

## Registry-Registrar Agreement Afilias New gTLDs

This Registry-Registrar Agreement (the “**Agreement**”), dated as of \_\_\_\_\_, is made and entered into by and between Afilias plc, a company organized under the laws of Ireland, with its principal place of business located at 4th Floor, International House, 3 Harbourmaster Place, IFSC, Dublin 1, Ireland (“**Afilias**”), and \_\_\_\_\_, a \_\_\_\_\_, with its principal place of business located at \_\_\_\_\_ (“**Registrar**”). Afilias and Registrar may be referred to individually as a “Party” and collectively as the “Parties.”

**WHEREAS**, Afilias has entered a Registry Agreement with the Internet Corporation for Assigned Names and Numbers to operate a shared registration system, TLD nameservers, and other equipment for the top-level domain \_\_\_\_\_ (the “**Registry TLD**”);

**WHEREAS**, multiple registrars will provide Internet domain name registration services within the Registry TLD;

**WHEREAS**, Registrar wishes to act as a registrar for domain names within the Registry 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, Afilias and Registrar, intending to be legally bound, hereby agree as follows:

### 1. DEFINITIONS AND INTERPRETATION

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Other terms used in this Agreement as defined terms shall have the meanings ascribed to them in the context in which they are defined.

- 1.1 “**APIs**” are the application program interfaces by which Registrar may interact, through the EPP, with the Registry System.
- 1.2 “**Confidential Information**” means all information and materials, including, without limitation, computer software, data, information, intellectual property, databases, protocols, reference implementation and documentation, financial information, statistics and functional and interface specifications, provided by the Disclosing Party to the Receiving Party under this Agreement and marked or otherwise identified as Confidential, provided that if a communication is oral, the Disclosing Party will notify the Receiving Party in writing, including by email, within 15 days of the disclosure that it is confidential.
- 1.3 “**Data Controller**” is a person or entity who, either alone or with others, controls the content and use of Personal Data.
- 1.4 “**Data Processor**” is a person or entity that processes Personal Data on behalf of a Data Controller.
- 1.5 “**DNS**” means the Internet domain name system.
- 1.6 “**Effective Date**” shall be the date first set forth above.

- 1.7 “**EPP**” means the Extensible Provisioning Protocol, which is the protocol used by the Registry System.
- 1.8 “**ICANN**” means the Internet Corporation for Assigned Names and Numbers.
- 1.9 “**Personal Data**” refers to data about any identified or identifiable natural living person.
- 1.10 “**Registered Name**” refers to a domain name within the domain of the Registry TLD, whether consisting of two or more (e.g., john.smith.TLD) levels, about which Afilias 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).
- 1.11 “**Registered Name Holder**” means the holder of a Registered Name.
- 1.12 “**Registrar Tool Kit**” comprises the EPP, APIs and Software.
- 1.13 “**Registry Agreement**” means the Registry Agreement between Afilias and ICANN for the operation of the Registry TLD, as amended, restated or replaced from time to time. The Registry Agreement is incorporated by reference with respect to those provisions regarding obligations of Registrar as set forth herein.
- 1.14 “**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.
- 1.15 “**Registry Services**” Registry Services are: (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 Afilias for the TLD registry as of the Effective Date; (b) other products or services that Afilias is required to provide because of the establishment of a Consensus Policy (as defined in the Registry Agreement); (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.
- 1.16 “**Registry TLD**” means the TLD for which this Agreement is entered into by the Parties as defined in the recitals above.
- 1.17 “**Registry System**” means the system operated by Afilias for Registered Names in the Registry TLD.
- 1.18 “**Software**” means reference client software intended to allow Registrar to develop its system to register second-level domain names through the Registry System.
- 1.19 “**Term**” means the term of this Agreement, as set forth in Subsection 9.1.
- 1.20 A “**TLD**” means a top-level domain of the DNS.
- 1.21. **References.** In this Agreement, unless the context requires otherwise, references to:
- 1.21.1 a “party” or “the parties” is to a party or the parties to this Agreement;
- 1.21.2 a “clause” is to a clause to this Agreement unless otherwise noted;

- 1.21.3** “persons” includes individuals, firms, partnerships, companies, corporations, associations, organisations, foundations and trusts, governments, state or agency of a state (whether or not having separate legal personality);
- 1.21.4** a statute or statutory provision includes any consolidation, re-enactment, modification or replacement of the same, any statute or statutory provision of which it is a consolidation, re-enactment or replacement of and any subordinate legislation in force under any of the same from time to time;
- 1.21.5** the masculine, feminine and neuter gender respectively includes the other genders, references to the singular include the plural (and vice versa) and references to persons include firms, corporations and unincorporated associations;
- 1.21.6** section headings and captions to the clauses in this Agreement are for convenience of reference only and shall not be considered a part of or affect the interpretation of this Agreement; and
- 1.21.7** general words, including those introduced by "other" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and in general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by general words. Accordingly the rule known as the ejusdem generis rule shall not apply to the interpretation of this Agreement.

