

DRAFT OUTLINE OF NEW GTLD REGISTRY AGREEMENTS

19 June 2007

Note: This document is a preliminary draft, provided for discussion purposes only. Nothing in this document constitutes a waiver or admission. This is only a summary of the provisions that might be included in future ICANN New GTLD registry agreements, and is not intended to be a complete description of the provisions of any current or future ICANN agreement. Please refer to the full text of ICANN's actual agreements for complete details on any particular provision. This document is subject to change based on feedback from the GNSO, public comment, and Board input.

[Introductory clause: identifies the parties to the agreement and the effective date.]

ARTICLE 1 INTRODUCTION

Section 1.1 Top-Level Domain. Identifies the top-level domain that is the subject of the agreement.

Section 1.2 Designation as Registry Operator. Designates contracting party as the sole registry operator for the TLD.

ARTICLE 2 COVENANTS

Section 2.1 Covenants of Registry Operator.

2.1(a) Preserve Security and Stability.

2.1(a)(i) Registry operator will comply with temporary (emergency) policies adopted by ICANN to preserve the stability and security of the Internet and the DNS.

2.1(b) Consensus Policies.

2.1(b)(i) Registry Operator will comply with all previously adopted ICANN policies.

2.1(b)(ii) Defines "Consensus Policies" as policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in the "picket fence."

2.1(b)(iii) Describes the "picket fence" of topics that may be the subject of "Consensus Policies."

2.1(b)(iv) Grants Registry Operator a reasonable period of time following notice to implement Consensus Policies.

2. 1(c) Handling of Registry Data.

- 2.1(c)(i) Data Escrow. Requires Registry Operator to deposit copies of registration data with a third-party, to be released to a successor operator if the registry agreement is terminated.
- 2.1(c)(ii) Personal Data. Requires Registry Operator to comply with baseline personal data protections by describing the purpose of any collected personal data, the intended recipients, mechanism for correction, precautions against loss and misuse, etc.
- 2.1(c)(iii) Bulk Zone File Access. Requires Registry Operator to provide bulk access to the registry zone files for the TLD to any requesting party on terms specified in a specified zone file access agreement.
- 2.1(c)(iv) Monthly Reporting. Requires Registry Operator to provide a monthly report to ICANN totaling transaction information in a specified format.
- 2.1(c)(v) Whois Service. Requires Registry Operator to provide a public WHOIS service in a specified format.

2. 1(d) Registry Operations.

- 2.1(d)(i) Registration Restrictions. Requires Registry Operator to reserve from initial registration all strings that appear on a Schedule of Reserved Names. (The schedule of reserved names will be updated based on the work of the GNSO's Reserved Names Working Group.
- 2.1(d)(ii) Functional and Performance Specifications. Requires Registry Operator to offer Registry Services in accordance with defined specifications and requirements.
- 2.1(d)(iii) Registry Services. Sets forth definition of "Registry Services."
- 2.1(d)(iv) Process for Consideration of Proposed Registry Services. Requires new Registry Services to be evaluated through the ICANN Registry Services Evaluation Policy.

2. 1(e) Fees and Payments. Requires Registry Operator to make regular payments of fees to support ICANN (as described below).

2. 1(f) Limited Use of Non-Identifying Traffic Data. Specifies that Registry Operator may make commercial use of data gleaned from the operation of the registry, as long as no personal data is disclosed, and access to data is made available on nondiscriminatory terms.

Section 2.2 Covenants of ICANN. ICANN covenants and agrees with Registry Operator as follows:

2. 2(a) TLD Zone Servers. ICANN will use commercially reasonable efforts to ensure that Registry Operator's nameservers appear in the root.
2. 2(b) Nameserver Changes. Registry Operator may request changes in the nameserver delegation, and, such requests will be implemented by ICANN as promptly as feasible.
2. 2(c) Root-zone Information Publication. ICANN's publication of root-zone contact information for the Registry TLD will include Registry Operator.

ARTICLE 3 TERM OF AGREEMENT

Section 3.1 Term. The term of this Agreement shall be [ten] years following the Effective Date, as extended by any renewal terms.

Section 3.2 Renewal. The agreement shall be renewed unless an arbitrator or court determines that Registry Operator has breached the agreement and the registry operator fails to cure. The terms of any renewal agreement will be upon terms similar to such other similar gTLD agreements.

