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6
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7 COALITION FOR ICANN TRANSPARENCY INC.

8

9   UNITED STATES DISTRICT COURT

10   NORTHERN DISTRICT OF CALIFORNIA

11   SAN JOSE DIVISION

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14 | COALITION FOR ICANN   Case No.
   | TRANSPARENCY INC., a Delaware
   | corporation,   **DECLARATION OF KEITH L. BUTLER
15 | IN SUPPORT OF THE COALITION
   | Plaintiff,   FOR ICANN TRANSPARENCY'S *EX
16 | PARTE* APPLICATION FOR
   | v.   TEMPORARY RESTRAINING ORDER**
17 |
   | VERISIGN, INC., a Delaware corporation;
18 | INTERNET CORPORATION FOR
   | ASSIGNED NAMES AND NUMBERS, a
19 | California corporation,
   |
20 | Defendants.

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1 I, Keith L. Butler, declare as follows:

2 1. I am attorney representing the Coalition For ICANN Transparency Inc.

3 ("CFIT"), and I am admitted to practice before the bar of this court.

4 2. I have personal knowledge of the matters stated herein. If called upon to

5 testify, I could competently do so.

6 3. Attached hereto as Exhibit 1 is a true and correct copy of the 2001 .com

7 Registry Agreement between Internet Corporation for Assigned Names and Numbers ("ICANN")

8 and VeriSign, Inc. ("VeriSign"), dated May 25, 2001, and Appendices G, I and W to that

9 agreement. On or about November 23, 2005, I caused these documents to be printed from

10 ICANN's web site (http://www.icann.org/tlds/agreements/verisign/com-index.htm).

11 4. Attached hereto as Exhibit 2 is a true and correct copy of the 2001 .net

12 Registry Agreement between ICANN and VeriSign, dated May 25, 2001, Appendices G, I and W

13 to that agreement. On or about November 23, 2005, I caused these documents to be printed from

14 ICANN's web site (http://www.icann.org/tlds/agreements/verisign/net-index.htm).

15 5. Attached hereto as Exhibit 3 is a true and correct copy of the proposed

16 2005 .com Registry Agreement between ICANN and VeriSign, and Appendix 9 to that

17 agreement. On or about November 23, 2005, I caused these documents to be printed from

18 ICANN's web site (http://www.icann.org/tlds/agreements/verisign/index-2005.htm).

19 6. Attached hereto as Exhibit 4 is a true and correct copy of the 2005 .net

20 Registry Agreement between ICANN and VeriSign, dated July 1, 2005, and Appendix 9 to that

21 agreement. On or about November 23, 2005, I caused these documents to be printed from

22 ICANN's web site (http://www.icann.org/tlds/agreements/net/net-registry-agreement-

23 01jul05.pdf).

24 7. On the morning of Monday, November 28, 2005, I caused letters notifying

25 VeriSign and ICANN of CFIT's intent to file its Complaint and Application for a Temporary

26 Restraining Order to be faxed to James M. Ulam, Senior Vice President, General Counsel, and

27 Secretary of Verisign, Inc., and John O. Jeffrey, General Counsel of ICANN, to inform them that

28 CFIT is filing an action in this court seeking a temporary restraining order.

1   8.   Attached hereto as Exhibit 5 is a true and correct copy of the notice letter

2   faxed to Mr. Ulam.

3   9.   Attached hereto as Exhibit 6 is a true and correct copy of the notice letter

4   sent to Mr. Jeffrey.

5   I declare that the foregoing is true and correct under penalty of perjury and the laws of the

6   State of California.

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8   This declaration was executed on the 28th day of November, 2005, in San Francisco,

9   California.

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Keith L. Butler

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EXHIBIT 1

.com Registry Agreement

This REGISTRY AGREEMENT ("Agreement") is by and between the Internet Corporation for Assigned Names and Numbers ("ICANN"), a not-for-profit corporation, and VeriSign, Inc. ("Registry Operator").

I. Definitions

For purposes of this Agreement, the following definitions shall apply:

1. "Consensus Policies" are those specifications or policies established based on a consensus among Internet stakeholders represented in the ICANN process, as demonstrated by (1) action of the ICANN Board of Directors establishing the specification or policy, (2) 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 (3) 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 specification or policy.

A. 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 adopting the specification or policy. The decision of the panel shall be based on the report and supporting materials required by the first paragraph of Definition 1 above. In the event that Registry Operator seeks review and the Independent Review Panel sustains the Board's determination that the specification or policy is based on a consensus among Internet stakeholders represented in the ICANN process, then Registry Operator must implement such specification or policy unless it promptly seeks and obtains injunctive relief under Section 15 below.

B. If, following a decision by the Independent Review Panel convened under Subsection (A) above, 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 Section 15 below; provided, however, that Registry Operator must continue to implement the specification or policy unless it has obtained injunctive relief under Section 15 below or a final decision is rendered in accordance with the provisions of Section 15 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 the first paragraph of Definition 1 above.

C. 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 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 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 meets the standard set forth in the first paragraph of Definition 1 above. If the standard set forth in the first paragraph of Definition 1 above 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 specification or temporary policy, it will no longer be a "Consensus Policy."

D. For all purposes under this Agreement, the policies identified in <u>Appendix V</u> shall be treated in the same manner and have the same effect as "Consensus Policies."

E. 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 the first paragraph of Definition 1 above 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 the first paragraph of Definition 1 above in which to comply with that specification or policy, taking into account any urgency involved.

F. In the event that, at the time the ICANN Board establishes a specification or policy under the first paragraph of Definition 1 above 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 (A) above 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 with the specifications or policy in the interim.

2. "DNS" refers to the Internet domain name system.

3. "Effective Date" is the date specified as such in Section 3 of the Agreement for Restructured Relationship among ICANN, VeriSign, and Network Solutions, Inc.

4. "Expiration Date" is November 10, 2007, unless further extended pursuant to this Agreement.

5. "Personal Data" refers to data about any identified or identifiable natural person.

6. "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 TLD zone file (e.g., a registered but inactive name).

7. "Registry Data" means all Registry Database data maintained in electronic form in the Registry Database, and shall include 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.

8. "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.

9. "Registry Services" means services provided as an integral part of the Registry TLD, including all subdomains. These services include: receipt of data concerning registrations of domain names and nameservers from registrars; provision to registrars of status information relating to the Registry TLD zone servers, dissemination of TLD zone files, operation of the Registry 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 through the establishment of Consensus Policies as set forth in Definition 1 of this Agreement. Registry Services shall not include the provision of name service for a domain used by a single entity under a Registered Name registered through an ICANN-accredited registrar.

10. "Registry TLD" refers to the .com TLD.

11. "Term of this Agreement" begins on the Effective Date and runs through the earlier of (a) the Expiration Date, or (b) termination of this Agreement.

12. "TLD" refers to a top-level domain in the DNS.

13. "Zone File Data" means all data contained in DNS zone files for the Registry TLD, or for any subdomain for which Registry Services are provided and that contains Registered Names, as provided to TLD nameservers on the Internet.

II. Agreements

Registry Operator and ICANN agree as follows:

1. Designation of Registry Operator. ICANN hereby continues to recognize Registry Operator as the sole operator for the Registry TLD during the Term of this Agreement.

2. Recognition in Authoritative Root Server System. In the event and to the extent that ICANN is authorized to set policy with regard to an authoritative root server system, it will ensure that (a) 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 (b) any changes to TLD zone server designation submitted to ICANN by Registry Operator will be implemented by ICANN within five business days of submission. In the

event that this Agreement is terminated (a) under Section 16 or Section 18(B) of this Agreement by Registry Operator or (b) under Section 26 of this Agreement due to the withdrawal of recognition of ICANN by the US Department of Commerce("DOC"), ICANN's obligations concerning TLD zone server designations for the Registry TLD in the authoritative root server system shall be as stated in a separate agreement between ICANN and DOC.

3. General Obligations of Registry Operator.

A. During the Term of this Agreement:

(i) Registry Operator agrees that it will operate the registry for the Registry TLD in accordance with this Agreement;

(ii) Registry Operator shall comply, in its operation of the registry, with all Consensus Policies insofar as they:

(a) are adopted by ICANN in compliance with Section 4 below,

(b) relate to one or more of the following: (1) issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, technical reliability and/or stable operation of the Internet or DNS, (2) registry policies reasonably necessary to implement Consensus Policies relating to registrars, or (3) resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names), and

(c) do not unreasonably restrain competition.

B. Registry Operator agrees that upon the earlier of (i) the Expiration Date or (ii) termination of this Agreement by ICANN pursuant to Section 16 below, it will cease to be the Registry Operator for the Registry TLD, unless prior to the end of the Term of this Agreement Registry Operator is chosen as the successor registry in accordance with the provisions of this Agreement.

C. To the extent that Consensus Policies are adopted in conformance with Section 4 of this Agreement, the measures permissible under Section 3(A)(ii)(b) above shall include, without limitation:

(i) principles for allocation of Registered Names (e.g., first-come, first-served, timely renewal, holding period after expiration);

(ii) prohibitions on warehousing of or speculation in domain names by registries or registrars;

(iii) 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., "example.com" and single-letter/digit names);

(iv) the allocation among continuing registrars of the Registered Names sponsored in the registry by a registrar losing accreditation; and

(v) dispute resolution policies that take into account the use of a domain name.

Nothing in this Section 3 shall limit or otherwise affect Registry Operator's obligations as set forth elsewhere in this Agreement.

4. General Obligations of ICANN. With respect to all matters that impact the rights, obligations, or role of Registry Operator, ICANN shall during the Term of this Agreement

A. exercise its responsibilities in an open and transparent manner;

B. not unreasonably restrain competition and, to the extent feasible, promote and encourage robust competition;

C. 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

D. 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.

5. Use of ICANN Name. 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 recognized 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, and (c) to link to pages and documents within the ICANN web site. No other use of ICANN's name is licensed hereby. This license may not be assigned or sublicensed by Registry Operator.

