

# Registry-Registrar Agreement

This Registry-Registrar Agreement (the “Agreement”) is ~~dated as of the date signed~~ (“Effective Date”) ~~by and~~ between Bayern Connect GmbH ~~and/or Minds + Machines GmbH~~(the “Registry”), a German limited liability company, with its principal place of business located at \_\_\_\_\_ (“Registry Operator”), and \_\_\_\_\_, IANA ID \_\_\_\_\_, a \_\_\_\_\_ (type of company and jurisdiction), with its principal place of business located at \_\_\_\_\_ the Registrar (“Registrar”). ~~The Registry and Registrar may be referred to individually as a “Party” and collectively as the “Parties.”~~

~~WHEREAS, Registry Operator has entered a Registry Agreement with the Internet Corporation for Assigned Names and Numbers to operate a shared registration system, TLD nameservers, and other equipment for certain top-level domains;~~

~~WHEREAS, ~~the multiple~~ Registrars ~~may~~ provide Internet domain name registration services within the ~~top level domains.BAYERN Top Level Domain wherein the Registry operates and maintains the .BAYERN TLD registry, servers, and zone files;~~ and~~

~~WHEREAS, the Registrar wishes to ~~act as a registrar for register domain~~ names ~~within the top-level domains (“Registry TLD(s)”) specified in Exhibit C in the multiple-registrar Shared Registry System (“SRS”) for the .BAYERN TLD.~~~~

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

## 1. DEFINITIONS

1.1. APIs are the application program interfaces by which Registrar may interact, through the EPP, with the Registry System.

a. ~~“Business Day” means a day that is an ordinary business day in Germany.~~

1.2. b. “Confidential Information” means all information and materials, including, without limitation, computer software, data, information, databases, protocols, reference implementation and documentation, and functional and interface specifications, provided by the Disclosing Party to the Receiving Party under this Agreement and marked or otherwise identified as Confidential, provided that if a communication is oral, the Disclosing Party will notify the Receiving Party in writing within 15 business-days of the disclosure of its confidentiality.

- 1.3. **Domain Name** refers to a domain name created and registered within the Registry TLD(s), whether consisting of two or more (e.g., john.smith.name) levels, about which Registry Operator or its Registry Service Provider maintains data in a Registry Database, arranges for such maintenance, or derives revenue from such maintenance. A name in a Registry Database may be a Domain Name even though it does not appear in a TLD zone file (e.g., a registered but inactive name).
- 1.4. ~~e.~~ “DNS” refers to means the Internet domain name system.
- 1.5. The **Effective Date** shall be the date on which this Agreement is executed by both parties.
- 1.6. ~~d.~~ “EPP” means the Extensible Provisioning Protocol, ~~the IETF-recommended and ICANN required registration protocol~~ which is the protocol used by the Registry System.
- 1.7. ~~e.~~ “ICANN” refers to means the Internet Corporation for Assigned Names and Numbers.
- 1.8. ~~f.~~ “**ICANN Published Policies**” ~~are policies that apply from time to time in the .BAYERN Top Level Domain Registry (including ICANN consensus policies) which includes the UDRP and the URS.~~ 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.
- 1.9. **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 Trademark Clearinghouse (TMCH) requirements, the Uniform Rapid Suspension (URS) requirements, the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP).
- ~~g.~~ “IP” means Internet Protocol.
- ~~h.~~ The “Licensed Product” refers to the intellectual property required to access the Supported Protocol, and to the API, and software, collectively.
- 1.10. **Licensed Product** means the intellectual property required to access the EPP, the APIs, and software necessary for such access.
- 1.11. ~~i.~~ “**Personal Data**” refers to data about any identified or identifiable natural person.
- 1.12. **Price List** means the list of fees published by Registry Operator from time to time. The Registry Operator’s Price List: (i) contains the most current fees; (ii) will be made available online on a website or other method to be advised by 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.
- ~~j.~~ “.BAYERN Registry Policies” means the (i) Naming Policy; (ii) Acceptable Use Policy;

~~k. (iii) Privacy & Whois Policy; (iv) Sunrise Dispute Resolution Policy; and (v) any other policy or policies as may be released from time to time by the Registry with not less than ninety (90) days prior written notice~~

~~l. "Registered Name" refers to a domain name within the domain of the TLD, for which the Registry maintains data in a registry database, arranges for such maintenance, or derives revenue from such maintenance. A name in a registry database may be a Registered Name even though it may not appear in a TLD zone file (e.g., a registered but inactive name).~~

~~m. "TLD zone file" means the file on an authoritative name server (referenced by the root name servers) root server that contains necessary domain name registration information to resolve the domain names to their relevant IP addresses.~~

**1.13. Registered Name Holder** means the holder of a Domain Name.

**1.14. Registrar Accreditation Agreement or RAA** means the form of agreement adopted by the ICANN Board on 27 June 2013, as such agreement may be amended from time to time in accordance with its terms.

**1.15. Registrar Services** means the services subject to this Agreement, including contracting with Registered Name Holders, collecting registration data about such Registered Name Holders, and submitting registration information for entry into the Registry Database.

**1.16. Registration Agreement** means the Domain Name registration agreement between Registrar and a Registered Name Holder.

**1.17. Registry Agreement** means the Registry Agreement between Registry Operator and ICANN for the operation of the Registry TLD(s), as properly amended or renewed from time to time.

**1.18. Registry Database** means a database comprised of data about one or more DNS domain names within the domain of the Registry TLD(s) that is used to generate either DNS resource records that are published authoritatively or responses to domain-name availability lookup requests or WHOIS queries, for some or all of those names.

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

**1.20. n. "Registry TLD(s)"** means the ~~.BAYERN~~ TLD(s) as selected in Exhibit C.

**1.21. Registry Requirements** are the requirements, standards, policies and procedures for the Registry TLD(s) that are adopted by Registry Operator, as may be properly amended or modified from time to time.

**1.22. The Registry Service Provider** refers to Knipp Medien und Kommunikation GmbH, or the entity notified in writing to Registrar by Registry Operator.

**1.23. Registry Services** means services provided by Registry Operator as defined in the Registry Agreement.

**1.24. The Registry System** means the registry system operated by or on behalf of Registry Operator for entering and maintaining Domain Names in the Registry TLD(s).

**1.25.** The Registry Tool Kit comprises the EPP, APIs and software, as each of the foregoing may be modified and made available to Registrar by Registry from time to time.

~~o. "SRS" refers to the Shared Registry System operated by the Registry for registration of Registered Names by multiple Registrars in the Registry TLD.~~

~~p. "Inter-Registrar Transfer Policy" refers to ICANN's Inter-Registrar Transfer Policy and is incorporated by reference herein.~~

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

**1.26.** Term means the term of this Agreement, as set forth in Section 8.1.

**1.27.** ~~r.~~ A "TLD" is means a top-level domain of the DNS.

**1.28.** 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 Registry Operator Published Policies.

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

## **2. OBLIGATIONS OF REGISTRY OPERATOR**~~Obligations of the Parties~~

**2.1.** Access to Registry System.~~a. "SRS Operation and Access." Throughout the term of this Agreement, the Registry Operator shall operate the SRS and provide the Registrar with access to the Registry System SRS to provide Registrar Services transmit domain name registration information for the Registry TLD to the SRS. Nothing in this Agreement entitles the Registrar to enforce any agreement between the Registry Operator and the Registry Service Provider and/or the Registry Operator and ICANN.~~

**2.2.** Suspension of Access to the Registry System. In the event of degradation of the Registry System or other event that in Registry's Operator's opinion affects the security or stability of the Registry System, Registry Operator and/or Registry Service Provider may, in its sole discretion, temporarily suspend or restrict Registrar's access to the Registry System. Except in the case of an emergency, Registry Operator will provide advance notice to Registrar's technical contact. To the extent reasonably practicable, Registry Operator will provide advance notice by email or telephone to 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.

**2.3.** ~~b.~~ Maintenance of Registrations Sponsored by the Registrar. Subject to the provisions of this Agreement, ICANN requirements, and Registry Requirements including, without limitation, those authorized by ICANN, the Registry Operator shall maintain the registrations of Registered Domain Names sponsored by the Registrar in the Shared Registry System during the term for which Registrar has paid the fees required by Section 4.1.5 ("Fees").

## **2.4. Provision of Tool Kit; License.**

**2.4.1. Registry Tool Kit.** No later than three (3) business days after the Effective Date, or as soon as practicable thereafter, Registry Operator shall provide to Registrar a copy (or hyperlink to a copy which can be downloaded) of the Registry Tool Kit, which shall provide sufficient technical specifications to allow Registrar to interface with the Registry System and employ its features that are available to Registrars.

**2.4.2. License.** Subject to the terms and conditions of this Agreement, ~~the Registry Operator~~ hereby grants ~~the Registrar~~ and the Registrar accepts a non-exclusive, royalty-free, non-transferable, worldwide limited license to use for the Term and purposes of this Agreement the Licensed Product and any reference client software included in the Registry Tool Kit, as well as updates and redesigns thereof, for providing Registrar Services in the Registry TLD(s) to provide domain name registration services in the TLD only and for no other purpose.

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

**2.5. Changes to System.** Registry Operator may from time to time make modifications to the Registry Tool Kit or other materials licensed hereunder that will revise or augment the features of the Registry System. Registry Operator will provide Registrar with reasonable notice prior to the implementation of any material changes to the EPP, APIs, software, or other materials licensed hereunder. Registrar acknowledges that certain Registry System functionality may not be available unless Registrar uses the then-current version of the Registry Tool Kit.

**2.6. Engineering and Customer Service Support.** Registry Operator, or Registry Service Provider, shall provide Registrar with engineering and customer service support as described in the customer support procedures made available to Registrar and as may be amended from time to time.

**2.7. Handling of Personal Data.** ~~The Registry Operator~~ shall notify ~~the Registrar~~ of the purposes for which Personal Data submitted to ~~the Registry Operator~~ by ~~the Registrar~~ is collected, the

intended recipients (or categories of recipients) of such Personal Data, and the mechanism for access to and correction of such Personal Data. The Registry Operator shall take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction. The Registry Operator shall not use or authorise authorize the use of Personal Data in a way that is incompatible with the notice provided to the registrars. Notwithstanding the above, The Registry Operator may from time to time use the demographic data collected for statistical analysis, provided that this analysis will not disclose individual Personal Data and provided that such use is compatible with the notices provided to the registrars regarding the purpose and procedures for such use.

**2.8. Service Level Agreement.** Registry Operator shall use commercially reasonable efforts to meet the performance specifications set forth in Specification 10 to the Registry Agreement.

**2.9. ICANN Requirements.** The Registry's Operator's obligations hereunder are subject to modification at any time as the result of ICANN-mandated requirements and ICANN consensus policies through the processes set forth in the Registry Agreement. Notwithstanding anything in this Agreement to the contrary, the Registrar shall comply with any such ICANN requirements in accordance with the timeline defined by ICANN.

**2.10. New Registry Services.** Registry Operator shall provide Registrar no less than thirty (30) days written notice of any new Registry Service that has been approved by ICANN in accordance with the Registry Agreement. In the event that the introduction of a new Registry Service involves material changes to the Registry System, such thirty (30) days shall run in parallel with, and not in addition to, any notice provided under Section 2.5 above. Such notice shall include the provision of information on pricing, starting date and any additional terms and conditions regarding the new Registry Service.

**2.11. Compliance Actions.** Registry Operator acknowledges that all ICANN-accredited registrars must enter into an RAA with ICANN and ICANN may take certain compliance actions in response to an emergency or in accordance with the terms of the RAA, including suspension or termination of a registrar's accreditation or suspension of a registrar's ability to create new registered names or initiate inbound transfers of registered names. ICANN may require Registry Operator to take specific actions consistent with ICANN's authority under the terms of the RAA to: (i) suspend or terminate a registrar's ability to create new registered names, or (ii) transfer registered names to a registrar designated by ICANN.

**2.12. IDNs.** Registry Operator may offer registration of IDNs at the second and lower levels provided that Registry Operator complies with ICANN's IDN Implementation Guidelines as set forth in its Registry Agreement.

**2.13. Rights Protection Mechanisms.** Registry Operator will comply with the ICANN RPMs as they may be revised from time to time including, but not limited to, the implementation of determinations issued by URS examiners and any remedies ICANN imposes following a determination by any PDDRP or RRDRP panel. Registry Operator shall comply with the Trademark Clearinghouse Rights Protection Mechanism Requirements or any successor requirements related to the same as approved and published by ICANN.

~~c. Distribution of EPP, APIs and Software. No later than three Business Days after the Effective Date of this Agreement, the Registry shall make available to the Registrar: (i) full documentation of the Supported Protocol, (ii) application program interfaces (“APIs”) to the Supported Protocol with documentation, and (iii) Registrar Toolkits (RTKT) that will allow the Registrar to connect via EPP to the SRS to register second level domain names through the SRS for the Registry TLD. If the Registry elects to modify or upgrade the APIs and/or Supported Protocol, the Registry shall provide updated APIs to the Supported Protocol with documentation to the Registrar promptly as such updates become available. Unless the circumstances require a shorter time frame (such as due to ICANN mandated policies, emergency maintenance or changes needed to ensure the security and stability of the system), the Registry will provide not less than ninety (90) days prior written notice to Registrar to implement such API updates.~~

### **3. OBLIGATIONS OF REGISTRAR**

**3.1. Accredited Registrar.** During the term of this Agreement, Registrar shall maintain in full force and effect its accreditation by ICANN as a registrar for the Registry TLD(s), under an executed RAA.

