**Comments of the Registries Constituency**
**Contract Provisions Contained in the Draft Guidebook for new gTLDs**
**December 5, 2008**

The Registries Constituency of the GNSO (RyC) appreciates the opportunity to provide these Comments of the Registries Constituency – Contract Provisions Contained in the Draft Applicant Guidebook for new Generic Top-level Domains (gTLDs) - December 3, 2008 (the "Guidebook"). The comments that follow represent a consensus position of the RyC as further detailed at the end of the document.

Introduction

These comments focus specifically on the contractual provisions contained in the Guidebook, i.e., the terms and conditions under which applications are submitted and the registry agreement that an applicant would be required to sign.

Summary Conclusions

The Registries Constituency below provides detailed comments on specific provisions of both the terms and conditions governing applications for new gTLDs, as well as the draft registry agreement proposed for new gTLDs. At the outset, however, the constituency believes that the documents raise several over-arching concerns, including:

> First, the draft base agreement reflects fundamental over-reaching by ICANN, including an attempted end run around the constraints on ICANN's ability to impose new terms and conditions in the absence of a demonstrated stability and/or security need.

> Second, even the "Expanded Summary of Changes to Base Agreements" document issued by ICANN does not adequately describe the nature and scope of the proposed changes.

> Third, while registry operators would welcome a flexible and more cooperative relationship with ICANN, the proposed contractual terms do not allay – indeed they reinforce – concerns about ICANN's willingness to be accountable to contracted parties and gTLD registrants, who currently pay over 90% of ICANN's fees through registry and registrar fees.

> Fourth, the terms and conditions governing applications for new gTLDs exhibit the same heavy-handed, no-accountability approach adopted by ICANN in the draft registry agreement. The bottom line is, applicants are invited to follow all of the rules laid down by ICANN and pay a non-refundable minimum of $185,000 (and potentially far more), and give ICANN the right to do whatever it pleases with the application and funds. ICANN, on the other hand, is unwilling to be bound by any rules of fair play whatsoever, including its own bylaws.

Our comments appear in two parts. Part I consists of an annotated copy of the draft registry agreement that appears in the Guidebook as Module 5, and Part II consists of an annotated copy of the application agreement that appears in the Guidebook as Module 6. The ICANN text appears in black, while the constituency comments appear in blue.

While these comments are submitted by the Registries Constituency, which has a specific interest in, and significant experience with registry/ICANN contractual relations. we note that these concerns are not parochial.  To the extent ICANN claims the authority to modify its commitments to the community, and the obligations it imposes on registry operators and others in an ad hoc basis through its contractual agreements, the interests and expectations of all ICANN stakeholders are threatened.

It is hard to reconcile the approach that ICANN prescribes in the application with its assertions regarding flexibility and cooperation and its professed efforts to improve confidence in the institution.  The Registries Constituency urges ICANN to reconsider the approach adopted in these documents.

## REGISTRY AGREEMENT

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

## ARTICLE 1 DELEGATION AND OPERATION
## OF TOP–LEVEL DOMAIN

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

**Section 1.2** Technical Feasibility of String. 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.

**TLD registry operators understand that ICANN cannot guarantee string acceptance, but
believe that ICANN should commit to use best efforts to raise awareness of, and support
solutions to the acceptance issues created by use of outdated length parameters or
other erroneous formatting criteria.**

**In 2003, ICANN's Security and Stability Advisory Committee recommended several steps
that ICANN could take to educate infrastructure providers and application developers
about this, and to encourage Internet standards to address it.  In addition, the
comprehensive review of the new gTLD process produced for ICANN by Summit
Strategies in 2004 indicated that the situation was not resolved.  ICANN was advised in
the report to designate "a member of ICANN Staff to develop an action plan for next
steps. These steps might include (i) assessing the current dimensions of the problem; (ii)
monitoring its improvement; and (iii) publicizing any shortcomings."**

**While IANA has published a comprehensive list of TLDs, this is highly unlikely to
address the problem in an environment where the addition of new TLDs is routine rather
than exceptional.  As Thomas Roessler pointed out on IANA's discussion board:**

> **In reality, this list will -- if at all! -- be used to seed hard-coded lists of TLDs in
> some applications.  These applications will be fine until the next time the set of
> TLDs changes. They will then generate the very problems the list is supposed to
> solve.**

> **IANA should try to drive home with application developers the point that the
> *only* reliable way to verify whether or not a domain name exists is to query the
> DNS -- not some list downloaded from a website.**

**Accordingly, registry operators believe that ICANN/IANA should commit to take the steps outlined in the SSAC Report, including:**

**1. Developing an advisory regarding support for new TLDs for display on their website, and the GNSO constituencies should publicise this advisory through their membership and customer bases.**

**2. Recommending that the IAB consider issuing an informational RFC advising of the issue, and publicising this through the IETF technical community.**

**3. Reminding Internet infrastructure providers that have their own customised software for Internet service provision to test the capability of the software to support new TLDs, and correct problems quickly where they are found.**