6. Protection from Burdens of Compliance With ICANN Policies. 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 a Consensus Policy) established after the Effective 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 Section 6, ICANN may, at the time it establishes a specification or policy after the Effective Date giving rise to an indemnity obligation under this Section 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 Section 6, in which case the reasonable cost to Registry Operator of such insurance shall be treated under Subsection 22(A) as a cost of providing Registry Services arising from the newly established ICANN specification or policy.

7. Registry-Level Financial Support of ICANN. During the Term of this Agreement, Registry Operator shall pay to ICANN the following fees:

A. 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 7(D).

B. 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 (a) to measure the size of a TLD's registry 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, and (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 operator's Fixed Registry-Level Fee. 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.

C. 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.

D. Fee Caps. The Fixed Registry-Level Fee Cap shall be US$ 100,000 per year until and including June 30, 2002; shall automatically increase by 15% on July 1 of each year beginning in 2002; and may be increased by a greater amount through the establishment of Consensus Policies as set forth in Definition 1 and Section 3 of this Agreement. The sum of the Fixed Registry-Level Fees and the Variable Registry-Level Fees due to be paid in any year ending on any June 30 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$ 5,500,000 for the fiscal year ending June 30, 2002; shall increase by 15% each fiscal year thereafter;

and may be increased by a greater amount through the establishment of Consensus Policies as set forth in Definition 1 and Section 3 of this Agreement.

E. 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 Section 22(a)) 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. The adjustments permitted by this Subsection 7(E) shall only apply for periods of time as to which the Registry Operator does not have in effect a provision in its Registry-Registrar Agreement permitting it to require ICANN-Accredited Registrars to pay to Registry Operator a portion of Registry Operator's payments of variable registry-level fees to ICANN.

8. Reports Provided to ICANN. 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 unreasonably withhold) or through the establishment of Consensus Policies as set forth in Definition 1 of this Agreement.

9. Data Escrow. 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. 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 unreasonably withhold) or through the establishment of Consensus Policies as set forth in Definition 1 of this Agreement. The escrow shall be held under an agreement, substantially in the form of Appendix S, among ICANN, Registry Operator, and the escrow agent.

10. 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 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.

11. Publication by Registry Operator of Registry Data.

A. 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 unreasonably withhold) or through the establishment of Consensus Policies as set forth in Definition 1 of this Agreement.

B. To ensure operational stability of the registry, Registry Operator may temporarily limit access under Subsection 11(A) 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 unreasonably withhold) or through the establishment of Consensus Policies as set forth in Definition 1 of this Agreement. Such temporary limitations shall be applied in a non-arbitrary manner and shall apply fairly to all ICANN-accredited registrars.

C. In providing query-based public access to registration data as required by this Subsection 11(A), Registry Operator shall not impose terms and conditions on 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 unreasonably withhold) or through the establishment of Consensus Policies as set forth in Definition 1 of this Agreement.

D. To comply with applicable statutes and regulations and for other reasons, ICANN may from time to time establish Consensus Policies as set forth in Definition 1 of this Agreement 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 11(A) and on the manner in which Registry Operator may make them available.

E. 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:

> (i) 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 unreasonably withhold) or through the establishment of Consensus Policies as set forth in Definition 1 of this Agreement.

> (ii) 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 unreasonably withhold) or through the establishment of Consensus Policies as set forth in Definition 1 of this Agreement.

12. 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 in the registry supplied by or through registrars. In the event that Registry Data is released from escrow under Section 9, any rights 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.

13. 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 Section 7 of this Agreement. 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.

14. Specific Performance. During the Term of this Agreement, either party may seek specific performance of any provision of this Agreement as provided by Section 15, provided the party seeking such performance is not in material breach of its obligations.

15. Resolution of Disputes Under This Agreement. Disputes arising under or in connection with this Agreement, including requests for specific performance, shall be resolved in a court of competent jurisdiction or, at the election of both parties (except for any dispute over whether a policy adopted by the Board is a Consensus Policy, in which case at the election of either party), by an arbitration conducted as provided in this Section pursuant to the International Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration shall be conducted in English 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 AAA. 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 AAA 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 (whether in a case where arbitration has not been elected or to enforce an arbitration award), 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 temporary or preliminary 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.

16. Termination.

A. In the event an arbitration award or court judgment is rendered specifically enforcing any provision of this Agreement or declaring a party's rights or obligations under this Agreement, either party may, by giving written notice, demand that the other party comply with the award or judgment. In the event that the other party fails to comply with the order or judgment within ninety days after the giving of notice (unless relieved of the obligation to comply by a court or arbitration order before the end of that ninety-day period), the first party may

terminate this Agreement immediately by giving the other party written notice of termination.

B. In the event of termination by DOC of its Cooperative Agreement with Registry Operator pursuant to Section 1.B.8 of Amendment __ to that Agreement, ICANN shall, after receiving express notification of that fact from DOC and a request from DOC to terminate Registry Operator as the operator of the Registry TLD, terminate Registry Operator's rights under this Agreement, and shall cooperate with DOC to facilitate the transfer of the operation of the Registry Database to a successor registry.

C. This Agreement may also be terminated in the by ICANN on written notice given at least forty days after the final and nonappealable occurrence of either of the following events:

(i) Registry Operator:

(a) 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

(b) is disciplined by the government of its domicile for conduct involving dishonesty or misuse of funds of others.

(ii) 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.

D. If Registry Operator becomes bankrupt or insolvent, ICANN may immediately terminate this Agreement upon notice to Registry Operator.

E. If 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, ICANN may, by giving written notice, demand that Registry Operator pay that amount. In the event that Registry Operator fails to pay within ninety days after the giving of notice (unless relieved of the obligation to comply by a court or arbitration order before the end of that ninety-day period), ICANN may terminate this Agreement immediately by giving Registry Operator written notice of termination.

17. Assignment. Neither party may assign this Agreement without the prior written approval of the other party, such approval not to be unreasonably withheld. Notwithstanding the foregoing sentence, a party may assign this Agreement by giving written notice to the other party in the following circumstances, provided the assignee agrees in writing with the other party to assume the assigning party's obligations under this Agreement: (a) Registry Operator may assign this Agreement as part of the transfer of its registry business and (b) ICANN may, in conjunction with a reorganization or re-

incorporation of ICANN and with the written approval of the DOC, assign this Agreement to another non-profit corporation organized for the same or substantially the same purposes as ICANN.

18. Relationship to Cooperative Agreement Between VeriSign/NSI and U.S. Government.

A. Registry Operator's obligations under this Agreement are conditioned on the concurrence by DOC through an amendment to Cooperative Agreement NCR-9218742.

B. If within a reasonable period of time ICANN has not made substantial progress towards having entered into agreements with competing registries and Registry Operator is adversely affected from a competitive perspective, Registry Operator may terminate this Agreement with the approval of the DOC.

C. In the case of conflict while they are both in effect, and to the extent that they address the same subject in an inconsistent manner, the term(s) of Cooperative Agreement NCR-9218742 shall take precedence over this Agreement.

19. Registry Operator Agreements with Registrars. Registry Operator shall make access to the Shared Registration System available to all ICANN-accredited registrars subject to the terms of the Registry-Registrar Agreement (attached as Appendix F). Such agreement may be revised by Registry Operator, provided however, that any such revisions must be approved in advance by ICANN.

20. Performance and Functional Specifications for Registry Services. Unless and until ICANN adopts different standards as a Consensus Policy pursuant to Definition 1 and Section 3, Registry Operator shall provide Registry Services to ICANN-accredited registrars in a manner that meets the performance and functional specifications set forth in Appendices C and D, and the Registry Service Level Agreement attached as Appendix E. In the event ICANN adopts different performance and functional standards for the registry as a Consensus Policy in compliance with Definition 1 and Section 3, Registry Operator shall comply with those standards to the extent practicable, provided that compensation pursuant to the provisions of Section 22(A) below has been resolved prior to implementation. In no event shall Registry Operator be required to implement any different functional standards before November 10, 2002.

21. Bulk Access to Zone Files. Registry Operator shall provide bulk access to the zone files for the Registry TLD as follows:

A. to third parties on the terms set forth in the TLD zone file access agreement established by ICANN. The 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 unreasonably withhold) or through the establishment of Consensus Policies as set forth in Definition 1 of this Agreement.

B. to ICANN on a continuous basis in the manner which ICANN may from time to time specify.

22. Price for Registry Services.

A. The price(s) to ICANN-accredited registrars for entering initial and renewal domain name registrations into the Registry Database and for transferring a domain name registration from one ICANN-accredited registrar to another will be as set forth in Section 5 of the Registry-Registrar Agreement (attached as Appendix F). These prices 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 reasonably demonstrated increases in the net costs of providing Registry Services arising from (i) new or revised ICANN specifications or policies adopted after the Effective Date, or (ii) legislation specifically applicable to the provision of Registry Services adopted after the Effective 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 (i) or (ii) above.

B. 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 (i) the same price shall be charged for services charged to all ICANN-accredited registrars (provided that volume adjustments may be made if the same opportunities to qualify for those adjustments is available to all ICANN-accredited registrars) and (ii) the prices shall not exceed those set forth in Appendix G.

23. Fair Treatment of ICANN-Accredited Registrars.

A. Registry Operator shall provide all ICANN-accredited registrars that are signatories to the Registry-Registrar Agreement, 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.

B. 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.

C. 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 Section 24. This also shall not preclude an affiliate (including wholly-owned subsidiaries) of Registry Operator from acting as a registrar with respect to the Registry TLD, provided that Registry Operator complies with the provisions of Subsection 23(E).

D. Registry Operator shall comply with its Code of Conduct attached as Appendix I. Any changes to that Code of Conduct will require ICANN's approval.

E. 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. For purposes of this Subsection 23(E), funds distributed to debt or equity participants in Registry Operator shall no longer be deemed revenues and assets of Registry Operator once they are distributed.