**3.2. d. Registrar Responsibility for Customer Support.** ~~The Registrar is responsible and shall provide customer support for all Registrar’s Registered Name Holders in the Registry TLD(s). In providing customer support, Registrar shall provide (i) support to accept (i) orders for registration, cancellation, modification, renewal, deletion, redemptions or transfer of Registered Domain Names, and (ii) customer service (including domain name record support) and billing, and technical support to Registered Name Holders (also sometimes referred to herein as “Registrants”). The Registrar shall, consistent with ICANN policies, provide to Registered Name Holders emergency contact or 24/7 support information for critical situations such as domain name hijacking.~~

**3.3. Registrar’s Registration Agreement and submission to policies.** ~~At all times while it is sponsoring the registration of any Domain Name within the Registry System, Registrar shall have in effect an electronic or paper Registration Agreement with the Registered Name Holder and upon written request from Registry Operator, the Registrar will, within fourteen (14) days of the request, provide Registry Operator with a copy of any Registration Agreement sought in Registry Operator’s request. The Registrar shall have in effect an electronic or paper registration agreement with the Registered Name Holder which shall at all times incorporate or provide a link to the terms of the .BAYERN Registry Policies and no terms that are contrary to or inconsistent with the .BAYERN Registry Policies. The Registrar shall provide a copy of the Registrar’s registration agreement upon request for same by the Registry. The Registrar shall include in its Registration Agreement those terms required by this Agreement, including but not limited to those listed in Exhibit A and other terms that are requested by the Registry that are consistent with the Registrar’s obligations to the Registry Operator under this Agreement, and the consent of each registrant for the collection and use of their personal data by the Registry and by ICANN for such purposes as the Registry is required contractually to use the data. The Registrar shall employ in its domain name registration agreement a requirement for the Registered Name Holders to submit to the ICANN Policies including the Inter-Registrar Transfer Policy, Uniform Domain Name Dispute Resolution Policy (UDRP), and the Uniform~~

Rapid Suspension (URS), and the .BAYERN Registry Policies, each in their most recent form and each as may be amended from time to time. In its registration agreement with each Registered Name Holder, the Registrar shall require such Registrant to:

**3.4. Indemnification Required of Registered Name Holders.** In its Registration Agreement with each Registered Name Holder, Registrar shall require such Registered Name Holder to indemnify, defend and hold harmless Registry Operator, its Registry Service Provider, and its subcontractors, directors, officers, employees, affiliates and agents of each of them from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to the Registered Name Holder's domain name registration. The Registration Agreement shall further require this indemnification obligation survive the termination or expiration of the Registration Agreement.

**3.5. Registrar's Duty to Cooperate with Technical Analysis.** Registrar will not interfere with Registry Operator's conduct of periodic technical analysis to assess whether domains in the Registry TLD(s) are being used to perpetrate security threats such as pharming, phishing, malware, and botnets, and will cooperate with Registry Operator to respond to any such threats identified by Registry Operator through such efforts.

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

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

~~g. Registrar's Registration Agreement and submission to policies. The Registrar shall have in effect an electronic or paper registration agreement with the Registered Name Holder which shall at all times incorporate or provide a link to the terms of the .BAYERN Registry Policies and no terms that are contrary to or inconsistent with the .BAYERN Registry Policies. The Registrar shall provide a copy of the Registrar's registration agreement upon request for same by the Registry. The Registrar shall include in its registration agreement those terms required by this Agreement, other terms that are requested by the Registry that are consistent with the Registrar's obligations to the Registry under this Agreement, and the consent of each registrant for the collection and use of their personal data by the Registry and by ICANN for such purposes as the Registry is required contractually to use the data. The Registrar shall employ in its domain name registration agreement a requirement for~~



~~the Registered Name Holders to submit to the ICANN Policies including the Inter-Registrar Transfer Policy, Uniform Domain Name Dispute Resolution Policy (UDRP), and the Uniform Rapid Suspension (URS), and the .BAYERN Registry Policies, each in their most recent form and each as may be amended from time to time. In its registration agreement with each Registered Name Holder, the Registrar shall require such Registrant to:~~

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

~~ii.——indemnify, defend and hold harmless the Registry and its subcontractors, and its and their directors, officers, employees, agents, and affiliates from and against any and all claims, damages, liabilities, costs, and expenses, including reasonable legal fees according to the Rechtsanwaltsvergütungsgesetz (RVG) or any other legislation or regulation that may be force at the time and expenses arising out of or relating to, for any reason whatsoever, the Registered Name Holder's domain name registration. The Registrar's registration agreement shall further require that this indemnification obligation survive the termination or expiration of the registration agreement; and~~

~~iii.——acknowledge and agree that they (the Registered Name Holder) are prohibited from 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 that evidence of any such activity by the Registered Name Holder may result in application by the Registry or Registrar of consequences (consistent with applicable law and any related procedures) including suspension of the domain name.~~

~~The Registrar shall comply with its obligations under the .BAYERN Registry Policies and any breach by the Registrar of the terms of the .BAYERN Registry Policies shall be a breach of this Agreement.~~

~~If a Registrant is in breach of any term of the .BAYERN Registry Policies, the Registry is entitled (and without prejudice to the Registry's ability to take such steps as it considers appropriate pursuant to the .BAYERN Registry Policies) to instruct the Registrar to exercise any of the powers granted to the Registrar pursuant to the .BAYERN Registry Policies.~~

~~Whether and to what extent the Registry instructs the Registrar to exercise any such power is a matter that the Registry may decide in its absolute discretion, but insofar as it is reasonably possible to do so it shall consult with the Registrar before issuing any such instruction to the Registrar.~~

~~h.——URS High-Level Technical Requirements. In addition to any other requirement under the URS, the Registrar must accept and process payments for the renewal of a domain name by an eligible, validated URS Complainant in cases where the URS Complainant prevailed. The Registrar~~

~~must not renew a domain name for longer than a year to a URS Complainant who has prevailed. In addition, the Registrar must agree to abide by any other rights protection mechanisms required by ICANN including any such listed in Specification 7 of the public Registry Agreement, including any amendments to the Registry Agreement or to Specification 7.~~

### **3.7. Obligations Related to the Provision of Registrar Services by Third Parties; Resellers.**

Registrar is responsible for the provision of Registrar Services in compliance with this Agreement for all names in the Registry Database sponsored by Registrar, whether such services are provided by Registrar or a third party such as a reseller.

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

~~Each EPP session shall be authenticated and encrypted using two-way secure socket layer ("SSL") protocol. The Registrar agrees to authenticate every EPP client connection with the SRS using both (i) a server certificate issued by a mutually agreed commercial Certification Authority and (ii) its Registrar password, which it shall disclose only to its employees with a need to know. The Registrar agrees to notify the Registry within four (4) hours of learning that its Registrar password has been compromised in any way or if its server certificate has been revoked by the issuing Certification Authority or compromised in any way.~~

~~Upon not less than ninety (90) days prior written notification (unless shorter notice is required in exceptional circumstances, such as changes are needed to ensure the security and stability of the system), to the Registrar, the Registry may require other industry standard security provisions, practices or technology to ensure that the Registry System is secure and stable, which the Registry may adopt from time to time in its sole and complete discretion. If the Registrar fails to comply with the Registry's standards, the Registry will provide the Registrar a 30 (thirty) day compliance notice. Failure to comply at the end of such period will be considered a material breach of this Agreement. Additionally, the Registrar must ensure that access to Registrant accounts is adequately protected, at a minimum, by a secure log in process that requires username and password authentication and the Registrar must comply with all other security-related ICANN Registrar accreditation requirements.~~

~~The Registrar shall not provide identical Registrar-generated authorization (<authinfo>) codes for domain names registered by different Registrants with the same Registrar. The Registry in its sole~~

discretion may choose to modify <authinfo> codes for a given domain and shall notify the sponsoring Registrar of such modifications via EPP-compliant mechanisms (i.e., EPP<poll> or EPP<domain:info>). The Registry will use reasonable efforts to implement a system to ensure the notifications of such modifications to be made in 300 seconds. Documentation of these mechanisms shall be made available to the Registrar by the Registry.

The Registrar shall provide the Registered Name Holder with timely access to the authorization code along with the ability to modify the authorization code; the Registrar shall respond to any inquiry by a Registered Name Holder regarding access to and/or modification of an authorization code within five (5) calendar days.

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

**3.9. Resolution of Technical Problems.** Resolution of Technical Problems or Breach of Agreement.

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

**3.10. Time.** The Registrar agrees that, in the event of any dispute concerning the time of the entry of a Domain Name registration into the Registry Database, the time shown in the Registry records System shall control.

**3.11. Transfer of Sponsorship of Registrations.** The Registrar agrees to implement transfers of Registered Domain Name registrations from another registrar to the Registrar and vice versa pursuant to the Inter-Registrar ICANN Transfer Policy as may be amended from time to time, and any applicable Registry Requirements by ICANN.

**3.12. Compliance with Terms and Conditions** Operational Requirements. The Registrar shall comply with each of the following requirements, and further shall include in Its Registration Agreement with each Registered Name Holder, as applicable appropriate, an obligation for such Registered Name Holder to comply with each all of the following requirements:

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

3.12.2. Registry Requirements as established from time to time by Registry Operator, including Registry Operator Published Policies. Additional or revised Registry Requirements for the Registry TLD(s) shall be effective upon thirty (30) days notice by Registry Operator to Registrar.

3.13. Restrictions on Domain Names. ~~Prohibited Domain Name Registrations.~~ In addition to complying with ICANN standards, policies, procedures, and practices limiting domain names that may be registered, ~~the Registrar agrees to comply with Registry Operator's policies regarding reservation of and restrictions on the registration of domain names and applicable statutes and regulations limiting the domain names that may be registered~~ applicable statutes and regulations limiting the domain names that may be registered, as well as the Registry's Policies, including the Acceptable Use Policy and Naming Policy, as may be amended from time to time by the Registry at its sole discretion.

3.14. v. ——— Authorization Codes. ~~The Registrar shall not provide identical Registrar-generated authorization <authinfo> codes for Domain Names registered by different registrants with the same Registrar. The Registry Operator in its sole discretion may choose to modify <authinfo> codes for a given domain and shall notify the sponsoring registrar of such modifications via EPP compliant mechanisms (i.e., EPP<poll> or EPP<domain:Info>). Documentation of these mechanisms shall be made available to the Registrar by the Registry Operator. The Registrar shall provide the Registered Name Holder Registrant with timely access to the authorization code along with the ability to modify the authorization code; the Registrar shall respond to any inquiry by a Registered Name Holder Registrant regarding access to and/or modification of an authorization code within five (5) calendar days. In addition, Registrar may not employ any mechanism for complying with a Registered Name Holder's request to obtain the applicable <authinfo> that is more restrictive than the mechanisms used for changing any aspect of the Registered Name Holder's contact or name server information. Registrar must not refuse to release an <authinfo> to the Registered Name Holder solely because there is a dispute between the Registered Name Holder and the Registrar over payment.~~

3.15. Cooperation. Registrar agrees to cooperate with Registry Operator and share data as set forth in this Agreement. In the event of any inquiry or dispute for any reason involving a domain name registered by Registrar in the Registry TLD(s), Registrar shall provide all reasonable assistance to Registry Operator and/or any Court, Arbitrator, law enforcement and governmental and quasi-governmental agencies and/or any other relevant authority considering the issue or dispute.

3.16. Registrar Responsibilities for Uniform Rapid Suspension. Subject to ICANN requirements and the Registry Requirements the Registrar must:

3.16.1. 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 Registered Name Holder at the time of suspension;

3.16.2. Accept and process payments for the renewal of a Domain Name by the party who initiated a Uniform Rapid Suspension complaint regarding a Domain Name in such cases where that party has prevailed in relation to that Domain Name; and

3.16.3. Not allow a party who initiated a Uniform Rapid Suspension complaint regarding a Domain Name who prevailed in relation to that Domain Name to renew that Domain Name for longer than one (1) year.

**3.17. TMCH Periods.** Availability of Domain Names during the TMCH Periods is subject to the TMCH requirements. Notwithstanding anything in this Agreement, Registrar acknowledges and agrees that 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.