**4. Encouraging Internet software application developers to review their software for support of new TLDs.  Where problems are found, application developers should upgrade their software, and provide these updates to their user base.**

**5. Creating a central repository of known commonly used software that has compatibility problems (e.g., DNS resolver software used by common operating systems) with new TLDs, and instructions for how to upgrade the software should be created.  This repository would facilitate Internet infrastructure providers and software application developers to provide necessary software updates to users of the Internet to resolve known compatibility issues.**

**6. Examining compatibility problems with the introduction of new TLDs on a regular basis and taking additional steps to work with infrastructure providers and application developers to address the problem.**

**Section 1.3** Statements of Registry Operator. Registry Operator represents and warrants that all information provided and statements made in connection with the registry TLD application and during the negotiations of this Agreement were true and correct in all material respects, and that **except as set forth on Schedule * hereto**, such information or statements continue to be true and correct in all material respects as of the Effective Date.

**ICANN should anticipate and accept that reasonable changes may occur during the course of what could be a lengthy review process.  Registries also believe that the registry agreement should obligate operators to fulfill the commitments made in their applications, particularly with respect to community based applications, and note that this provision does not accomplish that goal.**

**ARTICLE 2 COVENANTS OF REGISTRY OPERATOR**

Registry Operator covenants and agrees with ICANN as follows:

**Section 2.1** Compliance with Consensus Policies and Temporary Policies. Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies existing as of the Effective Date and adopted thereafter as set forth at <http://www.icann.org/general/consensus-policies.htm>.  Consensus Policies and Temporary Polices are policies that are established in accordance with the procedure and relate to those topics and subject to those limitations set forth at [see specification 1]*.

ICANN's summary leaves the impression that the changes to the covenants in the registry agreement are not substantive. The registries disagree.

First, the existing agreements obligate registries to fully comply with and implement all Consensus Policies found on a specified web page *to the extent that they are consistent with a specified set of limitations on those policies* (which ICANN has moved to Specification 1). The new draft, however, requires registry operators to comply with anything on the referenced consensus policies page. Although the draft agreement subsequently defines consensus policies, the definition does not effectively limit the obligation to comply with anything on the page.

The deleted caveat is extremely important. Currently the referenced page contains policies that have been recommended by the GNSO Council and passed by the Board as "Consensus Policies" but which have elements that do not necessarily fall within the definition of "Consensus Policy" as defined in existing registry agreements and/or the new "Specification 1." ICANN's Consensus Policy page[1] acknowledges this by pointing out that "Sponsors and registry operators of sponsored TLDs may be required to comply with consensus policies in some instances." Registries are free to give ICANN additional rights by contract, as they have on several occasions, but such agreements do not, by themselves, make it a Consensus Policy. Likewise, adoption by a super majority vote of the Board does not transform a GNSO adopted policy that falls outside the picket fence into a "Consensus Policy" as long defined in registry agreements.

Second, this draft agreement gives ICANN the right to change any aspect of the contract at will, subject to an override of questionable value (discussed below). As a result, the fact that Specification 1 currently reflects existing contract language does not provide any assurance that it will not change in the future. The "picket fence" is at the very core of the bargain among registry operators, ICANN, and the ICANN community, and a material element of the contractual consideration through which ICANN derives its legitimacy with respect to registry operators.

Third, taken together, these changes cleverly conflate two very different ideas – "Consensus Policies" are NOT equivalent to policies that are the product of a PDP. This difference is clearly recognized by the Board, as evidenced by the discussion in Section 4.2 of the Report of the Board Governance Committee on GNSO Improvements:

> *In launching a working group to produce policy development recommendations, or in assessing the level of consensus reflected in its outcome, the Council should be mindful of the distinction between the development of "consensus policies" that bind registries and registrars, and the development of other kinds of advice to the Board. This distinction should be clarified in the Bylaws.*

We agree with this statement of the Board Governance Committee, and note that the conflation attempted in the draft registry agreement will profoundly exacerbate the well-known challenges of the existing Policy Development Process.

As ICANN's General Counsel stated some time ago, the picket fence ensures that the environment under which registries operate is stable, predictable, and otherwise suitable

---

[1] http://www.icann.org/en/general/consensus-policies.htm,

**for their business activities.**2  **Indeed, the GNSO policy development process is substantially less contentious than it might otherwise be because the picket fence protections are included in a contract document that can be amended only by an agreement between the parties.  Without this assurance,  registries and registrars would need to preserve the picket fence on a policy by policy basis.**

**Registry operators can not agree to expand  the scope of Consensus Policies beyond the long-accepted picket fence, and believe that it is not in ICANN's long term interests to do so.  Because bylaws can and do change, registries feel that  contractual protections for the picket fence are essential.**

**Section 2.2** Data Escrow. Registry Operator shall comply with the registry data escrow procedures posted at [see specification 2]*.

