. Other than notices under Sections 7.6 or 7.7, 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 electronic mail shall be followed by a copy sent by regular postal mail service within three (3) calendar days. Any notice required by Sections 7.6 or 7.7 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.

> If to ICANN, addressed to:
> Internet Corporation for Assigned Names and Numbers
> 12025 Waterfront Drive, Suite 300
> Los Angeles, CA 90094-2536
> USA
> Telephone: +1-310-301-5800
> Facsimile: +1-310-823-8649
> Attention: President and CEO
>
> With a Required Copy to: General Counsel
> Email: (As specified from time to time.)
>
> If to Registry Operator, addressed to:
> Registry Services, LLC
> 21575 Ridgetop Circle
> Sterling, VA 20166
> USA
> Telephone: +1-571-434-5400
> Facsimile: +1-571-434-5735
> Attention: General Counsel
> Email: (As specified from time to time.)

7.10   Entire Agreement. This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

7.11   English Language Controls. Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

7.12   Ownership Rights. Nothing contained in this Agreement shall be construed as (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.

7.13   Severability; Conflicts with Laws. 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. 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.

7.14   Court Orders. ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement

7.15   Confidentiality

(a)   Subject to Section 7.15(c), during the Term and for a period of three (3) 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.

(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.

(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.

* * * * *

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____

Cyrus Namazi
Senior Vice President, Global Domains Division

REGISTRY SERVICES, LLC

By: _____

Heather Hoffert
Vice President Finance

EXHIBIT A

Approved Services

The ICANN gTLD Applicant Guidebook (located at http://newgtlds.icann.org/en/applicants/agb) and the RSEP specify processes for consideration of proposed registry services. Registry Operator may provide any service that is required by the terms of this Agreement. In addition, the following services (if any) are specifically identified as having been approved by ICANN prior to the effective date of the Agreement, and Registry Operator may provide such services:

1. DNS Service – TLD Zone Contents

Notwithstanding anything else in this Agreement, as indicated in section 2.2.3.3 of the gTLD Applicant Guidebook, permissible contents for the TLD's DNS service are:

1.1. For the "Internet" (IN) Class:

    1.1.1. Apex SOA record

    1.1.2. Apex NS records and in-bailiwick glue for the TLD's DNS servers

    1.1.3. NS records and in-bailiwick glue for DNS servers of registered names in the TLD

    1.1.4. DS records for registered names in the TLD

    1.1.5. Records associated with signing the TLD zone (e.g., RRSIG, DNSKEY, NSEC, NSEC3PARAM and NSEC3)

    1.1.6. Apex TXT record for zone versioning purposes

    1.1.7. Apex TYPE65534 record for automatic dnssec signing signaling

1.2. For the "Chaos" (CH) Class:

    1.2.1. TXT records for server version/identification (e.g., TXT records for "version.bind.", "id.server.", "authors.bind" and/or "hostname.bind.")

(Note: The above language effectively does not allow, among other things, the inclusion of DNS resource records that would enable a dotless domain name (e.g., apex A, AAAA, MX records) in the TLD zone.)

If Registry Operator wishes to place any DNS resource record type or class into its TLD DNS service (other than those listed in Sections 1.1 or 1.2 above), it must describe in detail its proposal and submit a Registry Services Evaluation Process (RSEP) request. This will be

evaluated per RSEP to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Registry Operator recognizes and acknowledges that a service based on the use of less-common DNS resource records and/or classes in the TLD zone, even if approved, might not work as intended for all users due to lack of software support.

2. Internationalized Domain Names (IDNs)

Registry Operator may offer registration of IDNs at the second and lower levels provided that Registry Operator complies with the following requirements:

2.1. Registry Operator must offer Registrars support for handling IDN registrations in EPP.

2.2. Registry Operator must handle variant IDNs as follows:

    2.2.1. Variant IDNs (as defined in the Registry Operator's IDN tables and IDN Registration Rules) will be blocked from registration.

2.3. Registry Operator may offer registration of IDNs in the following languages/scripts (IDN Tables and IDN Registration Rules will be published by the Registry Operator as specified in the ICANN IDN Implementation Guidelines):

    2.3.1. Chinese
    2.3.2. Danish
    2.3.3. Finnish
    2.3.4. German
    2.3.5. Hungarian
    2.3.6. Icelandic
    2.3.7. Japanese
    2.3.8. Korean
    2.3.9. Latvian
    2.3.10. Lithuanian
    2.3.11. Norwegian
    2.3.12. Polish
    2.3.13. Portuguese
    2.3.14. Spanish
    2.3.15. Swedish

3. Bulk Transfer After Partial Portfolio Acquisition

Bulk Transfer After Partial Portfolio Acquisition ("BTAPPA") is a registry service available to consenting registrars in the circumstance where (i) one ICANN-accredited registrar purchases, by means of a stock or asset purchase, merger or similar transaction, a portion but not all, of another ICANN-accredited registrar's domain name portfolio in the TLD or (ii) a newly accredited registrar (gaining registrar) requests a transfer of all domain names from the losing registrar for which the gaining registrar has served as the reseller. Upon

completion of the transfer, the gaining registrar is the new sponsoring registrar. The gaining registrar must certify the BTAPPA would not otherwise qualify under ICANN's Transfer Policy.

At least fifteen days before completing a BTAPPA, the losing registrar must provide written notice of the bulk change of sponsorship to all domain name registrants for names involved in the BTAPPA. The notice must include an explanation of how the RDDS record will change after the BTAPPA occurs and customer support and technical contact information of the gaining registrar.

The losing registrar's existing Registration Agreement with customers must permit the transfer of domain names in the event of acquisition by another party. A single BTAPPA request may be submitted for transfers from multiple losing registrars provided they are Affiliated Registrars as defined by the 2013 or subsequent Registrar Accreditation Agreement.

The expiration dates of transferred registrations are not affected and, therefore, there are no ICANN fees. Once the BTAPPA is complete, there is no grace period to reverse the transfer.

Domain names in the following EPP statuses at the time of the BTAPPA execution shall not be transferred:

- Base statuses: pendingTransfer, pendingDelete.
- Redemption Grace Period ("RGP") statuses: redemptionPeriod, pendingRestore, pendingDelete.

Domain names that are within a grace period window are subject to BTAPPA, but Registry Operator may decline to provide a credit for those names deleted after the BTAPPA and prior to the expiration of the applicable grace period window.

Registry Operator must reject a BTAPPA request if there is reasonable evidence that a transfer under BTAPPA is being requested in order to avoid fees otherwise due to Registry Operator or ICANN. Registry Operator has discretion to reject a BTAPPA request if a registrar with common ownership or management or both has already requested BTAPPA service within the preceding six-month period.

4. Implementation Period

Registry Operator will have a 270 calendar days grace period, beginning on the Effective Date, to work with ICANN and backend providers to ensure that all technical operations and obligations have transitioned from the previous registry agreement for the TLD to this Registry Agreement.

SPECIFICATION 1

CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

1. **Consensus Policies**.

    1.1. "***Consensus Policies***" are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this Specification. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.

    1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:

    1.2.1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System ("DNS");

    1.2.2 functional and performance specifications for the provision of Registry Services;

    1.2.3 Security and Stability of the registry database for the TLD;

    1.2.4 registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;

    1.2.5 resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or

    1.2.6 restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.

    1.3. Such categories of issues referred to in Section 1.2 of this Specification shall include, without limitation:

    1.3.1 principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);

    1.3.2 prohibitions on warehousing of or speculation in domain names by registries or registrars;

1.3.3   reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and

1.3.4   maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.

1.4.   In addition to the other limitations on Consensus Policies, they shall not:

1.4.1   prescribe or limit the price of Registry Services;

1.4.2   modify the terms or conditions for the renewal or termination of the Registry Agreement;

1.4.3   modify the limitations on Temporary Policies (defined below) or Consensus Policies;

1.4.4   modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or

1.4.5   modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.

2.   **Temporary Policies**. Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("*Temporary Policies*").

2.1.   Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.

2.1.1   ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why

the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.

2.1.2   If the period of time for which the Temporary Policy is adopted exceeds ninety (90) calendar days, the Board shall reaffirm its temporary adoption every ninety (90) calendar days for a total period not to exceed one (1) year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one (1) year period expires or, if during such one (1) year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.

3.   **Notice and Conflicts**. Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Polices or Temporary Policy shall control, but only with respect to subject matter in conflict.

SPECIFICATION 2

DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent ("***Escrow Agent***") for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

PART A – TECHNICAL SPECIFICATIONS

1. **Deposits**. There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.

    1.1. "**Full Deposit**" will consist of data that reflects the state of the registry as of 00:00:00 UTC (Coordinated Universal Time) on the day that such Full Deposit is submitted to Escrow Agent.

    1.2. "**Differential Deposit**" means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., all additions, modifications or removals of data).

2. **Schedule for Deposits**. Registry Operator will submit a set of escrow files on a daily basis as follows:

    2.1. Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.

    2.2. The other six (6) days of the week, a Full Deposit or the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.

3. **Escrow Format Specification**.

    3.1. **Deposit's Format**. Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see Part A, Section 9, reference 1 of this Specification and draft-arias-noguchi-dnrd-objects-mapping, see Part A, Section 9, reference 2 of this Specification (collectively, the "DNDE Specification"). The DNDE Specification describes some elements as

optional; Registry Operator will include those elements in the Deposits if they are available. If not already an RFC, Registry Operator will use the most recent draft version of the DNDE Specification available at the Effective Date. Registry Operator may at its election use newer versions of the DNDE Specification after the Effective Date. Once the DNDE Specification is published as an RFC, Registry Operator will implement that version of the DNDE Specification, no later than one hundred eighty (180) calendar days after. UTF-8 character encoding will be used.

3.2.   **Extensions**. If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional "extension schemas" shall be defined in a case by case basis to represent that data. These "extension schemas" will be specified as described in Part A, Section 9, reference 2 of this Specification. Data related to the "extensions schemas" will be included in the deposit file described in Part A, Section 3.1 of this Specification. ICANN and the respective Registry Operator shall work together to agree on such new objects' data escrow specifications.

4.   **Processing of Deposit files**. The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see Part A, Section 9, reference 3 of this Specification. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see Part A, Section 9, reference 4 of this Specification, that are also royalty-free. The process to follow for the data file in original text format is:

(1)   The XML file of the deposit as described in Part A, Section 9, reference 1 of this Specification must be named as the containing file as specified in Section 5 but with the extension xml.

(2)   The data file(s) are aggregated in a tarball file named the same as (1) but with extension tar.

(3)   A compressed and encrypted OpenPGP Message is created using the tarball file as sole input. The suggested algorithm for compression is ZIP as per RFC 4880. The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.

(4)   The file may be split as necessary if, once compressed and encrypted, it is larger than the file size limit agreed with the escrow agent. Every part of a

split file, or the whole file if not split, will be called a processed file in this section.

(5)   A digital signature file will be generated for every processed file using the Registry Operator's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 Section 9, reference 3, and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.

(6)   The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.

(7)   The Escrow Agent will then validate every (processed) transferred data file using the procedure described in Part A, Section 8 of this Specification.

5.   **File Naming Conventions**. Files will be named according to the following convention: {gTLD}_{YYYY-MM-DD}_{type}_S{#}_R{rev}.{ext} where:

5.1.   {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;

5.2.   {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";

5.3.   {type} is replaced by:

(1)   "full", if the data represents a Full Deposit;

(2)   "diff", if the data represents a Differential Deposit;

(3)   "thin", if the data represents a Bulk Registration Data Access file, as specified in Section 3 of Specification 4;

(4)   "thick-{gurid}", if the data represent Thick Registration Data from a specific registrar, as defined in Section 3.2 of Specification 4. The {gurid} element must be replaced with the IANA Registrar ID associated with the data.

5.4.   {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".

5.5. {rev} is replaced by the number of revision (or resend) of the file beginning with "0":

5.6. {ext} is replaced by "sig" if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by "ryde".

6. **Distribution of Public Keys**. Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry Operator and ICANN will exchange public keys by the same procedure.

7. **Notification of Deposits**. Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN (using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification (the "Interface Specification")) a written statement from Registry Operator (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. The preparation and submission of this statement must be performed by the Registry Operator or its designee, provided that such designee may not be the Escrow Agent or any of Escrow Agent's Affiliates. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in Part A, Section 9, reference 1 of this Specification.

If not already an RFC, Registry Operator will use the most recent draft version of the Interface Specification at the Effective Date. Registry Operator may at its election use newer versions of the Interface Specification after the Effective Date. Once the Interface Specification is published as an RFC, Registry Operator will implement that version of the Interface Specification, no later than one hundred eighty (180) calendar days after such publishing.

8. **Verification Procedure**.

(1) The signature file of each processed file is validated.

(2) If processed files are pieces of a bigger file, the latter is put together.

(3) Each file obtained in the previous step is then decrypted and uncompressed.

(4) Each data file contained in the previous step is then validated against the format defined in Part A, Section 9, reference 1 of this Specification.

(5)   The data escrow agent extended verification process, as defined below in reference 2 of Part A of this Specification 2, as well as any other data escrow verification process contained in such reference.

If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.

9.   **<u>References</u>**.

(1)   Domain Name Data Escrow Specification (work in progress), http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow

(2)   Domain Name Registration Data (DNRD) Objects Mapping, http://tools.ietf.org/html/draft-arias-noguchi-dnrd-objects-mapping

(3)   OpenPGP Message Format, http://www.rfc-editor.org/rfc/rfc4880.txt

(4)   OpenPGP parameters, http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml

(5)   ICANN interfaces for registries and data escrow agents, http://tools.ietf.org/html/draft-lozano-icann-registry-interfaces

PART B – LEGAL REQUIREMENTS

1. **Escrow Agent**. Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendments thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated as a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.

2. **Fees**. Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within fifteen (15) calendar days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.

3. **Ownership**. Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed to ICANN or to a party designated in writing by ICANN on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis, for any use related to the operation, maintenance or transition of the TLD.

4. **Integrity and Confidentiality**. Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one (1) year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

    If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow

sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies**. Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.

6. **Release of Deposits**. Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four (24) hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:

    6.1.   the Registry Agreement has expired without renewal, or been terminated; or

    6.2.   ICANN has not received a notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent within five (5) calendar days after the Deposit's scheduled delivery date; (a) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (b) ICANN has not, within seven (7) calendar days after such notice, received the notification from Escrow Agent; or

    6.3.   ICANN has received notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent of failed verification of the latest escrow deposit for a specific date or a notification of a missing deposit, and the notification is for a deposit that should have been made on Sunday (i.e., a Full Deposit); (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven (7) calendar days after such notice, received notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent of verification of a remediated version of such Full Deposit; or

    6.4.   ICANN has received five notifications from Escrow Agent within the last thirty (30) calendar days notifying ICANN of either missing or failed escrow deposits that should have been made Monday through Saturday (i.e., a Differential Deposit), and (x) ICANN provided notice to Registry Operator of the receipt of such notifications; and (y) ICANN has not, within seven (7) calendar days after delivery of such notice to Registry Operator, received notification from Escrow Agent of verification of a remediated version of such Differential Deposit; or

6.5.   Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or

6.6.   Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Agreement; or

6.7.   a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN; or

6.8.   pursuant to Contractual and Operational Compliance Audits as specified under Section 2.11 of the Agreement.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon expiration or termination of the Registry Agreement or the Escrow Agreement.

7.   **Verification of Deposits**.

7.1.   Within twenty-four (24) hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a notification generated for each Deposit. Reports will be delivered electronically using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification.

7.2.   If Escrow Agent discovers that any Deposit fails the verification procedures or if Escrow Agent does not receive any scheduled Deposit, Escrow Agent must notify Registry Operator either by email, fax or phone and ICANN (using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification) of such nonconformity or non-receipt within twenty-four (24) hours after receiving the non-conformant Deposit or the deadline for such Deposit, as applicable. Upon notification of such verification or delivery failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to be delivered and pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.

8.   **Amendments**. Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.

9.   **Indemnity**. Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members,

and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

SPECIFICATION 3

FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD, using the API described in draft-lozano-icann-registry-interfaces, see Specification 2, Part A, Section 9, reference 5, with the following content.

ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three (3) months after the end of the month to which the reports relate. Unless set forth in this Specification 3, any reference to a specific time refers to Coordinated Universal Time (UTC). Monthly reports shall consist of data that reflects the state of the registry at the end of the month (UTC).

1.   **Per-Registrar Transactions Report**. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named "gTLD-transactions-yyyymm.csv", where "gTLD" is the gTLD name; in case of an IDN-TLD, the A-label shall be used; "yyyymm" is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field name	Description
01	registrar-name	Registrar's full corporate name as registered with IANA
02	iana-id	For cases where the registry operator acts as registrar (i.e., without the use of an ICANN accredited registrar) either 9998 or 9999 should be used depending on registration type (as described in Specification 5), otherwise the sponsoring Registrar IANA id should be used as specified in http://www.iana.org/assignments/registrar-ids
03	total-domains	total domain names under sponsorship in any EPP status but pendingCreate that have not been purged
04	total-nameservers	total name servers (either host objects or name server hosts as domain name attributes) associated with domain names registered for the TLD in any EPP status but pendingCreate that have not been purged
05	net-adds-1-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of one (1) year (and not deleted within the

		add grace period). A transaction must be reported in the month the add grace period ends.
06	net-adds-2-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of two(2) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
07	net-adds-3-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of three (3) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
08	net-adds-4-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of four (4) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
09	net-adds-5-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of five (5) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
10	net-adds-6-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of six (6) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
11	net-adds-7-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of seven (7) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
12	net-adds-8-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of eight (8) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
13	net-adds-9-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of nine (9) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.

14	net-adds-10-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of ten (10) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
15	net-renews-1-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of one (1) year (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
16	net-renews-2-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of two (2) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
17	net-renews-3-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of three (3) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
18	net-renews-4-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of four (4) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
19	net-renews-5-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of five (5) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
20	net-renews-6-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of six

		(6) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
21	net-renews-7-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of seven (7) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
22	net-renews-8-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of eight (8) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
23	net-renews-9-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of nine (9) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
24	net-renews-10-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of ten (10) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
25	transfer-gaining-successful	number of domain transfers initiated by this registrar that were successfully completed (either explicitly or automatically approved) and not deleted within the transfer grace period. A transaction must be reported in the month the transfer grace period ends.
26	transfer-gaining-nacked	number of domain transfers initiated by this registrar that were rejected (e.g., EPP transfer op="reject") by the other registrar

27	transfer-losing-successful	number of domain transfers initiated by another registrar that were successfully completed (either explicitly or automatically approved)
28	transfer-losing-nacked	number of domain transfers initiated by another registrar that this registrar rejected (e.g., EPP transfer op="reject")
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed (reported in the month where the determination happened)
30	transfer-disputed-lost	number of transfer disputes this registrar lost (reported in the month where the determination happened)
31	transfer-disputed-nodecision	number of transfer disputes involving this registrar with a split or no decision (reported in the month where the determination happened)
32	deleted-domains-grace	domains deleted within the add grace period (does not include names deleted while in EPP pendingCreate status). A deletion must be reported in the month the name is purged.
33	deleted-domains-nograce	domains deleted outside the add grace period (does not include names deleted while in EPP pendingCreate status). A deletion must be reported in the month the name is purged.
34	restored-domains	domain names restored during reporting period
35	restored-noreport	total number of restored names for which a restore report is required by the registry, but the registrar failed to submit it
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (both successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a "header line" as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read "Totals" while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

2.   **Registry Functions Activity Report**. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named "gTLD-activity-yyyymm.csv", where "gTLD" is the gTLD name; in case of an IDN-TLD, the A-label shall be used; "yyyymm" is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars in the production system at the end of the reporting period
02	zfa-passwords	number of active zone file access passwords at the end of the reporting period; "CZDS" may be used instead of the number of active zone file access passwords, if the Centralized Zone Data Service (CZDS) is used to provide the zone file to the end user
03	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
04	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
05	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
06	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
07	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
08	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
09	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
10	srs-dom-check	number of SRS (EPP and any other interface) domain name "check" requests responded during the reporting period
11	srs-dom-create	number of SRS (EPP and any other interface) domain name "create" requests responded during the reporting period

Field #	Field Name	Description
12	srs-dom-delete	number of SRS (EPP and any other interface) domain name "delete" requests responded during the reporting period
13	srs-dom-info	number of SRS (EPP and any other interface) domain name "info" requests responded during the reporting period
14	srs-dom-renew	number of SRS (EPP and any other interface) domain name "renew" requests responded during the reporting period
15	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP "restore" requests delivering a restore report responded during the reporting period
16	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP "restore" requests responded during the reporting period
17	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name "transfer" requests to approve transfers responded during the reporting period
18	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name "transfer" requests to cancel transfers responded during the reporting period
19	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name "transfer" requests to query about a transfer responded during the reporting period
20	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name "transfer" requests to reject transfers responded during the reporting period
21	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name "transfer" requests to request transfers responded during the reporting period
22	srs-dom-update	number of SRS (EPP and any other interface) domain name "update" requests (not including RGP restore requests) responded during the reporting period

Field #	Field Name	Description
23	srs-host-check	number of SRS (EPP and any other interface) host "check" requests responded during the reporting period
24	srs-host-create	number of SRS (EPP and any other interface) host "create" requests responded during the reporting period
25	srs-host-delete	number of SRS (EPP and any other interface) host "delete" requests responded during the reporting period
26	srs-host-info	number of SRS (EPP and any other interface) host "info" requests responded during the reporting period
27	srs-host-update	number of SRS (EPP and any other interface) host "update" requests responded during the reporting period
28	srs-cont-check	number of SRS (EPP and any other interface) contact "check" requests responded during the reporting period
29	srs-cont-create	number of SRS (EPP and any other interface) contact "create" requests responded during the reporting period
30	srs-cont-delete	number of SRS (EPP and any other interface) contact "delete" requests responded during the reporting period
31	srs-cont-info	number of SRS (EPP and any other interface) contact "info" requests responded during the reporting period
32	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact "transfer" requests to approve transfers responded during the reporting period
33	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact "transfer" requests to cancel transfers responded during the reporting period
34	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact "transfer" requests to query about a transfer responded during the reporting period
35	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact "transfer" requests to reject transfers responded during the reporting period

Field #	Field Name	Description
36	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact "transfer" requests to request transfers responded during the reporting period
37	srs-cont-update	number of SRS (EPP and any other interface) contact "update" requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a "header line" as described in section 2 of RFC 4180. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

For gTLDs that are part of a single-instance Shared Registry System, the Registry Functions Activity Report may include the total contact or host transactions for all the gTLDs in the system.

SPECIFICATION 4

REGISTRATION DATA PUBLICATION SERVICES

1. **Registration Data Directory Services**. Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

   Registry Operator shall implement a new standard supporting access to domain name registration data (SAC 051) no later than one hundred thirty-five (135) days after it is requested by ICANN if: 1) the IETF produces a standard (i.e., it is published, at least, as a Proposed Standard RFC as specified in RFC 2026); and 2) its implementation is commercially reasonable in the context of the overall operation of the registry.

   1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.

   1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.

   1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

   1.4. The fields specified below set forth the minimum output requirements. Registry Operator may output data fields in addition to those specified below, subject to approval by ICANN, which approval shall not be unreasonably withheld.

   1.5. **Domain Name Data:**

      1.5.1 **Query format:** whois EXAMPLE.TLD

      1.5.2 **Response format:**

      Domain Name: EXAMPLE.TLD
      Domain ID: D1234567-TLD

WHOIS Server: whois.example.tld
Referral URL: http://www.example.tld
Updated Date: 2009-05-29T20:13:00Z
Creation Date: 2000-10-08T00:45:00Z
Registry Expiry Date: 2010-10-08T00:44:59Z
Sponsoring Registrar: EXAMPLE REGISTRAR LLC
Sponsoring Registrar IANA ID: 5555555
Domain Status: clientDeleteProhibited
Domain Status: clientRenewProhibited
Domain Status: clientTransferProhibited
Domain Status: serverUpdateProhibited
Registrant ID: 5372808-ERL
Registrant Name: EXAMPLE REGISTRANT
Registrant Organization: EXAMPLE ORGANIZATION
Registrant Street: 123 EXAMPLE STREET
Registrant City: ANYTOWN
Registrant State/Province: AP
Registrant Postal Code: A1A1A1
Registrant Country: EX
Registrant Phone: +1.5555551212
Registrant Phone Ext: 1234
Registrant Fax: +1.5555551213
Registrant Fax Ext: 4321
Registrant Email: EMAIL@EXAMPLE.TLD
Admin ID: 5372809-ERL
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION
Admin Street: 123 EXAMPLE STREET
Admin City: ANYTOWN
Admin State/Province: AP
Admin Postal Code: A1A1A1
Admin Country: EX
Admin Phone: +1.5555551212
Admin Phone Ext: 1234
Admin Fax: +1.5555551213
Admin Fax Ext:
Admin Email: EMAIL@EXAMPLE.TLD
Tech ID: 5372811-ERL
Tech Name: EXAMPLE REGISTRAR TECHNICAL
Tech Organization: EXAMPLE REGISTRAR LLC
Tech Street: 123 EXAMPLE STREET
Tech City: ANYTOWN
Tech State/Province: AP
Tech Postal Code: A1A1A1
Tech Country: EX
Tech Phone: +1.1235551234

Tech Phone Ext: 1234
Tech Fax: +1.5555551213
Tech Fax Ext: 93
Tech Email: EMAIL@EXAMPLE.TLD
Name Server: NS01.EXAMPLEREGISTRAR.TLD
Name Server: NS02.EXAMPLEREGISTRAR.TLD
DNSSEC: signedDelegation
DNSSEC: unsigned
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.6. **Registrar Data:**

1.6.1 **Query format**: whois "registrar Example Registrar, Inc."