F. With respect to its obligations under Subsections 24(A) through 24(E) 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 ICANN to promote compliance with Subsections 24(A) through 24(E) and Appendices H and I, and that (except as stated in Appendix Y) 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. In the event that the gTLD Constituency of the Domain Name Supporting Organization proposes a substitute Appendix Y at any time prior to May 1, 2002, and ICANN determines (following an appropriate process of public notice and comment) that substitution by that Appendix Y would serve the interests of the Internet community, the substitution shall be made.

24. 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:

A. Registry Operator may register the domain names listed on Appendix X (Part A) for its own use in operating the registry and providing Registry Services under this Agreement, provided the total number of domain names listed on Appendix X at any time does not exceed 5000. 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. Appendix X may be revised upon written notice by Registry Operator to ICANN and written consent by ICANN, which shall not be unreasonably withheld.

B. Registry Operator may register the domain names listed on Appendix X (Part B) for its own use, provided the total number of domain names listed on Appendix X at any time does not exceed 5000. 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. Appendix X may be revised upon written notice by Registry Operator to ICANN and written consent by ICANN, which shall not be unreasonably withheld.

C. 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.

D. This Section 24 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.

25. Procedure for Subsequent Agreement.

A. Registry Operator may, no earlier than twenty-four and no later than eighteen months prior to the Expiration Date, submit a written proposal to ICANN for the extension of this Agreement for an additional term of four years (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.

B. ICANN shall consider the Renewal Proposal for a period of no more than six months before deciding whether to call for competing proposals from potential successor registry operators for the Registry TLD. During this six month period, ICANN may request Registry Operator to provide, and Registry Operator shall provide, additional information concerning the Renewal Proposal that ICANN determines to be reasonably necessary to make its decision. Following consideration of the Renewal Proposal, Registry Operator shall be awarded a four-year renewal term unless ICANN demonstrates that: (a) Registry Operator is in material breach of this Registry Agreement, (b) Registry Operator has not provided and will not provide a substantial service to the Internet community in its performance under this Registry Agreement, (c) Registry Operator is not qualified to operate the Registry TLD during the renewal term, or (d) the maximum price for initial and renewal registrations proposed in the Renewal Proposal exceeds the price permitted under Section 22 of this Registry Agreement. The terms of the registry agreement for the renewal term shall be in substantial conformity with the terms of registry agreements between ICANN and operators of other open TLDs then in effect, provided that this Section 25 shall be included in any renewed Registry Agreement unless Registry Operator and ICANN mutually agree to alternative language.

C. In the event that ICANN fails to award a renewal registry agreement to Registry Operator within the six month period described above, Registry Operator shall have the right to challenge the reasonableness of that failure under the provisions of Section 15.

D. In the event ICANN does not award Registry Operator a renewal registry agreement according to Subsection 25(B), ICANN shall call for competitive proposals and Registry Operator shall be eligible, to the same extent as similarly situated entities, to submit a proposal in response to such a call and to be considered for such award.

26. Withdrawal of Recognition of ICANN by the Department of Commerce. In the event that, prior to the expiration or termination of this Agreement under Section 16 or 18(B), the DOC withdraws its recognition of ICANN as NewCo under the Statement of Policy pursuant to the procedures set forth in Section 5 of Amendment 1 (dated November 10, 1999) to the Memorandum of Understanding between ICANN and the DOC, this Agreement shall terminate.

27. Option to Substitute Generic Agreement. At Registry Operator's option, it may substitute in its entirety any generic ICANN-Registry Operator Agreement that may be adopted by ICANN for this Agreement.

28. Additional Covenants of Registry Operator. Throughout the Term of the Agreement, Registry Operator shall abide by the covenants contained in Appendix W.

29. Notices, Designations, and Specifications. All notices 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 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 Operator.

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: Chief Executive Officer

If to Registry Operator, addressed to:

General Counsel
VeriSign, Inc.
1350 Charleston Road
Mountain View, California 94043
Telephone: 1/650/961/7500
Facsimile: 1/650/961/8853; and

General Manager
VeriSign Registry
21345 Ridgetop Circle
Dulles, Virginia 20166
Telephone: 1/703/948/3200
Facsimile: 1/703/421/2129; and

Deputy General Counsel
VeriSign, Inc.
505 Huntmar Park Drive
Herndon, Virginia 20170
Telephone: 1/703/742/0400
Facsimile: 1/703/742-7916

30. 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. 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.

31. 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, lightening, 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.

32. 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.

33. 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.

34. Language. All notices, designations, and specifications made under this Agreement shall be in the English language.

35. 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 any conflict between the provisions in the body of this Agreement (Section 1 to Section 37) and any provision in its appendices, the provisions in the body shall prevail.

36. 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.

37. 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.

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:

VERISIGN, INC.

By:_____

Stratton Sclavos
President and CEO
Date:

Revised VeriSign .com Registry Agreement: Appendix G

Posted: 16 April 2001

Registry Operator Maximum Price Schedule

This schedule specifies the maximum price Registry Operator may charge for Registry Services. In a manner consistent with Subsection 22(B) of the Registry Agreement, Registry Operator may charge a lower-than-specified rate for services, including not charging for a specified service. Except as set forth herein or otherwise agreed, Registry Operator shall not be entitled to charge for any Registry Service not specified in this Appendix G.

1. Maximum Initial Registration Fee for Registered Names

Registry Operator may charge a maximum of US $6.00 per year for registration of each Registered Name (the "Initial Registration Fee") in the Registry TLD.

2. Maximum Renewal Registration Fee for Registered Names

Registry Operator may charge a maximum of US $6.00 per year for renewal (or extension) of registration of each Registered Name (the "Renewal Fee") in the Registry TLD.

3. Fees for Transfers of Sponsorship of Domain-Name Registrations

Registrars may assume sponsorship of a Registered Name holder's existing domain name registration from another registrar by following the policy set forth in Exhibit B to Appendix F to the Registry Agreement.

For each transfer of the sponsorship of a domain-name registration under Part A of Exhibit B, Registry Operator may charge the gaining registrar a maximum fee equal to the renewal registration fee associated with a one-year extension, as set forth in item 2 above. The losing registrar's registration fees will not be refunded as a result of any such transfer.

For a transfer approved by ICANN under Part B of Exhibit B, 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).

Comments concerning the layout, construction and functionality of this site

should be sent to webmaster@icann.org.

Page Updated 16-April-2001

.com Registry Agreement: Appendix I
(25 May 2001)

ICANN

Registry Code of Conduct

VeriSign Global Registry Services (VGRS), the registry business of VeriSign, Inc., will at all times strive to operate as a trusted and neutral third party provider of Registry Services. VGRS recognizes that domain names are the means by which businesses, individuals and consumers gain access to, navigate and otherwise benefit from the global Internet. These benefits cannot be fully realized, however, unless the DNS resources are administered in a fair, efficient and neutral manner that makes them available to all qualified parties in the competitive DNS space. To ensure the provision of neutral Registry Services, VGRS will comply with the following Code of Conduct:

1. VGRS will not show any preference or provide any special consideration to any ICANN-accredited registrar with regard to Registry Services provided for the .com TLD.

2. All registrars accredited by ICANN who are authorized to register domain names in the .com registry shall have equivalent access to Registry Services provided by VGRS.

3. VGRS shall not in any way attempt to warehouse, or register domain names in its own right other than through an ICANN-accredited registrar, except for names designated for operational purposes in compliance with Section 24 of the Registry Agreement. VGRS will certify to ICANN every six months that it is abiding by this commitment.

4. Any subsidiary or affiliate of VGRS that operates as an ICANN-accredited registrar shall maintain separate books of account with respect to its registrar operations.

5. VGRS subsidiaries and affiliates engaged in providing Registry Services shall not have access to, and VGRS itself will not use, confidential user data or proprietary information of an ICANN-accredited registrar served by VGRS, received by VGRS in the course of providing Registry Services, except as necessary for registry management and operations.

6. VGRS will take appropriate precautions to prevent the disclosure of confidential user data or proprietary information from any ICANN-accredited registrar, received by VGRS in the course of providing Registry Services, to its affiliates or subsidiaries, except as necessary for registry management and operations.

7. Confidential information about VGRS's Registry Services for the .com TLD will not be shared with employees of any ICANN-accredited registrar, except as necessary for

registry management and operations.

8. VGRS will conduct internal neutrality reviews on a regular basis. In addition, VGRS agrees that it will cooperate with an independent third party ("Auditor") performing Annual Independent Neutrality Audits ("AIN Audits"), to be conducted during the fourth quarter of each calendar year. The Auditor will be selected by ICANN, and will be an accounting firm with significant experience in the review of contractual and other legal commitments. All costs of the AIN Audits will be borne by VGRS. The AIN Audit is intended to determine whether VGRS has been in compliance with Section 23 of the Registry Agreement, and will utilize such tests and techniques as the auditor deems appropriate to determine that compliance. The terms of reference of the AIN Audit will be established by ICANN, subject to the approval of VGRS (such approval not to be unreasonably withheld), and provided to the Auditor by ICANN. A complete report of the results of each AIN Audit shall be provided by the Auditor to ICANN and VGRS no later than 1 December of each calendar year (and by ICANN to the US Departments of Commerce and Justice promptly thereafter). ICANN shall determine that VGRS is in compliance with Section 23 if:

> (1) any material breach(es) of Section 23 found by the audit that are susceptible to cure have been cured, or are cured within a reasonable time; and

> (2) in addition and not as an alternative to subparagraph (1) above, any monetary sanction that ICANN chooses to impose under the Sanctions Program set forth in Appendix Y for any such breach(es) has been timely paid.

A summary of each AIN Audit report, excluding any information that ICANN and VGRS agree (such agreement not to be unreasonably withheld) is confidential or proprietary, will be posted on the ICANN web site no later than 31 January of the calendar year immediately following the audit.

Comments concerning the layout, construction and functionality of this site
should be sent to webmaster@icann.org.

Page Updated 25-May-2001

ICANN

Revised VeriSign .com Registry Agreement: Appendix W

Posted: 16 April 2001

Additional Covenants of Registry Operator

1. Centralized Whois

Registry Operator shall develop and deploy a centralized Whois for the .com, .net, and .org TLDs if mandated by ICANN insofar as reasonably feasible, particularly in view of Registry Operator's dependence on cooperation of third parties.

