

# Registry-Registrar Agreement

## Reference Schedule

<b>Effective Date:</b>	
<b>Initial Term:</b>	Five years
<b>Designated gTLD:</b>	
<b>Registry Operator:</b>	<b>Name:</b> The State of Victoria represented by the Department of Premier and Cabinet <b>Address:</b> Level 34, 121 Exhibition Street, Melbourne, Victoria, Australia, 3000 <b>Country of Incorporation:</b> Commonwealth of Australia <b>Contact:</b> Megan Vassarotti <b>Phone no.:</b> +61 3 96519798 <b>Fax no.:</b> N/A <b>Email:</b> <a href="mailto:domain@vic.gov.au">domain@vic.gov.au</a> (not for formal notices)
<b>Service Provider:</b>	<b>Name:</b> <del>AusRegistry International</del> <a href="#">Neustar Australia</a> Pty Ltd (ACN 103 729 620) <del>trading as ARI Registry Services</del> <b>Address:</b> Level 8, 10 Queens Road, Melbourne, Victoria, Australia 3004 <b>Phone no:</b> +61 3 9866 3710 <b>Fax no.:</b> +61 3 9866 1970 <b>Email:</b> <a href="mailto:legalaustralia@neustar.biz">legalaustralia@neustar.biz</a> <a href="mailto:legal@ariservices.com">legal@ariservices.com</a> (not for formal notices)
<b>Registrar:</b>	<b>Name:</b> <b>Country of Incorporation:</b> <b>Address:</b> <b>Contact:</b> <b>Phone no.:</b> <b>Fax no.:</b> <b>Email:</b> (not for formal notices)

Executed by and on behalf of the State of Victoria represented by the Department of Premier and Cabinet by an authorised representative:

Executed by and on behalf of the Registrar by an authorised representative:

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Signature of Representative

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Name and Title of Representative (Block Letters)

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Name and Title of Representative (Block Letters)

### RECITALS

- A The Registry Operator has entered into a Registry Agreement with ICANN whereby the Designated gTLD has been delegated by ICANN to the Registry Operator.
- B The Registrar wishes to act, as a registrar for Domain Names within the Designated gTLD.
- C The parties agree that the Registrar will be provided with access to the Registry System in connection with the provision of Registrar Services by the Registrar within the Designated gTLD on the following terms and conditions.

# OPERATIVE PROVISIONS

## 1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

**Accreditation Requirements** means:

- (a) the Registrar Access Contract;
- (b) the ICANN Accreditation Requirements; and
- (c) the Registry Operator Accreditation Requirements.

**Applicant** means a natural person, company or organisation in whose name an Application is submitted.

**Application** means the complete and technically correct request for a Domain Name, which complies with the Published Policies.

**Allocation** means the method by which a Domain Name is created and then assigned to an Applicant, **Allocated** shall have a corresponding meaning.

**Auctioned Name** means a Domain Name submitted to auction pursuant to the Registry Operator Published Policies.

**Auction Revenue** means the amounts received by, or on behalf of, the Registry Operator in relation to an Auctioned Name, less chargebacks, refunds or other costs.

**Business Day** means Monday to Friday excluding public holidays in Melbourne, Australia.

**Change of Control** occurs, in respect of an entity when:

- (a) a person who did not have Control of the entity at the Effective Date acquires Control of the entity; or
- (b) a person who did have Control of the entity at the Effective Date ceases to have Control of the entity.

**Confidential Information** means all information and materials about the other party or a third party, in any form, which comes into a party's possession pursuant to, or as a result of or in performance of this Agreement, excluding information:

- (a) which at the time of its first disclosure under this Agreement was in the public domain; or
- (b) which, after disclosure under this Agreement, comes into the public domain otherwise than by disclosure in breach of this Agreement; or
- (c) which is received by either party from a third party who has the right to provide the information and which is not itself subject to confidentiality; or
- (d) which was already in the party's possession or knowledge without restriction prior to its disclosure; or
- (e) which the party is required by law to disclose.

**Control** of an entity includes the direct or indirect power to:

- (a) direct the management or policies of the entity; or
- (b) control the membership of the board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that corporation or otherwise.

**Credit Limit** means the aggregate of:

- (a) all amounts invoiced to the Registrar for which payment has not yet been made to the Registry Operator, regardless of whether or not the payment terms have expired; and
- (b) the amounts that would be payable by the Registrar for transactions processed by the Registry Operator but not yet invoiced.

**Customer** means, as the case may be:

- (a) a Registrant; or
- (b) an Applicant.

**Customer Registration Agreement** means an agreement between the Registrar and the Customer, as contemplated in clause 5.4.

**Designated gTLD** means the TLD(s) described in the Reference Schedule.

**Domain Name** means a domain name for the Designated gTLD, regardless of whether or not it is a Registered Name.

**Effective Date** shall be the date on which this Agreement is executed by both parties.

**EPP** means the extensible provisioning protocol used in the Registry System.

**Fees** means fees in the nature of Schedule 3, payable by the Registrar under clause 8.1 of this Agreement.

**GST** has the same meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**ICANN** means the Internet Corporation for Assigned Names and Numbers.

**ICANN Accreditation** means accreditation issued by ICANN to be a registrar of the TLDs to which this Agreement relates.

**ICANN Accreditation Requirements** means the obligations prescribed by ICANN from time to time for ICANN Accreditation.

**ICANN Published Policies** means any ICANN Temporary Specifications or Policies and Consensus Policies (as defined in the Registry Agreement), including, without limitation, the latest versions, of policies identified at <http://www.icann.org/en/resources/registrars/consensus-policies> and any such policies that are from time to time developed and adopted by ICANN.

**ICANN RPMs** means any Rights Protection Mechanisms and associated rules, policies, requirements and procedures as outlined in Specification 7 of the Registry Agreement and the ICANN Published Policies, including but not limited to the TMCH Requirements, the Uniform Rapid Suspension (**URS**) requirements, the Trademark Post-Delegation Dispute Resolution Procedure (**PDDRP**) and the Registration Restriction Dispute Resolution Procedure (**RRDRP**).

**Initial Term** means the period of time expressed in the Reference Schedule, which commences on the Effective Date.

**Intellectual Property** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in

Article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**Issuer** means a person described in clause 8.7(d)(i).

**LCIA** means the London Court of International Arbitration.

**LCIA Rules** mean the rules of the London Court of International Arbitration.

**Participating Registrar** means a registrar for an Applicant who submitted at least one valid bid for an Auctioned Name.

**Performance Bond** means a financial guarantee of performance in the form required by clause 8.7(d).

**Personal Data** means any data about any identified or identifiable person.

**Personal Information** has the meaning in the Privacy Act.

**Premium Name** means Domain Names so designated by the Registry Operator in its sole discretion, subject to the Published Policies.

**Price List** means the list of Fees published by the Registry Operator from time to time.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Prohibited Activities** include any of distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law and other prohibited activities listed or added to in Specification 11 clause 3(a) of the Registry Agreement from time to time.

**Published Policies** collectively means the ICANN Published Policies, ICANN RPMs and the Registry Operator Published Policies.

**Registered Name** refers to a Domain Name created and registered within Designated gTLD, consisting of two or more levels of the Designated gTLD domain name hierarchy (e.g. name.TLD or another.name.TLD) about which the Registry Operator is engaged in providing Registry Services maintains data in the Registry System, arranges for such maintenance, or derives revenue from such maintenance, and includes a Domain Name in the Registry System even if it does not appear in a Zone File (for example, a registered but inactive Domain Name).

**Registrant** means the holder of a Registered Name.

**registrar** means a registrar who has entered into a registry-registrar agreement with the Registry Operator to access the Registry System.

**Registrar Access Contract** means a written agreement between the Registrar and the Registry Services Provider relating to, among other things, the Registrar's access to the Registry System, on such terms that are acceptable to the Registry Services Provider.

**Registrar Accreditation Agreement** means the agreement between the Registrar and ICANN in relation to ICANN Accreditation.

**Registrar Services** means the provision of services by the Registrar to Customers in respect of the Designated gTLD, including:

- (a) to take registration requests from Customers and make requests to the Registry System to register a Domain Name on behalf of Customers; and
- (b) to provide all associated services to such Customers, including services relating to the maintenance, transfer, modification, renewal and cancellation of a Domain Name; and

- (c) to provide such other services set out in this Agreement, the Registrar Accreditation Agreement or required by the Published Policies.

**Registrar Toolkit** means the registrar tool kit and comprises the items described in Schedule 1.

**Registry Agreement** means the Registry Agreement between Registry Operator and ICANN whereby the Registry Operator is designated as the registry operator of the Designated gTLD.

**Registry Data** means the data maintained in electronic form in the Registry System (other than Intellectual Property or non-public, proprietary or commercially sensitive information or property of the Registry Operator used by the Registry Operator in establishing and maintaining the Registry System or providing the Registry Services).

**Registry Operator Accreditation Requirements** means the accreditation requirements published by the Registry Operator from time to time, and those set out in clause 7.

**Registry Operator Published Policies** means those specifications and policies established and published from time to time by the Registry Operator or any subcontractor of the Registry Operator.

**Registry Services** means services provided by the Registry Operator pursuant to the Registry Agreement, including the operation of the Registry System and the Registry-Registrar Software.

**Registry Services Provider** means:

- (a) subject to clause (b), ~~Neustar Australia AusRegistry International Pty Ltd ACN 103729620 trading as ARI Registry Services;~~ -or
- (b) the person notified in writing to the Registrar by the Registry Operator.

**Registry-Registrar Software** means any software components owned by or licensed to the Registry Operator made available to the Registrar by the Registry Operator to provide Registrar Services in the Designated gTLD, including the Registrar Toolkit.

