Registry–Registrar Agreement

This Registry-Registrar Agreement (the "Agreement") is dated as of the date signed ("Effective Date") by and between Top Level Domain Holdings Limited, or its successor registry (the "Registry"), and _____, a corporation, with its principal place of business located at _____ ("Registrar"). The Registrar may be referred to individually as a "Party" and collectively as the "Parties." This Agreement applies to the top-level domains ("TLDs") indicated on Schedule B.

This Registry-Registrar Agreement is part of the Registry ~~policy~~ Policies ~~documents~~, the policies adapted and revised or amended from time to time by the Registry as posted on the Registry Website, which form a cohesive framework and must be read in conjunction with one another, including the Overview and Definitions, Naming Policy, Acceptable Use Policy, Registrant Agreement, Privacy & Whois Policy, and the Complaint Resolution Service. These documents, which include by reference applicable agreements, policies, laws, and regulations, represent the entirety of the obligations and responsibilities with regard to any domain name registration, application, or attempt to register or apply.

WHEREAS, multiple Registrars may provide Internet domain name registration services for this TLD for which the Registry operates and maintains a multiple registrar Shared Registry System (SRS);

WHEREAS, the Registrar wishes to register domain names in the SRS for this TLD.

NOW, THEREFORE, for and in consideration of the mutual promises, benefits and covenants contained herein and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Registry and the Registrar, intending to be legally bound, hereby agree as follows:

1. Definitions

In addition to the definitions found in the Registry Policies, the following terms are used in this Registry–Registrar Agreement have the following meaning;

a. "Confidential Information" means all information and materials including, without limitation: computer software, data, information, databases, protocols, reference implementation and documentation, and functional and interface specifications, provided by the disclosing party to the receiving party unless otherwise marked or identified as non-confidential.

b. "Inter-Registrar Transfer Policy" refers to ICANN's Inter-Registrar Transfer Policy, as may be amended from time to time, and is incorporated by reference herein.

c. The "Licensed Product" refers to the intellectual property required to access the Supported Protocol, and to the application programming interface (API), and software, collectively.

d. "Registered Name" refers to a domain name within the domain of the TLD, for which the Registry 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 may not appear in a TLD zone file (e.g., a registered but inactive name).

e. "Supported Protocol" means the Registry's implementation of EPP, or any successor protocols, supported by the SRS.

2. Obligations of the Parties

a. <u>SRS Operation and Access.</u> Throughout the Term of this Agreement, the Registry shall operate the SRS and provide the Registrar with access to the SRS to transmit domain

name registration information for the TLD(s) set forth in Schedule B to the SRS. Nothing in this Agreement entitles the Registrar to, and the Registrar has no right to, enforce any agreement between the Registry and ICANN.

b. Maintenance of Registrations Sponsored by the Registrar. Subject to the provisions of this Agreement, ICANN requirements, and Registry requirements including, without limitation, those authorized by ICANN, each as may be amended from time to time, the Registry shall maintain the registrations of Registered Names sponsored by the Registrar in the system during the term of the domain name registration.

c. Access to the SRS. Subject to the Registrar's successful completion of testing required by the Registry, the Registry will provide full access to the SRS for the TLD(s) set forth in Schedule B. The Registry shall make available to the Registrar: (i) an operational testing environment where Registrars may test the SRS; (ii) following the Registry's certification, at its sole discretion, that the Registrar has successfully completed the testing required by the Registry, the Registry will provide full documentation of the Supported Protocol, APIs to the Supported Protocol with documentation, and Registrar toolkits that will allow the Registrar to connect via EPP to the SRS to register second-level domain names through the SRS for the TLD(s) set forth in Schedule B. If the Registry elects to modify or upgrade the APIs and/or Supported Protocol, the Registry shall provide updated APIs to the Supported Protocol with documentation to the Registrar promptly as such updates become available. ~~It is the responsibility of the Registrar to implement such API updates in a timely fashion.~~ The Registry will provide 90 days notice to Registrar to implement the API and/or Supported Protocol updates and changes, except for routine configuration, maintenance, and software and hardware updates in the normal course of business, or for disaster recovery or other measures necessary to protect the security and stability of the registry, or in circumstances where a regulatory body (e.g. ICANN) or law enforcement mandates registry operators to meet shorter deadlines, in which case the Registrar will work with the Registry to agree on an appropriate date to implement such changes.

d. Registrar Responsibility for Customer Support. The Registrar shall provide Registrants with customer service and support for the registration, cancellation, modification, renewal, deletion, or transfer of Registered Names, domain name record support, billing, and technical support. The Registrar shall, consistent with ICANN policies, provide to Registrants emergency contact or 24/7 support information for critical situations such as domain name hijacking.