Section 3.3 Changes. The parties will meet at least once every three years to discuss any possible mutually agreed changes to the agreement.

Section 3.4 Failure to Perform in Good Faith. If the Registry Operator repeatedly and willfully breaches the agreement, then the arbitrators may award punitive damages.

ARTICLE 4 DISPUTE RESOLUTION

Section 4.1 Resolution of Disputes.

4. 1(a) Cooperative Engagement. In the event of a disagreement, the parties will attempt to resolve the dispute through writing and meeting prior to initiating arbitration.
4. 1(b) Arbitration. Disputes under the agreement will be resolved by binding arbitration under the rules of the International Court of Arbitration of the International Chamber of Commerce ("ICC").

Section 4.2 Specific Performance. The arbitrators may require the parties to comply with the terms of the agreement in addition to awarding damages in the event of a breach.

Section 4.3 Limitation of Liability. The parties' monetary liability to each other is capped at the amount of one year's fees.

ARTICLE 5 TERMINATION PROVISIONS

Section 5.1 Termination by ICANN. ICANN may terminate the agreement only if an arbitrator or court finds that Registry Operator has breached and has failed to cure a breach of its primary obligations under the agreement.

Section 5.2 Bankruptcy. The agreement will automatically terminate if Registry Operator enters bankruptcy and the bankruptcy isn't dismissed within 60 days.

Section 5.3 Transition of Registry upon Termination of Agreement. If the agreement is terminated, the parties will work cooperatively to transition to a successor operator for the TLD.

Section 5.4 Rights in Data. Registry Operator will not have any intellectual property rights in registry data, and will license use of the data to a successor or ICANN in the event the escrowed data is released.

Section 5.5 No Reimbursement. ICANN will have no obligation to reimburse Registry Operator for any expenses, and Registry Operator will not be required to make any payments to a successor registry operator.

ARTICLE 6 SPECIAL PROVISIONS

Section 6.1 Registry-Registrar Agreement. Registry Operator will make access to Registry Services available to all ICANN-accredited registrars, subject to the terms of a specified RRA.

Section 6.2 Registry Operator Shall Not Act as Own Registrar. Registry Operator will not act as a registrar with respect to the TLD.

Section 6.3 Restrictions on Acquisition of Ownership or Controlling Interest in Registrar. Registry Operator will not acquire direct or indirect control of more than 15% ownership of any ICANN-accredited registrar.

Section 6.4 Fees to be Paid to ICANN.

6. 4(a) Registry-Level Transaction Fee. [to be determined]

6. 4(b) Payment Schedule. Registry Operator will pay its Registry-Level Fees within 20 days of the end of each calendar quarter.

6. 4(c) Variable Registry-Level Fee. If ICANN does not collect variable accreditation fees from registrars, ICANN may collect it through registries, in the amount of no more than US\$0.25 per transaction/name-year and no more than US\$3.8mm to be divided by all registrars.
6. 4(d) Interest on Late Payments. Registry Operator will pay interest on late payments at the rate of 1.5% per month.

ARTICLE 7 MISCELLANEOUS

Section 7.1 Indemnification of ICANN. Registry Operator will indemnify ICANN against any third-party claims relating to Registry Operator's operation of the TLD, etc.

Section 7.2 Indemnification Procedures. Describes the procedure for indemnification of ICANN by Registry Operator.

Section 7.3 No Offset. All fee payments must be timely notwithstanding any pending dispute.

Section 7.4 Use of ICANN Name and Logo. ICANN grants to Registry Operator a license to use ICANN's logo and state that it is designated by ICANN as the Registry Operator for the TLD.

Section 7.5 Assignment and Subcontracting. Any assignment of the agreement generally requires written consent of the other party.

Section 7.6 Amendments and Waivers. Any amendment or waiver must be in writing and signed by both parties.

Section 7.7 No Third-Party Beneficiaries. This agreement shall not be construed to create any obligations to third-parties.

Section 7.8 Notices, Designations, and Specifications. Identifies the contact points for the parties, and specifies that all notices under the agreement must be in writing via mail, fax or email.

Section 7.9 Language. Notices and policies, etc. shall be in the English language.

Section 7.10 Counterparts. The agreement may be executed in one or more counterparts.

Section 7.11 Entire Agreement. This agreement constitutes the entire agreement of the parties pertaining to the operation of the TLD and supersedes all prior agreements and discussions.

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