**Registry System** means the system operated by or on behalf of the Registry Operator for the Designated gTLD used to record, store and maintain details of available and registered Domain Names in the Designated gTLD.

**Renewal Term** means a period of time of that is of equal length of time as the Initial Term.

**Service Credit** means the performance related rebates specified in the Service Level Agreement for specified Service Level failures.

**Service Level** means a measure of the standard or quality to which the Registry Services are to be performed, as detailed in Service Level Agreement.

**Service Level Agreement** means the service level agreement set out in Schedule 4.

**Service Provider** means ~~Neustar Australia AusRegistry International Pty Ltd ACN 103 729 620 trading as ARI Registry Services.~~

**Special Allocation Procedure** means the processes, procedures and requirements specified in Schedule 6.

**Specified Rating** means a rating regarding a person's long term debt or obligations of either BBB (in respect of Standard & Poor's Australia) or Baa2 (in respect of Moody's Investors Service).

**Successful Registrar** means the registrar of the Applicant who was the successful bidder for the Auctioned Name.

**Successful Registrar's Share** means the percentage of the Auction Revenue, described in the Registry Operator Published Policies.

**TMCH Requirements** mean the most recent Trademark Clearinghouse Rights Protection Mechanism Requirements, published by ICANN pursuant to Specification 7 of the Registry Agreement and amended from time to time, or in the event that the Trademark Clearinghouse Rights Protection Mechanism Requirements have not yet been finalised, the most recent draft thereof.

**Term** means the term of this Agreement described in clause 3.

**TLD** means a top level domain name within the Internet's "Domain Name System".

**Unsuccessful Registrars** means the Participating Registrars other than the Successful Registrar.

**Unsuccessful Registrar's Share** means the quotient of the percentage of the Auction Revenue, described in the Registry Operator Published Policies, divided between all Unsuccessful Registrars.

**URS Complainant** means a party who initiated a Uniform Rapid Suspension complaint regarding a Domain Name.

**Zone File** means a file that contains the mapping between each Domain Name in the Designated gTLD and the Internet addresses of computers that can resolve sub-domains for the domain name to physical Internet addresses.

(b) the Registry Operator reserves the right to deny any Application, or cancel, lock, place on hold, transfer or delete any domain name (including any Domain Name) that it deems necessary, in its sole discretion:

- (i) to protect the integrity and stability of the Registry System;
- (ii) to comply with its obligations as a Registry Operator;
- (iii) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or in compliance with any dispute resolution policies or process;
- (iv) to avoid any liability, civil or criminal, on the part of Registry Operator, as well as its affiliates, subsidiaries, officers, directors, employees and subcontractors;
- (v) to ensure compliance with the Published Policies;
- (vi) to stop or prevent any violations of any terms and conditions of this Agreement; or
- (vii) to correct mistakes made by the Registry Operator or any Registrar or any of its service providers in connection with an Application or a domain name.

## 2. AUTHORISATION AS REGISTRAR

### 2.1 Authorisation

- (a) Subject to the following provisions of this Agreement, the Registry Operator hereby authorises the Registrar to access the Registry System on a non-exclusive basis in connection with the provision of Registrar Services by the Registrar.
- (b) The Registrar acknowledges and agrees that the provision of Registrar Services will be provided by the Registrar on its own behalf and for its own benefit.

### 2.2 Entitlement to Access Registry System

The Registrar acknowledges and agrees that it will only be entitled to access the Registry System in connection with the provision of Registrar Services by the Registrar during the Term:

- (a) from the Effective Date;
- (b) for so long as a Registrar Access Contract is on foot and has not expired or otherwise been lawfully terminated; and
- (c) for so long as it meets the Accreditation Requirements.

### 2.3 Access to Registry System

The Registrar acknowledges and agrees that:

- (a) access to the Registry System will not be made available to the Registrar, or if made available may be withdrawn, during such period as the Registrar does not meet the Accreditation Requirements; provided however that Registry Operator will not be entitled to withdraw access to the Registry System for a failure of the Registrar to meet the ICANN Accreditation Requirements unless ICANN provides advice to the Registry Operator that the Registrar has failed to meet the ICANN Accreditation Requirements; and

### 2.4 ICANN

Nothing in this Agreement entitles the Registrar to enforce any agreement between the Registry Operator and ICANN.

## 3. TERM

### 3.1 Initial term

This Agreement will commence on the Effective Date and, unless terminated earlier in accordance with clause 15, will continue for the Initial Term and thereafter will continue for any Renewal Term pursuant to clause 3.2.

### 3.2 Renewal term

The Term will be extended for a Renewal Term, commencing on the day after the end of the Initial Term, unless the Registrar gives the Registry Operator at least 60 days' written notice prior to the end of the Term that it does not wish to extend the Term.

## 4. OBLIGATIONS OF REGISTRY OPERATOR

### 4.1 Access to Registry System

Subject to clauses 2 and 4.2, throughout the Term of this Agreement, the Registry Operator shall provide the Registrar with access as a registrar to the Registry System in accordance with the Service Level Agreement.

### 4.2 Suspension of Access to the Registry System

In the event of degradation of the Registry System or other event that in the Registry Operator's opinion affects the security or stability of the Registry System, the Registry Operator may, in its sole discretion, temporarily suspend or restrict the Registrar's access to the Registry System. Except in the case of an emergency, Registry Operator will provide advance notice via email and phone call to Registrar's technical contact. To the extent reasonably practicable, the Registry Operator will provide advance notice by email or telephone to the Registrar's technical contact prior to any such suspension or restriction. Such temporary suspension or restriction will be applied in a non-arbitrary and non-discriminatory

manner and will apply fairly to any registrar similarly situated, including affiliates of the Registry Operator.

#### 4.3 Maintenance of Registrations Sponsored by Registrar

Subject to the provisions of this Agreement and the Published Policies, the Registry Operator shall maintain the registrations of Registered Names sponsored by Registrar in the Registry System during such period of the Term for which Registrar has paid the fees required by clause 8.

#### 4.4 Provision of Registry-Registrar Software

- (a) The Registry Operator shall provide to the Registrar a copy of the Registry-Registrar Software, which shall provide sufficient technical specifications to permit the Registrar to interface with the Registry System and employ the features of the Registry System that are available to registrars.
- (b) Subject to the terms and conditions of this Agreement, the Registry Operator hereby grants the Registrar and the Registrar accepts a non-exclusive, non-transferable, worldwide limited licence to use the Registry-Registrar Software for the Term to provide Registrar Services in the Designated gTLD in accordance with this Agreement only and for no other purpose.
- (c) Unless expressly allowed by the licence accompanying the Registry-Registrar Software, the Registrar must not:
  - (i) sell, lease, transfer, assign, sub-license, license or otherwise part with possession of the Registry-Registrar Software, except as expressly permitted in this Agreement; and
  - (ii) attempt to disassemble, decompile or otherwise reverse engineer any Registry-Registrar Software, except as permitted under this Agreement.
- (d) The Registry Operator may from time to time make modifications to the Registry-Registrar Software that will modify, revise or augment the features of the Registry System.

#### 4.5 Technical and Customer Service Support

Registry Operator shall provide Registrar with technical and customer service support as set forth in Schedule 2.

#### 4.6 Service Credits

- (a) Registry Operator will issue credits to Registrar as described in the Service Level Agreement at Schedule 4.
- (b) Registry Operator acknowledges and agrees that except as provided in clause 16, the Service Credits issued to Registrar pursuant to the Service Level Agreement shall be the Registrar's sole and exclusive remedy for any failure by Registry Operator to meet its obligations required of it by this Agreement.

#### 4.7 ICANN Requirements

The Registrar acknowledges and agrees that the Registry Operator's obligations hereunder are subject to modification at any time as the result of ICANN-mandated requirements, modifications to the Registry Agreement and any ICANN Published Policies.

#### 4.8 Deal with Registrars Consistently

The Registry Operator will deal with all registrars on an equitable and consistent basis, providing non-discriminatory access to Registry Services in accordance with the Registry Agreement.

#### 4.9 Registry Operator Published Policies

- (a) The Registry Operator will ensure that the Registry Operator Published Policies will be established in a non-arbitrary manner, will be applicable to all registrars, and will be consistent with ICANN's standards, policies, procedures, and practices and the Registry Agreement.
- (b) The Registry Operator may add to, or vary, the Registry Operator Published Policies, with any such change to take effect:
  - (i) immediately upon notice, in the case of the Registry Operator being required to do so by ICANN;
  - (ii) immediately upon notice, in the case of the Registry Operator reasonably determining that there is an emergency or a material threat to the security or stability of the Registry System;
  - (iii) in the case of a material change, on the Registry Operator giving 90 days notice; and
  - (iv) otherwise on the Registry Operator giving 30 days notice.

#### 4.10 Service Provider

The Registry Operator has appointed the Service Provider to deliver the Registry Service to the Registrar. The Registrar shall direct all inquiries, payments and communications to the Service Provider.

### 5. OBLIGATIONS OF REGISTRAR

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#### 5.1 Accredited Registrar

The Registrar:

- (a) before accessing the Registry System, will obtain ICANN Accreditation;
- (b) thereafter maintain ICANN Accreditation and comply with the Registrar Accreditation Agreement; and
- (c) maintain its accreditation to access the Registry System in accordance with clause 7.

#### 5.2 Registry Operator Published Policies

- (a) The Registrar must comply with the Registry Operator Published Policies, as if they were incorporated into, and form a part of this Agreement.
- (b) The Registrar acknowledges and agrees with the requirement set out in clause 5.2(a) as an essential part of this Agreement.
- (c) In the event of any inconsistencies between the provisions of this Agreement and the Registry Operator Published Policies, then to the extent of the inconsistencies the provisions of this Agreement and the Registry Operator Published Policies will be interpreted in the following order of priority:
  - (i) ~~this Agreement; and~~
  - (ii) ~~the Registry Operator Published Policies; and~~
  - (iii) ~~this Agreement.~~
- (d) Subject to clause 5.2(c), nothing in this clause 5.2 limits or otherwise affects the Registrar's obligations as otherwise provided in this Agreement.