2. Research, Development and Infrastructure Improvements

During the period between the Effective Date of this Agreement and December 31, 2010, Registry Operator agrees to expend a minimum of US$200,000,000 for research, development, and infrastructure improvements to the .com, .net, and .org Registries (the "Improvements"). The intent of the Improvements is to increase the efficiency and stability of the .com, .net and .org Registries. Registry Operator shall ensure that a substantial portion of expenditures for the Improvements occurs prior to November 10, 2007. Registry Operator shall provide ICANN with an annual report on this research and development activity.

Registry Operator agrees that one of the early goals of the Improvements is to design and develop a Universal Whois Service that will allow public access and effective use of Whois across all Registries and all TLDs. Registry Operator shall commence research and development of the Universal Whois Service no later than December 31, 2001. Registry Operator shall, insofar as is reasonably possible in view of Registry Operator's dependence on the cooperation of third parties, strive to achieve significant progress in implementing the Universal Whois Service by December 31, 2002.

Registry Operator further agrees that if it successfully designs and develops the Universal Whois Service it will (a) make the Application Program Interfaces necessary to produce software which can efficiently deploy and use the Universal Whois Service available to applications developers on an open, non-proprietary, standards-based and royalty-free basis, and (b) make the Universal Whois Service available at a standardized reasonable fee to be negotiated with ICANN.

3. Limits on Volume Discounts

Registry Operator will not grant any volume adjustment to pricing under Subsection 22(B) until such time as ICANN authorizes Registry Operator to do so.

EXHIBIT 2

.net Registry Agreement

This REGISTRY AGREEMENT ("Agreement") is by and between the Internet Corporation for Assigned Names and Numbers, a not-for-profit corporation, and VeriSign, Inc.

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 [Deliberately left blank]

1.3 [Deliberately left blank]

1.4 The "DNS" refers to the Internet domain name system.

1.5 The "Effective Date" is the date specified as such in Section 3 of the Agreement for Restructured Relationship among ICANN, VeriSign, and Network Solutions, Inc.

1.6 The "Expiration Date" is the date specified in Subsection 5.1.1.

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 TLD 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 VeriSign, Inc., 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. These 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 .net TLD.

1.18 [Deliberately left blank]

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 TLD nameservers on the Internet.

2. <u>ICANN OBLIGATIONS</u>.

2.1 <u>General Obligations of ICANN</u>. 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 <u>Designation of Registry Operator</u>. ICANN hereby continues to recognize Registry Operator as the sole operator for the Registry TLD during the Term of this Agreement.

2.3 <u>Recognition in Authoritative Root-Server System</u>. 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 <u>Appendix A</u>. 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 <u>Recognition in the Root-Zone Contact Database</u>. 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 <u>Appendix B</u>. 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 <u>Other Obligations of ICANN</u>. 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. ICANN hereby grants to Registry Operator a non-exclusive, worldwide, royalty-free license during the term of this Agreement (i) to state that it is designated by ICANN as the registry operator for the Registry TLD, (ii) to use a logo specified by ICANN to signify that Registry Operator is an ICANN-designated registry operator, and (iii) to link to pages and documents within the ICANN web site. No other use of ICANN's name 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 Term of this Agreement, 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. Throughout the Term of this Agreement, 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 Subsection 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, and (b) introduced more than six months after the Effective 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.

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 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. For purposes of this Subsection 3.5.5, funds distributed to debt or equity participants in Registry Operator shall no longer be deemed revenues and assets of Registry Operator once they are distributed.

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 ICANN to promote compliance with Subsections 3.5.1 through 3.5.5 and Appendices H and I, and that (except as stated in Appendix Y) 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. In the event that the gTLD Constituency of the Domain Name Supporting Organization proposes a substitute Appendix Y at any time prior to 1 May 2002, and ICANN determines (following an appropriate process of public notice and comment) that substitution by that Appendix Y would serve the interests of the Internet community, the substitution shall be made.

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 listed on Appendix X (Part A) for its own use in operating the registry and providing Registry Services under this Agreement, provided the total number of domain names listed on Appendix X at any time does not exceed 5000. 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. Appendix X may be revised upon written notice by Registry Operator to ICANN and written consent by ICANN, which shall not be unreasonably withheld.

3.6.2 Registry Operator may register the domain names listed on Appendix X (Part B) for its own use, provided the total number of domain names listed on Appendix X at any time does not exceed 5000. 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. Appendix X may be revised upon written notice by Registry Operator to ICANN and written consent by ICANN, which shall not be unreasonably withheld.

3.6.3 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.

3.6.4 This 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 [Deliberately left blank]

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 <u>Appendix O</u>. 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 Subsection s 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 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.

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 (a) to measure the size of a TLD's registry 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, and (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 operator's Fixed Registry-Level Fee. 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$100,000 per year until and including 30 June 2002; shall automatically increase by 15% on July 1 of each year beginning in 2002; 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$5,500,000 for the fiscal year ending 30 June 2002; 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 <u>Adjustments to Price</u>. 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. The adjustments permitted by this Subsection 3.14.5 shall only apply for periods of time as to which the Registry Operator does not have in effect a provision in its Registry-Registrar Agreement (see Subsection 3.4) permitting it to require ICANN-Accredited Registrars to pay to Registry Operator a portion of Registry Operator's payments of variable registry-level fees to ICANN.

3.15 <u>Reports Provided to ICANN</u>.

3.15.1 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 <u>Appendix T</u>. 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 [Deliberately left blank]

4. PROCEDURES FOR ESTABLISHMENT OR REVISION OF SPECIFICATIONS AND POLICIES.

4.1 <u>Registry Operator's Ongoing Obligation to Comply With New or Revised Specifications and Policies</u>. 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 the 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 SLD 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 Effective Date, or (B) legislation specifically applicable to the provision of Registry Services adopted after the Effective 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 Effective 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 Effective 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. <u>MISCELLANEOUS PROVISIONS</u>.

5.1 <u>Expiration of this Agreement</u>.

5.1.1 The Expiration Date shall be 30 June 2005, provided, however, that the Expiration Date may be adjusted under the following circumstances:

5.1.1.1 <u>31 December 2002 Measurement Date</u>.

5.1.1.1.1 The total number of Registered Names for .biz, .info, .name and .pro TLDs as of 31 December 2002, as numerator, shall be compared to the total number of Registered Names for .biz, .info, .name, .pro, .com and .net TLDs as of 31 December 2002, as denominator.

5.1.1.1.2 The net new registrations of Registered Names in the .com and .net TLDs (i.e., the net increase in the number of Registered Names sponsored in the registry) sponsored by the NSI Registrar for the period 1 January 2002 through 31 December 2002, as numerator, shall be compared to the total net new registrations of Registered Names sponsored by all ICANN-accredited registrars, including the NSI Registrar, in the .com and .net TLDsfor the same period, as denominator.

5.1.1.1.3 The Expiration Date shall remain 30 June 2005 and no further measurements will be required if:

5.1.1.1.3.1 the share of Registered Names in the .biz, .info, .name and .pro TLDs, measured pursuant to <u>Subsection 5.1.1.1.1</u>, is 15% or more, or

5.1.1.1.3.2 the NSI Registrar share of net new registrations of Registered Names in .com and .net, measured pursuant to <u>Subsection 5.1.1.1.2</u>, is 20% or less;

and ICANN determines that the Registry Operator is in compliance with its obligations under <u>Section 3.5</u> of this Registry Agreement, in accordance with paragraph 8 of Appendix I.

5.1.1.1.4 The Expiration Date shall remain 30 June 2005, but a subsequent measurement will be required on 31 March 2004, as set forth in <u>Subsection 5.1.1.1.1</u> if:

5.1.1.1.4.1 the share of total Registered Names in the .biz, .info, .name and .pro TLDs, measured pursuant to <u>Subsection 5.1.1.1.1</u>, is 10% or more, or

5.1.1.1.4.2 the NSI Registrar share of net new registrations of Registered Names in .com and .net, measured pursuant to <u>Subsection 5.1.1.1.2</u>, is 25% or less;

and ICANN determines that the Registry Operator is in compliance with its obligations under <u>Section 3.5</u> of this Registry Agreement, in accordance with paragraph 8 of Appendix I.

5.1.1.1.5 The Expiration Date shall be adjusted to 10 November 2003 if:

5.1.1.1.5.1 the share of total Registered Names in the .biz, .info, .name and .pro TLDs, measured pursuant to <u>Subsection 5.1.1.1.1</u>, is less than 10%, and

5.1.1.1.5.2 the NSI Registrar's share of net new registrations of Registered Names in .com and .net, measured pursuant to Subsection <u>5.1.1.1.2</u>, is more than 25%;

or ICANN determines that Registry Operator is not in compliance with its obligations under <u>Section 3.5</u> of this Registry Agreement, in accordance with paragraph 8 of Appendix I.

5.1.1.2 <u>31 March 2004 Measurement Date</u>. In the event a subsequent measurement as set forth in <u>Subsection 5.1.1.1.4</u> is required, the subsequent measurement shall be calculated as follows:

5.1.1.2.1 The total number of Registered Names in all unsponsored gTLDs introduced by ICANN after 1 January 2001, including but not limited to .biz, .info, .name and .pro but not including .com and .net, as numerator, shall be compared to the total number of Registered Names in all unsponsored gTLDs recognized by ICANN, including .com and .net but not including .org, as denominator.

5.1.1.2.2 The net new registrations of Registered Names in the .com and .net TLDs (i.e., the net increase in the number of Registered Names sponsored in the registry) sponsored by the NSI Registrar for the period 1 April 2003 through 31 March 2004, as numerator, shall be compared to the total net new registrations of Registered Names sponsored by all ICANN-accredited registrars, including the NSI Registrar, in the .com and .net TLDs for the same period, as denominator.