1.6.2 **Response format**:

Registrar Name: Example Registrar, Inc.
Street: 1234 Admiralty Way
City: Marina del Rey
State/Province: CA
Postal Code: 90292
Country: US
Phone Number: +1.3105551212
Fax Number: +1.3105551213
Email: registrar@example.tld
WHOIS Server: whois.example-registrar.tld
Referral URL: http://www.example-registrar.tld
Admin Contact: Joe Registrar
Phone Number: +1.3105551213
Fax Number: +1.3105551213
Email: joeregistrar@example-registrar.tld
Admin Contact: Jane Registrar
Phone Number: +1.3105551214
Fax Number: +1.3105551213
Email: janeregistrar@example-registrar.tld
Technical Contact: John Geek
Phone Number: +1.3105551215
Fax Number: +1.3105551216
Email: johngeek@example-registrar.tld
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. **Nameserver Data:**

1.7.1 **Query format**: whois "nameserver (nameserver name)", or whois "nameserver (IP Address)." For example: whois "nameserver NS1.EXAMPLE.TLD".

1.7.2 **Response format:**

> Server Name: NS1.EXAMPLE.TLD
> IP Address: 192.0.2.123
> IP Address: 2001:0DB8::1
> Registrar: Example Registrar, Inc.
> WHOIS Server: whois.example-registrar.tld
> Referral URL: http://www.example-registrar.tld
> >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.8. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers (the extension will be provided as a separate field as shown above), email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

1.9. In order to be compatible with ICANN's common interface for WHOIS (InterNIC), WHOIS output shall be in the format outline above.

1.10. **Searchability**. Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.

1.10.1 Registry Operator will offer searchability on the web-based Directory Service.

1.10.2 Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).

1.10.3 Registry Operator will offer exact-match capabilities, at least, on the following fields: Registrar ID, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).

1.10.4 Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.

1.10.5 Search results will include domain names matching the search criteria.

1.10.6 Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate

authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

1.11. Registry Operator shall provide a link on the primary website for the TLD (i.e., the website provided to ICANN for publishing on the ICANN website) to a web page designated by ICANN containing WHOIS policy and educational materials.

2. **Zone File Access**

2.1. **Third-Party Access**

2.1.1 **Zone File Access Agreement**. Registry Operator will enter into an agreement with any Internet user, which will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider, which may be ICANN or an ICANN designee (the "CZDA Provider"). Registry Operator (optionally through the CZDA Provider) will provide access to zone file data per Section 2.1.3 of this Specification and do so using the file format described in Section 2.1.4 of this Specification. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 below or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5 below.

2.1.2 **Credentialing Requirements**. Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address and IP address.

2.1.3 **Grant of Access**. Each Registry Operator (optionally through the CZDA Provider) will provide the Zone File SFTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry's zone data archives. Registry Operator will grant the user a non-exclusive, nontransferable, limited right to access Registry Operator's (optionally CZDA Provider's) Zone File hosting server, and to transfer

a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using SFTP, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator (or the CZDA Provider) also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4 **File Format Standard**. Registry Operator (optionally through the CZDA Provider) will provide zone files using a subformat of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.

2. Class and Type must use the standard mnemonics and must be in lower case.

3. TTL must be present as a decimal integer.

4. Use of \X and \DDD inside domain names is allowed.

5. All domain names must be in lower case.

6. Must use exactly one tab as separator of fields inside a record.

7. All domain names must be fully qualified.

8. No $ORIGIN directives.

9. No use of "@" to denote current origin.

10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.

11. No $INCLUDE directives.

12. No $TTL directives.

13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.

14. No use of comments.

15. No blank lines.

16. The SOA record should be present at the top and (duplicated at) the end of the zone file.

17. With the exception of the SOA record, all the records in a file must be in alphabetical order.

18. One zone per file. If a TLD divides its DNS data into multiple zones, each zone goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

2.1.5 **Use of Data by User**. Registry Operator will permit user to use the zone file for lawful purposes; provided that (a) user takes all reasonable steps to protect against unauthorized access to, use of, and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to (i) allow, enable or otherwise support any marketing activities to entities other than the user's existing customers, regardless of the medium used (such media include but are not limited to transmission by e-mail, telephone, facsimile, postal mail, SMS, and wireless alerts of mass unsolicited, commercial advertising or solicitations to entities), (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar, or (iii) interrupt, disrupt or interfere in the normal business operations of any registrant.

2.1.6 **Term of Use**. Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

2.1.7 **No Fee for Access**. Registry Operator will provide, and CZDA Provider will facilitate, access to the zone file to user at no cost.

2.2. **Co-operation**

2.2.1 **Assistance**. Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

2.3. **ICANN Access**. Registry Operator shall provide bulk access to the zone files for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time. Access will be provided at least daily. Zone files will include SRS data committed as close as possible to 00:00:00 UTC.

2.4. **Emergency Operator Access**. Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

3. **Bulk Registration Data Access to ICANN**

3.1. **Periodic Access to Thin Registration Data**. In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

3.1.1 **Contents**. Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), Registrar ID (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar id (IANA ID), hostname of registrar Whois server, and URL of registrar.

3.1.2 **Format**. The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.

3.1.3 **Access**. Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

3.2. **Exceptional Access to Thick Registration Data**. In case of a registrar failure, deaccreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data as soon as commercially practicable, but in no event later than five (5) calendar days following ICANN's request. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for

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download by ICANN in the same manner as the data specified in Section 3.1 of this Specification.

SPECIFICATION 5

SCHEDULE OF RESERVED NAMES

Except to the extent that ICANN otherwise expressly authorizes in writing, and subject to the terms and conditions of this Specification, Registry Operator shall reserve the following labels from initial (i.e., other than renewal) registration within the TLD. If using self-allocation, the Registry Operator must show the registration in the RDDS. In the case of IDN names (as indicated below), IDN variants will be identified according to the registry operator IDN registration policy, where applicable.

1. **Example.** The ASCII label "EXAMPLE" shall be withheld from registration or allocated to Registry Operator at the second level and at all other levels within the TLD at which Registry Operator offers registrations (such second level and all other levels are collectively referred to herein as, "All Levels"). Such label may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, such withheld or allocated label shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such name without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

2. **Two-character labels**. All two-character ASCII labels shall be withheld from registration or allocated to Registry Operator at the second level within the TLD. Such labels may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator, provided that such two-character label strings may be released to the extent that Registry Operator reaches agreement with the related government and country-code manager of the string as specified in the ISO 3166-1 alpha-2 standard. The Registry Operator may also propose the release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes, subject to approval by ICANN. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such labels that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

3. **Reservations for Registry Operations**.

    3.1. The following ASCII labels must be withheld from registration or allocated to Registry Operator at All Levels for use in connection with the operation of the registry for the TLD: WWW, RDDS and WHOIS. The following ASCII label must be allocated to Registry Operator upon delegation into the root zone at All Levels for use in connection with the operation of the registry for the TLD: NIC. Registry Operator may activate WWW, RDDS and WHOIS in the DNS,

but must activate NIC in the DNS, as necessary for the operation of the TLD (in accordance with the provisions of Exhibit A, the ASCII label NIC must be provisioned in the DNS as a zone cut using NS resource records). None of WWW, RDDS, WHOIS or NIC may be released or registered to any person (other than Registry Operator) or third party. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD all such withheld or allocated names shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement. Such domains shall be identified by Registrar ID 9999.

3.1.1   If Exhibit A to the Agreement specifically provides that Registry Operator may offer registration of IDNs, Registry Operator may also activate a language-specific translation or transliteration of the term "NIC" or an abbreviation for the translation of the term "Network Information Center" in the DNS in accordance with Registry Operator's IDN Tables and IDN Registration Rules. Such translation, transliteration or abbreviation may be reserved by Registry Operator and used in addition to the label NIC to provide any required registry functions. For the avoidance of doubt, Registry Operator is required to activate the ASCII label NIC pursuant to Section 3.1 of this Specification 3.

3.2.   Registry Operator may activate in the DNS at All Levels up to one hundred (100) names (plus their IDN variants, where applicable) necessary for the operation or the promotion of the TLD. Registry Operator must act as the Registered Name Holder of such names as that term is defined in the then-current ICANN Registrar Accreditation Agreement (RAA). These activations will be considered Transactions for purposes of Section 6.1 of the Agreement. Registry Operator must either (i) register such names through an ICANN accredited registrar; or (ii) self-allocate such names and with respect to those names submit to and be responsible to ICANN for compliance with ICANN Consensus Policies and the obligations set forth in Subsections 3.7.7.1 through 3.7.7.12 of the then-current RAA (or any other replacement clause setting out the terms of the registration agreement between a registrar and a registered name holder). If Registry Operator chooses option (ii) above, it shall identify these transactions using Registrar ID 9998. At Registry Operator's discretion and in compliance with all other terms of this Agreement, including the RPMs set forth in Specification 7, such names may be released for registration to another person or entity.

3.3.   Registry Operator may withhold from registration or allocate to Registry Operator names (including their IDN variants, where applicable) at All Levels in accordance with Section 2.6 of the Agreement. Such names may not be activated in the DNS, but may be released for registration to Registry

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Operator or another person or entity at Registry Operator's discretion, subject to compliance with all the terms of this Agreement, including applicable RPMs set forth in Specification 7. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Upon ICANN's request, Registry Operator shall provide a listing of all names withheld or allocated to Registry Operator pursuant to Section 2.6 of the Agreement. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

3.4.   Effective upon the conclusion of the No-Activation Period specified in Section 6.1 of Specification 6, Registry Operator shall allocate the domain name "icann-sla-monitoring.<tld>" to the ICANN testing registrar (as such registrar is described in Section 8.2 of Specification 10). If such domain name is not available for registration in the TLD or is otherwise inconsistent with the registration policies of the TLD, Registry Operator may allocate a different domain name to the ICANN testing registrar in consultation with ICANN. The allocation of any such alternative domain name will be communicated to ICANN following such consultation. The allocation of the domain name "icann-sla-monitoring.<tld>" to the ICANN testing registrar will not (i) be considered a Transaction for purposes of Section 6.1 of the Agreement, (ii) count towards the one hundred domain names available to Registry Operator under Section 3.2 of this Specification 5, or (iii) adversely affect Registry Operator's qualification as a .BRAND TLD pursuant to Specification 13 (.BRAND TLD Provisions) hereto (as applicable).

4.   **Country and Territory Names**. The country and territory names (including their IDN variants, where applicable) contained in the following internationally recognized lists shall be withheld from registration or allocated to Registry Operator at All Levels:

4.1.   the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union <http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm>;

4.2.   the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and

4.3.   the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names (including their IDN variants according to the registry operator IDN registration policy, where applicable) may be released to the extent that Registry Operator reaches agreement with the applicable government(s). Registry Operator must not activate such names in the DNS; provided, that Registry Operator may propose the release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

5.   **International Olympic Committee; International Red Cross and Red Crescent Movement**. As instructed from time to time by ICANN, the names (including their IDN variants, where applicable) relating to the International Olympic Committee, International Red Cross and Red Crescent Movement listed at http://www.icann.org/en/resources/registries/reserved shall be withheld from registration or allocated to Registry Operator at the second level within the TLD. Additional International Olympic Committee, International Red Cross and Red Crescent Movement names (including their IDN variants) may be added to the list upon ten (10) calendar days notice from ICANN to Registry Operator. Such names may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

6.   **Intergovernmental Organizations**. As instructed from time to time by ICANN, Registry Operator will implement the protections mechanism determined by the ICANN Board of Directors relating to the protection of identifiers for Intergovernmental Organizations. A list of reserved names for this Section 6 is available at http://www.icann.org/en/resources/registries/reserved. Additional names (including their IDN variants) may be added to the list upon ten (10) calendar days notice from ICANN to Registry Operator. Any such protected identifiers for Intergovernmental Organizations may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such protected identifiers shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use

of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

SPECIFICATION 6

REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

1. **Standards Compliance**

    1.1. **DNS**. Registry Operator shall comply with relevant existing RFCs and those
    published in the future by the Internet Engineering Task Force (IETF),
    including all successor standards, modifications or additions thereto relating
    to the DNS and name server operations including without limitation RFCs
    1034, 1035, 1123, 1982, 2181, 2182, 3226, 3596, 3597, 4343, 5966 and
    6891. DNS labels may only include hyphens in the third and fourth position
    if they represent valid IDNs (as specified above) in their ASCII encoding (e.g.,
    "xn--ndk061n").

    1.2. **EPP**. Registry Operator shall comply with relevant existing RFCs and those
    published in the future by the Internet Engineering Task Force (IETF)
    including all successor standards, modifications or additions thereto relating
    to the provisioning and management of domain names using the Extensible
    Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731,
    5732 (if using host objects), 5733 and 5734. If Registry Operator implements
    Registry Grace Period (RGP), it will comply with RFC 3915 and its successors.
    If Registry Operator requires the use of functionality outside the base EPP
    RFCs, Registry Operator must document EPP extensions in Internet-Draft
    format following the guidelines described in RFC 3735. Registry Operator
    will provide and update the relevant documentation of all the EPP Objects
    and Extensions supported to ICANN prior to deployment.

    1.3. **DNSSEC**. Registry Operator shall sign its TLD zone files implementing
    Domain Name System Security Extensions ("DNSSEC"). For the absence of
    doubt, Registry Operator shall sign the zone file of <TLD> and zone files used
    for in-bailiwick glue for the TLD's DNS servers. During the Term, Registry
    Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their
    successors, and follow the best practices described in RFC 6781 and its
    successors. If Registry Operator implements Hashed Authenticated Denial of
    Existence for DNS Security Extensions, it shall comply with RFC 5155 and its
    successors. Registry Operator shall accept public-key material from child
    domain names in a secure manner according to industry best practices.
    Registry shall also publish in its website the DNSSEC Practice Statements
    (DPS) describing critical security controls and procedures for key material
    storage, access and usage for its own keys and secure acceptance of
    registrants' public-key material. Registry Operator shall publish its DPS
    following the format described in RFC 6841. DNSSEC validation must be
    active and use the IANA DNS Root Key Signing Key set (available at
    https://www.iana.org/dnssec/files) as a trust anchor for Registry Operator's
    Registry Services making use of data obtained via DNS responses.

1.4.   **IDN**. If the Registry Operator offers Internationalized Domain Names ("IDNs"), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices.

1.5.   **IPv6**. Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry's name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow "DNS IPv6 Transport Operational Guidelines" as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g., Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six (6) months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

1.6.   **IANA Rootzone Database**. In order to ensure that authoritative information about the TLD remains publicly available, Registry Operator shall submit a change request to the IANA functions operator updating any outdated or inaccurate DNS or WHOIS records of the TLD. Registry Operator shall use commercially reasonable efforts to submit any such change request no later than seven (7) calendar days after the date any such DNS or WHOIS records becomes outdated or inaccurate. Registry Operator must submit all change requests in accordance with the procedures set forth at <http://www.iana.org/domains/root>.

1.7.   **Network Ingress Filtering**. Registry Operator shall implement network ingress filtering checks for its Registry Services as described in BCP 38 and BCP 84, which ICANN will also implement.

2.   **Registry Services**

2.1.   **Registry Services**. "Registry Services" are, for purposes of the Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other

products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

2.2. **Wildcard Prohibition**. For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a "Name Error" response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

3. **Registry Continuity**

3.1. **High Availability**. Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator. Registry Operator's emergency operations department shall be available at all times to respond to extraordinary occurrences.

3.2. **Extraordinary Event**. Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within twenty-four (24) hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of forty-eight (48) hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. **Business Continuity**. Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide

the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

4. **Abuse Mitigation**

4.1. **Abuse Contact**. Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

4.2. **Malicious Use of Orphan Glue Records**. Registry Operator shall take action to remove orphan glue records (as defined at http://www.icann.org/en/committees/security/sac048.pdf) when provided with evidence in written form that such records are present in connection with malicious conduct.

5. **Supported Initial and Renewal Registration Periods**

5.1. **Initial Registration Periods**. Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

5.2. **Renewal Periods**. Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

6. **Name Collision Occurrence Management**

6.1. **No-Activation Period.** Registry Operator shall not activate any names in the DNS zone for the Registry TLD (except for "NIC") until at least 120 calendar days after the effective date of this agreement. Registry Operator may allocate names (subject to subsection 6.2 below) during this period only if Registry Operator causes registrants to be clearly informed of the inability to activate names until the No-Activation Period ends.

6.2. **Name Collision Occurrence Assessment**

6.2.1 Registry Operator shall not activate any names in the DNS zone for the Registry TLD except in compliance with a Name Collision Occurrence Assessment provided by ICANN regarding the Registry TLD. Registry

Operator will either (A) implement the mitigation measures described in its Name Collision Occurrence Assessment before activating any second-level domain name, or (B) block those second-level domain names for which the mitigation measures as described in the Name Collision Occurrence Assessment have not been implemented and proceed with activating names that are not listed in the Assessment.

6.2.2 Notwithstanding subsection 6.2.1, Registry Operator may proceed with activation of names in the DNS zone without implementation of the measures set forth in Section 6.2.1 only if (A) ICANN determines that the Registry TLD is eligible for this alternative path to activation of names; and (B) Registry Operator blocks all second-level domain names identified by ICANN and set forth at <http://newgtlds.icann.org/en/announcements-and-media/announcement-2-17nov13-en> as such list may be modified by ICANN from time to time. Registry Operator may activate names pursuant to this subsection and later activate names pursuant to subsection 6.2.1.

6.2.3 The sets of names subject to mitigation or blocking pursuant to Sections 6.2.1 and 6.2.2 will be based on ICANN analysis of DNS information including "Day in the Life of the Internet" data maintained by the DNS Operations, Analysis, and Research Center (DNS-OARC) <https://www.dns-oarc.net/oarc/data/ditl>.

6.2.4 Registry Operator may participate in the development by the ICANN community of a process for determining whether and how these blocked names may be released.

6.2.5 If ICANN determines that the TLD is ineligible for the alternative path to activation of names, ICANN may elect not to delegate the TLD pending completion of the final Name Collision Occurrence Assessment for the TLD, and Registry Operator's completion of all required mitigation measures. Registry Operator understands that the mitigation measures required by ICANN as a condition to activation of names in the DNS zone for the TLD may include, without limitation, mitigation measures such as those described in Section 3.2 of the New gTLD Name Collision Occurrence Management Plan approved by the ICANN Board New gTLD Program Committee (NGPC) on 7 October 2013 as found at <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-07oct13-en.pdf>.

6.3. **Name Collision Report Handling**

    6.3.1   During the first two years after delegation of the TLD, Registry Operator's emergency operations department shall be available to receive reports, relayed by ICANN, alleging demonstrably severe harm from collisions with overlapping use of the names outside of the authoritative DNS.

    6.3.2   Registry Operator shall develop an internal process for handling in an expedited manner reports received pursuant to subsection 6.3.1 under which Registry Operator may, to the extent necessary and appropriate, remove a recently activated name from the TLD zone for a period of up to two years in order to allow the affected party to make changes to its systems.

SPECIFICATION 7

MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms**. Registry Operator shall implement and adhere to the rights protection mechanisms ("RPMs") specified in this Specification. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party's legal rights. Registry Operator will include all RPMs required by this Specification 7 and any additional RPMs developed and implemented by Registry Operator in the Registry-Registrar Agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements set forth therein each of the mandatory RPMs set forth in the Trademark Clearinghouse as of the date hereof, as posted at http://www.icann.org/en/resources/registries/tmch-requirements (the "Trademark Clearinghouse Requirements"), which may be revised in immaterial respects by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse. If there is a conflict between the terms and conditions of this Agreement and the Trademark Clearinghouse Requirements, the terms and conditions of this Agreement shall control. Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar authorizing such registrar(s) to register domain names in the TLD as follows:

    a. if Registry Operator conducts a Qualified Launch Program or is authorized by ICANN to conduct an Approved Launch Program (as those terms are defined in the Trademark Clearinghouse Requirements), Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar prior to allocating any domain names pursuant to such Qualified Launch Program or Approved Launch Program, as applicable;

    b. if Registry Operator does not conduct a Qualified Launch Program or is not authorized by ICANN to conduct an Approved Launch Program, Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar at least thirty (30) calendar days prior to the expiration date of the Sunrise Period (as defined in the Trademark Clearinghouse Requirements) for the TLD; or

    c. if this Agreement contains a Specification 13, Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar prior to the Claims Commencement Date (as defined in Specification 13).

Nothing in this Specification 7 shall limit or waive any other obligations or requirements of this Agreement applicable to Registry Operator, including Section 2.9(a) and Specification 9.

2. **Dispute Resolution Mechanisms**. Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

   a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at http://www.icann.org/en/resources/registries/pddrp and http://www.icann.org/en/resources/registries/rrdrp, respectively). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and

   b. the Uniform Rapid Suspension system ("URS") adopted by ICANN (posted at http://www.icann.org/en/resources/registries/urs), including the implementation of determinations issued by URS examiners.

SPECIFICATION 8

CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6th) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in item 50(b) of Attachment to Module 2 – Evaluation Questions and Criteria – of the gTLD Applicant Guidebook, as published and supplemented by ICANN prior to the date hereof (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. If Registry Operator elects to obtain an irrevocable standby letter of credit but the term required above is unobtainable, Registry Operator may obtain a letter of credit with a one-year term and an "evergreen provision," providing for annual extensions, without amendment, for an indefinite number of additional periods until the issuing bank informs ICANN of its final expiration or until ICANN releases the letter of credit as evidenced in writing, if the letter of credit otherwise meets the requirements set forth in item 50(b) of Attachment to Module 2 – Evaluation Questions and Criteria – of the gTLD Applicant Guidebook, as published and supplemented by ICANN prior to the date hereof; provided, however, that if the issuing bank informs ICANN of the expiration of such letter of credit prior to the sixth (6th) anniversary of the Effective Date, such letter of credit must provide that ICANN is entitled to draw the funds secured by the letter of credit prior to such expiration. The letter of credit must require the issuing bank to give ICANN at least thirty (30) calendar days' notice of any such expiration or non-renewal. If the letter of credit expires or is terminated at any time prior to the sixth (6th) anniversary of the Effective Date, Registry Operator will be required to obtain a replacement Continued Operations Instrument. ICANN may draw the funds under the original letter of credit, if the replacement Continued Operations Instrument is not in place prior to the expiration of the original letter of credit. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld).

2.   If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an "Alternative Instrument"). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.

3.   Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an Alternative Instrument that (i) provides for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operator replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such Alternative Instrument(s), and such instrument shall thereafter be considered the Continued Operations Instrument for purposes of this Agreement.

SPECIFICATION 9

REGISTRY OPERATOR CODE OF CONDUCT

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a "Registry Related Party"), to:

   a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;

   b. register domain names in its own right, except for names registered through an ICANN accredited registrar; provided, however, that Registry Operator may (a) reserve names from registration pursuant to Section 2.6 of the Agreement and (b) may withhold from registration or allocate to Registry Operator up to one hundred (100) names pursuant to Section 3.2 of Specification 5;

   c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running"); or

   d. allow any Affiliated registrar to disclose Personal Data about registrants to Registry Operator or any Registry Related Party, except as reasonably necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions.

2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, ensure that such services are offered through a legal entity separate from Registry Operator, and maintain separate books of accounts with respect to its registrar or registrar-reseller operations.

3. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will conduct internal reviews at least once per calendar year to ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to

Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification; provided, however, ICANN shall not disclose Confidential Information contained in such results except in accordance with Section 7.15 of the Agreement.

4.   Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.

5.   Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.

6.   Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for the exclusive use of Registry Operator or its Affiliates, (ii) 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 (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

SPECIFICATION 10

REGISTRY PERFORMANCE SPECIFICATIONS

1. **Definitions**

    1.1. **DNS**. Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.

    1.2. **DNSSEC proper resolution**. There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.

    1.3. **EPP**. Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.

    1.4. **IP address**. Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.

    1.5. **Probes**. Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.

    1.6. **RDDS**. Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.

    1.7. **RTT**. Round-Trip Time or RTT refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.

    1.8. **SLR**. Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

2. **Service Level Agreement Matrix**

	Parameter	SLR (monthly basis)
DNS	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime ($\approx 99\%$)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
RDDS	RDDS availability	≤ 864 min of downtime ($\approx 98\%$)

	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
EPP	EPP service availability	≤ 864 min of downtime ($\approx 98\%$)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar periods of unavailable or slow service; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

3. **DNS**

3.1. **DNS service availability**. Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from "**DNS tests**" to each of their public-DNS registered "**IP addresses**" to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.

3.2. **DNS name server availability**. Refers to the ability of a public-DNS registered "**IP address**" of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered "**IP address**" of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from "**DNS tests**" to a name server "**IP address**" during a given time, the name server "**IP address**" will be considered unavailable.

3.3. **UDP DNS resolution RTT**. Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.