5.3	<b>ICANN Published Policies</b>				(c) not allow a URS Complainant who prevailed in relation to that Domain Name to renew that Domain Name for longer than 1 year.
	Notwithstanding anything in this Agreement to the contrary, the Registrar will comply with all ICANN-mandated requirements and all ICANN Published Policies (as amended by ICANN from time to time) and in accordance with the timeline defined by ICANN.				
5.4	<b>Customer Registration Agreement</b>	5.7	<b>Customer Prohibited Activities</b>		(a) The Registrar will prescribe consequences for a Customer engaging in any Prohibited Activities. Such consequences must be consistent with applicable law and any related procedures or Published Policies and must include suspension or deletion of the Domain Name.
	(a) At all times when sponsoring the registration of any Registered Name within the Registry System, the Registrar shall have in effect an electronic or paper registration agreement with the Customer.			(b) In the event that the Registry Operator detects and informs the Registrar of any Prohibited Activities in respect of a Customer of the Registrar, the Registrar must investigate, and as required, enforce any consequences applicable to that Customer as prescribed by the Registrar pursuant to the Customer Registration Agreement.	
	(b) The Customer Registration Agreement must include the obligations and acknowledgements in a manner consistent with those described in Schedule 5 (unless otherwise agreed in writing by the Registry Operator) and must include those terms and conditions required by this Agreement and must nevertheless be consistent with this Agreement, the Registrar Accreditation Agreement and any applicable Published Policies.	5.8	<b>Data Submission Requirements</b>		(a) As part of its registration and sponsorship of Registered Names in the Designated gTLD, the Registrar shall submit complete data as required by the Published Policies and other technical specifications of the Registry System that are made available to the Registrar from time to time and update that data within 5 days of any changes coming to its attention.
	(c) The Customer Registration Agreement must require the Customer to expressly agree to the price of a Domain Name and acknowledge that price for the creation of a Domain Name may be greater than or less than the price for the renewal of that Domain Name.			(b) The Registrar hereby grants the Registry Operator an irrevocable non-exclusive license to such data for propagation of and the provision of authorised access to the Zone Files and as otherwise required in the Registry Operator's operation of the Registry System and to comply with the Registry Agreement.	(c) Any access to the Zone Files and use of data in the Zone Files must be conducted with reference to the obligations of the parties pursuant to any relevant ICANN Published Policies.
	(d) The Registrar will provide:			(d) The Registry Operator will provide the Registrar with back-up of the list of unavailable domain names for each TLD ("Zone File"). The Zone File will include all domains that are not available to be registered. The Registry Operator will provide the Registrar with a daily file that includes all Registrar registered domains with renewal and redemption pricing, if different than the standard pricing.	
	(i) the most current version of the Customer Registration Agreement hosted online at a URL and will notify the Registry Operator of any changes to the URL; or,				
	(ii) upon written request from the Registry Operator, the Registrar will, within 14 days of the request, provide the Registry Operator with a certified copy of any Customer Registration Agreement sought in the Registry Operator's request.				
5.5	<b>Registrar Responsibility for Customer support</b>	5.9	<b>Security</b>		(a) The Registrar shall develop and employ in its domain name registration business all necessary technology and restrictions to ensure that its connection to the Registry System is secure and that all data exchanged between the Registrar's system and the Registry System shall be protected to avoid unintended disclosure of information.
	Registrar shall provide:			(b) On at least 30 days written notification to the Registrar from the Registry Operator, the Registrar must employ industry standard security provisions, practices or technologies prescribed by the Registry Operator from time to time.	
	(a) support to accept requests for registration, cancellation, deletion, renewal, maintenance, restoration or transfer of Domain Names;				
	(b) customer service (including Domain Name record support) and billing and technical support to Registrants; and				
	(c) any other customer support to Customers or other persons as required by this Agreement or the Published Policies.				
5.6	<b>Registrar Requirements for Uniform Rapid Suspension</b>	5.10	<b>Resolution of Technical Problems</b>		The Registrar shall employ necessary employees, contractors, or agents with sufficient technical training and experience to respond to and fix all technical problems arising in the Registrar's systems which affect the Registrar's use of the Registry-Registrar Software or the systems of the Registry Operator.
	Subject to the Published Policies the Registrar must:				
	(a) ensure that a Domain Name that has been suspended as a result of a final decision of a Uniform Rapid Suspension complaint remains registered to the person who was the Registrant at the time of suspension;				
	(b) accept and process payments for the renewal of a Domain Name by a URS Complainant in such cases where the URS Complainant has prevailed in relation to that Domain Name; and				



- 5.11 **Time**
- In the event of any dispute concerning the time of the entry of a Domain Name registration into the Registry System, the time shown in the Registry System records shall prevail.
- 5.12 **Restrictions on Registered Names**
- In addition to complying with Published Policies limiting domain names that may be registered, Registrar agrees to comply with all applicable laws, statutes and regulations limiting the domain names that may be registered.

## 6. SPECIAL ALLOCATION

- 6.1 **Effect**
- The Registrar acknowledges that certain domain names may be subject to the Registry Operator's Special Allocation Procedure, and agrees that those domain names so affected by the Special Allocation Procedure may (subject to the TMCH Requirements and the Published Policies) remain subject to the terms of the Special Allocation Procedure even if the domain name is deleted, expires or is transferred to the Registrar at a time after initial registration of the domain name.
- 6.2 **Release**
- THE REGISTRAR ACKNOWLEDGES THAT THE REGISTRY OPERATOR HAS NO LIABILITY OF ANY KIND FOR ANY LOSS OR LIABILITY RESULTING FROM, AND INDEMNIFIES THE REGISTRY OPERATOR FOR ANY CLAIM BY A THIRD PARTY ARISING FROM, THE SPECIAL ALLOCATION PROCEDURE INCLUDING:
- (a) THE INABILITY OF A CUSTOMER TO BE ENTITLED TO REGISTER A DOMAIN; AND
  - (b) THE RESULTS OF ANY DISPUTE RESOLUTION PROCESS PRESCRIBED IN THE SPECIAL ALLOCATION PROCEDURE.

## 7. ACCREDITATION

- 7.1 **Requirements for Accreditation**
- (a) The Registrar acknowledges and agrees that it must meet the Accreditation Requirements in order to access the Registry System in connection with the provision of Registrar Services by the Registrar, and that entering into this Agreement does not indicate that the Registrar has met the Accreditation Requirements.
  - (b) The Registrar further acknowledges and agrees that the Registry Operator may suspend or terminate the Registrar's access to the Registry System if the Registry Operator:
    - (i) considers, in good faith, that the Registrar has not materially complied with the Registry Operator's Accreditation Requirements;
    - (ii) the Registrar at any time does not have ICANN Accreditation; or
    - (iii) is advised by ICANN that the Registrar has not complied with the ICANN Accreditation Requirements.

If the event giving rise to such a termination or suspension is not remedied by the Registrar within 30 days of written notice, the Registry Operator may terminate this Agreement pursuant to Section 15.2(a).

- 7.2 **Technical Requirements**
- The Registrar must at all times comply with the technical requirements and related technical criteria determined by the Registry Operator:
- (a) to ensure that the Registrar's system can properly interface with the Registry System for the processing of Registry Data using the Registry-Registrar Software and other such tools provided to the Registrar by the Registry Operator and to otherwise employ the features of the Registry System that are available to registrars; and
  - (b) such other requirements set out in the Registry Operator Published Policies.

## 8. FEES

- 8.1 **Amount of Registry Operator Fees**
- (a) The Fees payable by the Registrar will be those calculated in accordance with the Registry Operator's Price List.
  - (b) The Registrar must also pay to the Registry Operator any fee that the Registry Operator is entitled to collect under the Registry Agreement.
  - (c) The Registry Operator will issue to the Registrar an invoice for amounts due under this clause 8.1 on a monthly basis.
  - (d) Unless otherwise agreed in writing, the Registrar will pay all amounts due to the Registry Operator under this clause 8.1 within 14 days of the date of the Registry Operator's invoice.
  - (e) The Registry Operator reserves the right to revise the Fees by issuing a revised Price List from time to time, provided that such revisions are consistent with clause 2.10 of the Registry Agreement. Subject to the foregoing, the Fees may be revised by the Registry Operator in its sole discretion provided that any increase in the Fees shall be no more than 10% of then current Fee, and that increases in Fees shall not occur more than one time per calendar year.
- ~~(f) Notwithstanding anything herein, the parties agree that un-registered Premium Names fees may be amended by the Registry Operator at any time.~~

- 8.2 **Credit limit**
- (a) Unless otherwise agreed in writing the Registry Operator may from time to time determine a Credit Limit in accordance this clause 8.2 that the Registrar must not exceed.
  - (b) The Credit Limit will be determined by the Registry Operator having regard to reasonable commercial ~~bases~~ basis to determine credit risk, including but not limited to the value of gross revenue derived by the Registrar in the 12 months prior to the Credit Limit being established. For the purpose of clause 4.8, the Registrar acknowledges that the amount prescribed as the Credit Limit may differ between registrars, provided that the Registry Operator applies the basis for assessment of credit risk in a non-discriminatory manner.
  - (c) The Credit Limit may be set or varied at any time by the Registry Operator, provided that:
    - (i) the initial setting of the Credit Limit; or

(ii) the tightening of the Credit Limit at any time, must not come into effect until the Registry Operator has given the Registrar 7 days written notice to the Registrar.