5.1.1.2.3 The Expiration Date shall remain 30 June 2005 if:

5.1.1.2.3.1 the share of Registered Names in all unsponsored gTLDs introduced by ICANN after 1 January 2001, measured pursuant to Subsection 5.1.1.2.1, is 13% or more, or

5.1.1.2.3.2 the NSI Registrar share of net new registrations of Registered Names, measured pursuant to Subsection 5.1.1.2.2, is 22% or less;

and ICANN determines that Registry Operator is in compliance with its obligations under Section 3.5 of this Registry Agreement, in accordance with paragraph 8 of Appendix I.

5.1.1.2.4 The Expiration Date shall be adjusted to 1 January 2005 if:

5.1.1.2.4.1 the share of Registered Names in all unsponsored gTLDs introduced by ICANN after 1 January 2001, measured pursuant to Subsection 5.1.1.2.1, is less than 13%, and

5.1.1.2.4.2 the NSI Registrar share of net new registrations of Registered Names, measured pursuant to Subsection 5.1.1.1.2, is more than 22%;

or ICANN determines that Registry Operator is not in compliance with its obligations under Section 3.5 of this Registry Agreement, in accordance with paragraph 8 of Appendix I.

5.1.1.3 ICANN shall perform the measurements described in Subsections 5.1.1.1.1 and 5.1.1.1.2 above on a quarterly basis, and report the results to Registry Operator on a confidential basis.

5.1.2 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.

5.1.3 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.

5.1.4 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 Not later than one year prior to the end of the term of this Agreement, ICANN shall, in accordance with Section 2.1, adopt an open, transparent procedure for designating a successor Registry Operator. The requirement that this procedure be opened one year prior to the end of the Agreement shall be waived in the event that the Agreement is terminated prior to its expiration.

5.2.2 Registry Operator or its assignee shall be eligible to serve as the successor Registry Operator and neither the procedure established in accordance with subsection 5.2.1 nor the fact that Registry Operator is the incumbent shall disadvantage Registry Operator in comparison to other entities seeking to serve as the successor Registry.

5.2.3 If Registry Operator or its assignee is not designated as the successor Registry Operator, Registry Operator or its assignee shall cooperate with ICANN and with the successor Registry Operator in order to facilitate the smooth transition of operation of the registry to successor Registry Operator. Such cooperation shall include the timely transfer to the successor Registry Operator of an electronic copy of the Registry Database and of a full specification of the format of the data.

5.2.4 ICANN shall select as the successor Registry Operator the eligible party that it reasonably determines is best qualified to perform the registry function under terms and conditions developed pursuant to Subsection 4.3 of this Agreement, taking into account all factors relevant to the stability of the Internet, promotion of competition, and maximization of consumer choice, including without limitation: functional capabilities and performance specifications proposed by the eligible party for its operation of the registry, the price at which registry services are proposed to be provided by the party, the relevant experience of the party, and the demonstrated ability of the party to manage domain name or similar databases at the required scale.

5.2.5 In the event that a party other than Registry Operator or its assignee is designated as the successor Registry Operator, Registry Operator shall have the right to challenge the reasonableness of ICANN's failure to designate Registry Operator or its assignee as the successor Registry Operator pursuant to Section 5.9 below. Any such challenge must be filed within 10 business days following any such designation, and shall be decided on a schedule that will produce a final decision no later than 60 days following any such challenge.

5.3 [Deliberately left blank]

5.4 Termination by ICANN. This Agreement may be terminated before its expiration by ICANN in any of the following circumstances:

5.4.1 [Deliberately left blank]

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 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 requirement 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 [Deliberately left blank]

5.6 <u>Additional Covenants of Registry Operator</u>. Throughout the Term of this Agreement, Registry Operator shall abide by the covenants contained in <u>Appendix W</u>.

5.7 <u>Indemnification of ICANN</u>. 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) establishment or operation of the Registry TLD; (d) Registry Services; (e) collection or handling of Personal Data by Registry Operator; (f) any dispute concerning registration of a domain name within the domain of the Registry TLD; and (g) duties and obligations of Registry Operator in operating the Registry TLD; provided that, with respect to items (b) through (g) 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 (g) 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 of the parties' respective obligations under this Agreement.

5.8 <u>Indemnification Procedures</u>. 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 <u>Resolution of Disputes Under This Agreement</u>. Disputes arising under or in connection with this Agreement, including requests for specific performance, shall be referred in the first instance to 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. Either party, if dissatisfied with the result of the arbitration, may challenge that result by bringing suit against the other party in a court located in Los Angeles, California, USA to enforce its rights under this Agreement. 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 <u>Limitation of Liability</u>. 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 <u>Assignment</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. 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) to the 25 November 1998, Memorandum of Understanding between ICANN and the United States Department of Commerce.

5.12 <u>Subcontracting</u>. 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. 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 <u>Force Majeure</u>. 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 <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 SLD holder.

5.15 <u>Notices, Designations, and Specifications</u>. 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
Telephone: 1/310/823-9358
Facsimile: 1/310/823-8649 Attention: Chief Executive Officer

If to Registry Operator, addressed to:

General Counsel
VeriSign, Inc.
1350 Charleston Road
Mountain View, California 94043
Telephone: 1/650/961/7500
Facsimile:1/650/961/8853; and

General Manager
VeriSign Registry
21345Ridgetop Circle
Dulles, Virginia 20166
Telephone: 1/703/948/3200
Facsimile: 1/703/421/2129; and

Deputy General Counsel
VeriSign, Inc.
505 Huntmar Park Drive
Herndon, Virginia 20170
Telephone: 1/703/742/0400
Facsimile: 1/703/742/7916

5.16 <u>Dates and Times</u>. 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 <u>Language</u>. 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 any 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 shall prevail.

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:

VERISIGN, INC.

By:_____
Stratton Sclavos
President and CEO
Date:

Revised VeriSign .net and .org
Registry Agreements: Appendix G

Posted: 16 April 2001

Registry Operator Maximum Price Schedule

This schedule specifies the maximum price Registry Operator may charge for Registry Services. In a manner consistent with Subsection 3.4.3 of the Registry Agreement, Registry Operator may charge a lower-than-specified rate for services, including not charging for a specified service. Except as set forth herein or otherwise agreed, Registry Operator shall not be entitled to charge for any Registry Service not specified in this Appendix G.

1. Maximum Initial Registration Fee for Registered Names

Registry Operator may charge a maximum of US $6.00 per year for registration of each Registered Name (the "Initial Registration Fee") in the Registry TLD.

2. Maximum Renewal Registration Fee for Registered Names

Registry Operator may charge a maximum of US $6.00 per year for renewal (or extension) of registration of each Registered Name (the "Renewal Fee") in the Registry TLD.

3. Fees for Transfers of Sponsorship of Domain-Name Registrations

Registrars may assume sponsorship of a Registered Name holder's existing domain name registration from another registrar by following the policy set forth in Exhibit B to Appendix F to the Registry Agreement.

For each transfer of the sponsorship of a domain-name registration under Part A of Exhibit B, Registry Operator may charge the gaining registrar a maximum fee equal to the renewal registration fee associated with a one-year extension, as set forth in item 2 above. The losing registrar's registration fees will not be refunded as a result of any such transfer.

For a transfer approved by ICANN under Part B of Exhibit B, 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).

Comments concerning the layout, construction and functionality of this site

should be sent to <u>webmaster@icann.org</u>.

Page Updated 16-April-2001

.net Registry Agreement: Appendix I
(25 May 2001)

ICANN

Registry Code of Conduct

VeriSign Global Registry Services (VGRS), the registry business of VeriSign, Inc., will at all times strive to operate as a trusted and neutral third party provider of Registry Services. VGRS recognizes that domain names are the means by which businesses, individuals and consumers gain access to, navigate and otherwise benefit from the global Internet. These benefits cannot be fully realized, however, unless the DNS resources are administered in a fair, efficient and neutral manner that makes them available to all qualified parties in the competitive DNS space. To ensure the provision of neutral Registry Services, VGRS will comply with the following Code of Conduct:

1. VGRS will not show any preference or provide any special consideration to any ICANN-accredited registrar with regard to Registry Services provided for the .net TLD.

2. All registrars accredited by ICANN who are authorized to register domain names in the .net registry shall have equivalent access to Registry Services provided by VGRS.

3. VGRS shall not in any way attempt to warehouse, or register domain names in its own right other than through an ICANN-accredited registrar, except for names designated for operational purposes in compliance with Subsections 3.6.1 and 3.6.2 of the Registry Agreement. VGRS will certify to ICANN every six months that it is abiding by this commitment.

4. Any subsidiary or affiliate of VGRS that operates as an ICANN-accredited registrar shall maintain separate books of account with respect to its registrar operations.

5. VGRS subsidiaries and affiliates engaged in providing Registry Services shall not have access to, and VGRS itself will not use, confidential user data or proprietary information of an ICANN-accredited registrar served by VGRS, received by VGRS in the course of providing Registry Services, except as necessary for registry management and operations.

6. VGRS will take appropriate precautions to prevent the disclosure of confidential user data or proprietary information from any ICANN-accredited registrar, received by VGRS in the course of providing Registry Services, to its affiliates or subsidiaries, except as necessary for registry management and operations.

7. Confidential information about VGRS's Registry Services for the .net TLD will not be

shared with employees of any ICANN-accredited registrar, except as necessary for registry management and operations.

8. VGRS will conduct internal neutrality reviews on a regular basis. In addition, VGRS agrees that it will cooperate with an independent third party ("Auditor") performing Annual Independent Neutrality Audits ("AIN Audits"), to be conducted during the fourth quarter of each calendar year. The Auditor will be selected by ICANN, and will be an accounting firm with significant experience in the review of contractual and other legal commitments. All costs of the AIN Audits will be borne by VGRS. The AIN Audit is intended to determine whether VGRS has been in compliance with Section 3.5 of the Registry Agreement, and will utilize such tests and techniques as the auditor deems appropriate to determine that compliance. The terms of reference of the AIN Audit will be established by ICANN, subject to the approval of VGRS (such approval not to be unreasonably withheld), and provided to the Auditor by ICANN. A complete report of the results of each AIN Audit shall be provided by the Auditor to ICANN and VGRS no later than 1 December of each calendar year (and by ICANN to the US Departments of Commerce and Justice promptly thereafter). ICANN shall determine that VGRS is in compliance with Section 3.5 if:

> (1) any material breach(es) of Section 3.5 found by the audit that are susceptible to cure have been cured, or are cured within a reasonable time; and

> (2) in addition and not as an alternative to subparagraph (1) above, any monetary sanction that ICANN chooses to impose under the Sanctions Program set forth in Appendix Y for any such breach(es) has been timely paid.