~~k. — Domain Name Lookup Capability. The Registrar agrees to employ in its domain name registration business the Registry’s domain directory service (Whois) registry domain name lookup capability to determine if a requested domain name is already registered and, if so, to retrieve the publicly available data regarding this domain name. The Registrar also agrees, at its expense, to provide an interactive web page and a port 43 Whois service providing free public query-based access to up-to-date (i.e., updated at least daily) data concerning all active Registered Names sponsored by the Registrar for the Registry TLD. The Registrar’s obligation under this clause shall consist of, and be subject to, elements that are designated from time to time according to any ICANN-adopted specification or policy or the Registrar Accreditation Agreement between the Registrar and ICANN.~~

~~l. — Privacy and Proxy Services. The Registrar agrees to comply with the requirements of the 2013 RAA or future consensus policies defining requirements for privacy and proxy services.~~

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

~~n. — Time. The Registrar agrees that, in the event of any dispute concerning the time of the entry of a domain name registration into the Registry database, the time shown in the Registry records shall be determinative.~~

~~o. — Compliance with Operational Requirements. The Registrar shall comply with each of the following requirements, and further shall include in its registration agreement with each Registered Name Holder, as applicable, an obligation for such Registered Name Holder to comply with each of the following requirements:~~

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

~~vii. — Operational standards, policies, procedures, and practices for the TLD established from time to time by the Registry in a non-arbitrary manner and applicable to all Registrars (“Operational Requirements”), including affiliates of the Registry, and consistent with the Registry’s Registry Agreement with ICANN, as applicable, upon the Registry’s notification to the Registrar of the establishment of those terms and conditions upon 90-day notice, except in circumstances where a regulatory body (e.g. ICANN) or law enforcement mandates registries to meet shorter deadlines, in~~

which case the Registrar will work with the Registry to agree on an appropriate date to implement such changes.

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

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

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

~~s. — Accredited Registrar. During the term of this Agreement, the Registrar shall maintain in full force and effect its accreditation by ICANN as a Registrar for the Registry TLD under the 2013 Registrar Accreditation Agreement or any subsequent version thereof.~~

~~t. — The Registrar knows and accepts that the Registry reserves certain domain names that will not be available for public registration, i.e. domain names that correspond with names and notations of municipalities and/or governmental organisations of the Federal State of Bavaria. The Registrar can choose to participate in this process and register those domain names for the corresponding municipalities and/or governmental organisation at no cost on request. The request of the municipality or governmental organisation will include proof of authenticity and authority to oblige the Registrant to register the domain name. The option to provide free registrations is limited to a two-year registration period per domain name. After this term the Registry and the respective Government will join in negotiations concerning the future registration fees of such domain names.~~

### **3. — License**

~~a. — License Grant. Subject to the terms and conditions of this Agreement, the Registry hereby grants the Registrar and the Registrar accepts a non-exclusive, royalty-free, non-transferable, worldwide limited license to use for the Term and purposes of this Agreement the Licensed Product, as well as updates and redesigns thereof, to provide domain name registration services in the TLD only and for no other purpose. The Licensed Product, as well as updates and redesigns thereof, will enable the Registrar to register domain names in the Registry TLD with the Registry on behalf of its Registered Name Holders. The Registrar, using the Licensed Product, as well as updates and redesigns thereof, will be able to invoke the following operations on the SRS: (i) check the availability of a domain name, (ii) register a domain name, (iii) renew a domain name, (iv) cancel the registration~~

of a domain name it has registered, (v) update the nameservers of a domain name, (vi) transfer a domain name from another Registrar to itself with proper authorization (or vice versa), (vii) redeem a domain name, (viii) query a domain name registration record, (ix) register a NameServer, (x) update the IP addresses of a NameServer, (xi) delete a NameServer, (xii) query a NameServer, and (xiii) establish and end an authenticated session.

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

c. — Changes to Licensed Materials. The Registry may from time to time replace or make modifications to the Licensed Product licensed hereunder. Unless circumstances require a shorter notice period, the Registry will provide the Registrar with not less than ninety (90) days prior written notice to implement such modifications. If additional time is required, the Parties will agree to a mutually acceptable time frame. The license granted in clause 3.a shall apply to such changed or modified materials.

#### **4. — Support Services**

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

b. — Customer Service Support. During the Term of this Agreement, the Registry will provide customer service support to the Registrar at the service levels set by ICANN and will not provide any customer service support to Registered Name Holder or prospective customers of the Registrar, for nontechnical issues solely relating to the SRS and its operation. The Registry may provide additional levels of customer service support to the Registrar at its sole discretion. The Registry will provide the Registrar with a telephone number and email address for such support during implementation of the Supported Protocol, APIs, and Software. First-level telephone support will be available on a 7-day/24-hour basis.

#### **5.4. FEES**

a. — Registration Fees.

**4.1. Amount of Registry Operator Fees.**

~~4.1.1. i. The Registrar agrees to pay the Registry Operator the fees set forth in the Price List all non-refundable fees for initial and renewal registrations and other services provided by the Registry Operator to Registrar (collectively, the “Registration Fees”). ii. The Registry Operator reserves the right to revise the Fees prospectively to the extent and in the manner that such adjustments are permitted by the Registry Agreement, as follows adjust Standard and Premium domain name Registration Fees within certain notification periods as listed below: (i) With respect to initial domain name registrations, Registry Operator shall provide Registrar written notice of any price change of no less than thirty (30) calendar days; (ii) With respect to renewal of domain name registrations, Registry Operator shall provide Registrar written notice of any price increase of no less than one hundred eighty (180) calendar days, and notice of any other price change of no less than thirty (30) calendar days.~~

Fee Adjustment Event	Notification Period
<del>1) Standard and premium tier level price changes*:</del>	
<del>A) For all unregistered domains: increase or decrease to a standard or premium tier level rate i.e., for new (domain:create), renewal, or redemption transactions</del>	<del>45 days</del>
<del>B) For all registered domains: renewal rate decrease (domain:renew)</del>	<del>60 days</del>
<del>C) For all registered domains: renewal rate increase (domain:renew)</del>	<del>180 days</del>
<del>2) A subset of domains within a tier:</del>	
<del>A) A tier assignment increase or decrease for unregistered domains: i.e., the moving of a subset of unregistered domains from one tier to another tier</del>	<del>30 days</del>
<del>B) A tier assignment decrease for registered domains: i.e., the movement of a subset of registered domains to a lower priced tier for renewal</del>	<del>30 days</del>
<del>C) A tier assignment increase for registered domains: i.e., the movement of a subset of registered domains to a higher renewal priced tier</del>	<del>180 days</del>
<del>3) Reserved domains change of status</del>	
<del>A) Change of unpriced reserved domains to priced (available or reserved)</del>	<del>45 days</del>
<del>B) Change of priced reserved domains to available</del>	<del>30 days</del>
<del>C) Sale of reserved domain (priced or unpriced) to a buyer</del>	<del>24 hours</del>



~~\* for the avoidance of doubt, a standard or premium tier level change relates to all domains (i.e., registered or unregistered) within a specific level/tier rate such as the standard rate or a premium tiered rate.~~

~~Administrative adjustments: if the registry makes a pricing error on a subset of unregistered domains, the registry will first reserve the mispriced, unregistered domains and will re-release with correct pricing after a 30-day notice period (3B).~~

~~Any such notice may be by email, hand, registered mail, courier or express delivery service, or may be posted to the Registry's website, provided that notice of standard and price-tier changes will be made by email. Current prices can be found in the registrar portal.~~

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

**4.2. Payment of Registry Operator Fees.** Registrar shall comply with the terms of the Billing Policy promulgated by the Registry Operator, as provided to Registrar from time to time. In advance of incurring Fees, Registrar shall establish a deposit account, or other credit facility accepted by Registry Operator, which acceptance will not be unreasonably withheld so long as payment is assured. All Fees are due immediately upon receipt of applications for initial and renewal registrations, or upon provision of other services provided by Registry Operator to Registrar, or as otherwise described in the Billing Policy. Payment shall be made via debit or draw down of the deposit account or other credit facility approved by Registry Operator. Registry Operator shall provide monthly invoices to the Registrar.

**4.3. Non-Payment of Fees.** ~~Timely payment of fees owing under this Section 5 is a material condition of performance under this Agreement. In the event that the Registrar has insufficient funds deposited with Registry Operator, Registry Operator may do any or all of the following: fails to adequately fund its RPA or fails to pay its Registration Fees in a timely manner, the Registry will issue a 15-day notice to the Registrar requesting the payment for all outstanding invoices. If, by the end of the notice period, all invoices remain unpaid, the Registry may, at its sole discretion: (i.) stop accepting new initial, or renewal or transferred registrations from the Registrar; (ii.) suspend/delete the Domain Names associated with any negative balance incurred invoices not paid in full, and delete such domain names from the Registry Database; if such the invoice remains unpaid after thirty (30) additional days; give written notice of termination of this Agreement pursuant to Section 6(a)(iii) below (the Registry may, in its sole discretion, issue a fifteen (15) day notice demanding payment prior to using its right under this Section); and/or; (iii.) pursue any other remedy under this Agreement.~~

**4.4. Taxes.** ~~iv. The Registration All~~ Fees due under this Agreement are exclusive of tax. All taxes, duties, fees, and other governmental charges of any kind (including sales, turnover, services,

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

**4.5. Variable Registry-Level Fees.** In the event that Registry Operator is required to pay Variable Registry-Level Fees to ICANN in accordance with the Registry Agreement, Registry Operator is entitled to collect such Fees from Registrar, and Registrar hereby gives its express approval of Registry Operator's collection, in addition to Fees due to Registry under this Section 4, of the amount that is equivalent to the Variable Registry-Level Fee paid by Registry Operator to ICANN with respect to Registrar's Domain Names in the Registry TLD(s).

~~b. Change in Registrar Sponsoring Domain Name. The Registrar may assume sponsorship of a Registered Name Holder's existing domain name registration from another Registrar by following the Inter-Registrar Transfer Policy.~~

~~i. For each transfer of the sponsorship of a domain name registration under the Inter-Registrar Transfer Policy, the Registrar agrees to pay the Registry the renewal registration fee associated with a one-year extension. The losing Registrar's Registration Fees will not be refunded as a result of any such transfer; or~~

~~ii. For a transfer approved by ICANN under Part B of the Transfer Policy, Registrar agrees to pay the Registry US\$0.00 (for transfers of 50,000 names or fewer) or US\$50,000 (for transfers of more than 50,000 names).~~

~~c. Charges for ICANN Fees. The Registry will immediately debit the Registrar's RPA or account for any variable registry level fees paid or to be paid by the Registry to ICANN relating to the Registrar and the Registrar's transactions. The fee will consist of two components; each component will be calculated by ICANN for each Registrar:~~

~~i. The transactional component of the Variable Registry Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year.~~

~~ii. The per-Registrar component of the Variable Registry Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year.~~

~~d. Non-Payment of Fees. Timely payment of fees owing under this Section 5 is a material condition of performance under this Agreement. In the event that the Registrar fails to adequately fund its RPA or fails to pay its Registration Fees in a timely manner, the Registry will issue a 15-day notice to the Registrar requesting the payment for all outstanding invoices. If, by the end of the notice period, all invoices remain unpaid, the Registry may, at its sole discretion: i. stop accepting new initial or renewal registrations from the Registrar; ii. suspend the domain names associated with~~

~~invoices not paid in full, and delete such domain names from the Registry database if such the invoice remains unpaid after thirty (30) additional days; give written notice of termination of this Agreement pursuant to Section 6(a)(iii) below (the Registry may, in its sole discretion, issue a fifteen (15) day notice demanding payment prior to using its right under this Section); and/or, iii. pursue any other remedy under this Agreement.~~

## 5. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

5.1. Use of Confidential Information. During the Term of this Agreement, each party (the “Disclosing Party”) may be required to disclose its Confidential Information to the other Party (the “Receiving Party”). Each party’s use and disclosure of the Confidential Information of the other party disclosed hereunder are shall be subject to the following terms and conditions:

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

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

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

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

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

5.1.6. Notwithstanding the foregoing, this Subsection 5.1 imposes no obligation upon the parties with respect to information that (i) is disclosed with the Disclosing Party’s prior written approval in the absence of a confidentiality agreement and such disclosure was agreed to by the Disclosing Party in writing prior to such disclosure; or (ii) is or has entered the public domain through no fault of the Receiving Party; or (iii) is known by the Receiving Party prior to the time of disclosure; or (iv) is independently developed by the Receiving Party without use of the Confidential Information; or (v) is made generally available by the Disclosing Party without restriction on disclosure, or (vi) is required to be disclosed by law, regulation or court order; provide d, that

5.1.7. In the event the Receiving Party is required by law, regulation, or court order to disclose any of the Disclosing Party's Confidential Information, the Receiving Party will promptly notify the Disclosing Party in writing prior to making any such disclosure in order to facilitate the Disclosing Party seeking a protective order or other appropriate remedy from the proper authority, at the Disclosing Party's expense. The Receiving Party agrees to cooperate with the Disclosing Party in seeking such order or other remedy. The Receiving Party further agrees that if the Disclosing Party is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, it will furnish only that portion of the Confidential Information that which is legally required.

5.1.8. The Receiving Party's duties under this Section 5.1 shall expire five (5) years after the information is received or earlier, upon written agreement of the parties.