- (d) If the Registrar exceeds the Credit Limit, the Registry Operator may:
- (i) suspend provision of any or all of the Registry Services in connection with the Registrar under this Agreement;
  - (ii) notwithstanding clause 8.1(c), issue an invoice to the Registrar for work incurred or transactions processed but not yet invoiced.
- (e) The Registry Operator must cease suspension of the Registry Services if:
- (i) to the extent that the Registry Operator has not drawn down on the Performance Bond for non-payment for such invoices, the Registrar has paid all invoices that relate to the Credit Limit; and
  - (ii) the Registry Operator draws down on the Performance Bond for payment of the invoices that related to the Credit Limit, and the Registrar has issued a replacement Performance Bond in accordance with clause 8.7.

### 8.3 Remedies for non-payment

The Registrar's timely payment of amounts due under clause 8.1 is a material condition of the Registry Operator's obligations under this Agreement. In the event that the Registrar fails to pay the Registry Operator in accordance with clause 8.1, the Registry Operator may, subject to its compliance with ICANN Published Policies, and without prejudice to any other rights that the Registry Operator may have, do any or all of:

- (a) suspend provision of any or all of the Registry Services in connection with the Registrar under this Agreement;
- (b) delete from the Registry System domain names associated with invoices not paid in full;
- (c) terminate this Agreement pursuant to clause 14; and
- (d) pursue any other remedy under this Agreement or at law.

### 8.4 Goods and Services Tax

- (a) All amounts payable to the Registry Operator under this Agreement are exclusive of GST, unless otherwise stated.
- (b) All applicable GST must be paid to the Registry Operator by the Registrar at the same time and in the same manner as the relevant fee is paid under this Agreement.

### 8.5 Financing Charge

If the Registrar fails to pay any Fee owing to the Registry Operator under this Agreement, then without prejudice to the Registry Operator's rights under this Agreement, a financing charge is payable on late payments of amounts owing to the Registry Operator on such amounts from and including the due date to the date of the actual payment at the rate prescribed from time to time by Section 2 of the *Penalty Interest Rates Act 1983* (Vic).

### 8.6 No Set-Off

The Registrar must not exercise any right of set-off or counter claim of any kind against any amounts payable to the Registry Operator.

### 8.7 Performance bond

- (a) Unless otherwise agreed in writing, the Registry Operator may require the Registrar procure a Performance Bond in accordance with this clause 8.7.
- (b) The amount of the Performance Bond will be determined by the Registry Operator having regard to reasonable commercial bases to determine credit and commercial risk, including but not limited to the value of gross revenue derived by the Registrar in the 12 months prior to the Performance Bond being established. For the purpose of clause 4.8, the Registrar acknowledges that the amount prescribed as the Performance Bond may differ between registrars, provided that the Registry Operator applies the basis for assessment of credit risk in a non-discriminatory manner.
- (c) Where the Registry Operator requires a Performance Bond, the Registrar must:
  - (i) on or before the date of this Agreement; and
  - (ii) within 6 months prior to the expiry of any Performance Bond,deliver to the Registry Operator a Performance Bond.
- (d) The Performance Bond must:
  - (i) be issued by an entity that ordinarily issues bank guarantees in the course of its business and has a credit rating no less than the Specified Rating;
  - (ii) have a face amount:
    - (A) the greater of:
      - (I) AUD 1,000 and
      - (II) the Credit Limit; or
    - (B) as agreed in writing by the Registry Operator;
  - (iii) either:
    - (A) not automatically expire; or
    - (B) expire no earlier than the end of the Initial Term or the Renewal Term (as the case may be); and
  - (iv) be issued to the Registry Operator's nominated bank in Australia.
- (e) The Registry Operator may draw down on the Performance Bond for all amounts due to the Registry Operator by the Registrar but unpaid, and any damages, liquidated damages, costs and expenses recoverable by the Registry Operator from the Registrar as a result of the Registrar's breach of this Agreement.
- (f) If the amount available to be drawn under the Performance Bond is less than the amount prescribed in clause (d)(ii), the Registrar must, within 1 month, procure the issue to the Registry Operator of a replacement Performance Bond.



- (g) Upon the Registrar providing a replacement Performance Bond for the purpose of clause (c)(ii) or (f), the Registry Operator will procure the return of the Performance Bond that is being replaced.
- (h) The Registry Operator must procure return each Performance Bond to the Registrar as soon as practicable within 90 days after the end of the Term.

## 9. AUCTION INCENTIVE

### 9.1 Payments to Participating Registrars

Upon the Allocation of an Auctioned Name to a successful bidder, the Registry Operator will pay to:

- (a) the Successful Registrar its proportion of the Successful Registrar's Share (if any); and
- (b) each of the Unsuccessful Registrars the Unsuccessful Registrar's Share (if any).

### 9.2 Payment terms

- (a) Subject to clause 9.2(b), the Registry Operator will make the payments to each registrar under clause 9.1 within 14 days after of the Registry Operator has received the Auction Revenue as cleared funds.
- (b) If the Registrar owes any amounts to the Registry Operator, whether or not due and payable at that time, the Registry Operator may offset any amounts payable under this clause 9.2 with any such amounts owing by the Registrar.

### 9.3 Recipient-created tax invoices

As to the payment of any GST by the Registry Operator to a registrar for the purpose of clause 9.1 under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth):

- (a) the Registry Operator may issue Recipient Created Tax Invoices (RCTIs) in respect of taxable supplies;
- (b) if the Registry Operator issues an RCTI, the registrar will not, if it is aware that the Registry Operator has issued an RCTI, issue a tax invoice in respect of those same taxable supplies;
- (c) the registrar acknowledges that it is registered for GST and will notify the Registry Operator if the registrar ceases to be registered;
- (d) the Registry Operator confirms that it is registered for GST and that it will notify the registrar if the Registry Operator ceases to be registered or ceases to satisfy the Australian Taxation Office ruling as to RCTIs.

## 10. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

### 10.1 Confidential Information

Each party must:

- (a) keep confidential;
  - (b) take reasonable steps to ensure that the party's employees do not disclose to a third party;
  - (c) maintain proper and secure custody of; and
  - (d) not use or reproduce in any form,
- any Confidential Information belonging to the other party other than to the extent required for the purpose of complying with its

obligations under this Agreement or without the written consent of the other party or as required by law.

### 10.2 Return or Destroy

A party must immediately on receipt of a request from the other party in accordance with the other party's rights under this Agreement:

- (a) deliver all Confidential Information belonging to the other party and all changes to, reproductions of, extracts from and notes regarding that Confidential Information, in any form; or
- (b) destroy the Confidential Information and, if it is stored in other media, by erasing it from the media on which it is stored so that the Confidential Information is incapable of being revived; and
- (c) provide a statutory declaration to the other party that all Confidential Information has been delivered or destroyed in accordance with this clause 10.2.

### 10.3 Intellectual Property

- (a) Subject to the licenses granted hereunder, each party will continue to independently own its Intellectual Property.
- (b) Without limiting the generality of the foregoing, no commercial use rights or any licenses under any patent, patent application, copyright, trade mark, know-how, or any other intellectual property rights are granted by either party to the other by this Agreement, or by any disclosure of any Confidential Information to the other under this Agreement.
- (c) The Registrar acknowledges and agrees that the Registry Data held in the Registry System is not proprietary information which is owned by either party, and neither the Registrar nor the Registry Operator are entitled to claim any Intellectual Property rights in the Registry Data held in the Registry System.
- (d) For the sake of clarification, but subject to clause (c), the Registrar acknowledges and agrees that the Registry Operator will both during and after the Term independently own its Intellectual Property in the Registry System and otherwise (including, without limitation, any Registry-Registrar Software, software, hardware, all patents, trademarks, trade names, service marks, copyrights, trade secrets, proprietary processes and other forms of intellectual property in the Registry System hardware and software) and all other Intellectual Property or non-public, proprietary or commercially sensitive information or property or other property owned or used by the Registry Operator in operating the Registry System or providing the Registry Services.

## 11. INSURANCE

### 11.1 Insurance

The Registrar must, for so long as any obligations remain in connection with this Agreement, effect and maintain the following insurances:

- (a) a broad form public liability policy to the value of at least AUD 1,000,000 in respect of each claim;
- (b) worker's compensation insurance in accordance with applicable legislation; and

- (c) such other insurances required by the Registrar Accreditation Agreement.

#### 11.2 Provide evidence of Policy

On request, the Registrar must produce to the Registry Operator a certificate evidencing that the Registrar has effected and renewed a particular insurance policy.

### 12. PERSONAL DATA

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#### 12.1 Registry Operator to Provide Notice of Purpose

- (a) The Registry Operator shall collect and use Personal Data of Customers and give access to use that Personal Data to third parties (including service providers) for the purposes of complying with its obligations under this Agreement, the ICANN Published Policies and otherwise under the Registry Agreement plus any ancillary purposes connected with the foregoing, and as otherwise permitted by law. Such third parties may include escrow agents, domain name auction service providers, persons using or operating a domain name lookup service and ICANN.
- (b) The Registry Operator shall take such reasonable steps as is required to protect Personal Data collected under this Agreement (including pursuant to the Registry Agreement or any Published Policies) from loss, misuse, unauthorised disclosure, alteration or destruction.
- (c) The Registry Operator shall not use or authorise the use of any Personal Data collected under this Agreement (including pursuant to the Registry Agreement or any Published Policies) in a way that is incompatible with the notice provided to the Registrar in clause 12.1(a).

#### 12.2 Registrar to Obtain Customer Consent

In its agreement with each Customer, the Registrar must obtain consent from each Customer to the use, copying, distribution, publication, modification and other processing of the Customer's Personal Data by the Registry Operator and its designees and agents in a manner consistent with the purposes specified in clause 12.1(a).