## 2. OBLIGATIONS OF AFILIAS

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- 2.1 Access to Registry System.** Throughout the Term of this Agreement, Afiliias shall operate the Registry System and provide Registrar with access to the Registry System to transmit domain name registration information for the Registry TLD to the Registry System. Nothing in this Agreement entitles Registrar to enforce any agreement between Afiliias and ICANN.
- 2.2 Maintenance of Registrations Sponsored by Registrar.** Subject to the provisions of this Agreement, ICANN requirements, and Afiliias requirements authorized by ICANN, Afiliias shall maintain the registrations of Registered Names sponsored by Registrar in the Registry System during the term for which Registrar has paid the fees required by Subsection 4.1.
- 2.3 Provision of Tool Kit; License.** Promptly following the full execution of this Agreement, Afiliias shall provide to Registrar a copy of the Registrar Tool Kit, which shall provide sufficient technical specifications to permit Registrar interface with the Registry System and employ its features that are available to Registrar and other registrars. Subject to the terms and conditions of this Agreement, Afiliias hereby grants Registrar and Registrar accepts a non-exclusive, non-transferable, worldwide limited license to use for the Term and purposes of this Agreement, all components owned by or licensed to Afiliias in and to the EPP, APIs, any reference client software and any other intellectual property included in the Registrar Tool Kit, as well as updates and redesigns thereof, to provide domain name registration services in the Registry TLD only and for no other purpose.
- 2.4 Changes to System.** Afiliias may from time to time replace or make modifications to the EPP, APIs, or Software or other materials licensed hereunder that will modify, revise or augment the features of the Registry System. Afiliias will provide Registrar with at least ninety (90) days notice prior to the implementation of any material changes to the EPP, APIs, Software or other materials licensed hereunder. In the case of administrative or other non-material changes, Afiliias shall provide Registrar with at least forty-eight (48) hours prior notice. In the case of emergency changes, including without limitation changes made in direct response to

the detection of a material security vulnerability, an imminent material failure, significant degradation of the Registry System or other emergency, notice periods will not apply.

## **2.5 Engineering and Customer Service Support.**

**2.5.1. Engineering Support.** Afiliias agrees to provide Registrar with reasonable engineering telephone support (24/7/365) to address engineering issues arising in connection with Registrar's use of the Registry System.

**2.5.2 Customer Service Support.** During the Term of this Agreement, Afiliias will provide reasonable telephone and e-mail customer service support to Registrar (but not to Registered Name Holders or prospective customers of Registrar), for non-technical issues solely relating to the Registry System and its operation. Afiliias will provide Registrar with a telephone number and e-mail address for such support during implementation of the EPP, APIs and Software. First-level telephone support will be available on a 24/7/365 basis.

**2.6 Handling of Personal Data.** Afiliias shall notify Registrar of the purposes for which Personal Data submitted to Afiliias by Registrar is collected and processed, the intended recipients (or categories of recipients) of such Personal Data, and the mechanism for access to and correction of such Personal Data. It is agreed that such Personal Data may be stored in or transmitted to a country that does not have data protection standards which are the equivalent of those in the European Economic Area, including without limitation the United States of America. Afiliias shall take appropriate technical and organizational security measures to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction. Afiliias shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to Registrar. It is agreed that Afiliias may from time to time use the demographic data collected for statistical analysis, provided that this analysis will not disclose individual Personal Data and provided that such use is compatible with the notice provided to Registrar regarding the purpose and procedures for such use. Afiliias, to the extent it is a Data Processor of the Personal Data of which the Registrar is Data Controller, shall answer the Registrar's reasonable enquiries to enable it to monitor Afiliias compliance with this Clause 2.6.

**2.7 ICANN Requirements.** Afiliias' obligations hereunder are subject to modification at any time as the result of ICANN-mandated requirements and consensus policies. Notwithstanding anything in this Agreement to the contrary, Registrar shall comply with any such ICANN requirements in accordance with the timeline defined by ICANN.

**2.8 Unavailable Domain Names.** If requested by Registrar, Afiliias will provide Registrar with access to an FTP server which will contain the following files which shall be updated on a daily basis: (i) a list of all domain names in the TLD that are not available to be registered, including, but not limited to, restricted and/or reserved domains that have not been registered and (ii) a list of all domains that are priced differently than standard pricing for the TLD, including price information needed to support registration, renewal, redemption, and transfer transactions.