e. Data Submission Requirements. As part of its registration and sponsorship of Registered Names in the TLD(s), the Registrar shall submit complete data as required by the technical specifications of the SRS that are made available to the Registrar from time to time. The Registrar shall submit any corrections or updates from a Registrant relating to the registration information for a Registered Name to the Registry in a timely manner.

f. License. The Registrar grants the Registry a non-exclusive, royalty-free, non-transferable, worldwide limited license to the data elements consisting of the Registered Name, the IP addresses of nameservers, the identity of the registering Registrar, and other data required or permitted by the technical specifications of the SRS, as made available to the Registrar by the Registry from time to time or as required by ICANN for propagation and the provision of authorized access to the TLD zone files, or as otherwise required or permitted by a Registry's Registry Agreement with ICANN concerning the operation of the TLD, as may be amended from time to time.

g. Registrar's Registration Agreement and Domain Name Dispute Policy. The Registrar shall have in effect an electronic or paper registration agreement with each Registrant, which may be amended from time to time by the Registrar, ~~provided a copy is made available to the Registry within 15 days of the adoption of any such amendment(s), but~~ which shall at all times include, subject to applicable law, the terms of the Registrant Agreement and Registry Policies included above, especially with regard to those terms that are required

by ICANN. The Registrar shall provide the Registry with a copy of the Registrar's registration agreement upon request. The Registrar shall include in its registration agreement those terms required by this Agreement and other terms that are consistent with the Registrar's obligations to the Registry under this Agreement. The Registrar shall employ in its domain name registration agreement a requirement for registrants to submit to the Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS), Complaint Resolution Service (CRS), and the Inter-Registrar Transfer Policy, each in their most recent form and each as may be amended from time to time. In its registration agreement with each Registrant, the Registrar shall require such Registrant to:

i.   acknowledge and agree that the Registry reserves the right to deny, cancel, or transfer any registration or transaction, or place any domain name(s) on registry lock, hold, or similar status as it deems necessary, in its unlimited and sole discretion: (1) to comply with specifications adopted by any industry group generally recognized as authoritative with respect to the Internet (e.g., RFCs); (2) to correct mistakes made by the Registry or any Registrar in connection with a domain name registration; (3) if required by a URS, UDRP, CRS proceeding; or (4) for the non-payment of fees to the Registry; and

ii. indemnify and hold harmless the Registry and its subcontractors, and its and their employees, directors, officers, representatives, delegees, shareholders, affiliates, agents, successors, and/or assigns from and against any and all claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses arising out of or relating to, for any reason whatsoever, the Registrant's domain name registration. The Registrar's registration agreement shall further require that this indemnification obligation survive the termination or expiration of the registration agreement

h.   <u>URS High-Level Technical Requirements.</u> In addition to any other requirement under the URS, the Registrar must accept and process payments for the renewal of a domain name by a URS Complainant in cases where the URS Complainant prevailed and the Registrar must not renew a domain name to a URS Complainant who prevailed for longer than one year (if allowed by the maximum validity period of the TLD).

i.   <u>Secure Connection.</u> The Registrar agrees to develop and employ in its domain name registration business all necessary technology, procedures, processes, and restrictions to ensure that its connection to the SRS is secure. All data exchanged between the Registrar's system and the SRS shall be protected to avoid unintended disclosure of information. The Registrar shall employ commercially reasonable measures to prevent its access to the Registry System granted hereunder from being used to (1) allow, enable, or otherwise support the transmission by email, telephone, or facsimile of mass unsolicited advertising or solicitations to persons or entities other than its own existing customers; or (2) enable high volume, automated, electronic processes that send queries or data to the systems of the Registry, any other registry operated under an agreement with ICANN, or any ICANN-accredited the Registrar, except as reasonably necessary to register domain names or modify existing registrations.

Each EPP session shall be authenticated and encrypted using two-way secure socket layer ("SSL") protocol. The Registrar agrees to authenticate every EPP client connection with the SRS using both (i) a server certificate issued by a commercial Certification Authority ~~identified by the Registry~~ to be chosen by the Registrar, subject to Registry's agreement, which agreement shall not be unreasonably withheld and (ii) its Registrar password, which it shall disclose only to its employees with a need to know. The Registrar agrees to notify the Registry within four (4) hours of learning that its Registrar password has been compromised in any way or if its server certificate has been revoked by the issuing Certification Authority or compromised in any way.

Additionally, the Registrar must ensure that access to registrant accounts is adequately protected by, at a minimum, a secure log-in process that requires username and password authentication and the Registrar must comply with all other security-related ICANN Registrar accreditation requirements.