## **5.2. Intellectual Property.**

5.2.1. Subject to the licenses granted herein, each party will continue to independently own its intellectual property, including all patents, trademarks, trade names, service marks, copyrights, trade secrets, proprietary processes and all other forms of intellectual property. In addition, Registry Operator, Registry Service Provider, or their suppliers and/or licensees, shall own all right, title and interest in and to the EPP, APIs, Registry Tool Kits, and any software incorporated into the Registry System, as well as all intellectual property appurtenant thereto.

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

5.2.3. Any tools provided hereunder and any tools, software (both in object code and source code from), documentation, technical information, databases, designs, algorithms, techniques, reports, drawings, charts, text or other information and works of authorship, and all ideas, inventions, discoveries, concepts, ideas, know-how, methods, processes, improvements and derivative, whether or not patentable or copyrightable, used or developed by Registry Operator and/or Registry Service Provider to provide the Services shall be and remain the sole and exclusive property of Registry Operator and Registry Service Provider which shall have and retain all Intellectual Property Rights therein.

5.2.4. Registrar will not, and shall not allow others to, reverse engineer or otherwise attempt to derive source code from Registry Operator or Registry Service Provider tools or software accessed as part of the Services.

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

6.1. Indemnification. The Registrar, at its own expense and within thirty (30) calendar days of after presentation of a demand by the Registry Operator or Registry Related Parties under this paragraph Section, will indemnify, defend and hold harmless the Registry Operator, Registry Service Provider, and its their employees, directors, officers, representatives, agents and affiliates, against any claim, suit, action, or other proceeding brought against the Registry

Operator, Registry Related Parties, or any affiliate of the Registry the foregoing based on or arising from any claim or alleged claim: (i) relating to any product or service of the Registrar; (ii) relating to any agreement, including the Registrar's dispute policy, with any Registered Name Holder of the Registrar; or (iii) relating to the Registrar's domain name registration business, including, but not limited to, the Registrar's advertising, domain name application process, systems and other processes, fees charged, billing practices and customer service; provided, however, that in any such case: (a) the Registry Operator or Registry Service Provider, as the case may be, or Registry Related Party provides the Registrar with prompt notice of any such claim, and (b) upon the Registrar's written request, the Registry Operator or Registry Related Parties will provide to the Registrar all available information and assistance reasonably necessary for the Registrar to defend such claim, provided that the Registrar reimburses the Registry Operator and/or Registry Service Provider for their for its actual and reasonable costs incurred in connection with providing such information and assistance and expenses. The Registrar will not enter into any settlement or compromise of any such indemnifiable claim without the Registry Operator's and/or Registry Service Provider's, or where applicable Registry Related Parties' prior written consent, which consent shall not be unreasonably withheld. The Registrar will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees in accordance with the RVG or any other statutory provision and costs awarded against or otherwise incurred by the Registry Operator or Registry Service Provider, as the case may be, in connection with or arising from any such indemnifiable claim, suit, action or proceeding.

**6.2. Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES RESULTING FROM LOSS OF PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY(IES) HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR A BREACH OF SECTION 5 OR THE INDEMNIFICATION OBLIGATIONS OF SECTION 6.1, IN NO EVENT SHALL THE MAXIMUM AGGREGATE LIABILITY OF THE PARTIES EXCEED THE LESSER OF (I) THE TOTAL AMOUNT PAID TO REGISTRY UNDER THE TERMS OF THIS AGREEMENT FOR THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD, OR (ii) \$100,000 USD.

## **7. DISPUTE RESOLUTION.**

**7.1. Dispute Resolution.** Disputes arising under or in connection with this Agreement, including requests for specific performance, shall be resolved through binding arbitration conducted as provided in this Section pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted in the English language and shall occur in the Commonwealth of Virginia, USA. There shall be three arbitrators: each party shall choose one arbitrator and, if the two arbitrators are not able to agree on a third arbitrator, the third shall be chosen by the ICC. The parties shall bear the costs of the arbitration in equal shares, subject to the right of the arbitrators to reallocate the costs in their award as provided in the ICC rules. The parties shall bear their own attorneys' fees in connection with the arbitration, and the arbitrators may not reallocate the attorneys' fees in conjunction with their award. The arbitrators shall render their decision within ninety (90) days of the initiation of arbitration. Any litigation brought to enforce an arbitration award

shall be brought in a Commonwealth or federal court in the eastern district of the Commonwealth of Virginia, USA; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction. For the purpose of aiding the arbitration and/or preserving the rights of a Party during the pendency of an arbitration, each Party shall have the right to seek temporary or preliminary injunctive relief from the arbitration panel or a court located in the Eastern District of the Commonwealth of Virginia, USA, which shall not be a waiver of this arbitration agreement.

#### **6.8. TERM AND TERMINATION**~~Miscellaneous~~

~~a. — Right to Amend the Terms of this Agreement. The Registry shall be entitled to amend or revise the terms of an RPAThis Agreement provided that such amendments or revisions have been approved or adopted by ICANN pursuant to the Registry’s Registry Agreement with ICANN and upon the Registry giving the Registrar thirty (30) calendar days’ notice of that amendment. Subject to the Registrar’s right to terminate pursuant to Section 6(b)(ii), the Registrar shall have thirty (30) calendar days from the date of notice of any such amendment or revisions to execute an agreement putting the approved amendments or revisions into effect.~~

~~b. — Term of Agreement and Termination.~~

**8.1. Term of the Agreement; Revisions.** ~~The Term of this Agreement shall commence on~~The ~~duties and obligations of the Parties under this Agreement shall apply from the Effective Date and, unless earlier terminated in accordance with the provisions of this Agreement, shall expire on the expiration of the Registry Agreement through and including the last day of the calendar month sixty (60) months from the Effective Date (the “Initial Term”). Upon conclusion of the Initial Term, all provisions of this Agreement will automatically renew for successive five (5) year renewal periods until the Agreement has been terminated as provided herein, the Registrar elects not to renew, or the Registry ceases to operate the registry for the Registry TLD.~~ii. — Termination where Revision. In the event that an amendment or revisions to Registry Operator’s approved form of Registry-Registrar this Agreement are is approved or adopted by ICANN, and 30 calendar days’ notice of the same is given to the Registry pursuant to Section 6(a), the Registrar may, at its option exercised within such thirtyfifteen (3015) days after receiving notice of such amendmentperiod, terminate this Agreement immediately by giving written notice to the Registry Operator.; provided, however, that iIn the event the Registry Operator does not receive such executed amendment or notice of termination from the Registrar within such thirty-fifteen (3015) day period, Registrar shall be bound by the amendment of the date of the notice, the Registrar shall be deemed to have executed such amendment as of the thirty-first (31st) day after the date of the notice.

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

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

8.2.2. ~~iii.~~ Termination at Option of Registrar. ~~The~~ Registrar may terminate this Agreement at any time by giving ~~the~~ Registry Operator thirty (30) ~~calendar~~ days ~~prior written~~ notice of termination.

8.2.3. ~~iv.~~ Termination Upon Loss of Registrar's Accreditation. This Agreement shall terminate in the event ~~the~~ Registrar's accreditation ~~for the Registry TLD~~ by ICANN, ~~or its successor~~, is terminated or expires without renewal.

8.2.4. ~~v.~~ Termination in the Event of Termination of Registry Agreement that Successor Registry Operator is Named. This Agreement shall terminate in the event that Registry Operator's Registry Agreement with ICANN is terminated or expires without entry of a subsequent Registry Agreement with ICANN and this Agreement is not assigned under Section 9.1.1. ~~ICANN, as appropriate, designates another entity to operate the registry for the Registry TLD~~

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

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

8.3.1. ~~the~~ Registry Operator will, to the extent it has the authority to do so, complete the registration of all domain names processed by ~~the~~ Registrar prior to the effective date of such expiration or termination, provided that ~~the~~ Registrar's payments to ~~the~~ Registry Operator for Registration Fees are current and timely.

8.3.2. ~~Registrar shall~~ immediately upon any expiration or termination of this Agreement, the Registrar shall (i) transfer its sponsorship of Registered-Domain Names registrations to another ICANN-accredited registrar that is also accredited in the Registry TLD(s) in licensed Registrar(s) of the Registry, in compliance with Part B of the Inter-Registrar Transfer Policy, or any other procedures established or approved by ICANN.

8.3.3. All Confidential Information of the Disclosing Party in the possession of the Receiving Party shall be immediately returned to the Disclosing Party or certified destroyed by the Receiving Party, save that Registry Operator shall be entitled to retain copies of such information for legal compliance, its obligations pursuant to the Registry Agreement or ICANN accreditation and/or good corporate governance, and (ii) either return to the Registry or certify to the Registry the destruction of all data, software, documentation, and Confidential Information it has received under this Agreement. In the event of termination, the Registry reserves the right to immediately contact any and all Registered Name Holders to facilitate the orderly and stable transition of Registered Name Holders to other ICANN-accredited the Registrars.

8.3.4. All fees owing to ~~the~~ Registry Operator shall become immediately due and payable.

**8.4. vi. Survival.** In the event of termination of this Agreement, the following sections shall survive: Sections 2.7, 3.6, 5.1, 5.2, 6.1, 6.2, 7.1, 8.3.3, 8.3.4, 8.4, 9.2, 9.3.3, 9.5, 9.6, 9.8, 9.9, 9.10, and 9.13 and (ii) the Registered Name Holder's indemnification obligation under Section 3.4.(i) the Registrar's Registration Agreement and Domain Name Dispute Policy; Indemnification Required of Registered Name Holders; Effect of Termination; No Third Party Beneficiaries; Relationship of the Parties; Attorneys' Fees; Dispute Resolution, Choice of Law, Venue; Use of Confidential Information; Limitation of Liability; Construction; Intellectual Property; and Indemnification; (ii) the Registered Name Holder's obligations to indemnify, defend, and hold harmless the Registry, as stated in Section 2 (g) (ii); and (iii) the Registrar's payment obligations as set forth in Section 5 with respect to fees incurred during the term of this Agreement. Neither party shall be liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with its terms, but each Party shall be liable for any damage arising from any breach by it of this Agreement.

## **9. MISCELLANEOUS**

### **9.1. Assignments.**

9.1.1. Assignment to Successor Registry Operator. In the event the Registry Operator's Registry Agreement is terminated (and such termination is deemed final under the Registry Agreement) or expires without entry by Registry Operator and ICANN of a subsequent registry agreement, Registry Operator's rights under this Agreement may be assigned to a successor registry by ICANN in accordance with Section 4.5 of the Registry Agreement.

9.1.2. Assignment in Connection with Assignment of Agreement with ICANN. In the event that the Registry Operator's Registry Agreement with ICANN for the Registry TLD(s) is validly assigned, the 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 and obligations of the Registry Operator under this Agreement. In the event that the Registrar's accreditation agreement with ICANN for the Registry TLD(s) is validly assigned, the Registrar's rights and responsibilities under this Agreement shall be automatically assigned to the assignee of the accreditation agreement, provided that the subsequent registrar assumes the duties and obligations of the Registrar under this Agreement.

9.1.3. Other Assignments./Sublicense. Except as otherwise expressly provided in this Agreement herein, the provisions of this Agreement shall inure to the benefit of and be binding upon, the successors and permitted assigns of the parties hereto. Neither party shall assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld. The Registrar shall not assign, sublicense, or transfer its rights or obligations under this Agreement to any third party without the prior written consent of the Registry. The Registry Operator may assign its rights or and obligations under this Agreement to an affiliate without the consent of the Registrar.

**9.2. Notices.** Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service, by email or by fax/telecopier during business hours) to the address or fax/telecopier



number set forth beneath the name of such party below, unless party has given a notice of a change of address in writing: if to Registrar: Registrar to provide appropriate contact information under separate cover.

**If to Registrar:**

**With a copy to:**

<u>Name:</u>	<u>Name:</u>
<u>Title:</u>	<u>Title:</u>
<u>Address:</u>	<u>Address:</u>
<u>Email Address:</u>	<u>Email Address:</u>

**If to Registry Operator:**

**With a copy to:**

<u>Bayern Connect GmbH / Minds + Machines GmbH</u>	<u>Registry Services, LLC</u>
<u>Senior Director, Registry Solutions</u>	<u>General Counsel</u>

**9.3. Representations and Warranties.**

**9.3.1. The Registrar.** The Registrar represents and warrants that: (i) it is a corporation duly incorporated, validly existing and (insofar as the laws under which it is incorporated recognise) in good standing under the law of its jurisdiction of formation or organization; (ii) it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement; (iii) it is, and during the Term of this Agreement will continue to be, accredited by ICANN or its successor; (iv) the execution, performance and delivery of this Agreement has been duly authorized by the Registrar; and (v) no further approval, authorization or consent of any governmental or regulatory authority or ICANN is required to be obtained or made by the Registrar in order for it to enter into and perform its obligations under this Agreement.

**9.3.2. The Registry Operator.** The Registry Operator represents and warrants that: (i) it is a limited liability company duly organized, validly existing and in good standing under the laws of Germany, (1) it is a corporation duly organized, validly existing under the laws of Germany; (2)(ii) it has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement; (iii) the execution, performance, and delivery of this Agreement has been duly authorized by the Registry Operator; and (4iv) no further approval, authorization, or consent of any governmental or regulatory authority or ICANN is required to be obtained or made by the Registry Operator in order for it to enter into and perform its obligations under this Agreement.