A summary of each AIN Audit report, excluding any information that ICANN and VGRS agree (such agreement not to be unreasonably withheld) is confidential or proprietary, will be posted on the ICANN web site no later than 31 January of the calendar year immediately following the audit.

Comments concerning the layout, construction and functionality of this site should be sent to webmaster@icann.org.

Page Updated 28-May-2001

Revised VeriSign .net and .org
Registry Agreements: Appendix W

Posted: 16 April 2001

ICANN

Additional Covenants of Registry Operator

1. Centralized Whois

Registry Operator shall develop and deploy a centralized Whois for the .com, .net, and .org TLDs if mandated by ICANN insofar as reasonably feasible, particularly in view of Registry Operator's dependence on cooperation of third parties.

2. Research, Development and Infrastructure Improvements

During the period between the Effective Date of this Agreement and 31 December 2010, Registry Operator agrees to expend a minimum of US$200,000,000 for research, development, and infrastructure improvements to the .com, .net, and .org Registries (the "Improvements"). The intent of the Improvements is to increase the efficiency and stability of the .com, .net and .org Registries. Registry Operator shall ensure that a substantial portion of expenditures for the Improvements occurs prior to 10 November 2007. Registry Operator shall provide ICANN with an annual report on this research and development activity.

Registry Operator agrees that one of the early goals of the Improvements is to design and develop a Universal Whois Service that will allow public access and effective use of Whois across all Registries and all TLDs. Registry Operator shall commence research and development of the Universal Whois Service no later than 31 December 2001. Registry Operator shall, insofar as is reasonably possible in view of Registry Operator's dependence on the cooperation of third parties, strive to achieve significant progress in implementing the Universal Whois Service by 31 December 2002.

Registry Operator further agrees that if it successfully designs and develops the Universal Whois Service it will (a) make the Application Program Interfaces necessary to produce software which can efficiently deploy and use the Universal Whois Service available to applications developers on an open, non-proprietary, standards-based and royalty-free basis, and (b) make the Universal Whois Service available at a standardized reasonable fee to be negotiated with ICANN.

3. Limits on Volume Discounts

Registry Operator will not grant any volume adjustment to pricing under Subsection 3.4.3 until such time as ICANN authorizes Registry Operator to do so.

EXHIBIT 3

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this "Agreement") is entered into by and between the Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation ("ICANN"), and VeriSign, Inc. a Delaware corporation.

WHEREAS, the parties wish to work together cooperatively to promote and facilitate the security and stability of the Internet and the DNS, and to that end, hereby agree as follows:

ARTICLE I INTRODUCTION

Section 1.1 Effective Date. The effective date ("Effective Date") for purposes of this Agreement shall be _____ ____, 2005.

Section 1.2 Top-Level Domain. The Top-Level Domain to which this Agreement applies is .com ("TLD").

Section 1.3 Designation as Registry Operator. Upon the Effective Date, until the Expiration Date as defined in Section 4.1 hereof, ICANN shall continue to recognize VeriSign, Inc. as the sole registry operator for the TLD ("Registry Operator").

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1 Registry Operator's Representations and Warranties.

(a) Organization; Due Authorization and Execution. 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.

(b) Statements made During Negotiation Process. The factual statements made in writing by Registry Operator in negotiating this Agreement were true and correct in all material respects at the time made. A violation or breach of any such representation or warranty 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 ICANN's Representations and Warranties.

(a) Organization; Due Authorization and Execution. 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

Privileged and Confidential - Settlement Communication

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 III COVENANTS

Section 3.1   Covenants of Registry Operator. Registry Operator covenants and agrees with ICANN as follows:

(a) Preserve Security and Stability.

(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.

(b) Consensus Policies.

(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.

(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.

(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."

(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:

(A)   principles for allocation of registered names in the TLD (e.g., first-come, first-served, timely renewal, holding period after expiration);

(B)   prohibitions on warehousing of or speculation in domain names by registries or registrars;

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(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);

(D)   maintenance of and access to accurate and up-to-date information concerning domain name registrations;

(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

(F)   resolution of disputes regarding whether particular parties may register or maintain registration of particular domain names.

(v)   In addition to the other limitations on Consensus Policies, they shall not:

(A)   prescribe or limit the price of Registry Services;

(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;

(C)   for three years following the Effective Date, modify the procedure for the consideration of proposed Registry Services;

(D)   modify the terms or conditions for the renewal or termination of this Agreement;

(E)   modify ICANN's obligations to Registry Operator under Section 3.2 (a), (b), and (c);

(F)   modify the limitations on Consensus Policies or Temporary Specifications or Policies;

(G)   modify the definition of Registry Services;

(H)   modify the terms of Sections 7.2 and 7.3, below; and

(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).

(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.

(c) Handling of Registry Data.

(i) Data Escrow. 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-related key material; (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) the DNSSEC-related material necessary to sign the .com zone (e.g., public and private portions of .com zone key-signing keys and zone-signing keys). 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 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 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.

(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.

(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).

(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 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.

(v)   Whois Service. Registry Operator shall provide such whois data as set forth in Appendix 5.

(d) Registry Operations.

(i)   Registration Restrictions. 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.

(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, 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.

(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 .com registry as of the Effective Date; (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. Only Registry Services defined in (a) and (b) above are subject to the maximum price provisions of Section 7.3, below.

(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:

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(e) Fees and Payments. Registry Operator shall pay the Registry-Level Fees to ICANN on a quarterly basis in accordance with Section 7.2 hereof.

(f) 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 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 disclose domain name registrant or end user information. The process for the introduction of new Registry Services shall not apply to such traffic data.

Section 3.2   Covenants of ICANN. ICANN covenants and agrees with Registry Operator as follows:

(a) Open and Transparent. Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

(b) 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.

(c) TLD Zone Servers. In the event and to the extent that ICANN is authorized to set policy with regard to an authoritative root server system, it will 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.

(d) Nameserver Changes. 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.

(e) Root-zone Information Publication. ICANN's publication of root-zone contact information for the Registry TLD will include Registry Operator and its

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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.

Section 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.

ARTICLE IV TERM OF AGREEMENT

Section 4.1 <u>Term</u>. The initial term of this Agreement shall expire on November 30, 2012. The "Expiration Date" shall be November 30, 2012, 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 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 5 largest gTLDs (determined by the number of domain name registrations under management at the time of renewal), 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 price of Registry Services; 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 obligations to Registry Operator under Section 3.2 (a), (b), and (c); the limitations on Consensus Policies or Temporary Specifications or Policies; the definition of Registry Services; or the terms of Section 7.3. Upon renewal, Registry-Level Transaction Fees may be reasonably modified so long as any increase in such fees shall not exceed the average of the percentage increase in Registry-Level Transaction Fees for the 5 largest gTLDs (determined as above), during the prior three-year period.

Section 4.3 <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 V DISPUTE RESOLUTION

Section 5.1   Resolution of Disputes.

(a) Cooperative Engagement. 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.

(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 an 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 the amount of Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to Section 7.2 of this Agreement. 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 provided pursuant to Section 4.3 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 VI   TERMINATION PROVISIONS

Section 6.1   Termination by ICANN.   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); Section 5.2 or Section 7.3 within thirty 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   Bankruptcy.   This Agreement shall automatically terminate in the event Registry Operator shall voluntarily or involuntarily be subject to bankruptcy proceedings.

Section 6.3   Transition of Registry upon Termination of Agreement.   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 6.4   Rights in Data. 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   No Reimbursement.   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 VII SPECIAL PROVISIONS

Section 7.1   Registry-Registrar Agreement.

(a) Access to Registry Services. 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:

    (i)   All registrars (including any registrar affiliated with Registry Operator) 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;

    (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;

    (iii)   All registrars have the same level of access to customer support personnel via telephone, e-mail and Registry Operator's website;

    (iv)   All registrars have the same level of access to registry resources to resolve registry/registrar or registrar/registrar disputes and technical and/or administrative customer service issues;

    (v)   All registrars have the same level of access to data generated by Registry Operator to reconcile their registration activities from Registry Operator's Web and ftp servers;

    (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

    (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.

(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.

(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>.

(a) <u>Initial Fees</u>. On the Effective Date, Registry Operator shall make a one-time lump sum payment of US$1.25 million to an account designated by ICANN. The uses of these initial fees shall include meeting the costs associated with establishing structures to implement the provisions of this agreement.

(b) <u>Payment Schedule</u>. Registry Operator shall pay the Registry-Level Fees specified in Sections 7.2(c) and (d) below, and Section 7.2(e), 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; provided, however, for the six (6) month period commencing 1 January 2006 and ending 30 June 2006 ("Initial Six Month Period"), the fees specified under Section 7.2(c) and (d), below, shall be paid in accordance with the payment schedule set forth in Section 7.2 (d), below.

(c) <u>Fixed Registry-Level Fee</u>. Registry Operator shall pay ICANN a quarterly Fixed Registry-Level Fee in an amount equal to US$43,725 for each fiscal quarter during the twelve-month period ending June 30, 2006. The first quarterly payment of the Fixed Registry-Level Fee shall be prorated from the Effective Date until the end of the calendar quarter in which the Effective Date falls. Such fee is subject to increase on July 1 of each year thereafter in an amount established by ICANN's Board of Directors, but not to exceed a sum equal to 115% of the prior year's fee. One dollar (USD) of the Fixed Registry-Level Fee shall be waived for each dollar that the ICANN Registry-Level Transaction Fee exceeds US$2,000,000 per annum.