## **3. OBLIGATIONS OF REGISTRAR**

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**3.1 Accredited Registrar.** During the Term of this Agreement, Registrar shall maintain in full force and effect its accreditation by ICANN as a registrar for the Registry TLD.

**3.2 Registrar Responsibility for Customer Support.** Registrar shall provide (i) support to accept orders for registration, cancellation, modification, renewal, deletion or transfer of Registered Names and (ii) customer service (including domain name record support) and billing and technical support to Registered Name Holders. Registrar shall publish to

Registered Name Holders emergency contact information for critical situations such as domain name hijacking.

- 3.3 Registrar's Registration Agreement.** At all times while it is sponsoring the registration of any Registered Name within the Registry System, Registrar shall have in effect an electronic or paper registration agreement with the Registered Name Holder. Registrar shall include in its registration agreement those terms required by this Agreement and other terms that are consistent with Registrar's obligations to Afiliias under this Agreement.
- 3.4. Indemnification Required of Registered Name Holders.** In its registration agreement with each Registered Name Holder, Registrar shall require such Registered Name Holder to indemnify, defend and hold harmless Afiliias and its subcontractors, and the directors, officers, employees, affiliates and agents of each of them, from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to the Registered Name Holder's domain name registration. The registration agreement shall further require that this indemnification obligation survive the termination or expiration of the registration agreement.
- 3.5. Compliance with Terms and Conditions.** Registrar shall comply with each of the following requirements, and further shall include in its registration agreement with each Registered Name Holder, as applicable, an obligation for such Registered Name Holder to comply with each of the following requirements:
- 3.5.1** ICANN standards, policies, procedures, and practices as may be adopted or amended from time to time;
  - 3.5.2** operational standards, policies, procedures, and practices for the Registry TLD established from time to time by Afiliias in a non-arbitrary manner and applicable to all registrars, including affiliates of Afiliias, and consistent with ICANN's standards, policies, procedures, and practices and the Registry Agreement. Additional or revised Afiliias operational standards, policies, procedures, and practices for the Registry TLD shall be effective upon thirty days notice by Afiliias to Registrar. If there is a discrepancy between the terms required by this Agreement and the terms of the Registrar's registration agreement, the terms of this Agreement shall supercede those of the Registrar's registration agreement; and
  - 3.5.3** public interest commitments (as set forth in Specification 11 to the Registry Agreement, as amended from time to time), community registration policies (if applicable, as set forth in Specification 12 to the Registry Agreement, as amended from time to time) and Government Advisory Committee ("**GAC**") safeguards (as set forth in Exhibit B to this Agreement or otherwise published or provided to Registrar by Afiliias from time to time).
- 3.6 Additional Requirements for Registration Agreement.** In addition to the provisions of Subsection 3.5, in its registration agreement with each Registered Name Holder, Registrar shall require such Registered Name Holder to:
- 3.6.1** consent to the use, copying, distribution, publication, modification and other processing of Registered Name Holder's Personal Data by Afiliias and its designees and agents in a manner consistent with the purposes specified pursuant to this Agreement, including without limitation Subsections 2.6 and 3.2;
  - 3.6.2** submit to proceedings commenced under ICANN's Uniform Domain Name Dispute Resolution Policy ("**UDRP**") and/or Uniform Rapid Suspension ("**URS**"); and
  - 3.6.3** immediately correct and update the registration information for the Registered Name during the registration term for the Registered Name;

- 3.6.4** agree to be bound by the terms and conditions of the initial launch of the Registry TLD as published by Afiliias from time to time, including without limitation any sunrise period, limited registration period, or land rush period, and the dispute resolution policies and rights protection mechanisms mandated by ICANN or Afiliias for the TLD (including without limitation the Trademark Clearinghouse), and further to acknowledge that Afiliias has no liability of any kind for any loss or liability resulting from the proceedings and processes relating to the sunrise period, limited registration period, land rush period or other period associated with the initial launch of the Registry TLD, including, without limitation: (a) the ability or inability of a registrant to obtain a Registered Name during these periods, and (b) the results of any dispute resolution process regarding a registration; and
- 3.6.5** acknowledge and agree that Afiliias 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, that it deems necessary, in its discretion; (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of Afiliias, as well as its affiliates, subsidiaries, officers, directors, and employees; (4) per the terms of the registration agreement; (5) for the non-payment of fees by Registrar, including without limitation pursuant to the terms of any Credit Facility (as defined in Section 4.4) or (6) to correct mistakes made by Afiliias or any Registrar in connection with a domain name registration. Afiliias also reserves the right to place upon registry lock, hold or similar status a domain name during resolution of a dispute.