**This provision should not be subject to unilateral change absent a stability or security consideration that supports creation of a  Consensus Policy.**

**Section 2.3** Monthly Reporting. Within 20 days following the end of each calendar month, Registry Operator shall deliver to ICANN a report in the format posted at [see specification 3]*. 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 will not exceed one per quarter. Any such audit will be at ICANN's cost, unless such audit is related to a discrepancy or discrepancies in the data provided by Registry Operator in excess of 5%  to ICANN's detriment. In the latter event, Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with such audit, which reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

**This provision should not be subject to unilateral change absent a stability or security consideration that supports creation of a  Consensus Policy.**

**Section 2.4** Publication of Registration Data. Registry Operator shall provide public access to registration data in accordance with the specification posted at [see specification 4]*.

**While registry operators are not opposed to moving the WHOIS specification to an annex, the annex should not be subject to unilateral change absent a stability or security consideration that supports creation of a  Consensus Policy.**

**Registries note that this is a particularly strong reminder that the freedom ICANN seeks to modify its contractual obligations could be used to overturn the settled expectations of the non-contracted members of the ICANN community.**

**Section 2.5** Registration Restrictions. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve from initial (i.e. other than renewal) registration all strings that appear on the Schedule of Reserved Names posted at [see specification 5]*.

---

2 See, e.g.,  General Counsel's Briefing Concerning Implementation of Policies by Registrars and Registry Operators, 20 October 2002 at http://www.icann.org/en/legal/briefing-on-implementation-20oct02.htm

**The annex should not be subject to unilateral change absent a stability or security consideration that supports creation of a Consensus Policy.**

**Section 2.6** Functional and Performance Specifications. Functional and Performance Specifications for operation of the TLD will be as set forth at [see specification 6]*. Registry Operator shall comply with and 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 will not exceed one per quarter. Any such audit will be at ICANN's cost.

**This provision, as well as the specifications themselves, should not be subject to unilateral change absent a stability or security consideration that supports creation of a Consensus Policy.**

**Section 2.7** Protection of Legal Rights of Third Parties. Registry Operator must specify a process and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties ("Rights Protection Mechanisms"), which shall at a minimum include those provisions set forth at [see specification 7]*. Any changes or modifications to Registry Operator's Rights Protection Mechanisms following the Effective Date must be approved in advance by ICANN.

**This provision is duplicative and unnecessary, and could potentially dramatically expand registry liability. Currently, 3rd party protections for launch and sunrise are contained in the application itself and incorporated into the start up plan, which is an attachment to the registry agreement (and thereby enforceable under that agreement). These provisions reflect input from other ICANN stakeholders, which may vary from registry to registry. Registry operators are, in addition, subject to the Consensus Policy UDRP. Section 2.7 of the proposed new registry agreement adopts a new, ongoing obligation to "protect the legal rights of third parties," which goes beyond the current commitment to take specified and agreed-upon steps to protect such rights. It creates potential liability for infringement that is neither practical nor consistent with established law. Such liability would not exist, for example, in the United States, under either case law (i.e., *LOCKHEED MARTIN CORPORATION, v. NETWORK SOLUTIONS, INC.*, (9th Cir. 1999)) or the Lanham Act (15 U.S.C. S 1114).**

**If additional tools are needed to address behavior that falls within the prescribed areas for which Consensus Policy may be developed, they can and should be developed as Consensus Policy. If tools to address behavior outside of the scope of Consensus Policy are desirable, those can be discussed and negotiated, but should not be confused with Consensus Policy.**

**Section 2.8** Registrar Relations. [TBD- See paper to be posted on ICANN's web site discussing registrar marketplace issues.]

**This is a complex issue, of fundamental importance to registry operators, and any related terms and conditions must provide clear requirements, capable of implementation without unreasonable cost. In addition, the provisions of this section will impact registry views on many other elements of the proposed registry agreement. Accordingly, the registries could not endorse any proposed registry agreement before having an appropriate opportunity to review, comment on, and revise terms that relate to registrar marketplace issues.**

**Section 2.9** Transparency of Pricing for Registry Services. Registry Operator shall prominently post on its website an up to date listing of prices and policies relating to notice of price changes for new and renewal domain name registrations, for transferring a domain name registration from one ICANN-accredited registrar to another and for each other registry service offered by Registry Operator ("Registry Services Policies"). Registry Operator shall ensure through its Registry-Registrar Agreement that each ICANN-accredited registrar authorized to sell names in the TLD will clearly display at the time of registration a link to an ICANN-designated web page that ICANN will develop describing registrant rights and responsibilities and a link to Registry Operator's Registry Services Policies.

**For registry operators using the ICANN accredited registrar distribution channel, the pricing transparency requirements are fully addressed by the equivalent treatment obligations. In addition, this provision creates new enforcement obligations for registries, who would be obligated to monitor registrar compliance. At a fundamental level, registry policies applicable to registrants need to be enforced via the registrar's end-user agreement. In the ordinary situation, registries have no privity of contract with registrants unless the registrar-registrant agreement creates third party rights, and includes the provisions registries would seek to enforce vis a vis registrants. Pricing policies are contracts between registries and registrars, not registries and registrants.**

**In a competitive market for registrar services, we do not understand ICANN's justification for requiring registrars to disclose their cost structure to registrants, and even if this kind of intervention could be justified, there is no reason for registries to be involved.**

**Section 2.10** Contractual and Operational Compliance Audits. In addition to those audit rights set forth in Sections 2.3 and 2.6, ICANN may from time to time at its expense conduct contractual compliance audits to assess compliance with the terms of this Agreement. As part of any contractual compliance 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 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 with the terms of this Agreement.