3.4. **TCP DNS resolution RTT**. Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.

3.5. **DNS resolution RTT**. Refers to either "**UDP DNS resolution RTT**" or "**TCP DNS resolution RTT**".

3.6. **DNS update time**. Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer "**DNS queries**" with data consistent with the change made. This only applies for changes to DNS information.

3.7. **DNS test**. Means one non-recursive DNS query sent to a particular "**IP address**" (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a "**DNS resolution RTT**" 5 times higher than the corresponding SLR, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the "**DNS resolution RTT**" or, undefined/unanswered.

3.8. **Measuring DNS parameters**. Every minute, every DNS probe will make an UDP or TCP "**DNS test**" to each of the public-DNS registered "**IP addresses**" of the name servers of the domain name being monitored. If a "**DNS test**" result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

3.9. **Collating the results from DNS probes**. The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

3.10. **Distribution of UDP and TCP queries**. DNS probes will send UDP or TCP "**DNS test**" approximating the distribution of these queries.

3.11. **Placement of DNS probes**. Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

4. **RDDS**

4.1. **RDDS availability**. Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.

4.2.   **WHOIS query RTT**. Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.3.   **Web-based-WHOIS query RTT**. Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.4.   **RDDS query RTT**. Refers to the collective of "**WHOIS query RTT**" and "**Web-based- WHOIS query RTT**".

4.5.   **RDDS update time**. Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.

4.6.   **RDDS test**. Means one query sent to a particular "**IP address**" of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.

4.7.   **Measuring RDDS parameters**. Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered "**IP addresses**" of the servers for each RDDS service of the TLD being monitored and make an "**RDDS test**" to each one. If an "**RDDS test**" result is undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

4.8.   **Collating the results from RDDS probes**. The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

4.9.   **Placement of RDDS probes**. Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

5. **EPP**

    5.1.   **EPP service availability**. Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with "**EPP command RTT**" 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

    5.2.   **EPP session-command RTT**. Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

    5.3.   **EPP query-command RTT**. Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

    5.4.   **EPP transform-command RTT**. Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

    5.5.   **EPP command RTT**. Refers to "**EPP session-command RTT**", "**EPP query-command RTT**" or "**EPP transform-command RTT**".

    5.6.   **EPP test**. Means one EPP command sent to a particular "**IP address**" for one of the EPP servers. Query and transform commands, with the exception of "create", shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the "**EPP command RTT**" or undefined/unanswered.

5.7. **Measuring EPP parameters**. Every 5 minutes, EPP probes will select one "**IP address**" of the EPP servers of the TLD being monitored and make an "**EPP test**"; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an "**EPP test**" result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

5.8. **Collating the results from EPP probes**. The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

5.9. **Placement of EPP probes**. Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. **Emergency Thresholds**

The following matrix presents the emergency thresholds that, if reached by any of the services mentioned above for a TLD, would cause the emergency transition of the Registry for the TLD as specified in Section 2.13 of this Agreement.

Critical Function	Emergency Threshold
DNS Service	4-hour total downtime / week
DNSSEC proper resolution	4-hour total downtime / week
EPP	24-hour total downtime / week
RDDS	24-hour total downtime / week
Data Escrow	Reaching any of the criteria for the release of deposits described in Specification 2, Part B, Section 6.2 through Section 6.6.

7. **Emergency Escalation**

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between

ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. Emergency Escalation initiated by ICANN

Upon reaching 10% of the Emergency thresholds as described in Section 6 of this Specification, ICANN's emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator's emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

7.2. Emergency Escalation initiated by Registrars

Registry Operator will maintain an emergency operations department prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the registry for the TLD because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an emergency escalation to the emergency operations department of ICANN. ICANN then may initiate an emergency escalation with the Registry Operator as explained above.

7.3. Notifications of Outages and Maintenance

In the event that a Registry Operator plans maintenance, it will provide notice to the ICANN emergency operations department, at least, twenty-four (24) hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per its contractual obligations with ICANN, on services under a service level agreement and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend emergency escalation services for the monitored services involved.

8. Covenants of Performance Measurement

8.1. **No interference**. Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement

tests described in this Specification as it would to any other request from an Internet user (for DNS and RDDS) or registrar (for EPP).

8.2. **ICANN testing registrar**. Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLR**s described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement. Registry Operator shall identify these transactions using Registrar ID 9997.

SPECIFICATION 11

PUBLIC INTEREST COMMITMENTS

1. Registry Operator will use only ICANN accredited registrars that are party to the Registrar Accreditation Agreement approved by the ICANN Board of Directors on 27 June 2013 in registering domain names. A list of such registrars shall be maintained by ICANN on ICANN's website.

2. (Intentionally omitted.)

3. Registry Operator agrees to perform the following specific public interest commitments, which commitments shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN (posted at http://www.icann.org/en/resources/registries/picdrp), which may be revised in immaterial respects by ICANN from time to time (the "PICDRP"). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

   a. Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.

   b. Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.

   c. Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.

d. Registry Operator of a "Generic String" TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person's or entity's "Affiliates" (as defined in Section 2.9(c) of the Registry Agreement). "Generic String" means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.

ADDENDUM TO REGISTRY AGREEMENT

This Addendum to that certain Registry Agreement, dated as of 30 June 2019, for the **.biz** Top-Level Domain (the "<u>Registry Agreement</u>"), by and between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation ("<u>ICANN</u>"), and Registry Services, LLC, a Delaware limited liability company ("<u>Registry Operator</u>"), is dated as of 30 June 2019 and is by and among ICANN and Registry Operator ("<u>Addendum</u>"). ICANN and Registry Operator are hereinafter referred to collectively as the "<u>Parties</u>" and individually as a "<u>Party</u>." Capitalized terms used and not defined herein will have the respective meanings given thereto in the Registry Agreement.

WHEREAS, the Parties previously entered into a registry agreement, dated 22 August 2013;

WHEREAS, the Registry Agreement has certain provisions that are not applicable to a previously delegated top level domain, such as the TLD;

WHEREAS, the purpose of this Addendum is to amend the Registry Agreement in order to modify the provisions that are not applicable to the TLD; and

WHEREAS, pursuant to Section 7.6 of the Registry Agreement, the parties may enter into bilateral amendments and modifications to the Registry Agreement negotiated solely between the Parties.

NOW, THEREFORE, in consideration of the above recitals acknowledged herein by reference, the Parties, intending to be legally bound hereby, do agree as follows:

1. No Approved Amendment pursuant to Section 7.6 or Section 7.7 of the Registry Agreement shall amend or modify the specific terms of the Registry Agreement that are modified or amended pursuant to Section 2 of this Addendum (such terms, "<u>Addendum Terms</u>"); provided that the foregoing shall not apply to any other terms of any provision of the Registry Agreement, including the remaining unmodified terms of any Sections of the Registry Agreement that include the Addendum Terms. If an Approved Amendment is approved in accordance with Section 7.6 or Section 7.7 that would amend or modify any terms of the Registry Agreement that are modified by the Addendum Terms, ICANN and the Registry Operator agree to (i) enter into good faith discussions regarding whether an amendment to such Addendum Terms is appropriate in light of such Approved Amendment and (ii) mutually agree (such agreement not to be unreasonably withheld, conditioned or delayed) on an appropriate amendment to this Addendum or the Registry Agreement.

2. The following Sections of the Registry Agreement are hereby modified by the Addendum Terms set forth in the column across from such Section.

Section	Addendum Terms
1.1	The following terms of Section 1.1 shall be of no force or effect: ", subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone"
1.3(a)(i)	The terms of Section 1.3(a)(i) are hereby amended and restated in their entirety as follows: "all material information provided and statements made in writing during the negotiation of this Agreement were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN; and"
1.3(a)(iii)	The terms of Section 1.3(a)(iii) shall be of no force or effect.
2.3	The following terms of Section 2.3 are hereby amended and restated in their entirety as follows: "**Data Escrow**. Registry Operator shall comply with the registry data escrow procedures set forth in Specification 2 attached hereto ("Specification 2")."
2.4	The terms of Section 2.4 are hereby amended and restated in their entirety as follows: "**Monthly Reporting**. Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format set forth in Specification 3 attached hereto ("Specification 3")."
2.8	The terms of the first sentence of Section 2.8 are hereby amended and restated in their entirety as follows: "Registry Operator must comply with the processes and procedures for ongoing protection of the legal rights of third parties as set forth Specification 7 attached hereto ("Specification 7")."
2.9	The terms of Section 2.9(a) shall be modified to include the following at the end of the provision: "The Registry-Registrar Agreement referred to in this

Section	Addendum Terms
	Section 2.9(a) is the last Registry-Registrar Agreement for the TLD approved by ICANN pursuant to the registry agreement for the TLD that immediately preceded this Agreement."
2.12	The terms of Section 2.12 shall be of no force or effect.
2.13	The following terms of Section 2.13 shall be of no force or effect: "In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument."
2.15	The following term of the first sentence of Section 2.15 shall be of no force or effect: "new"
2.19	A new Section 2.19 shall be added as follows: "**2.19 Traffic Data**. Nothing in this Agreement shall preclude Registry Operator from making commercial use of, or collecting, traffic data regarding domain names or non-existent domain names for purposes such as, without limitation, the determination of the availability and Security and Stability of the Internet, pinpointing specific points of failure, characterizing attacks and misconfigurations, identifying compromised networks and hosts and promoting the sale of domain names, provided however, that such use does not permit Registry Operator to disclose domain name registrant or end-user information or other Personal Data as defined in Section 2.18 that it collects through providing Registry Services for any purpose not otherwise authorized by this agreement. The process for the introduction of new Registry Services shall not apply to such traffic data. Nothing contained in this Section 2.19 shall be deemed to constitute consent or acquiescence by ICANN to an introduction by Registry Operator of a service employing a universal wildcard function, except that this sentence shall not prohibit the provision of nameservice or any other non-registry service for a domain or zone used for other than registration services to unaffiliated third parties by a single entity (including its affiliates) for domain names registered through an ICANN-accredited registrar. To the extent that traffic data subject to this provision is made available, access shall be on terms that are nondiscriminatory."

Section	Addendum Terms
4.3(b)	The terms of Section 4.3(b) shall be of no force or effect.
4.3(c)	The terms of Section 4.3(c) shall be of no force or effect.
4.5	The following terms of Section 4.5 shall be of no force or effect: "In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument for the maintenance and operation of the TLD, regardless of the reason for termination or expiration of this Agreement."
4.6	The reference to "Section 2.12" in Section 4.6 shall be of no force or effect.
6.1(a)	The terms of Section 6.1(a) are hereby amended and restated in their entirety as follows: "(a) Registry Operator shall pay ICANN a registry-level fee equal to (i) the registry fixed fee of US$6,250 per calendar quarter and (ii) the registry-level transaction fee (collectively, the "Registry-Level Fees"). The registry-level transaction fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US$0.25; provided, however that the registry-level transaction fee shall not apply until and unless more than 50,000 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 to each quarter in which the Transaction Threshold has not been met. Registry Operator's obligation to pay the quarterly registry-level fixed fee will begin on the Effective Date."
6.4	The terms of Section 6.4 shall be of no force or effect.
Specification 1, § 2	The terms of the first sentence of Specification 1, Section 2 are hereby amended and restated in their entirety as follows: "**Temporary Policies**. Registry Operator shall comply with and implement all specifications or policies established by the

Section	Addendum Terms
	Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the Stability or Security of Registry Services or the DNS ("Temporary Policies")."
Specification 5, § 2	The terms of Section 2 of Specification 5 are hereby amended and restated in their entirety as follows: **"Two Character Labels**. All two character labels that were previously reserved by Registry Operator pursuant to prior registry agreements between Registry Operator and ICANN may be allocated through ICANN-accredited registrars, subject to the following: 2.1 <u>Registration Policy</u>: For all new registrations after the Effective Date, Registry Operator must include a provision in its publicly available registration policy requiring a representation that the registrant of a letter/letter two-character ASCII label will take steps to ensure against misrepresenting or falsely implying that the registrant or its business is affiliated with a government or country-code manager if such affiliation, sponsorship or endorsement does not exist. 2.2 <u>Post-Registration Complaint Investigation</u>. Registry Operator shall take reasonable steps to investigate and respond to any reports from governmental agencies and ccTLD operators of conduct that causes confusion with the corresponding country code in connection with the use of a letter/letter two-character ACSCII domain. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law."
Specification 5, § 3.1.1	The terms of Section 3.1.1 of Specification 5 are hereby amended and restated in their entirety as follows: "If Exhibit A to the Agreement specifically provides that Registry Operator may offer registration of IDNs, Registry Operator may also activate a language-specific translation or transliteration of the term "NIC" or an abbreviation for the

Section	Addendum Terms
	translation of the term "Network Information Center" in the DNS in accordance with Registry Operator's IDN Tables and IDN Registration Rules. Such translation, transliteration or abbreviation may be reserved by Registry Operator and used in addition to the label NIC to provide any required registry functions. For the avoidance of doubt, Registry Operator is required to activate the ASCII label NIC pursuant to Section 3.1 of this Specification 5."
Specification 5, § 3.2	The terms of Section 3.2 of Specification 5 shall be of no force or effect.
Specification 5, § 3.4	The terms of Section 3.4 of Specification 5 are hereby amended and restated in their entirety as follows: "Registry Operator shall allocate the domain name "icann-sla-monitoring.<tld>" to the ICANN testing registrar (as such registrar is described in Section 8.2 of Specification 10). If such domain name is not available for registration in the TLD or is otherwise inconsistent with the registration policies of the TLD, Registry Operator may allocate a different domain name to the ICANN testing registrar in consultation with ICANN. The allocation of any such alternative domain name will be communicated to ICANN following such consultation. The allocation of the domain name "icann-sla-monitoring.<tld>" to the ICANN testing registrar will not be considered a Transaction for purposes of Section 6.1 of the Agreement."
Specification 5, § 5	The terms of Section 5 of Specification 5 shall be of no force or effect.
Specification 5, § 6	The terms of Section 6 of Specification 5 shall be of no force or effect.
Specification 6, § 6	The terms of Section 6 of Specification 6 shall be of no force or effect.
Specification 7, § 1	The terms of Section 1 of Specification 7 are hereby amended and restated in their entirety as follows: "**Rights Protection Mechanisms**. Registry Operator shall implement and adhere to the rights protection mechanisms ("RPMs") specified in this Specification. In addition to such RPMs, Registry Operator may develop and implement RPMs

Section	Addendum Terms
	that discourage or prevent registration of domain names that violate or abuse another party's legal rights. Registry Operator will include all RPMs required by this Specification 7 and any additional RPMs developed and implemented by Registry Operator in the Registry-Registrar Agreement entered into by ICANN-accredited registrars authorized to register names in the TLD."
Specification 8	The terms of Specification 8 shall be of no force or effect.
Specification 9, § 1(b)	The terms of Section 1(b) of Specification 9 are hereby amended and restated in their entirety as follows: "register domain names in its own right, except for names registered through an ICANN accredited registrar; provided, however, that Registry Operator may reserve names from registration pursuant to Section 2.6 of the Agreement;"

3. This Addendum shall constitute an integral part of the Registry Agreement. Notwithstanding Section 7.10 of the Registry Agreement, the Registry Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) and this Addendum constitute the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject. The Registry Agreement and this Addendum shall at all times be read together.

4. Except as specifically provided for in this Addendum, all of the terms of the Registry Agreement shall remain unchanged and in full force and effect, and, to the extent applicable, such terms shall apply to this Addendum as if it formed part of the Registry Agreement.

5. This Addendum may be executed and delivered (including by electronic transmission) in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
Cyrus Namazi
Senior Vice President, Global Domains Division

REGISTRY SERVICES, LLC

By: _____
Heather Hoffert
Vice President Finance

RM 32

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION (ICDR)

Independent Review Panel

IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS
Pursuant to the Internet Corporation for Assigned Names and Number's (ICANN) Bylaws, the *International Dispute Resolution Procedures* of the ICDR, and the *Supplementary Procedures for ICANN Independent Review Process.*

Gulf Cooperation Council ("GCC") Gulf Cooperation Council Building Contact Information Redacted (Claimant) Represented by Natasha Kohne and Kamran Salour of Akin Gump Strauss Hauer & Feld, Contact Information Redacted And **Internet Corporation for Assigned Names Numbers ("ICANN")** 12055 Waterfront Drive, Suite 300 Los Angeles, CA 90094-2 (Respondent)	))

ICDR Case No. 01-14-0002-1065

Represented by Eric Enson, Rachel Zernik, and Jeffrey LeVee of Jones Day, Contact Information Redacted
Contact Information Redacted

INTERIM DECLARATION ON EMERGENCY REQUEST FOR INTERIM MEASURES OF PROTECTION

John A.M. Judge
Emergency IRP Panel
12 February 2015

I. INTRODUCTION

1. The Claimant Gulf Cooperation Council (the "Claimant" or "GCC") commenced this proceeding by filing a Notice of Independent Review with the International Centre for Dispute Resolution ("ICDR") on December 5, 2014 in accordance with the Bylaws of the Respondent, the Internet Corporation for Assigned Names and Numbers ("ICANN"). The purpose of this filing is to review the approval by ICANN of a new generic top level domain ("gTLD") for .PERSIANGULF and its proposed action to enter into a registry agreement with a third party for the award and operation of that top level domain under the New gTLD Program of ICANN. On the same day, December 5, 2014, the GCC also has sought emergency interim measures pursuant to the Rules of the (ICDR) for the appointment of an Emergency Arbitrator and also for an order compelling ICANN to refrain from taking any further steps to sign a registry agreement for .PERSIANGULF until the Independent Review Panel has been concluded.

2. Although the ICANN Bylaws and paragraph 12 of the Supplementary Rules for ICANN's Independent Review Process expressly preclude the grant of emergency measures of protection, ICANN has consented to the appointment of an Emergency IRP Panellist and to the consideration and disposition of GCC's Request for Emergency Measures in accordance with the Rule 6 of the ICDR Rules in effect June 1, 2014. By appointment dated 9 December 2014, John A.M. Judge was appointed by the ICDR as the Emergency IRP Panellist to consider the Claimant's Request for Emergency Measures.

3. The applicant for the proposed gTLD .PERSIANGULF is a private Turkish company which is not a party to the Independent Review Process nor to this Request for Emergency Measures of Protection. However in resisting the application for emergency measures, counsel for ICANN advanced not only the interests of ICANN but also those of that applicant which is seeking to secure a registry agreement for the proposed domain in dispute.

4. The Emergency IRP Panellist has carefully reviewed the following written submissions, evidence and authorities filed by the Claimant and the Respondent:

      a. The Notice of Independent Review and the accompanying Request for Independent Review Process, both dated 5 December 2014, with Annexes 1-34 (392 Pages) (the "Claimant IRP Request") and the Expert Report of Steven Tepp filed by the GCC;

    b. The Request for Emergency Arbitrator and Interim Measures of Protection also dated 5 December 2014, with Annexes 1 - 18 (269 pages), filed by the GCC (the "Claimant ER Request") ;

    c. ICANN's Response to the Request for Emergency Relief dated 17 December 2014 with Annexes R-ER-1-18 (approximately 665 pages) (the "ICANN Response");

    d. The Reply of GCC dated 22 December 2014 with the Witness Statement of Abdulrahman Al Marzouqi signed 22 December 2014, with attached letter exhibit (the "Claimant Reply" or the "Reply");

    e. ICANN'S Cooperative Engagement Process provided by counsel for ICANN on 23 December 2014.

Oral submissions from counsel for each party were also received by way of telephone conference call on 23 December 2014.

5. Based on the review of these materials, filed, and the oral submissions, this Emergency Panellist is satisfied for the reasons more fully set out herein that interim relief is warranted and therefore hereby declares on an interim basis that ICANN shall refrain from taking any steps to sign a registry agreement for the new gTLD .PERSIANGULF, until further order by an Independent Review Panel to be constituted, such declaration being expressly conditional on the terms and conditions as set out in paragraph 96 hereof.

II. BACKGROUND FACTS

a. The Parties

6. The GCC is a political and economic alliance of six Arab nations whose members are: (1) United Arab Emirates; (2) Saudi Arabia; (3) Kuwait; (4) Qatar; (5) Bahrain; and, (6) Oman. All of the member states border on that body of water separating the Arabian peninsula and the geographic area of the Islamic Republic of Iran ("Iran"), an area formerly known as Persia. That body of water is referred to in these reasons by way of the neutral term the "Gulf". Among other things, the GCC promotes common economic, cultural, religious and geographic beliefs shared by these Arab nations, including a belief that the proper name for the Gulf is the "Arabian Gulf".

7. ICANN is a California not-for-profit public benefit corporation formed in 1998 for the express purpose of promoting the public interest in the operational stability of the Internet by, inter alia, "performing and overseeing functions related to the coordination of the Internet domain name system ('DNS'), including the development of policies for determining the circumstances under which new top-level domains are added to the DNS root system" (Exhibit R-ER-1, Articles of Incorporation, para. 3). According to ICANN's Bylaws, Article 1 Section 1, its mission is "to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operations of the Internet's unique identifier systems" including the DNS.

8. ICANN is itself a complex organization which facilitates input from stakeholders around the world and acts, as submitted by counsel, "as a community of participants". ICANN's Articles of Incorporation further provide that in carrying out its mandate, ICANN "shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets." (Ex. R-ER-1, Articles of Incorporation, para. 4).

b. The Historical Name Dispute: "Persian Gulf" vs. "Arabian Gulf"

9. There has been a long standing dispute for more than fifty years between Arab states, many of which are in the GCC, and Iran, which is a non-Arab nation bordering the Gulf, over the proper name for the Gulf. Iran uses the term Persian Gulf while the Arab states refer to it as the Arabian Gulf.

10. This naming dispute is part of a broader series of historical differences and conflicts between Iran and one or more Arabian members of the GCC involving various matters of culture, religion, contested sovereignty of lands and islands, the use of commercial air space, participation in sporting events and even censorship of publications due to the use of one or other of the disputed terms to describe the Gulf. As a result of this history of disputes, the GCC and its members are extremely sensitive to use of the term "Persian Gulf" in virtually any context, including its use as a top level domain. Various examples of the ongoing dispute are more particularly described in the Claimant's IRP Request at paras. 25-29.

11. ICANN does not dispute that the GCC holds strong beliefs in its position regarding this naming dispute. However, ICANN challenges the merits of GCC's position in this IRP proceeding and on this Request for Emergency Measures on numerous grounds discussed below.

c. ICANN's Structure and the New gTLD Program

12. **Organizational Structure.** As a not for profit corporation, the business and affairs of ICANN are controlled and conducted by the ICANN Board, like any other corporation (Bylaws Article II, Section 1). However, ICANN has created a complex organization and governing structure, quite unlike that of any private or public corporation. It is a structure which promotes diversity, inclusion and participation on a global basis not only through its Board and staff, but also through various Supporting Organizations and Advisory Committees (see the Bylaws, Articles V to XI).

13. One such committee is the Governmental Advisory Committee (the "GAC") consisting of members appointed by and representing governments from around the world to consider and to advise ICANN on internet related issues and concerns of governments, particularly where there is an interaction between ICANN policies and national laws and international agreements or on matters otherwise engaging other public policy issues (Bylaws, Article XI, Section 2). Members of the Claimant GCC are members of the GAC.

14. Since the deliberations and advice of the GAC at specific times play an important role in the narrative of events on this application, it is appropriate to clarify the function of the GAC in relation to ICANN. According to ICANN's Bylaws, the GAC itself does not act for or on behalf of ICANN. Instead, it acts as an important advisory resource for ICANN. The interaction between the GAC and ICANN, acting through its Board, is specifically addressed in various provisions of the Bylaws including Article XI 2.1 as follows:

> j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.
>
> k. If no such solution can be found, the ICANN Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to

public policy issues falling within their responsibilities.

It is clear that the ICANN Board is not bound by the GAC Advice. However, it must consider it and provide an explanation if that advice is not followed.

15. While complex in its structure, ICANN also emphasizes and promotes accountability and transparency in its practices and decision making, objectives which are critical for its work in relation to the Internet and its global community of users and participants to ensure fairness in its procedures (see Bylaws Article III). Indeed, the Bylaws establish various procedures for the review of various actions or inactions of the ICANN Board. The Independent Review Process is one such process intended to facilitate the review of Board actions alleged by an affected party to be inconsistent with ICANN's Articles of Incorporation or Bylaws. It is this Independent Review Process (the "IRP") which has been invoked by the GCC. The material procedures and requirements for the IRP are reviewed more fully below.

16. **The New gTLD Program.** Historically, there have been a limited number of top level domain names, such as .com, .net and .org, as well as the country specific domains. As confirmed in the Articles of Incorporation, Article 3.(iii), the mandate of ICANN, pursued over many years, has been to develop procedures for expanding the number of top level domains and increasing the number of companies to act as registrars for the sale of domain name registrations. These efforts ultimately led to the introduction of the New gTLD Program to significantly expand the Internet's naming system and to thereby expand consumer choice and encourage competition and innovation. ICANN, with its community of supporting organizations and advisory committees, painstakingly developed through many iterations over time an Applicant Guidebook to set out the application instructions and procedures for the delegation of new generic domain names.

