

# Registry-Registrar Agreement

## Reference Schedule

<b>Effective Date:</b>		
<b>Initial Term:</b>	Five years	
<b>Designated gTLD:</b>	<del>.courses</del>   <del>.study</del>	(Strike out if not applicable)
<b>Registry Operator:</b>	<b>Name:</b>	Open Universities Australia Pty Ltd ACN 053 431 888
	<b>Country of Incorporation:</b>	Commonwealth of Australia
	<b>Address:</b>	Level 1, 473 Bourke Street, Melbourne, Victoria, 3000
	<b>Contact:</b>	Adrian Hill
	<b>Phone no.:</b>	+ 61 3 8628 2406
	<b>Fax no.:</b>	+ 61 3 8628 2586
	<b>Email:</b> (not for formal notices)	adrian.hill@open.edu.au
<b>Registrar:</b>	<b>Name:</b>	
	<b>Country of Incorporation:</b>	
	<b>Address:</b>	
	<b>Contact:</b>	
	<b>Phone no.:</b>	
	<b>Fax no.:</b>	
	<b>Email:</b> (not for formal notices)	
<b>Executed by and on behalf of Open Universities Australia Pty Ltd by an authorised representative:</b>		<b>Executed by and on behalf of the Registrar by an authorised representative:</b>
_____		_____
Signature of Representative		Signature of Representative
_____		_____
Name and Title of Representative (Block Letters)		Name and Title of Representative (Block Letters)

This Registry-Registrar Agreement (the "Agreement") is between Registry Services, LLC, a Delaware 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 \_\_\_\_\_ ("Registrar").

## **RECITALS**

~~A~~ ~~WHEREAS~~, Registry Operator has entered into 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; ~~ICANN whereby the Designated gTLD has been delegated by ICANN to the Registry Operator.~~

WHEREAS, multiple registrars provide Internet domain name registration services within the top-level domains;

~~B~~ ~~WHEREAS~~, Registrar wishes to act, as a registrar for domain names within the top-level domains ("Registry TLD(s)") specified in Exhibit C; ~~Designated gTLD.~~

~~C~~ ~~The parties agree that the Registrar will be provided with access to the Registry System in connection with the provision of Registrar Services by the Registrar within the Designated gTLD on the following terms and conditions.~~

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, Registry Operator and Registrar, intending to be legally bound, hereby agree as follows:

## **OPERATIVE PROVISIONS**

### **1. DEFINITIONS**

In this Agreement, unless the contrary intention appears:

~~Accreditation Requirements~~ means:

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

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

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

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

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

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

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

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

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

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

**1.2. 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 days of the disclosure of its confidentiality. about the other party or a third party, in any form, which comes into a party's possession pursuant to, or as a result of or in performance of this Agreement, excluding information:

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

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

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

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

**Credit Limit** means the aggregate of:

~~(a) all amounts invoiced to the Registrar for which payment has not yet been made to the Registry Operator, regardless of whether or not the payment terms have expired; and~~

~~(b) the amounts that would be payable by the Registrar for transactions processed by the Registry Operator but not yet invoiced.~~

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

~~(a) a Registrant; or~~

~~(b) an Applicant.~~

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

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

~~**1.3. Domain Name** means 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 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).for the Designated gTLD, regardless of whether or not it is a Registered Name.~~

~~**1.4. DNS** 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. EPP** means the Extensible Provisioning Protocol, which is the protocol used ~~in~~ by the Registry System.~~

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

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

~~**1.7. ICANN** means the Internet Corporation for Assigned Names and Numbers.~~

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

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

~~**1.8. ICANN Published Policies** means any ICANN Temporary Specifications or Policies and Consensus Policies (as defined in the Registry Agreement), including, without limitation, the latest versions, of policies identified at <http://www.icann.org/en/resources/registrars/consensus-policies> and any such policies that are from time to time developed and adopted by ICANN.~~

~~**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**).

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

~~**Intellectual Property** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in Article 2 of the convention establishing the World Intellectual Property Organisation 1967.~~

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

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

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

**1.10. Licensed Product** means the intellectual property required to access the EPP, the APIs, and software necessary for such access.

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

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

**1.11. Personal Data** means any refers to data about any identified or identifiable natural person.

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

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

**1.12. Price List** means the list of fees published by ~~the~~ 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.

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

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

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

~~**Registered Name** refers to a Domain Name created and registered within the Designated gTLD, consisting of two or more levels of the Designated gTLD domain name hierarchy (e.g. name.TLD or~~

~~another.name.TLD) about which the Registry Operator is engaged in providing Registry Services maintains data in the Registry System, arranges for such maintenance, or derives revenue from such maintenance, and includes a Domain Name in the Registry System even if it does not appear in a Zone File (for example, a registered but inactive Domain Name).~~

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

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

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

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

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

- ~~(a) — to take registration requests from Customers and make requests to the Registry System to register a Domain Name on behalf of Customers; and~~
- ~~(b) — to provide all associated services to such Customers, including services relating to the maintenance, transfer, modification, renewal and cancellation of a Domain Name; and~~
- ~~(c) — to provide such other services set out in this Agreement, the Registrar Accreditation Agreement or required by the Published Policies.~~

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

**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 the operation of the Registry whereby the Registry Operator is designated as the registry operator of the Designated gTLD(s), as properly amended or renewed from time to time.

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

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

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

**1.20. Registry TLD(s)** means the 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. Registry Services** means services provided by ~~the~~ Registry Operator as defined in pursuant to the Registry Agreement, including the operation of the Registry System and the Registry-Registrar Software.

**Registry Services Provider** means:

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

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

**1.23. The Registry System** means the registry system operated by ~~or on behalf of the~~ Registry Operator for entering and maintaining the Designated gTLD used to record, store and maintain details of available and registered domain names in the Designated Registry gTLD(s).

**1.24. 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.

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

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

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

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

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

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

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

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

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

~~**1.25. Term** means the term of this Agreement, as set forth described in Section 8.1 clause 3.~~

~~**1.26. A TLD** means a top level domain of the DNSname within the Internet's "Domain Name System".~~

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

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

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

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

~~**1.27. 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. — AUTHORISATION AS REGISTRAR**~~

### ~~**2.1. — Authorisation**~~

~~(a) Subject to the following provisions of this Agreement, the Registry Operator hereby authorises the Registrar to access the Registry System on a non-exclusive basis in connection with the provision of Registrar Services by the Registrar.~~

~~(b) The Registrar acknowledges and agrees that the provision of Registrar Services will be provided by the Registrar on its own behalf and for its own benefit.~~

### ~~**2.2. — Entitlement to Access Registry System**~~

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

~~(a) from the Effective Date;~~



~~(b) for so long as a Registrar Access Contract is on foot and has not expired or otherwise been lawfully terminated; and~~

~~(c) for so long as it meets the Accreditation Requirements.~~

### **~~2.3. Access to Registry System~~**

The Registrar acknowledges and agrees that:

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

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

~~i. to protect the integrity and stability of the Registry System;~~

~~ii. to comply with its obligations as a Registry Operator;~~

~~iii. to comply with any applicable laws, government rules or requirements, requests of law enforcement, or in compliance with any dispute resolution policies or process;~~

~~iv. to avoid any liability, civil or criminal, on the part of Registry Operator, as well as its affiliates, subsidiaries, officers, directors, employees and subcontractors;~~

~~v. to ensure compliance with the Published Policies;~~

~~vi. to stop or prevent any violations of any terms and conditions of this Agreement; or~~

~~vii. to correct mistakes made by the Registry Operator or any Registrar or any of its service providers in connection with an Application or a domain name.~~

### **~~2.4. ICANN~~**

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

### **~~3.1. TERM~~**

#### **~~3.1.1. Initial Term~~**

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

### ~~3.2.1.1. Renewal term~~

~~The Term will be extended for a Renewal Term, commencing on the day after the end of the Initial Term or the previous Renewal Term (as the case may be), unless the Registrar gives the Registry Operator at least 60 days' written notice prior to the end of the then-current Term that it does not wish to extend the Term.~~

## **4.2. OBLIGATIONS OF REGISTRY OPERATOR**

~~4.1.2.1. Access to Registry System.~~ ~~Subject to clauses 2 and 4.2, t~~ Throughout the term of this Agreement, ~~the~~ Registry Operator shall provide ~~the~~ Registrar with access as a registrar to the Registry System ~~that Registry Operator operates according to its arrangements in accordance with ICANNthe Service Level Agreement. Nothing in this Agreement entitles Registrar to enforce any agreement between Registry Operator and ICANN.~~

~~4.2.2.2. Suspension of Access to the Registry System.~~ In the event of degradation of the Registry System or other event that in ~~the~~ Registry Operator's opinion affects the security or stability of the Registry System, ~~the~~ Registry Operator may, in its sole discretion, temporarily suspend or restrict ~~the~~ Registrar's access to the Registry System. Except in the case of an emergency, Registry Operator will provide advance notice ~~via email and phone call~~ to Registrar's technical contact. To the extent reasonably practicable, ~~the~~ Registry Operator will provide advance notice by email or telephone to ~~the~~ Registrar's technical contact prior to any such suspension or restriction. Such temporary suspension or restriction will be applied in a non-arbitrary and non-discriminatory manner and will apply fairly to any registrar similarly situated, including affiliates of the Registry Operator.

### ~~4.3.2.3. Maintenance of Registrations Sponsored by Registrar~~

Subject to the provisions of this Agreement, ~~ICANN requirements, and Registry Requirements and the Published Policies,~~ ~~the~~ Registry Operator shall maintain the registrations of ~~Registered Domain~~ Names sponsored by Registrar in the Registry System during ~~such period of~~ the term for which Registrar has paid the fees required by ~~clause 8~~Section 4.1.