**This provision gives ICANN the right to audit a registry's compliance with each and every aspect of the registry agreement. ICANN <u>already</u> has the right to audit compliance with the fee arrangements and with ICANN's technical and functional specifications. This provision could impose significant costs on registry operators (even if ICANN has to pay the actual auditor) that are not justified unless the audit is necessary to investigate a bona fide complaint about a material violation of the registry agreement involving, for example, consumer fraud or in connection with a stability and security concern. Even then, registries should be given appropriate advance notice of any such audits, reasonable assurances of confidentiality, and protection against misuse of this audit right, for example by obligating ICANN to reimburse registries in the event audits are undertaken on the basis of claims that prove to be unfounded.**

**ARTICLE 3 COVENANTS OF ICANN**

ICANN covenants and agrees with Registry Operator as follows:

**The proposed changes in this section eliminate ICANN's obligations to (a) operate in an open and transparent matter consistent with its expressed mission and core values, and (b) not apply its standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and not single out particular registries for disparate treatment unless justified by substantial and reasonable cause. As previously discussed, because Bylaws can be changed, registry operators feel very strongly that ICANN's accountability for compliance with the most basic obligations of fair dealing should be set out in the Registry Agreement. Registry operators were disturbed that ICANN's initial summary of changes to the base agreement did not even reference the deletion of these provisions, and appreciate the discussion contained in ICANN's expanded summary. We also appreciate ICANN's commitment to reconsider this change.**

**Section 3.1** TLD Zone Servers and Nameservers. ICANN will use commercially reasonable efforts to ensure that any changes to the TLD zone server and 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 as promptly as feasible following technical verifications.

**ICANN's description of the changes in this section omit to mention the substantive change, which eliminates ICANN's current obligation to attempt to have these requests implemented within 7 days. Registry operators believe that ICANN should be willing to commit to a best efforts standard that targets implementation within 7 days. This is one of ICANN's few commitments.**

**ICANN's summary also omits to mention that the changes remove ICANN's obligation to ensure that the authoritative root points to the designated TLD zone servers to the extent ICANN has the authority to do so. This is a very limited obligation with respect to a matter of fundamental importance to registries, and should remain in the Registry Agreement.**

**Section 3.2** Root-Zone Information Publication. 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 at http://www.iana.org/domains/root/.

**ARTICLE 4 TERM AND TERMINATION**

**Section 4.1** Term. The term of this Agreement will be ten years from the Effective Date.

**Extending the term to ten years does not justify the many changes ICANN proposes to make in this agreement. In fact, the protections in place in the current agreements are far more important, and once in place, the term itself is less critical to registry operators.**

**Section 4.2** Renewal. This Agreement will be renewed upon the expiration of the term set forth in Section 4.1 above and each successive term, unless an arbitrator or court has determined that Registry Operator has been in fundamental and material breach of this Agreement which remains uncured.

**The current registry agreements places modest constraints on ICANN's rights to refuse to renew, which ICANN proposes to eliminate in the draft. The draft also eliminates**

**existing provisions regarding the terms under which such renewals will take place. The current agreement assures ICANN that it can bring renewal agreements in line with contract changes that have been implemented during the term, but provide the degree of stability and predictability registry operators need to operate their businesses, both with respect to terms and pricing. Those protections should be maintained.**

**Section 4.3** Termination by ICANN. ICANN may terminate this Agreement if Registry Operator fails to cure any fundamental and material breach of Registry Operator's obligations set forth in this Agreement within thirty (30) calendar days after ICANN gives Registry Operator written notice of the breach, which notice will include with specificity the details of the alleged breach and an arbitrator or court has determined that Registry Operator is, in fundamental and material breach and has failed to cure such breach. Failure of Registry Operator to complete all testing and procedures necessary for delegation of the TLD into the root zone within 12 months of the Effective Date shall be considered a material and fundamental breach of Registry Operator's obligations hereunder and shall entitle ICANN, in its sole discretion, to terminate the Agreement with no further obligations of either party. Registry Operator may request an extension for up to additional 12 months for delegation if it can demonstrate 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.

**The existing registry agreement limits the grounds on which ICANN may terminate for breach (violations related to stability and security, failure to follow an order for specific performance, and nonpayment). This new draft, however, extends ICANN's termination rights to any "fundamental and material breach" of the agreement, including any changed terms. Given that ICANN controls access to an essential asset (or at the very least, has the means to prevent access to that asset), the limitations in the existing agreements are reasonable and appropriate and should be retained.**

**Section 4.4** Transition of Registry upon Termination of Agreement. Upon any termination of this Agreement, Registry Operator shall agree to provide ICANN or any successor registry authority that may be designated for the TLD with all data regarding operations of the registry for the TLD necessary to maintain operations and critical registry functions that may be reasonably requested in addition to that data escrowed in accordance with Section 2.2.