17. **GAC Input for the Applicant Guidebook.** As the Guidebook was under development, the GAC prepared its GAC Principles Regarding New gTLDs dated March 28, 2007 which set out certain GAC consensus advice to the ICANN Board on public policy principles to apply to the delegation of new gTLDs. The GAC recommended, inter alia, that the New gTLDs should respect the "sensitivities regarding terms with national, cultural, geographic and religious significance"(Claimant ER Request, Annex 1, Section 2.2.1.b). Furthermore, the GAC advised that "ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant

governments or public authorities." (Annex 1, Section 2.2.2). Finally, with respect to the implementation of these principles, the GAC advised that if "individual members or other governments express formal concerns about any issues related to new gTLDs, the ICANN Board should fully consider those concerns and clearly explain how it will address them" (Annex 1, Section 3.3). While these set out the expectations of the GAC, it must be recalled that the GAC serves only an advisory role and does not bind ICANN.

18. The gTLD Application Guidebook version 2012-06-04 (the "Guidebook") is the final version material to the application for and evaluation of the requested domain .PERSIANGULF as well as for the objection procedures which may be taken to the delegation of a proposed domain.

d. The Application for .PERSIANGULF and the Opposition of the GCC

19. On July 8, 2012, the Turkish company, Asia Green IT System Bilgisayar San. ve. Tic. Ltd. Sti ("Asia Green") applied for the registration of the gTLD .PERSIANGULF in accordance with the Guidebook. The founders of Asia Green are said to be of Persian origin (see Claimant Request for Interim Measures at p. 34 of 269; Annex 3, Asia Green application at page 4 of 50). The purpose of the gTLD .PERSIANGULF is said to provide a forum for serving people of Persian descent and heritage who are living around the world (see Asia Green application at page 5 of 50) and who share common business, cultural and religious interests in the Middle East and Persia specifically.

20. Asia Green also applied for the new gTLD .PARS. The term Pars refers to the ancient country located in southwestern Iran, and in particular Fars province, which is regarded as the cultural capital of Iran and is the original homeland of ancient Persians (Claimant Application, Annex 18, Application for PARS, page 5 of 53). The application for .PARS is essentially the same as that for .PERSIANGULF. Asia Green has in fact been granted the gTLD for .PARS and a registry agreement was signed in early September 2014 for the operation of the .PARS registry and the sale of domain names under that gTLD.

21. While the Asia Green application for .PARS proceeded without objection or opposition, the opposite is true of the .PERSIANGULF application. The GCC has opposed the .PERSIANGULF application consistently since the fall of 2012 throughout the application process.

22. ICANN has in its Response carefully reviewed the application process for .PERSIANGULF to illustrate that ICANN has at all times acted consistently with ICANN's Articles, By-Laws and the Guidebook in considering the Asia Green application and the objections of the GCC before allowing the application to proceed. In light of the position taken by ICANN on the merits of the IRP and this Request for Interim measures, it is appropriate to briefly set out the Guidebook procedures for the .PERSIANGULF application and the chronology of the steps taken by the GCC in opposition to it.

23. **The Guidebook Procedures.** The Guidebook, at 339 pages in length, sets out comprehensive procedures to which a domain application is subjected, procedures relied upon by ICANN in its opposition to the request for interim measures. Following the submission of a completed application with the requisite deposits and evaluation fees and an initial administrative review for completeness, the application is publicly posted on the ICANN website for community review and comment which may be taken into account by ICANN in determining whether an application meets the required criteria for delegation. (Exhibit R-ER-3, Guidebook 1.1.2.1 and 2). Thereafter a number of objection procedures may be triggered including:

   a. An Early Warning Notice which is a notice issued by the GAC indicating that the application is seen as potentially sensitive or problematic by one or more governments, though such a warning is not a formal objection and is not fatal to an application;

   b. A Consensus GAC Advice in which the GAC provides public policy advice to the ICANN Board based on a consensus amongst GAC members that a particular application should not proceed. While also not fatal, such GAC Advice creates a "strong presumption" for the Board that the application should not proceed. Absent a GAC consensus, there is no such presumption. (Guidebook, Articles 1.2.2.7 and Module 3, Section 3.1).

   c. A formal Objection may be filed initiating an independent dispute process leading to an expert determination on the validity of the objection based on specified and limited grounds, one being the Community Objection where there is substantial opposition to an application from a significant portion of the community to which

the gTLD domain may be explicitly or implicitly targeted(Guidebook at Article 3.2.1);

    d. Independent Objection. The Independent Objector is a person appointed by ICANN with significant experience in the Internet community who exercises independent judgement in the public interest in determining whether to file and pursue a Limited Public Interest Objection or a Community Objection to an application (Guidebook, Module 3, Articles 3.2.1; 3.2.2.3; 3.2.2.4; 3.2.5).

    e. Mandatory Government Support for certain Geographic Names. If the proposed domain is a geographic name, as defined in the Guidebook, then the applicant must also file documented support from or non-objection by the relevant or affected government. Such geographic names are narrowly defined to include capital city names, sub-national place names, such as a county, province or state, and certain UNESCO and UN designated regions or sub-regions. However, geographic names which do not fall within these express designations or narrow definitions do not require documented support or non-objection by the relevant government. If there is any doubt, the Guidebook further suggests that the applicant consult with the relevant government and public authority to enlist support or non-objection prior to submission. (Guidebook, Article 2.2.1.4.2)

In the event that an application successfully completes these stages, the application transitions through the delegation process which includes certain testing and technical set up and the negotiation and execution of a registry agreement.

24. The Asia Green application for .PERSIANGULF engaged all of these objection procedures, save the need for obtaining prior government support from affected governments. In that regard, it cannot be disputed that .PERSIANGULF is not within the definition of designated geographic names under the Guidebook. Therefore, Asia Green was not required to obtain the written support from the Claimant or its member states. It is also undisputed that Asia Green did not in fact consult with the Claimant or its members, whether there was any obligation to do so or not. The evidence does show that the Claimant or its member states have consistently opposed the application for .PERSIANGULF and clearly would not have supported the application if consulted.

25. **GCC Letters of Opposition.** In October 2012, representatives of the governments of the UAE, Bahrain, Qatar and Oman sent separate but similar letters to the Chair of ICANN and to the Chair of the GAC objecting to the delegation of .PERSIANGULF as a new gTLD on two grounds. First, the proposed domain referred to a geographical place whose name was disputed in light of the historical naming dispute over the Gulf. Second, the use of the proposed name targeted countries and communities bordering the Gulf (including the six member states of the GCC) which were not consulted about and did not support the use of this proposed domain, thereby confirming the absence of any community consensus for its use (Claimant ER Request, Annexes 8,9,10 and 11). Therefore, on these basic grounds, the governments objected to the delegation of the proposed domain.

26. **GAC Early Warning.** On November 20, 2012, the governments of the UAE, Bahrain, Oman and Qatar issued a GAC Early Warning objecting to the delegation and recommending that Asia Green withdraw the application for the same reasons as had been set out in the October letters of objection (Claimant ER Request, Annex 12)

27. **Review by the Independent Objector.** In December 2012, the Independent Objector completed a review of the naming dispute and the public comments against the .PERSIANGULF gTLD, concluding that an objection on either the limited public interest ground or the community objection procedure was not warranted (ICANN Response, Annex R-ER-5). With respect to the limited public interest ground, the Independent Objector noted that there were no binding international legal norms to settle the issue. Resolutions of the United Nations Conference on the Standardization of Geographical Names urge countries sharing a geographical feature to agree on a name, failing which the separate names used by each country should be accepted. As for the Community Objection, while accepting that there was a clearly delineated community implicitly targeted by the application and that a significant portion of that community opposed the application, the Independent Objector considered it "most debateable" that the gTLD would "create a likelihood of material detriment to the rights or legitimate interests of a significant portion of the targeted community", that is the Arab communities, which was the threshold requirement under the Guidebook for the launch of an independent objection (ICAAN Response, Exhibit R-ER-5). In the view of the Independent Objector, the new gTLD should neither solve nor exacerbate the naming dispute. Instead it was appropriate to adapt to the *status quo* by taking no

position. He noted the GCC could file its own objection and could apply for the gTLD .ARABIANGULF. Therefore, the Independent Objector considered it inadvisable to file an objection.

28. **GCC's Community Objection.** On 13 March 2013, the GCC filed a Community Objection to the .PERSIANGULF application. The International Chamber of Commerce ("ICC") was designated as the dispute service provider under the Guidebook and it appointed Judge Stephen Schwebel, a noted American international jurist, to serve as the Expert Panellist to hear and determine this Community Objection.(Claimant Submission, Annex 2, Expert Determination, para. 2.)

29. **GAC Advice under the Guidebook for Pending Applications and GCC Objections.** As contemplated by the Bylaws, the Guidebook established a framework for the GAC to provide advice to the ICANN Board regarding pending gTLD applications. This is in addition to the general GAC advice provided in 2007 regarding the content of the Guidebook, as referred to in para. 17 above. Under Sections 1.1.2.7 and 3.1 of the Guidebook, any GAC member may raise concerns or sensitivities about any application with the GAC which must then consider and agree on advice to be forwarded to the ICANN Board for its consideration. Members of the Claimant raised the .PERSIANGULF application, amongst others, with the GAC and voiced objections at various meetings. The following GAC meetings and advice have been relied upon.

30. At the April 11, 2013 Beijing meeting, the GAC provided advice to the ICANN Board in respect of a number of gTLD applications. Some advice was on a consensus basis, thereby creating a presumption that the subject applications should not be approved. Other advice was on a non-consensus basis. With respect to a number of geographically based strings, including .PERSIANGULF, the GAC determined that further consideration was warranted and therefore advised ICANN simply not to proceed beyond Initial Evaluation in respect of that string (Claimant ER Request, para 13, Annex 13, GAC Beijing Communique, p 3).

31. In June 2013, the ICANN Board, acting through its New gTLD Program Committee (the "NGPC"), considered and accepted the advice of the GAC with respect to the .PERSIANGULF application, which advice was conveyed through the GAC Beijing Communique relied upon by the NGPC as being the official advice of the GAC. The NGPC decision, and rationale therefore, are set out in a resolution of the NGPC (ICANN Response,

Ex. R-ER-6) which annexed to it a table referred to as a "Scorecard" (ICANN Response, Ex R-ER-7), recording the NGPC Response to each item raised by GAC in the Beijing Communique. With respect to .PERSIANGULD, the NGPC accepted the GAC advice and it was noted in the Scorecard that the advice would not toll or suspend the processing of any of the applications.

32. At the July 13-18 Durban GAC Meeting, the GAC gave further consideration to .PERSIANGULF application , among others. This GAC meeting has generated two documents which contain conflicting information on the deliberation over .PERSIANGULF. The Claimant has relied upon the GAC Meeting Minutes, (Claimant ER Request, Annex 14 in which the discussion was recorded as follows:

> "The GAC finalized its consideration of .persiangulf after hearing opposing views, the **GAC determined that it was clear that there would not be consensus on an objection regarding this string and *therefore the GAC does not provide advice against this string proceeding.* The** GAC noted the opinion of GAC members from UAE, Oman, Bahrain, and Qatar that this application should not proceed due to lack of community support and controversy of the name. [emphasis added]

33. ICANN contrasts this language with the GAC Durban Communique which is received as the official document providing GAC Advice to the ICANN Board. This Communique (Claimant IRP Request, Annex 24) provides that "The GAC has finalized its consideration of the following strings, and *does not object to them proceeding:* ... ii. persiangulf (application number 1-2128-55439". This language suggests that there was in fact a consensus of the GAC members not to object to the application.

34. The Claimant's Reply Witness Adbulrahman Al Marzouqi attended the Durban meeting as the representative of the UAE and his evidence makes clear, at paragraphs 5, 6 and 7 of his Statement, that there was no consensus reached whatsoever, whether to support the application or to oppose it. The position taken by the Iranian representative and the opposing position taken Mr. Al Marzouqui for the UAE, apparently shared by others, prevented any consensus on any position regarding .PERSIANGULF. The general discord over geographic names was also reflected in the recommendation in the Durban Communique calling for further collaboration with GAC in refining the Applicant Guidebook for future rounds regarding the protection of terms with national, cultural, geographic and religious significance in accordance with the 2007 GAC Principles referenced above.

35. ICANN Board Response and Notification September 2013. The Durban Communique was relied upon by the NGPC of the ICANN Board as the formal statement of advice from the GAC to ICANN. Therefore, the NGPC noted and considered that GAC advice and responded to it by way of resolution and an attached "Scorecard" as follows:

> "**ICANN will continue to process the application** in accordance with the established procedures in the [Guidebook]. The NGPC notes that community objections have been filed with the International Centre for Expertise of the ICC against .PERSIANGULF." (emphasis added)

This NGPC resolution and the Scorecard were posted online on September 12, 2013 and the minutes and related materials were posted on 30 September 2013(the "NGPC Resolution and Scorecard"). It is this decision to "continue to process the application" which is said to be the action of the ICANN Board to approve the delegation of .PERSIANGULF and which therefore triggered the 30 period for filing a Request for an IRP. However, with the community objection still pending, the evidence is not clear as to the exact status of the application approval at that time. The ICANN Board and the NGPC did not and presumably would not unequivocally approve the delegation while the community objection was still pending.

36. Community Objection and Expert Determination. The Community Objection proceeded from March 2013 to October 30, 2013 when Judge Stephen Schwebel issued his Expert Determination, dismissing the Objection of the GCC. It must be noted that the necessary elements in support of a Community Objection are different from those required on an IRP. More importantly, they are significantly different from the threshold tests on an application for emergency measures in the context of an IRP. Judge Schwebel found that the GCC had met three of the four necessary elements for a successful Objection. He found that the GCC did have standing as an institution created by treaty having an ongoing relationship with a clearly delineated community, that is Arab inhabitants of the six member states of the GCC. It was plain and obvious that there was substantial opposition by the Arab inhabitants and the community to the application. It was also concluded that the Arab inhabitants would be implicitly targeted by the .PERSIANGULF gTLD. However, Judge Schwebel found that the GCC failed to meet the fourth element in that the GCC did not establish that the targeted community would "suffer the likelihood of material detriment to their rights or legitimate

interests", as required and defined under the Guidebook. Therefore, the objection was dismissed. He accepted that naming disputes such as that regarding the Gulf can be of high importance to States, "roiling international relations". However, in his view, the impact of the application .PERSIANGULF was difficult to discern and "it was far from clear that the registration would resolve or exacerbate or significantly affect the dispute". Echoing the Independent Objector, he noted that the GCC was free to seek registration of the .ARABIANGULF. ICANN has repeated this argument in its Response although no such application for .ARABIANGULF has in fact been made by the GCC.

37. **October 2013 to December 2014: Contact between GCC and ICANN Leading to the Notice of Independent Review.** ICANN asserted in its Response that the GCC was conspicuously silent for over one year following the NGPC Resolution and Scorecard before filing the Request for Independent Review. ICANN relied on that period of delay as the bases for resisting the application. In its Reply, the GCC has endeavoured to provide an explanation and response to that position with additional evidence in the Witness Statement of Mr. Al Marzouqi on the continued dealings between the GCC and ICANN over the continued opposition of the GCC to the delegation. Following the September 2013 posting of the NGPC Resolution and Scorecard, Mr. Al Marzouqi apparently reached out to ICANN representatives. However, any efforts to resolve the matter were by agreement postponed until after the delivery of the Expert Determination since that Determination may have affected those efforts. After the October release of the Expert Determination, further discussions were apparently had without success, though the evidence of Mr. Al Marzouqi is vague on the details of these discussions.

38. The evidence of Mr. Al Marzouqi is however clear on a significant meeting held between ICANN and the GCC. It cannot be disputed that in June 2014, a meeting was arranged and held during the GCC Telecom Council Ministers Meeting in Kuwait City with the most senior representatives of ICANN, the CEO Fadi Chehade, and senior representatives of the GCC. According to the evidence of Mr. Al Marzouqi, the GCC representatives restated their concerns and objections regarding the application at that meeting. Following the meeting, these concerns were then confirmed in writing by letter dated 9 July 2014 from Mohanned Al Ghanim, Director General of the Telecommunication Regulatory Authority to the CEO of ICANN, Mr. Chehade (Letter Exhibit to the Witness Statement of Mr. Al Marzouqi). It has

not been disputed that this letter was received by ICANN. No written response from Mr. Chehade or ICANN was adduced in evidence, either before or after the oral argument of this application. No written response is referenced by Mr. Al Marzouqi in his statement. Indeed, he suggests that the only response was a suggestion in September by his unnamed "ICANN counterpart" that the GCC *may* have to file a request for independent review.

39. By September 2014, the manner of dealing with certain geographic names remained a live issue. At that time, there was no evidence of a definitive statement from ICANN that a registry agreement was about to be signed for .PERSIANGULF. By contrast, Asia Green had apparently signed a registry agreement for .PARS by early September 2014, which agreement is posted by ICANN online. Some proposed changes to the Guidebook had also been tabled which would require the agreement of relevant governments to the delegation of geographic names as new domains. (Claimant IRP Request, Annex 1, "the protection of geographic names in the new gTLDs process, v.3 August 29, 2014). Although the Claimant attributed this proposal to ICANN (Claimant IRP Request at para. 1), it appears on review to be the work of a sub-working group of the GAC, and not of ICANN itself. The evidence is not clear on this point. In any event, it serves to illustrate that the use of geographic names remained a live issue within the ICANN community of committees while the delegation of .PERSIANGULF remained pending.

40. According to Mr. Al Marzouqi, the handling of geographic names was a topic of continued discussion in October 2014 at the ICANN meetings in Los Angeles, all without a resolution. Thereafter, he advised the GCC in November to proceed with the request for an IRP which it did on December 5, 2014. He also states that at no time during the resolution efforts from September 2013 to November 2014 was it suggested that the GCC would be time barred from proceeding with an IRP.

III. THE INDEPENDENT REVIEW PROCESS AND THE REQUEST FOR INTERIM MEASURES OF PROTECTION

41. ICANN attaches considerable importance to the principle of accountability and to that end has enshrined two important procedures in Article IV of its Bylaws to ensure accountability of decisions: *1.* Reconsideration of a Board action; and, *2.* Independent Review of a Board decision or action (ICANN Response, Exhibit R-ER-1). The first provides for a review or

reconsideration of any ICANN action by the Board itself for the benefit of any person or entity materially affected by that action. That procedure was not implemented by the GCC. The second is for an Independent Review by a third party of the Board decision or action alleged by an affected party to be inconsistent with the Articles or Bylaws. The Claimant chose to proceed with the Independent Review Process, rather than a Reconsideration, as it was entitled to do.

42. Bylaw Article IV, Section 3 sets out the detailed procedures for the IRP and the following requirements were urged as material to this application:

   a. A Request for IRP must be filed within 30 days of the posting of the Board meeting minutes said to demonstrate a violation of the Articles or Bylaws(Art. IV, Section 3.3);

   b. In comparing the contested action with the Articles or Bylaws, the IRP panel must apply a standard of review that is specifically and narrowly defined, to focus on the following three questions(Art. IV, Section 3.4):

      i. Did the Board act without conflict of interest in taking its decision?

      ii. Did the Board exercise due diligence and care in having a reasonable amount of facts in from of them?

      iii. Did the Board members exercise independent judgement in taking the decision believed to be in the best interests of ICANN?

   c. There shall be a standing panel of IRP panel members from which a panel can be readily constituted and all proceedings shall be administered by an international dispute provider (Art. IV, Section 3.6).

   d. The IRP Panel has specific and limited remedial authority (Art. IV, Section 3.11) to order, *inter alia:*

      i. Summary dismissal for frivolous or vexatious requests;

      ii. A declaration whether an action or inaction is inconsistent with the Articles or Bylaws; or,

      iii. A recommendation to the Board to stay any action or decision until such time as the Board reviews and acts upon the IRP opinion.

43. Prior to initiating a request for an IRP, a complainant is encouraged under the Bylaw to enter into a cooperative engagement process which is a voluntary ICANN process with the detailed

procedures being incorporated by reference into Bylaw Article IV, Section 3. These procedures include the tolling of the time for filing an IRP during each day of the cooperative engagement process up to fourteen days, unless a longer extension is mutually agreed in writing.

44. ICANN has also prepared the Supplementary Procedures for the IRP which confirmed the designation of the ICDR as the Independent Review Panel Provider. The ICDR Rules, together with the Supplementary Procedures and the Bylaws govern the IRP process. While the Supplementary Procedures expressly exclude the emergency measures of protection under the ICDR Rules (Paragraph 12, Supplementary Procedures), certain specified interim measures of protection may be recommended by an IRP Panel to the Board. These include a stay of any decision of the Board, such measure being consistent with those permitted under the Bylaw. As noted earlier, ICANN has agreed for the purposes only of this proceeding that an emergency arbitrator or panelist be appointed with the authority to issue an interim declaration to the ICANN Board as an emergency measure.

45. **Claimant's Position on Emergency Interim Measures.** The main submission put forward by the GCC in support of its request for emergency measures can be briefly summarized as follows:

    a. Article 6 of the ICDR Rules applies as no IRP panel has been appointed. Since ICANN is about to sign a registry agreement for .PERSIANGULF, the IRP Request will be rendered moot absent emergency interim relief (Claimant's ER Submission, para. 16);

    b. The four part test for establishing an entitlement to emergency interim relief have been met on the evidence, specifically:

        i. *Urgency.* The GCC will be deprived of a meaningful independent review if ICANN signs the registry agreement.

        ii. *Necessity.* There is no harm to either ICANN or to applicant, Asia Green, which outweighs the harm to the GCC absent any emergency interim measures. While Asia Green may be delayed in the processing of its pending application, such delay will cause no prejudice as Asia Green has the registry agreement for the .PARS gTLD which is intended to serve the

same market and constituency as it intends to target with .PERSIANGULF.

    iii. *Protection of an Existing Right.* GCC has a right to a meaningful IRP in accordance with the ICANN Bylaws which will protected by the relief sought. That right will be useless without the emergency relief.

    iv. *A Reasonable Possibility of Success on the Merits of the IRP.* The GCC emphasized that the standard of establishing a "reasonable possibility of success" is a lower standard than a "reasonable likelihood" of success for the purpose of showing that ICANN acted in a manner inconsistent with numerous "guidelines". In the Claimant IRP Request dated December 5, 2014, the GCC placed emphasis and reliance on the GAC Principles Regarding New gTLDs presented March 28, 2007 and certain other GAC advice arising from GAC meetings in 2013 which ICANN is said to have ignored (see also Claimant's ER Request, paragraphs 21 – 25).

46. **Respondent's Position on Emergency Interim Measures.** ICANN resists the application for interim measures essentially on the general ground that ICANN did everything it was required to do under the applicable Articles and Bylaws and that it properly followed the procedures contemplated in the Guidebook. ICANN also submitted three specific grounds for denying the requested relief which can be briefly summarized as follows:

    a. The GCC is not reasonably likely to succeed on the merits of the IRP for two basic reasons. First, the IRP Request was filed long after the expiry of the 30 day filing period for doing so and is therefore time barred. Second, no ICANN Board action has been identified by the GCC said to violate the Articles or Bylaws.

    b. The unreasonable delay of over one year by the GCC in bringing the Request in and of itself justifies the dismissal of the request and serves to underscore the lack of any urgency, necessity and harm to GCC.

    c. The GCC has no demonstrable harm which outweighs the harm to others like Asia Green which has invested time, energy and money in its application. The integrity of the application process for which ICANN is responsible will also be harmed. The GCC will not be harmed as it can easily apply for .ARABIANGULF in order to serve its communities.

ICANN also reviewed in detail the procedures to be followed under the Guidebook and Bylaws and, based upon a detailed review of the chronology, submitted that ICANN did everything required of it to consider the concerns raised by the GCC members. In so doing, it took no steps inconsistent with the Articles or Bylaws.

47. **Reply of the Claimant.** In its Reply, the GCC addressed the key responding submissions of ICANN as follows:

a. The ICANN decision and action in issue is well known and obvious – the decision to approve Asia Green's application for the new gTLD .PERSIANGULF (GCC Reply, para 11).

b. The IRP Request is not time barred as ICANN has by its conduct from September 2013 to November 2014 effectively extended the time for filing as a result of ongoing discussions between the GCC and ICANN to resolve the issue, some of which involved the most senior executives of both organizations. Informal discussions continued through September and October and it was suggested to GCC by an unnamed ICANN representative that it may have to file an IRP request to reach a resolution. Therefore, there was no unreasonable delay as the GCC then proceeded to prepare and to file the Request dated December 5, 2014(GCC Reply, para, 6-9,17).

c. The GCC also asserted that ICANN's action were inconsistent not only with the GAC advice previously identified, but also with certain specific core values of ICANN enshrined in Article 1, Section 1 of the Bylaws which are to guide decisions and actions of the Board, namely:

4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision making;

8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness;

11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

d. As to the balancing of the relative harm, whether the interim measures are granted or not, the GCC asserted that the harm to it by a denial of relief would be irreparable as it would

lose the valuable right to an independent review. By contrast, ICANN has offered no evidence of harm to it, nor to Asia Green, which would outweigh the harm to the GCC.

48. The positions of both parties were further developed and clarified in oral argument on the application heard by way of telephone conference call on December 23, 2014 which was approximately one and one half hours in duration.