### **3.7 Data Submission Requirements.**

- 3.7.1** As part of its registration and sponsorship of Registered Names in the Registry TLD, Registrar shall submit complete data as required by technical specifications of the Registry System that are made available to Registrar from time to time. Registrar hereby grants Afiliias a non-exclusive, non-transferable, limited license to such data for propagation of and the provision of authorized access to the TLD zone files and as otherwise required in Afiliias' operation of the Registry TLD.
- 3.7.2** Registrar shall submit any corrections or updates from a Registered Name Holder relating to the registration information for a Registered Name to Afiliias in a timely manner.

### **3.8 Security.**

- 3.8.1** Registrar shall develop and employ in its domain name registration business all necessary and appropriate technological and organisational security measures and restrictions to ensure that its connection to the Registry System is secure and that all data exchanged between Registrar's system and the Registry System shall be protected to avoid unintended and/or unauthorized access or disclosure of information. Registrar shall employ the necessary measures to prevent its access to the Registry System granted hereunder from being used to (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than its own existing customers; or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Afiliias, any other registry operated under an agreement with ICANN, or any ICANN-accredited registrar, except as reasonably necessary to register domain names or modify existing registrations. In addition, Afiliias may require other reasonable security provisions to ensure that the Registry System is secure and stable.
- 3.8.2** Each session wherein Registrar accesses the Registry System shall be authenticated and encrypted using two-way secure socket layer ("**SSL**") protocol. At a minimum, Registrar shall authenticate every client connection with the Registry System using both an X.509 server

certificate issued by a commercial certification authority reasonably identified by the Registry Operator and its Registrar password. Registrar shall disclose only its Registrar password to its employees with a need to know. Registrar agrees to notify Afiliias within four 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.

- 3.8.3** Registrar shall not provide identical Registrar-generated authorization <authinfo> codes for domain names registered by different registrants with the same Registrar. Afiliias 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 poll event within 300 seconds of modification. Documentation of these mechanisms shall be made available to Registrar by Afiliias. The Registrar shall provide the Registered Name Holder with timely access to the authorization code along with the ability to modify the authorization code. Registrar shall respond to any inquiry by a Registered Name Holder regarding access to and/or modification of an authorization code within five (5) calendar days.
- 3.9 Resolution of Technical Problems.** Registrar shall 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 EPP, the APIs and the systems of Afiliias in conjunction with Registrar's systems. In the event of significant degradation of the Registry System or other emergency, Afiliias may, in its sole discretion, temporarily suspend or restrict Registrar's access to the Registry System. Such temporary suspensions shall be applied in a non-arbitrary manner and shall apply fairly to any registrar similarly situated, including affiliates of Afiliias.
- 3.10 Time.** 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.
- 3.11 Transfer of Registration Sponsorship.** Registrar agrees to implement transfers of Registered Name registrations from another registrar to Registrar and vice versa pursuant to the Policy on Transfer of Registrations Between Registrars as may be amended from time to time by ICANN (the "**Transfer Policy**").
- 3.12 Restrictions on Registered Names.** In addition to complying with ICANN standards, policies, procedures, and practices limiting domain names that may be registered, Registrar agrees to comply with applicable statutes and regulations limiting the domain names that may be registered.
- 3.13 URS.**
- 3.13.1 Whois Compliance.** Upon receipt of a URS determination in favor of the complainant, Registrar shall continue to display all of the information of the original Registrant except for the nameservers. In addition, Registrar shall cause the Whois to reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration.
- 3.13.2 Registration Extension.** Registrar shall offer the successful URS complainant the option to extend the registration period for one additional year at commercial rates.
- 3.13.3 Other Remedies.** Registrar shall not pursue other remedies in the event of a determination in favor of the complainant.