### ~~4.4.2.4. Provision of Registry-Registrar Software Tool Kit; License.~~

~~(a)2.4.1. \_\_\_\_\_~~ ~~The Registry Took Kit. No later than three (3) business days after the Effective Date, or as soon as practicable thereafter,~~ Registry Operator shall provide to ~~the~~ Registrar a copy ~~(or hyperlink to a copy which can be downloaded)~~ of the Registry-~~Registrar Software Tool Kit,~~ which shall provide sufficient technical specifications to ~~allow~~permit ~~the~~ Registrar to interface with the Registry System and employ ~~the-its~~ features ~~of the Registry System~~ 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 the Registry-Registrar Software 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 to provide Registrar Services in the Designated Registry gTLD(s) in accordance with this Agreement only and for no other purpose.~~

~~(b)2.4.3. Limitations on Use. Notwithstanding any other provisions in this Agreement, except with the written consent of Registry Operator, 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 Registrar, (ii) publish, distribute or permit disclosure of the Licensed Product other than to employees, contractors, and agents of Registrar for use in Registrar's domain name registration business, (iii) decompile, reverse engineer, copy or re-engineer the Licensed Product for any unauthorized purpose, (iv) use or permit use of the Licensed Product in violation of any federal, state or local rule, regulation or law, or for any unlawful purpose. Registrar agrees to employ the necessary measures to prevent its access to the Registry System granted hereunder from being used to (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than Registrar's customers; or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry or any ICANN-Accredited Registrar, except as reasonably necessary to register domain names or modify existing registrations~~

~~(c) Unless expressly allowed by the licence accompanying the Registry-Registrar Software, the Registrar must not:~~

- ~~i. sell, lease, transfer, assign, sub-license, license or otherwise part with possession of the Registry-Registrar Software, except as expressly permitted in this Agreement; and~~
- ~~ii. attempt to disassemble, decompile or otherwise reverse engineer any Registry-Registrar Software, except as permitted under this Agreement.~~

~~(d)2.5. **Changes to System.** The Registry Operator may from time to time make modifications to the Registry Tool Kit or other materials licensed hereunder-Registrar Software that will modify, 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.~~

~~4.5.2.6. **Technical Engineering and Customer Service Support.** Registry Operator shall provide Registrar with technical engineering and customer service support as described in the customer support procedures made available to Registrar and as may be amended from time to timeset forth in Schedule 2.~~

~~4.6. **Service Credits**~~

~~(a) Registry Operator will issue credits to Registrar as described in the Service Level Agreement at Schedule 4.~~

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

**2.7. Handling of Personal Data.** Registry Operator shall notify Registrar of the purposes for which Personal Data submitted to Registry Operator by Registrar is collected, the intended recipients (or categories of recipients) of such Personal Data. Registry Operator shall take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars. Notwithstanding the above, 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 such use is compatible with the notices provided to 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.

~~4.7.2.9. ICANN Requirements.~~ The Registrar acknowledges and agrees that the Registry Operator's obligations hereunder are subject to modification at any time as the a result of ICANN-mandated requirements and consensus policies through the processes set forth in the Registry Agreement. Notwithstanding anything in this Agreement to the contrary, Registrar shall comply with any such ICANN requirements in accordance with the timeline defined by ICANN, modifications to the Registry Agreement and any ICANN Published Policies.

**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~~ **Error! Reference source not found.** 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.

#### ~~4.8. Deal with Registrars Consistently~~

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

#### ~~4.9. Registry Operator Published Policies~~

~~(a) The Registry Operator will ensure that the Registry Operator Published Policies will be established in a non-arbitrary manner, will be applicable to all registrars, and will be consistent with ICANN's standards, policies, procedures, and practices and the Registry Agreement.~~

~~(b) The Registry Operator may add to, or vary, the Registry Operator Published Policies, with any such change to take effect:~~

- ~~i. immediately upon notice, in the case of the Registry Operator being required to do so by ICANN;~~
- ~~ii. immediately upon notice, in the case of the Registry Operator reasonably determining that there is an emergency or a material threat to the security or stability of the Registry System;~~
- ~~iii. in the case of a material change, on the Registry Operator giving 90 days notice; and~~
- ~~iv. otherwise on the Registry Operator giving 30 days notice.~~

### **5.3. OBLIGATIONS OF REGISTRAR**

**5.1.3.1. 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.

The Registrar:

~~(a) before accessing the Registry System, will obtain ICANN Accreditation;~~

~~(b) thereafter maintain ICANN Accreditation and comply with the Registrar Accreditation Agreement; and~~

~~(c) maintain its accreditation to access the Registry System in accordance with clause 7.~~

**3.2. Registrar Responsibility for Customer Support.** 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 support to accept (i) requests/orders for registration, cancellation, modification, renewal, deletion, renewal, maintenance, restoration/redemptions or transfer of Domain Names and (ii) customer service (including domain name record support) and billing and technical support to Registrants/Registered Name Holders.; and any other customer support to Customers or other persons as required by this Agreement or the Published Policies.

**3.3. Customer/Registrar's Registration Agreement.** At all times when/while it is sponsoring the registration of any Registered Domain Name within the Registry System, the Registrar shall have in effect an electronic or paper Registration Agreement with the Customer/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 include in its Customer Registration Agreement must include the obligations and acknowledgements in a manner consistent with those described in Schedule 5 (unless otherwise agreed in writing by the Registry Operator) and must include those terms and conditions required by this Agreement, including but not limited to those listed in Exhibit A and other terms that are consistent with Registrar's obligations to Registry Operator under this Agreement. and must nevertheless be consistent with this Agreement, the Registrar Accreditation Agreement and any applicable Published Policies. The Customer Registration Agreement must require the Customer to expressly agree to the price of a Domain Name and acknowledge that price for the creation of a Domain Name may be greater than or less than the price for the renewal of that Domain Name. Upon written request from the Registry Operator, the Registrar will, within 14 days of the request, provide the Registry Operator with a certified copy of any Customer Registration Agreement sought in the Registry Operator's request.

**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, 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.

## **5.2. Registry Operator Published Policies**

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

## **5.3. ICANN Published Policies**

~~Notwithstanding anything in this Agreement to the contrary, the Registrar will comply with all ICANN-mandated requirements and all ICANN Published Policies (as amended by ICANN from time to time) and in accordance with the timeline defined by ICANN.~~

### **~~5.4.1.1. Customer Registration Agreement~~**

- ~~(a) At all times when sponsoring the registration of any Registered Name within the Registry System, the Registrar shall have in effect an electronic or paper registration agreement with the Customer.~~
- ~~(b)(a) The Customer Registration Agreement must include the obligations and acknowledgements in a manner consistent with those described in Schedule 5 (unless otherwise agreed in writing by the Registry Operator) and must include those terms and conditions required by this Agreement and must nevertheless be consistent with this Agreement, the Registrar Accreditation Agreement and any applicable Published Policies.~~
- ~~(c)(a) The Customer Registration Agreement must require the Customer to expressly agree to the price of a Domain Name and acknowledge that price for the creation of a Domain Name may be greater than or less than the price for the renewal of that Domain Name.~~
- ~~(d)(a) Upon written request from the Registry Operator, the Registrar will, within 14 days of the request, provide the Registry Operator with a certified copy of any Customer Registration Agreement sought in the Registry Operator's request.~~

### **~~5.5.1.1. Registrar Responsibility for Customer support~~**

~~Registrar shall provide:~~

~~(a) support to accept requests for registration, cancellation, deletion, renewal, maintenance, restoration or transfer of Domain Names;~~

~~(b)(a) customer service (including Domain Name record support) and billing and technical support to Registrants; and~~

~~(c)(a) any other customer support to Customers or other persons as required by this Agreement or the Published Policies.~~

**3.6. Data Submission Requirements.** As part of its registration and sponsorship of Registered Domain Names in the Designated Registry gTLD(s), the Registrar shall submit complete data as required by the Published Policies and other technical specifications of the Registry System that are made available to the Registrar from time to time and update that data within 5 days of any changes coming to its attention. The Registrar hereby grants the Registry Operator an irrevocable 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 the Registry Operator's operation of the Registry TLD(s). Registrar shall submit any corrections or updates from a Registered Name Holder relating to the registration information for a Domain Name to Registry Operator in a timely manner. System and to comply with the Registry Agreement. Any access to the Zone Files and use of data in the Zone Files must be conducted with reference to the obligations of the parties pursuant to any relevant ICANN Published Policies.

**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.** The Registrar shall develop and employ in its domain name registration business all necessary technology and restrictions to ensure that its connection to the Registry System is secure, and that a All data exchanged between the Registrar's system and the Registry System shall be protected to avoid unintended disclosure of information. Registrar agrees to employ the necessary measures to prevent its access to the Registry System granted hereunder from being used to (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than its own existing customers; or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator, any other registry operated under an agreement with ICANN, or any ICANN-accredited registrar, except as reasonably necessary to register domain names or modify existing registrations. In addition, Registry Operator may require other reasonable security provisions to ensure that the Registry System is secure. On at least 30 days written notification to the Registrar from the Registry Operator, the Registrar must employ industry standard security provisions, practices or technologies prescribed by the Registry Operator from time to time.

**3.9. Resolution of Technical Problems.** The Registrar shall employ necessary employees, contractors, or agents with sufficient technical training and experience to respond to and fix all technical problems concerning the use of the EPP and the APIs in conjunction with arising



~~in the Registrar's systems, which affect the Registrar's use of the Registry-Registrar Software or the systems of 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, or other emergency, Registry Operator may, in its sole discretion, temporarily suspend or restrict access to the Registry System. Such temporary suspensions shall be applied in a non-arbitrary manner and shall apply fairly to any registrar similarly situated, including affiliates of Registry Operator.