IV. ISSUE FOR DETERMINATION ON THE INTERIM DECLARATION

49. Is the GCC entitled to an interim declaration by way of an interim measure of protection that ICANN refrain from signing a registry agreement for .PERSIANGULF pending the hearing of the GCC Request for an IRP? Specifically, on the limited evidence available, has the GCC satisfied the following tests proposed by the parties for the grant of interim relief:

   a. urgency;
   b. necessity;
   c. protection of an existing right; and,
   d. a reasonable possibility of success on the merits of the IRP?

V. DISCUSSION, ANALYSIS AND REASONS FOR INTERIM DECLARATION

50. The parties in their written and oral submissions have analogized the independent review process and this request for interim emergency measures within this IRP to an international arbitral proceeding under the ICDR Rules and the Supplementary Procedures. It is generally accepted that interim or provisional measures are intended and designed to safeguard the rights of the parties, to avoid serious injury pending the hearing of a dispute and to thereby ensure that the dispute process may function in a fair and effective manner. Interim measures protect both the rights of a party and the integrity of the dispute process. While some measures may be aimed at preserving evidence critical to the disposition of the main dispute, other measures are intended to preserve a factual or legal status quo to safeguard a right, the recognition of which is sought before the tribunal hearing the substantive merits of the particular dispute (see Gary Born, International Commercial Arbitration, Kluwer, 2009, Vol. II at p. 1944). The necessary elements of proof will differ depending on the nature of the interim emergency relief sought, whether to preserve evidence or to preserve the status quo. Here, the requested interim emergency measure is in the nature of injunctive relief to restrain

an action, the execution of a registry agreement, in order to preserve the status quo pending the completion of the IRP.

51. The ICDR Rules expressly provide the power to grant interim measures, such as injunctive relief, including on an emergency basis under Article 6 prior to constitution of a panel. That article applies here by express agreement. Such extraordinary relief prior to the determination of the substantive merits is discretionary and largely fact driven. The ICDR Rules and the Supplementary Procedures are silent as to the necessary tests to guide the exercise of discretion to award such relief. The parties have referred to numerous authorities, some diverging, on the appropriate factors to consider, particularly with respect to the extent of an assessment and consideration of the substantive merits of a case. These authorities include not only U.S. domestic court cases and international arbitral institutional rules and awards, but also a prior decision of another ICANN IRP panel under the ICANN Bylaws. Given the divergence between the parties on the applicable test for considering the substantive merits, it is appropriate to clarify and confirm the tests emerging from the authorities to guide the exercise of discretion in awarding any interim emergency relief.

52. The Claimant has relied heavily on the decision of the ICANN IRP Panel in *DotConnectAfrica Trust v. ICANN*, ICDR Case No. 50 117 T 1083 13 (12 May 2014) in which an IRP Panel gave relief on an application for interim measures based on a four part test requiring proof of: (1) urgency; (2) necessity; (3) protection of an existing right; and, (4) a prima facie case or reasonable possibility of success on the merits (See Claimant ER Request, Annex 15, Decision at para. 37). ICANN has not put the first three criteria in issue, though each merits some elaboration. With respect to the fourth criterion, ICANN appeared to have accepted the applicability of that element, but then argued that the GCC has no reasonable *likelihood* of success for specific reasons.

53. The Claimant has also adopted the argument, which found success in the *DotConnectAfrica* IRP Panel decision, that interim relief was warranted as ICANN had failed to establish a standing panel of IRP panellists, as required under the Bylaws. In that case, the failure to establish a standing panel delayed the constitution of a panel for the specific case and significantly impaired the ability of the claimant to seek timely relief. There, the Panel found that the need for interim relief arose directly from the failure of ICANN to scrupulously honour its own procedural Bylaws. That argument does not carry the same weight or force in

this case as ICANN has designated the ICDR as the provider of panellists to serve on the IRP panel and the ICDR has acted promptly and efficiently in constituting a panel.

54. Here, the Request for an IRP was filed on December 5, 2014 and an IRP panellist was appointed on an emergency basis within four days, on December 9, 2014, with ICANN agreeing to the application of the ICDR Rules for emergency measures. A brief procedural hearing was held on the December 9 and the need for immediate emergency relief was then addressed but found unnecessary due to the undertaking of ICANN not to sign the registry agreement for .PERSIANGULF pending this application. The procedure for the appointment of the IRP panel or an Emergency Panel worked effectively and had no adverse impact whatsoever on the ability of the Claimant to seek effective interim relief. Interim emergency relief is not necessary or warranted based on this argument regarding the creation of the standing panel that found success in the *DotConnectAfrica* case. This case must be determined on the application of the generally accepted criteria for interim measures of protection.

a. Urgency or Irreparable Harm

55. The element of urgency imports the notion that the applicant will suffer imminent irreparable or serious harm if no interim relief is granted before the IRP hearing process is concluded at which time entitlement to relief for reparable or other harm may be finally addressed in the normal course (A. Redfern and M. Hunter, Law and Practice of International Commercial Arbitration, Sweet & Maxwell, 4th ed. 2004, para. 7-29 and 7-30; Born, supra, page 1981 - 1982). Here, the GCC argues that its right to a fair and effective IRP process will be lost entirely if ICANN proceeds to sign a registry agreement for the disputed domain before the IRP proceeding can be held and completed. The relief sought by the GCC in its IRP Request expressly includes a declaration "requiring ICANN to refrain from signing the registry agreement [for .PERSIANGULF] with Asia Green or any other entity"(Claimant IRP Request, para. 75).

56. It is undisputed that ICANN intends to sign a registry agreement with Asia Green. ICANN'S undertaking to refrain from doing so is in place only pending the application for emergency measures and not until the final declaration in the IRP process. ICANN also intends to use its standard form registry agreement, a copy of which is available online. The registry agreement is for a term of ten years, subject to successive ten year renewals. As discussed

during oral argument, the terms of the standard registry agreement do not entitle or permit ICANN to terminate the agreement, without breach or compensation, if an IRP is successful and an IRP Panel declares that the ICANN should not have signed that particular agreement. The execution of the registry agreement cannot be readily and lawfully undone.

57. While ICANN argues the absence of any harm to the GCC, irreparable or otherwise, by the delegation of the domain and the signing of a registry agreement, it does so principally in the context of two other elements for relief, namely necessity or the balancing of the harm and also the absence of any reasonable likelihood of success on the merits of the IRP. ICANN's position on these points is discussed in detail below under those particular elements.

58. ICANN also argues that any perceptions or adverse impact arising from the registration of .PERSIANGULF can be simply counteracted by registration of the gTLD .ARABIANGULF by the GCC. There are two difficulties with this argument for this application. First, it does not address the importance of the right to a fair and effective IRP process and the loss of that right. Second, it raises the issue of the existence and scope of any duty or obligation to mitigate on a party which may suffer irreparable harm by the actions of another. Should the GCC be required to undertake the effort, time and expense of applying for and operating a competing registry in an effort to counteract the impact of the disputed domain? In any event, would such a competing registry avoid or undo harm caused by the other? This issue the will be also discussed in connection with the primary arguments of ICANN on the consideration of the merits of the IRP. Suffice it to say at this point that the option of GCC applying for .ARABIANGULF does not avoid the harm to the GCC in respect of the IRP process, absent any interim relief nor does it negate the harm arising from the delegation of .PERSIANGULF.

59. For this application, this Panel accepts that the right to an independent review is a significant and meaningful one under the ICANN's Bylaws. This is so particularly in light of the importance of ICANN's global work in overseeing the DNS for the Internet and also the weight attached by ICANN itself to the principles of accountability and review which underpin the IRP process. If ICANN proceeds to sign the agreement, the integrity of the IRP process itself will be undermined. The Claimant's right of review will be of no consequence whatsoever. The signing of the registry agreement will frustrate the Claimant's IRP Request, rendering the issue of injunctive relief moot as no IRP Panel would then make a declaration

that ICANN refrain from signing. This constitutes clear irreparable harm which will be suffered by the Claimant absent interim relief at this stage of the process. This harm is not simply a possibility but is a reasonable likelihood if no interim is granted.

b. Necessity or the Balancing of Harm

60. The test of necessity imports an assessment of the relative proportionality of harm suffered, that is, a consideration and balancing of the harm to the Claimant if the interim relief is not granted with the harm caused to the Respondent if the relief is in fact ordered. The irreparable harm to the Claimant is already described above.

61. In terms of potential harm arising from or caused by the grant of the requested declaratory relief, ICANN relies on harm to itself and also to the Applicant Asia Green. ICANN is rightly concerned about maintaining the integrity of the gTLD application process and processing the application quickly and efficiently. Beyond that, counsel candidly admitted, when asked in oral argument, that there will be little harm to ICANN itself in the event that interim emergency relief is granted. It can also be said that the integrity of the ICANN independent review process, to ensure accountability and transparency in decision making, is also an integral part of ICANN's application process which merits promotion and protection. While some prejudice by delay to the gTLD application may arise from the granting of the requested interim relief, that is in part counterbalanced by the advancement of the integrity in and legitimacy of the IRP process. Furthermore, the delay in the IRP is likely to be far shorter than the delay to date in the processing of the application. It is not clear what has caused the delay from October 2013 to November 2014 in the decision to sign the registry agreement, other than, as suggested by counsel for ICANN, the routine processing of the application and the negotiation of the agreement. In any event, any harm to ICANN by the grant of interim relief does not outweigh the harm to the GCC through the deprivation of a meaningful IRP process if no relief is granted and the registry agreement is signed.

62. Counsel for ICANN also pointed to and relied on the harm caused by the delay in the delegation to the applicant Asia Green which has invested time, effort and money into the pursuit of its application. That harm is said to be real and significant, with added continuing expense and delay in the conduct of business using the domain. It is said that this real harm stands in contrast to the vague allegations of harm to the GCC which may be caused by the

delegation of the disputed domain, particularly when the GCC could itself apply for and obtain .ARABIANGULF. It may be argued that the harm to Asia Green is not relevant to a consideration of relief on this application as Asia Green is not a party to this proceeding. However, in my view it is appropriate to consider such harm as it will also reflect upon and reinforce the potential reputational harm to ICANN with respect to the integrity of the application process.

63. In considering the harm to Asia Green, it must be remembered that Asia Green already has access to another delegated domain .PARS, for which a registry agreement is signed and is intended to target the same market as .PERSIANGULF. Asia Green will not be precluded from actively developing its business. Counsel for ICANN candidly admitted during oral submissions that he was not certain of the need for Asia Green to have two registries for essentially the same market, but noted that Asia Green had in any event spent considerable time and money for the disputed domain. Apart from the general impact of delay, there was no specific evidence of harm to Asia Green, such as a particular lost business opportunity.

64. In my view, the harm to the GCC absent any interim relief clearly outweighs any harm to Asia Green which may be caused by the grant of interim relief requiring ICANN to refrain from signing a registry agreement for .PERSIANGULF pending the IRP process. Any delay can be kept to a minimum by the prompt constitution of the IRP panel through the ICDR and a reasonable and efficient schedule for the conduct of the review. The application process has not in any event been proceeding in an overly expeditious manner, given that the application was made in July 2012. By September 2013, the NGPC Scorecard noted that ICANN will "continue to process the application" and it was only in November 2014 that the signing of a registry agreement appeared imminent. There is no evidence that a few more months of delay during the IRP will cause any specific prejudice or harm to Asia Green.

65. In balancing the harm which may arise, whether interim relief is granted or not, it is clear on a balance of probabilities and not mere possibilities, that the harm to the GCC absent any relief is irreparable and that the loss of an effective meaningful IRP process outweighs any harm to either Asia Green or ICANN arising from delay in the signing of the registry agreement.

c. Protection of an Existing Right

66. This criterion was accepted and applied by the IRP Panel in the *DotConnectAfrica* Decision on Interim Measures of Protection, relied upon by the Claimant, although it is not entirely

clear where this requirement originates in the authorities and what is intended by it. This requirement is not normally separately identified either in case law or in authoritative texts as a specific criterion for the grant of interim injunctions or interim measures of protection. It is perhaps plain and obvious that the grant of an interim measure to preserve a factual or legal status quo is virtually always dependent on the assertion of an identified legal or equitable right. However, some interim measures not applicable here, such as an order to freeze assets to preserve rights of execution, may relate to only potential rights as opposed to existing rights. In any event, both the Claimant and the Respondent have proceeded on the basis of the existence and application of this third criterion.

67. The ICANN Bylaws, Article IV, Section 3.1 establishes "a separate process for independent third party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws." As stated in the Reply, it is this right which the Claimant seeks to protect, failing which the review will become meaningless after the execution of the registry agreement by ICANN. The protection of this right for the independent review of a Board decision to delegate the domain and enter into a registry agreement is an existing right which meets this pre-requisite for the grant of interim emergency relief.

d. A Reasonable Possibility that the Requesting Party will succeed on the Merits

68. The consideration and impact of the merits of the IRP is the main point of contention between the parties. They disagree not only on the basis of the available evidence, but more fundamentally on the definition and scope of this legal requirement. The Claimant maintains that it need show only a *reasonable possibility* of success on the merits of the IRP. The Respondent, while appearing to confirm the applicability of that test in its written submission (ICANN Response, para. 42), also submitted a more stringent standard that the Claimant must show a *reasonable likelihood* of success, which, ICANN submits, cannot be established on the evidence.

69. **The Applicable Test.** In the *DotConnectAfrica* Decision on Interim Measures, the IRP panel considered the competing tests of proof of a *prima facie* case and proof of a reasonable possibility of success and found that there was no meaningful difference between those two tests. They are essentially one and the same standard. That panel in *DotConnectAfrica* also

went on to state that interim relief should be available "on a standard of proof which is less than required for the merits under applicable law". This panel agrees with that finding. It should also be noted that in some fora, the requisite standard is couched in terms of whether a preliminary assessment reveals that there is a serious question to be tried or determined which is a standard the same or very similar to the standard of proof of *prima facie* case or proof of a reasonable possibility of success. The threshold is relatively low.

70. The standard of proof of a reasonable likelihood of success on the merits, as submitted by the Respondent, sets the bar too high for interim relief. That is essentially the same standard as balance of probabilities which is the normal civil standard to be applied at the hearing of the substantive merits of the IRP. The lesser standard of a *prima facie* case or a reasonable possibility of success is more appropriate for a number of reasons.

71. On an emergency interim application such as this, the submissions and the evidence are usually incomplete, largely due to the time constraints in developing the evidentiary record. That is the case here. More evidence and detailed submissions can be expected at a substantive hearing. Given the limited evidentiary record, the tribunal must refrain from prejudging the merits of the case on the interim relief application. If the higher standard of reasonable likelihood is applied, it is inevitable that the tribunal will be engaging in an early determination of the merits A prejudgement of the merits cannot be avoided if the same standard of proof is applied for emergency interim measures as for the substantive hearing. The lesser standard facilitates a provisional assessment without any binding or preclusive impact on the merits hearing. Once the threshold is met, the focus of the analysis will be on the test of irreparable harm and the balance of the respective harm pending the decision on the merits.

72. Where the grant of interim relief may in effect amount to a final determination and put an end to the entire dispute, a more extensive review of the merits may well be appropriate to weigh the likelihood of success along with the irreparability of harm and the balance of the respective harm. However, that is not this case. The grant of interim relief will not foreclose the completion of the IRP process. However, the refusal of interim relief likely will have that effect.

73. The standard of a *prima facie* case or reasonable possibility of success quite properly requires some consideration of the legal sufficiency and relative strength of the respective parties'

cases. Therefore, frivolous and weak cases can be identified and rejected to ensure that the interim measure of protection does not become an unjustified lever or windfall that can damage an innocent party (see Born, supra, at page 1992). In that regard, it cannot be said that the merits of the GCC's IRP Request is either frivolous or vexatious. It appears to raise serious questions about the decision making process of the ICANN Board under the Bylaws in connection with the approval of the application for .PERSIANGULF as a new gTLD.

74. **The Obligation of ICANN under the Bylaws.** The starting point for the discussion on whether the GCC has shown a reasonable possibility of success on the merits of the IRP is a clarification of the obligations of the ICANN Board under the Articles and Bylaws against which the actions and decision of the Board must be compared and measured. While the Claimant initially relied upon the various instances of GAC advice to the ICANN Board as the basis of its request for review, the Bylaws do not oblige the ICANN Board to accept any or all of the advice of the GAC or to take actions that are consistent only with the GAC advice. The Bylaws require the ICANN to take that advice into account and, where the advice is not followed, to provide reasons for so doing. (Exhibit R-ER-1, Bylaw Article XI, 2.1.j).

75. In its Reply, the GCC also expressly referred to and relied upon the core values set out in Bylaw Article I, Section 2.4, 2.8 and 2.11, quoted earlier at paragraph 47.c.1, and the obligation of the ICANN Board to be guided by those core values in making decisions. The Claimant identified these three of the eleven core values as the yardstick to measure and to assess the ICANN Board action to delegate the domain and to enter into a registry agreement with Asia Green. However, the last paragraph of Article I, Section 2 of the Bylaws makes it clear that the application of the individual or specific core values is necessarily qualified. Due to the breadth of the general language in the stated core values, the closing paragraph of Section 2 expressly provides that "situations will inevitably arise in which perfect fidelity to all eleven core values is not possible". The Board has latitude in its decision making and must of necessity exercise discretion in the balancing of all of the core values to arrive at any decision. Not all core values may be advanced to the same extent.

76. By the same token, the closing sentence of Article 1, Section 2 also sets out certain basic requirements with which the ICANN Board must comply in its decision making. According to the last sentence of Section 2, ICANN *shall*: (1) *"exercise its judgment"*; *(2) "to*

determine which core values are most relevant and how they apply to the specific circumstances of the case at hand"; and, (3) *"to determine, if necessary, an appropriate and defensible balance among competing values"*. It is against these requirements that the relevant decision in issue of the ICANN Board must be assessed on the evidence. The ICANN Board does not have an unfettered discretion in making decisions. In bringing its judgment to bear on an issue for decision, it must assess the applicability of different potentially conflicting core values and identify those which are most important, most relevant to the question to be decided. The balancing of the competing values must be seen as "defensible", that is it should be justified and supported by a reasoned analysis. The decision or action should be based on a reasoned judgment of the Board, not on an arbitrary exercise of discretion.

77. This obligation of the ICANN Board in its decision making is reinforced by the standard of review for the IRP process under Article IV, Section 3.4 of the Bylaws, quoted at paragraph 42 b. above, when the action of the Board is compared to the requirements under the Articles and Bylaws. The standard of review includes a consideration of whether the Board exercised due diligence and care in having a reasonable amount of facts before them and also whether the Board exercised its own independent judgement.

78. **The Decision in Issue.** The Respondent submitted, in part, that the Claimant had failed to identify any "action or decision" of the Board capable of review. The Respondent then also argued in the alternative that the only Board decision that could have injured the GCC is the September 2013 decision to "continue to process the application" in accordance with the Guidebook, following the GAC Durban Communique that the GAC did not object to the application (ICANN Response at para. 48). The Claimant submitted in Reply that the Board action in issue is well known and is simply the decision to proceed to delegate the domain .PERSIANGULF and to enter into a registry agreement. It is not disputed that ICANN is in fact about to enter a registry agreement with Asia Green for that domain.

79. The Emergency Panel accepts the Claimant's position that the Board decision and action in issue is the decision to proceed to delegate the domain .PERSIANGULF to Asia Green and to enter into a registry agreement, all pursuant to the Guidebook. If not for that decision, this Emergency Request would not have been brought. That decision is capable of review.

80. The only available documentary evidence of that Board decision adduced by the parties is the posting of the NGPC Resolution and Scorecard on September 12, 2013 to "continue to process the application", followed by the posting on September 30, 2013 of the Minutes and Briefing Materials related to that decision. There are no other Board resolutions or memoranda after September 2013 which otherwise address or confirm the Board deliberation or decision to make the delegation. It is in relation to the posting of the Resolution, Scorecard and Minutes that the Respondent has based its main arguments against any emergency interim relief, namely that the request for the IRP was time-barred or was in any event unreasonably and fatally delayed. It is appropriate to now address these two main related arguments asserted by ICANN regarding the September decision.

81. **The Issues of Time-Bar and of Delay.** ICANN has relied on the requirement under Article IV, Section 3.3 of the Bylaws that the request for an IRP "must be filed within 30 days of the posting of the Board meeting (and the accompanying Board Briefing Materials, if available)." It is said that the 30 day time limit is mandatory and, in this case, commenced on September 30, 2013. Therefore the filing period expired on October 30, 2013. As a result, the December 5, 2014 filing of the IRP Request is, according the ICANN, patently out of time. In addition, ICANN asserts that this lengthy delay from October 2013 to December 2014 was unreasonable and was left unexplained in the Claimant's initial submission. Accordingly it is submitted that such delay, in and of itself, further justifies the denial of extraordinary discretionary relief.

82. The GCC responded to the time-bar and delay arguments in its Reply. The GCC relied on the Witness Statement of Mr. Al Marzouqu which outlined the ongoing contact between him, as the GCC representative, and ICANN over the disputed domain, including the high level meeting in June 2014 to attempt to resolve the issue. Therefore, the GCC asserted that any time limit for filing the IRP Request was extended by ICANN's conduct.

83. In the view of the Emergency Panel, the evidence of the ongoing contact between representatives of ICANN and the GCC from October 2013 to November 2014 supports a reasonable possibility that the time period for the filing of the IRP has been extended by the conduct of ICANN representatives and that the delay, as explained, is reasonable. The evidence of Mr. Al Marzouqi, while vague in some of the detail, provides a number of reasonable examples of such conduct. First, as of September 30, 2013, the Expert

Determination was still pending and was not released until October 30, 2013. The alleged discussion with an unidentified ICANN representative to await the delivery of the Expert Determination before attempting any resolution is reasonable under the circumstances. Otherwise, the 30 day time limit would have expired by the time the Expert Determination was delivered. Second, and most importantly, it is beyond dispute that the President of ICANN met with the representatives of the GCC in early June 2014 with a follow up letter being delivered by the GCC representative to the ICANN President confirming a request not to proceed with the delegation of the disputed domain. The circumstances of the meeting and the unanswered follow up letter, while not expressly referring to the deadline for filing an IRP, are also suggestive of an extension of that filing period. Indeed, the tenor of the evidence with such a high level meeting in June 2014 reasonably suggests that the issue of the delegation was still under active consideration with no final decision having in fact been made. Third, Mr. Al Marzouqi also states that another ICANN representative, again unnamed, suggested in September 2014 that the GCC may have to file a request for IRP. The available evidence and reasonable inferences from that evidence support the defence that the time limit was extended for commencing the IRP, and there is a reasonable possibility that the GCC will succeed on this issue. It is recognized that the evidentiary record is far from complete and additional evidence can be expected on this issue on the IRP itself. After a full review of the evidence on the IRP and the application of the appropriate standard of proof, the IRP panel may well find that the time limit for filing was mandatory and that it expired on October 30, 2013 without any extension. However, at this stage, it is sufficient to find that there is a reasonable possibility that the time has been extended under the circumstances.

84. Counsel for ICANN also argued that the time limit for the IRP filing could be tolled or delayed, but only through the formal invocation of the Cooperative Engagement Process prior to the commencement of the IRP as provided for in the Bylaws Article IV, Section 3, para. 14. This is a voluntary process encouraged by ICANN to try to resolve issues or at least narrow the issues for a reference to the Board. A conciliation process following the commencement of an IRP is also encouraged. According to the copy provided by ICANN, the Cooperative Engagement procedure has an even shorter time limit for commencement, being only 15 days of the posting of the Minutes of the Board. While it is undisputed that the formal Cooperative Engagement Process was never started, it is also undisputed that an

analogous informal engagement process was in fact undertaken involving the most senior officers of both ICANN and the GCC with the apparent purpose of resolving the issues. The availability of the Cooperative Engagement Process is not the sole method for extending time for filing the IRP and is not determinative of this issue whether ICANN has extended the time the time for the commencement of an IRP by reason of its conduct in connection with the undisputed efforts at resolution undertaken in 2014, especially the June 2014 meeting with the senior representatives of the organizations and the July 9 letter.

85. Based on the limited evidence available at this stage, there is a reasonable possibility that, by reason of ICANN's conduct, any time limitation for filing an IRP was extended or otherwise would not be enforced. The Reply evidence of the GCC also provides a reasonable basis for a possible explanation of the delay of over one year, an explanation which may neutralize the defence of delay or laches to the grant of discretionary interim emergency relief.

86. During the IRP process, these issues can be more fully ventilated with additional evidence from both parties about the meeting and contacts. As ICANN did not file any evidence on this Emergency Request of the involvement and conduct of its representatives throughout 2014, it will have the opportunity to do so for the IRP hearing. This evidence will also further assist the determination of whether the 30 day time limit for filing the IRP under the Bylaws is mandatory or directory only or was extended or waived. The IRP Panel will therefore have a fresh opportunity on a complete evidentiary record to further consider the defences of the time bar and the delay.

87. **Comparison of the Bylaws with the Board's Decision and Decision Making Process.** The merits of the IRP will involve a determination of whether the action and decision of the Board with respect to the delegation and registry agreement for .PERSIANGULF was made in a manner consistent with the requirements under the Articles and Bylaws. The IRP Panel will make this comparative determination on the basis of a standard of balance of probabilities. At this stage, only a preliminary assessment can and should be made on these issues. It is sufficient to identify the presence of serious issues or serious questions and determine if there is a reasonable possibility of success on the available evidence. It is also essential to avoid any prejudgement or findings on the merits of these issues and to avoid influencing the IRP Panel in its eventual task.