**The reference to "critical registry functions" should be defined in the same manner that this phrase is used in the proposed gTLD Registry Continuity Plan.**

ARTICLE 5 DISPUTE RESOLUTION

**Section 5.1** Cooperative Engagement. Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator must attempt to resolve the dispute by engaging in good faith communications between the parties over a period of at least fifteen (15) calendar days.

**The existing registry agreement sets out a specific process whereby either party can invoke the other party's cooperative engagement obligation, and then sets out a series of steps for that process. While there are many ways this process could reasonably proceed, these changes remove all specificity – including most importantly, specificity about when the period starts. It is unclear why these changes are improvements, and at**

**the very least the new agreement should retain the procedure whereby one party or the other can invoke the start of the cooperative engagement period**.

**Section 5.2** Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce ("ICC"). The arbitration will be conducted in the English language in front of a single arbitrator and will occur in Los Angeles County, California, USA. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrators shall include in their awards. In any proceeding, ICANN may request the appointed arbitrator award punitive or exemplary damages in the event Registry Operator shall be shown to have been repeatedly and willfully in fundamental and material breach of this Agreement. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California, USA; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

**The registry operators object to mandating a single arbitrator.  The ICC rules provide for panels of one or more and registry operators believe that the arbitration provisions should retain this flexibility.**

**Moreover, we see no grounds for substituting a blanket right to seek extraordinary damages for the limited right set out in Section 4.4  of the current registry agreement (Failure to Perform in Good Faith), which provides procedural and substantive safeguards to prevent abuse.**

**Section 5.3** Limitation of Liability. ICANN's aggregate monetary liability for violations of this Agreement will not exceed the amount of 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 6.4, if any). Registry Operator's aggregate monetary liability to ICANN for violations of this Agreement will be limited to the amount of fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.4, if any), and punitive and exemplary damages, if any, in accordance with Section 5.2.

**ICANN describes these changes as insignificant, but in fact they increase the liability for registry operators from "fees and sanctions owing" to fees paid during the preceding 12 months.  ICANN's liability is not increased, however.**

**Registry operators do not agree with ICANN that the express waiver of warranties is unnecessary.**

**ARTICLE 6 FEES**

**Section 6.1** Registry-Level Fees. Registry Operator shall pay ICANN a Registry-Level Fee equal to the greater of (i) the Registry Fixed Fee of US$18,750 per calendar quarter or (ii) the Registry- Level Transaction Fee calculated per calendar quarter as follows. For any quarter in which the Registry-Level Transaction Fee as calculated in this Section 6.1 exceeds the Fixed Fee, then the Registry-Level Transaction Fee shall be paid. 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) during the applicable calendar quarter multiplied by US$0.25 (the "Transaction Fee") for calendar quarters during which the average annual price of registrations (including all bundled products or services that may be offered by Registry Operator and include or are offered in conjunction with a domain name registration) is equal to US$5.00. For calendar quarters during which the average annual price of registrations is less than US$5.00, the Transaction Fee will be decreased by US $0.01 for each US$0.20 decrease in the average annual price of registrations below $5.00, down to a minimum of US$0.01 per transaction. For calendar quarters during which the average annual price of registrations is greater than US$5.00, the Transaction Fee will be increased by US $0.01 for each US$0.20 increment in the average annual price of registrations above $5.00.

**The GNSO policy on new gTLDs recommends that ICANN take a consistent approach to registry fees, but in no way mandates that ICANN impose a one-size-fits-all model. Registry operators strongly reject this model. The proposed mechanism seems to abandon any cost-recovery obligations and, in the end, amounts to a revenue share. Pricing is not a stability or security issue and thus not within the bounds of the picket fence. It is a matter on which each registry is free to agree via contract, but it is not an appropriate matter for Consensus Policy.**

**Finally, to the extent registry fees depend upon pricing by registries, there is no justification for calculating such prices on the basis of all bundled products or services.**

**Section 6.2** Cost Recovery for RSTEP. Requests by Registry Operator for the approval of new or modifications to existing registry services are reviewed by ICANN and referred as appropriate to the registry services Technical Evaluation Panel ("RSTEP") pursuant to that process at http://www.icann.org/en/registries/rsep/. Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review for new or modified registry services that are referred to the RSTEP within ten (10) business days of receipt of a copy of the RSTEP invoice from ICANN.

**Registry operators urge ICANN to reconsider this provision in light of the strongly negative affect it could have on innovation in the TLD space.**

**The RSEP process is a function of ICANN's primary role** in **"preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet." ICANN's mission and core values specifically obligate it to respect creativity and innovation, and to rely on market mechanisms to promote and sustain competition. The RSEP process supports ICANN's core functions, and should be treated as an integral part of ICANN's operations, and not as an adjunct, pay-as-you-go service. It imposes a fee on innovation, creates a free-rider problem, and to the extent that registries with limited resources (i.e., smaller, community based registries) are the source of innovation, it reduces the likelihood that the community will enjoy the benefit of such innovation.**

**In addition, this would make it less likely that registries would seek to introduce new registry services that benefit consumers but do not produce additional revenue to registries. A perfect example of this is the PIR request to introduce DNSSEC in .ORG. Moreover, by creating a user fee for the RSEP process, ICANN is eliminating any incentives it may have to use the RSEP process efficiently.**

**Section 6.3** Payment Schedule. Registry Operator shall pay the Registry-Level Fees specified in Section 6.1 and Section 6.4, if applicable, on a quarterly basis comprised of four equal

payments 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.