#### 12.3 Dealing with Personal Data

In dealing with any Personal Information collected during its provision of the Registrar Services, or for any other purpose under this Agreement or the Published Policies, the Registrar must:

- (a) comply with the provisions related to Personal Data contained in the Registrar Accreditation Agreement, to the extent permitted by law;
- (b) comply with any obligations under the Privacy Act as if the Registrar were bound by the Privacy Act; and
- (c) comply with all applicable data protection and privacy laws related to the Personal Data that affect the Registrar.

The provisions of this clause 12.3 survive the termination or expiration of this Agreement.

### 13. DISPUTE RESOLUTION

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#### 13.1 Negotiation before Arbitration

- (a) If a dispute arises between the parties:
  - (i) out of or relating to this Agreement, or the breach, termination, validity or subject matter of this Agreement; or

- (ii) as to any claim in tort, in equity or pursuant to any domestic or international statute or law,

then upon the written request of either party, each of the parties shall appoint a designated officer to (and who has the authority to) meet and negotiate in good faith to resolve such dispute.

- (b) Other than injunctive or provisional relief (which may be sought by a party without delay where appropriate), formal legal proceedings under clause 13.2 may not be commenced until the earlier of:

- (i) the expiration of 30 days after the initial request for such negotiations; or
- (ii) either of the designated officers concluding in good faith and notifying the other designated officer that amicable resolution through continued negotiation of the matter at issue does not appear likely.

#### 13.2 Arbitration

- (a) This clause 13.2 only applies if the Registry Operator is not incorporated in, or does not have a material presence in, Australia.
- (b) Subject to clause 13.1, any Dispute, including any question regarding the existence, validity or termination of the Agreement, shall be referred to and finally resolved by arbitration under the LCIA Rules, which rules are deemed to be incorporated by reference in this clause.
- (c) The number of arbitrators shall be:
  - (i) three (3) arbitrators, if either party, by written notice both to the LCIA and to the other party, so requests; or
  - (ii) otherwise, one (1) arbitrator,whose nationality shall be British.
- (d) The seat, or legal place, of arbitration shall be London in the United Kingdom.
- (e) The language to be used in arbitral proceedings shall be English.

#### 13.3 No Merger

This clause does not merge upon completion.

### 14. AMENDMENTS

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Other than the Published Policies, no amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless:

- (a) the amendment is mandated by ICANN as a result of:
  - (i) an amendment to the Registry Agreement; or
  - (ii) introduction of, or variations to, any ICANN Published Policies; or
  - (iii) an ICANN approved change to this Agreement;

in which case, subject to clause 15.1, the amendment is binding automatically; or

- (b) is approved by ICANN in accordance with the amendment procedures in the Registry Agreement and in the ICANN Published Policies, in which case, subject to clause 15.1, the amendment is binding automatically; or
- (c) the amendment is in writing and executed by both parties.

## 15. TERMINATION

### 15.1 Termination by Change of Agreement

If this Agreement is amended because of clause 14(a) or 14(b), the Registrar may, within 10 days after receiving notice of the amendment, terminate this Agreement immediately by giving written notice to the Registry Operator. In the event that the Registry Operator does not receive such notice of termination from the Registrar within such 10 day period, the Registrar will be bound by the amendment.

### 15.2 Termination by Either Party

Either party shall have the right at any time by giving notice in writing to the other party to terminate this Agreement forthwith in any of the following events:

- (a) the other party commits a material breach of a material term or condition of this Agreement and fails to remedy the same within 30 days of being required to do so in writing by the party giving the notice of termination;
- (b) the other party fails to pay any moneys owing under the terms of this Agreement and fails to remedy the same within 30 days of being required to do so in writing by the party giving the notice of termination; or
- (c) the other party is unable to pay its debts as they fall due or a petition is presented or application made for the purpose of winding up the other party or the other party enters into a liquidation or administration whether compulsorily or voluntarily or compounds with its creditors generally or has a receiver, liquidator, administrator or other like person appointed over all or any part of its assets or takes or suffers any similar action or in consequence of debt.

To avoid any doubt, the rights of termination to which this clause 15.2 refers do not affect the rights of the Registry Operator to withdraw, suspend or terminate the Registrar's access to the Registry System.

### 15.3 Termination by Expiry of Registrar Accreditation Agreement

This Agreement shall terminate in the event that the Registrar Accreditation Agreement is terminated or expires without renewal, or the Registrar's accreditation by ICANN is otherwise terminated or expires without renewal.

### 15.4 Termination by Expiry of Registry Agreement

This Agreement shall terminate in the event that the Registry Agreement between ICANN and the Registry Operator is terminated or expires without renewal.

### 15.5 Termination by Registrar

This Agreement shall terminate on 30 days written notice from the Registrar to the Registry Operator.

## 15.6 Effect of Termination

Upon the expiration or termination of this Agreement for any reason:

- (a) the Registry Operator will complete the registration of all Domain Names processed by the Registrar prior to the date such expiration or termination takes effect, provided that the Registrar's payments to the Registry Operator for Fees are current and timely;
- (b) the Registrar must cease to use the Registry-Registrar Software, and delete and remove all copies of it from its systems and return to the Registry Operator any media that contains copies of such Registry-Registrar Software;
- (c) the Registry Operator shall transfer the sponsorship of Registered Names from Registrar to:
  - (i) in the case of termination under clause 15.5, an ICANN-accredited registrar nominated by the Registry Operator; and
  - (ii) in all other respects, an ICANN-accredited registrar in compliance with the ICANN Published Policies;
- (d) all Confidential Information of the other party held by a party shall be immediately returned or destroyed in accordance with clause 10.2; and
- (e) all amounts owing to the Registry Operator by the Registrar shall become immediately due and payable.

## 15.7 Survival

In the event of termination of this Agreement, the following shall survive: Clauses 8.7, 12, 13, 14 and 16. Neither party shall be liable to the other party for damages of any sort resulting solely from terminating this Agreement in accordance with its terms.

## 16. LIMITATION OF LIABILITY

### 16.1 LIMITATION

- (a) IF RIGHTS ARE CONFERRED UPON THE REGISTRAR, A CUSTOMER OR ANY OTHER PERSON, OR OBLIGATIONS ARE IMPOSED UPON THE REGISTRY OPERATOR BY ANY APPLICABLE LEGISLATION WHICH CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED, THE PROVISIONS OF CLAUSE 16 SHALL BE READ SUBJECT TO THOSE RIGHTS OR OBLIGATIONS, HOWEVER THE REGISTRY OPERATOR HEREBY EXPRESSLY LIMITS ITS LIABILITY UNDER ANY SUCH LEGISLATION TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- (b) SUBJECT TO CLAUSE 16.1(a), TO THE EXTENT PERMITTED BY LAW THE REGISTRAR AGREES THAT THE LIABILITY OF THE REGISTRY OPERATOR UNDER THIS AGREEMENT FOR THE BREACH OF ANY SUCH RIGHT OR OBLIGATION IMPOSED UPON THE REGISTRY OPERATOR (WHICH CANNOT BE LIMITED BEYOND THE PROVISIONS CONTAINED IN THE FOLLOWING PROVISIONS OF THIS CLAUSE 16.1(b)) IS LIMITED TO:
  - (i) IN THE CASE OF GOODS SUPPLIED BY THE REGISTRY OPERATOR, ANY ONE OR MORE OF THE FOLLOWING (AT THE SOLE OPTION OF THE REGISTRY OPERATOR):
    - (A) REPLACE THE GOODS OR SUPPLY EQUIVALENT GOODS;
    - (B) REPAIR THE GOODS;

- (C) PAY THE COSTS OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR
- (D) PAY THE COSTS OF HAVING THE GOODS REPAIRED; AND
- (ii) IN THE CASE OF SERVICES SUPPLIED BY THE REGISTRY OPERATOR, ANY ONE OR MORE OF THE FOLLOWING (AT THE SOLE OPTION OF THE REGISTRY OPERATOR):
  - (A) SUPPLY THE SERVICES AGAIN; OR
  - (B) PAY THE COSTS OF HAVING THE SERVICES SUPPLIED AGAIN.

THE REGISTRY OPERATOR'S AGGREGATE LIABILITY (IF ANY) TO ALL OF THE REGISTRAR, THE REGISTRAR'S CUSTOMERS AND ANY OTHER PERSON CLAIMING THROUGH THE REGISTRAR WILL NOT, IN ANY EVENT, EXCEED THE LESSER OF:

- (i) THE AMOUNT OF THE FEES CHARGED BY THE REGISTRY OPERATOR TO THE REGISTRAR DURING THE FIRST 12 MONTHS FROM THE EFFECTIVE DATE, OR
- (ii) AUD 100,000.
- (b) IN THE EVENT OF ANY SUCH LIABILITY, THE REGISTRAR FURTHER AGREES THAT THE AMOUNTS OF SUCH LIABILITY SHALL BE PAID TO:
  - (i) FIRST, THE REGISTRANTS AND CUSTOMERS, UP TO THE AGGREGATE LIABILITY PROVIDED FOR IN CLAUSE 16.5(a); AND
  - (ii) THEN, THE REGISTRAR, UP TO THE AMOUNT OF THE BALANCE OF THE AGGREGATE LIABILITY PROVIDED FOR IN CLAUSE 16.5(a) AFTER THE PAYMENTS IN CLAUSE 16.5(b)(i) HAVE BEEN MADE.
- (c) THE LIABILITY CAP UNDER CLAUSE 16.5(a) WILL NOT APPLY TO ANY LIABILITY ARISING FROM AN INDEMNITY OBLIGATION UNDER THIS AGREEMENT.