88. The Respondent asserts that it has acted consistently with the Bylaws throughout. Based on a careful review of the Bylaws and the evidence, there are in my view a number of serious questions about the process of the Board's decision making and for which the Claimant has a reasonable possibility of establishing that the Board, or the NGPC has not met the Bylaw requirements in its decision making process. A series of more focussed questions about the decision making process emerge from the analysis of the evidence, including the following:

   a. Did the ICANN Board or the NGPC acting for the Board exercise its own independent judgment in deciding to proceed to delegate .PERISANGULF and to enter into a registry agreement or did it simply adopt the GAC advice in the GAC Durban Communique that the GAC did not object, without doing its own independent assessment?

   b. Did the NGPC identify, consider and take guidance from the core values as set out in Article I, Section 2 of the Bylaws, including values 4, 8, and 11 relied upon by the Claimant? Did the NGPC determine which of the core values were most relevant to the issue of the delegation of .PERSIANGULF in light of the history of the opposition and if so what is the evidence of that?

   c. Did the NGPC determine a balance of the competing values identified in Article I, Section 2 of the Bylaws with respect to the applied for gTLD and the objections to it? If so, what was it and on what was it based? Is that balance defensible, how, and where is that determination recorded? What is the evidence to confirm that a defensible balance of the competing values has been made?

   d. Did the NGPC exercise due diligence to consider a reasonable amount of facts in making its decision to proceed with the delegation under the circumstances? Apart from taking a position consistent with the GAC advice set out in the Durban Communique, what other facts were relied upon by the NGPC? Did the NGPC consider the opposition of the members of the GCC to the domain application as expressed in the Minutes of the Durban meeting, or alternatively was the NGPC entitled or obliged to disregard that opposition due to the wording of the Durban Communique? Given the delay from the September 2013 resolution to November 2014 when the registry agreement was about to be signed, was the NGPC obliged to consider and did it consider, in exercising due diligence, the facts of the

continued opposition of the GCC and the events occurring during that period, such as the June 2014 meeting between ICANN representatives, including President Chehade, and representatives of the GCC, as well as the July follow-up letter? Where is the evidence of that consideration in its decision making? Should the Board consider and weigh the August 29, 2014 policy statement setting out the concerns of the Sub-working group that geographic names generally should be avoided in absence of agreement of relevant affected governments?

e. When did the ICANN Board in fact decide to delegate the domain? Is it in fact on September 10, 2013 with the adoption of the Scorecard in response to the GAC Durban Communique or was the decision made at a later date, such as after the June 2014 meeting of the ICANN President and the GCC representatives in Kuwait City, in which case how was that decision made?

89. The September 2013 Board decision, as taken, was simply to "continue to process the application in accordance with the established procedures in the AGB". That decision does not reflect any assessment or application of the competing core values or a consideration of the three stated values relied upon by the GCC. Nor does it provide a statement of a defensible balance of the competing values. It is clear that the ICANN Board was aware of the objections of the GCC and its constituent governments to the application, both before and after the September resolution to continue to proceed.   The evidence does not establish that this governmental opposition was taken into account at all in the Board decision to proceed with the delegation of the .PERSIANGULF domain to Asia Green, given the apparent reliance on the wording of the Durban communique. It is certainly not clear under the Bylaws that the evidence of the objections by the GCC and its member states, raised after the September 10 resolution and before the signing of the registry agreement, should **not** be taken into account. To the contrary, core value in Article I, Section 2.11 suggests that recommendations of governments are to be duly taken into account. That is a significant and serious issue for consideration on the IRP in respect of which the parties will be entitled to adduce additional evidence.   On the basis of the available evidence, the Claimant has a reasonable possibility of success on the merits of the IRP.

90. ICANN has also asserted that "ICANN did precisely what it was supposed to do pursuant to the Guidebook" and that there "is no Article [of Incorporation], Bylaws provision or

'guideline' that requires the ICANN Board to do anything more than follow the processes that it has followed" (ICANN Response, para. 54). That argument itself raises a serious and fundamental question to be considered and determined by the IRP Panel about the inter-relationship of the obligations on ICANN under the Guidebook and the Bylaws. Does compliance with the Guidebook procedures for the processing of a domain application satisfy the obligations on the ICANN Board under Bylaws Article 1, Section 2 in terms of the consideration of competing relevant values and the determination of an appropriate and defensible balance of those competing values? That is not at all obvious and the circumstances suggest an answer in the negative. Upon completion of the various procedures for evaluation and for objections under the Guidebook, the question of the approval of the applied for domain still went back to the NGPC, representing the ICANN Board, to make the decision to approve, without being bound by recommendation of the GAC, the Independent Objector or even the Expert Determination. Such a decision would appear to be caught by the requirements of Article 1, Section 2 of the Bylaws requiring the Board or the NGPC to consider and apply the competing values to the facts and to arrive at a defensible balance among those values.

91. In its Response, ICANN also relied on the position expressed in the Comments of the Independent Objector (Exhibit R-ER-5) and on the findings of the Expert Determination (Claimant ER Request, Annex 2) to justify the propriety of the delegation. These specific recommendations are certainly material to the Board consideration, but they are not a substitute for the exercise by the Board of its own judgement in balancing the competing values as expressly required under Article 1, Section 2 of the Bylaws. Therefore, at this stage and based on the available evidence, the Claimant appears to have a reasonable possibility of success on the merits of the IRP.

92. Both the Independent Objector and the Expert also noted that the GCC could itself apply for .ARABIANGULF and thereby neutralize any objection with the delegation of .PERSIANGULF. ICANN in its Response has also relied on this argument. The Independent Objector stated that it is not the mission of the gTLD strings to solve or exacerbate such naming disputes, but they should adapt to the *status quo*. This directly raises the type of policy issue which should be addressed by the Board in a discussion and balancing of the core values of ICANN in Article 1, Section 2 and which calls out for a reasoned

discussion and defensible balance to be reached by the Board. There is no question about ICANN solving the naming dispute – it cannot. There is a serious question as to whether, in the context of a geographic naming dispute, the registration of one domain name and the encouragement to register the other will elevate the deeper dispute between the parties to a new level and introduce that dispute to the Internet and to the internet domain name system. As noted in the Expert Determination, denomination disputes can be of high importance, roiling international relations, particularly when it is a flashpoint for deeper disputes as appears to be the case here. While the suggestion of the Independent Objector is for the gTLD strings to adapt to the *status quo*, one of the objectives on an application for interim measures is to preserve the *status quo*. The context assists in determining what may be regarded as the *status quo*. According to the Independent Objector, since both disputed names are in fact used in practice in the different states, it is suggested that both be used. Absent agreement on a common name, that would be consistent with general rules for international cartography. However, in terms of the domain naming system and top level domains for the Internet, neither term is currently used – that is the *status quo* for top level domain names. It is that *status quo* which should be preserved pending the completion of the IRP. The GCC is not asking to use the domain .ARABIANGULF and at this point does not want to use that domain. It is simply seeking to maintain the status quo that neither name be used as a gTLD.

93. This Emergency Panel therefore finds that the GCC has a reasonable possibility of success on the IRP for the purposes of granting interim measures in the nature of injunctive relief. However, nothing in this Interim Declaration should be taken as a finding on the merits binding on the IRP panel or as a suggestion of any decision which the ICANN Board should or should not make in respect of the merits of the domain application in dispute. The IRP Panel will have an opportunity on a full evidentiary record to make the determination required of it pursuant to the ICANN Bylaws, Article IV, Section 3 whether the Board in making its decision has acted consistently with the provision of the Articles and Bylaws. That is not a review *de novo* of the merits of the decision of the ICANN Board, but a review of the decision-making process of the Board in light of requirements under the Bylaws.

e. Other Considerations for Interim Measures

94. Based on the foregoing analysis, the Claimant has established an entitlement to an order that ICANN refrain from taking any further steps towards the execution of a registry agreement for .PERSIANGULF until the IRP is completed, or until such other order of the IRP panel. Of course in the event that the parties are able to amicably resolve the issues to their mutual satisfaction, the interim order and the proceedings can be brought to an end upon their consent. It is a common term or condition for the grant of such interim measures in the nature of injunctive relief to require the applicant to post security for any potential monetary damages or costs which may be caused by the grant of such measures in the event that the order is subsequently set aside or terminated. No request has been made at this time for security and the parties were not asked to brief the point. Therefore no order for such security shall be made at this time. However, the order made herein is without prejudice to any request which may be made in due to the IRP Panel which shall be free to consider that issue afresh.

95. Neither the Claimant nor the Respondent has sought costs of this Request for Interim Measures. The issue of costs was simply not addressed in the written or oral submissions. No order as to costs will be made at this time, but the issue of costs of this Request for Interim Measures shall be reserved to IPR panel.

VI. Conclusion and Interim Declaration`

96. Based on the forgoing analysis, this Emergency Panel makes the following order by way of an interim declaration and recommendation to the ICANN Board that:

    a. ICANN shall refrain from taking any further steps towards the execution of a registry agreement for .PERSIANGULF, with Asia Green or any other entity, until the IRP is completed, or until such other order of the IRP panel when constituted;

    b. This order is without prejudice to the IRP panel reconsidering, modifying or vacating this order and interim declaration upon a further request;

    c. This order is without prejudice to any later request to the IRP panel to make an order for the provision of appropriate security by the Claimant; and,

    d. The costs of this Request for Interim Measures shall be reserved to the IRP panel.

97. After the completion of the foregoing reasons for this emergency interim declaration and immediately before its release, the Tribunal received an email from the Claimant dated 11

February 2015, attaching a letter from ICANN dated 2 February 2015 which was apparently in response to the letter dated 9 July 2014 from Mr. Al Ghanim referred to in these reasons. In the February 2 letter, ICANN advised that the processing of the .PERSIANGULF application had been placed "On Hold". Apparently, Asia Green invoked the Cooperative Engagement Process in respect of some decision of the ICANN Board. As noted earlier, that process must be commenced within 15 days of the posting of the minutes of the Board which are said to violate the Articles or Bylaws. As a result of the application being placed "On Hold", the GCC took the position that their Emergency Request for Interim Measures had been rendered moot and asked for a declaration to be issued to that effect, but with an express reservation that the matter proceed in the event that ICANN does take further steps to sign an agreement with Asia Green.
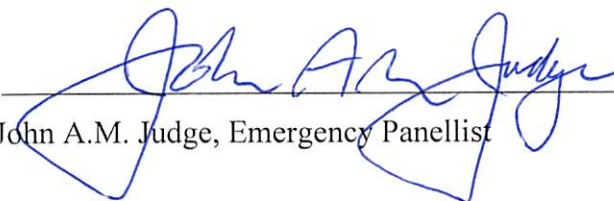
98. As for ICANN's position, the letter of February 11 also set out ICANN's position, quoting a letter between counsel that the placement of the application on hold had no bearing on this request for interim measures or on other accountability mechanisms already invoked. On 12 February 2015, ICANN also delivered a response opposing the GCC request. ICANN asserted that the GCC should either withdraw the Request for Emergency Relief or allow the decision with respect to that Request to be released if the "GCC wishes to ensure that the .PERSIANGULF application remains on hold". Clearly, ICANN did not agree that the Request was moot. ICANN asserted those accountability mechanisms under the Bylaws should proceed to completion, including this Request for Emergency Relief or, alternatively, that the GCC withdraw the Request for Emergency Relief.

99. On 12 February 2015 at 9:29 pm EST, the GCC replied to the ICANN position. The GCC did not withdraw its Request. The GCC maintained its position that the letter of February 2 from ICANN rendered the Request moot.

100. The parties are not in agreement on a consent disposition to this application. GCC has not withdrawn the Request for Emergency Relief. The Request remains extant. As a result, it is appropriate that this Declaration be released forthwith.

101. Having reviewed the letter of 2 February 2015 and the further submissions of the parties in the email of counsel of February 11 and 12, 2015, this Tribunal finds and confirms that the reasoning and result remains as set out above. The result is not altered or changed by these late submissions. Indeed, these materials reinforce the finding that the Declaration as set out

above should now be issued and released. Most importantly, the position taken by ICANN clearly indicates that, but for an order on this Request for Emergency Relief, the application will not remain on hold, suggesting that the registry agreement will be signed. The fact of the commencement of the Cooperative Engagement Process by Asia Green raises further questions as to what is the decision of ICANN Board in respect of the disputed application. For the purposes of the recently commenced Cooperative Engagement Process it may simply be the decision to put the application on hold pending the completion of the emergency request. The ICANN letter of 2 February 2015 is not an admission or commitment by ICANN that it will place the application on hold pending the completion of the GCC's IRP request. The request by Asia Green for the Cooperative Engagement Process raises many other questions as to the role if any of the GCC in that process and also the impact, if any at all, on the GCC request for the IRP. ICANN is rightly concerned that the accountability processes including the IRP should proceed as intended under the Bylaws. Therefore, for these reasons, the request of the GCC for a declaration that this Request is now moot is denied.

102. To be clear, and having taken into account the submissions of parties received on 11 and 12 February 2015, the interim declaratory relief as set out in paragraph 96 is hereby granted.

Signed in Toronto, Ontario, Canada for delivery to the Parties in Los Angeles, California, USA and Riyadh, Saudi Arabia.

Dated 12 February 2015.

John A.M. Judge, Emergency Panellist

RM 33

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
INDEPENDENT REVIEW PANEL

ICDR Case No. 01-14-0001-5004

Dot Registry, LLC,

Claimant

v.

Internet Corporation for Assigned Names and Numbers,

Respondent

IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS BEFORE THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

EMERGENCY INDEPENDENT REVIEW PANELIST'S ORDER ON REQUEST FOR EMERGENCY MEASURES OF PROTECTION

Mark C. Morril
Emergency Independent Review Panelist

December 23, 2014

This Order determines Claimant Dot Registry, LLC.'s ("Dot Registry") application to the undersigned as Emergency Independent Review Panelist for emergency relief under Article 6 of the International Centre for Dispute Resolution ("ICDR") International Dispute Resolution Rules.

Dot Registry applied to Respondent Internet Corporation for Assigned Names and Numbers ("ICANN") for the right to operate three new generic Top Level Domains ["gTLDs"].[1] In the underlying proceeding, Dot Registry has invoked ICANN's Independent Review Process ("IRP") to review the July 24, 2014 Determination of ICANN's Board Governance Committee ("BGC") denying reconsideration of a Community Priority Evaluation ("CPE") panel report finding that Dot Registry's applications did not qualify for "community-based" status.

ICANN has announced its intention to proceed with an auction of the gTLDs at issue on January 21, 2015. Dot Registry seeks an order enjoining ICANN from taking any further steps toward delegating the gTLDs at issue pending the conclusion of its IRP. I find emergency relief to be required to preserve the pending IRP as a process capable of providing an effective remedy.

The Parties

1. Claimant Dot Registry is a limited liability company registered in the State of Kansas. It was formed in 2011 to apply for the rights to operate certain new gTLDs, including .CORP, .LTD and .LLP (collectively "the corporate identifier strings"), which are at issue in the underlying proceeding.

2. Respondent ICANN is a California non-profit public benefit corporation established "for the benefit of the Internet community as a whole." It is responsible, among other things, for administering certain aspects of the Internet Domain Name System.

Applicable Law

3. The parties agree that international law principles, applicable international conventions and local law govern this application.[2] Although there are a variety of formulations, the tests listed below are commonly applied in both international and U.S. matters to determine an application for preliminary relief or interim measures.

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[1] Top-Level Domain or "TLDs" are the string of letters following the rightmost dot in domain names, such as the original gTLDs - .com, gov, .org, .net, .mil and .edu. ICANN began planning for the introduction of new TLDs in 2007 and in 2011 launched its "New gTLD Program" which provided policies and procedures to accomplish the expansion of available TLDs.
[2] ICANN Article of Incorporation ("Articles"), Article 4.

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i. The existence of a right to be protected

Interim measures are available in international arbitration to preserve a party's rights or property pending a resolution on the merits. Article 6 of the ICDR rules, applicable here by consent of the parties, empowers the Emergency Independent Review Panelist to order or award any interim or conservancy measures deemed "necessary." The ICSID convention similarly refers to provisional measures "to preserve the specific rights of either party." The UNCITRAL Arbitration Rules provide in Article 26 for interim measures, among other things, to preserve the *status quo* and prevent action that might prejudice the arbitration process. Some formulations also identify the public interest as an interest to be protected.[3]

ii. Urgency

This factor requires a showing that in the absence of interim measures, actions prejudicial to the rights sought to be protected are likely to be taken before the arbitration panel has the opportunity to determine the merits.

iii. Necessity

This factor assesses a) the nature and risk of the harm interim measures are intended to avoid; and b) the balance of hardships as between the parties resulting from the grant or withholding of interim measures.

iv. Possibility of success on the merits

It generally is required that the party seeking interim measures makes some showing on the merits of its underlying claim. Article 26 of the UNCITRAL Arbitration Rules requires demonstration of a "reasonable possibility that the requesting party will succeed on the merits of the claim."

Procedural History and Jurisdiction of the Emergency Independent Review Panelist

4. Dot Registry commenced the underlying IRP by a Request for Independent Review Process submitted on September 22, 2014 ("the IRP Request.") Article IV, Section 3 of ICANN's Bylaws provides in pertinent part that:

> 2. Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action.

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[3] See *Alliance for the Wild Rockies v. Cottrell*, 632 F.3D 1127 (9th Cir. 2011)

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> 7. All IRP proceedings shall be administered by an international dispute resolution provider appointed from time to time by ICANN ("the IRP Provider.")
>
> 8. Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures....

5. ICANN's Board appointed the ICDR as the IRP Provider. The parties agree that the current IRP is governed by the ICDR International Dispute Resolution Rules as in effect from June 1, 2014 ("the ICDR Rules") and the ICDR Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process.

6. The parties agreed that Article 6 of the ICDR Rules would apply to any application Dot Registry might make for emergency relief during the pendency of the IRP.[4] Dot Registry filed a Request for Emergency Independent Review Panelist and Interim Measures of Protection dated November 19, 2014 ("the Emergency Request.") The undersigned was appointed Emergency Independent Review Panelist on November 24, 2014 and made certain disclosures in connection with the appointment.

7. I conducted a telephonic preliminary hearing on November 25, 2014, which was attended by counsel for both parties and a Dot Registry executive. During the preliminary hearing, the parties confirmed their acceptance of the undersigned as Emergency Independent Review Panelist. Following that preliminary hearing, I issued Procedural Order No. 1, dated November 26, 2014, which provided *inter alia* that:

   a) ICANN confirmed that Dot Registry would not be required to pay any deposits associated with the auctions for the gTLD strings that are the subject of this dispute until sometime after January 2, 2015 and that no auction would be conducted for the gTLD strings prior thereto;
   b) The Emergency Independent Review Panelist would conduct a telephonic hearing on December 16, 2014; and
   c) The Emergency Independent Review Panelist would provide a reasoned order or award.

8. I have reviewed on this application the IRP Request, ICANN's Response thereto dated October 27, 2014 ("ICANN Merits Response"), the Emergency Request, ICANN's Response thereto dated December 8, 2014 ("ICANN Emergency Response"), a letter from Dot Registry's counsel Weil, Gotshal & Manges LLP

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[4] See C-ER-40 (Email from Jeffrey LeVee dated October 29, 2014 to Ali Arif and others); Procedural Order No. 1, ¶ 1.

dated December 15, 2014, a post-hearing submission from each party and exhibits to each of the foregoing documents.[5]

9. I conducted a telephonic hearing on December 16, 2014. Both parties appeared through their respective counsel. Executives from Dot Registry and ICANN also were in attendance. With the agreement of both parties, the record on this application was closed on December 18, 2014.

Factual Background

ICANN Governance and Accountability

10. ICANN's governance documents include the Articles and ICANN's Bylaws. The Articles require ICANN to carry "out its activities in conformity with relevant principles of international law and applicable international conventions and local law."[6] The Bylaws provide enumerated "Core Values" to "guide the decisions and actions of ICANN."[7] The Core Values include "making decisions by applying documented policies neutrally and objectively with integrity and fairness" and "remaining accountable to the Internet community..." Article III of the Bylaws, "Transparency," provides that "ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness."

11. Article IV of the Bylaws, "Accountability and Review" sets out two formal review tiers for persons materially affected by an action of ICANN – A Reconsideration Request and the Independent Review Process.[8] The stated purpose is to hold ICANN "accountable to the community for operating in a manner that is consistent with these Bylaws, and with due regard for the core values."

12. The Bylaws provide that a Reconsideration Request is available to review "one or more staff actions or inactions that contradict established ICANN policies" as well as Board actions or inactions where the Board failed to consider material information

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[5] The exhibits are cited herein as: "C-[number]" (IRP Petition); "C-ER-[number]" (Emergency Request); "I-[number]" (ICANN Merits Response); "I-ER-[number] (ICANN Emergency Response.)

[6] Articles ¶4

[7] Bylaws, Article 1, §2

[8] In addition to the these formal review processes, the Bylaws provide complainants a voluntary period of "cooperative engagement" with ICANN prior to initiating an IRP for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. Upon the filing of an IRP request, the Bylaws provide for a further voluntary "conciliation period" for the purpose of narrowing the issues that are stated within the IRP request. ICANN also maintains an ombudsman program.

or relied on false or inaccurate material information.[9] ICANN's board has designated its Board Governance Committee ("BGC") to review and consider Reconsideration Requests.[10] The Bylaws do not provide a standard of review for Reconsideration Requests. At the hearing, ICANN's counsel stated that the BGC has determined that review of staff or agent action on a Reconsideration Requests would be limited to whether there were any "procedural irregularities" in the activity reviewed. Counsel stated that the BGC's Determination on Dot Registry's Request applied that standard. ICANN's Merits Response asserts here that the Board made a "considered decision" not to review the substance of any agent or staff action on a Reconsideration Request.[11]

13. The Independent Review Process is available to any "person materially affected by a decision or action by the Board that he or she asserts is inconsistent" with the Articles or the Bylaws.[12] Requests for Independent Review are referred to an Independent Process Panel which is "charged with comparing contested actions of the Board" to the Articles and Bylaws.[13]

14. The Government Advisory Committee ("GAC") is an Advisory Committee to the Board, comprised of representatives of national governments, distinct economies and multinational and treaty organizations, whose role is to provide advice on ICANN's activities as they relate to concerns of governments.[14]

The New gTLD Program

15. The ICANN Board delegated authority to its New GTLD Program Committee ("NGPC") to manage "any and all issues that may arise relating to the New gTLD Program," including the administration of applications to register new gTLDs.[15] In June, 2011 ICANN published its "gTLD Applicant Guidebook" ("AGB"), a detailed handbook which sets out policies and procedures to guide applicants seeking to register new gTLDs.[16]

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[9] The BGC determined that the reconsideration process is available also to challenge expert determinations rendered by panels formed by third party service providers. See C-ER-18 at fn. 41

[10] Article IV, §2 (3); The BGC is empowered to request additional information and to conduct a meeting with the requester. Article IV, §2 (12)

[11] ICANN Merits Response at 21

[12] Bylaws Article IV, §3 (2)

[13] Id. The section also states that the IRP Panel "must apply a defined standard of review" "focusing on" whether the Board acted without conflict of interest and exercised due diligence and care in having a reasonable amount of facts in front of them and exercised independent judgment in taking the decision, believed to be in the best interests of the company." Article IV, §3 (4)

[14] Article XI, §2 (1)

[15] Resolution of 10 April 2012, cited at Merits Response R-3.