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

**9.4. Reservation of Rights.** Registry Operator reserves the right to deny, cancel or transfer any registration or transaction, or place any Domain Name(s) on registry lock, hold or similar status, that it deems necessary, in its discretion; (i) to protect the integrity and stability of the registry; (ii) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (iii) to avoid any liability, civil or criminal, on the part of Registry Operator, as well as its affiliates, subsidiaries, officers, directors, and employees; (iv) for violations of this Agreement, including, without limitation, the exhibits hereto; (v) to correct mistakes made by Registry Operator or any Registrar in connection with a Domain Name registration; (vi) to enforce the Registry Requirements; and (vii) to prevent use of the Domain Name in a manner contrary to the intended purpose of the Registry TLD(s). Registry also reserves the right to place a Domain Name on registry hold, registry lock, or similar status during resolution of a dispute.

**9.5. Third-Party Beneficiaries.** The Parties expressly agree that ICANN is an intended third-party beneficiary of this Agreement. Otherwise, this Agreement shall not be construed to create any obligation by either party to any non-party to this Agreement, including any Registered Name Holder. Registrar acknowledges that nothing in this Agreement, including those requirements in this Agreement that incorporate the Registry Agreement, shall confer upon Registrar the status of an intended third-party beneficiary to the Registry Agreement.

**9.6. 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.

**9.7. Force Majeure.** Neither party shall be liable to the other for any loss or damage resulting from any cause beyond its reasonable control (a “Force Majeure Event”) including, but not limited to, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government or other competent authority, compliance with any statutory obligation or executive order, industrial disputes of any kind (whether or not involving either party’s employees), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, equipment or facilities shortages which are being experienced by providers of telecommunications services generally, or other similar force beyond such Party’s reasonable control, and acts or omissions of persons for whom neither party is responsible. Upon occurrence of a Force Majeure Event and to the extent such occurrence interferes with either party’s performance of this Agreement, such party shall be excused from performance of its obligations (other than payment obligations) during the first six (6) months of such interference, provided that such party uses best efforts to avoid or remove such causes of nonperformance as soon as possible.

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

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

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

**9.8. Amendments in Writing.** Except as otherwise provided herein, no amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless: in this Agreement, any amendment or supplement to this Agreement shall be in writing and duly executed by both Parties, except that Schedules may be amended by the Registry with 180 days written notice. Any new services approved by ICANN and purchased by the Registrar will be subject to such terms and conditions as may be established by the Registry through an appendix to this Agreement executed by the Registrar and the Registry.

**9.8.1.** 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 Section 8.1, the amendment is binding automatically.

9.8.2. The amendment 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 Section 8.1, the amendment is binding automatically.

9.8.3. The amendment is executed in writing by both parties.

9.9. **Waivers.** No failure on the part of either party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of either party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise or waiver of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. Neither party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

9.10. **Lawyers' Attorneys' Fees.** If any legal action or other legal proceeding (including –arbitration) relating to the performance under this Agreement or the enforcement of any provision of this Agreement is brought against either Party hereto, the prevailing Party shall be entitled to recover reasonable ~~lawyers' fees according to the RVG (or any other legislation or regulation that may be force at the time)~~attorneys' fees, costs, and disbursements (in addition to any other relief to which the prevailing Party may be entitled).

~~g. \_\_\_\_\_~~

~~h. \_\_\_\_\_ **Dispute Resolution, Choice of Law, Venue.** The Parties shall attempt to resolve any disputes between them prior to resorting to litigation. This Agreement shall be exclusively governed by and construed in accordance with the laws of Germany, without regard to conflict of laws principles. The Registrar hereby irrevocably consents to the exclusive personal jurisdiction of the courts of Germany, for any and all claims or disputes directed against the Registry and which arise out of, purport to enforce, construe, or otherwise relate to the Registry TLD,~~

~~this Agreement, or the .BAYERN Registry Policies. The exclusive venue for such action shall be the courts of Germany. The Registrar waives any right to object to venue or jurisdiction based on inconvenient forum or for any other reason, and the Registrar waives any statutory or other right pursuant to the laws of the jurisdiction in which the Registrar resides to have a case relating to this Agreement adjudicated or resolved in that jurisdiction~~

~~i. \_\_\_\_\_ **Notices.** Any notice or other communication required or permitted to be delivered to any Party under this Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service, by email or by fax during business hours) to the address or fax number set forth beneath the name of such Party below, unless party has given a notice of a change of address in writing; if to Registrar: Registrar to provide appropriate contact information under separate cover.~~

if to the Registry:

Registry Name: Bayern Connect GmbH

Attention: Notices

Physical Address: Antonienstr. 3, 80802 Munich Country: Germany

Telephone Number: 49 (0) 89 360 351 04

Email Address: support@nic.bayern

with a copy to:

Minds + Machines

PO Box 9134

Seattle WA 98109

legal@mmx.co

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

~~k. Assignment in Connection with Assignment of Agreement with ICANN. In the event that the Registry's Registry Agreement with ICANN for the Registry TLD is validly assigned, the Registry's rights under this Agreement shall be automatically assigned to the assignee of the Registry Agreement, provided that the assignee assumes the duties and obligations of the Registry under this Agreement. In the event that the Registrar's accreditation agreement with ICANN for the Registry TLD is validly assigned, the Registrar's rights and responsibilities under this Agreement shall be automatically assigned to the assignee of the accreditation agreement, provided that the subsequent Registrar assumes the duties and obligations of the Registrar under this Agreement.~~

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

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

~~ii. The Receiving Party shall make no disclosures whatsoever of any Confidential Information to others, provided however, that if the Receiving Party is a corporation, partnership, or similar entity, disclosure is permitted to the Receiving Party's officers, employees, contractors, and agents who have a demonstrable need to know such Confidential Information, provided the Receiving Party shall advise such personnel of the confidential nature of the Confidential Information and of the procedures required to maintain the confidentiality thereof, and shall~~

~~require them to acknowledge in writing that they have read, understand, and agree to be individually bound by the terms of this Confidentiality Agreement.~~

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

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

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

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

~~m. — LIMITATION OF LIABILITY. UNLESS STATED OTHERWISE WITHIN THESE TERMS AND CONDITIONS, INCLUDING THE SUBSEQUENT STIPULATIONS, THE PARTIES SHALL BE LIABLE TO EACH OTHER IN ACCORDANCE WITH STATUTORY PROVISIONS.~~

~~THE PARTIES OR ITS AGENTS OR LEGAL REPRESENTATIVES SHALL BE LIABLE TO AN UNLIMITED EXTENT FOR DAMAGES TO LIFE, BODY AND HEALTH, WHICH ARE CAUSED INTENTIONALLY OR THROUGH GROSS NEGLIGENCE.~~

~~LIABILITY FOR SLIGHT NEGLIGENCE IS LIMITED TO THE EXTENT OF AN ESSENTIAL DUTY, WHICH MAKES THE PROPER EXECUTION OF THE AGREEMENT POSSIBLE AT ALL, BEING BREACHED AND THEREFORE A PARTY COULD RELY ON THE COMPLIANCE OF THE OTHER PARTY WITH ITS CARDINAL OBLIGATIONS, BUT ALWAYS ONLY IN THE AMOUNT OF THE FORESEEABLE DAMAGE. OTHERWISE THE PARTIES' LIABILITY FOR SLIGHT NEGLIGENCE ARE EXCLUDED.~~

~~CONTRACTUAL LIABILITY CLAIMS SHALL EXPIRE ONE YEAR FROM THE LIMITATION PERIOD. THIS DOES NOT APPLY TO INTENT OR GROSS NEGLIGENCE OF EITHER PARTY, ITS LEGAL REPRESENTATIVES OR AGENTS AND LOSS OF LIFE, BODY AND HEALTH. IN SUCH CASES, THE STATUTORY LIMITATION PERIOD SHALL APPLY.~~

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

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

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

~~p. Representations and Warranties:~~

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

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

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

~~COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION OF THE REGISTRAR'S OWN SYSTEMS AND SOFTWARE.~~

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

~~f. \_\_\_\_\_~~

**9.13. Entire Agreement; Severability.** This Agreement ([including its exhibits, which form a part of it](#)) constitutes the entire agreement between the Parties concerning the subject matter [hereof 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. If any provision of this Agreement shall be held to be illegal, invalid, or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.

**9.14. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



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

<a href="#">Bayern Connect GmbH / Minds + Machines GmbH</a>	
<a href="#">By:</a>	<a href="#">By:</a>
<a href="#">Name:</a>	<a href="#">Name:</a>
<a href="#">Title:</a>	<a href="#">Title:</a>
<a href="#">Date:</a>	<a href="#">Date:</a>

for Registry by:

for Registrar by:

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Company Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Date Signed

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date Signed

\_\_\_\_\_  
 IANA ID

## Exhibit A

# Requirements for Agreements with Registered Name Holders

Registrar shall ensure that its registration agreements with Registered Name Holders include the following provisions and obligations, or provisions and obligations at least equivalent thereto:

1. **Pricing.** Registered Name Holder shall 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.
2. **Malicious Conduct.** Registered Name Holder is prohibited from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting, sending unsolicited bulk email or spam or otherwise engaging in activity contrary to applicable law. Consequences for breach of this requirement include, but are not limited to, exercise of our rights under Section 7 of this Exhibit A.
3. **Use of Personal Data.** Registered Name Holder consents to the use, copying, distribution, publication, modification and other processing of Registered Name Holder's Personal Data by Registry, its service providers, subcontractors and agents in a manner consistent with Registry Operator Published Policies and all other purposes of collection notified to Registrar by Registry Operator.
4. **Rights Protection Mechanisms.** Registered Name Holder will 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.
5. **Updating Registration Information.** Registered Name Holder will immediately correct and update the registration information for the Domain Name during the registration term for the Domain Name.
6. **Compliance with Registry Requirements.** Registered Name Holder's use of the Domain Name shall comply with all applicable Registry Requirements, including, but not limited to, Registry Operator Published Policies.
7. **Right to Deny, Cancel or Transfer a Registration.** Registered Name Holder acknowledges and agrees that Registry Operator reserves the right to deny, cancel or transfer any registration or transaction, or place any Domain Name(s) on registry lock, hold or similar status, that it deems necessary, in its discretion: (a) to protect the integrity and stability of the registry; (b) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (c) to avoid any liability, civil or criminal, on the part of Registry Operator, as well as its affiliates, subsidiaries, officers, directors, and employees; (d) per the terms of the registration agreement; (e) to correct mistakes made by Registry Operator or any

Registrar in connection with a Domain Name registration; (f) to enforce the Registry Requirements; and (g) to prevent use of the Domain Name in a manner contrary to the intended purpose of the Registry TLD(s). Registry Operator also reserves the right to lock, hold or place a similar status a Domain Name during resolution of a dispute. Registry Operator shall have no liability to of any kind to Registered Name Holder, its customers, affiliates, service providers or any other party as a result of such denial, cancellation or transfer.

- 8. Representations and Warranties.** By submitting a request for a Domain Name, Registered Name Holder represents and warrants that: (a) to its knowledge, the registration of the requested Domain Name does not and will not infringe upon or otherwise violate the rights of any third party; (b) it is not submitting the request for a domain name for an unlawful purposes, and it will not use the Domain Name for an unlawful purpose; (c) it will not knowingly use the Domain Name in violation of any applicable laws or regulations or of the rights of any third parties; and (d) that it will use the Domain Name in accordance with the Registry Requirements.

## **Exhibit B**

### **Data Processing Addendum**

To the extent of any conflict between the Agreement (referred to herein as RRA), as amended (including any of its Exhibits or attachments), and this Data Processing Addendum, the terms of this Data Processing Addendum will take precedence. Capitalized terms not defined below will have the meaning provided to them in the RRA.

#### **1. INTRODUCTION**

This Data Processing Addendum establishes the Parties' respective responsibilities for the Processing of Shared Personal Data under the RRA. It is intended to ensure that Shared Personal Data is Processed in a manner that is secure and in accordance with Applicable Laws and its defined Purpose(s). Though this Data Processing Addendum is executed by and between the Registry and Registrar as an addendum to the RRA, Purposes for Processing are often at the direction or requirement of ICANN as a Controller. Certain Purposes for Processing under the RAA may also be at the direction of the Registrar or Registry, each as a Controller.