Upon prior written notification to the Registrar, the Registry may require other industry standard security provisions, practices, or technology to ensure that the Registry System is secure and stable, which the Registry may adopt from time to time in its sole and complete discretion. ~~Failure by the Registrar to comply with the Registry's standards as in effect at any time will be considered a material breach of this Agreement.~~ In the event that the Registrar does not comply with the Registry standards, the Registry will provide the Registrar a 30-day notice to inform the Registrar of the need to either correct non-compliance or agree on a mutually acceptable plan with Registry to correct non-compliance, and the time period in which such plan must be completed. Failure to meet the standards at the end of the agreed period will constitute a material breach of the agreement. The Registry's failure at any time to declare a material breach does not constitute a waiver of its right to do so in the future.

i. Handling of Personal information. The Registry shall notify the Registrar of the purposes for which Personal Information submitted to the Registry by the Registrar is collected, the intended recipients (or categories of recipients) of such Personal Information, and the mechanism for access to and correction of such Personal Information. The Registry shall take all steps required by applicable laws, rules, and regulations to protect Personal Information from loss, misuse, unauthorized disclosure, alteration or destruction. The Registry shall not use or authorize the use of Personal Information in a way that is incompatible with the notice provided to the Registrars or applicable laws, rules, and regulations. The Registry may from time to time use the demographic data collected for statistical analysis, provided that this analysis will not disclose individual Personal information and provided that such use is compatible with the notice provided to the Registrars regarding the purpose and procedures for such use.

ii. Authorization Codes. The Registrar shall not provide identical Registrar-generated authorization <authinfo> codes for domain names registered by different registrants with the same Registrar. The Registry in its sole discretion may choose to modify <authinfo> codes for a given domain and shall notify the sponsoring Registrar of such modifications via EPP compliant mechanisms (i.e., EPP<poll> or EPP<domain:Info>). Documentation of these mechanisms shall be made available to the Registrar by the Registry. The Registrar shall provide the Registrant with timely access to the authorization code along with the ability to modify the authorization code; the Registrar shall respond to any inquiry by a Registrant regarding access to and/or modification of an authorization code within five (5) calendar days.

j. Domain Name Lookup Capability. The Registrar agrees to employ in its domain name registration business the Registry's domain directory service (Whois) registry domain name lookup capability to determine if a requested domain name is available or currently unavailable for registration. The Registrar also agrees, at its expense, to provide an interactive web page and a port 43 Whois service, subject to compliance with ICANN requirements, providing free public query-based access to up-to-date (i.e., updated at least daily) data concerning all active Registered Names sponsored by the Registrar for the TLD. The data accessible shall consist of elements that are designated from time to time according to an ICANN-adopted specification or policy or the Registrar Accreditation Agreement between the Registrar and ICANN.

k. Transfer of Sponsorship of Registrations. The Registrar agrees to implement transfers of Registered Name registrations from another Registrar to the Registrar and *vice versa* pursuant to the Inter-Registrar Transfer Policy as may be amended from time to time by ICANN.

l.   Time. The Registrar agrees that, in the event of any dispute concerning the time of the entry of a domain name registration into the Registry database, the time shown in the Registry records shall control.

m.   Compliance with Operational Requirements. The Registrar shall comply with each of the following requirements, as may be in effect from time to time, and, further, shall include in its registration agreement with each Registrant an obligation for such Registrant to comply with each of the following requirements:

   i.   ICANN standards, policies, procedures, and practices for which the Registry has monitoring responsibility in accordance with the Registry Agreement or other arrangement with ICANN; and

   ii.   Operational standards, policies, procedures, and practices for the TLD established from time to time by the Registry in a non-arbitrary manner and applicable to all Registrars ("Operational Requirements"), including affiliates of the Registry, and consistent with the Registry's Registry Agreement with ICANN, as applicable, upon the Registry's notification to the Registrar of the establishment of those terms and conditions upon 90-day notice, except in circumstances where a regulatory body (e.g. ICANN) or law enforcement mandates registries to meet shorter deadlines, in which case the Registrar will work with the Registry to agree on an appropriate date to implement such changes.

n.   Resolution of Technical Problems or Breach of Agreement. The Registrar agrees to employ necessary employees, contractors, or agents with sufficient technical training and experience to respond to and fix all technical problems concerning the use of the Supported Protocol, the APIs, and the Registry's SRS in conjunction with the Registrar's systems. The Registrar agrees that, in the event of significant degradation of the SRS or other emergency, or upon the Registrar's violation of the Registry operational requirements or breach of this Agreement, the Registry may, in its sole discretion, temporarily suspend or restrict access to the SRS. Such temporary suspensions or restrictions shall be applied in a non-arbitrary manner and shall be applied non-discriminatorily to any Registrar similarly situated, including affiliates of the Registry.

o.   Prohibited Domain Name Registrations. In addition to complying with ICANN standards, policies, procedures, and practices limiting domain names that may be registered, the Registrar agrees to comply with applicable statutes and regulations limiting the domain names that may be registered, as well as the Registry's Acceptable Use Policy and Naming Policy, as may be amended from time to time by the Registry at its sole discretion.

p.   ICANN Requirements. The Registry's obligations hereunder are subject to modification at any time as the result of ICANN-mandated requirements and ICANN Consensus Policies. Notwithstanding anything in this Agreement to the contrary, the Registrar shall comply with any such ICANN requirements in accordance with the timeline defined by ICANN.

q.   Accredited Registrar. During the term of this Agreement, the Registrar shall maintain in full force and effect its accreditation by ICANN as a Registrar for the TLD under the 2013 Registrar Accreditation Agreement or any subsequent version thereof. Failure to maintain such accreditation shall constitute a material breach of this Agreement

3. License

a.   License Grant. Subject to the terms and conditions of this Agreement, the Registry hereby grants the Registrar and the Registrar accepts a non-exclusive, royalty-free, non-transferable, worldwide limited license to use for the Term and purposes of this Agreement the Licensed Product, as well as updates and redesigns thereof, to provide domain name registration services in the TLD only and for no other purpose. The

Licensed Product, as well as updates and redesigns thereof, will enable the Registrar to register domain names in the TLD with the Registry on behalf of its Registrants. The Registrar, using the Licensed Product, as well as updates and redesigns thereof, will be able to invoke the following operations on the SRS: (i) check the availability of a domain name, (ii) register a domain name, (iii) renew a domain name, (iv) cancel the registration of a domain name it has registered, (v) update the nameservers of a domain name, (vi) transfer a domain name from another Registrar to itself with proper authorization (or *vice versa*), (vii) query a domain name registration record, (viii) register a nameserver, (ix) update the IP addresses of a nameserver, (x) delete a nameserver, (xi) query a nameserver, and (xii) establish and end an authenticated session.

b. <u>Limitations on Use.</u> Notwithstanding any other provisions in this Agreement, except with the prior written consent of the Registry, the Registrar shall not: (i) sublicense the Licensed Product or otherwise permit any use of the Licensed Product by or for the benefit of any party other than the Registrar, (ii) publish, distribute or permit disclosure of the Licensed Product other than to employees, contractors, and agents of the Registrar for use in the Registrar's domain name registration business, (iii) decompile, reverse engineer, copy, or re-engineer the Licensed Product for any unauthorized purpose, (iv) use or permit use of the Licensed Product in violation of the laws of the Republic of Ireland or local rule, regulation or law, or for any unlawful purpose. The Registrar agrees to employ the necessary measures to prevent its access to the SRS granted hereunder from being used to (i) allow, enable, or otherwise support the transmission by email, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than the Registrar's customers; or (ii) enable high volume, automated, electronic processes that send queries or data to the SRS of the Registry or any ICANN-Accredited Registrar, except as reasonably necessary to register domain names or modify existing registrations.

c. <u>Changes to Licensed Materials.</u> The Registry may from time to time replace or make modifications to the Licensed Product licensed hereunder, at its sole discretion, provided that the Registry provides 90 days notice to the Registrar to implement material changes that alter the functionality of the Licensed Product, except in circumstances where a regulatory body (e.g., ICANN) or law enforcement agency mandates registries to meet shorter deadline, in which case the Registrar will work with the Registry to agree on an appropriate date to implement such changes. For the avoidance of doubt, design or usability improvements to the web interface to Espresso shall not be considered material changes.

4. Support Services

a. <u>Engineering Support.</u> The Registry agrees to make available to the Registrar with reasonable Registrar Liaison telephone support (between the hours of 9AM and 5PM UTC or at such other times as may be mutually agreed upon) to address issues arising in connection with the Registrar's use of the SRS.

b. <u>Customer Service Support.</u> During the Term of this Agreement, the Registry will make customer service support available to the Registrar only, and not to Registrants or prospective customers of the Registrar, at the service levels set by ICANN, for nontechnical issues solely relating to the SRS and its operation. The Registry may make additional levels of customer service support available to the Registrar at its sole discretion. The Registry will provide the Registrar with a telephone number and email address for such support during implementation of the Licensed Product. First-level telephone support will be available on a 7-day/24-hour basis.

5. Fees

a. <u>Registration Fees.</u>

i. The Registrar agrees to pay the Registry the non-refundable fees set forth in Schedule B for initial and renewal registrations and other services provided by the Registry (collectively, the "Registration Fees").

ii. the Registry reserves the right to adjust the renewal Registration Fees, provided that any price increase shall be made only upon the minimum prior notice to the Registrar set by ICANN (as then in effect), provided that such notice may be by email, hand, registered mail, or courier or express delivery service, and provided that such adjustments are consistent with the Registry's Registry Agreement with ICANN.

iii. All Registration Fees are due ~~immediately~~ within thirty (30) days of the invoice date. The Registrar may be required to fund a Registrar Payment Account ("RPA") with the Registry from which its Registration Fees for any transaction will be debited immediately and to which credits, if any, due the Registrar will be refunded. In the event that the Registrar's RPA does not have sufficient funds to immediately pay a Registration Fee, then the Registry may, at its sole discretion, suspend the Registrar and registrations will not be accepted until the Registrar's RPA is replenished with sufficient funds to pay the Registration Fees for its submitted transactions. Credit may be granted in the Registry's sole discretion.

iv. The Registration Fees due under this Agreement are exclusive of tax. All taxes, duties, fees, and other governmental charges of any kind (including sales, turnover, service, use and value-added taxes, but excluding taxes based on the net income of the Registry) which are imposed by or under the authority of any government or any political subdivision thereof on the fees for any services, software, and/or hardware shall be borne by the Registrar and shall not be considered a part of, a deduction from, or an offset against such Registration Fees. All payments due to the Registry shall be made without any deduction or withholding on account of any tax, duty, charge, or penalty except as required by law, in which case, the sum payable by the Registrar from which such deduction or withholding is to be made shall be increased to the extent necessary to ensure that, after making such deduction or withholding, the Registry receives and retains (free from any liability with respect thereof) a net sum equal to the sum it would have received but for such deduction or withholding being required.

b. <u>Change in Registrar Sponsoring Domain Name.</u> The Registrar may assume sponsorship of a Registrant's existing domain name registration from another Registrar by following the Inter-Registrar Transfer Policy.

i. For each transfer of the sponsorship of a domain-name registration under the Inter-Registrar Transfer Policy, the Registrar agrees to pay the Registry the renewal registration fee associated with a one-year extension, as set forth above. The losing Registrar's Registration Fees will not be refunded as a result of any such transfer. The Registry reserves the right to charge transfer and other fees, as appropriate, with 180 days' written notice; or

ii. For a transfer approved by ICANN under the Inter-Registrar Transfer Policy, the Registrar agrees to pay the Registry the equivalent of a one-year registration fee for each domain-name transferred.

c. <u>Charges for ICANN Fees.</u> The Registry will immediately debit the Registrar's RPA or account for any variable registry-level fees paid or to be paid by the Registry to ICANN relating to the Registrar and the Registrar's transactions. 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.

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.

d.   <u>Non-Payment of Fees.</u> Timely payment of fees owing under this Section 5 is a material condition of performance under this Agreement. In the event that the Registrar fails to adequately fund its RPA ~~to immediately pay its Registration Fees and/or Variable Registry-Level Fees~~ or fails to pay its Registration Fees in a timely manner, the Registry will issue a 15-day notice to the Registrar requesting the payment for all outstanding invoices. If, by the end of the notice period, all invoices remain unpaid, the Registry may, at its sole discretion:

   i.   stop accepting new or renewal registrations from the Registrar;

   ii.   delete the domain names associated with invoices not paid in full from the Registry database;

   iii.   give written notice of termination of this Agreement pursuant to Section 6(a)(ii) (Miscellaneous: Term of Agreement and Termination: Termination for Cause) below; and/or

   iv.   pursue any other remedy under this Agreement.

6.   Miscellaneous

a.   <u>Term of Agreement and Termination.</u>

   i.   <u>Term of the Agreement; Revisions.</u> The duties and obligations of the Parties under this Agreement shall apply from the Effective Date through and including the last day of the calendar month sixty (60) months from the Effective Date (the "Initial Term"). Upon conclusion of the Initial Term, all provisions of this Agreement will automatically renew for successive five (5) year renewal periods until the Agreement has been terminated as provided herein, the Registrar elects not to renew, or the Registry ceases to operate the registry for the TLD. In the event that revisions to the Registry's Registry-Registrar Agreement are approved or adopted by ICANN, the Registrar shall have thirty (30) days from the date of notice of any such revision to review, comment on, and execute an amendment substituting the revised agreement in place of this Agreement, or the Registrar may, at its option exercised within such thirty (30) day period, terminate this Agreement immediately by giving written notice to the Registry; provided, however, that in the event the Registry does not receive such executed amendment or notice of termination from the Registrar within such thirty (30) day period of the date of the notice, the Registrar shall be deemed to have executed such amendment as of the thirty-first (31st) day after the date of the notice.

   ii.   <u>Termination for Cause.</u> In the event that either Party materially breaches any term of this Agreement including any of its representations and warranties hereunder and such breach is not substantially cured within thirty (30) calendar days after written notice thereof is given by the other Party, then the non-breaching Party may, by giving written notice thereof to the other Party, terminate this Agreement as of the date specified in such notice of termination.

   iii.   <u>Termination at Option of Registrar.</u> The Registrar may terminate this Agreement at any time by giving the Registry thirty (30) days prior written notice of termination.

   iv.   <u>Termination Upon Loss of Registrar's Accreditation.</u> This Agreement shall terminate immediately in the event that the Registrar's accreditation by ICANN, or its successor, is terminated or expires without renewal.

v.   Termination in the Event that Successor Registry Operator is Named. This Agreement shall terminate in the event that ICANN, as appropriate, designates another entity to operate the registry for the TLD.

vi. Termination in the Event of Bankruptcy. Registry may terminate this Agreement if the Registrar is adjudged insolvent or bankrupt, or if proceedings are instituted by or against the Registrar seeking relief, reorganization, or arrangement under any laws relating to insolvency, or seeking any assignment for the benefit of creditors, or seeking the appointment of a receiver, liquidator, or trustee of the Registrar's property or assets or the liquidation, dissolution, or winding up of the Registrar's business.

v.   Effect of Termination. Upon expiration or termination of this Agreement, the Registry will, to the extent it has the authority to do so, complete the registration of all domain names processed by the Registrar prior to the date of such expiration or termination, provided that the Registrar's payments to the Registry for Registration Fees are current and timely. Immediately upon any expiration or termination of this Agreement, the Registrar shall (i) transfer its sponsorship of Registered Name registrations to another licensed Registrar(s) of the Registry, in compliance with Part B of the Inter-Registrar Transfer Policy, or any other procedures established or approved by ICANN, and (ii) either return to the Registry or certify to the Registry the destruction of all data, software, documentation, and Confidential Information it has received under this Agreement. In the event of termination, the Registry reserves the right to immediately contact any and all Registrants to facilitate the orderly and stable transition of Registrants to other ICANN-accredited Registrars. All fees owing to the Registry shall be immediately due and payable.

vi. Survival. In the event of termination of this Agreement, the following sections shall survive: (i) License; the Registrar's Registration Agreement and Domain Name Dispute Policy; Indemnification Required of Registrants; Effect of Termination; No Third Party Beneficiaries, Relationship of the Parties; Attorneys' Fees; Dispute Resolution, Choice of Law, Venue; Use of Confidential Information; Limitation of Liability; Construction; Intellectual Property; and Indemnification; (ii) the Registrant's obligations to indemnify, defend, and hold harmless the Registry, as stated in Section 2.14 (g) (ii); and (iii) the Registrar's payment obligations as set forth in Section 5 with respect to fees incurred during the term of this Agreement. Neither Party shall be liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with its terms but each Party shall be liable for any damage arising from any breach by it of this Agreement.

b.   No Third Party Beneficiaries, Relationship of the Parties. This Agreement does not provide and shall not be construed to provide third parties (i.e., non-parties to this Agreement), including any Registrant, with any remedy, claim, cause of action, or privilege. Nothing in this Agreement shall be construed as creating an employer-employee or agency relationship, a partnership or a joint venture between the Parties.

c.   Force Majeure. Neither Party shall be responsible for any failure to perform any obligation or provide service hereunder because of any Act of God, strike, work stoppage, governmental acts or directives, war, riot or civil commotion, equipment or facilities shortages which are being experienced by providers of telecommunications services generally, or other similar force beyond such Party's reasonable control.

d.   Further Assurances. Each Party hereto shall execute and/or cause to be delivered to each other Party hereto such instruments and other documents, and shall take such other actions, as such other Party may reasonably request for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.

e.   Amendment in Writing. Except as otherwise provided in this Agreement, any amendment or supplement to this Agreement shall be in writing and duly executed by both Parties,

except that Schedule B may be amended by the Registry with 180 days written notice. Any new services approved by ICANN and purchased by the Registrar will be subject to such terms and conditions as may be established by the Registry through an appendix to this Agreement executed by the Registrar and the Registry.

f. <u>Attorneys' Fees.</u> If any legal action or other legal proceeding (including arbitration) relating to the performance under this Agreement or the enforcement of any provision of this Agreement is brought against either Party hereto, the prevailing Party shall be entitled to recover reasonable attorneys' fees, costs, and disbursements (in addition to any other relief to which the prevailing Party may be entitled).

g. <u>Dispute Resolution, Choice of Law, Venue.</u> The Parties shall attempt to resolve any disputes between them prior to resorting to litigation. This Agreement shall be exclusively governed by and construed in accordance with the laws of the Republic of Ireland applicable to contracts made and wholly performed therein, without regard to conflict of laws principles. The Registrar hereby irrevocably consents to the exclusive personal jurisdiction of the courts of the Republic of Ireland, for any and all claims or disputes directed against the Registry and which arise out of, purport to enforce, construe, or otherwise relate to the TLD, this Agreement, or the Registry policies. The exclusive venue for such action shall be the courts of the Republic of Ireland. The Registrar waives any right to object to venue or jurisdiction based on inconvenient forum or for any other reason, and the Registrar waives any statutory or other right pursuant to the laws of the jurisdiction in which the Registrar resides to have a case relating to this Agreement adjudicated or resolved in that jurisdiction.

h. <u>Notices.</u> Any notice or other communication required or permitted to be delivered to any Party under this Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service, by email or by fax during business hours) to the address or fax number set forth beneath the name of such Party below, unless party has given a notice of a change of address in writing:

> <u>if to Registrar:</u>
>
> Customer Name:
> Attention:
> Physical Address:
> City, State Postal:
> Telephone Number:
> Fax Number:
> Email Address:
>
> <u>with a copy to:</u>
>
> Customer Name:
> Attention:
> Physical Address:
> City, State Postal:
> Telephone Number:
> Fax Number:
> Email Address:
>
> <u>if to the Registry:</u>
>
> Registry Name:
> Attention:
> Physical Address:
> City, State Postal:
> Telephone Number:
> Fax Number:

Email Address:

<u>with a copy to:</u>

Minds + Machines Limited
32 Nassau Street
Dublin 2
Ireland
+353 (0) 1 677 8933
notice@mindsandmachines.com

i.   <u>Assignment/Sublicense.</u> Except as otherwise expressly provided herein, the provisions of this Agreement shall inure to the benefit of and be binding upon, the successors and permitted assigns of the Parties hereto. The Registrar may not assign, sublicense, or transfer this Agreement to any third party without the prior written consent of the Registry. The Registry may assign its rights or obligations under this Agreement to an affiliate without the consent of the Registrar.

j.   <u>Assignment in Connection with Assignment of Agreement with ICANN.</u> In the event that the Registry's Registry Agreement with ICANN for a TLD is validly assigned, the Registry's rights under this Agreement shall be automatically assigned to the assignee of the Registry Agreement. In the event that the Registrar's accreditation agreement with ICANN for the TLD is validly assigned, the Registrar's rights under this Agreement shall be automatically assigned to the assignee of the accreditation agreement, provided that the subsequent Registrar assumes the duties of the Registrar under this Agreement.

k.   <u>Use of Confidential Information.</u> During the term of this Agreement, each Party (the "Disclosing Party") may disclose its Confidential Information to the other Party (the "Receiving Party"). Each Party's use and disclosure of Confidential Information disclosed hereunder are subject to the following terms and conditions:

i.   The Receiving Party shall treat as strictly confidential, and use all reasonable efforts to preserve the secrecy and confidentiality of, all Confidential Information of the Disclosing Party including implementing reasonable physical security measures and operating procedures.

ii.   The Receiving Party shall make no disclosures whatsoever of any Confidential Information to others, provided however, that if the Receiving Party is a corporation, partnership, or similar entity, disclosure is permitted to the Receiving Party's officers, employees, contractors, and agents who have a demonstrable need to know such Confidential Information, provided the Receiving Party shall advise such personnel of the confidential nature of the Confidential Information and of the procedures required to maintain the confidentiality thereof, and shall require them to acknowledge in writing that they have read, understand, and agree to be individually bound by the terms of this Confidentiality Agreement.

iii.   The Receiving Party agrees that it will use any Confidential Information of the Disclosing Party solely for the purpose of exercising its right or performing its obligations under this Agreement and for no other purposes whatsoever.

iv.   The Receiving Party shall not modify or remove any confidentiality legends and/or copyright notices appearing on any Confidential Information of the Disclosing Party.

v.   The Receiving Party agrees not to prepare any derivative works based on the Confidential Information.

vi.   Notwithstanding the foregoing, this Subsection imposes no obligation upon the parties with respect to information that (i) is disclosed in the absence of a

confidentiality agreement and such disclosure was agreed to by the Disclosing Party in writing prior to such disclosure; or (ii) is or has entered the public domain through no fault of the Receiving Party; or (iii) is known by the Receiving Party prior to the time of disclosure; or (iv) is independently developed by the Receiving Party without use of the Confidential Information; or (v) is made generally available by the Disclosing Party without restriction on disclosure, or (vi) is required to be disclosed by law, regulation or court order; provided, that in the event the Receiving Party is required by law, regulation, or court order to disclose any of the Disclosing Party's Confidential Information, the Receiving Party will promptly notify the Disclosing Party in writing prior to making any such disclosure in order to facilitate the Disclosing Party seeking a protective order or other appropriate remedy from the proper authority, at the Disclosing Party's expense. The Receiving Party agrees to cooperate with the Disclosing Party in seeking such order or other remedy. The Receiving Party further agrees that if the Disclosing Party is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, it will furnish only that portion of the Confidential Information that is legally required.

l. Delays or Omissions; Waivers. No failure on the part of either Party to exercise any power, right, privilege, or remedy under this Agreement, and no delay on the part of either Party in exercising any power, right, privilege, or remedy under this Agreement, shall operate as a waiver of such power, right, privilege, or remedy; and no single or partial exercise or waiver of any such power, right, privilege, or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege, or remedy. No Party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege, or remedy under this Agreement, unless the waiver of such claim, power, right, privilege, or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

m. LIMITATION OF LIABILITY. IN NO EVENT WILL THE REGISTRY BE LIABLE TO THE REGISTRAR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES RESULTING FROM LOSS OF PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE REGISTRY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE MAXIMUM AGGREGATE LIABILITY OF THE PARTIES EXCEED THE LESSER OF (I) THE TOTAL AMOUNT PAID TO REGTRY UNDER THE TERMS OF THIS AGREEMENT FOR THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD, OR (ii) €500,000.

n. Construction. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement.

o. Intellectual Property. Subject to Section 2(f) ("License") above, each Party will continue to independently own its intellectual property, including all patents, trademarks, trade names, service marks, copyrights, trade secrets, proprietary processes, and all other forms of intellectual property.

p. Representations and Warranties.

i. Registrar. The Registrar represents and warrants that: (1) it is a corporation duly incorporated, validly existing and in good standing under the laws of _____; (2) it has all requisite corporate power and authority to execute, deliver, be bound by, and perform its obligations under this Agreement; (3) it is, and during the Term of this Agreement will continue to be, accredited by ICANN or its successor; (4) the execution, performance and delivery of this Agreement has been duly authorized by the Registrar; and (5) no further approval, authorization or consent of any governmental or regulatory authority is required to be

obtained or made by the Registrar in order for it to enter into and perform its obligations under this Agreement.

ii. <u>The Registry.</u> The Registry represents and warrants that: (1) it is a corporation duly organized, validly existing and in good standing under the laws of the Republic of Ireland; (2) it has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement; (3) the execution, performance, and delivery of this Agreement has been duly authorized by the Registry; and (4) no further approval, authorization, or consent of any governmental or regulatory authority is required to be obtained or made by the Registry in order for it to enter into and perform its obligations under this Agreement.

iii. <u>DISCLAIMER OF WARRANTIES.</u> THE EPP, APIS, SOFTWARE, AND DATA ARE PROVIDED "AS-IS" AND WITHOUT ANY WARRANTY OF ANY KIND. THE REGISTRY EXPRESSLY DISCLAIMS ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. THE REGISTRY DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE EPP, APIS, OR SOFTWARE WILL MEET THE REGISTRAR'S REQUIREMENTS, OR THAT THE OPERATION OF THE EPP, APIS, OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE EPP, APIS, DATA, OR SOFTWARE WILL BE CORRECTED. FURTHERMORE, THE REGISTRY DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE EPP, APIS, SOFTWARE, OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. SHOULD THE EPP, APIS, SOFTWARE, OR DOCUMENTATION PROVE DEFECTIVE, THE REGISTRAR ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION OF THE REGISTRAR'S OWN SYSTEMS AND SOFTWARE.

q. <u>Indemnification.</u> The Registrar, at its own expense and within thirty (30) days of presentation of a demand by the Registry under this paragraph, will indemnify and hold harmless the Registry and its employees, directors, officers, representatives, affiliates, delegees, shareholders, agents, successors, and/or assigns, against any claim, suit, action, or other proceeding brought against the Registry or any affiliate of the Registry based on or arising from any claim or alleged claim (i) relating to any product or service of the Registrar; (ii) relating to any agreement, including the Registrar's dispute policy, with any Registrant of the Registrar; or (iii) relating to the Registrar's domain name registration business, including, but not limited to, the Registrar's advertising, domain name application process, systems, and other processes, fees charged, billing practices, and customer service; provided, however, that in any such case: (a) the Registry provides the Registrar with prompt notice of any such claim, and (b) upon the Registrar's written request, the Registry will provide to the Registrar all available information and assistance reasonably necessary for the Registrar to defend such claim, provided that the Registrar reimburses the Registry for its actual and reasonable costs and expenses. The Registrar will not enter into any settlement or compromise of any such indemnifiable claim without the Registry's prior written consent, which consent shall not be unreasonably withheld. The Registrar will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by the Registry in connection with or arising from any such indemnifiable claim, suit, action or proceeding.

r. <u>Entire Agreement; Severability.</u> This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein. If any provision of this Agreement shall be held to be illegal, invalid, or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so

as to effect the intent of the Parties, and the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date ~~set forth in the first paragraph hereof~~ below.

for Registry by: for Registrar by:

_____   _____
Name   Company Name

_____   _____
Title   Name

_____   _____
Date   Title

                                          _____
                                          Date