[16] C-ER-6

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16. The AGB provided for ICANN to appoint Community Priority Panels to Review Community applications.[17] ICANN engaged the Economist Intelligence Unit ("EIU") to conduct the CPE panels. EIU is the "business information arm" of the Economist Group, publisher of the Economist magazine.[18]

17. The AGB provides that applications for a gTLD "operated for the benefit of a clearly-defined community" may be designated as "community-based." All applications not so designated are designated as "standard" applications. An applicant for a community-based gTLD is expected to i) demonstrate an ongoing relationship with a clearly delineated community; ii) have applied for a gTLD string strongly and specifically related to the community; iii) have proposed dedicated registration and use policies... including appropriate security verification procedures; and iv) have the application endorsed in writing by one or more established institutions representing the community it has named.[19]

18. The GAC recommended in its Beijing Communiqué of 11 April 2013 that certain categories of gTLDs be designated "Category I" on the basis that they are "likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm." It recommended a series of "safeguards" to be applied to this category.[20] GAC identified the corporate identifier strings as Category I gTLDs. By Resolution of 5 February 2014, ICANN's NGPC classified the corporate identifier strings as involving a "highly-regulated" sector and required applicants for these strings to implement certain "Safeguards as Public Interest Commitments." One such safeguard was to mandate that Registrars include in their Registration Agreements a provision requiring any applicant for a corporate identifier string to "represent that it possesses any necessary authorizations ...for participation in the sector associated with the Registry TLD string."[21]

19. The AGB provides a "string contention process" to resolve competing applications to register the same gTLD.[22] Applications determined to have Community status are entitled to priority over all Standard applications. In the case of competing applications within either the Community or the Standard category, the string contention process culminates in an auction of the gTLD. The AGB denominates the auction the "Mechanism of Last Resort." It states the expectation that "most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants."[23]

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[17] AGB 4.2.2
[18] C-16
[19] AGB 1.2.3
[20] C-10.
[21] I-3 at 8.
[22] AGB 4.1
[23] AGB 4.3

20. ICANN issued Auction Rules for New gTLDs ("the Auction Rules.") Auction Rule 8 provides that no auction may take place unless all active applications in the contention set have "no pending ICANN Accountability Measures."[24]

21. At the hearing, ICANN's counsel stated that ICANN has applied Auction Rule 8 to preclude all auctions during the pendency of Reconsideration Requests. ICANN has determined to make case-by-case determinations whether to schedule an auction during the pendency of an IRP request. Counsel stated that ICANN determined to proceed with the auction in this case because it deemed Dot Registry's position in the IRP to be "frivolous." ICANN's counsel stated that the question of whether to proceed with an auction while an IRP is outstanding has arisen in only a few instances.[25]

22. The new gTLD application form included in the AGB contains a mandatory broad waiver of any remedies other than those expressly set forth in the Bylaws:

> Applicant agrees not to challenge, in court or in any other judicial fora, any final decision made by ICANN with respect to the application and irrevocably waives any right to sue or proceed in court or any other judicial fora on the basis of any other legal claim against ICANN and ICANN affiliated parties with respect to the application.[26]

23. The waiver contains a proviso "that applicant may utilize any accountability mechanism set forth in ICANN's Bylaws for purposes of challenging any final decision made by ICANN with respect to the application." ("the Proviso")

Review of Dot Registry's CPE Applications

24. Dot Registry submitted separate applications for the .INC, .LLP and .LLC gTLDs on or about 13 June 2012, designating each as a community-based application. Dot Registry identified the relevant "community" in its .INC application as "the Community of Registered Corporations."[27] Dot Registry's application stated the "Mission/Purpose" of its proposed gTLD to be "authenticating each of our registrant's right to conduct business in the United States." It cited to the "rise of business identity thefts online which in turn creates a loss of consumer confidence" and an NASS White Paper on Business Identity Theft. Dot Registry stated its

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[24] ICANN Auction Rules for New gTLDs, Version 2014-11-03 at 1.

[25] In at least one such instance, the IRP Panel enjoined the auction during the pendency of the IRP. See Decision on Interim Measures of Protection, *DotConnectAfrica Trust v. ICANN*, ICDR Case No. 50-117-T-1083-13 (2014) (C-ER-60) It appears that ICANN has agreed to put other contention sets on hold pending IRPs. See IRP Request at fn. 73.

[26] See Top Level Domain Application – Terms and Conditions at AGB Module 6 (C-5)

[27] The .LLC and .LLP applications had similar community descriptions. Dot Registry submitted the only community based application as to each of the corporate identifier strings.

intention to verify the identity of each registrant through the records of Secretaries of State "by the creation of a seamless connection and strong communication channel between our organization and the governmental authority charged with monitoring the creation and good standing of corporations." [28] It claimed to be a "corporate affiliate" of the NASS and cited support from "various Secretaries of States offices."[29]

25. The record before the CPE Panel included letters from several Secretaries of State expressing concerns about fraudulent use of corporate entities and business identity theft online, stating the need to "protect consumers and the community of interest that exists among validly registered U.S. companies and ...secretaries of state ...that are responsible for administering the nation's legal entity registration system."[30] The NASS in a letter dated 1 April 2014 to EUI affirmed its position that "the community application process is the only option to ensure that safeguards and restrictions to protect U.S. businesses can and will be enforced...." It noted Dot Registry's work as the only community applicant with NASS and Secretaries of State over "several years" and urged that "Any award by ICANN should be to the applicant that will commit to maintaining and enforcing a system with regular, real-time verification of each company's legal status, in accordance with state law."[31]

26. EIU issued its CPE panel determinations of Dot Registry's applications on 11 June 2014. The panels awarded each of Dot Registry's applications a score of 5 of the available 16 points. Since a score of 14 was required to achieve Community Priority status, each of Dot Registry's applications for priority failed.

27. Among EIU's most significant findings in its evaluation of Dot Registry's applications were that the applications failed to identify a "community" within the AGB definition because businesses "typically do not associate themselves with being part of the community as defined by the applicant" and instead "Research showed that firms are typically organized around specific industries, locales and other criteria not related to the entities' structure...." EIU also found that the Secretaries of State could not represent the community Dot Registry stated because they "are not mainly dedicated to the community as they have other functions beyond processing corporate registrations." [32]

28. Dot Registry applied for reconsideration of the CPE Panel determination on 25 June 2014. Dot Registry cited numerous instances in which it alleged EUI mismanaged the CPE process, as well as scoring errors in each of the four categories by which

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[28] C-ER-12 at 7-9.

[29] Id. at 15.

[30] C-ER 18 at Annex 1 (letter dated 20 March 2012 from Jeffrey W. Bullock, Secretary of State of the State of Delaware to ICANN.) The FTC Office of International Affairs expressed similar concerns about the need for a "proactive approach ...to combat fraudulent websites" in a letter dated 29 January 2014. Id.

[31] C-ER 18 at Annex 1

[32] C-18, 19, 20

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EIU evaluated the applications. Dot Registry also asserted that EIU had a conflict of interest in respect to the corporate identifier strings. NASS was a co-Requester on the face of the Reconsideration Request Form.[33]

29. The BGC denied Dot Registry's Reconsideration Request in a written Determination dated 24 July 2014. The BGC did not list NASS on its Determination and did not discuss NASS or the interests it asserted in the body of its Determination. The BGC stated that it had not evaluated the CPE Panels substantive conclusions that Dot Registry's applications did not prevail in the CPE process. Rather its review was limited to whether the Panels violated any established policy or procedure.[34] It found that Dot Registry had not demonstrated any procedural violation or that it had been adversely affected by the challenged actions of the Panels.

The Parties' Contentions

Dot Registry's contentions regarding the scope of the IRP process

30. The IRP Request alleges broad and detailed errors in EIU's management of the CPE process, including "conflating applications, deducting points when requisite criteria were admittedly met, engaging in double-counting, failing to verify statements of support and objection, engaging in unprofessional and arbitrary harassment and conclusively disposing of the rights of applicant based upon undisclosed and unverifiable "research.""[35]

31. The IRP petition attributes responsibility for EIU's alleged mismanagement of the CPE process and EIU's alleged errors in the scoring of Dot Registry's applications to ICANN and its Board. It asserts that ICANN failed to operate in a transparent and accountable manner, consistent with applicable principles of international law and its Bylaws, by allowing EIU to act in an "arbitrary and unprofessional manner" in numerous respects, and by failing to ensure that its policies were implemented accurately and in a transparent, unbiased manner and failing to address the EIU's violations when brought explicitly to the Board's attention.

32. The IRP petition further alleges that ICANN violated the forgoing obligations by appointing EIU which, it alleges, lacked the "requisite skill and expertise" to carry out the CPE review, and had a conflict of interest in relation to the corporate identifier strings.[36]

Dot Registry's contentions regarding the Reconsideration Request

33. Dot Registry asserts that the Board, acting through its BGC, failed to exercise diligence and care on Dot Registry's Reconsideration Request. The BGC also mischaracterized Dot Registry's claims as challenges to the substantive

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[33] C-ER-18
[34] C-ER-17 at 8
[35] IRP Request at 23
[36] Id.

determinations of the CPE panels rather than acknowledging that its challenges were to violations of established policies and procedures. ICANN "deliberately ignored" the role of the NASS and NASS' participation as a co-Requester on Dot Registry's Reconsideration Request. [37]

Dot Registry's contentions regarding the Board's response to GAC advice

34. Dot Registry further avers that ICANN breached its Articles of Incorporation and Bylaws by failing to address adequately the GAC Beijing Communiqué findings relating to the risks inherent in the corporate identifier strings. [38]

ICANN's contentions regarding the scope of the IRP process

35. ICANN alleges that Dot Registry cannot succeed in the IRP because IRPs are not a vehicle to challenge third party reports such as the EIU scoring of Dot Registry's application. The creation or acceptance of CPE panel reports is not Board action and the fact that a CPE panel may have come to a particular conclusion on an application is not evidence that the panel lacked skill and expertise and does not constitute a violation of ICANN's Articles or Bylaws. The IRP Panel is tasked with providing a non-binding opinion, applying a defined deferential standard of review, as to whether challenged Board actions violated ICANN's Articles or Bylaws.[39]

36. Reserving its position regarding the proper scope of of an IRP (and a Reconsideration Request), ICANN nonetheless responded to Dot Registry's claims in relation to EIU's management of the CPE. Among other things, ICANN asserts i) the BGC properly found no evidence that the CPE panel had mismanaged the support and opposition letters relating to Dot Registry's application ii) Dot Registry's separate applications were separately evaluated to the extent required notwithstanding some degree of permitted collaboration between CPE panels; iii) the CPE panels were authorized to conduct independent research and not required to make any disclosure in relation thereto; and iv) there is no evidence that EIU's alleged conflict of interest ever was brought to the attention of ICANN's board since it is the obligation of third party providers, not ICANN, to address potential conflicts of interest.[40]

37. Any error in EIU's CPE scoring caused no harm to Dot Registry. Since Dot Registry received only 5 of the 14 points required to achieve community priority status, the errors it alleges would not have changed the result of the CPE review.

ICANN's Contentions Regarding the Reconsideration Request

38. ICANN asserts that the BGC acted properly in denying Dot Registry's Reconsideration Request. The BGC is not required on a reconsideration petition to

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[37] IRP Request at 17-19, 24

[38] GAC also criticized ICANN for adopting the "looser requirement" of requiring registrants to represent their status, as opposed to the "validation and verification" process it had recommended in the Beijing Communiqué. C-13, 14.

[39] IR at 8.

[40] ICANN Merits Response at 7.

perform a substantive review of CPE panel reports. Rather, its role is to review whether the panel violated any policy or procedure in scoring the application.[41] The BGC's failure to list NASS as a co-Requester on BGC's determination of the Reconsideration Request was inadvertent and "had no effect on the substance of the BGC's determination."

ICANN's contentions regarding the Board's response to GAC advice

39. ICANN argued that it instituted additional safeguards applicable to the operation of the corporate identifier strings, responsive to the recommendations of the GAC Beijing Communiqué, which will be included as non-negotiable terms of binding Registry Agreements. Dot Registry lacks standing to raise harm to consumers or other businesses and the CPE review of its application was not affected by the content of any other application.[42]

Relief Sought

40. Dot Registry's application seeks interim measures
   - Enjoining ICANN from taking any further steps towards delegating the corporate identifier strings until the conclusion of the IRP proceedings commenced by Dot Registry; and
   - Requiring ICANN to placed the contention sets and each active application for .INC, .LLC and .LLP "on hold" and designate them "ineligible for auction" pending the outcome of the IRP proceedings commenced by Dot Registry.

41. On December 15, 2014, Dot Registry's counsel submitted a letter addressing its interactions with ICANN regarding the deadline to submit an "Auction Date Advancement/Postponement Request Form" pursuant to Auction Rule 10. It sought to extend the emergency relief requested in its application to "freeze all deadlines and actions in connection with the auction or disposition of the corporate identifier strings." ICANN's counsel responded at the hearing.

Issues To Be Decided

I find that the following are the issues to be decided on this application:

42. Has Dot Registry established the existence of one or more rights potentially requiring protection by means of interim measures?

43. Is there an urgent need for interim measures?

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[41] ICANN Merits Response at 17-18; statement of ICANN counsel at hearing that BGC review is limited to "procedural irregularities"
[42] ICANN Merits Response at 13-15

44. Are interim measures necessary, including i) has Dot Registry shown a risk of irreparable injury in the absence of such measures; and ii) does the potential harm to Dot Registry from the withholding of interim measures outweigh the potential harm to ICANN or other parties by imposing interim measures?

45. Has Dot Registry demonstrated the existence of substantial questions going to the merits in the underlying IRP?

Analysis

Rights subject to protection

46. I find the preservation of the IRP as a process that is capable of providing an effective remedy in the IRP to be a substantial right at issue on this application. ICANN's Bylaws provide a narrowly tailored tiered dispute resolution process with a defined and limited set of remedies. The stated core values of fairness and accountability, together with the Bylaw commitment to "procedures designed to ensure fairness," reinforce the importance of preserving an opportunity for the IRP Panel to provide an effective remedy to the extent the Panel deems relief to be required.[43]

47. The terms and structure of the litigation waiver likewise reinforce the rights of applicants in the New gTLD registry process to a meaningful IRP process with the potential for an effective remedy. The structure of the broad waiver, coupled with the Proviso, suggests that the availability of "any accountability mechanism… for the purposes of challenging any final decision made by ICANN with respect to the application" is the *quid pro quo* for the relinquishment of substantial rights

48. The underlying substantive rights at issue in the IRP, priority registration rights available to a successful applicant in the Community Priority Evaluation process, also are substantial and potentially subject to preservation on the current application.

Urgency

49. I find the need for interim measures to be urgent since ICANN has stated its unequivocal intention to auction registry rights to the corporate identifier strings on January 21, 2015. Consummation of the procedures set out in the Auction Rules will confer unconditional and irrevocable rights to the prevailing party.

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[43] I find the preservation of an opportunity for the IRP Panel to rule before an irrevocable auction of the corporate identifier strings takes place to be a substantial right, whether the IRP Panel determination is merely advisory, as ICANN contends, or is binding, as some authority has found. See *Declaration on the IRP Procedure, DotConnectAfrica Trust v. ICANN*, ICDR Case No. 50-117-T-1083-13 (2014) (holding that IRP Panel decision will be binding); *Burlington Resources Inc. and others v. Republic of Ecuador and Empresa Estatal Petroleos del Ecuador*, ICSID Case No. ARB/08/5, Procedural Order No. 1 at 22 (C-ER-38) (holding preservation of the effectiveness of a potential future award to be a right subject to protection by provisional measures)

Accordingly, the need for interim measures is urgent to prevent the imminent dissipation of substantial rights.[44]

Necessity

    Irreparable Injury

50. Recognizing that a common basis for the denial of preliminary relief is the availability of monetary damages to compensate any claimed injury, I consider here the nature of the injury Dot Registry claims is threatened. Commonly stated in U.S. jurisprudence as "irreparable injury," the Model Law requirement is that the asserted harm is "not adequately repaired by an award of damages."[45]

51. The potential harm to Dot Registry is the irrevocable loss of the priority registration rights it sought to obtain and the ongoing operation of the corporate identifier strings under the terms and conditions set out in its application. The loss of those rights would not be compensable by monetary damages.

52. ICANN has not claimed here that monetary damages will be available to compensate Dot Registry if it is determined in the IRP process that Dot Registry's rights were violated, but in the meantime another bidder has obtained registry rights to the corporate identifier strings in the auction. Emergency relief is necessary to preserve the *status quo* of the corporate identifier strings remaining undelegated.

Balance of Harms

53. The UNCITRAL Rule requires a finding that the harm "substantially outweighs the harm that is likely to result to the party against whom the measure is directed..."[46] I find that the balance of hardships as between the parties from the grant or withholding of interim measures tips decidedly in favor of Dot Registry. As discussed, Dot Registry has at stake significant procedural and substantive rights, which may be irrevocably lost and cannot be compensated with monetary damages.

54. While ICANN surely has an interest in the streamlined and orderly administration of its processes, it cannot show hardship comparable to that threatened against Dot Registry. The interim measures sought here are rather modest, involving a delay of perhaps several months in a registration process that has been ongoing since 2012.[47] ICANN has not identified any concrete harm that would result from the relatively short delay required for the IRP Panel to complete its review.

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[44] In light of the interim measures provided here, I find that the relief requested in Dot Registry's letter of December 15 is not urgent. Of course, Dot Registry may renew that application to the IRP Panel if it chooses to do so.

[45] UNCITRAL Arbitration Rule Article 26 (3)(a)

[46] Id.

[47] At least some of the timing of the IRP process and the review by ICANN's board of the IRP panel's determination will be within ICANN's control. The IRP process itself is quite limited and streamlined.

55. Moreover, it appears that the requested relief does not differ greatly from that provided in ICANN's Auction Rule 8 which provides on its face that no auction will be scheduled while an accountability measure is pending. While ICANN at the hearing stated that it has applied a different standard when the pending accountability measure is an IRP, its claim of hardship is at least tempered by the plain language of its own rule.

56. ICANN argues that competing applicants for the strings will suffer substantial harm if further processing is delayed. It does not specify such harm beyond noting that a number of new gTLDs have been delegated and that there is "growing competition" in the gTLD space. However, Dot Registry's December 15 letter stated, and ICANN's counsel confirmed at the hearing, that all of the contending applicants for the corporate identifier strings, save one applicant for .INC, already have submitted formal Auction Rule 10 requests to postpone the January 21 auction date.[48]

57. I also find that there is a significant public interest element at stake on this application. NASS, an association of public officials which supported Dot Registry's application and was a co-Requester on its Reconsideration Request, asserted that safeguards are important to protect consumers and that the Community Application process is the most appropriate to secure the necessary safeguards. The FTC and ICANN's own Government Advisory Committee raised similar concerns. The GAC expressed continuing concerns even after ICANN implemented a set of safeguards after the Beijing Communiqué. It is not appropriate to determine on this emergency application the merits of Dot Registry's proposals for safeguards to protect the interests it asserts, the sufficiency of the safeguards ICANN states it would imposed instead or Dot Registry's standing to challenge this aspect of ICANN's actions. However, the expressed interest of accountable public officials in the subject matter of the IRP, coupled with an identified potential risk to the public interest, weighs in favor of granting the application.

Dot Registry's Possibility of Success on the Merits

58. ICANN relies primarily on this factor, arguing that it determined to move forward with the auction process because it deems Dot Registry's IRP "frivolous and unlikely to succeed on the merits."

59. UNCITRAL Arbitration Rule 26 (3) (b) conditions the grant of interim measures on a showing of a "reasonable possibility that the requesting party will succeed on the merits of the claim." The parties are not in full agreement on the strength of the required showing. Where, as here, the balance of hardships tips decidedly in favor of the party seeking relief, some courts have held that the required showing on the

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[48] Auction Rule 10 permits a delay of up to two scheduled auction dates in ICANN's discretion if all applicants in a string contention so request. Dot Registry asserts that did not file a timely Auction Rule 10 request to postpone the January 21 auction date because it was seeking the same relief on this application and it did not want to use up the sole Auction Rule 10 request permitted by the ICANN rules.

merits maybe somewhat relaxed.[49]   For purposes of this application, I adopt ICANN's formulation that the requesting party must, at a minimum, show that it has raised "substantial questions going to the merits" on its underlying claim, a formulation that recognizes the flexible interplay among the various factors.[50]

60. I find that Dot Registry has raised "substantial questions going to the merits" on this application. I do not attempt a comprehensive listing of such questions, but identify here some examples:

i) BGC Determination of the Reconsideration Request
ICANN states in its Merits Response, and emphasized at the hearing, that the Board made a "considered decision" not to perform any substantive reviews of third party evaluators' reports in the Reconsideration process. Rather, the BGC consistently is applying a policy of reviewing CPE determinations solely for procedural irregularities.   Dot Registry has raised a substantial question going to the merits whether the standard the BGC applied to its Reconsideration Request is consistent with ICANN's Bylaws and the New gTLD application form.

ii) Failure to recognize NASS as a co-Requester on Dot Registry's Reconsideration Request
ICANN concedes that the BGC "inadvertently failed to list the NASS as a co-Requester," but argues that this "omission has no effect on the substance of the BGC's Determination."[51] I cannot conclude at this preliminary stage that the omission in the heading of the BGC Determination was harmless error, given that the text of the Determination likewise lacks any reference to NASS or the positions that it (as well as the GAC and the FTC) asserted in respect to such issues as the existence of a cognizable community and the importance of invoking the Community process in relation to the corporate identifier strings.

(iii) Scope of IRP review as applied to new gTLD application
ICANN's principal defense to the IRP is that Dot Registry cannot succeed because most of its claims are no more than a challenge to the substance of EIU's evaluation of its applications.   ICANN asserts that IRPs are not a forum for challenging third party expert reports, which it contends, involve no board action.[52] I find that Dot Registry has raised a colorable argument that the term "Board action," when read against the broad accountability and review provisions in Articles III and IV of the Bylaws, and against the Proviso, should be construed to encompass some aspects of Dot Registry's claims in respect to the selection of EUI and the processes EIU applied to

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[49] See *Alliance for the Wild Rockies v. Cottrell*, 632 F.3D 1127 (9th Cir. 2011)
[50] Id.
[51] ICANN Merits Response at fn. 25
[52] ICANN Merits Response at 10; ICANN Emergency Response at 9

the CPE review of Dot Registry's applications. [53] This substantial question of scope and construction will be for the IRP Panel to determine.

iv) Board's response to the recommendations of the GAC's Beijing Communiqué

ICANN contends that it responded adequately to the GAC's recommendations as to special safeguards required for the corporate identifier strings. It further contends that Dot Registry lacks standing to question the Board's response. The NASS nonetheless urged both EIU and the BGC to consider the importance of the collaboration of NASS and its members with Dot Registry over several years to develop a "regular, real time verification system."[54] Dot Registry has raised substantial questions going to the merits as to its standing to address the issue and, if it is found to have standing, as to the adequacy of the Board's responses as a substitute for the safeguards proposed in Dot Registry's application.

iii) EIU's Conduct of the CPE

If the IRP Panel determines that review of any aspect of EIU's management of the CPE process (or the BGC's review thereof) is within the scope of the IRP, I find that Dot Registry has raised substantial questions going to the merits in relation to some of the processes EIU applied in the CPE panel review. These questions include whether each of Dot Registry's applications was independently evaluated to the extent required by the AGB and whether EIU made sufficient disclosure in relation to its independent research to enable Dot Registry to obtain a meaningful review of its findings at the Reconsideration stage. [55]

Conclusion

61. I conclude that emergency measures of protection are required to preserve the pending IRP as a process that is capable of providing a meaning remedy should Dot Registry prevail in whole or in part. The IRP Panel will not be in a position to award effective relief should it find in favor of Dot Registry on some or all of its claims if ICANN previously has delegated to another party in an auction irrevocable and unconditional rights to the corporate identifier strings.

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[53] I note that even the "deferential" IRP review standard ICANN cites requires examination of whether the Board exercised "due diligence and care in having a reasonable amount of facts in front of them." Bylaws Article IV, §3.4; See also Declaration of the Independent Review Panel in the Matter of an Independent Review Process between ICM Registry, LLC and ICANN ("[T]he actions and decisions of the ICANN Board are not entitled to deference whether by application of the "business judgment" rule or otherwise; they are to be appraised not deferentially but objectively.") (C-ER-5)

[54] C-ER-18 at Annex 1

[55] I cannot conclude on this preliminary application that the errors Dot Registry alleges in respect to EIU's management of the CPE process would be harmless individually or in the aggregate even if sustained.

62. Mindful that interim measures are not to be imposed lightly, I find the least intrusive measure adequate to protect the interests identified to be to require ICANN to apply its Auction Rule 8 in this IRP. Specifically, ICANN will be ordered to refrain from scheduling an Auction for the corporate identifier strings while the current IRP is pending.
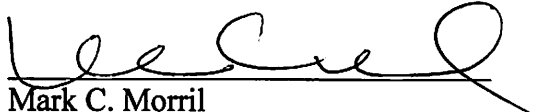
Costs of the Application for Emergency Relief

63. I have carefully reviewed all of the facts and circumstances of this application for emergency relief and carefully considered the allocation of costs. I have considered Dot Registry's request for an award of costs, including its legal fees and expenses, and ICANN's response to that request. Based on such careful review, I find it appropriate that the costs of the application should be borne as incurred, the Emergency Independent Review Panelist's compensation should be shared equally and each party should bear its own attorneys' fees and expenses.

Order

Upon consideration of the parties' submissions, including the evidence submitted therewith, and the arguments made by counsel, it is hereby ORDERED as follows:

1. The Emergency Independent Review Panelist finds that emergency measures of protection are necessary to preserve the pending Independent Review Process as an effective remedy should the Independent Review Panel determine that that the award of relief is appropriate.

2. It is therefore ORDERED that ICANN refrain from scheduling an auction for the new gTLDs .INC, .LLP and .LLC until the conclusion of the pending Independent Review Process.

3. The administrative fees of the ICDR shall be borne as incurred. The compensation of the Emergency Independent Review Panelist shall be borne equally by both parties. Each party shall bear all other costs, including its attorneys' fees and expenses, as incurred.

4. This Order renders a final decision on Claimant's Request for Emergency Independent Review Panel and Interim Measures of Protection. All other requests for relief not expressly granted herein are hereby denied.