**16.2 REGISTRAR'S INDEMNITY**

THE REGISTRAR AGREES TO INDEMNIFY AND KEEP THE REGISTRY OPERATOR (INCLUDING ITS EMPLOYEES, AGENTS AND SUBCONTRACTORS) FULLY INDEMNIFIED FROM AND AGAINST ALL SUITS, ACTIONS, CLAIMS, DEMANDS, LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES WHICH MAY BE MADE OR BROUGHT AGAINST OR SUFFERED OR INCURRED BY THE REGISTRY OPERATOR ARISING OUT OF OR IN CONNECTION WITH ANY CLAIM OR ALLEGED CLAIM RELATING TO :

- (a) ANY PRODUCT OR SERVICE OF REGISTRAR;
- (b) ANY AGREEMENT, INCLUDING REGISTRAR'S DISPUTE POLICY, WITH ANY CUSTOMER; OR
- (c) 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.

**16.6 Survival**

The preceding provisions of this clause 16 survive termination of this Agreement.

**16.3 REGISTRY OPERATOR'S INDEMNITY**

REGISTRY OPERATOR, AT ITS OWN EXPENSE AND WITHIN 30 DAYS AFTER PRESENTATION OF A DEMAND BY REGISTRAR UNDER THIS CLAUSE, WILL INDEMNIFY REGISTRAR AGAINST ANY CLAIM, SUIT, ACTION, OR OTHER PROCEEDING BROUGHT AGAINST IT ARISING FROM A CLAIM THAT THE REGISTRY SYSTEM, EPP, REGISTRY SERVICES, REGISTRY-REGISTRAR SOFTWARE OR REGISTRY OPERATOR TRADE MARKS AS PROVIDED TO REGISTRAR INFRINGES THE VALID INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

**17. WARRANTIES AND ACKNOWLEDGEMENTS**

**17.1 Warranties**

The Registrar represents and warrant to the Registry Operator that:

- (a) the Registrar is or will be by the Effective Date accredited by ICANN and has entered into the Registrar Accreditation Agreement; and
- (b) all written information which has been or will be provided to the Registry Operator in connection with this Agreement (including during the negotiation of this Agreement):
  - (i) is true and accurate in all material respects and not misleading whether by omission or otherwise; and
  - (ii) where that information contains forecasts and opinions, such forecasts and opinions were made or formed after due and careful consideration on the part of its relevant officers based on the best information available to it and are fair and reasonable.

**16.4 NO CONSEQUENTIAL LOSS**

- (a) TO THE MAXIMUM EXTENT PERMITTED BY LAW AND SUBJECT TO CLAUSES 16.1 AND 16.4(b), NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, LOSS OR PROFITS, LOSS OR CORRUPTION OF DATA, BUSINESS INTERRUPTION OR INDIRECT COSTS, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS.
- (b) CLAUSE 16.4(a) DOES NOT APPLY TO ANY LIABILITY ARISING FROM:
  - (i) ANY WILFUL, WRONGFUL OR FRAUDULENT ACT OR OMISSION OF THE REGISTRAR OR ANY PERSON FOR WHOM THE REGISTRAR IS RESPONSIBLE; OR
  - (ii) A BREACH OF CLAUSE 4.4(c).

**17.2 Acknowledgments**

The Registrar acknowledges that:

- (a) the Registry Operator has entered into this Agreement in reliance upon the Registrar's representations and warranties in this Agreement;
- (b) the Registry Operator may begin accepting or processing requests for the registration of Domain Names by the Registrar on a date which is later than the Effective Date;

**16.5 AGGREGATE LIABILITY**

- (a) SUBJECT TO CLAUSE 16.5(c), WITHOUT REDUCING THE EFFECT OF, AND SUBJECT ALWAYS TO, THIS CLAUSE 16,

- (c) Unless otherwise notified in writing by the Registrar, the Registry Operator may post on its web site, the Registrar's name and contact information, and a link to the Registrar's web site; and
- (d) even if the Registrar has approved a request for the registration of a Domain Name, that Domain Name request may still be rejected by the Registry Operator in performing the final integrity checks.

system (as shown in a confirmation of delivery report from the sender's information system),

provided that if a notice or other communication is served by hand on a day which is not a Business Day, or after 5.00 p.m. on any Business Day, such notice or communication shall be deemed to be duly received by the recipient at 9.00 a.m. on the first Business Day thereafter.

## 18. MISCELLANEOUS

### 18.1 Subcontracting

The Registry Operator may subcontract any of its obligations under this Agreement, provided that the Registry Operator remains fully responsible for any subcontracted functions, responsibilities, obligations and services and will be liable for the acts and omissions of its subcontractors under this Agreement.

### 18.2 Assignments

- (a) Except as set forth in clause 18.3, neither party may assign in whole or in part any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- (b) The Registrar must not subcontract any of its obligations under this Agreement without the prior written consent of the Registry Operator.

### 18.3 Change of Control

In the event that Registry Operator's Registry Agreement with ICANN is validly assigned, Registry Operator's rights under this Agreement shall be automatically assigned to the assignee of the Registry Agreement, provided that the assignee assumes the duties of Registry Operator under this Agreement. In the event that Registrar's accreditation agreement with ICANN 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.

### 18.4 Notices

- (a) All notices and other communications required or to be given by this Agreement shall be in writing and shall be sent to the recipient by hand, pre-paid post, facsimile or email. Notwithstanding the foregoing, notice by publication on the Registry Operators website will suffice for the purposes of clauses 4.9 and 8.1.
- (b) Without limiting any other means by which a party may be able to prove that a notice or other communication has been received by another party, a notice or other communication shall be deemed to be duly received:
  - (i) if sent by hand when left at the address of the recipient;
  - (ii) if sent by pre-paid post, 14 days after the date of posting;
  - (iii) if sent by facsimile, upon receipt by the sender of an acknowledgement or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number; or
  - (iv) if sent by e-mail, on the date and time at which it enters the recipient's information

(c) All notices and other communications shall be sent to the recipient at the address set out below or to such other address as a party may for the purposes of this clause 18.4 from time to time notify to the other in writing:

- (i) If to the Registrar, as set out in the Reference Schedule under "Registrar".
- (ii) If to the Registry Operator, as set out in the Reference Schedule under "Registry Operator" and "Service Provider".

### 18.5 Third-Party Beneficiaries

This Agreement shall not be construed to create any obligation by either party to any non-party to this Agreement, including any Customer or Registrant. The Registrar expressly acknowledges that, notwithstanding anything in this Agreement to the contrary, it is not an intended third-party beneficiary of the Registry Agreement.

### 18.6 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.

### 18.7 Force Majeure

Neither party shall be responsible or liable to the other for any loss, damage, detention or delay caused by limitations of availability, production, hold ups, shortages of raw materials or labour, fire, strike, civil or military authority, governmental restrictions or controls, insurrection or riot, acts of God, acts of terrorism, lockout, tempest, accident, breakdown of machinery, delay in delivery of materials by other persons, or any other cause which is unavoidable or beyond its reasonable control, nor in any event for consequential loss or damages arising out of such loss, damage, detention or delay.

### 18.8 Waivers

- (a) No waiver by any party of any provision of or right of that party under this Agreement shall be effective unless it is in writing signed by that party and, if required, approved by ICANN in accordance with the amendment procedures in the Registry Agreement and in the ICANN Published Policies.
- (b) Such waiver shall be effective only in the specific instance and for the specific purpose for which it was given. No failure or delay by any party to exercise any right under this Agreement or to insist on strict compliance by any other party with any obligation under this Agreement, and no custom or practice of the parties at variance with the terms of this Agreement, shall constitute a waiver of that party's right to demand exact compliance with this Agreement.

### 18.9 Entire Agreement

This Agreement 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.

**18.10 Counterparts**

This Agreement may be signed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

**18.11 Governing Jurisdiction**

This document is governed by and is to be construed in accordance with the laws of the State of Victoria, Australia. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and waive any right to object to proceedings being brought in those courts.

**18.12 Severability of Provisions**

Any provision of this Agreement which is or becomes prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective and severed to the extent thereof without invalidating any other provision of this Agreement, and any such prohibition or unenforceability shall not invalidate such provision in any other jurisdiction.

**18.13 Non-merger**

The continuing warranties, covenants and indemnities of the parties shall not merge on termination of this Agreement but shall continue thereafter.

**19. INTERPRETATION**

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In this Agreement unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include every gender;
- (c) references to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, novated or replaced from time to time;
- (d) references to this Agreement are references to this Agreement and the Schedules;

- (e) references to clauses and the Schedules are references to clauses of, and the schedules to, this Agreement;
- (f) headings are for convenience only and shall be ignored in construing this Agreement;
- (g) references to parties or to a party shall be a reference to the parties or a party to this Agreement and includes references to their or its respective successors, permitted assigns, executors and administrators;
- (h) references to law shall include references to any constitutional provision, treaty, decree, convention, statute, act, regulation, rule, ordinance, subordinate legislation, rule of common law and of equity and judgment and shall include the requirements of any applicable stock exchange;
- (i) references to any law are references to that law as amended, consolidated, supplemented or replaced from time to time;
- (j) references to any person include references to any individual, company, body corporate, association, partnership, firm, joint venture, trust and governmental agency;
- (k) reference to AUD, \$ and dollars are to Australian dollars;
- (l) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision;
- (m) references to time are references to Melbourne, Victoria, Australia time;
- (n) references to any thing (including, but not limited to, any right) includes a part of that thing; and
- (o) each of the obligations of the parties contained in this Agreement shall be separate and independent and save as expressly provided shall not be limited by reference to any other provision of this Agreement.