## 4. FEES

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- 4.1 Amount of Afiliass Fees.** Registrar agrees to pay Afiliass the fees set forth in Exhibit A for services provided by Afiliass to Registrar (collectively, "**Fees**"). Afiliass reserves the right to revise the Fees from time to time, provided that Afiliass shall provide notices to Registrar in compliance with Section 2.10 (Pricing for Registry Services) in the Registry Agreement, and with paragraph 4.1.1 below, prior to any changes in fees for initial registrations, renewal registrations or fees for registrations associated with transfers of sponsorship.
- 4.1.1 Revision of Registration Fees.** Notwithstanding the provisions of paragraph 4.1 above, the following additional notice requirements shall apply:
- 4.1.1.1 Initial Registrations.** With respect to changes in fees for initial domain name registrations for which Afiliass is required to provide 30 days prior notice to Registrar per the terms of the Registry Agreement, in the event that Afiliass desires to effect such fee changes more than two (2) times in any calendar year, Afiliass shall provide 180 days notice of any such additional change; and
- 4.1.1.2 Tiered Registration Pricing.** With respect to fees for initial domain name registrations during any period in which standard wholesale pricing for the TLD is charged on a tiered basis ("**Tiered Pricing**"), Afiliass shall provide 180 days notice of any change in such fees. The notification on price change applies to both a) the change in value of a tier, as well as b) the moving of one or more domain name(s) from one tier to another.
- 4.1.1.3 Fees for Other Services.** With respect to services provided to Registrar hereunder other than initial registrations, renewal registrations or transfers of sponsorship ("**Other Services**"), Afiliass shall provide 180 days prior notice.
- 4.1.2 Variable Fees.** Registrar agrees to pay Afiliass the applicable variable fees assessed to the Registry Operator by ICANN, as permitted by Section 6.3 of the Registry Agreement, by no later thirty (30) days after the date of an invoice from Afiliass for such fees.
- 4.2 Payment of Afiliass Fees.** In advance of incurring Fees, Registrar shall establish a deposit account, or, if agreed by Afiliass in its discretion, a letter of credit or Credit Facility (as defined below) (collectively or individually the "**Payment Security**"). All Fees are due immediately (subject to the terms of the Credit Facility, if applicable) upon receipt of applications for initial and renewal registrations, registrations associated with transfers of sponsorship, or upon provision of other services provided by Afiliass to Registrar. Payment shall be made via debit or draw down of the deposit account or letter of credit or, if established, per the terms of the Credit Facility. Afiliass shall provide monthly invoice statements to the Registrar.
- 4.3 Non-Payment of Fees.** In the event Registrar has insufficient funds deposited or available through the letter of credit or otherwise is in default of the terms of the Credit Facility, Afiliass may do any or all of the following in its discretion: (a) stop accepting new initial or renewal registrations, or registrations associated with transfers of sponsorship, from Registrar; (b) delete or transfer the domain names associated with any negative balance incurred or invoice not paid in full; (c) give written notice of termination of this Agreement pursuant to Subsection 9.2.1; (d) pursue remedies available under the Credit Facility and (e) pursue any other remedy under this Agreement.
- 4.4 Credit Facility.** If Registrar establishes Payment Security under Afiliass' credit policies which are posted online by Afiliass or otherwise made available by Afiliass to Registrar, as such



policies may be supplemented, amended or replaced from time to time (the “**Credit Facility**”), Registrar acknowledges that certain remedies regarding all of the domain names associated with Registrar are available to Afiliás under the Credit Facility in the case of the non-payment of fees by Registrar.

- 4.5 Taxes.** All Fees due under this Agreement are exclusive of tax. All taxes, duties, fees and other governmental charges of any kind (including sales, turnover, services, use and value-added taxes, but excluding taxes based on the net income of Afiliás) 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 Registrar and shall not be considered a part of, a deduction from or an offset against such Fees. All payments due to Afiliás 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 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, Afiliás 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.

## 5. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

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- 5.1 Use of Confidential Information.** 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 the Confidential Information of the other party shall be subject to the following terms and conditions:
- 5.1.1** 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.
- 5.1.2** 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.
- 5.1.3** The Receiving Party shall make no disclosures whatsoever of any Confidential Information of the Disclosing Party 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 confidentiality terms of this Agreement.
- 5.1.4** The Receiving Party shall not modify or remove any confidentiality legends and/or copyright notices appearing on any Confidential Information of the Disclosing Party.
- 5.1.5** The Receiving Party agrees not to prepare any derivative works based on the Confidential Information.
- 5.1.6** Notwithstanding the foregoing, this Subsection 5.1 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 Disclosing Party's Confidential Information, Receiving Party will promptly notify Disclosing Party in writing prior to making any such disclosure in order to facilitate Disclosing Party seeking a protective order or other appropriate remedy from the proper authority, at the Disclosing Party's expense. Receiving Party agrees to cooperate with Disclosing Party in seeking such order or other remedy. Receiving Party further agrees that if 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 which is legally required.

**5.1.7** The Receiving Party's duties under this Subsection 5.1 shall expire two (2) years after the expiration or termination of this Agreement or earlier, upon written agreement of the parties.