**Section 6.4** 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.

**Registry operators have agreed in the past to collect fees, subject to a specific cap, from registrars on behalf of ICANN. Registry operators cannot, however, agree to the changes proposed by ICANN, which remove all limitations on what ICANN may require registries to collect. ICANN should not have the ability to use registries as leverage in fee negotiations with registrars. Moreover, it would undermine ICANN's accountability to contracted parties. Any such obligation must be designed to preserve the status quo only, and it must be capped at the level of per registration fees agreed to and paid by registrars prior to the non-payment event.**

**In addition, this provision would appear to obligate registries to pay registrar fees with no phase in period to allow registries to first collect the fees from registrars. Registries should not have to compensate ICANN for fees due by Registrars unless they have had the opportunity first to collect those fees.**

6.2, 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 be specified on a per registrar basis, and will be required to be collected from all ICANN accredited registrars if collected from any.

**See above.**

## ARTICLE 7 CHANGES AND MODIFICATIONS

**Section 7.1** Evolution of Terms and Specifications. During the term of this Agreement, certain provisions of the Agreement and the specifications incorporated into this Agreement may be amended, modified, supplemented or updated in accordance with changing standards, policies and requirements pursuant to the process set forth in this Article 7.

**This is completely unnecessary, and an extraordinary act of over-reaching on ICANN's part. ICANN has described this provision as providing necessary flexibility, but has not identified any situation in which the absence of this right has hindered ICANN's ability to perform its mission. But the fact is that ICANN already possesses authority to impose new obligations on registry operators through the Consensus Policy provisions of the agreement, and has emergency authority to do so using the Temporary Policy provisions of the registry agreement. These provisions give ICANN the authority at all times to make changes necessary to preserve the stability and security of the Internet and the DNS. ICANN has not – because it cannot – point to any situation where it needed the kind of blank check it is requesting here. ICANN's expanded comments speak to the need to address market changes that would affect "the even playing field" for all registries. While we agree that ICANN is obligated to treat all registries in a non-discriminatory way, this suggests a far more affirmative role in regulating competition**

**among contracted parties than is appropriate or necessary. This isn't about mission creep, it is about "mission leap." Further discussion follows Section 7.2 below.**

**Registries are also concerned that this provision introduces ambiguity with respect to the involvement of the ICANN Board in contract amendments. What would not be a "material change"? Are there any circumstances in which modifications, supplements, or updates would not be amendments? For example, could staff change Specification 1 without specific authority from the Board for a particular change?**

**Registry operators understand that the current approach to negotiating registry agreements is not likely to work in an environment where hundreds of new registries are added in quick succession. But giving ICANN unilateral authority of this sort is not a good answer. Rather, registries believe that we should focus now on crafting an agreement that is fair, gives ICANN the tools it needs to achieve its limited mission, and gives registries the stability and predictability they need to operate businesses. Provisions under which changes to the fee provisions of each registry's agreement should be negotiated on an individual basis, as appropriate.**

**Section 7.2** Notice of Changes. ICANN will publicly post on its web site for no less than thirty (30) days notice of any proposed changes, modifications or amendments to this form of registry agreement. Following such public notice period during which ICANN will consider input from affected Registry Operators, Registry Operator will be provided notice of the final terms of any changes, modifications or amendments to the terms of this Agreement, and/or the requirements, specifications, or processes incorporated into this Agreement at least ninety (90) days prior to the effectiveness thereof by the posting of a notice of effectiveness on ICANN's web site. Any such proposed changes, modifications or amendments may be disapproved within sixty (60) days from the date of notice of effectiveness of the change by either (i) two thirds in number of the registry operators subject to the change or (ii) a two-thirds vote by the council of the ICANN Generic Names Supporting Organization (GNSO) pursuant to the GNSO's procedures (as the same may be modified from time to time) followed with respect to the review and consideration of new Consensus Polices. In the event that such modification or amendment is disapproved pursuant to the process set forth herein, the ICANN Board shall have thirty (30) days to override such disapproval if it can show that the modification or amendment is justified by a substantial and compelling need related to the security or stability of the Internet or the Domain Name System.