## Schedule 1. Registrar Toolkit

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### 1. OVERVIEW

- (a) The Registrar Toolkit has been developed to enable Registrars to develop and integrate Registrar software with the Registry System.
- (b) The Registrar Toolkit provides a level of abstraction by providing features to gather throughput statistics, and multiplex commands to the Registry System, thus enabling efficient EPP command execution.
- (c) The Registrar Toolkit is licensed under the GNU Lesser General Public License and this Agreement, and on the understanding that the Registry Operator makes no representations about the Registrar EPP Toolkit and the Registrar EPP Toolkit is used by the Registrar solely at its own risk in all things.
- (d) The Registrar Toolkit has development standards, specifications and standards compliance are described in the documentation which accompanies the Registrar Toolkit.

### 2. OBTAINING THE REGISTRAR TOOLKIT

The Registrar Toolkit:

- (a) is available for download at <https://github.com/AusRegistry/ari-toolkit#downloads>, or as advised from time to time;
- (b) includes online Registrar Toolkit guide; describing installation and setup details of the toolkit, and providing quick start information for sending a command, performing bulk operations, using extensions with commands, and various toolkit implementation notes; and
- (c) includes documentation in the form of the Registrars Reference Guide available from <http://www.ariservices.com/registrars/documentrepository>, or as advised from time to time, which describes the Registry System's EPP interface in extensive detail, along with the commands required to create and manage Registry objects such as domains, contacts, and hosts. In addition to describing the execution of object commands, it provides usage examples for developers to help the build integrated Registrar software systems.

## Schedule 2. Technical and Customer Service Support

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### 1. DEFINITIONS

In this Schedule, unless the contrary intention appears:

**AEST** means Australian Eastern Standard Time.

**UTC** means Coordinated Universal Time.

**Response Timeframe** means the timeframe within which initial response to a request will be provided.

**Update Frequency** means should an update be required, it will be provided in the intervals stipulated, following the initial response.

**Resolution Target** means the maximum time within which we will target resolution of the after the initial response.

### 2. REGISTRAR SUPPORT

- (a) During the term of your agreement you shall have access to a Registrar Liaison and Technical Service Desk (all of which constitute **Registrar Support**).
- (b) Registrar Support in relation to the provision Registrars Services means support to the Registrar regarding:
  - (i) non-technical support relating to the Designated gTLD and this agreement; and
  - (ii) technical support relating to the Registry Services.
- (c) For the avoidance of doubt Registrar Support does not include support to the Registrar's Customers, such requests for support will be directed to the Registrar.
- (d) The language for all Registrar Support will be English.

### 3. CONTACTING REGISTRAR SUPPORT

- (a) We will only action Registrar Support requests that have been submitted by a Registrar's authorised representative.
- (b) Reference numbers for all requests for Registrar Support will be generated, and will be monitored and tracked for auditing purposes.

### 4. REGISTRAR SUPPORT QUALITY MONITORING

- (a) Telephone calls to Registrar Support may be monitored or recorded for training or business analytic purposes:
  - (i) Callers have the right to opt-out of such recording and/or request a copy of the recording of calls.
  - (ii) A transcript of the call may be provided on request, where such information is available.
- (b) In order to improve Registrar Support, contact may be made to a Registrar's authorised representative in order to follow up on requests and/or to elicit information in the form of a survey.

### 5. REGISTRAR LIAISON

- (a) The Registrar Liaison:
  - (i) will provide non-technical support regarding the Registry Services; and
  - (ii) be available to you on Business Days between the hours of 09.30 AEST (23.30 UTC) and 18.00 AEST (08.00 UTC).
- (b) After entering into this agreement, Registrars will be introduced to the Registrar Liaison. Registrars will be provided with an email address and contact phone number for the Registrar Liaison.

### 6. TECHNICAL SERVICE DESK

- (a) The Technical Service Desk will
  - (i) assist with any technical inquiries pertaining to the Registry Services; and
  - (ii) deal with technical issue management of the Registry Services, incident escalation and resolution, and the provision of various notifications.
- (b) The Technical Service Desk will be available 24 hours per day, 7 days per week.

## 7. ISSUE SEVERITY LEVELS AND RESPONSE TIME FRAMES

We will endeavour to provide you with a response and resolution to any reported issue in accordance with the timeframes listed in the following table.

Classification	Severity of Incident	Response Timeframe	Update Frequency	Resolution Target
Severity 1	An incident that involves total failure of the system to operate, or complete interruption of a service, for which a workaround does not exist	2 hours	2 hours	2 hours
Severity 2	An incident that involves impairment. Note that an incident that would otherwise qualify as a Severity 1 incident for which a workaround exists would be a Severity 2 incident.	2 hours	2 hours	4 hours
Severity 3	An incident that has a limited or minor adverse effect on operations and does not substantially impair the functionality of the service. A workaround may be available.	2 hours	8 hours	8 hours
Severity 4	General usage questions regarding the service and general requests for clarification or information.	4 hours	16 hours	24 hours

## Schedule 3. Fees

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### 1. GENERAL

- (a) Except as otherwise stated in the Published Policies, all Fees are non-refundable.
- (b) The Registry Operator's Price List:
  - (i) contains the most current Fees for the Registry Services;
  - (ii) will be available online on a website to be advised by the Registry Operator from time to time; and
  - (iii) is subject to change from time to time as described in the clause 2.10 of the Registry Agreement and in this Agreement.
- (c) Registrar must ensure that:
  - (i) it understands the Fees in relation to a Domain Name; and
  - (ii) ensure that the correct price for a Domain Name is presented to a Customer when entering into a Customer Registration Agreement.
- (d) Subject to the Published Policies, no refunds will be provided where the Registrar has failed to ensure that the correct Fee has been presented to a Customer.

### 2. DOMAIN NAME CREATION AND RENEWAL FEES

- (a) The Fees for the creation and renewal of a Domain Name are charged in annual increments, from 1 to 10 years.
- (b) The maximum term for which a Domain Name can be registered is 10 years.
- (c) On creation and renewal of a Registered Name the Registry Operator will charge a Fee, corresponding to the annual increment selected.

### 3. DOMAIN NAME AUTO RENEWAL FEES

- (a) Subject to the Published Policies, a Domain Name will renew automatically.
- (b) The Registrar shall be responsible for any Fees associated with that renewal.

### 4. DOMAIN NAME TRANSFER FEES

- (a) The sponsorship of a Registered Name may be transferred from one registrar of the Designated gTLD to another registrar of the Designated gTLD in accordance with the Published Policies.
- (b) Where such a transfer occurs, the receiving registrar is required to renew the Registered Name for a minimum of a one year increment.
- (c) The receiving registrar shall be responsible for such additional Fees that are associated with that renewal, described in the Price List.
- (d) The extension to the term as a result of the renewal of the Registered Name will be subject to the maximum term for which a Domain Name can be registered.

### 5. ICANN APPROVED BULK TRANSFERS

Subject to the Published Policies, the Registry Operator will use reasonable endeavours to facilitate such changes to the Registry Data as are required to effect a bulk transfer of the sponsorship of a Registered Names.

### 6. RESTORING DELETED DOMAIN NAME FEE

- (a) The Fee for restoring unintentionally deleted Registered Names is separate from, and in addition to, any Renewal Fees that may be charged.
- (b) Registry Operator may waive the Fee for restoring any Registered Name that was deleted, contrary to the wishes of the Registrant as the result of an error that is the fault of the Registry Operator.

### 7. FEE FOR EXEMPTIONS TO THE ADD GRACE PERIOD LIMITS POLICY

Where a Registrar requests an exemption to the Add Grace Period Limits Policy, the Registry operator will charge a fee in relation to processing the exemption request.

### 8. FEE FOR DISPUTES BROUGHT SUBJECT TO THE REGISTRAR TRANSFER DISPUTE RESOLUTION POLICY

The Registry Operator may charge a fee for disputes brought to it under the Registrar Transfer Dispute Resolution Policy.

### 9. APPLICATION FEES

A Domain Name that is subject to any of the Special Allocation Procedure described in Schedule 6 may attract a Fee for making an Application for that Domain Name.

**10. PREMIUM NAMES FEES**

- (a) The Registry Operator may make available from time to time, subject always to the Registry Agreement, this Agreement and the Published Policies, Domain Names which the Registry Operator has designated as a Premium Name.
- (b) A Premium Name may be assigned a Fee (a premium), which shall be payable in addition to the Fee for creation and/or renewal.

## Schedule 4. Service Level Agreement

### 1. DEFINITIONS

In this Schedule, unless the contrary intention appears:

**EPP Service** means a Registrar interface provided by the Registry operator which utilises EPP.

**Round Trip Time** means the time a command is received by the EPP Service gateway, is processed, and departs the EPP Service gateway.

**EPP Check Command** means the command defined in the relevant internet standard, and described in the Registry Agreement.

**EPP Create Command** means the command defined in the relevant internet standard, and described in the Registry Agreement.

### 2. SERVICE LEVELS AND AVAILABILITY

- (a) The Registry Operator will endeavour to operate the EPP Service in order to meet the following Service Levels.
- (b) The EPP Service is considered 'unavailable' when that service fails to meet the measurements described in the following table.

Function	Round Trip Time	Service Level Per Calendar month
EPP Service	EPP Check Command	≤ 3000 ms, for at least 90% of the commands
	EPP Create Command	≤ 5000 ms, for at least 90% of the commands

- (c) The number of minutes the EPP Service is considered unavailable is calculated as the number of minutes the EPP Service fails to meet the Service Levels described in (b).