## **5.2 Intellectual Property.**

**5.2.1** Subject to the licenses granted hereunder, 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.

**5.2.2** Without limiting the generality of the foregoing, no commercial use rights or any licenses under any patent, patent application, copyright, trademark, knowhow, trade secret, or any other intellectual proprietary rights are granted by the Disclosing Party to the Receiving Party by this Agreement, or by any disclosure of any Confidential Information to the Receiving Party under this Agreement.

## **6. INDEMNITIES AND LIMITATION OF LIABILITY**

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### **6.1 Indemnification.**

**6.1.1 Indemnification by Registrar.** Registrar will indemnify, defend and hold harmless Afiliias and its subcontractors, and the directors, officers, employees, representatives, agents and affiliates of each of them, against any claim, suit, action, or other proceeding brought against any such party(ies) based on or arising from any claim or alleged claim: (i) relating to any product or service of Registrar; (ii) relating to any agreement, including Registrar's dispute policy, with any Registered Name Holder or registrar; or (iii) relating to Registrar's domain name registration business, including, but not limited to, Registrar's advertising, domain name application process, systems and other processes, fees charged, billing practices and customer service. Afiliias shall provide Registrar with notice of any such claim as soon as reasonably practicable after becoming aware of same, and upon Registrar's written request, Afiliias will provide to Registrar all available information and assistance reasonably necessary for Registrar to defend such claim, provided that Registrar reimburses Afiliias for Afiliias' actual and reasonable costs incurred in connection with providing such information and assistance. Registrar will not enter into any settlement or compromise of any such indemnifiable claim without Afiliias' prior written consent, which consent shall not be unreasonably withheld. 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 Afiliias in connection with or arising from any such indemnifiable claim, suit, action or proceeding.

- 6.1.2 Indemnification by Afiliias.** Afiliias will indemnify, defend and hold harmless Registrar and its subcontractors, and the directors, officers, employees, representatives, agents and affiliates of each of them, against any claim, suit, action, or other proceeding brought against any such party(ies) based on or arising from any claim or alleged claim relating to Afiliias' breach of its obligations under this Agreement. Registrar shall provide Afiliias with notice of any such claim as soon as reasonably practicable after becoming aware of same, and upon Afiliias' written request, Registrar will provide to Afiliias all available information and assistance reasonably necessary for Afiliias to defend such claim, provided that Afiliias reimburses Registrar for Registrar's actual and reasonable costs incurred in connection with providing such information and assistance. Afiliias will not enter into any settlement or compromise of any such indemnifiable claim without Registrar's prior written consent, which consent shall not be unreasonably withheld. Afiliias 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 Registrar in connection with or arising from any such indemnifiable claim, suit, action or proceeding.
- 6.2 Representation and Warranty.** Registrar represents and warrants that: (i) it is an entity duly formed, validly existing and in good standing under the law of the jurisdiction of its formation; (ii) it has all requisite power and authority to execute, deliver and perform its obligations under this Agreement; (iii) the execution, performance and delivery of this Agreement has been duly authorized by Registrar; (iv) it is accredited by ICANN or its successor and (v) no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by Registrar in order for it to enter into and perform its obligations under this Agreement.
- 6.3 Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES RESULTING FROM LOSS OF PROFITS OR BUSINESS INTERRUPTION, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE MAXIMUM AGGREGATE LIABILITY OF AFILIAS AND ITS SUBCONTRACTORS EXCEED THE LESSER OF (i) THE TOTAL AMOUNT PAID TO AFILIAS UNDER THE TERMS OF THIS AGREEMENT FOR THE IMMEDIATELY PRECEEDING 12 MONTH PERIOD, OR (ii) \$100,000 USD.
- 6.4 Disclaimer of Warranties.** THE REGISTRAR TOOL KIT AND ALL OTHER ITEMS PROVIDED BY AFILIAS HEREUNDER ARE PROVIDED "AS-IS" AND WITHOUT ANY WARRANTY OF ANY KIND. AFILIAS 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. AFILIAS DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE REGISTRAR TOOL KIT WILL MEET REGISTRAR'S REQUIREMENTS, OR THAT THE OPERATION OF THE REGISTRAR TOOL KIT WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE REGISTRAR TOOL KIT WILL BE CORRECTED. FURTHERMORE, AFILIAS DOES NOT WARRANT NOR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE REGISTRAR TOOL KIT OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. SHOULD THE REGISTRAR TOOL KIT PROVE DEFECTIVE, REGISTRAR ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION OF REGISTRAR'S OWN SYSTEMS AND SOFTWARE.
- 6.5 Reservation of Rights.** Afiliias 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, that it deems necessary, in its discretion; (1) to protect the integrity and stability of the registry; (2)

to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of Afiliias, as well as its affiliates, subsidiaries, officers, directors, and employees; (4) for violations of this Agreement, including, without limitation, the exhibits hereto; (5) for the non-payment of fees by Registrar, including without limitation per the terms of the Credit Facility or (6) to correct mistakes made by Afiliias or any Registrar in connection with a domain name registration. Afiliias also reserves the right to place a domain name on registry hold, registry lock, or similar status during resolution of a dispute.