#### **2. DEFINITIONS**

- a) Applicable Agreements. Collectively means this Data Processing Addendum, the Registrar Accreditation Agreement (RAA), the Registry Agreement (RA), and the RRA, as those documents are applicable and binding on any individual Party.
- b) Applicable Laws. The General Data Protection Regulation (2016/679) ("GDPR"), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended) and all other applicable laws and regulations worldwide, including their successors or as modified, relating to the Processing of Shared Personal Data.
- c) Disclosing Party. Means the Party that transfers Shared Personal Data to the Receiving Party.
- d) Data Protection Authority. Means the relevant and applicable supervisory data protection authority in the member state or other territory where a Party to this Data Processing Addendum is established or has identified as its lead supervisory authority, or otherwise has jurisdiction over a Party to this Data Protection Addendum.
- e) Data Security Breach. A breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to the Shared Personal Data, and which is further subject to the provisions of 5.6 below.
- f) Data Subject. Means an identifiable natural person who can be identified, directly or indirectly, in particular by reference to Personal Data.
- g) Personal Data. Means any information such as a name, an identification number, location data, an online identifier or information pertaining to an individual's physical, physiological, genetic, mental, economic, cultural or social identity relating to that natural person, that can be used to directly or indirectly identify a Data Subject.

- h) Processing. Means any operation or set of operations which is performed on the Shared Personal Data, whether or not by automated means, and which includes the collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. Processing, Processes, Processed or other derivatives as used herein, will have the same meaning.
- i) Purpose(s). Has the meaning provided in Section 3 below.
- j) Receiving Party. Means the Party receiving Shared Personal Data from the Disclosing Party.
- k) Registration Data. Means data collected by the Registrar under the RAA and that is required to be shared with the Registry Operator under the RAA and the RA.
- l) Shared Personal Data. Means Personal Data contained in the fields within Registration Data and that is Processed in accordance with the Applicable Agreements.
- m) Temporary Specification. Means the “Temporary Specification for gTLD Registration Data” Adopted on 17 May 2018 by the ICANN Board of Directors, as may be amended or supplemented from time to time.

### **3. PURPOSE, SUBJECT MATTER, AND ROLES**

- a) Purpose(s). Processing of Shared Personal Data under this Data Processing Addendum by the Parties is for the limited purpose of provisioning, servicing, managing and maintaining domain names, as required of registries and registrars under the Applicable Agreements with ICANN, including to the extent those purposes serve to ensure the stability and security of the Domain Name System and to support the lawful, proper and legitimate use of the services offered by the Parties. Only Shared Personal Data is subject to the terms of this Data Processing Addendum.
- b) Subject Matter. This Data Processing Addendum sets out the framework for the protection of Shared Personal Data for the Purposes noted in this section and defines the principles and procedures that the Parties shall adhere to and the responsibilities the Parties owe to each other. The Parties collectively acknowledge and agree that Processing necessitated by the Purpose(s) is to be performed at different stages, or at times even simultaneously by the Parties. Thus, this Data Processing Addendum is required to ensure that where Shared Personal Data may be Processed, it is done so at all times in compliance with the requirements of Applicable Laws.
- c) Roles and Responsibilities. The Parties acknowledge and agree that, with respect to Processing of Shared Personal Data for the Purposes of this Data Processing Addendum:
  - i. The details of Processing are established and set forth in Annex 1;
  - ii. Each Party and ICANN may act as either a Controller or Processor of Shared Personal Data as specified in Appendix C to the Temporary Specification; and
  - iii. Although ICANN, the Registry Operator and Registrar may each take on the role, or additional role, of Controller or Processor in the lifecycle of processing Registration Data under Applicable Agreements, for the purposes of this Data Processing Addendum, only the roles of the Registry Operator and the Registrar are applicable.
  - iv. To the extent either the Purpose(s) or Subject Matter is not specifically referenced or noted when detailing the respective or shared rights, duties, liabilities or obligations hereunder, the Parties nonetheless mutually acknowledge and agree that the Purpose(s)

and Subject Matter is and will be at all times the basis upon which legitimate and lawful processing hereunder may be conducted and performed.

#### **4. FAIR AND LAWFUL PROCESSING**

- a) Each Party shall ensure that it processes the Shared Personal Data fairly and lawfully in accordance with this Data Processing Addendum and Applicable Laws.
- b) Each Party shall ensure that it processes Shared Personal Data on the basis of one of the following legal grounds:
  - i. The Data Subject has given consent to the Processing of his or her Personal Data for one or more specific Purposes;
  - ii. Processing is necessary for the performance of a contract to which the Data Subject is party or in order to take steps at the request of the Data Subject prior to entering into a contract;
  - iii. Processing is necessary for compliance with a legal obligation to which the Controller is subject;
  - iv. Processing is necessary for the purposes of the legitimate interests pursued by the Controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the Data Subject which require protection of Personal Data; or
  - v. Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Controller.

#### **5. PROCESSING SHARED PERSONAL DATA**

- a) All Parties agree that they are responsible for Processing of Shared Personal Data in accordance with Applicable Laws and this Data Processing Addendum. The Parties shall fully cooperate with each other to the extent necessary to effectuate corrections, amendments, restrictions or deletions of Personal Data as required by Applicable Laws and/or at the request of any Data Subject.
- b) A Party may only transfer Shared Personal Data relating to EU individuals to outside of the European Economic Area (EEA) (or if such Shared Personal Data is already outside of the EEA, to any third party also outside the EEA), in compliance with the terms of this Data Processing Addendum and the requirements of Applicable Laws, the latter including any relevant Adequacy Decision of the European Commission or the use of EU 'Standard Contractual Clauses'. Where Standard Contractual Clauses for data transfers between EU and non-EU countries are required to be executed between the Parties, they may be found and downloaded, to be incorporated herein as part of this Data Processing Addendum upon execution, at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32010D0087> (or such link location as may be updated from time to time).
- c) A Party must immediately notify the other Party and ICANN if, in its opinion, ICANN's instructions or requirements under Applicable Agreements infringes any Applicable Laws.
- d) All Shared Personal Data must be treated as strictly confidential and a Party must inform all its employees or approved agents engaged in processing the Shared Personal Data of the

- confidential nature of the Shared Personal Data, and ensure that all such persons or parties have signed an appropriate confidentiality agreement to maintain the confidence of the Shared Personal Data.
- e) Where a Party Processes Shared Personal Data, it acknowledges and agrees that it is responsible for maintaining appropriate organizational and security measures to protect such Shared Personal Data in accordance with all Applicable Laws. Appropriate organizational and security measures are further enumerated in Section 5 of this Data Processing Addendum, but generally must include:
- i. Measures to ensure that only authorized individuals for the Purposes of this Data Processing Addendum can access the Shared Personal Data;
  - ii. The pseudonymisation and encryption of the Shared Personal Data, where necessary or appropriate;
  - iii. The ability to ensure continued confidentiality, integrity, availability and resilience of its processing systems and services;
  - iv. The ability to restore the availability and access to Shared Personal Data in a timely manner;
  - v. A process for regularly testing, assessing, and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing of Shared Personal Data; and
  - vi. Measures to identify vulnerabilities with regard to the processing of Shared Personal Data in its systems.
- f) To the extent that the Receiving Party contracts with any subcontractor, vendor or other third-party to facilitate its performance under the Applicable Agreements, it must enter into a written agreement with such third party to ensure such party also complies with the terms of this Data Processing Addendum.
- g) The Party which employs a sub-processor, vendor or other third-party to facilitate its performance under this Data Processing Addendum is and will remain fully liable for any such third party's acts where such party fails to fulfill its obligations under this Data Processing Addendum (or similar contractual arrangement put in place to impose equivalent obligations on the third party to those incumbent on the Receiving Party under this Data Processing Addendum) or under Applicable Laws.
- h) Each Party will, at its expense, defend, indemnify and hold the other Party harmless from and against all claims, liabilities, costs and expenses arising from or relating to (i) a Data Security Breach, (ii) breach of Applicable Laws, and (iii) breach of this Data Processing Addendum, to the extent the cause of the breaching Party's negligent, willful or intentional acts or omissions.
- i) The Parties shall, in respect of Shared Personal Data, ensure that their privacy notices are clear and provide sufficient information to Data Subjects in order for them to understand what of their Personal Data is included in Shared Personal Data, the circumstances in which it will be shared, the purposes for the Personal Data sharing and either the identity with whom the Personal Data is shared or a description of the type of organization that will receive the Shared Personal Data.
- j) The Parties undertake to inform Data Subjects of the Purposes for which it will process the Shared Personal Data and provide all of the information that it must provide in accordance with Applicable Laws, to ensure that the Data Subjects understand how their Personal Data will be Processed.
- k) The Shared Personal Data must not be irrelevant or excessive with regard to the Purposes.

- l) A Party shall, subject to the instructions of the Data Subject, ensure that Shared Personal Data is accurate. Where any Party becomes aware of inaccuracies in Shared Personal Data, they will, where necessary, notify the other Parties, to enable the timely rectification of such data.

## **6. SECURITY**

- a) The Disclosing Party shall be responsible for the security of transmission of any Shared Personal Data in transmission to the Receiving Party by employing appropriate safeguards and technical information security controls.
- b) All Parties agree to implement appropriate technical and organizational measures to protect the Shared Personal Data in their possession against unauthorized or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, including but not limited to:
- i. Ensuring IT equipment, including portable equipment is kept in lockable areas when unattended;
  - ii. Not leaving portable equipment containing the Shared Personal Data unattended;
  - iii. Ensuring use of appropriate secure passwords for logging into systems or databases containing Shared Personal Data;
  - iv. Ensuring that all IT equipment is protected by antivirus software, firewalls, passwords and suitable encryption devices;
  - v. Using industry standard 256-bit AES encryption or suitable equivalent where necessary or appropriate;
  - vi. Limiting access to relevant databases and systems to those of its officers, staff, agents, vendors and sub-contractors who need to have access to the Shared Personal Data, and ensuring that password security mechanisms are in place to prevent inappropriate access when individuals are no longer engaged by the Party;
  - vii. Conducting regular threat assessment or penetration testing on systems as deemed necessary, considering the nature, scope, context and purposes of processing, as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, with due regard to the nature of the data held, the cost of implementation, and the state of the art;
  - viii. Ensuring all authorized individuals handling Shared Personal Data have been made aware of their responsibilities with regards to handling of Shared Personal Data; and
  - ix. Allowing for inspections and assessments to be undertaken by the Controller as to the security measures taken, or producing evidence of those measures, if requested.

## **7. SECURITY BREACH NOTIFICATION**

- a) Notification Timing. Should a Party become aware of any Data Security Breach by a sub-processor in relation to Shared Personal Data, and where such a Breach is of a material impact to this Data Processing Addendum, or is likely to have a material impact on the Parties, the relevant Party should immediately notify the Parties, and the relevant Party shall provide immediate feedback about any impact this incident may/will have on the affected Parties, including the anticipated impacts to the rights and freedoms of Data Subjects if applicable. Such notification will be provided as promptly as possible, but in any event no later than 24 hours after detection of the



Data Security Breach. Nothing in this section should be construed as limiting or changing any notification obligation of a Party under Applicable Laws.

- b) Notification Format and Content. Notification of a Data Security Breach will be in writing to the information/administrative contact identified by the Parties, though communication may take place first via telephone. The notifying Party must be provided the following information, to the greatest extent possible, with further updates as additional information comes to light:
  - i. A description of the nature of the incident and likely consequences of the incident;
  - ii. Expected resolution time (if known);
  - iii. A description of the measures taken or proposed to address the incident including, measures to mitigate its possible adverse effects the Parties and/or Shared Personal Data;
  - iv. The categories and approximate volume of Shared Personal Data and individuals potentially affected by the incident, and the likely consequences of the incident on that Shared Personal Data and associated individuals; and
  - v. The name and phone number of a representative the Party may contact to obtain incident updates.
- c) Security Resources. The Parties' may, upon mutual agreement, provide resources from its security group to assist with an identified Data Security Breach for the purpose of meeting its obligations in relation to the notification of a Data Security Breach under Applicable Laws or other notification obligations or requirements.
- d) Failed Security Incidents. A failed security incident will not be subject to the terms of this Data Processing Addendum. A failed security incident is one that results in no unauthorized access or acquisition to Shared Personal Data, and may include, without limitation, pings and other broadcast attacks on firewalls or edge servers, port scans, unsuccessful log-on attempts, denial of service attacks, packet sniffing (or other unauthorized access to traffic data that does not result in access beyond headers) or similar incidents.
- e) Additional Notification Requirements. For the purpose of this section, a Party is also required to provide notification in accordance with this section in response to:
  - i. A complaint or objection to Processing or request with respect to the exercise of a Data Subject's rights under Applicable Laws; and
  - ii. An investigation into or seizure of Shared Personal Data by government officials, regulatory or law enforcement agency, or indications that such investigation or seizure is contemplated.

## **8. DATA SUBJECT RIGHTS**

- a) Controllers have certain obligations to respond to requests of a Data Subject whose Personal Data is being processed under this Data Processing Addendum, and who wishes to exercise any of their rights under Applicable Laws, including, but not limited to: (i) right of access and update; (ii) right to data portability; (iii) right to erasure; (iv) right to rectification; (v) right to object to automated decision-making; or (vi) right to object to processing.
- b) Data Subjects have the right to obtain certain information about the processing of their personal data through a subject access request (Subject Access Request). The Parties shall maintain a record of Subject Access Requests, the decisions made and any information that was exchanged.

Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.

- c) The Parties agree that the responsibility for complying with a Subject Access Request falls to the Party receiving the Subject Access Request in respect of the Personal Data held by that Party, but any final decisions made by the Controller will govern.
- d) The Parties agree to provide reasonable and prompt assistance (within 5 business days of such a request for assistance) as is necessary to each other to enable them to comply with Subject Access Requests and to respond to any other queries or complaints from Data Subjects.

## **9. DATA RETENTION AND DELETION**

Notwithstanding any requirements under the Applicable Agreements to the contrary, the Parties will retain Shared Personal Data only as necessary to carry out the Purposes or otherwise in accordance with the Temporary Specification and as permitted under Applicable Laws, and thereafter must delete or return all Shared Personal Data accordingly.

## **10. TRANSFERS**

- a) For the purposes of this Data Processing Addendum, transfers of Personal Data include any sharing of Shared Personal Data, and shall include, but is not limited to, the following:
  - i. Transfers amongst the Parties for the Purposes contemplated in this Data Processing Addendum or under any of the Applicable Agreements;
  - ii. Disclosure of the Shared Personal Data with any other third party with a valid legal basis for the provisioning of the Purposes;
  - iii. Publication of the Shared Personal Data via any medium, including, but not limited to in public registration data directory services;
  - iv. The transfer and storage by the Receiving Party of any Shared Personal Data from within the EEA to servers outside the EEA; and
  - v. Otherwise granting any third party located outside the EEA access rights to the Shared Personal Data.
- b) No Party shall disclose or transfer Shared Personal Data outside the EEA without ensuring that adequate and equivalent protections will be afforded to the Shared Personal Data.

## **11. RESOLUTION OF DISPUTES**

- a) In the event of a dispute or claim brought by a Data Subject or an applicable Data Protection Authority against any Party concerning the processing of Shared Personal Data, the concerned Parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- b) The Parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by a Data Protection Authority. If they do participate in the proceedings, the Parties may elect to do so remotely (such as by telephone or other electronic

means). The Parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.

c) In respect of Data Security Breaches or any breach of this Data Processing Addendum, each Party shall abide by a decision of a competent court of the complaining Party's country of establishment or of any binding decision of the relevant Data Protection Authority.

## **12. IMPACT OF CHANGES; NEW GUIDANCE**

In the event the ICANN Board adopts changes to the Temporary Specification (a Triggering Event), then Registry may notify Registrar of the changes, and upon ICANN publication of the updated Temporary Specification to its website, the changes will also be adopted and incorporated automatically herein to this Data Processing Addendum.

Registrar will be given thirty (30) days to accept or reject the proposed changes; rejection may result in termination of the RRA. If Registrar does not respond within thirty (30) days following notice, it is deemed to have accepted the changes to the Data Processing Addendum, as applicable.

In the event Applicable Laws change in a way that the Data Processing Addendum is no longer adequate for the purpose of governing lawful processing of Shared Personal Data and there was no Triggering Event, the Parties agree that they will negotiate in good faith to review and update this Data Processing Addendum in light of the new laws.

### **Annex 1**

#### **Details of the Processing**

**1. Nature and Purpose of Processing.** The Parties will Process Shared Personal Data only as necessary to perform under and pursuant to the Applicable Agreements, and subject to this Data Processing Addendum, including as further instructed by Data Subjects.

**2. Duration of Processing.** The Parties will Process Shared Personal Data during the Term of the underlying RRA to which this this Data Processing Addendum is applicable, but will abide by the terms of this Data Processing Addendum for the duration of the Processing if in excess of that term, and unless otherwise agreed upon in writing.

**3. Type of Personal Data.** Data Subjects may provide the following Shared Personal Data in connection with the purchase of a domain name from a Registrar:

Name, address, telephone and fax numbers, and email addresses of Registered Name Holder and their Technical, Billing and Administrative Contacts and any other Contacts associated with a domain name as applicable.

## Exhibit C

### Service Activation Form

The Registrar agrees that this Service Activation Form shall form part of, and be subject to, the Registry-Registrar Agreement executed by and between the parties.

Registrar wishes to act as a registrar for domain names within the selected top-level domains ("Registry TLD(s")):

- |   |                                |
|---|--------------------------------|
| <input type="checkbox"/> <u>.bayern</u> | <input type="checkbox"/> _____ |
| <input type="checkbox"/> <u>.nrw</u>    | <input type="checkbox"/> _____ |
| <input type="checkbox"/> _____          | <input type="checkbox"/> _____ |

Parties may vary this Exhibit C by executing subsequent Service Activation Form(s). Subsequent Service Activation Forms shall supersede and replace this executed Service Activation Form as Exhibit C to the Agreement only if executed in writing by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this supplement to the Agreement as of the date set forth below.

<u>By:</u>	<u>By:</u>
<u>Name:</u>	<u>Name:</u>
<u>Title:</u>	<u>Title:</u>
<u>Date:</u>	<u>Date:</u>

## **Annex 1**

~~In order to register a domain in the .BAYERN TLD, the Registrant must comply with the following, in addition to the requirements of the .BAYERN Registry Policies, which is incorporated herein by reference.~~

### **Eligibility for Registration**

~~.BAYERN will be an open TLD. However, during Landrush, priority will be given to applications from Bavaria.~~

### **.BAYERN Launch**

~~Sunrise and Landrush are expected to: 1) run concurrently (i.e. start and end at the same time), 2) be on application basis (as opposed to a first come, first served basis), 3) last approximately 60 days. Full details, including additional rules and priority ranking will be communicated to the Registrar separately.~~

### **Blocked Names**

~~The Registry may block names it considers to be profane or inappropriate in this TLD, all two-character names, and any other names as required by its contract with ICANN or by applicable law.~~

### **Reserved Names**

~~The Registry may reserve names from registration and/or release such names at any time.~~

### **Premium Names**

~~Registrars have the option to participate in our premium name program. By initialing here, the Registrar agrees to carry the Registry TLD premium names: \_\_\_\_\_~~

## **RRA Data Processing Addendum**

This RRA DATA PROCESSING ADDENDUM (the “**Data Processing Addendum**”) is made by and between the undersigned registry (the “**Registry**”) and registrar (the “**Registrar**”) (each a “**Party**” and together the “**Parties**”), and is effective as of May 25, 2018, and supplements the terms and conditions of the Registry-Registrar Agreement (the “**RRA**”) executed between the Parties. To the extent of any conflict between the RRA, as amended (including any of its attachments), and this Data Processing Addendum, the terms of this Data Processing Addendum will take precedence. Capitalized terms not defined below will have the meaning provided to them in the RRA.

### **1. INTRODUCTION**

This Data Processing Addendum establishes the Parties’ respective responsibilities for the Processing of Shared Personal Data under the RRA. It is intended to ensure that Shared Personal Data is Processed in a manner that is secure and in accordance with Applicable Laws and its defined Purpose(s). Though this Data Processing Addendum is executed by and between the Registry and Registrar as an addendum to the RRA, Purposes for Processing are often at the direction or requirement of ICANN as a Controller. Certain Purposes for Processing under the RRA may also be at the direction of the Registrar or Registry, each as a Controller.

### **2. DEFINITIONS**

- a) **Applicable Agreements.** Collectively means this Data Processing Addendum, the Registrar Accreditation Agreement (“**RAA**”), the Registry Agreement (“**RA**”), and the RRA, as those documents are applicable and binding on any individual Party.
- b) **Applicable Laws.** The General Data Protection Regulation (2016/679) (“**GDPR**”), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended) and all other applicable laws and regulations worldwide, including their successors or as modified, relating to the Processing of Shared Personal Data.
- c) **Disclosing Party.** Means the Party that transfers Shared Personal Data to the Receiving Party.
- d) **Data Protection Authority.** Means the relevant and applicable supervisory data protection authority in the member state or other territory where a Party to this Data Processing Addendum is established or has identified as its lead supervisory authority, or otherwise has jurisdiction over a Party to this Data Protection Addendum.
- e) **Data Security Breach.** A breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to the Shared Personal Data, and which is further subject to the provisions of Section 6 below.
- f) **Data Subject.** Means an identifiable natural person who can be identified, directly or indirectly, in particular by reference to Personal Data.
- g) **Personal Data.** Means any information such as a name, an identification number, location data, an online identifier or information pertaining to an individual’s physical, physiological,

~~genetic, mental, economic, cultural or social identity relating to that natural person, that can be used to directly or indirectly identify a Data Subject.~~

- ~~h) — Processing. Means any operation or set of operations which is performed on the Shared Personal Data, whether or not by automated means, and which includes the collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. Processing, Processes, Processed or other derivatives as used herein, will have the same meaning.~~
- ~~i) — Purpose(s). Has the meaning provided in Section 3 below.~~
- ~~j) — Receiving Party. Means the Party receiving Shared Personal Data from the Disclosing Party.~~
- ~~k) — Registration Data. Means data collected by the Registrar under the RAA and that is required to be shared with the Registry under the RAA and the RA.~~
- ~~l) — Shared Personal Data. Means Personal Data contained in the fields within Registration Data and that is Processed in accordance with the Applicable Agreements.~~
- ~~m) — Temporary Specification. Means the “Temporary Specification for gTLD Registration Data” Adopted on 17 May 2018 by the ICANN Board of Directors, as may be amended or supplemented from time to time.~~

### ~~3. — PURPOSE, SUBJECT MATTER, AND ROLES~~

- ~~a) — Purpose(s). Processing of Shared Personal Data under this Data Processing Addendum by the Parties is for the limited purpose of provisioning, servicing, managing and maintaining domain names, as required of Registries and Registrars under the Applicable Agreements with ICANN, including to the extent those purposes serve to ensure the stability and security of the Domain Name System and to support the lawful, proper and legitimate use of the services offered by the Parties. Only Shared Personal Data is subject to the terms of this Data Processing Addendum.~~
- ~~b) — Subject Matter. This Data Processing Addendum sets out the framework for the protection of Shared Personal Data for the Purposes noted in this section and defines the principles and procedures that the Parties shall adhere to and the responsibilities the Parties owe to each other. The Parties collectively acknowledge and agree that Processing necessitated by the Purpose(s) is to be performed at different stages, or at times even simultaneously by the Parties. Thus, this Data Processing Addendum is required to ensure that where Shared Personal Data may be Processed, it is done so at all times in compliance with the requirements of Applicable Laws.~~
- ~~c) — Roles and Responsibilities. The Parties acknowledge and agree that, with respect to Processing of Shared Personal Data for the Purposes of this Data Processing Addendum:
  - ~~i. — The details of Processing are established and set forth in Annex 1;~~
  - ~~ii. — Each Party and ICANN may act as either a Controller or Processor of Shared Personal Data as specified in Appendix C to the Temporary Specification; and~~~~

- iii. ~~Although ICANN, the Registry and Registrar may each take on the role, or additional role, of Controller or Processor in the lifecycle of processing Registration Data under Applicable Agreements, for the purposes of this Data Processing Addendum, only the roles of the Registry and the Registrar are applicable.~~
- iv. ~~To the extent either the Purpose(s) or Subject Matter is not specifically referenced or noted when detailing the respective or shared rights, duties, liabilities or obligations hereunder, the Parties nonetheless mutually acknowledge and agree that the Purpose(s) and Subject Matter is and will be at all times the basis upon which legitimate and lawful processing hereunder may be conducted and performed.~~

#### ~~4. FAIR AND LAWFUL PROCESSING~~

- a) ~~Each Party shall ensure that it processes the Shared Personal Data fairly and lawfully in accordance with this Data Processing Addendum and Applicable Laws.~~
- b) ~~Each Party shall ensure that it processes Shared Personal Data on the basis of one of the following legal grounds:~~
  - i. ~~The Data Subject has given consent to the Processing of his or her Personal Data for one or more specific Purposes;~~
  - ii. ~~Processing is necessary for the performance of a contract to which the Data Subject is party or in order to take steps at the request of the Data Subject prior to entering into a contract;~~
  - iii. ~~Processing is necessary for compliance with a legal obligation to which the Controller is subject;~~
  - iv. ~~Processing is necessary for the purposes of the legitimate interests pursued by the Controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the Data Subject which require protection of Personal Data; or~~
  - v. ~~Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Controller.~~

#### ~~5. PROCESSING SHARED PERSONAL DATA~~

- a) ~~All Parties agree that they are responsible for Processing of Shared Personal Data in accordance with Applicable Laws and this Data Processing Addendum. The Parties shall fully cooperate with each other to the extent necessary to effectuate corrections, amendments, restrictions or deletions of Personal Data as required by Applicable Laws and/or at the request of any Data Subject.~~
- b) ~~A Party may only transfer Shared Personal Data relating to EU individuals to outside of the European Economic Area ("EEA") (or if such Shared Personal Data is already outside of the EEA, to any third party also outside the EEA), in compliance with the terms of this Data Processing Addendum and the requirements of Applicable Laws, the latter including any relevant Adequacy Decision of the European Commission or the use of EU 'Standard Contractual Clauses'. Where Standard Contractual Clauses for data transfers between EU and~~



~~non-EU countries are required to be executed between the Parties, they may be found and downloaded, to be incorporated herein as part of this Data Processing Addendum upon execution, at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32010D0087> (or such link location as may be updated from time to time).~~

- ~~c) A Party must immediately notify the other Party and ICANN if, in its opinion, ICANN's instructions or requirements under Applicable Agreements infringes any Applicable Laws.~~
- ~~d) All Shared Personal Data must be treated as strictly confidential and a Party must inform all its employees or approved agents engaged in processing the Shared Personal Data of the confidential nature of the Shared Personal Data, and ensure that all such persons or parties have signed an appropriate confidentiality agreement to maintain the confidence of the Shared Personal Data.~~
- ~~e) Where a Party Processes Shared Personal Data, it acknowledges and agrees that it is responsible for maintaining appropriate organizational and security measures to protect such Shared Personal Data in accordance with all Applicable Laws. Appropriate organizational and security measures are further enumerated in Section 5 of this Data Processing Addendum, but generally must include:
  - ~~i. Measures to ensure that only authorized individuals for the Purposes of this Data Processing Addendum can access the Shared Personal Data;~~
  - ~~ii. The pseudonymisation and encryption of the Shared Personal Data, where necessary or appropriate;~~
  - ~~iii. The ability to ensure continued confidentiality, integrity, availability and resilience of its processing systems and services;~~
  - ~~iv. The ability to restore the availability and access to Shared Personal Data in a timely manner;~~
  - ~~v. A process for regularly testing, assessing, and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing of Shared Personal Data; and~~
  - ~~vi. Measures to identify vulnerabilities with regard to the processing of Shared Personal Data in its systems.~~~~
- ~~f) To the extent that the Receiving Party contracts with any subcontractor, vendor or other third party to facilitate its performance under the Applicable Agreements, it must enter into a written agreement with such third party to ensure such party also complies with the terms of this Data Processing Addendum.~~
- ~~g) The Party which employs a sub-processor, vendor or other third party to facilitate its performance under this Data Processing Addendum is and will remain fully liable for any such third party's acts where such party fails to fulfill its obligations under this Data Processing Addendum (or similar contractual arrangement put in place to impose equivalent obligations on the third party to those incumbent on the Receiving Party under this Data Processing Addendum) or under Applicable Laws.~~

- ~~h) — Each Party will, at its expense, defend, indemnify and hold the other Party harmless from and against all claims, liabilities, costs and expenses arising from or relating to (i) a Data Security Breach, (ii) breach of Applicable Laws, and (iii) breach of this Data Processing Addendum, to the extent the cause of the breaching Party’s negligent, willful or intentional acts or omissions.~~
- ~~i) — The Parties shall, in respect of Shared Personal Data, ensure that their privacy notices are clear and provide sufficient information to Data Subjects in order for them to understand what of their Personal Data is included in Shared Personal Data, the circumstances in which it will be shared, the purposes for the Personal Data sharing and either the identity with whom the Personal Data is shared or a description of the type of organization that will receive the Shared Personal Data.~~
- ~~j) — The Parties undertake to inform Data Subjects of the Purposes for which it will process the Shared Personal Data and provide all of the information that it must provide in accordance with Applicable Laws, to ensure that the Data Subjects understand how their Personal Data will be Processed.~~
- ~~k) — The Shared Personal Data must not be irrelevant or excessive with regard to the Purposes.~~
- ~~l) — A Party shall, subject to the instructions of the Data Subject, ensure that Shared Personal Data is accurate. Where any Party becomes aware of inaccuracies in Shared Personal Data, they will, where necessary, notify the other Parties, to enable the timely rectification of such data.~~

## ~~6. — SECURITY~~

- ~~a) — The Disclosing Party shall be responsible for the security of transmission of any Shared Personal Data in transmission to the Receiving Party by employing appropriate safeguards and technical information security controls.~~
- ~~b) — All Parties agree to implement appropriate technical and organizational measures to protect the Shared Personal Data in their possession against unauthorized or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, including but not limited to:
  - ~~i. — Ensuring IT equipment, including portable equipment is kept in lockable areas when unattended;~~
    - ~~i. — Not leaving portable equipment containing the Shared Personal Data unattended;~~
    - ~~ii. — Ensuring use of appropriate secure passwords for logging into systems or databases containing Shared Personal Data;~~
    - ~~iv. — Ensuring that all IT equipment is protected by antivirus software, firewalls, passwords and suitable encryption devices;~~
    - ~~v. — Using industry standard 256 bit AES encryption or suitable equivalent where necessary or appropriate;~~
    - ~~vi. — Limiting access to relevant databases and systems to those of its officers, staff, agents, vendors and sub-contractors who need to have access to the Shared Personal Data, and ensuring that password security mechanisms are in place to prevent inappropriate access when individuals are no longer engaged by the Party;~~~~

- vii. ~~Conducting regular threat assessment or penetration testing on systems as deemed necessary, considering the nature, scope, context and purposes of processing, as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, with due regard to the nature of the data held, the cost of implementation, and the state of the art;~~
- vii. ~~Ensuring all authorized individuals handling Shared Personal Data have been made aware of their responsibilities with regards to handling of Shared Personal Data; and~~
- ix. ~~Allowing for inspections and assessments to be undertaken by the Controller as to the security measures taken, or producing evidence of those measures, if requested.~~

## ~~7. SECURITY BREACH NOTIFICATION~~

- a) ~~Notification Timing. Should a Party become aware of any Data Security Breach by a sub-processor in relation to Shared Personal Data, and where such a Breach is of a material impact to this Data Processing Addendum, or is likely to have a material impact on the Parties, the relevant Party should immediately notify the Parties, and the relevant Party shall provide immediate feedback about any impact this incident may/will have on the affected Parties, including the anticipated impacts to the rights and freedoms of Data Subjects if applicable. Such notification will be provided as promptly as possible, but in any event no later than 24 hours after detection of the Data Security Breach. Nothing in this section should be construed as limiting or changing any notification obligation of a Party under Applicable Laws.~~
- b) ~~Notification Format and Content. Notification of a Data Security Breach will be in writing to the information/administrative contact identified by the Parties, though communication may take place first via telephone. The notifying Party must be provided the following information, to the greatest extent possible, with further updates as additional information comes to light:~~
  - i. ~~A description of the nature of the incident and likely consequences of the incident;~~
  - ii. ~~Expected resolution time (if known);~~
  - iii. ~~A description of the measures taken or proposed to address the incident including, measures to mitigate its possible adverse effects the Parties and/or Shared Personal Data;~~
  - iv. ~~The categories and approximate volume of Shared Personal Data and individuals potentially affected by the incident, and the likely consequences of the incident on that Shared Personal Data and associated individuals; and~~
  - v. ~~The name and phone number of a representative the Party may contact to obtain incident updates.~~
- c) ~~Security Resources. The Parties' may, upon mutual agreement, provide resources from its security group to assist with an identified Data Security Breach for the purpose of meeting its obligations in relation to the notification of a Data Security Breach under Applicable Laws or other notification obligations or requirements.~~
- d) ~~Failed Security Incidents. A failed security incident will not be subject to the terms of this Data Processing Addendum. A failed security incident is one that results in no unauthorized access or acquisition to Shared Personal Data, and may include, without limitation, pings and other~~

~~broadcast attacks on firewalls or edge servers, port scans, unsuccessful log-on attempts, denial of service attacks, packet sniffing (or other unauthorized access to traffic data that does not result in access beyond headers) or similar incidents.~~

- e) ~~Additional Notification Requirements. For the purpose of this section, a Party is also required to provide notification in accordance with this section in response to:~~
  - i. ~~A complaint or objection to Processing or request with respect to the exercise of a Data Subject's rights under Applicable Laws; and~~
  - ii. ~~An investigation into or seizure of Shared Personal Data by government officials, regulatory or law enforcement agency, or indications that such investigation or seizure is contemplated.~~

#### ~~8. DATA SUBJECT RIGHTS~~

- a) ~~Controllers have certain obligations to respond to requests of a Data Subject whose Personal Data is being processed under this Data Processing Addendum, and who wishes to exercise any of their rights under Applicable Laws, including, but not limited to: (i) right of access and update; (ii) right to data portability; (iii) right to erasure; (iv) right to rectification; (v) right to object to automated decision-making; or (vi) right to object to processing.~~
- b) ~~Data Subjects have the right to obtain certain information about the processing of their personal data through a subject access request ("Subject Access Request"). The Parties shall maintain a record of Subject Access Requests, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.~~
- c) ~~The Parties agree that the responsibility for complying with a Subject Access Request falls to the Party receiving the Subject Access Request in respect of the Personal Data held by that Party, but any final decisions made by the Controller will govern.~~
- d) ~~The Parties agree to provide reasonable and prompt assistance (within 5 business days of such a request for assistance) as is necessary to each other to enable them to comply with Subject Access Requests and to respond to any other queries or complaints from Data Subjects.~~

#### ~~9. DATA RETENTION AND DELETION~~

~~Notwithstanding any requirements under the Applicable Agreements to the contrary, the Parties will retain Shared Personal Data only as necessary to carry out the Purposes or otherwise in accordance with the Temporary Specification and as permitted under Applicable Laws, and thereafter must delete or return all Shared Personal Data accordingly.~~

#### ~~10. TRANSFERS~~

- a) ~~For the purposes of this Data Processing Addendum, transfers of Personal Data include any sharing of Shared Personal Data, and shall include, but is not limited to, the following:~~

- ~~i. Transfers amongst the Parties for the Purposes contemplated in this Data Processing Addendum or under any of the Applicable Agreements;~~
  - ~~ii. Disclosure of the Shared Personal Data with any other third party with a valid legal basis for the provisioning of the Purposes;~~
  - ~~iii. Publication of the Shared Personal Data via any medium, including, but not limited to in public registration data directory services;~~
  - ~~iv. The transfer and storage by the Receiving Party of any Shared Personal Data from within the EEA to servers outside the EEA; and~~
  - ~~v. Otherwise granting any third party located outside the EEA access rights to the Shared Personal Data.~~
- ~~b) No Party shall disclose or transfer Shared Personal Data outside the EEA without ensuring that adequate and equivalent protections will be afforded to the Shared Personal Data.~~

#### ~~11. RESOLUTION OF DISPUTES~~

- ~~a) In the event of a dispute or claim brought by a Data Subject or an applicable Data Protection Authority against any Party concerning the processing of Shared Personal Data, the concerned Parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.~~
- ~~b) The Parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by a Data Protection Authority. If they do participate in the proceedings, the Parties may elect to do so remotely (such as by telephone or other electronic means). The Parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.~~
- ~~c) In respect of Data Security Breaches or any breach of this Data Processing Addendum, each Party shall abide by a decision of a competent court of the complaining Party's country of establishment or of any binding decision of the relevant Data Protection Authority.~~

#### ~~12. IMPACT OF CHANGES; NEW GUIDANCE~~

~~In the event the ICANN Board adopts changes to the Temporary Specification (a "Triggering Event"), then Registry may notify Registrar of the changes, and upon ICANN publication of the updated Temporary Specification to its website, the changes will also be adopted and incorporated automatically herein to this Data Processing Addendum.~~

~~Registrar will be given thirty (30) days to accept or reject the proposed changes; rejection may result in termination of the RRA. If Registrar does not respond within thirty (30) days following notice, it is deemed to have accepted the changes to the Data Processing Addendum, as applicable.~~

~~In the event Applicable Laws change in a way that the Data Processing Addendum is no longer adequate for the purpose of governing lawful processing of Shared Personal Data and there was no Triggering Event, the Parties agree that they will negotiate in good faith to review and update this Data Processing Addendum in light of the new laws.~~

## Annex 1

### DETAILS OF THE PROCESSING

1. ~~**Nature and Purpose of Processing.** The Parties will Process Shared Personal Data only as necessary to perform under and pursuant to the Applicable Agreements, and subject to this Data Processing Addendum, including as further instructed by Data Subjects.~~
2. ~~**Duration of Processing.** The Parties will Process Shared Personal Data during the Term of the underlying RRA to which this this Data Processing Addendum is applicable, but will abide by the terms of this Data Processing Addendum for the duration of the Processing if in excess of that term, and unless otherwise agreed upon in writing.~~
3. ~~**Type of Personal Data.** Data Subjects may provide the following Shared Personal Data in connection with the purchase of a domain name from a Registrar:~~

~~Registrant Name: Example Registrant Street:~~

~~1234 Admiralty Way~~

~~City: Marina del Rey~~

~~State/Province: CA~~

~~Postal Code: 90292~~

~~Country: US~~

~~Phone Number: +1.3105551212~~

~~Fax Number: +1.3105551213~~

~~Email: [registrant@example.tld](mailto:registrant@example.tld)~~

~~Admin Contact: Jane Registrant~~

~~Phone Number: +1.3105551214~~

~~Fax Number: +1.3105551213~~

~~Email: [janeregistrar@example-registrant.tld](mailto:janeregistrar@example-registrant.tld)~~

~~Technical Contact: John Geek~~

~~Phone Number: +1.3105551215~~

~~Fax Number: +1.3105551216~~

~~Email: [johngeek@example-registrant.tld](mailto:johngeek@example-registrant.tld)~~