Function	Parameter	Service Level Per Calendar month
EPP Service	EPP Service availability	≤ 864 min of unavailability (~ 98%)

### 3. MAINTENANCE

- (a) We will perform periodic maintenance on components of the EPP Service to maintain its operation or we may periodically upgrade to include new features, enhance existing features, address changes required to maintain ongoing compliance or to resolve defects.
- (b) Maintenance will be scheduled to ensure the least impact; however the timing of such maintenance remains at our sole discretion.
- (c) During maintenance, certain functions may be unavailable
- (d) We will endeavour to notify Registrars:
  - (i) 3 days in advance of the timing of any maintenance, and
  - (ii) Of the impact on the functionality and performance.
- (e) Maintenance periods for upgrades or changes may be required in order to conform to decisions made or implemented by ICANN or other Regulatory Body, or to resolve emergent issues. In such cases we will endeavour to notify registrars as soon as practical.
- (f) Should the maintenance cause the system to fall below the Service Levels described in 2.(b), it is considered unavailable and will count against the total minutes of unavailability permissible for the month as described in (b).

### 4. SERVICE LEVEL MEASUREMENT

- (a) Service Levels will be measured by the Registry Operator as the average Round Trip Time for each of the following:
  - (i) EPP Check Command; and
  - (ii) EPP Create Command.

### 5. SERVICE CREDITS

- (a) Subject always to this agreement where a registrar believes that a Service Level described in this Schedule 4 has not been met, the registrar may make a claim for a Service Credit.
- (b) The claim for a Service Credit must be made to the Registry Operator in writing within 14 days of when the registrar claims the Service Level was not met.
- (c) The Registry Operator will use the records available to investigate a claim. Should the records available to the Registry Operator show that a Service Level was not met the Registry Operator will calculate the units outside the Service Levels cumulatively for that month.
- (d) The amount payable to all registrars in the Designated gTLD is calculated by apportioning the Service Credit to each registrar.
- (e) The proportion of Service Credits provided to the registrar are calculated on the amounts listed under the Service Credit column in the tables below, based on the formula described for each service.
- (f) The calculation will be based on the percentage of Domain Names created in the Designated gTLD by the registrar.



- (g) The calculation will be  $RP=(R/T)*F$ , where:
- (i) RP = Service Credits available to the registrar;
  - (ii) T = total Domain Names created for the month within the Designated gTLD;
  - (iii) R = the Domain Names created within the Designated gTLD by the registrar; and
  - (iv) F = Service Credit (fixed value).
- (h) If a Service Credit applies then the Registry Operator will, subject to this Agreement, apply a Service Credit to its next invoice.
- (i) The Registry Operator will not be responsible for any failure to comply with a Service Level, and a Service Credit will not apply if that failure, including an infrastructure or system failure, is caused, or materially contributed to, by an act or omission which is outside of the Registry Operator's direct responsibility or control.
- (j) The aggregate of all applicable Service Credits payable to a Registrar shall not exceed 50% of the monthly Domain Name Fees.

Parameter	Measure	Units outside Service Level Per Calendar Month	Service Credit
EPP Service availability	% greater than Service Level	Up to 5%	AUD 1,000
		Between 5% and 10%	AUD 3,000
		Greater than 10%	AUD 10,000

## Schedule 5. Customer Registration Agreement

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### 1. INTELLECTUAL PROPERTY

The Customer:

- (a) must ensure that the Customer's Application for, and the possible subsequent registration and/or use of, the Domain Name will not infringe the Intellectual Property rights of any third party;
- (b) agrees and submits to proceedings commenced under all applicable ICANN dispute resolution policies or processes as established or amended by ICANN from time to time; and
- (c) must bear liability for any claims of infringement arising out of or relating to the Customer's registration or use of the Domain Name, and indemnifies the Registry Operator for any liability it may incur arising from such infringement.

### 2. GENERAL CUSTOMER OBLIGATIONS

The Customer expressly agrees to:

- (a) comply with the applicable Published Policies, and that the Published Policies may be modified, and agrees to comply with any such changes in the time period specified for compliance;
- (b) adhere to all ICANN Published Policies for which the Registry Operator has monitoring responsibility under the Registry Agreement or any other arrangement with ICANN;
- (c) adhere to all Registry Operator Published Policies as established from time to time;
- (d) adhere to any policies, rules or procedures applicable under the ICANN RPMs, submit to any proceedings brought in relation to the ICANN RPMs, and acknowledge any potential consequences of the ICANN RPMs including, but not limited to, the potential for a Domain Name to be locked pursuant to the Uniform Rapid Suspension rules;
- (e) the Registry Operator's and the Registrar's use of Personal Data;
- (f) and warrants that any consents procured in respect of the Personal Data for the purpose of the Customer Agreement have been procured lawfully; and
- (g) refrain from engaging in any of the Prohibited Activities and acknowledge that the consequences of such activities, which shall include suspension or deletion of the Domain Name.

### 3. CUSTOMER'S WARRANTY

The Customer represents and warrants that:

- (a) it has the authority to enter into the Customer Registration Agreement;
- (b) the information provided in relation to an Application, or a Domain Name, as the case may be, is current, complete, and accurate, and that the Customer agrees to correct and update the information to ensure that it remains current, complete, and accurate; and
- (c) in the event that any registration information provided in relation to an Application, or a Domain Name, changes the Customer will correct and update that information immediately.

### 4. CUSTOMER ACKNOWLEDGEMENTS

The Customer expressly agrees and acknowledges:

- (a) an Application for a Domain Name may not result in the Domain Name being Allocated to the Customer;
- (b) certain domain names may not be available as a result of being reserved by the Registry Operator or otherwise Allocated in accordance with the Published Policies;
- (c) from time to time the Registry Operator may identify certain domain names to be reserved, and may release such domain names subject to the Published Policies;
- (d) during the periods and under the circumstances identified in the Published Policies, multiple Applications for the same Domain Name may be accepted, and that those Applications may be subject to the Special Allocation Procedure described in relation to that period or circumstance;
- (e) where a Special Allocation Procedure exists, the Customer must pay any fees and undertake any further steps that may be required in order to complete the process of registering the Domain Name;
- (f) the Registry Operator may prevent a Customer from making an Application and registering or renewing a Domain Name where that Customer has been found to be in breach of the Published Policies;
- (g) that the Registry Operator reserves the right to deny any Application, or cancel, lock, place on hold, transfer or delete any Domain Name that it deems necessary, in its sole discretion:
  - (i) to protect the integrity and stability of the Registry System;
  - (ii) to comply with its obligations as a Registry Operator;

- (iii) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or in compliance with any dispute resolution policies or process;
- (iv) to avoid any liability, civil or criminal, on the part of Registry Operator, as well as its affiliates, subsidiaries, officers, directors, employees and subcontractors;
- (v) to ensure compliance with the Published Policies;
- (vi) to stop or prevent any violations of any terms and conditions of the Customer Registration Agreement;
- (vii) for the non-payment to the Registry Operator of any fee; or
- (viii) to correct mistakes made by the Registry Operator or any Registrar or any of its service providers in connection with an Application or a domain name.

## 5. FEES

The Customer expressly agrees and acknowledges:

- (a) the price presented by the Registrar to the Customer for:
  - (i) the Application;
  - (ii) fulfilling any TMCH Requirements;
  - (iii) the Allocation of a Domain Name;
  - (iv) any premium associated with a Domain Name;
  - (v) creation of the Domain Name;
  - (vi) renewal of the Domain Name; or
  - (vii) any other fees that may be associated with the Domain Name;.
- (b) that the price for the creation of a Domain Name may be greater than or less than the price for the renewal of that Domain Name; and
- (c) that no refund will be provided for the Customer's failure to check or understand the fees.

## 6. INDEMNITY

THE CUSTOMER INDEMNIFIES AND KEEPS THE REGISTRY OPERATOR (INCLUDING ITS EMPLOYEES, AGENTS AND SUBCONTRACTORS) FULLY INDEMNIFIED FROM AND AGAINST ALL SUITS, ACTIONS, CLAIMS, DEMANDS, LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES THAT MAY BE MADE OR BROUGHT AGAINST OR SUFFERED OR INCURRED BY THE REGISTRY OPERATOR ARISING OUT OF OR IN CONNECTION IN ANY WAY WITH A BREACH OF THE CUSTOMER REGISTRATION AGREEMENT BY THE CUSTOMER.

## 7. ADDITIONAL CUSTOMER OBLIGATIONS FOR SPECIAL ALLOCATION PROCEDURES

The Customer acknowledges that:

- (a) contact may be made by the Registry Operator or its service providers in relation to an Application; and
- (b) pursuant to the Registry Operator Published Policies, failing to provide sufficient information in order to undertake any verification of an Application that the Application may be discontinued.

## Schedule 6. Special Allocation Procedure

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### 1. DEFINITIONS

In this Schedule, unless the contrary intention appears:

**TMCH Periods** mean the Sunrise Period, the Claims Period and, where applicable, any Limited Registration Period and any period during which the Sunrise Services and the Claims Services apply, as those terms are defined in the TMCH Requirements and the Published Policies.

**TMCH Services** mean the Sunrise Services and the Claims Services, as those terms are defined in the TMCH Requirements.

### 2. TMCH PERIODS

- (a) The availability of Domain Names during the TMCH Periods is subject to the TMCH Requirements.
- (b) Notwithstanding anything in this Agreement, the Registrar acknowledges and agrees that the Registry operator will not accept a Claims Registration (as that term is defined in the TMCH Requirements) unless the Registrar has completed integration testing, pursuant to the TMCH Requirements; and
- (c) The Registrar acknowledges that Applications for and Allocation of Domain Names during TMCH Periods:
  - (i) may not be on a first-come, first served basis; and
  - (ii) is at all times subject to the TMCH Requirements and the Published Policies.

### 3. PREMIUM NAME ALLOCATION

- (a) The Registry Operator will give reasonable notice to the Registrar of the commencement date and any applicable time frames in relation to the release of any Premium Name(s); and
- (b) The Release of any Premium Name(s) and Applications for and Allocation of a Premium Name will be subject to the Published Policies.