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

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

**3.12. Compliance with Terms and Conditions.** Registrar shall comply with, and shall include in its Registration Agreement with each Registered Name Holder as appropriate, an obligation to comply with all of the following:

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

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 Registered Names.** ~~In addition to complying with ICANN standards, policies, procedures, and practices~~ ~~Published Policies~~ limiting domain names that may be registered, Registrar agrees to comply with Registry Operator's Published Policies regarding reservation of and restrictions on the registration of domain names and ~~all applicable laws, statutes and regulations limiting the domain names that may be registered.~~

**3.14. Authorization Codes.** Registrar shall not provide identical Registrar-generated authorization <authinfo> codes for Domain Names registered by different registrants with the same Registrar. 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. Documentation of these mechanisms shall be made available to Registrar by Registry Operator. The Registrar shall provide the Registered Name Holder with timely access to the authorization code along with the ability to modify the authorization code. Registrar shall respond to any inquiry by a Registered Name Holder regarding access to and/or modification of an authorization code within five (5) calendar days. 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 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.

**5.6-3.16. Registrar Requirements for Uniform Rapid Suspension.** Subject to to ICANN requirements and the Registry Requirements ~~the Published Policies~~ the Registrar must:

~~(a) ensure that a Domain Name that has been suspended as a result of a final decision of a Uniform Rapid Suspension complaint remains registered to the person who was the Registrant at the time of suspension;~~

~~(b)3.16.1. \_\_\_\_\_ Accept and process payments for the renewal of a Domain Name the party who initiated a Uniform Rapid Suspension complaint regarding a Domain Name by a URS Complainant in such cases where the that URS Complainant party has prevailed in relation to that Domain Name; and~~

~~(c)3.16.2. \_\_\_\_\_ Not allow a party who initiated a Uniform Rapid Suspension complaint regarding a Domain Name URS Complainant 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.

#### **5.7. ~~Customer Prohibited Activities~~**

~~(a) The Registrar will prescribe consequences for a Customer engaging in any Prohibited Activities. Such consequences must be consistent with applicable law and any related procedures or Published Policies and must include suspension or deletion of the Domain Name.~~

~~(b) In the event that the Registry Operator detects and informs the Registrar of any Prohibited Activities in respect of a Customer of the Registrar, the Registrar must investigate, and as required, enforce any consequences applicable to that Customer as prescribed by the Registrar pursuant to the Customer Registration Agreement.~~

#### **5.8-1-1 ~~Data Submission Requirements~~**

~~(a) As part of its registration and sponsorship of Registered Names in the Designated gTLD, the Registrar shall submit complete data as required by the Published Policies and other technical specifications of the Registry System that are made available to the Registrar~~

~~from time to time and update that data within 5 days of any changes coming to its attention.~~

~~(b)(a) The Registrar hereby grants the Registry Operator an irrevocable non-exclusive license to such data for propagation of and the provision of authorized access to the Zone Files and as otherwise required in the Registry Operator's operation of the Registry System and to comply with the Registry Agreement.~~

~~(c)(a) Any access to the Zone Files and use of data in the Zone Files must be conducted with reference to the obligations of the parties pursuant to any relevant ICANN Published Policies.~~

#### ~~5.9.1.1. Security~~

~~(a) The Registrar shall develop and employ in its domain name registration business all necessary technology and restrictions to ensure that its connection to the Registry System is secure and that all data exchanged between the Registrar's system and the Registry System shall be protected to avoid unintended disclosure of information.~~

~~(b)(a) On at least 30 days written notification to the Registrar from the Registry Operator, the Registrar must employ industry standard security provisions, practices or technologies prescribed by the Registry Operator from time to time.~~

#### ~~5.10.1.1. Resolution of Technical Problems~~

~~The Registrar shall employ necessary employees, contractors, or agents with sufficient technical training and experience to respond to and fix all technical problems arising in the Registrar's systems which affect the Registrar's use of the Registry-Registrar Software or the systems of the Registry Operator.~~

#### ~~5.11.1.1. Time~~

~~In the event of any dispute concerning the time of the entry of a Domain Name registration into the Registry System, the time shown in the Registry System records shall prevail.~~

#### ~~5.12.1.1. Restrictions on Registered Names~~

~~In addition to complying with Published Policies limiting domain names that may be registered, Registrar agrees to comply with all applicable laws, statutes and regulations limiting the domain names that may be registered.~~

### **6. SPECIAL ALLOCATION**

#### **6.1. Effect**

The Registrar acknowledges that certain domain names may be subject to the Registry Operator's Special Allocation Procedure, and agrees that those domain names so affected by the Special Allocation Procedure may (subject to the TMCH Requirements and the Published Policies) remain subject to the terms of the Special Allocation Procedure even if the domain

name is deleted, expires or is transferred to the Registrar at a time after initial registration of the domain name.

## **6.2. Release**

~~THE REGISTRAR ACKNOWLEDGES THAT THE REGISTRY OPERATOR HAS NO LIABILITY OF ANY KIND FOR ANY LOSS OR LIABILITY RESULTING FROM, AND INDEMNIFIES THE REGISTRY OPERATOR FOR ANY CLAIM BY A THIRD PARTY ARISING FROM, THE SPECIAL ALLOCATION PROCEDURE INCLUDING:~~

- ~~(a) THE INABILITY OF A CUSTOMER TO BE ENTITLED TO REGISTER A DOMAIN; AND~~
- ~~(b) THE RESULTS OF ANY DISPUTE RESOLUTION PROCESS PRESCRIBED IN THE SPECIAL ALLOCATION PROCEDURE.~~

## **7. ACCREDITATION**

### **7.1. Requirements for Accreditation**

- ~~(a) The Registrar acknowledges and agrees that it must meet the Accreditation Requirements in order to access the Registry System in connection with the provision of Registrar Services by the Registrar, and that entering into this Agreement does not indicate that the Registrar has met the Accreditation Requirements.~~
- ~~(b) The Registrar further acknowledges and agrees that the Registry Operator may suspend or terminate the Registrar's access to the Registry System or, in accordance with the ICANN Published Policies, cause or facilitate the transfer of domain names (including any Domain Name) to another registrar, if the Registry Operator:
  - ~~i. considers that the Registrar has not complied with the Registry Operator Accreditation Requirements;~~
  - ~~ii. the Registrar at any time does not have ICANN Accreditation; or~~
  - ~~iii. is advised by ICANN that the Registrar has not complied with the ICANN Accreditation Requirements.~~~~

### **7.2. Technical Requirements**

~~The Registrar must at all times comply with the technical requirements and related technical criteria determined by the Registry Operator:~~

- ~~(a) to ensure that the Registrar's system can properly interface with the Registry System for the processing of Registry Data using the Registry-Registrar Software and other such tools provided to the Registrar by the Registry Operator and to otherwise employ the features of the Registry System that are available to registrars; and~~
- ~~(b) such other requirements set out in the Registry Operator Published Policies.~~

## **8.4. FEES**

### **8.1.4.1. Amount of Registry Operator Fees.**

~~(a) 4.1.1. \_\_\_\_\_ Registrar agrees to pay Registry Operator tThe Fees payable by set forth in the Registrar will be those calculated in accordance with the Registry Operator's Price List for initial and renewal registrations and other services provided by Registry Operator to Registrar (collectively, "Fees"). Registry Operator reserves the right to revise the Fees by issuing a revised Price List from time to time, provided that such revisions are consistent with clause 2.10 of the Registry Agreement. Subject to the foregoing, the Fees may be revised by the Registry Operator in its sole discretion provided that any increase in the Fees shall be no more than 10% of then current Fee, and that increases in Fees shall not occur more than one time per calendar year. prospectively to the extent and in the manner that such adjustments are permitted by the Registry Agreement, as follows:~~

~~(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.~~

~~(b) The Registrar must also pay to the Registry Operator any fee that the Registry Operator is entitled to collect under the Registry Agreement.~~

~~(c) The Registry Operator will issue to the Registrar an invoice for amounts due under this clause 8.1 on a monthly basis.~~

~~(d) The Registrar will pay all amounts due to the Registry Operator under this clause 8.1 within 14 days of the date of the Registry Operator's invoice.~~

~~(e)(a) \_\_\_\_\_ The Registry Operator reserves the right to revise the Fees by issuing a revised Price List from time to time, provided that such revisions are consistent with clause 2.10 of the Registry Agreement. Subject to the foregoing, the Fees may be revised by the Registry Operator in its sole discretion provided that any increase in the Fees shall be no more than 10% of then current Fee, and that increases in Fees shall not occur more than one time per calendar year.~~

**4.2. Payment of Registry Operator Fees.** Registrar shall comply with the terms 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.

### **8.2. Credit limit**

~~(a) The Registry Operator may from time to time determine a Credit Limit in accordance this clause 8.2 that the Registrar must not exceed.~~

~~(b) The Credit Limit will be determined by the Registry Operator having regard to reasonable commercial bases to determine credit risk, including but not limited to the value of gross revenue derived by the Registrar in the 12 months prior to the Credit Limit being established. For the purpose of clause 4.8, the Registrar acknowledges that the amount prescribed as the Credit Limit may differ between registrars, provided that the Registry Operator applies the basis for assessment of credit risk in a non-discriminatory manner.~~

~~(c) The Credit Limit may be set or varied at any time by the Registry Operator, provided that:~~

~~i. the initial setting of the Credit Limit; or~~

~~ii. the tightening of the Credit Limit at any time,~~

~~must not come into effect until the Registry Operator has given the Registrar 7 days written notice to the Registrar.~~

~~(d) If the Registrar exceeds the Credit Limit, the Registry Operator may:~~

~~i. suspend provision of any or all of the Registry Services in connection with the Registrar under this Agreement;~~

~~ii. notwithstanding clause 8.1(c), issue an invoice to the Registrar for work incurred or transactions processed but not yet invoiced.~~

~~(e) The Registry Operator must cease suspension of the Registry Services if:~~

~~i. to the extent that the Registry Operator has not drawn down on the Performance Bond for non-payment for such invoices, the Registrar has paid all invoices that relate to the Credit Limit; and~~

~~ii. the Registry Operator draws down on the Performance Bond for payment of the invoices that related to the Credit Limit, and the Registrar has issued a replacement Performance Bond in accordance with clause 8.7.~~

**8.3.4.3. Remedies for non-payment.** ~~The Registrar's timely payment of amounts due under clause 8.1 is a material condition of the Registry Operator's obligations under this Agreement. In the event that the Registrar has insufficient funds deposited with fails to pay the Registry Operator in accordance with clause 8.1, the Registry Operator may, subject to its compliance with ICANN Published Policies, and without prejudice to any other rights that the Registry Operator may have, do any or all of the following: (i) stop accepting new initial, renewal or transferred registrations from Registrar; (a) suspend provision of any or all of the Registry Services in connection with the Registrar under this Agreement; (b) delete from the Registry System Domain Names associated with with any negative balance incurred from the Registry Database invoices not paid in full; (c) terminate this Agreement pursuant to clause 14; and (d) pursue any other remedy under this Agreement or at law.~~

**8.4.4.4. Goods and Services Taxes.** ~~All amounts payable to the Registry Operator Fees due under this Agreement are exclusive of GST tax, unless otherwise stated. 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 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 Registrar and shall not be considered a part of, a deduction from or an offset against such Fees. All payments due to 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 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, 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. All applicable GST must be paid to the Registry Operator by the Registrar at the same time and in the same manner as the relevant fee is paid under this Agreement.

**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 **Error!** [Reference source not found.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).

#### **8.5. Financing Charge**

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

#### **8.6. No Set Off**

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

#### **8.7. Performance bond**

- (a) The Registry Operator may require the Registrar procure a Performance Bond in accordance with this clause 8.7.
- (b) The amount of the Performance Bond will be determined by the Registry Operator having regard to reasonable commercial bases to determine credit and commercial risk, including but not limited to the value of gross revenue derived by the Registrar in the 12 months prior to the Performance Bond being established. For the purpose of clause 4.8, the Registrar acknowledges that the amount prescribed as the Performance Bond may differ between registrars, provided that the Registry Operator applies the basis for assessment of credit risk in a non-discriminatory manner.
- (c) Where the Registry Operator requires a Performance Bond, the Registrar must:

- ~~i. on or before the date of this Agreement; and~~
- ~~ii. within 6 months prior to the expiry of any Performance Bond;~~
- ~~iii. deliver to the Registry Operator a Performance Bond.~~

~~(d) The Performance Bond must:~~

- ~~i. be issued by an entity that ordinarily issues bank guarantees in the course of its business and has a credit rating no less than the Specified Rating;~~
- ~~ii. have a face amount:
  - ~~A. the greater of:
    - ~~I. USD 1,000 and~~
    - ~~II. the Credit Limit; or~~~~
  - ~~B. as agreed in writing by the Registry Operator;~~~~
- ~~iii. either:
  - ~~A. not automatically expire; or~~
  - ~~B. expire no earlier than the end of the Initial Term or the Renewal Term (as the case may be); and~~~~
- ~~iv. be issued to the Registry Operator's nominated bank in Australia.~~

~~(e) The Registry Operator may draw down on the Performance Bond for all amounts due to the Registry Operator by the Registrar but unpaid, and any damages, liquidated damages, costs and expenses recoverable by the Registry Operator from the Registrar as a result of the Registrar's breach of this Agreement.~~

~~(f) If the amount available to be drawn under the Performance Bond is less than the amount prescribed in clause (d)(ii), the Registrar must, within 1 month, procure the issue to the Registry Operator of a replacement Performance Bond.~~

~~(g) Upon the Registrar providing a replacement Performance Bond for the purpose of clause (c)(ii) or (f), the Registry Operator will procure the return of the Performance Bond that is being replaced.~~

~~(h) The Registry Operator must procure return each Performance Bond to the Registrar as soon as practicable within 90 days after the end of the Term.~~

## **9. AUCTION INCENTIVE**

### **9.1. Payments to Participating Registrars**

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



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

### **9.2. Payment terms**

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

### **9.3. Recipient-created tax invoices**

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

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

## **10.5. CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

**5.1. 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 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 confidentiality terms of this Agreement.

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

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

5.1.6. Notwithstanding the foregoing, this Section 5.1 imposes no obligation upon the parties with respect to information that (i) is disclosed with the Disclosing Party's prior written approval; 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.

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

~~10.1.5.1.8.~~ 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.

Each party must:

~~(a) keep confidential;~~

~~(b) take reasonable steps to ensure that the party's employees do not disclose to a third party;~~

~~(c) maintain proper and secure custody of; and~~

~~(d) not use or reproduce in any form,~~

~~any Confidential Information belonging to the other party other than to the extent required for the purpose of complying with its obligations under this Agreement or without the written consent of the other party or as required by law.~~

#### **10.2. Return or Destroy**

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

~~(a) deliver all Confidential Information belonging to the other party and all changes to, reproductions of, extracts from and notes regarding that Confidential Information, in any form; or~~

~~(b) destroy the Confidential Information and, if it is stored in other media, by erasing it from the media on which it is stored so that the Confidential Information is incapable of being revived; and~~

~~(c) provide a statutory declaration to the other party that all Confidential Information has been delivered or destroyed in accordance with this clause 10.2.~~

#### **10.3.5.2. Intellectual Property**

~~(a) 5.2.1. \_\_\_\_\_ Subject to the licenses granted herein~~under~~, 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, or its 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.~~

~~(b) 5.2.2. \_\_\_\_\_ Without limiting the generality of the foregoing, no commercial use rights or any licenses under any patent, patent application, copyright, trade-mark, know-how, trade secret, or any other intellectual ~~property~~proprietary rights are granted by Disclosing Party to the Receiving Party ~~either party to the other~~ by this Agreement, or by any disclosure of any Confidential Information to the Receiving Party ~~other~~ 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 to provide the Services shall be and remain the sole and exclusive property of Registry Operator 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 tools or software accessed as part of the Services.~~

~~(c) The Registrar acknowledges and agrees that the Registry Data held in the Registry System is not proprietary information which is owned by either party, and neither the Registrar nor the Registry Operator are entitled to claim any Intellectual Property rights in the Registry Data held in the Registry System.~~

~~(d) For the sake of clarification, but subject to clause (c), the Registrar acknowledges and agrees that the Registry Operator will both during and after the Term independently own its Intellectual Property in the Registry System and otherwise (including, without limitation, any Registry-Registrar Software, software, hardware, all patents, trademarks, trade names, service marks, copyrights, trade secrets, proprietary processes and other forms of intellectual property in the Registry System hardware and software) and all other Intellectual Property or non-public, proprietary or commercially sensitive information or property or other property owned or used by the Registry Operator in operating the Registry System or providing the Registry Services.~~

#### ~~10.4. Marketing~~

~~(a) Each party grants the other a non-exclusive, royalty-free licence, on such reasonable terms and conditions as prescribed by the respective licensor from time to time, to use its corporate logo in its unaltered form during the Term in order to:~~

~~i. link to pages and documents within the other party's website, provided not framed by other materials; and~~

~~ii. describe the fact of the other party's Access.~~

~~(b) If the licensee breaches the terms and conditions of the licence granted under clause 10.4(a), the licensor may withdraw the licence.~~

~~(c) The rights granted under this clause 10.4 must not be transferred or assigned or sub-licensed to any other person.~~

### ~~11. INSURANCE~~

#### ~~11.1. Insurance~~

~~The Registrar must, for so long as any obligations remain in connection with this Agreement, effect and maintain the following insurances with an insurance company approved by the Registry Operator (such approval not to be unreasonably withheld):~~

~~(a) a broad form public liability policy to the value of at least USD 1,000,000 in respect of each claim;~~

~~(b) worker's compensation insurance in accordance with applicable legislation; and~~

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

#### ~~11.2. Provide evidence of Policy~~

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

## ~~12. PERSONAL DATA~~

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

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

### ~~12.2. Registrar to Obtain Customer Consent~~

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

### ~~12.3. Dealing with Personal Data~~

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

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

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

## 6. INDEMNITIES AND LIMITATION OF LIABILITY

**LIMITATION**

~~IF RIGHTS ARE CONFERRED UPON THE REGISTRAR, A CUSTOMER OR ANY OTHER PERSON, OR OBLIGATIONS ARE IMPOSED UPON THE REGISTRY OPERATOR BY ANY APPLICABLE LEGISLATION WHICH CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED, THE PROVISIONS OF CLAUSE 16; SHALL BE READ SUBJECT TO THOSE RIGHTS OR OBLIGATIONS, HOWEVER THE REGISTRY OPERATOR HEREBY EXPRESSLY LIMITS ITS LIABILITY UNDER ANY SUCH LEGISLATION TO THE MAXIMUM EXTENT PERMITTED BY LAW.~~

~~SUBJECT TO CLAUSE 16.1(a), TO THE EXTENT PERMITTED BY LAW THE REGISTRAR AGREES THAT THE LIABILITY OF THE REGISTRY OPERATOR UNDER THIS AGREEMENT FOR THE BREACH OF ANY SUCH RIGHT OR OBLIGATION IMPOSED UPON THE REGISTRY OPERATOR (WHICH CANNOT BE LIMITED BEYOND THE PROVISIONS CONTAINED IN THE FOLLOWING PROVISIONS OF THIS CLAUSE 16.1(b)) IS LIMITED TO:~~

~~IN THE CASE OF GOODS SUPPLIED BY THE REGISTRY OPERATOR, ANY ONE OR MORE OF THE FOLLOWING (AT THE SOLE OPTION OF THE REGISTRY OPERATOR):~~

~~REPLACE THE GOODS OR SUPPLY EQUIVALENT GOODS;~~

~~REPAIR THE GOODS;~~

~~PAY THE COSTS OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR~~

~~PAY THE COSTS OF HAVING THE GOODS REPAIRED; AND~~

~~IN THE CASE OF SERVICES SUPPLIED BY THE REGISTRY OPERATOR, ANY ONE OR MORE OF THE FOLLOWING (AT THE SOLE OPTION OF THE REGISTRY OPERATOR):~~

~~SUPPLY THE SERVICES AGAIN; OR~~

~~PAY THE COSTS OF HAVING THE SERVICES SUPPLIED AGAIN.~~

**6.1. REGISTRAR'S INDEMNITY/Indemnification.** ~~The Registrar, at its own expense and within thirty (30) days after presentation of a demand by Registry Operator under this Section, will agree to indemnify, defend and keephold harmless the Registry Operator (including and its employees, directors, officers, representatives, agents and subcontractors/affiliates) fully indemnified from and against all any claim, suits, actions, or other proceeding claims, demands, losses, liabilities, damages, costs and expenses which may be made or brought against or suffered or incurred by the Registry Operator or any affiliate of Registry Operator based on or arising outfrom of or in connection with any claim or alleged claim: (i) relating to Any product or service of Registrar; (ii) relating to Any agreement, including Registrar's dispute policy, with any Registered Name Holder of Registrar/customer; or (iii) relating to Registrar's domain name registration business, including, but not limited to, Registrar's advertising, domain name application process, systems and other processes, fees charged, billing practices and customer service; provided, however, that in any such case: (a) Registry~~

Operator provides Registrar with prompt notice of any such claim, and (b) upon Registrar's written request, Registry Operator will provide to Registrar all available information and assistance reasonably necessary for Registrar to defend such claim, provided that Registrar reimburses Registry Operator for its actual and reasonable costs incurred in connection with providing such information and assistance. Registrar will not enter into any settlement or compromise of any such indemnifiable claim without Registry Operator's prior written consent, which consent shall not be unreasonably withheld. Registrar will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by Registry Operator in connection with or arising from any such indemnifiable claim, suit, action or proceeding.

#### REGISTRY OPERATOR'S INDEMNITY

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

#### NO CONSEQUENTIAL LOSS

TO THE MAXIMUM EXTENT PERMITTED BY LAW AND SUBJECT TO CLAUSES 16.1 AND 16.4(b), NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, LOSS OR PROFITS, LOSS OR CORRUPTION OF DATA, BUSINESS INTERRUPTION OR INDIRECT COSTS, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS.

CLAUSE 16.4(a) DOES NOT APPLY TO ANY LIABILITY ARISING FROM:

ANY WILFUL, WRONGFUL OR FRAUDULENT ACT OR OMISSION OF THE REGISTRAR OR ANY PERSON FOR WHOM THE REGISTRAR IS RESPONSIBLE;  
OR

A BREACH OF CLAUSE 4.4(c).

**6.2. AGGREGATE LIABILITYLimitation 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. SUBJECT TO CLAUSE 16.5(c), WITHOUT REDUCING THE EFFECT OF, AND SUBJECT ALWAYS TO, THIS CLAUSE 16, THE REGISTRY OPERATOR'S AGGREGATE LIABILITY (IF ANY) TO ALL OF THE REGISTRAR, THE REGISTRAR'S CUSTOMERS AND ANY OTHER PERSON CLAIMING THROUGH THE REGISTRAR WILL NOT, EXCEPT FOR A BREACH OF SECTION 5 OR THE INDEMNIFICATION OBLIGATIONS OF SECTION [Error! Reference source not found.](#)6-1, IN ANYNO EVENT, SHALL THE MAXIMUM AGGREGATE LIABILITY OF THE PARTIES EXCEED THE LESSER OF: (I) THE TOTAL AMOUNT OF THE FEES

~~CHARGED BY THE PAID TO REGISTRY OPERATOR TO THE REGISTRAR DURING THE FIRST UNDER THE TERMS OF THIS AGREEMENT FOR THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS PERIOD FROM THE EFFECTIVE DATE, OR (ii) USD \$100,000 USD.~~

~~IN THE EVENT OF ANY SUCH LIABILITY, THE REGISTRAR FURTHER AGREES THAT THE AMOUNTS OF SUCH LIABILITY SHALL BE PAID TO:~~

~~FIRST, THE REGISTRANTS AND CUSTOMERS, UP TO THE AGGREGATE LIABILITY PROVIDED FOR IN CLAUSE 16.5(a); AND~~

~~THEN, THE REGISTRAR, UP TO THE AMOUNT OF THE BALANCE OF THE AGGREGATE LIABILITY PROVIDED FOR IN CLAUSE 16.5(a) AFTER THE PAYMENTS IN CLAUSE 16.5(b)(i) HAVE BEEN MADE.~~

~~THE LIABILITY CAP UNDER CLAUSE 16.5(a) WILL NOT APPLY TO ANY LIABILITY ARISING FROM AN INDEMNITY OBLIGATION UNDER THIS AGREEMENT.~~

#### ~~Survival~~

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

### **13.7. 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.

#### **13.1. Negotiation before Arbitration**

(a) If a dispute arises between the parties:

- i. out of or relating to this Agreement, or the breach, termination, validity or subject matter of this Agreement; or



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

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

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

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

### **~~13.2. Arbitration~~**

- (a) ~~This clause 13.2 only applies if the Registrar is not incorporated in, or does not have a material presence in, Australia.~~
- (b) ~~Subject to clause 13.1, any Dispute, including any question regarding the existence, validity or termination of the Agreement, shall be referred to and finally resolved by arbitration under the LCIA Rules, which rules are deemed to be incorporated by reference in this clause.~~
- (c) ~~The number of arbitrators shall be:~~
  - i. ~~three (3) arbitrators, if either party, by written notice both to the LCIA and to the other party, so requests; or~~
  - ii. ~~otherwise, one (1) arbitrator,~~

~~whose nationality shall be British.~~
- (d) ~~The seat, or legal place, of arbitration shall be London in the United Kingdom.~~
- (e) ~~The language to be used in arbitral proceedings shall be English.~~

### **~~13.3. No Merger~~**

~~This clause does not merge upon completion.~~

### **~~14.1.1. AMENDMENTS~~**

~~Other than the Published Policies and the terms of use of the Registry Operator's logo and materials to which clause 10.4(a) refers, no amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless:~~

- (a) ~~the amendment is mandated by ICANN as a result of:~~

~~i. an amendment to the Registry Agreement; or~~

~~ii. introduction of, or variations to, any ICANN Published Policies; or~~

~~iii. an ICANN approved change to this Agreement;~~

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

~~(b)(a) is approved by ICANN in accordance with the amendment procedures in the Registry Agreement and in the ICANN Published Policies, in which case, subject to clause 15.1, the amendment is binding automatically; or~~

~~(c)(a) the amendment is in writing and executed by both parties.~~

## **8. TERM AND TERMINATION**

**8.1. Initial Term of the Agreement; Revisions.** ~~The Term of this Agreement will~~ shall commence on the Effective Date and, unless earlier terminated earlier in accordance with the provisions of this Agreement, shall expire on the expiration of the Registry Agreement. In the event that revisions to Registry Operator's approved form of Registry-Registrar Agreement are approved or adopted by ICANN, Registrar may, at its option exercised within fifteen (15) days after receiving notice of such amendment, terminate this Agreement immediately by giving written notice to Registry Operator. In the event that Registry Operator does not receive such notice of termination from Registrar within such fifteen (15) day period, Registrar shall be bound by the amendment. ~~clause 15, will continue for the Initial Term and thereafter will continue for any Renewal Term pursuant to clause 3.2.~~

### Renewal term

~~The Term will be extended for a Renewal Term, commencing on the day after the end of the Initial Term or the previous Renewal Term (as the case may be), unless the Registrar gives the Registry Operator at least 60 days' written notice prior to the end of the then-current Term that it does not wish to extend the Term.~~

**15.8.2. Termination.** ~~This Agreement may be terminated as follows:~~

### **15.1. Termination by Change of Agreement**

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

### **15.2. Termination by Either Party**

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

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

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

8.2.1. Termination for Cause. In the event that either party materially breaches any of its obligations under this Agreement and such breach is not substantially cured within thirty (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. Termination by at Option of Registrar. Registrar may terminate ~~T~~this Agreement at any time by giving Registry Operator thirty ~~shall terminate on (30) days written notice from the Registrar to the Registry Operator~~of termination.

~~15.2.1-8.2.3.~~ 8.2.3. Termination by upon Loss of Expiry of Registrar's Accreditation. Agreement This Agreement shall terminate in the event that the Registrar Accreditation Agreement is terminated or expires without renewal, or the Registrar's accreditation by ICANN is otherwise terminated or expires without renewal.

~~15.2.2-8.2.4.~~ 8.2.4. Termination by Expiry in the Event of Termination of Registry Agreement. This Agreement shall terminate in the event that Registry Operator's the Registry Agreement ~~between with~~ ICANN and the Registry Operator is terminated or expires without entry of a subsequent Registry Agreement with ICANN and this Agreement is not assigned under Section 9.1.1renewal.

~~15.3.1.1. Termination by Registrar~~

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

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.

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

~~(a)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 takes effect, provided that the Registrar's payments to the Registry Operator for Fees are current and timely;

~~(b) the Registrar must cease to use the Registry Registrar Software, and delete and remove all copies of it from its systems and return to the Registry Operator any media that contains copies of such Registry Registrar Software;~~

~~(c)8.3.2.~~ the Registry Operator Registrar shall immediately transfer the its sponsorship of Registered Domain Names from Registrar to another ICANN-accredited registrar that is also accredited in the Registry TLD(s) in compliance with any procedures established or approved by ICANN.:

~~i. in the case of termination under clause 15.5, an ICANN-accredited registrar nominated by the Registry Operator; and~~

~~ii. in all other respects, an ICANN-accredited registrar in compliance with the ICANN Published Policies;~~

~~(d)8.3.3.~~ All Confidential Information of the other Disclosing Party in the possession of the held by a 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 in accordance with clause 10.2; and

~~(e)8.3.4.~~ All amounts owing to the Registry Operator by the Registrar shall become immediately due and payable.

**15.5.8.4. Survival.** In the event of termination of this Agreement, the following shall survive: (i) Clauses Sections 2.7, Error! Reference source not found.3-6, Error! Reference source not found.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 3.48.7, 12, 13, 14 and 16. Neither party shall be liable to the other party for damages of any sort resulting solely from terminating this Agreement in accordance with its terms.

~~16.1. LIMITATION OF LIABILITY~~

~~16.1.1.1. LIMITATION~~

~~(a) IF RIGHTS ARE CONFERRED UPON THE REGISTRAR, A CUSTOMER OR ANY OTHER PERSON, OR OBLIGATIONS ARE IMPOSED UPON THE REGISTRY OPERATOR BY ANY APPLICABLE LEGISLATION WHICH CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED, THE PROVISIONS OF CLAUSE 16; SHALL BE READ SUBJECT TO THOSE RIGHTS OR OBLIGATIONS, HOWEVER THE REGISTRY OPERATOR HEREBY EXPRESSLY LIMITS ITS LIABILITY UNDER ANY SUCH LEGISLATION TO THE MAXIMUM EXTENT PERMITTED BY LAW.~~

~~(b)(a) SUBJECT TO CLAUSE 16.1(a), TO THE EXTENT PERMITTED BY LAW THE REGISTRAR AGREES THAT THE LIABILITY OF THE REGISTRY OPERATOR UNDER THIS AGREEMENT FOR THE BREACH OF ANY SUCH RIGHT OR OBLIGATION IMPOSED UPON THE REGISTRY OPERATOR (WHICH CANNOT BE LIMITED BEYOND THE PROVISIONS CONTAINED IN THE FOLLOWING PROVISIONS OF THIS CLAUSE 16.1(b)) IS LIMITED TO:~~

~~i. IN THE CASE OF GOODS SUPPLIED BY THE REGISTRY OPERATOR, ANY ONE OR MORE OF THE FOLLOWING (AT THE SOLE OPTION OF THE REGISTRY OPERATOR):~~

~~A. REPLACE THE GOODS OR SUPPLY EQUIVALENT GOODS;~~

~~B. A. REPAIR THE GOODS;~~

~~C. A. PAY THE COSTS OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR~~

~~D. A. PAY THE COSTS OF HAVING THE GOODS REPAIRED; AND~~

~~ii. IN THE CASE OF SERVICES SUPPLIED BY THE REGISTRY OPERATOR, ANY ONE OR MORE OF THE FOLLOWING (AT THE SOLE OPTION OF THE REGISTRY OPERATOR):~~

~~A. SUPPLY THE SERVICES AGAIN; OR~~

~~B. A. PAY THE COSTS OF HAVING THE SERVICES SUPPLIED AGAIN.~~

#### ~~16.2.1.1. REGISTRAR'S INDEMNITY~~

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

~~(a) ANY PRODUCT OR SERVICE OF REGISTRAR;~~

~~(b)(a) ANY AGREEMENT, INCLUDING REGISTRAR'S DISPUTE POLICY, WITH ANY CUSTOMER;  
OR~~

~~(c)(a) REGISTRAR'S DOMAIN NAME REGISTRATION BUSINESS, INCLUDING, BUT NOT LIMITED TO, REGISTRAR'S ADVERTISING, DOMAIN NAME APPLICATION PROCESS;~~

~~SYSTEMS AND OTHER PROCESSES, FEES CHARGED, BILLING PRACTICES AND CUSTOMER SERVICE.~~

~~**16.3.1.1. REGISTRY OPERATOR'S INDEMNITY**~~

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

~~**16.4.1.1. NO CONSEQUENTIAL LOSS**~~

~~(a) TO THE MAXIMUM EXTENT PERMITTED BY LAW AND SUBJECT TO CLAUSES 16.1 AND 16.4(b), NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, LOSS OR PROFITS, LOSS OR CORRUPTION OF DATA, BUSINESS INTERRUPTION OR INDIRECT COSTS, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS.~~

~~(b)(a) CLAUSE 16.4(a) DOES NOT APPLY TO ANY LIABILITY ARISING FROM:~~

~~i. ANY WILFUL, WRONGFUL OR FRAUDULENT ACT OR OMISSION OF THE REGISTRAR OR ANY PERSON FOR WHOM THE REGISTRAR IS RESPONSIBLE; OR~~

~~ii. A BREACH OF CLAUSE 4.4(c).~~

~~**16.5.1.1. AGGREGATE LIABILITY**~~

~~(a) SUBJECT TO CLAUSE 16.5(c), WITHOUT REDUCING THE EFFECT OF, AND SUBJECT ALWAYS TO, THIS CLAUSE 16, THE REGISTRY OPERATOR'S AGGREGATE LIABILITY (IF ANY) TO ALL OF THE REGISTRAR, THE REGISTRAR'S CUSTOMERS AND ANY OTHER PERSON CLAIMING THROUGH THE REGISTRAR WILL NOT, IN ANY EVENT, EXCEED THE LESSER OF:~~

~~i. THE AMOUNT OF THE FEES CHARGED BY THE REGISTRY OPERATOR TO THE REGISTRAR DURING THE FIRST 12 MONTHS FROM THE EFFECTIVE DATE, OR~~

~~ii. USD 100,000.~~

~~(b)(a) IN THE EVENT OF ANY SUCH LIABILITY, THE REGISTRAR FURTHER AGREES THAT THE AMOUNTS OF SUCH LIABILITY SHALL BE PAID TO:~~

~~i. FIRST, THE REGISTRANTS AND CUSTOMERS, UP TO THE AGGREGATE LIABILITY PROVIDED FOR IN CLAUSE 16.5(a); AND~~

~~ii. THEN, THE REGISTRAR, UP TO THE AMOUNT OF THE BALANCE OF THE AGGREGATE LIABILITY PROVIDED FOR IN CLAUSE 16.5(a) AFTER THE PAYMENTS IN CLAUSE 16.5(b)(i) HAVE BEEN MADE.~~

~~(c)(a) THE LIABILITY CAP UNDER CLAUSE 16.5(a) WILL NOT APPLY TO ANY LIABILITY ARISING FROM AN INDEMNITY OBLIGATION UNDER THIS AGREEMENT.~~

#### ~~16.6.1.1. Survival~~

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

### ~~17.1.1. WARRANTIES AND ACKNOWLEDGEMENTS~~

#### ~~17.1.1.1. Warranties~~

~~The Registrar represents and warrant to the Registry Operator that:~~

~~(a) the Registrar is or will be by the Effective Date accredited by ICANN and has entered into the Registrar Accreditation Agreement; and~~

~~(b)(a) all written information which has been or will be provided to the Registry Operator in connection with this Agreement (including during the negotiation of this Agreement):~~

~~i. is true and accurate in all material respects and not misleading whether by omission or otherwise; and~~

~~ii. where that information contains forecasts and opinions, such forecasts and opinions were made or formed after due and careful consideration on the part of its relevant officers based on the best information available to it and are fair and reasonable.~~

#### ~~17.2.1.1. Acknowledgments~~

~~The Registrar acknowledges that:~~

~~(a) the Registry Operator has entered into this Agreement in reliance upon the Registrar's representations and warranties in this Agreement;~~

~~(b)(a) the Registry Operator may begin accepting or processing requests for the registration of Domain Names by the Registrar on a date which is later than the Effective Date;~~

~~(c)(a) Unless otherwise notified in writing by the Registrar, the Registry Operator may post on its web site, the Registrar's name and contact information, and a link to the Registrar's web site; and~~

~~(d)(a) even if the Registrar has approved a request for the registration of a Domain Name, that Domain Name request may still be rejected by the Registry Operator in performing the final integrity checks.~~

### ~~18.9. MISCELLANEOUS~~

#### ~~18.1. Subcontracting~~

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

#### 18.2.9.1. 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.

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

~~(b) The Registrar must not subcontract any of its obligations under this Agreement without the prior written consent of the Registry Operator.~~

#### ~~18.3. Change of Control~~

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

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

~~(a) 9.2. Notices. (a) All Any notices and or other communications required or permitted to be delivered to any party under given by this Agreement shall be in writing and shall be sent to the recipient deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service, by e-mail or by telecopier during business hours) to the address or telecopier number set forth beneath the name of such party below, unless party has given a notice of a change of address in writing: ~~pre-paid post, facsimile or email. Notwithstanding the foregoing, notice by publication on the Registry Operators website will suffice for the purposes of clauses 4.9 and 8.1.~~~~



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>Registry Services, LLC</u>	<u>Registry Services, LLC</u>
<u>Senior Director, Registry Solutions</u>	<u>General Counsel</u>

~~(b) Without limiting any other means by which a party may be able to prove that a notice or other communication has been received by another party, a notice or other communication shall be deemed to be duly received:~~

- ~~i. if sent by hand when left at the address of the recipient;~~
- ~~ii. if sent by pre-paid post, 14 days after the date of posting;~~
- ~~iii. if sent by facsimile, upon receipt by the sender of an acknowledgement or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number; or~~
- ~~iv. if sent by e-mail, on the date and time at which it enters the recipient's information system (as shown in a confirmation of delivery report from the sender's information system),~~

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

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

- ~~i. If to the Registrar, as set out in the Reference Schedule under "Registrar".~~

- ii. ~~If to the Registry Operator, as set out in the Reference Schedule under “Registry Operator”.~~

~~WARRANTIES AND ACKNOWLEDGEMENTS~~

**9.3. Representations and Warranties.**

**9.3.1. Registrar.** ~~The Registrar represents and warrants to the Registry Operator that:~~ (i) it is a corporation duly incorporated, validly existing and 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 Registrar, (v) no further approval, authorization or consent of any governmental or regulatory authority or ICANN is required to be obtained or made by Registrar in order for it to enter into and perform its obligations under this Agreement.

**9.3.2. Registry Operator.** 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 the State of Delaware, (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 Registry Operator, and (iv) no further approval, authorization or consent of any governmental or regulatory authority or ICANN is required to be obtained or made by 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 ARE PROVIDED “AS-IS” AND WITHOUT ANY WARRANTY OF ANY KIND. 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. REGISTRY OPERATOR DOES NOT WARRANT THAT THE EPP, APIs, REGISTRY TOOL KITS, REGISTRY SYSTEM OR ANY COMPONENT THEREOF WILL MEET REGISTRAR’S REQUIREMENTS, OR THAT THE OPERATION OF EPP, APIs, REGISTRY TOOL KITS, THE REGISTRY SYSTEM OR ANY COMPONENT THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE EPP, APIs, REGISTRY TOOL KITS, REGISTRY SYSTEM OR ANY COMPONENT THEREOF WILL BE CORRECTED. FURTHERMORE, REGISTRY OPERATOR DOES NOT WARRANT NOR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE EPP, APIs, REGISTRY TOOL KITS, REGISTRY SYSTEM OR ANY COMPONENT THEREOF 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 PROVE DEFECTIVE, REGISTRAR ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION OF REGISTRAR’S OWN SYSTEMS AND SOFTWARE.

~~the Registrar is or will be by the Effective Date accredited by ICANN and has entered into the Registrar Accreditation Agreement; and~~

~~all written information which has been or will be provided to the Registry Operator in connection with this Agreement (including during the negotiation of this Agreement);~~

~~is true and accurate in all material respects and not misleading whether by omission or otherwise; and~~

~~where that information contains forecasts and opinions, such forecasts and opinions were made or formed after due and careful consideration on the part of its relevant officers based on the best information available to it and are fair and reasonable.~~

### ~~Acknowledgments~~

~~The Registrar acknowledges that:~~

~~the Registry Operator has entered into this Agreement in reliance upon the Registrar's representations and warranties in this Agreement;~~

~~the Registry Operator may begin accepting or processing requests for the registration of Domain Names by the Registrar on a date which is later than the Effective Date;~~

~~Unless otherwise notified in writing by the Registrar, the Registry Operator may post on its web site, the Registrar's name and contact information, and a link to the Registrar's web site; and~~

~~even if the Registrar has approved a request for the registration of a Domain Name, that Domain Name request may still be rejected by the Registry Operator in performing the final integrity checks.~~

**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.

**18.4.9.5. Third-Party Beneficiaries.** The Parties expressly agree that ICANN is an intended third-party beneficiary of this Agreement. Otherwise, ~~t~~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 ~~Customer or Registrant~~. The Registrar expressly acknowledges that, ~~notwithstanding anything~~nothing in this Agreement, including those requirements in this

Agreement that incorporate to the Registry Agreement, shall confer upon Registrar the status of contrary, it is not an intended third-party beneficiary of to the Registry Agreement.

**18.5.9.6. 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.

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

**9.8. Amendments.** ~~Other than the Published Policies and the terms of use of the Registry Operator's logo and materials to which clause 10.4(a) refers~~ Except as otherwise provided herein, no amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless:

**9.8.1.** T~~he~~ 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~~clause 15.1, the amendment is binding automatically.~~ ~~;~~ ~~or~~

**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 clause 15~~Section 8.1, the amendment is binding automatically.~~ ~~;~~ ~~or~~

**9.8.3.** ~~†~~The amendment is executed in writing and executed by both parties.

**18.7.9.9. 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.

~~(a) No waiver by any party of any provision of or right of that party under this Agreement shall be effective unless it is in writing signed by that party and, if required, approved by ICANN in accordance with the amendment procedures in the Registry Agreement and in the ICANN Published Policies.~~

~~(b) Such waiver shall be effective only in the specific instance and for the specific purpose for which it was given. No failure or delay by any party to exercise any right under this Agreement or to insist on strict compliance by any other party with any obligation under this Agreement, and no custom or practice of the parties at variance with the terms of this Agreement, shall constitute a waiver of that party's right to demand exact compliance with this Agreement.~~

**9.10. 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 attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing Party may be entitled).

**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.

~~18.8.9.13.~~ **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 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 affect 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.

~~18.9.9.14.~~ **Counterparts.** This Agreement may be ~~signed~~ executed in ~~any number of one or more~~ counterparts, ~~each of which shall be deemed an original, but and all of which such~~ counterparts taken together shall ~~be deemed to constitute one and the same instrument.~~

#### ~~18.10. Governing Jurisdiction~~

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

#### ~~18.11. Severability of Provisions~~

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

#### ~~18.12. Non-merger~~

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

### ~~19. INTERPRETATION~~

~~In this Agreement unless the context otherwise requires:~~

- ~~(a) words importing the singular include the plural and vice-versa;~~
- ~~(b) words importing a gender include every gender;~~
- ~~(c) references to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, novated or replaced from time to time;~~
- ~~(d) references to this Agreement are references to this Agreement and the Schedules;~~
- ~~(e) references to clauses and the Schedules are references to clauses of, and the schedules to, this Agreement;~~
- ~~(f) headings are for convenience only and shall be ignored in construing this Agreement;~~
- ~~(g) references to parties or to a party shall be a reference to the parties or a party to this Agreement and includes references to their or its respective successors, permitted assigns, executors and administrators;~~
- ~~(h) references to law shall include references to any constitutional provision, treaty, decree, convention, statute, act, regulation, rule, ordinance, subordinate legislation, rule of common law and of equity and judgment and shall include the requirements of any applicable stock exchange;~~
- ~~(i) references to any law are references to that law as amended, consolidated, supplemented or replaced from time to time;~~

- ~~(j) references to any person include references to any individual, company, body corporate, association, partnership, firm, joint venture, trust and governmental agency;~~
- ~~(k) reference to USD, \$ and dollars are to United States dollars;~~
- ~~(l) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision;~~
- ~~(m) references to time are references to Melbourne, Victoria, Australia time;~~
- ~~(n) references to any thing (including, but not limited to, any right) includes a part of that thing; and~~
- ~~(o) each of the obligations of the parties contained in this Agreement shall be separate and independent and save as expressly provided shall not be limited by reference to any other provision of this Agreement.~~

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

<u>Registry Services, LLC</u>	
<u>By:</u>	<u>By:</u>
<u>Name:</u>	<u>Name:</u>
<u>Title:</u>	<u>Title:</u>
<u>Date:</u>	<u>Date:</u>

## 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.

**9. TLD Specific Requirements.** Registrar shall ensure that its registration agreements with Registered Name Holders also include the following additional provisions and obligations, or provisions and obligations at least equivalent thereto, as applicable for Registry TLD(s) as selected in Exhibit C.

**9.1. .abogado**

9.1.1. Registered Name Holder must comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures. At the time of registration, Registrar must provide notice of this requirement.

9.1.2. Registered Name Holders who collect and maintain sensitive health and financial data must implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law.

9.1.3. Registered Name Holder must provide administrative contact information, which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.

9.1.4. Registered Name Holder represents that they possess any necessary authorizations, charters, licenses and/or other related credentials for participation in the sector associated with the TLD.

9.1.5. Registered Name Holder must report any material changes to the validity of the authorizations, charters, licenses and/or other related credentials for participation in the sector associated with the TLD.

## **9.2. .dds**

9.2.1. Registered Name Holder must comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures. At the time of registration, Registrar must provide notice of this requirement.

9.2.2. Registered Name Holders who collect and maintain sensitive health and financial data must implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law.

9.2.3. Registered Name Holder must provide administrative contact information, which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.

9.2.4. Registered Name Holder represents that they possess any necessary authorizations, charters, licenses and/or other related credentials for participation in the sector associated with the TLD; specifically that they have been awarded a Doctor of Dental Surgery (DDS) degree by a recognized accredited body.

9.2.5. Registered Name Holder must report any material changes to the validity of the authorizations, charters, licenses and/or other related credentials for participation in the sector associated with the TLD.

## **9.3. .design, .fashion, .fit, .law**

9.3.1. Registered Name Holder must comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures. At the time of registration, Registrar must provide notice of this requirement.

9.3.2. Registered Name Holders who collect and maintain sensitive health and financial data must implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law.

## **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 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 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>.abogado</u>            | <input type="checkbox"/> <u>.design</u>  | <input type="checkbox"/> <u>.select</u>  |
| <input type="checkbox"/> <u>.adult*<sup>1</sup></u> | <input type="checkbox"/> <u>.fashion</u> | <input type="checkbox"/> <u>.sex*</u>    |
| <input type="checkbox"/> <u>.beer</u>               | <input type="checkbox"/> <u>.fishing</u> | <input type="checkbox"/> <u>.study</u>   |
| <input type="checkbox"/> <u>.biz</u>                | <input type="checkbox"/> <u>.fit</u>     | <input type="checkbox"/> <u>.surf</u>    |
| <input type="checkbox"/> <u>.blackfriday</u>        | <input type="checkbox"/> <u>.garden</u>  | <input type="checkbox"/> <u>.vip</u>     |
| <input type="checkbox"/> <u>.boston</u>             | <input type="checkbox"/> <u>.horse</u>   | <input type="checkbox"/> <u>.vodka</u>   |
| <input type="checkbox"/> <u>.casa</u>               | <input type="checkbox"/> <u>.law</u>     | <input type="checkbox"/> <u>.wedding</u> |
| <input type="checkbox"/> <u>.club</u>               | <input type="checkbox"/> <u>.luxe</u>    | <input type="checkbox"/> <u>.work</u>    |
| <input type="checkbox"/> <u>.compare</u>            | <input type="checkbox"/> <u>.miami</u>   | <input type="checkbox"/> <u>.xxx*</u>    |
| <input type="checkbox"/> <u>.cooking</u>            | <input type="checkbox"/> <u>.photo</u>   | <input type="checkbox"/> <u>.yoga</u>    |
| <input type="checkbox"/> <u>.courses</u>            | <input type="checkbox"/> <u>.porn*</u>   | <input type="checkbox"/> _____           |
| <input type="checkbox"/> <u>.dds</u>                | <input type="checkbox"/> <u>.rodeo</u>   | <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>Registry Services, LLC</u>	
<u>By:</u>	<u>By:</u>
<u>Name:</u>	<u>Name:</u>
<u>Title:</u>	<u>Title:</u>
<u>Date:</u>	<u>Date:</u>

\* Agreement executed by Registry Services, LLC on behalf of the Registry Operator entity contracted with ICANN per the Registry Agreement.

## Schedule 1

### Registrar Toolkit

#### 1. OVERVIEW

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

#### 2. OBTAINING THE REGISTRAR TOOLKIT

The Registrar Toolkit:

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

## ~~Schedule 2~~

# ~~Technical and Customer Service Support~~

### ~~1. DEFINITIONS~~

~~In this Schedule, unless the contrary intention appears:~~

~~**AEST** means Australian Eastern Standard Time.~~

~~**UTC** means Coordinated Universal Time.~~

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

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

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

### ~~2. REGISTRAR SUPPORT~~

~~(a) During the term of your agreement you shall have access to a Registrar Liaison and Technical Service Desk (all of which constitute **Registrar Support**).~~

~~(b) Registrar Support in relation to the provision Registrars Services means support to the Registrar regarding:~~

~~(i) non technical support relating to the Designated gTLD and this agreement; and~~

~~(ii) technical support relating to the Registry Services.~~

~~(c) For the avoidance of doubt Registrar Support does not include support to the Registrar's Customers, such requests for support will be directed to the Registrar.~~

~~(d) The language for all Registrar Support will be English.~~

### ~~3. CONTACTING REGISTRAR SUPPORT~~

~~(a) We will only action Registrar Support requests that have been submitted by a Registrar's authorised representative.~~

~~(b) Reference numbers for all requests for Registrar Support will be generated, and will be monitored and tracked for auditing purposes.~~

### ~~4. REGISTRAR SUPPORT QUALITY MONITORING~~

~~(a) Telephone calls to Registrar Support may be monitored or recorded for training or business analytic purposes:~~

~~(i) Callers have the right to opt out of such recording and/or request a copy of the recording of calls.~~

~~(ii) A transcript of the call may be provided on request, where such information is available.~~

~~(b) In order to improve Registrar Support, contact may be made to a Registrar's authorised representative in order to follow up on requests and/or to elicit information in the form of a survey.~~

### ~~5. REGISTRAR LIAISON~~

~~(a) The Registrar Liaison:~~

~~(i) will provide non technical support regarding the Registry Services; and~~

~~(ii) be available to you on Business Days between the hours of 09.30 AEST (23.30 UTC) and 18.00 AEST (08.00 UTC).~~

~~(b) After entering into this agreement, Registrars will be introduced to the Registrar Liaison. Registrars will be provided with an email address and contact phone number for the Registrar Liaison.~~

### ~~6. TECHNICAL SERVICE DESK~~

~~(a) The Technical Service Desk will~~

~~(i) assist with any technical inquiries pertaining to the Registry Services; and~~

(ii) deal with technical issue management of the Registry Services, incident escalation and resolution, and the provision of various notifications.

(b) The Technical Service Desk will be available 24 hours per day, 7 days per week.

**7. ISSUE SEVERITY LEVELS AND RESPONSE TIME FRAMES**

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

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

## ~~Schedule 3~~

### ~~Fees~~

#### ~~1. GENERAL~~

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

#### ~~2. DOMAIN NAME CREATION AND RENEWAL FEES~~

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

#### ~~3. DOMAIN NAME AUTO RENEWAL FEES~~

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

#### ~~4. DOMAIN NAME TRANSFER FEES~~

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

#### ~~5. ICANN APPROVED BULK TRANSFERS~~

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

#### ~~6. RESTORING DELETED DOMAIN NAME FEE~~

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

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

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

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

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

~~9. APPLICATION FEES~~

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

~~10. PREMIUM NAMES FEES~~

~~(a) The Registry Operator may make available from time to time, subject always to the Registry Agreement, this Agreement and the Published Policies, Domain Names which the Registry Operator has designated as a Premium Name.~~

~~(b) A Premium Name may be assigned a Fee (a premium), which shall be payable in addition to the Fee for creation and/or renewal.~~



## Schedule 4

# Service Level Agreement

### 1. DEFINITIONS

In this Schedule, unless the contrary intention appears:

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

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

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

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

### 2. SERVICE LEVELS AND AVAILABILITY

(c) The Registry Operator will endeavour to operate the EPP Service in order to meet the following Service Levels.

(d) The EPP Service is considered 'unavailable' when that service fails to meet the measurements described in the following table.

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

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

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

### 3. MAINTENANCE

(a) We will perform periodic maintenance on components of the EPP Service to maintain its operation or we may periodically upgrade to include new features, enhance existing features, address changes required to maintain ongoing compliance or to resolve defects.

(b) Maintenance will be scheduled to ensure the least impact; however the timing of such maintenance remains at our sole discretion.

(c) During maintenance, certain functions may be unavailable.

(d) We will endeavour to notify Registrars:

(i) 3 days in advance of the timing of any maintenance, and

(ii) Of the impact on the functionality and performance.

(e) Maintenance periods for upgrades or changes may be required in order to conform to decisions made or implemented by ICANN or other Regulatory Body, or to resolve emergent issues. In such cases we will endeavour to notify registrars as soon as practical.

(f) Should the maintenance cause the system to fall below the Service Levels described in 2.(b), it is considered unavailable and will count against the total minutes of unavailability permissible for the month as described in (b).

### 4. SERVICE LEVEL MEASUREMENT

(a) Service Levels will be measured by the Registry Operator as the average Round Trip Time for each of the following:

(i) EPP Check Command; and

(ii) EPP Create Command.

**5. SERVICE CREDITS**

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

Parameter	Measure	Units outside Service Level Per Calendar Month	Service Credit
EPP Service availability	% greater than Service Level	Up to 5%	USD
		Between 5% and 10%	USD
		Greater than 10%	USD

## ~~Schedule 5~~

# ~~Customer Registration Agreement~~

### ~~1. INTELLECTUAL PROPERTY~~

~~The Customer:~~

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

### ~~2. GENERAL CUSTOMER OBLIGATIONS~~

~~The Customer expressly agrees to:~~

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

### ~~3. CUSTOMER'S WARRANTY~~

~~The Customer represents and warrants that:~~

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

### ~~4. CUSTOMER ACKNOWLEDGEMENTS~~

~~The Customer expressly agrees and acknowledges:~~

- ~~(a) an Application for a Domain Name may not result in the Domain Name being Allocated to the Customer;~~
- ~~(b) certain domain names may not be available as a result of being reserved by the Registry Operator or otherwise Allocated in accordance with the Published Policies;~~
- ~~(c) from time to time the Registry Operator may identify certain domain names to be reserved, and may release such domain names subject to the Published Policies;~~
- ~~(d) during the periods and under the circumstances identified in the Published Policies, multiple Applications for the same Domain Name may be accepted, and that those Applications may be subject to the Special Allocation Procedure described in relation to that period or circumstance;~~
- ~~(e) where a Special Allocation Procedure exists, the Customer must pay any fees and undertake any further steps that may be required in order to complete the process of registering the Domain Name;~~

- (f) ~~the Registry Operator may prevent a Customer from making an Application and registering or renewing a Domain Name where that Customer has been found to be in breach of the Published Policies;~~
- (g) ~~that the Registry Operator reserves the right to deny any Application, or cancel, lock, place on hold, transfer or delete any Domain Name or transaction that it deems necessary, in its sole discretion:~~
  - (i) ~~to protect the integrity and stability of the Registry System;~~
  - (ii) ~~to comply with its obligations as a Registry Operator;~~
  - (iii) ~~to comply with any applicable laws, government rules or requirements, requests of law enforcement, or in compliance with any dispute resolution policies or process;~~
  - (iv) ~~to avoid any liability, civil or criminal, on the part of Registry Operator, as well as its affiliates, subsidiaries, officers, directors, employees and subcontractors;~~
  - (v) ~~to ensure compliance with the Published Policies;~~
  - (vi) ~~to stop or prevent any violations of any terms and conditions of the Customer Registration Agreement;~~
  - (vii) ~~for the non-payment to the Registry Operator of any fee; or~~
  - (viii) ~~to correct mistakes made by the Registry Operator or any Registrar or any of its service providers in connection with an Application or a domain name.~~

#### **5. FEES**

The Customer expressly agrees and acknowledges:

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

#### **6. INDEMNITY**

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

#### **7. ADDITIONAL CUSTOMER OBLIGATIONS FOR SPECIAL ALLOCATION PROCEDURES**

The Customer acknowledges that:

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

## ~~Schedule 6~~

# ~~Special Allocation Procedure~~

### ~~1. DEFINITIONS~~

~~In this Schedule, unless the contrary intention appears:~~

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

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

### ~~2. TMCH PERIODS~~

~~(c) The availability of Domain Names during the TMCH Periods is subject to the TMCH Requirements.~~

~~(d) Notwithstanding anything in this Agreement, the Registrar acknowledges and agrees that the Registry operator will not accept a Claims Registration (as that term is defined in the TMCH Requirements) unless the Registrar has completed integration testing, pursuant to the TMCH Requirements; and~~

~~(e) The Registrar acknowledges that Applications for and Allocation of Domain Names during TMCH Periods:~~

~~(i) may not be on a first come, first served basis; and~~

~~(i) is at all times subject to the TMCH Requirements and the Published Policies.~~

### ~~3. PREMIUM NAME ALLOCATION~~

~~(a) The Registry Operator will give reasonable notice to the Registrar of the commencement date and any applicable time frames in relation to the release of any Premium Name(s); and~~

~~(b)(a) The Release of any Premium Name(s) and Applications for and Allocation of a Premium Name will be subject to the Published Policies.~~