**This provision is completely unacceptable, for the reasons articulated with respect to Section 7.1. ICANN may argue that the override rights protect registry operators from ICANN's over-reaching, but that is not the case.**

**First, there is no justification for shifting the burdens in the way this provision does. Currently, ICANN can force certain changes on stability and security grounds, but ICANN has to first make the case that Consensus Policy is needed. In addition, through the policy development process, registries may agree – but are not obligated - to abide by policies that extend into areas outside the picket fence, and registries have demonstrated their willingness to do so. Under the arrangement proposed by ICANN, however, ICANN can impose any changes it wants, and the burden is on registries to block those that regulate activities outside the picket fence.**

14

**Second, even if such burden shifting could be supported, the requirement of a vote of two-thirds of the number of registries to overturn such changes is not an effective check in an environment involving hundreds, if not thousands, of TLDs employing many different business models. Registries already operate under widely varied business models and even now, with only a handful of non-cc registries, and it is easy to imagine changes that all registries are "subject to" but for which the cost impact varies tremendously from registry to registry. Registrant authentication obligations, for example, might impose relatively small costs on registries serving a pre-identified and pre-authenticated user base like, for example, .MUSEUM, but extraordinary costs on the larger commercial registries that would have to implement costly new procedures. There is no particular reason for registries that are only minimally impacted by a change to object to it, indeed, the incentive for such registries would be to preserve political capital by going along with a change. In addition, this provision requires a relatively high level of participation by all registries in the ICANN process by registry operators. Even today that is not always the case.**

**Finally, it is not clear what the ability of the GNSO Council to overturn a change by a two-thirds vote adds by way of protection for registries. Rather, it problematically expands the mission of the GNSO Council, which currently consists of policy development only.**

**Registry operators do not believe there is any justification for giving ICANN unilateral authority to require registry operators to bear costs and adopt irrelevant business models.**

## ARTICLE 8 MISCELLANEOUS

**Section 8.1** Indemnification of ICANN. 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 legal fees and expenses, arising out of or relating to 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 due to a breach by ICANN of any obligation contained in this Agreement. This section will not apply to any request for attorneys' fees in connection with any litigation or arbitration between or among the parties.

**ICANN proposes to eliminate the modest protections for registries set forth in the current agreement, which provides indemnification only for :**

> **(a) establishment or operation of the registry for the TLD;**
> **(b) Registry Services to the extent the acts giving rise to the claim were performed by or at the direction of Registry Operator;**
> **(c) collection or handling of Personal Data by Registry Operator;**
> **(d) any dispute concerning registration of a domain name within the domain of the TLD for the registry; and**
> **(e) duties and obligations of Registry Operator in operating the registry for the TLD.**

**The current agreement also protects registries from claims "arising, in whole or in part, out of any conduct of ICANN inconsistent with ICANN's obligations under 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."**

**Moreover, any indemnification provision should include the protections contained, for example, in the .BIZ registry agreement that provide as follows:**

> **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 as 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.**

**The bottom line is that ICANN is demanding sweeping indemnification rights without justification and without providing anything to registries. There is no justification for such sweeping indemnification. We note that even ICANN's expanded summary does not describe this change.**

**Section 8.2** Indemnification Procedures. If any third-party claim is commenced that is indemnified under Section 8.1 above, the party against which such claim is commenced shall provide written notice thereof to the other party 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 policies 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, 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
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:

[_____]
[_____]
[_____]
Telephone:
Facsimile:
Attention:

**With a Required Copy to**:

Email: (As specified from time to time.)

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, 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.

**Section 8.3** No Offset. All payments due under this Agreement will 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** Change in Control; Assignment and Subcontracting. Registry Operator will provide no less than ten (10) days advance notice to ICANN in accordance with Section 8.8 of any event or change of circumstance anticipated to result in a direct or indirect change of ownership or control of Registry Operator. Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN, to another nonprofit corporation organized for the same or substantially the same purposes. Registry Operator must provide notice to ICANN of any subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder.

**To the extent notification of subcontracting arrangements is required, it should be limited to subcontracts that have a material impact on a registry's compliance with the registry agreement.  Moreover, while there may be situations in which it is appropriate for ICANN to seek advance notice of changes in control, that should be the exception rather than the rule.**

**Section 8.5** Amendments and Waivers. Except as set forth in Article 7, no amendment,

supplement, or modification of this Agreement or any provision hereof will be binding unless executed in writing by both parties. Irrespective of the provisions of Article 7, ICANN and Registry Operator may at any time and from time to time enter into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement will 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 will be deemed or will constitute a waiver of any other provision hereof, nor will any such waiver constitute a continuing waiver unless otherwise expressly provided.

**Section 8.6** 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.

**Section 8.7** General Notices. 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. Any change in the contact information for notice below will be given by the party within 30 days of such change. Notices, designations, determinations, and specifications made under this Agreement will be in the English language. 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. Whenever this Agreement specifies a URL address for certain information or notice provided by ICANN, Registry Operator will 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 become practically achievable, such as

**Section 8.8** 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.

**Section 8.9** 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.

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**
By: _____
[_____]
President and CEO
Date:

**[Registry Operator]**
By: _____
[_____]

[_____]
Date:

**MODULE 6**
**Application Terms and Conditions**

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification.  Applicant understands
and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application.  Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) will reflect negatively on this application and may cause ICANN and the evaluators to reject the application.

2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.