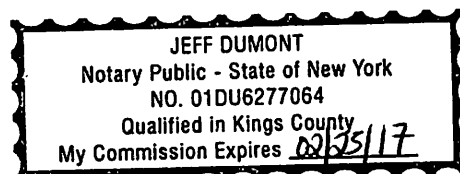Dated: December 23, 2014
New York, New York

Mark C. Morril
Emergency Independent Review Panelist

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

On this 23rd day of December, 2014, before me came Mark C. Morril, known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

Date: December 23, 2014

Notary Public

JEFF DUMONT
Notary Public - State of New York
NO. 01DU6277064
Qualified in Kings County
My Commission Expires 02/25/17

RM 34

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION (ICDR)
A Division of the American Arbitration Association (AAA)
CASE # 50 117 T 1083 13

In the matter of an Independent Review Process pursuant to the Internet Corporation for Assigned Names and Number's (ICANN's) Bylaws, the *International Dispute Resolution Procedures* of the ICDR, and the *Supplementary Procedures for ICANN Independent Review Process*

Between: **DotConnectAfrica (DCA) Trust**;
("Claimant")

Represented by Mr. Arif H. Ali, Ms. Marguerite Walter and Ms. Erica Franzetti of Weil, Gotshal, Manges, LLP located at 1300 Eye Street, NW, Suite 900, Washington, DC 2005, U.S.A.

And

Internet Corporation for Assigned Names and Numbers (ICANN);
("Respondent")

Represented by Mr. Jeffrey A. LeVee of Jones Day, LLP located at 555 South Flower Street, Fiftieth Floor, Los Angeles, CA 90071, U.S.A.

Claimant and Respondent will together be referred to as "Parties".

DECISION ON INTERIM MEASURES OF PROTECTION

Babak Barin, *Chair*
Prof. Catherine Kessedjian
Hon. Richard C. Neal (Ret.)

12 May 2014

BACKGROUND

1. DotConnectAfrica ("DCA") Trust ("Claimant"), is a non-profit organization established under the laws of the Republic of Mauritius on 15 July 2010 with its registry operation – DCA Registry Services (Kenya) Limited – as its principal place of business in Nairobi, Kenya. DCA was formed with the charitable purpose of, among other things, advancing information technology education in Africa and providing a continental Internet domain name to provide access to internet services for the people of Africa and for the public good.

2. In March 2012, DCA Trust applied to the Internet Corporation for Assigned Names and Numbers ("ICANN") for the delegation of the .Africa top-level domain name in its 2012 General Top-Level Domains ("gTLD") Internet Expansion Program (the "New gTLD Program"), an internet resource available for delegation under that program.

3. ICANN ("Respondent") is a non-profit corporation established under the laws of the State of California, U.S.A., on 30 September 1998 and headquartered in Marina del Rey, California. According to its Articles of Incorporation, ICCAN was established for the benefit of the Internet community as a whole and is tasked with carrying out its activities in conformity with relevant principles of international law, international conventions, and local law.

4. On 4 June 2013, the ICANN Board New gTLD Program Committee ("NGPC") posted a notice that it had decided not to accept DCA's application.

5. On 19 June 2013, DCA Trust filed a request for reconsideration by the ICANN Board Governance Committee ("BGC"), which denied the request on 1 August 2013.

6. On 19 August 2013, DCA Trust informed ICANN of its intention to seek relief before an Independent Review Panel under ICANN's Bylaws. Between August and October 2013, DCA Trust and ICANN participated in a Cooperative Engagement Process ("CEP") to try and resolve the issues relating to DCA Trust's application. Despite several meetings, however, no resolution was reached.

7. On 24 October 2013, DCA Trust filed a Notice of Independent Review Process with the ICDR in accordance with Article IV, Section 3, of ICANN's Bylaws.

INDEPENDENT REVIEW PROCESS

8. According to DCA Trust, the central dispute between it and ICANN in the Independent Review Process invoked by DCA Trust in October 2013 and

described in its Amended Notice of Independent Review Process submitted to ICANN on 10 January 2014 arises out of:

> "(1) ICANN's breaches of its Articles of Incorporation, Bylaws, international and local law, and other applicable rules in the administration of applications for the .AFRICA top-level domain name in its 2012 General Top-Level Domains ("gTLD") Internet Expansion Program (the "New gTLD Program"); and (2) ICANN's wrongful decision that DCA's application for .AFRICA should not proceed [...]."[1]

9. According to DCA Trust, "ICANN's administration of the New gTLD Program and its decision on DCA'S application were unfair, discriminatory, and lacked appropriate due diligence and care, in breach of ICANN's Articles of Incorporation and Bylaws."[2] DCA Trust also advanced that "ICANN's violations materially affected DCA's right to have its application processed in accordance with the rules and procedures laid out by ICANN for the New gTLD Program."[3]

10. In its Response to Claimant's Amended Notice submitted to DCA Trust on 10 February 2014[4], ICANN submitted that in these proceedings, "DCA challenges the 4 June 2013 decision of the ICANN Board New gTLD Program Committee ("NGPC"), which has delegated authority from the ICANN Board to make decisions regarding the New gTLD. In that decision, the NGPC <u>unanimously</u> accepted advice from ICANN's Governmental Advisory Committee ("GAC") that DCA application for .AFRICA should not proceed. DCA argues that the NGPC should not have accepted the GAC's advice. DCA also argues that ICANN's subsequent decision to reject DCA's Request for Reconsideration was improper."[5]

11. ICANN argued that the challenged decisions of ICANN's Board "were well within the Board's discretion" and the Board "did exactly what it was supposed to do under its Bylaws, its Articles of Incorporation, and the Applicant Guidebook ("Guidebook") that the Board adopted for implementing the New gTLD Program."[6]

12. Specifically, ICANN also advanced that "ICANN properly investigated and rejected DCA's assertion that two of ICANN's Board members had conflicts of interest with regard to the .AFRICA applications, [...] numerous African

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[1] Claimant's Amended Notice of Independent Review Process, *para.* 2.
[2] *Ibid.*
[3] *Ibid.*
[4] ICANN's Response to Claimant's Amended Notice contains a typographical error, it is dated "February 10, 2013" rather than 2014.
[5] ICANN's Response to Claimant's Amended Notice, *para.* 4
[6] *Ibid. para.* 5

countries issued "warnings" to ICANN regarding DCA's application, a signal from those governments that they had serious concerns regarding DCA's application; following the issuance of those warnings, the GAC issued "consensus advice" against DCA's application; ICANN then accepted the GAC's advice, which was entirely consistent with ICANN's Bylaws and the Guidebook; [and] ICANN properly denied DCA's Request for Reconsideration."[7]

13. In short, ICANN argued that in these proceedings, "the evidence establishes that the process worked <u>exactly</u> as it was supposed to work."[8]

REQUEST FOR INTERIM MEASURES OF PROTECTION

14. In an effort to safeguard its rights pending the ongoing constitution of the IRP Panel, on 22 January 2014, DCA Trust wrote to ICANN requesting that it immediately cease any further processing of all applications for the delegation of the .AFRICA gTLD, failing which DCA Trust would seek emergency relief under Article 37 of the ICDR Rules. In addition, DCA Trust indicated that it believed it had the right to seek such relief because there is no standing panel (as anticipated in the Supplementary Procedures for ICANN Independent Review Process), which would otherwise hear requests for emergency relief.

15. In response, in an email dated 5 February 2014, ICANN wrote:

> "Although ICANN typically is refraining from further processing activities in conjunction with pending gTLD applications where a competing applicant has a pending reconsideration request, ICANN does not intend to refrain from further processing of applications that relate in some way to pending independent review proceedings. In this particular instance, ICANN believes that the grounds for DCA's IRP are exceedingly weak, and that the decision to refrain from the further processing of other applications on the basis of the pending IRP would be unfair to others."[9]

16. In its Request for Emergency Arbitrator and Interim Measures of Protection subsequently submitted to ICANN on 28 March 2014, DCA Trust argued, *inter alia*, that, "in an effort to preserve its rights, in January 2014, DCA requested that ICANN suspend its processing of applications for .AFRICA during the pendency of this proceeding. ICANN, however, summarily refused to do so."[10]

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[7] *Ibid.*

[8] *Ibid. para.* 6

[9] ICANN counsel's email to DCA Trust counsel dated 5 February 2014.

[10] Request for Emergency Arbitrator and Interim Measures of Protection, *para.* 3

17. DCA Trust also argued that "on 23 March 2014, DCA became aware that ICANN intended to sign an agreement with DCA's competitor (a South African company called ZACR) on 26 March 2014 in Beijing [...] Immediately upon receiving this information, DCA contacted ICANN and asked it to refrain from signing the agreement with ZACR in light of the fact that this proceeding was still pending. Instead, according to ICANN's website, ICANN *signed its agreement with ZACR the very next day, two days ahead of plan, on 24 March instead of 26 March.*"[11]

18. According to DCA Trust, that same day, "ICANN then responded to DCA's request by presenting the execution of the contract as a *fait accompli*, arguing that DCA should have sought to stop ICANN from proceeding with ZACR's application, as ICANN had already informed DCA of its intention [to] ignore its obligations to participate in this proceeding in good faith."[12] DCA Trust also argued that on 25 March 2014, as per ICANN's email to the ICDR, "ICANN for the first time informed DCA that it would accept the application of Article 37 [of the ICDR International Dispute Resolution Procedures, amended and effective June 1, 2009 ("ICDR Rules")] to this proceeding contrary to the express provisions of the Supplementary Procedures of ICANN has put in place for the IRP Process."[13]

19. In its Request, DCA Trust argued that it "is entitled to an accountability proceeding with legitimacy and integrity, with the capacity to provide a meaningful remedy. [...] DCA has requested the opportunity to compete for rights to .AFRICA pursuant to the rules that ICANN put into place. Allowing ICANN to delegate .AFRICA to DCA's only competitor – which took actions that were instrumental in the process leading to ICANN's decision to reject DCA's application – would eviscerate the very purpose of this proceeding and deprive DCA of it's rights under ICANN's own constitutive instruments and international law."[14]

20. Finally, DCA Trust requested, among other things, the following interim relief:

> a. An order compelling *ICANN to refrain from any further steps toward delegation of the .AFRICA gTLD*, including but not limited to execution or assessment of pre-delegation testing, negotiations or discussions relating to delegation with the entity ZACR or any of its officers or agents; [...][15]

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[11] *Ibid.*

[12] *Ibid.*

[13] *Ibid., para.* 4.

[14] *Ibid., para.* 5.

[15] *Ibid., para.* 6.

21. In its Response to DCA Trust's Request for Emergency Arbitrator and Interim Measures of Protection submitted on 4 April 2014, ICANN urged that DCA's request for a stay be denied. ICANN also reproached DCA for having waited five months before initiating its Request for Interim Measures of Protection pursuant to Article 37 of the ICDR Rules.

22. ICANN further argued that Claimant's Request for Interim Relief ought to be denied because "DCA has not demonstrated a reasonable possibility that it will succeed on the merits of this IRP, which the law requires DCA to demonstrate."[16]

23. According to ICANN, "DCA's decision to wait five months before seeking a stay reflects the weakness of DCA's claims and the lack of any corresponding irreparable harm to DCA. This is compounded by the fact that DCA has done nothing to try to expedite these proceedings. To the contrary, DCA has failed to file its fees timely, it sought multiple extensions of time to file its papers, and it requested a very leisurely amount of time for the parties to select the IRP Panel. ICANN, and not the DCA, has been the party trying to expedite these proceedings, and DCA has resisted at every turn."[17]

24. DCA Trust's Request for Emergency Arbitrator and Interim Measures of Protection, initially scheduled for a hearing on 14 April 2014 before an emergency arbitrator pursuant to ICDR Rules 21 and 37, was instead referred to this Panel on 13 April 2014 for review and consideration pursuant to Article 37.6 of the ICDR Rules.

25. On 22 April 2014, this Panel held an organizational telephone conference call with the Parties. During that call, it was agreed, among other things, that the telephone hearing for DCA's Request for Interim Measures of Protection will be heard on 5 May 2014, and that ICANN would not take any further steps that would in any way prevent this Panel from granting the full relief requested by DCA Trust in its Request. These and a number of directions given by the Panel to the Parties were reflected in a Procedural Order No. 1 issued on 24 April 2014.

26. On 5 May 2014 this Panel heard the Parties' submissions on their respective written submissions and the Panel's questions sent to them in advance on 2 May 2014.

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[16] ICANN's Response to Claimant's Request for Emergency Arbitrator and Interim Measures of Protection, *para.* 3.

[17] *Ibid., para.* 30.

DECISION AND REASONS OF THE IRP PANEL

27. After having carefully read DCA Trust's written submissions and the responses filed by ICANN, and after listening to the Parties' respective oral presentations made by telephone on 5 May 2014, for reasons set forth below, the Panel is unanimously of the view that a stay ruling in the form described below is in order in this proceeding and that ICANN must immediately refrain from any further processing of any application for .AFRICA until this Panel has heard the merits of DCA Trust's Notice of Independent Review Process and issued its final decision regarding the same.

28. The Panel finds that interim relief in this proceeding is warranted based on two independent and equally sufficient grounds.

29. First, the Panel is of the view that this Independent Review Process could have been heard and finally decided without the need for interim relief, but for ICANN's failure to follow its own Bylaws (Article IV, Section 3, paragraph 6) and Supplemental Procedures (Article 1), which require the creation of a standing panel as follows:

> "There shall be an omnibus standing panel between six and nine members with a variety of expertise, including jurisprudence, judicial experience, alternative dispute resolution and knowledge of ICANN's mission and work from which each specific IRP Panel shall be selected."

30. This requirement in ICANN's Bylaws was established on 11 April 2013. More than a year later, no standing panel has been created. Had ICANN timely constituted the standing panel, the panel could have addressed DCA Trust's request for an Independent Review Process as soon as it was filed in January 2014. It is very likely that, by now, that proceeding would have been completed, and there would be no need for any interim relief by DCA Trust.

31. In the Panel's unanimous view, therefore, a stay order in this proceeding is proper to preserve DCA Trust's right to a fair hearing and a decision by this Panel before ICANN takes any further steps that could potentially moot DCA Trust's request for an independent review. This is the same opportunity DCA would have enjoyed without a stay, but for ICANN's failure to create the standing panel.

32. Whether the Panel's decision is advisory only, as ICANN contends, or binding, as DCA Trust argues, the Panel is strongly of the view that ICANN's unique, international and important public functions require it to scrupulously honor the procedural protections its Bylaws, rules and regulations purport to offer the internet community. ICANN has been entrusted with the important

responsibility of bringing order to the global internet system. As set out in Article I, Sections 1 and 2 of ICANN's Bylaws:

> "[t]he mission of ICANN is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. [...] In performing its mission, the following core values should guide the decisions and actions of ICANN:

>> 6. Introducing and promoting competition in the registration of domain names where practicable and beneficial to public interest.

>> [...]

>> 8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness."

33. In the Panel's unanimous view, it would be unfair and unjust to deny DCA Trust's request for interim relief when the need for such a relief by DCA Trust arises out of ICANN's failure to follow its own Bylaws and procedures.

34. Second, interim relief in this case is independently warranted for reasons unrelated to ICANN's role in creating the need for such relief as explained above.

35. DCA Trust argues that four criteria must be satisfied before interim relief is granted under international law and in international proceedings: urgency, necessity, protection of an existing right, and existence of a *prima facie* case on the merits, without the necessity of prejudging the matter.

36. ICANN agrees with the first three criteria identified by DCA Trust, but disagrees with the fourth. For ICANN, the Panel needs to find more than a *prima facie* case on the merits before ordering interim relief in this proceeding. In its Response to DCA Trust's Request for Emergency Arbitrator and Interim Measures of Protection, ICANN submits that the standard must be the one set out in article 17(A)(1)(b) of the UNCITRAL *Model Law on International Commercial Arbitration*. ICANN explains:

> "In fact, it is generally accepted under both international and U.S. law that, in order to demonstrate entitlement to interim relief, the party seeking relief must also demonstrate a reasonable possibility of success on the merits. For example, Article 27 [*sic.*] (A)(1)(b) of the United Nations Commission on International Trade Law's ("UNCITRAL's") Model Law on International Commercial Arbitration states that a party requesting an interim measure must demonstrate

that "there is a reasonable possibility that the requesting party will succeed on the merits of the claim." [...] Likewise, under U.S. law, a party seeking a preliminary injunction must at least demonstrate that "the likelihood of success is such that serious questions going to the merits were raised."[18]

37. The Panel agrees with the Parties that the four criteria listed above in paragraph 35 form a part of the criteria most commonly used by international and national courts and arbitral tribunals[19] to evaluate a party's request for interim relief. The Panel, however, does not see a distinction between the demonstration of "a prima facie case" or "a reasonable possibility that the requesting party will succeed on the merits of the claim". Like the International Law Association ("ILA"), the Panel is of the view that the demonstration of "a prima facie case" and "a reasonable possibility that the requesting party will succeed on the merits of the claim" are in reality one and the same standard.

38. Indeed, as the ILA recommended in its resolution of 1996[20], the granting of an interim relief should be available "on a showing of a case on the merits on a standard of proof which is less than that required for the merits under the applicable law".

Urgency

39. Both DCA Trust and ICANN agree that urgency is one of the criteria that this Panel must consider before it decides to grant interim relief. DCA Trust in particular argues that the orders it requests are needed urgently, because:

> "[w]ithout the order compelling ICANN to stay processing of ZACR's application, DCA will suffer irreparable harm before the IRP process can be concluded... A request for interim measures of protection is considered urgent, if absent the requested measure, an action that is prejudicial to the rights of either party is likely to be taken before such final decision is given. This standard is sometimes termed "imminent harm". In light of ICANN's response to DCA'S request that it refrain from signing a Registry Agreement with ZACR – namely, signing the agreement 48 hours ahead of time in order to prevent ay effective intervention by DCA – the additional harm DCA seeks to prevent clearly is imminent. Moreover, ZACR claims that it will have received

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[18]*Ibid., para.* 21.

[19] By "most commonly used", the Panel means that this standard is used by international or regional courts and tribunals, but also by many domestic courts under their own laws.

[20] ILA Report of the Sixty-Seventh Conference, Helsinki, 1996, p. 202.

all rights to .AFRICA by April 2014, and will begin operating .AFRICA by May 2014."[21]

40. The Panel is satisfied that the urgency test is met in the present case. Indeed, DCA Trust argues, without being contradicted by ICANN, that in March 2014 the latter officially signed the registry agreement for the .Africa gTLD with ZACR, DCA Trust's competitor.

41. The urgency test is met as well when the Panel takes into consideration, ICANN's noncommittal email to it and DCA Trust of 23 April 2014, in which ICANN writes:

> "I am writing to follow up...with respect to the timing of the ultimate delegation by ICANN to ZA Central Registry of .AFRICA into the root zone...ICANN will not, as a practical matter, be able to conclude the delegation process prior to 15 May 2014. As a result, the schedule adopted by the Panel...would give ICANN the opportunity to consider the Panel's recommendation in the event the Panel recommends a stay." [Emphasis added]

42. The registry agreement being signed, the countdown for the launch of the .Africa gTLD could commence. ZACR announces on its website (https://www.registry.net.za/launch.php) that the launch should take place in June 2014. This Panel, even if it works very rapidly, will not be in a position to decide on the merits of DCA's Request for an Independent Review before June 2014. Therefore, there is absolutely no doubt in the Panel's mind that DCA Trust's need for interim relief in this matter is urgent.

Necessity

43. Both DCA Trust and ICANN agree that a test of necessity must be met before granting the requested interim relief. Indeed, in its Response to Claimant's Request for Emergency Arbitrator and Interim Measures of Protection, ICANN writes:

> "As DCA acknowledges in its Request, in order to show necessity under international law, it must demonstrate proportionality, *i.e.* that the harm it would occur in the absence of interim relief measures would "exceed [] greatly the damage caused to the party affected" by these measures. DCA contends that it would suffer serious harm in the absence of interim relief because the "operation of .AFRICA is a unique right" and "DCA was created expressly for the purpose of campaigning for, competing for and ultimately operating .AFRICA." But DCA fails to acknowledge that, whatever its unilateral plans might have been, its

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[21] Request for Emergency Arbitrator and Interim Measures of Protection, *para.* 30.

actual probability of harm is greatly diminished by its scant probability of success on the merits. DCA also fails to note the substantial potential harm that ZACR could suffer if the processing of its application for, and the ultimate delegation of, .AFRICA is delayed."

"ICANN'S decision to proceed with the processing of ZACR's application for .AFRICA despite DCA's pending IRP is a reflection of ICANN's belief that: (i) DCA's IRP is frivolous and unlikely to succeed on the merits; and (ii) ZACR potentially could suffer substantial harm if the delegation of .AFRICA to it is further delayed."[22]

44. The Panel is of the opinion that the necessity test requires the Panel to consider the proportionality of the relief requested. The Panel thus must balance the harm caused to DCA Trust if a stay is not granted and the harm that would be caused to ICANN if interim relief were to be ordered. As explained by DCA Trust:

"If [DCA Trust] is deprived of the opportunity even to compete to operate .AFRICA, DCA will be unable to accomplish its charitable aims and will be unable to perform its mandate [...] By contrast, ICANN will suffer no similar harm...Regardless of the outcome of the IRP, ICANN will be able to delegate .AFRICA. [Similarly, ZACR may receive the rights to "AFRICA even if DCA is permitted to compete with it pursuant to ICANN's rules and procedures for the new gTLD program.] The IRP is meant to be an expedited dispute resolution process. A slight delay in delegation is hardly an undue burden compared to the issues at stake."[23]

45. It is abundantly clear to the Panel from the facts as explained by both Parties in this case that if a stay is not granted and the registry agreement between ICANN and ZACR is implemented further, the chances of DCA Trust having its Request for an independent review heard and properly considered will be jeopardized.

46. The Panel considers that a stay in the implementation of the registry agreement between ICANN and ZACR is therefore proportionate and adequate to the particular circumstances of this case. Indeed, neither ICANN, nor ZACR will suffer from a few more months of delay if a stay of processing of ZACR's .AFRICA application is ordered. Indeed, neither ICANN nor ZACR has pointed to any specific prejudice or harm that it will suffer if DCA Trust's request for interim relief is granted. The same cannot be said about the

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[22] ICANN's Response to Claimant's Request for Emergency Arbitrator and Interim Measures of Protection, *paras.* 25 and 26.

[23] Request for Emergency Arbitrator and Interim Measures of Protection, *paras.* 27 and 29.

absence of such a relief for DCA Trust, which clearly would suffer irreparable harm if interim relief is not granted.

Protection of an existing right

47. DCA Trust has demonstrated, to the satisfaction of this Panel that, beyond the procedural rights it must enjoy to have its case heard, DCA Trust also enjoys, according to ICANN's own Bylaws, the right to have ICANN's Board decision reviewed by an independent panel, a right which will be lost if interim relief is not granted in this case. Indeed, Article IV, Section 3, paragraph 1 of ICANN's Bylaws unequivocally indicates that:

> "In addition to the reconsideration process described in Section 2 of this Article, ICANN shall have in place a separate process for independent third-party review of Board actions <u>alleged</u> by an affected party to be inconsistent with the Articles of Incorporation or Bylaws." [Emphasis added]

Consequently, the Panel has determined that this criterion for the granting of interim relief in this case has also been met.

A reasonable possibility that the requesting party will succeed on the merits

48. This criterion was most heavily debated between the Parties. ICANN argues that DCA Trust does not have a case on the merits. In fact, ICANN goes as far as saying that Claimant's Request for an Independent Review Process is frivolous. Therefore, ICANN argues that DCA Trust has not demonstrated that there is a reasonable possibility it would succeed on the merits. In the Panel's view, by doing so, ICANN is asking for more than is required of DCA Trust at this stage of the independent review process.

49. Contrary to ICANN'S submissions, the Panel is of the view that it need not, at this stage, make a full appraisal of the merits of DCA Trust's case, given that the standard of proof for interim relief is lower than the standard of proof required for the evaluation of the merits of the case[24].

50. Having carefully examined the written submissions of the Parties, heard their oral submissions by telephone and deliberated on the various issues raised by them to date, the Panel is of the view that DCA Trust's case must proceed to the next stage.

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[24] See the report accompanying the ILA resolution of 1996 mentioned in footnote 2. On page 195, the report says that the "standard of proof propounded (...) was one which found wide acceptance" among all the countries studied, except one.
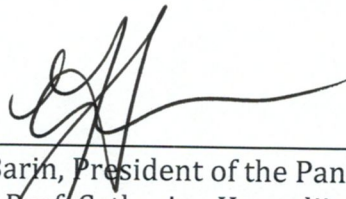
51. The Panel therefore concludes that ICANN must immediately refrain from any further processing of any application for .AFRICA until this Panel has heard the merits of DCA Trust's Notice of Independent Review Process and issued its conclusions regarding the same.

52. The Panel reserves its views with respect to the other requests for relief made by DCA Trust in its Request for Emergency Arbitrator and Interim Measures of Protection. The Panel will consider the Parties' respective arguments in that regard if and when required by the Parties and if appropriate.

53. The Panel reserves its decision on the issue of costs relating to this stage of the proceeding until the hearing of the merits.

This Decision on Interim Measures of Protection has thirteen (13) pages. The members of the Panel have all reviewed this decision and agreed that the Chair may sign it alone on their behalf.

Signed in Montreal, Quebec for delivery to the Parties in Los Angeles, California.

Dated 12 May 2014.

Babak Barin, President of the Panel, on behalf of himself, Prof. Catherine Kessedjian and the Hon. Richard C. Neal (Ret.) as consented to by the Parties in their respective emails to the Panel of 7 May 2014