(d) <u>Registry-Level Transaction Fee</u>. Commencing on 1 January 2006, Registry Operator shall pay ICANN the ICANN Registry-Level Transaction Fee in an amount initially equal to US$0.37, increasing to $0.45 and $0.50 on 1 July 2006 and 2007, respectively, for each annual increment of an initial or renewal domain

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name registration and for transferring a domain name registration from one ICANN-accredited registrar to another during the calendar quarter to which the ICANN Registry-Level Transaction Fee pertains. For the Initial Six Month Period, Registry Operator shall pay to ICANN an estimated prepayment in the aggregate amount of $7.8 million ("Prepayment Amount") for the ICANN Registry-Level Transaction Fees in equal monthly installments of $1.3 million on the 20th day of each month of the Initial Six Month Period to an account designated by ICANN. After the Initial Six Month Period, the next quarterly payment due under Section 7.2 (b) shall automatically be: (i) reduced in the amount by which the Prepayment Amount exceeds the actual aggregate ICANN Registry-Level Transaction Fees during the Initial Six Month Period; or (ii) increased in the amount by which such actual aggregate ICANN Registry-Level Transaction Fees during the Initial Six Month Period exceed the Prepayment Amount. ICANN intends to apply this fee to purposes including: (a) a special restricted fund for developing country Internet communities to enable further participation in the ICANN mission by developing country stakeholders, (b) a special restricted fund to enhance and facilitate the security and stability of the DNS, and (c) general operating funds to support ICANN's mission to ensure the stable and secure operation of the DNS.

(e) 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:

> (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$0.15.

> (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.

(f) Interest on Late Payments. For any payments ten days or more overdue, 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.

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Section 7.3   Pricing for Domain Name Registrations and Registry Services.

(a)   Scope. The Registry Services to which the provisions of this Section 7.3 shall apply are:

(i)   the Registry Services defined in Section 3.1(d)(iii)(a), above, and

(ii)   other products or services that the Registry Operator is required to provide within the scope of Section 3.1(d)(iii)(b), above, because of the establishment of a Consensus Policy (as defined in Section 3.1(b) above):

(1)   to implement changes in the core functional or performance specifications for Registry Services (as defined in Section 3.1(d)(iii)(a)); or

(2)   that are reasonably necessary to facilitate: (A) Security and/or Stability of the Internet or DNS; (B) Security and Stability of the registry database for the TLD; or (C) resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names).

Nothing contained herein shall be construed to apply the provisions of this Section 7.3 to the services enumerated in Appendix 9 of this Agreement.

(b)   No Tying. Registry Operator shall not require, as a condition of the provision or use of Registry Services subject to this Section 7.3 in accordance with the requirements of this Agreement, including without limitation Section 7.1 and Appendix 10, that the purchaser of such services purchase any other product or service or refrain from purchasing any other product or service. Notwithstanding any other offering that may include all or any portion of the Registry Services at any price, Registry Operator shall offer to all ICANN-accredited registrars the combination of all Registry Services subject to this Section 7.3 at a total price for those Registry Services that is no greater than the Maximum Price calculated pursuant to Section 7.3(d) and that otherwise complies with all the requirements of Section 7.3.

(c)   Price for Registry Services. The price for all Registry Services subject to this Paragraph 7.3 shall be the amount, not to exceed the Maximum Price, that Registry Operator charges for each annual increment of a new and renewal domain name registration and for each transfer of a domain name registration from one ICANN-accredited registrar to another.

(d)   Maximum Price. The Maximum Price for Registry Services subject to this Paragraph 7.3 shall be as follows:

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(i)   from the Effective Date through 31 December 2006, US$6.00;

(ii)   for each calendar year beginning with 1 January 2007, the smaller of the preceding year's Maximum Price or the highest price charged during the preceding year, multiplied by 1.07.

(e)   No price discrimination. Registry Operator shall charge the same price for Registry Services subject to this Section 7.3, not to exceed the Maximum Price, to all ICANN-accredited registrars (provided that 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).

(f)   Adjustments to Pricing for Domain Name Registrations. Registry Operator shall provide no less than six months prior notice in advance of any increase for new and renewal domain name registrations and for transferring a domain name registration from one ICANN-accredited registrar to another and shall continue to offer for periods of up to ten years new and renewal domain name registrations fixed at the price in effect at the time such offer is accepted. Registry Operator is not required to give notice of the scheduled increases to the ICANN Registry-Level Transaction Fee set forth in Section 7.2(d) or the imposition of the Variable Registry-Level Fee set forth in Section 7.2(e).

(g)   Maximum Price does not include ICANN Registry-Level Transaction Fee. The Maximum Price does not include, and shall not be calculated from a price that includes, all or any part of the ICANN Registry-Level Transaction Fee set forth in Section 7.2(d) or the Variable Registry-Level Fee set forth in Section 7.2(e), above, or any other per-name fee for new and renewal domain name registrations and for transferring a domain name registration from one ICANN-accredited registrar to another.

(h)   Collection of ICANN Registry-Level Transaction Fee from registrars. Commencing on 1 January 2006, in addition to charging an amount not to exceed the Maximum Price, Registry Operator may also invoice and collect from each ICANN-accredited registrar an additional amount not to exceed the ICANN Registry-Level Transaction Fee set forth in Section 7.2(d) or the Variable Registry-Level Fee set forth in Section 7.2(e), above, or any other per-name fee for new and renewal domain name registrations and for transferring a domain name registration from one ICANN-accredited registrar to another, that Registry Operator is obligated to pay to ICANN based on Registry Operator's sale of Registry Services to that registrar.

ARTICLE VIII MISCELLANEOUS

Section 8.1   No Offset. 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 8.2   Use of ICANN Name and Logo. 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 8.3 <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. 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 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. Any subcontracting of technical operations shall provide that the subcontracted entity become party to the data escrow agreement mandated by Section 3.1(c)(i) hereof.

Section 8.4 <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 8.5 <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 8.6 <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.

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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:

VeriSign, Inc.
21355 Ridgetop Circle
Dulles, VA 20166
Telephone: 1-703-948-4463
Facsimile: 1-703-450-7326
Attention: VP, Associate General Counsel, VNDS
With a Required Copy to: General Counsel
Email: (As specified from time to time.)

Section 8.7 Language. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

Section 8.8 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.

Section 8.9 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 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:_____
　　　Paul Twomey
　　　President and CEO

Date:

VeriSign, Inc.

By:_____
　　　Mark McLaughlin
　　　Senior Vice President, VeriSign, Inc.

Date:

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.COM Agreement: Appendix 9
Approved Services

The Registry Agreement specifies a "Process for Consideration of Proposed Registry Services." The following services are specifically identified as having been approved by ICANN prior to the effective date of the Registry Agreement. As such, notwithstanding any other provisions of the Registry Agreement, VeriSign shall be free to deploy the following services:

- ConsoliDate, in accordance with VeriSign's Registrar Reference Manual (v2.2) Section 2.14 to 2.14.3;

- Internationalized Domain Names, in accordance with the Letter from Rusty Lewis to Paul Twomey dated 13 October 2003;

- Restore, which allows use of the RRP Restore or EPP Update command to retrieve a previously deleted domain name registration during the Redemption Grace Period (approved by ICANN in accordance with VeriSign's Registrar Reference Manual (v2.2) Section 2.5.1.1-2.5.1.3);

- Wait Listing Service, in accordance with the letter from John O. Jeffrey to Russell Lewis dated 26 January 2004; and

- Transfer Dispute Resolution, in accordance with the Registrar Transfer Dispute Resolution Policy, dated 12 July 2004 (as may be amended or superseded by ICANN), and VeriSign's Supplemental Rules for Registrar Transfer Disputes.

EXHIBIT 4

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this "Agreement") is entered into as of July 1, 2005 by and between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation ("ICANN"), and VeriSign, Inc. a Delaware corporation.

ARTICLE I INTRODUCTION

Section 1.1 Effective Date. The Effective Date for purposes of this Agreement shall be the date on which the TLD (as defined below) is delegated within the authoritative root-server system to nameservers designated by Registry Operator.

Section 1.2 Top-Level Domain. The Top-Level Domain to which this Agreement applies is .net ("TLD").

Section 1.3 Designation as Registry Operator. Upon the Effective Date, until the Expiration Date as defined in Section 4.1 hereof, ICANN hereby designates VeriSign, Inc. as the sole registry operator for the TLD ("Registry Operator").

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1 Registry Operator's Representations and Warranties.

(a) Organization; Due Authorization and Execution. 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.

(b) Statements made During Application Process. The factual statements contained in Registry Operator's application for the TLD, or made by Registry Operator in negotiating this Agreement, were true and correct in all material respects at the time the application was submitted to ICANN and are true and correct in all material respects as of the date this Agreement is entered into set forth above.

Section 2.2 ICANN's Representations and Warranties.

(a) Organization; Due Authorization and Execution. 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 III COVENANTS

Section 3.1 <u>Covenants of Registry Operator.</u> Registry Operator covenants and agrees with ICANN as follows:

(a) <u>Preserve Security and Stability.</u>

(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.

(b) <u>Consensus Policies.</u>

(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.

(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.

(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."

(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:

(A) principles for allocation of registered names in the TLD (e.g., first-come, first-served, timely renewal, holding period after expiration);

(B) prohibitions on warehousing of or speculation in domain names by registries or registrars;

(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);

(D) maintenance of and access to accurate and up-to-date information concerning domain name registrations;

(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

(F)   resolution of disputes regarding whether particular parties may register or maintain registration of particular domain names.

(v)   In addition to the other limitations on Consensus Policies, they shall not:

(A)   prescribe or limit the price of Registry Services;

(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;

(C)   for three years following the Effective Date, modify the procedure for the consideration of proposed Registry Services;

(D)   modify the terms or conditions for the renewal or termination of this Agreement;

(E)   modify ICANN's obligations to Registry Operator under Section 3.2 (a), (b), and (c);

(F)   modify the limitations on Consensus Policies or Temporary Specifications or Policies;

(G)   modify the definition of Registry Services;

(H)   modify the terms of Sections 7.2 and 7.3, below; and

(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).