## 7. INSURANCE

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**7.1 Insurance Requirements.** Registrar shall acquire, on or before the Effective Date, at least US \$1,000,000 in comprehensive general liability insurance from a reputable insurance provider with a rating equivalent to an A.M. Best rating of "A" or better and shall maintain insurance meeting these requirements throughout the Term of this Agreement. Registrar shall provide a certificate of insurance to Afiliias evidencing such coverage from time to time upon Afiliias' reasonable request. Such insurance shall entitle Afiliias to seek compensation under such policy on behalf of Afiliias and its subcontractors, and the directors, officers, employees, representatives, agents, and affiliates of each of them, in respect of all costs and damages (including reasonable attorney fees) which any of them may suffer by reason of Registrar's failure to meet its indemnification obligations under this Agreement.

## 8. DISPUTE RESOLUTION AND GOVERNING LAW

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**8.1 Dispute Resolution.** 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 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 Dublin, Ireland. 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. Any litigation brought to enforce an arbitration award shall be brought in the courts in the Republic of Ireland; 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 a party during the pendency of an arbitration, each party shall have the right to seek temporary or preliminary injunctive relief from the arbitration panel or a court located in the courts in the Republic of Ireland, which shall not be a waiver of this arbitration agreement.

**8.2 Governing Law.** This Agreement is to be construed in accordance with and governed by the internal laws of Ireland without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of Ireland.

## 9. TERM AND TERMINATION

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**9.1 Term of the Agreement; Revisions.** The Term of this Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with the provisions of this

Agreement, shall expire on the last day of the calendar month which is two (2) years following the Effective Date. This Agreement shall automatically renew for additional successive two (2) year terms unless Registrar provides notice of termination to Afilias at least thirty (30) days prior to the end of the initial or any renewal term. In the event that revisions to this Agreement are approved or adopted by ICANN, Registrar may, at its option exercised within fifteen (15) days after receiving notice of such amendment, terminate this Agreement immediately by giving written notice to Afilias. In the event that Afilias does not receive such notice of termination from Registrar within such fifteen day period, Registrar shall be deemed to have accepted the revisions to this Agreement effective pursuant to the terms of notice from Afilias.

**9.2 Termination.** This Agreement may be terminated as follows:

**9.2.1 Termination for Cause.** In the event that either party materially breaches any of its obligations under this Agreement and such breach is not substantially cured within thirty 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.

**9.2.2 Termination at Option of Registrar.** Registrar may terminate this Agreement at any time by giving Afilias thirty days' notice of termination.

**9.2.3 Termination upon Loss of Registrar's Accreditation.** This Agreement shall terminate in the event Registrar's accreditation by ICANN is terminated or expires without renewal.

**9.2.4 Termination in the Event of Termination of Registry Agreement.** This Agreement shall terminate in the event that Afilias' Registry Agreement with ICANN is terminated or expires without entry of a subsequent Registry Agreement with ICANN and this Agreement is not assigned under Subsection 10.1.1.

**9.2.5 Termination in the Event of Insolvency or Bankruptcy.** Afilias may terminate this Agreement if Registrar is adjudged insolvent or bankrupt, or if proceedings are instituted by or against 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 a party's property or assets or the liquidation, dissolution or winding up of a party's business.

**9.3 Effect of Termination.** Upon the expiration or termination of this Agreement for any reason:

**9.3.1** Afilias will complete the registration of all domain names processed by Registrar prior to the effective date of such expiration or termination, provided that Registrar's payments to Afilias for Fees are current and timely.

**9.3.2** Registrar shall immediately transfer its sponsorship of Registered Names to another ICANN-accredited registrar in compliance with any procedures established or approved by ICANN.

**9.3.3** All Confidential Information of the Disclosing Party in the possession of the Receiving Party shall be immediately returned to the Disclosing Party.