3. Applicant acknowledges and agrees that ICANN has the right to reject any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created.  The decision to proceed with review and consideration of an application to establish one or more gTLDs is entirely at ICANN's discretion.  ICANN reserves the right to reject any application that ICANN is prohibited from considering for a gTLD under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

**This section requires applicants to acknowledge and agree that ICANN has the right to reject any and all applications.  Although ICANN may have intended this to say merely that it is not obligated to go forward with new gTLDs at all, this wording allows ICANN to single out particular applicants and/or particular applications.**

**Section 3 also calls out ICANN's right to reject any application it is prohibited from considering under applicable law or policy.  Registry operators do not question ICANN's obligation to do this, but in conjunction with the provisions discussed below, the reference to ICANN policy is a major concern.  ICANN uses the word "policy" to justify virtually all of its actions.  For instance, in other settings ICANN has argued that it is obligated to follow GAC advice.  Registry operators acknowledge that ICANN must consider and respond to GAC advice, but reject the notion that the Bylaws give the GAC a veto.  This provision, however, insulates ICANN from liability for reading its "policies" any way it likes.**

4. Applicant agrees to pay all fees that are associated with this application.  These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application.  Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application.  ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application.  Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled.

**Applicants are required to acknowledge that the initial fee of $185,000 is paid only "to obtain consideration" of an application.  Applicants are not entitled to expect that the $185,000 fee will buy them even reasoned or fair consideration.**

5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's consideration of the application, and any approval or rejection of the application; and/or (b) ICANN's reliance on information provided by applicant in the application.

**Applicants must agree to release ICANN from liability for any acts or omissions in anyway connected with its consideration of the application, no matter how outrageous those acts or omissions may be.  In fact, applicants must check their rights at the door, and promise that they will not challenge a final decision by ICANN for any reason.  This provision goes so far as to prevent applicants who are harmed by ICANN's failure to comply with its bylaws to seek independent review.  Finally, ICANN requires applicants to waive any equitable rights they may otherwise have with respect to a string that they have applied for but been denied.  Thus, in the event of a dispute regarding ICANN's acts or omissions, ICANN would be insulated from liability for delegating the string to another party.**

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's review of this application, investigation or verification, any characterization or description of applicant or the information in 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 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 ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION.  APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NO ENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER START-UP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD.

**This provision requires an applicant to indemnify ICANN from claims in any way arising from its consideration, approval, or rejection of the application. Taken literally, this means that even if an applicant overcomes the barricades discussed above, it could be required to assume ICANN's liability for the complained of acts or omissions.**

7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other materials prepared in connection with the evaluation of the application; provided, however, that information will not be published to the extent that the application specifically identifies such information as confidential. A general statement as the confidentiality of the application will not be sufficient for these purposes. Except for information that ICANN determines to treat as confidential, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion.

9. Applicant gives ICANN permission to use applicant's name and/or logo in ICANN's public announcements(including informational web pages) relating to top level domain space expansion.

10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.

11. Applicant authorizes ICANN to: a. 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 the application; b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession.

12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. The applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, Those such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.

<u>RyC Information with regard to These Comments</u>

A supermajority of 15 RyC members supported this statement:

- Total # of eligible RyC Members[3]:  15

- Total # of RyC Members:  15

- Total # of Active RyC Members[4]:

- Minimum requirement for supermajority of Active Members:  10

- Minimum requirement for majority of Active Members:  8

- # of Members that participated in this process:  15

- Names of Members that participated in this process:

1. Afilias (.info)
2. DotAsia Organisation (.asia)
3. Dot Cooperation LLC (.coop)
4. Employ Media (.jobs)
5. Fundació puntCAT (.cat)
6. Global Name Registry - GNR (.name)
7. mTLD Top Level Domain (.mobi)
8. Museum Domain Management Association – MuseDoma (.museum)
9. NeuStar (.biz)
10. Public Interest Registry - PIR (.org)
11. RegistryPro (.pro)
12. Societe Internationale de Telecommunication Aeronautiques – SITA (.aero)
13. Telnic, Limited (.tel)
14. Tralliance Corporation (.travel)
15. VeriSign (.com & .net)
16. Dot Mobi (.mobi)

---

[3] All top-level domain sponsors or registry operators that have agreements with ICANN to provide Registry Services in support of one or more gTLDs are eligible for membership upon the "effective date" set forth in the operator's or sponsor's agreement (Article III, Membership, ¶ 1). The RyC Articles of Operations can be found at http://www.gtldregistries.org/about_us/articles .

[4] Per the RyC Articles of Operations, Article III, Membership, ¶ 4: Members shall be classified as "Active" or "Inactive". A member shall be classified as "Active" unless it is classified as "Inactive" pursuant to the provisions of this paragraph. Members become Inactive by failing to participate in a Constituency meeting or voting process for a total of three consecutive meetings or voting processes or both, or by failing to participate in meetings or voting processes, or both, for six weeks, whichever is shorter. An Inactive member shall have all rights and duties of membership other than being counted as present or absent in the determination of a quorum. An Inactive member may resume Active status at any time by participating in a Constituency meeting or by voting.