(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.

(c) <u>Handling of Registry Data</u>.

(i)   Data Escrow. 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-related key material; (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) the DNSSEC-related material necessary to sign the .net zone (e.g., public and private portions of .net zone key-signing keys and zone-signing keys). 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.

(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.

(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).

(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 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.

(v)   Whois Service. Registry Operator shall provide such whois data as set forth in Appendix 5.

(d) Registry Operations.

(i)   Registration Restrictions. 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.

(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,

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.

(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 .net registry as of the Effective Date, as the case may be; (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. Only Registry Services defined in (a) and (b) above are subject to the maximum price provisions of Section 7.3, below.

(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:

> (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.

> (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.

> (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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(f) <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:

(a) <u>Open and Transparent</u>. Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

(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.

(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 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.

(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.

(e) 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.

ARTICLE IV TERM OF AGREEMENT

Section 4.1 Term. The initial term of this Agreement shall be six years from the Effective Date (the "Expiration Date"). Registry Operator agrees that upon the earlier of (i) termination of this Agreement by ICANN in accordance with Article VI below or (ii) the Expiration Date, it will cease to be the Registry Operator for the TLD, unless, with respect to termination under the foregoing clause (ii), Registry Operator and ICANN agree on terms for renewal of the Agreement as set forth in Section 4.2 below prior to the Expiration Date.

Section 4.2 Renewal. This Agreement shall be renewed upon the expiration of the initial 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 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 5 largest gTLDs (determined by the number of domain name registrations under management at the time of renewal), 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 price of Registry Services; 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 obligations to Registry Operator under Section 3.2 (a), (b), and (c); the limitations on Consensus Policies or Temporary Specifications or Policies; the definition of Registry Services; or the terms of Section 7.3. Upon renewal, Registry-Level Transaction Fees may be reasonably modified so long as any increase in such fees shall not exceed the average of the percentage increase in Registry-Level Transaction Fees for the 5 largest gTLDs (determined as above), during the prior three-year period.

Section 4.3 Changes. 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.

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 V DISPUTE RESOLUTION

Section 5.1 <u>Resolution of Disputes</u>.

(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.

(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 an 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 the amount of Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to Section 7.2 of this Agreement. 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 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 VI TERMINATION PROVISIONS

Section 6.1   Termination by ICANN. 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); Section 5.2 or Section 7.3 within thirty 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   Bankruptcy. This Agreement shall automatically terminate in the event Registry Operator shall voluntarily or involuntarily be subject to bankruptcy proceedings.

Section 6.3   Transition of Registry upon Termination of Agreement. 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   Rights in Data. 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   No Reimbursement. 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 VII SPECIAL PROVISIONS

Section 7.1   Registry-Registrar Agreement.

(a) Access to Registry Services. 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:

> (i)   All registrars (including any registrar affiliated with Registry Operator) 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;
>
> (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;
>
> (iii)   All registrars have the same level of access to customer support personnel via telephone, e-mail and Registry Operator's website;
>
> (iv)   All registrars have the same level of access to registry resources to resolve registry/registrar or registrar/registrar disputes and technical and/or administrative customer service issues;
>
> (v)   All registrars have the same level of access to data generated by Registry Operator to reconcile their registration activities from Registry Operator's Web and ftp servers;
>
> (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
>
> (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.

(b) 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.

(c) Restrictions on Acquisition of Ownership or Controlling Interest in Registrar. 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   Fees to be Paid to ICANN.

(a) Registry-Level Transaction Fee. Commencing on 1 July 2005, Registry Operator shall pay ICANN a Registry-Level Transaction Fee in an amount equal to US$0.75 for each annual increment of an initial or renewal domain name registration and for transferring a domain name registration from one ICANN-accredited registrar to another during the calendar quarter to which the Registry-Level Transaction Fee pertains. ICANN intends to apply this fee to purposes including: (a) a special restricted fund for developing country Internet communities to enable further participation in the ICANN mission by developing country stakeholders, (b) a special restricted fund to enhance and facilitate the security and stability of the DNS, and (c) general operating funds to support ICANN's mission to ensure the stable and secure operation of the DNS.

(b) Payment Schedule. Registry Operator shall pay the Registry-Level Fees specified in Sections 7.2(a) and (c), and Section 7.2(d), 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.

(c) Fixed Registry-Level Fee. Commencing on 1 July 2005, Registry Operator shall pay ICANN a quarterly Fixed Registry-Level Fee in an amount equal to US$37,950 for each quarter during the twelve-month period ending June 30, 2006. Such fee is subject to increase on July 1 of each year thereafter in an amount established by ICANN's Board of Directors, but not to exceed a sum equal to 115% of the prior year's fee. One dollar (USD) of the Fixed Registry-Level Fee shall be waived for each dollar that the Registry-Level Transaction Fee exceeds US$2,000,000 per annum.

(d) 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:

(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 eighty percent (80%) of the registrar level transaction fee as established pursuant to the approved 2004-2005 ICANN Budget.

(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.

(e) Interest on Late Payments. For any payments ten days or more overdue, 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   Pricing for Domain Name Registrations and Registry Services.

(a) Prices for Registry Services. From 1 July 2005 through 31 December 2006, 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 US$4.25 (consisting of a US$3.50 service fee and a US$0.75 ICANN fee). On 1 January 2007, the controls on Registry Operator's pricing set forth in this Agreement shall be eliminated, provided that the same price shall be charged to all registrars with respect to each annual increment of a new or renewal domain name registration, and for transferring a domain name registration from one ICANN-accredited registrar to another (provided that 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) Adjustments to Pricing for Domain Name Registrations. 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.

ARTICLE VIII MISCELLANEOUS

Section 8.1   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 directly relating to third-party claims against ICANN and any of the following: (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. With respect to each of (a), (c), (d), and (e), such indemnification obligation shall not apply to any claim 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.

Section 8.2 Indemnification Procedures. 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. If ICANN receives notice of any third-party claim 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 delivered to ICANN within a reasonable period of time, 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 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 ICANN other than the payment of money in an amount that is indemnified shall be entered into without the consent of ICANN, which consent shall not be unreasonably withheld. 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 reasonable cost and expense of Registry Operator.

Section 8.3 No Offset. 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 Use of ICANN Name and Logo. 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>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. 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 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. Any subcontracting of technical operations shall provide that the subcontracted entity become party to the data escrow agreement mandated by Section 3.1(c)(i) hereof.

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, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within two (2) business days. 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:
>
> VeriSign, Inc.
> 21355 Ridgetop Circle
> Dulles, VA 20166
> Telephone: 1-703-948-4463
> Facsimile: 1-703-450-7326
> Attention: VP, Associate General Counsel, VNDS
> With a Required Copy to: General Counsel
> Email: (As specified from time to time.)

Section 8.9   Language.   Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

Section 8.10   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.

Section 8.11 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 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:

VeriSign, Inc.

By:_____
    Mark D. McLaughlin
    Sr. Vice President

Date:

.NET Agreement: Appendix 9
Approved Services

The Registry Agreement specifies a "Process for Consideration of Proposed Registry Services." The following services are specifically identified as having been approved by ICANN prior to the effective date of the Registry Agreement. As such, notwithstanding any other provisions of the Registry Agreement, VeriSign shall be free to deploy the following services:

- ConsoliDate, in accordance with VeriSign's Registrar Reference Manual (v2.2) Section 2.14 to 2.14.3;

- Internationalized Domain Names, in accordance with the <u>Letter from Rusty Lewis to Paul Twomey</u> dated 13 October 2003;

- Redemption Grace Period, in accordance with VeriSign's Registrar Reference Manual (v2.2) Section 2.5.1.1-2.5.1.3; and

- Wait Listing Service, in accordance with the <u>letter from John O. Jeffrey to Russell Lewis</u> dated 26 January 2004.

EXHIBIT 5

MORRISON | FOERSTER

November 28, 2005

Writer's Direct Contact
415/268-6214
KButler@mofo.com

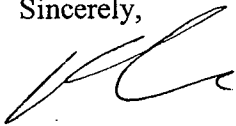By Telefacsimile (650) 426-5113

James M. Ulam
Senior Vice President, General Counsel and Secretary
Verisign, Inc.
487 E. Middlefield Road
Mountain View, CA 94043

Re: Complaint and Temporary Restraining Order

Dear Mr. Ulam:

        This letter is to inform you that the Coalition For ICANN Transparency Inc. ("CFIT")
intends today to file a Complaint and an *ex parte* Application for a Temporary Restraining
Order ("TRO") against the Internet Corporation for Assigned Names and Numbers
("ICANN") and Versign, Inc. ("VeriSign"), in the Northern District of California, San Jose
Division. The purpose of the TRO is to prevent ICANN from entering into the proposed
.com registry agreement with VeriSign, and to prevent ICANN from approving any new
registry services by VeriSign.

Sincerely,

/signature/

Keith L. Butler
Morrison & Foerster LLP

sf-2040634

EXHIBIT 6

MORRISON | FOERSTER

November 28, 2005

Writer's Direct Contact
415/268-6214
KButler@mofo.com
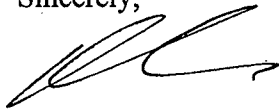
By Telefacsimile (310) 823-8649

John O. Jeffrey
General Counsel
ICANN
4676 Admiralty Way #330
Marina Del Rey, CA 90292-6601

Re: Complaint and Temporary Restraining Order

Dear Mr. Jeffrey:

This letter is to inform you that the Coalition For ICANN Transparency Inc. ("CFIT") intends today to file a Complaint and an *ex parte* Application for a Temporary Restraining Order ("TRO") against the Internet Corporation for Assigned Names and Numbers ("ICANN") and Versign, Inc. ("VeriSign"), in the Northern District of California, San Jose Division. The purpose of the TRO is to prevent ICANN from entering into the proposed .com registry agreement with VeriSign, and to prevent ICANN from approving any new registry services by VeriSign.

Sincerely,

Keith L. Butler
Morrison & Foerster LLP