**9.3.4** In the event of termination in accordance with the provisions of Sections 9.1 or 9.2, or upon the exercise of its rights under section 6.5, Afilias reserves the right to immediately contact any and all Registered Name Holders to facilitate the orderly and stable transition of Registered Name Holders to other ICANN-accredited registrars.+

**9.3.5** All fees owing to Afilias shall become immediately due and payable.

- 9.4 Survival.** In the event of termination of this Agreement, the following shall survive: (i) Subsections 2.6, 3.6, 4.3, 4.4, 5.1, 5.2, 6.1, 6.2, 6.3, 6.4, 6.5, 8.1, 9.4, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, 10.8, 10.9, and 10.10, and (ii) the Registered Name Holder's indemnification obligation under Subsection 3.4. Neither party shall be liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with its terms.

## 10. MISCELLANEOUS

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### 10.1 Assignments.

**10.1.1 Assignment to Successor Registry Operator.** In the event the Afiliias' Registry Agreement is terminated or expires without entry by Afiliias and ICANN of a subsequent registry agreement, Afiliias' rights under this Agreement may be assigned to a company with a subsequent registry agreement covering the Registry TLD upon ICANN's giving Registrar written notice within sixty days of the termination or expiration, provided that the subsequent registry operator assumes the duties of Afiliias under this Agreement.

**10.1.2 Assignment in Connection with Assignment of Agreement with ICANN.** In the event that Afiliias' Registry Agreement with ICANN for the Registry TLD is validly assigned, Afiliias' rights under this Agreement shall be automatically assigned to the assignee of the Registry Agreement, provided that the assignee assumes the duties of Afiliias under this Agreement. In the event that Registrar's accreditation agreement with ICANN for the Registry TLD is validly assigned, 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 Registrar under this Agreement.

**10.1.3 Other Assignments.** Except as otherwise expressly provided in this Agreement, the provisions of this Agreement shall inure to the benefit of and be binding upon, the successors and permitted assigns of the parties. Neither party shall assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld, provided however that Afiliias may assign its rights and obligations under this Agreement to an entity which Afiliias controls, is controlled by, or in relation to which it is under common control.

**10.2 Notices.** 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 e-mail or by facsimile during business hours) to the address or facsimile number set forth beneath the name of such party below, unless such party has given a notice of a change of address in writing:

If to Registrar:

with copy to:

If to Afilias:

Afilias plc  
4th Floor, International House  
3 Harbourmaster Place  
IFSC  
Dublin 1  
Ireland  
Attention: CEO  
phone: +353.1.854.1100  
facsimile: +353.1.791.8569

with a copy to:

Afilias plc  
c/o Afilias USA, Inc.  
300 Welsh Road  
Building 3, Suite 105  
Horsham, PA 19044  
USA  
Attention: General Counsel  
phone: +1.215.706.5700  
facsimile: +1.215 706.5701

- 10.3 Third-Party Beneficiaries.** The parties expressly agree that ICANN is an intended third-party beneficiary of this Agreement. Otherwise, this Agreement shall not be construed to create any obligation by either party to any non-party to this Agreement, including any holder of a Registered Name. Registrar expressly acknowledges that, notwithstanding anything in this Agreement to the contrary, it is not an intended third-party beneficiary of the Registry Agreement.
- 10.4 Relationship of the Parties.** Nothing in this Agreement shall be construed as creating an employer-employee or agency relationship, a partnership or a joint venture between the parties.
- 10.5 Force Majeure.** Neither party shall be liable to the other for any loss or damage resulting from any cause beyond its reasonable control (a "**Force Majeure Event**") including, but not limited to, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government or other competent authority, compliance with any statutory obligation or executive order, industrial disputes of any kind (whether or not involving either party's employees), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, and acts or omissions of persons for whom neither party is responsible. Upon occurrence of a Force Majeure Event and to the extent such occurrence interferes with either party's performance of this Agreement, such party shall be excused from performance of its obligations (other than payment obligations) during the first six months of such interference, provided that such party uses best efforts to avoid or remove such causes of nonperformance as soon as possible.

- 10.6 Amendments.** Except as provided in 9.1, no amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties.
- 10.7 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. Neither 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.
- 10.8 Entire Agreement.** This Agreement (including its exhibits, which form a part of it) constitutes the entire agreement between the parties concerning the subject matter of this Agreement 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.
- 10.9 Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable, each party agrees that such provision will 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 will not in any way be affected or impaired thereby. If necessary to effect the intent of the parties, the parties will negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.
- 10.10 Counterparts.** All executed copies of this Agreement are duplicate originals, equally admissible as evidence. This Agreement may be executed in counterparts, and such counterparts taken together shall be deemed the Agreement. A facsimile copy of a signature of a party hereto shall have the same effect and validity as an original signature.

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

Afilias plc

By:  
Name:  
Title:

[Registrar]

By:  
Name:  
Title: