

PLEASE READ THIS MASTER REGISTRY-REGISTRAR AGREEMENT ("RRA") CAREFULLY. IF AGREE, YOU ARE CONFIRMING THAT YOU ARE DULY AUTHORISED AND HAVE THE RIGHT TO BIND YOUR COMPANY AND FURTHER YOU REPRESENT THAT YOUR COMPANY IS AN ICANN ACCREDITED REGISTRAR AGREEING TO BE BOUND BY THE TERMS OF THIS RRA. IF YOU DO NOT AGREE TO THE TERMS OF THIS RRA, DO NOT CLICK YES AND DO NOT OFFER FOR REGISTRATION, REGISTER OR ALLOW OTHERS TO REGISTER DOMAINS IN THE TLD(s).

## MASTER REGISTRY-REGISTRAR AGREEMENT

This Master Registry-Registrar Agreement (the "Agreement") is entered into by and between Radix FZC, a company incorporated in UAE with its offices at: F-19, Business Center 1, Business Park, RAK Economic Zone, Ras Al Khaimah, P.O. Box 16113, UAE ("Radix" or "Registry Operator" or "RO") and \_\_\_\_\_, an ICANN accredited registrar, with its principal place of business located at

\_\_\_\_\_, ("Registrar"), (each individually a "Party" or collectively the "Parties") through their authorized representatives, and takes effect on the date executed by the final Party (the "Effective Date").

**WHEREAS**, Radix has entered into a Registry Agreement with the Internet Corporation for Assigned Names and Numbers (ICANN), for the rights to operate a TLD Registry.

**WHEREAS**, the Registry Agreement, which is the subject of this Agreement, will be so identified and included consistent with the form attached as Exhibit BA. All additional terms and pricing/fees for each Included TLD will also be included within Exhibit BA.

**WHEREAS**, multiple registrars provide Internet domain name registration services within certain TLDs wherein RO operates and maintains certain TLD servers and zone files;

**WHEREAS**, Registrar wishes to register second-level domain names in the multiple registrar system for certain TLDs.

**WHEREAS**, the Parties desire this Agreement to apply and govern the Parties' obligations related to the registration of domain names and provision of services to Registrar through the Registry System for each TLD included in or added to Exhibit BA wherein the condition precedents identified in paragraph 2.0 are satisfied.

**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, RO and Registrar, intending to be legally bound, hereby agree as follows:

### 1.- DEFINITIONS

~~1.1 "Accreditation~~For purposes of this Agreement", the following definitions shall apply:

1.1. "2013 Registrar Accreditation Agreement" or "Registrar Accreditation Agreement" means the ~~contract~~2013 Registrar Accreditation Agreement between Registrar and ICANN, which sets forth the minimum standards for the performance of registration functions, and, among other things, the rules and procedures applicable to the provision of registrar services, the current version of which is found here <http://www.icann.org/en/resources/registrars/raa/approved-with-specs-27jun13-en.htm#raa>.

1.2. "Account Balance" means the amount of money available to the Registrar subtracting all fees due to RO from the Payment Security.

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

1.4. "CentralNic" refers to CentralNic Ltd of ~~35-39 Moorgate~~Saddlers House, 44 Gutter Lane, London, ~~EC2R 6AR~~EC2V 6BR a Registry Service Provider for the RO, or its assigns

1.5. "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 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.

1.6. "Credit Balance" means the amount of money available to Registrar subtracting all fees due to RO from the Credit Limit. Registrar shall ~~keep~~keep its Credit Balance at an appropriate amount based on payment terms, as determined by RO from time to time, in its sole discretion.

1.7. "Credit Limit" means that amount of credit allowed to Registrar, if any, by the RO. RO may require Payment Security from Registrar or allow Registrar to make post-transaction payments based on an allowed Credit Limit, in RO's sole discretion and subject to change at any time in RO's sole discretion.

1.8. "DNS" refers to the Internet domain name system.

1.9. "Effective Date" means the date Registrar indicated its agreement to this Agreement.

1.10. "EPP" means the Extensible Provisioning Protocol.

1.11. "ICANN" refers to the Internet Corporation for Assigned Names and Numbers.

1.12. "IP" means Internet Protocol.

1.13. "Licensed Product" refers to the intellectual property required to access the Supported Protocol, and to the APIs, and software, collectively offered by the Registry Service Provider.

1.14. "Payment Security" shall be that amount required by RO, either on deposit, letter of credit or equivalent, of Registrar to secure payment of expected fees.

1.15. "Personal Data" refers to data about any identified or identifiable natural person.

1.16. "Premium Domain Name" refers to a domain name designated by the RO, in its sole discretion for non-standard pricing.

1.17. "Registered Name" refers to a domain name within the domain of the Included TLD, whether consisting of two or more levels, about which RO or an affiliate engaged in providing Registry Services maintains data in a registry database, arranges for such maintenance, or derives revenue from such maintenance. A name in a registry database may be a Registered Name even though it does not appear in a TLD zone file (e.g., a registered but inactive name).

1.18. "Registered Name Holder" or "Registrant" mean the holder of the Registered Name within an Included TLD.

1.19. "Registrar", when appearing with an initial capital letter, refers to the entity listed in the preamble above, a party to this Agreement.

- 1.20. "Registrar Agreement" means the CentralNic Registrar Agreement or the CentralNic Registrar Master Access Agreement.
- 1.21. "Registry Agreement" means the Registry Agreement between RO and ICANN for the operation of the Included TLD or TLDs, as amended from time to time, or as renewed.
- 1.22. "Registry Operator" or "RO" shall also mean any third party providing contracted services to RO for an Included TLD including but not limited to billing, customer service, marketing or software.
- 1.23. "Registry Service Provider" refers to the registry service provider designated and contracted with the RO, or its assigns.
- 1.24. "Registry Services" shall have the same meaning set forth in the Registry Agreement.
- 1.25. "Registry System" refers to the multiple registrar system operated by RO or its Registry Service Provider for registration of Registered Names in the Included TLD.
- 1.26. "Reserved Domain Name(s)" means any domain names permanently or temporarily withheld for reservation, whether for operational or any other purpose, including without limitation Premium Domain Names, domain names reserved or restricted to comply with ICANN requirements or domain names processing through sunrise registration.
- 1.27. "Reseller" means any person or entity selected by Registrar to enter into a Reseller Agreement with Registrar to facilitate the registration of domain names in any Included TLD.
- 1.28. "Reseller Agreement" means the contract entered into between Registrar and Reseller to offer domain names through Registrar's Registrar Accreditation Agreement with ICANN and in compliance with Registrar's further obligations herein.
- 1.29. "Standard Domain Name" refers to the most common type of domain name made available by RO at standard pricing on a first-come, first-served basis in any Included TLD.
- 1.30. "Supported Protocol" means RO's implementation of EPP, or any successor protocols, supported by the System.
- 1.31. "TLD" is a top-level domain of the DNS.
- 1.32. "Variable Registry-Level Fees" is defined by Section 6.3 of RO's Registry Agreement with ICANN, or as further defined or amended by ICANN in the future.
- 1.33. Other definitions are found in the ~~ICANN~~ Registry Agreement and ~~ICANN~~the Registrar Accreditation Agreement.

**2. CONDITION PRECEDENT.** This Agreement will apply and be effective for each and any TLD wherein all the following conditions are satisfied: (a) Registry Operator enters into a Registry Agreement with ICANN, (b) Registry Operator makes the TLD available in the Registry System, (c) Registrar agrees to and ~~complies sign a form in compliance~~ with **Exhibit BA**. Each TLD added to this Agreement under this paragraph shall be referred to as an "Included TLD(s)."

### **3. OBLIGATIONS OF THE PARTIES**

3.1. **Access.** Throughout the term of this Agreement, as a condition precedent Registrar must enter into and maintain a Registrar Agreement with CentralNic.

**3.2. System Operation.** Throughout the term of this Agreement, RO through the Registry Service Provider, shall operate the Registry System and provide Registrar with access to the Registry System to transmit domain name registration information for the Included TLD to the Registry System. Nothing in this Agreement entitles Registrar to enforce any agreement between RO and ICANN as a third-party beneficiary, under this Agreement or otherwise.

**3.3. Maintenance of Registrations Sponsored by Registrar.** Subject to the provisions of this Agreement, ICANN requirements, and RO policies and requirements, including, without limitation, those authorized by ICANN, RO shall maintain the registrations of Registered Names sponsored by Registrar in the Registry System during the term for which Registrar has paid the fees required by Subsection 6 (such period being the "Registration Period")

**3.4. Distribution of EPP, APIs and Software.** RO's Registry Service Provider for an Included TLD shall make available to Registrar (i) documentation of the Supported Protocol, (ii) application program interfaces ("APIs") to the Supported Protocol with documentation, and (iii) reference client software ("Software") that will allow Registrar to develop its system to register second-level domain names through the Registry System for the Included TLD. If RO or its Registry Service Provider elect to modify or upgrade the APIs and/or Supported Protocol, updated APIs to the Supported Protocol with documentation and updated Software will be provided to Registrar promptly as such updates become available. Registrar's implementation of any related changes will be subject to the notice period as per section 4.3 below

**3.5. Registrar Responsibility for Support.** Registrar shall provide (i) support to accept orders for registration, cancellation, modification, renewal, deletion, redemption or transfer of Registered Names and (ii) customer service (including domain name record support) and billing and technical support to Registered Name Holders. Registrar shall, consistent with ICANN policy, provide to Registered Name Holders emergency contact or 24/7 support information for critical situations. Notwithstanding the foregoing, Registrar reserves the right to stop sponsoring new registrations or inward transfers of Registered Names in any Included TLD. However, in such event, Registrar will be obligated to continue supporting existing registrations, renewals, redemptions and outward transfers of Registered Names sponsored by Registrar in any Included TLD.

**3.6. Data Submission Requirements.** As part of its registration and sponsorship of Registered Names in the Included TLD, Registrar shall submit to RO complete data as required by technical specifications of the Registry System that are made available to Registrar from time to time. Registrar shall submit any corrections or updates from a Registered Name Holder relating to the registration information for a Registered Name to RO in a timely manner.

### **3.7. Renewal and Deletion of Registered Names.**

**3.7.1. Registration Renewal.** It is the sole obligation of the Registrar to notify Registrants in advance of the expiry of a Registered Name. A renewal of a Registration Period in the Registry System may be made, at any time, for (i) an annual period between 1 to 10 years, provided that in no event shall the total Registration Period for the Registered Name exceed 10 years in the future, or (ii) less than 1 year in the event that the Registrant has requested to consolidate expirations if and when permitted by ICANN and offered by RO in its sole discretion. Any renewal for a longer period shall be automatically reduced to 10 years, regardless of the period actually requested and/or paid for.

**3.7.2. Renewal Request.** To renew the Registration Period of a Registered Name prior to its expiry, a Registrant must request or enable its Registrar of record to submit a renewal request to RO. Once Registrar's renewal request is received by RO, RO will deduct the Registrar's Account Balance for the

applicable fees or apply a deduction from Registrar's allotted Credit Balance. If a Registrant selects a renewal period of more than 1 year or is charged by Registrar on the basis of a renewal period of more than 1 year, the Registrar must request a renewal period that corresponds to the renewal period selected by the Registrant or charged for by Registrar to the Registrant, and pay to RO the applicable renewal fee for the full maximum renewal period selected or paid for by the Registrant in accordance with the terms stipulated hereunder.

3.7.3. Auto-Renewal. Subject to Sections 3.7.4 through 3.7.6 below, upon the expiry of its Registration Period, each Registered Name is automatically renewed by RO for one year (regardless of the original Registration Period), and RO will deduct the Registrar's Account Balance or Credit Balance for the applicable fees for such additional year.

3.7.4. Deletion of Renewed Registered Names. Following the automatic renewal of a Registered Name pursuant to Section 3.7.3, there is a forty-five (45) day period in which the Registrar of record can request that RO delete or modify the Registered Name (the "Auto Renew Grace Period"). Such request must be made in good faith or at the request of the Registrant. If the Registered Name is deleted during the Auto Renew Grace Period, RO will refund the Registrar's Account Balance or Credit Balance for the applicable fee.

3.7.5. Deletion of Non-Renewed Registered Names. If Registrar is unable to renew domain names because its Account Balance has fallen below an applicable threshold or it has exceeded the applicable Credit Limit available to Registrar, if any, RO may delete such non-renewed Registered Names. In addition to other remedies provided in this Agreement, RO may further refuse to process any further domain registrations by or through Registrar.

3.7.6. Redemption of Deleted Registered Names. Once a Registered Name has been deleted, either pursuant to Sections 3.7.4 or 3.7.5, there is then a 30-day period where the Registrant can redeem the Registered Name so that the domain name is re-registered. In order to redeem a domain name that has been deleted, a Registrant must ask its Registrar of record to submit a request to RO to redeem the deleted domain name. Once the redemption request is validated and approved by RO, RO will redeem the domain name and deduct from the Registrar's Account Balance or Credit Balance the applicable fee. The domain name will be re-registered with its original expiry date. RO will notify the Registrar via EPP response that the deleted domain name has been redeemed, and it shall then be Registrar's obligation to notify the Registrant of such redemption.

3.8. **Trademark Clearinghouse.** Registrar shall notify potential Registrants of any domain name for which an associated trademark is registered in the Trademark Clearinghouse by presenting the Trademark Claims Notice, in compliance with the RPMs, available at <http://newgtlds.icann.org/en/about/trademark-clearinghouse/rpm-requirements-30sep13-en.pdf> (as of 30 September 2013), or the then current version thereof.

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

3.10. **Registrar's Registration Agreement and Domain Name Dispute Policy.** Registrar shall have in effect an electronic or paper registration agreement with the Registered Name Holder ("Registration

Agreement") which may be amended from time to time by Registrar. Registrar shall provide RO an active link to its Registration Agreement currently in effect, including any amendments thereto. Registrar shall include in its Registration Agreement those terms required by this Agreement and other terms that are consistent with Registrar's obligations to RO under this Agreement. Registrar shall employ in its domain name registration business the Uniform Domain Name Dispute Resolution Policy and the Inter-Registrar Transfer Policy, each as adopted by the ICANN Board on 26 August 1999 and 7 November 2008 and as each may be amended from time to time, and submit to proceedings commenced under ICANN's Uniform Rapid Suspension System ("URS") under its related rules at <http://www.icann.org/en/help/dndr/udrp> and <http://newgtlds.icann.org/en/applicants/urs>, respectively. Registrar shall not include any terms in its Registration Agreement, which violate or undermine the Registry Agreement for each or any Included TLD. In its Registration Agreement with each Registered Name Holder for each or any Included TLD, Registrar agrees to include Section 3.10 (a)-(j) and shall require each such Registered Name Holder to:

(a) acknowledge and agree that RO reserves the absolute right to deny, cancel, delete or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status, as it deems necessary, in its unlimited and sole discretion: (1) to comply with specifications adopted by any industry group generally recognized as authoritative with respect to the Internet (e.g., RFCs), (2) to correct mistakes made by RO or any registrar in connection with a domain name registration, (3) for the non-payment of fees to RO, (4) to protect the integrity and stability of the Registry System; (5) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (6) to avoid any liability, civil or criminal, on the part of RO, as well as its affiliates, subsidiaries, officers, directors, and employees.

(b) comply with all applicable laws including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct) and applicable consumer laws in respect of fair lending, debt collection, organic farming (if applicable), disclosure of data and financial regulations. Registrar also agrees to notify ~~registrants~~Registrants of the requirement to comply with all applicable laws at the time of registration.

(c) acknowledge and agree that ~~registrants~~Registrants 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.

(d) warrant that no domain name registration within any Included TLD shall be used to distribute malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or other ~~similar~~ activity contrary to applicable law, and providing consequences for such activities including suspension of the domain name.

(e) comply with all operational standards, procedures, practices and policies for the Included TLD including the Radix Acceptable Use and Anti-Abuse Policy ("AUP") and all other applicable policies which will be available on the Radix website (~~www.radixregistry.com~~(www.radix.website)), established from time to time by RO in a non-arbitrary manner and applicable to all registrars, including affiliates of RO, and consistent with ICANN's standards policies, procedures, and practices and RO's Registry Agreement with ICANN for the Included TLD. Additional or revised RO operational standards, policies, procedures, and practices for the Included TLD shall be effective upon ninety (90) days notice by RO to Registrar unless mandated by ICANN with a shorter notice period.

(f) consent to the use, copying, distribution, publication, modification and other processing of Registrant's Personal Data by RO and its designees and agents, including data escrow requirements in compliance with Section 3.17, or as specified by ICANN from time to time for new gTLDs.

(g) expressly agree that registration and renewal fees for some domain names in ~~anthe~~ Included TLD are variable and shall differ from registration and renewal fees for other domain names within that Included TLD. This includes but is not limited to non-standard pricing for Premium Domain Name registration and renewal fees, which differs from the pricing of Standard Domain Names.

(h) expressly agree that to higher renewal fee at the time of initial registration, renewal of the domain name, following clear and transfers conspicuous disclosure of such renewal fees for each included TLD are variable by Registrar to the Registrant.

(i) be bound by the terms and conditions of the initial launch of the Included TLD, including without limitation the sunrise period and the landrush period, the procedure and process for compliance with ICANN's rights protection mechanisms including the Trademark Clearing House requirements and any Sunrise Dispute Resolution Policy, and further to acknowledge that RO and/or its service providers have no liability of any kind for any loss or liability resulting from the proceedings and processes relating to the sunrise period or the landrush period, including, without limitation: (a) the ability or inability of a ~~registrant~~ Registrant to obtain a domain name during these periods, and (b) the results of any dispute over a sunrise registration.

(j) indemnify, defend and hold harmless RO, RO's Registry Service Provider and its subcontractors, and its and their directors, officers, employees, agents, and affiliates from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses arising out of or relating in any way, for any reason whatsoever, to the Registered Name Holder's domain name registration, any breach of the Registration Agreement with Registrar and any use of the domain name. The Registration Agreement shall further require that this indemnification obligation survive the termination or expiration of the Registration Agreement and this Agreement.

**3.11. Non-Uniform Renewal Registration Pricing.** Registrar shall clearly and conspicuously disclose in its Registration Agreement, which shall be expressly agreed to by Registrants, that the Included TLDs will have non-uniform renewal registration pricing such that the Registration Fee for a domain name registration renewal may differ from other domain names in the same or other Included TLDs (e.g., renewal registration Fee is \$7 for one domain name and \$13 for a different domain name).

**3.12. Secure Connection.** Registrar agrees to 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. All data exchanged between Registrar's system and the Registry System shall be protected to avoid unintended disclosure of information. Registrar shall employ commercially reasonable 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 RO, 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. Each EPP session shall be authenticated and encrypted using two-way secure socket layer ("SSL") protocol. Registrar agrees to authenticate every EPP client connection with the Registry System using both an X.509 server certificate issued by a commercial Certification Authority identified jointly by the RO and Registrar, and its Registrar password, which it shall disclose only to

its employees with a need to know. Registrar agrees to notify Registry within four (4) hours of learning that its Registrar password has been compromised in any way or if its server certificate has been revoked by the issuing Certification Authority or compromised in any way. In addition, RO may request other reasonable security provisions to ensure that the Registry System is secure and stable, which Registrar shall endeavor to implement.

**3.13. Complete Data.** As part of its registration and sponsorship of Registered Names in the Included TLD, Registrar shall submit complete data as required by technical specifications of the Registry System that are made available to Registrar from time to time. Registrar hereby grants RO a non-exclusive, non-transferable, limited license to such data for propagation of and the provision of authorized access to the TLD zone files and as otherwise required in RO's operation of the Included TLD.

**3.14. Non-Standard Pricing** Registrar may, in its sole discretion, offer Premium Domain Name registrations provided that Registrar shall endeavor to support RO's pricing strategies, including but not limited to, non-standard pricing for Premium Domain Name registrations and renewals.

**3.15. Marketing.** Registrar may employ joint marketing campaigns with the RO to promote the Included TLDs. Unless expressly agreed in writing, each party shall bear their own costs in relation to any marketing activities.

**3.16. False WHOIS (or replacement protocol to WHOIS) Data.** Registrar shall accept written complaints from third parties regarding false and/or inaccurate WHOIS (or replacement protocol to WHOIS) data of Registrants and follow any other policies published by RO, and in accordance with ICANN requirements from time to time with respect to such complaints.

**3.17. Handling of Personal Data.** RO shall notify Registrar of the purposes for which Personal Data submitted to RO by Registrar is collected, the intended recipients (or categories of recipients) of such Personal Data, and the mechanism for access to and correction of such Personal Data. RO shall take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction. RO shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars. RO may from time to time use the aggregated demographic data collected for statistical analysis, provided that this analysis will not disclose individual Personal Data and provided that such use is compatible with the notice provided to registrars regarding the purpose and procedures for such use. Registry Operator will not share, sell, rent or otherwise disclose such data to any third parties. This section is updated by the addition of the ICANN Model Terms annexed herein.

**3.18. Authorization Codes.** Registrar shall not provide identical Registrar-generated authorization <authinfo> codes for domain names registered by different ~~registrants~~Registrants with the same Registrar. RO in its sole discretion may choose to modify <authinfo> codes for a given domain and shall notify the sponsoring registrar of such modifications via EPP compliant mechanisms (i.e., EPP<poll> or EPP<domain:Info>). Poll event will be triggered within 300 seconds of modification. Documentation of these mechanisms shall be made available to Registrar by RO. Registrar shall provide the Registered Name Holder with timely access to the authorization code along with the ability to modify the authorization code within five (5) calendar days.

**3.19. Transfer of Sponsorship of Registrations.** Registrar agrees to implement transfers of Registered Name registrations from another registrar to Registrar and vice versa pursuant to the Inter-Registrar Transfer Policy as may be amended from time to time by ICANN (the "Inter-Registrar Transfer Policy"), currently located at



<http://www.icann.org/en/resources/registrars/transfers/policy>. RO and Registrar may negotiate for bulk transfers in excess of the thresholds set forth in the Inter-Registrar Transfer Policy. Within two (2) weeks after each Included TLD's General Availability, RO will allow and support bulk transfer to Registrar, without extension of the registration term provided both gaining and losing registrars consent to such bulk transfer. Additionally, RO will reimburse Registrar for fees incurred under the Transfer Policy, provided RO does not incur any ICANN fees associated with such bulk transfer.

3.20. **Time.** Registrar agrees that in the event of any dispute concerning the time of the entry of a domain name registration into the registry database, the time shown in the RO records shall control.

3.21. **Compliance with Operational Requirements.** Registrar shall comply with each of the following requirements, and further shall include in its Registration Agreement with each Registered Name Holder, as applicable, an obligation for such Registered Name Holder to comply with each of the following requirements:

(a) ICANN standards, policies, procedures, and practices for which RO has monitoring responsibility in accordance with the Registry Agreement or other arrangement with ICANN; and

(b) Operational standards, policies, procedures, and practices for the Included TLD established from time to time by RO in a non-arbitrary manner and applicable to all registrars ("Operational Requirements"), including affiliates of RO, and consistent with RO's Registry Agreement with ICANN, as applicable, upon RO's notification to Registrar of the establishment of those terms and conditions.

3.22. **Resolution of Technical Problems or Breach of Agreement.** Registrar agrees to employ necessary employees, contractors, or agents with sufficient technical training and experience to respond to and fix all technical problems concerning the use of the Supported Protocol, the APIs and the systems of RO or its Registry Service Provider in conjunction with Registrar's systems. Registrar agrees that in the event of degradation of the Registry System or other emergency, or upon Registrar's violation of Operational Requirements or breach of this Agreement, RO may, in its sole discretion, immediately or temporarily suspend or restrict Registrar's access to the Registry System. Such temporary suspensions or restrictions shall be applied in a nonarbitrary manner and shall apply fairly to any registrar similarly situated. Except in the case of an emergency, RO will provide advance notice via email and phone call to Registrar's technical contact of any temporary suspension or restriction, except where RO is prevented from doing so due to an emergency.

3.23. **Prohibited Domain Name Registrations.** In addition to complying with ICANN standards, policies, procedures, and practices limiting domain names that may be registered, Registrar agrees to comply with applicable statutes and regulations limiting the domain names that may be registered.

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

3.25. **Accredited Registrar.** During the term of this Agreement, Registrar shall maintain in full force and effect its Registrar Accreditation Agreement as required by ICANN as a registrar for the Included TLD. Registrar shall notify RO immediately in the event of any alleged or actual violation of ICANN Policy, its [Registrar Accreditation Agreement](#) or any ICANN requirement. As long as Registrar is in full compliance with this Agreement, Registrar is accredited by RO to act as a registrar for Included TLDs

through the Registry System and to advertise and market its accreditation as a Registrar for the Included TLD.

**3.26. Unavailable Domain Names.** RO will provide Registrar access to a list of all domain names that are not available to be registered, including but not limited to restricted and/or reserved domain names that have not been registered. RO will update and provide Registrar access to such unavailable domain names files every twelve (12) hours. RO will provide Registrar with a daily file that includes a list of all domains (with registration, renewal, and redemption costs) that are priced different than the standard pricing.

**3.27. Violations of Section 3.** Registrar agrees that in the event of significant degradation of the Registry System or other emergency, RO may, in its sole discretion, temporarily suspend or restrict access to the Registry System for any Included TLD. Such temporary suspensions or restrictions shall be applied in a non-arbitrary manner and shall apply fairly to any registrar similarly situated.

#### **4. LICENSE**

**4.1. License Grant.** Subject to the terms and conditions of this Agreement, RO and, by contract, its Registry Service Provider, hereby grant Registrar and Registrar accepts a non-exclusive, royalty-free, ~~nontransferable~~non-transferable, worldwide limited license to use for the term and purposes of this Agreement the Licensed Product, as well as updates and redesigns thereof, to provide domain name registration services in the Included TLD only and for no other purpose. The Licensed Product, as well as updates and redesigns thereof, will enable Registrar to register domain names in the Included TLD on behalf of its Registered Name Holders. Registrar, using the Licensed Product, as well as updates and redesigns thereof, will be able to invoke the following operations on the Registry System: (i) check the availability of a domain name, (ii) register a domain name, (iii) re-register or renew a domain name, (iv) cancel the registration of a domain name it has registered, (v) update the nameservers of a domain name, (vi) transfer a domain name from another registrar to itself and vice-versa with proper authorization, (vii) query a domain name registration record, (viii) register a nameserver, (ix) update the IP addresses of a nameserver, (x) delete a nameserver, (xi) query a nameserver, and (xii) establish and end an authenticated session.

**4.2. Limitations on Use.** Notwithstanding any other provisions in this Agreement, except with the written consent of RO and its Registry Service Provider, 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 RO, its Registry Service Provider or any ICANN-Accredited Registrar, except as reasonably necessary to register domain names or modify existing registrations.

**4.3. Changes to Licensed Materials.** RO and/or its Registry Service Provider may from time to time replace or make modifications to the EPP, APIs, or Software or other materials licensed hereunder that will modify, revise or augment the features of the Registry System. RO and/or its Registry

Service Provider will provide Registrar with at least thirty (30) days notice prior to the implementation of any material changes to the Registry System, unless it is a change that will require engineering efforts on the part of Registrar but maintains backward compatibility including but not limited to changes to EPP, in which case RO and/or its Registry Service Provider will provide Registrar with ninety (90) days prior notice. For changes that would result in system incompatibility if not implemented on schedule, RO and/or its Registry Service Provider will provide Registrar with one hundred and eighty (180) days prior notice. RO will use commercially reasonable efforts to provide Registrar with advance notice of any non-material changes. These notice periods shall not apply in the event Registry System is subject to the imminent threat of a failure or a material security threat, immediate implementation of ICANN temporary policies (Spec 1 Section 2 of the RA) or the discovery of a major security vulnerability or a denial of service (DoS) attack where the Registry System is rendered inaccessible by being subject to (i) excessive levels of data traffic, (ii) unauthorized traffic; or (iii) data traffic not conforming to the protocols used by the Registry System, but RO will use commercially reasonable efforts to provide notice as soon as practicable.

**4.4. Representations.** Registrar shall not represent to any actual or potential Registrant that Registrar enjoys access to any of the Registry System that is superior to that of any other registrar accredited for the Included TLD.

**4.5. Registrar's Resellers.** Registrar may choose to allow its own resellers to facilitate the registration of domain names in the Registry System by executing a Reseller Agreement between Registrar and a selected Reseller, shall preserve a copy of each Reseller Agreement which shall be available to RO upon RO's request and agrees to expressly adhere its Resellers to all obligations assumed by Registrar in this Agreement.

**4.5.1.** Registrar, in any event, shall be fully responsible to ensure Resellers' compliance with this Agreement and remain fully responsible for the compliance of all obligations assumed by Registrar and its Resellers in this Agreement.

**4.5.2.** Registrar and its Reseller shall fully defend, indemnify and hold harmless RO and Registry Operator's members, officers, directors, agents, employees, service providers, and subcontractors for any loss, liabilities, damages, costs or expenses, including reasonable attorneys' fees, resulting from any third party claim, action, or demand arising out of any dispute in relation to any domain name registered by Registrar's resellers in the Registry, including but not limited to (a) any claim or alleged claim relating to any product or service of such Reseller; (b) any claim or alleged claim relating to any agreement with any Registrant that registers a Registered Name through Reseller; (c) any claim or alleged claim relating to Reseller's domain name registration business or other activities, including, but not limited to, Reseller's advertising, domain name application process, systems and other processes, fees charged, billing practices and customer service; and/or (d) any breach by Reseller of any of the terms, conditions, covenants, obligations, agreements, representations or warranties set forth herein. This indemnification obligation must be in writing and be made to survive any termination or expiration of the Reseller Agreement and this Agreement. RO reserves the right upon written notice to require Registrar to terminate any Reseller's right to provide registrar services including but not limited to its Reseller Agreement with respect to any or all Included TLDs if such Reseller fails to comply with the terms of this Agreement and to take any measures RO deems necessary to prevent such Reseller from accessing the Registry System directly or indirectly. RO shall provide a ten (10) days period for Reseller to cure such breach, unless, in the sole and reasonable discretion of RO, the nature of the Reseller breach is such that it is incapable of being cured or the same Reseller has committed the same breach previously.

## 5. SUPPORT SERVICES

**5.1. Engineering Support.** RO through the Registry Service Provider agrees to provide Registrar reasonable telephone and email support in English to address engineering issues arising in connection with Registrar's use of the Registry System. RO will provide a 24x7x365 emergency support for emergency situations consistent with any contact policies developed by RO. Registrar understands that neither RO nor its Registry Service Provider, have any obligation to provide support, technical or otherwise, under section 5.1, 5.2 or any other provision, to any Registered Name Holder, prospective customer or Reseller of Registrar.

**5.2. Customer Service Support.** During the term of this Agreement, RO, itself or through its Registry Service Provider or another designated service provider, will provide reasonable telephone, web based and e-mail customer service support to Registrar for nontechnical issues solely relating to the Registry System and its operation. RO itself or through its Registry Service Provider, will provide Registrar with a telephone number and e-mail address for such support during implementation of the Supported Protocol, APIs and Software.

## 6. FEES

### 6.1. Registration Fees.

6.1.1. Registrar agrees to pay RO, or its Registry Service Provider, or its designated service provider, the non-refundable fees set forth in Exhibit [BA](#) for initial and renewal registrations and other services provided by RO (collectively, the "Registration Fees"). Registration Fees for certain categories of domain names may differ from other categories of domain names for an Included TLD, including but not limited to non-standard fees for Premium Domain Name registration and renewals.

6.1.2. RO reserves the right to adjust the initial Registration Fees applicable to unregistered Standard Domain Names in any Included TLD, provided that any price increase other than those resulting from the cessation of any refunds, rebates, discounts, promotions, product tying, or other programs shall be made with ninety (90) days prior notice to Registrar (by e-mail, hand, by registered mail, or by courier or express delivery service), and provided that RO shall make such price increases (other than those resulting from the cessation of any refunds, rebates, discounts, promotions or other programs) effective only twice within any one year period. For the avoidance of doubt, the aforementioned limit will not apply to Premium Domain Name price changes. Notices applicable [for](#) price changes to Premium Domain Name Registration Fees are as per Exhibit [BA](#).

6.1.3. RO reserves the right to adjust the renewal registration fees applicable to all Registered Names in any Included TLD, provided that any such renewal registration fee increases other than those resulting from the cessation of any refunds, rebates, discounts, promotions, product tying or other programs, shall be made with at least one hundred and eighty (180) days prior notice to Registrar. RO need not provide notice of any increase for the imposition of the ICANN Variable Registry-Level Fees as defined in Section 6.3 of the Registry Agreement for each Included TLD.

6.1.4. RO may require Registrar, at RO's option and in its sole discretion, to provide a Payment Security comprised of an irrevocable letter of credit or cash deposit. The amount of the Payment Security establishes Registrar's credit limit in the Registry System, if any, and will be based on anticipated monthly level of registrations and other billable transactions. Registrar agrees to modify its Account Balance or Payment Security to support increases in billable transaction volumes as required by the RO credit and billing policies. RO, or its Registry Service Provider, or its designated service provider, will invoice Registrar monthly in arrears for each month's Registration Fees. All

Registration Fees are due as stated on each monthly invoice, but no later than thirty-five (35) days of Registrar's first receipt of invoice by email, mail or otherwise, based on Registrar's size and credit rating. In order to satisfy any outstanding account balances, RO may draw upon Registrar's Payment Security. If this occurs, Registrar agrees to replenish Payment Security to the pre-draw level immediately upon completion of draw. If Registrar's Payment Security is depleted, or its Account Balance is inadequate to cover existing or expected fees, registration of domain names for the Registrar will be suspended and new registrations will not be accepted until the Payment Security is replenished.

6.1.5. The Registration Fees due under this Agreement are exclusive of tax. All taxes, duties, fees and other governmental charges of any kind (including sales, turnover, services, use and value-added taxes, but excluding taxes based on the net income of RO or its Registry Service Provider or other designee) 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 Registration Fees. All payments due to RO, or its designate, 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, RO, or its designate 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.

**6.2. Change in Registrar Sponsoring Domain Name.** Registrar may assume sponsorship of any Registered Name Holder's existing domain name registration(s) in any Included TLD from another registrar by following the Transfer Policy.

6.2.1. For each transfer of the sponsorship of a domain-name registration under the Transfer Policy, Registrar agrees to pay RO the renewal registration fee associated with a one-year extension, as set forth above. The losing registrar's Registration Fees will not be refunded as a result of any such transfer.

6.2.2. For a transfer approved by ICANN under Part B of the Transfer Policy, Registrar agrees to pay RO US \$0 (for transfers of 50,000 names or fewer) or US \$50,000 (for transfers of more than 50,000 names). Fees under this Section shall be due immediately upon receipt of RO's invoice pursuant to the Payment Security.

**6.3. Variable Registry-Level Fee.** In the event that RO is required to pay Variable Registry-Level Fees to ICANN in accordance with Subsection 6.3 (a) and (b) of the RA, RO shall be entitled to collect such Fees from Registrar, and Registrar hereby gives it express approval of RO's collection, in addition to Fees due to RO under Sections 6.1 and 6.2 above, of the amount that is equivalent, on a per-name basis, to the Variable Registry-Level Fee paid by RO to ICANN in the Included TLD.

**6.4. Non-Payment of Fees.** Timely payment of all fees owing under this Agreement are a material condition of performance under this Agreement. In the event that Registrar fails to pay its fees by date when due, RO may, at its sole discretion: (i) stop accepting new initial or renewal registrations from Registrar; (ii) delete the domain names associated with invoices not paid in full from the Registry database; (iii) give written notice of termination of this Agreement pursuant to Section 7 below; and (iv) pursue any other remedy under this Agreement. Any late fees outstanding for more than 10 days after the date when due shall be subject to a 1% monthly interest charge, pro-rated daily by partial months.

## 7. TERM AND TERMINATION

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

**7.2. Termination For Cause.** In the event that either Party materially breaches any term of this Agreement, including any of its representations and warranties hereunder and such breach is not substantially cured within thirty (30) calendar days after written notice thereof is given by the other Party, and except as shorter or longer time frames are provided herein, 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.

**7.3. Termination at Option of Registrar.** Registrar may terminate this Agreement at any time by giving RO thirty (30) days notice of termination.

**7.4. Termination Upon Loss of Registrar's Accreditation.** This Agreement shall terminate immediately in the event Registrar's [Registrar Accreditation Agreement](#) with ICANN, or its successor, is terminated or expires without renewal.

**7.5. Termination in the Event that Successor RO is Named.** This Agreement shall stand terminated for a particular Included TLD in the event that ICANN or any department in control of the DNS at that point in time, as appropriate, designates another entity to operate the registry for that Included TLD.

**7.6. Termination in the Event of 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.

**7.7. Effect of Termination.** Upon expiration or termination of this Agreement, RO will, to the extent it has the authority to do so, complete the registration of all domain names processed by Registrar prior to the date of such expiration or termination, provided that Registrar's payments to RO, or its Registry Service Provider or its designated service provider, for Registration Fees are current and timely. Immediately upon any expiration or termination of this Agreement, Registrar shall (i) transfer its sponsorship of Registered Name registrations to another licensed registrar(s) of the RO for the Included TLD, in compliance with Part B of the Transfer Policy currently found at <http://archive.icann.org/en/transfers/policy-12jul04.htm>, or any other procedures established or approved by ICANN, or any department in control of DNS at a point in time, as appropriate, and (ii)

either return to RO or certify to RO the destruction of all Confidential Information it has received under this Agreement. In the event of termination, RO reserves the right to immediately contact, directly or through a designated service provider, any and all Registered Name Holders to facilitate the orderly and stable transition of Registered Names to other ICANN-accredited registrars. All fees owing to RO, or its Registry Service Provider or its designated service provider, shall become immediately due and payable.

**7.8. Survival.** In the event of termination of this Agreement, the following shall survive: (i) Sections 3.9 (License), 3.10 (Registrar's Registration Agreement and Domain Name Dispute Policy), 3.17 (Handling of Personal Data), 7.7 (Effect of Termination), 7.8 (Survival), 8.1 (No Third Party Beneficiaries; Relationship of the Parties), 8.5 (Attorneys' Fees), 8.6 (Arbitration), 8.7 (Notices), 8.10 (Use of Confidential Information), 8.11 (Delays or Omissions; Waivers), 8.12 (Limitation of Liability), 8.13 (Construction), 8.14 (Intellectual Property), 8.16 (Disclaimer of Warranties), 8.17 (Indemnification by Registrar), 8.18 (Indemnification by RO) and 8.19 (Entire Agreement; Severability); (ii) the Registered Name Holder's obligations to indemnify, defend, and hold harmless RO, and its Registry Service Provider; and (iii) Registrar's payment obligations as set forth in Section 6 with respect to fees incurred during the term of this Agreement. Neither Party shall be liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with its terms but each Party shall be liable for any damage arising from any breach by it of this Agreement.

## **8. MISCELLANEOUS**

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

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

**8.3. 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.

**8.4. Amendment in Writing.** Except as provided in Section 7.1 in cases wherein the RO's Registry Agreement with ICANN is amended or as otherwise provided in this Agreement, any amendment or supplement to this Agreement shall be in writing, upon no less than fifteen (15) calendar days written notice and duly executed by both Parties.

**8.5. 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).

**8.6. Arbitration; Choice of Law; Venue.** The Parties agree that any and all disputes arising under or in connection with this Agreement, including requests for specific performance, may, with mutual assent, be resolved through binding arbitration, only, conducted pursuant to the rules of the Singapore International Arbitration Center, which rules are hereby incorporated by reference. The arbitration will be conducted in the English language and will occur in Singapore. Any arbitration will be in front of a single arbitrator, unless the Parties agree in writing to a greater number of arbitrators. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the Parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day. The hearing may be extended for one (1) additional calendar day if agreed upon by the Parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the Parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. The Parties further agree that any judgment on a final arbitration award may be entered in any court of competent jurisdiction. Each Party shall treat information received from the other party pursuant to the arbitration that is appropriately marked as confidential as Confidential Information of such other party in accordance with this Agreement.

**8.7. Notices.** Any notice or other communication required or permitted to be delivered to any Party under this Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service, by e-mail or by 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:

if to Registrar:

\_\_\_\_\_

Attn: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

if to RO:

Neha Naik

F-19, Business Center 1, ~~Business Park~~, RAK Economic Zone, Ras Al Khaimah, UAE P O Box 16113

Telephone: +912261966300

Facsimile: +97172046061

E-Mail: legal@radix.email

**8.8. Assignment/Sublicense.** Except as otherwise expressly provided herein, the provisions of this Agreement shall inure to the benefit of and be binding upon, the successors and permitted assigns of the Parties hereto. Registrar may assign its rights and obligations under this Agreement to an



affiliated company, which owns, or is owned by, Registrar on a majority ownership (>50%) basis. Otherwise, Registrar shall not assign, sublicense or transfer its rights or obligations under this Agreement to any third person without the prior written consent of RO, which consent will not be unreasonably withheld. RO may assign its rights or obligations with regard to all or any Included TLD under this Agreement to an affiliate or any third party without the consent of Registrar. An assignment of any TLD does not affect the terms of this Agreement, or any amendments hereto on any other Included TLD.

**8.9. Assignment in Connection with Assignment of Agreement with ICANN.** In the event that RO's Registry Agreement with ICANN for the Included TLD is validly assigned, RO's rights under this Agreement shall be automatically assigned to the assignee of the Registry Agreement, provided that the assignee assumes the duties of RO under this Agreement. In the event that Registrar's Registrar Accreditation Agreement with ICANN for the Included TLD is validly assigned, Registrar's rights under this Agreement shall be automatically assigned to the assignee of the Registrar Accreditation Agreement, provided that the subsequent registrar assumes the duties of Registrar under this Agreement.

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

8.10.1. 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.

8.10.2. 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.

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

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

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

8.10.6. Notwithstanding the foregoing, this Subsection 8.10 imposes no obligation upon the parties with respect to information that (i) is disclosed in the absence of a confidentiality agreement and such disclosure was agreed to by the Disclosing Party in writing prior to such disclosure; or (ii) is or has entered the public domain through no fault of the Receiving Party; or (iii) is known by the Receiving Party prior to the time of disclosure; or (iv) is independently developed by the Receiving Party without use of the Confidential Information; or (v) is made generally available by the Disclosing Party without restriction on disclosure, or (vi) is required to be disclosed by law, regulation or court order; provided, that in the event the Receiving Party is required by law, regulation or court order to

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

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

**8.12. Limitation of Liability.** WITH THE EXCEPTION OF CONFIDENTIALITY AND INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER PARTY, OR THEIR SERVICE PROVIDERS OR ANY DESIGNEES, BE LIABLE TO THE OTHER PARTY 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 EITHER PARTY, OR ITS SERVICE PROVIDERS OR ANY DESIGNEES, HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE MAXIMUM AGGREGATE LIABILITY OF THE PARTIES EXCEED THE LESSER OF (I) THE TOTAL AMOUNT PAID TO RO UNDER THE TERMS OF THIS AGREEMENT FOR THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD OR ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

**8.13. 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.

**8.14. Intellectual Property.** Subject to any Confidentiality required by Section 8.10 or licensing under Section 3.9, 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.

**8.15. Representations and Warranties**

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

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

8.16. **Disclaimer of Warranties.** THE EPP, APIs AND SOFTWARE ARE PROVIDED "AS-IS" AND WITHOUT ANY WARRANTY OF ANY KIND. RO, AND ITS REGISTRY SERVICE PROVIDER OR ANY DESIGNEES, 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. NIETHER RO, NOR ITS REGISTRY SERVICE PROVIDER OR ANY DESIGNEES WARRANT THAT THE FUNCTIONS CONTAINED IN THE EPP, APIs OR SOFTWARE WILL MEET REGISTRAR'S REQUIREMENTS, OR THAT THE OPERATION OF THE EPP, APIs OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE EPP, APIs OR SOFTWARE WILL BE CORRECTED. FURTHERMORE, RO, AND ITS REGISTRY SERVICE PROVIDER OR ANY DESIGNEES DO NOT WARRANT NOR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE EPP, APIs, SOFTWARE OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. SHOULD THE EPP, APIs OR SOFTWARE PROVE DEFECTIVE, REGISTRAR ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION OF REGISTRAR'S OWN SYSTEMS AND SOFTWARE.

8.17. **Indemnification by Registrar.** Registrar, at its own expense and within thirty (30) days of presentation of a demand by RO and/or its service providers under this paragraph, will indemnify, defend and hold harmless RO and/or its service providers and their employees, directors, officers, representatives, agents and affiliates, against any claim, suit, action, or other proceeding brought against them or any affiliate of RO and/or its service providers based on or arising from any claim or alleged claim (i) relating to any product or service of Registrar; (ii) relating to any agreement, including Registrar's dispute policy, with any Registered Name Holder of Registrar; or (iii) relating to Registrar's domain name registration business, including, but not limited to, Registrar's advertising, domain name application process, systems and other processes, fees charged, billing practices and customer service; provided, however, that in any such case: (a) RO and/or its service providers provide Registrar with prompt notice of any such claim; and (b) upon Registrar's written request, RO and/or its service providers will provide to Registrar all available information and assistance reasonably necessary for Registrar to defend such claim, provided that Registrar reimburses RO and/or its service providers for their actual and reasonable costs incurred in connection with providing such information and assistance. RO and its service providers shall have the right to control the defense to any claim or in litigation, through counsel of its choice, whose fees shall be subject to indemnification as provided herein. Registrar will not enter into any settlement or compromise of any such indemnifiable claim without RO and/or its service providers' prior written consent, as such claims relate to either or both of them, 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 RO and/or its service providers in connection with or arising from any such indemnifiable claim, suit, action or proceeding.

8.18. **Indemnification by RO:** RO, at its own expense and within thirty (30) days of presentation of a demand by Registrar under this paragraph will indemnify, defend and hold harmless Registrar and its employees, directors, officers, representatives, agents, affiliates, against any claim, suit, action, or

other proceeding brought against any such party(ies) based on or arising out of any claim that (i) the Registry System, EPP, or APIs as provided to Registrar infringes the valid intellectual property rights of any third party or (ii) RO has breached this Agreement, provided however that in any such case (a) Registrar shall provide RO with prompt notice of any such claim, and (b) upon RO's written request, Registrar will provide to RO and its service providers all available information and assistance reasonably necessary for RO and its service providers to defend such claim, provided that RO reimburses Registrar for Registrar's actual and reasonable costs incurred in connection with providing such information and assistance. RO will not enter into any settlement or compromise of any such indemnifiable claim without Registrar's prior written consent, which consent shall not be unreasonably withheld. RO will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by Registrar in connection with or arising from any such indemnifiable claim, suit, action or proceeding.

**8.19. Entire Agreement; Severability.** This Agreement, which includes Exhibits A ~~and B~~ and all exhibits / appendices / supplements added in future, each of which may be accessed on the CentralNic registrar interface (currently at <https://registrar-console.centralnic.com/dashboard/login>) ("CentralNic Console"), constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.

~~8.20 Service Level Agreement. Appendix 10, as may be amended from time to time, of the Registry Agreement shall be incorporated into this Agreement and attached hereto as Exhibit A.~~

**THE PARTIES hereto have caused this Agreement to be signed electronically and executed by their duly authorized representatives.**

**RO (Radix FZC)**

By:

Name: Sandeep Ramchandani

Title: CEO

**Registrar :**

Registrar \_\_\_\_\_ agreed and accepted date: \_\_\_\_\_

**Exhibit A**

**SERVICE LEVEL AGREEMENT**

See Appendix 10 to the applicable Registry Agreement, as may be amended from time to time.

## Exhibit BA

~~Each TLD added to the Master Registry-Registrar Agreement shall attach a cover page substantially similar to this form to the fully executed ICANN New gTLD Registry Agreement (the current version of which was approved by NGPC on July 2, 2013).~~

Included TLD: .Press

RO: Radix FZC

Additional TLD-specific Terms:

1) **General Availability:** During General Availability, domain names in the Included TLD shall be available on a first-come-first-~~serve~~erved basis through Accredited Registrars.

~~2) **Sunrise:** RO will accept applications for domain names whose trademarks are registered with the Trademark Clearinghouse ("TMCH"), but has no obligation to accept applications for domain names that are not registered with the TMCH. The minimum registration period for a domain name during the Sunrise Period is one (1) year. Multiple requests for the same domain name will go to auction. The Sunrise Period will be for sixty (60) days unless otherwise indicated on the RO website. All application fees will be non-refundable. Domain name registration fees are indicated below. Sunrise applications for domain names currently blocked by ICANN due to non-existing domain name ("NxD") collision will be allocated to qualified Sunrise applicants at the end of Sunrise. However, RO will not activate (place into zone files) blocked domain names until it receives ICANN approval to do so. RO is not responsible for ICANN delays or refusal to approve the activation of any NxD blocked domain names.~~

~~3) **Landrush:** The minimum registration period for a domain name during the Landrush Period is one (1) year. Multiple requests for the same domain name will go to auction. The Landrush period will be for thirty (30) days unless otherwise indicated on the RO website. All application fees will be non-refundable except as indicated by the Registrar to participants and assuming any refunds are provided to losing participants. Domain name registration fees are indicated below.~~

4) **Premium Domain Name Registrations:** RO reserves the absolute right to identify domain names to be offered during ~~the Landrush~~, General Availability or any other Period, which shall be provided for registration through the EPP, or other distribution/registration mechanism, as defined and indicated by RO as Premium Domain Names. RO pricing for Premium Domain Names will be set by RO. Registrars may offer the domains at marked-up pricing for registration by ~~registrants~~Registrants and keep any difference between the registration fee paid by the ~~registrant~~Registrant and the RO price. ~~Multiple requests for the same Premium Domain Name during Sunrise or Landrush will go to a Premium Domain Name auction with the auction minimum being set by RO's designated auction provider.~~ During General availability, Premium Domain Names will be available on a first-come-first-served basis.

**Pricing:**

5) **Domain Name Initial Registration Fee.** Registrar agrees to pay ~~US \$ 49 per annual increment of an initial~~the domain name registration fee posted on the CentralNic Console for a Standard Domain Name, ~~or such other amount as may be established in accordance with RO policies.~~

~~64) Domain Name Renewal Fee.~~ Registrar agrees to pay ~~US \$ 49 per annual increment of a~~the domain name registration renewal ~~fee posted on the CentralNic Console~~ for a Standard Domain Name, ~~or such other amount as may be established in accordance with RO policies.~~ Registrar shall accept and process payments for the renewal of a domain name by a URS complainant in cases where the URS complainant prevailed. Registrar shall not renew a domain name to a URS complainant who prevailed for longer than one year, if allowed by the maximum validity period of the Included TLD.

~~75) Domain Name Transfer Fee.~~ Registrar agrees to pay ~~US \$ 49~~the domain name transfer fee ~~posted on the CentralNic Console~~ per Standard Domain Name that is transferred to Registrar from another ICANN-Accredited Registrar, ~~or such other amount as may be established in accordance RO policies.~~

~~86) EPP Update to Restore a Name.~~ Registrar agrees to pay ~~US \$ 60~~the fee posted on the CentralNic Console per use of the EPP Update command to restore a domain name, or such other amount as may be established in accordance with RO policies.

~~97) Sync.~~ In the event that RO offers this service, Registrar agrees to pay daily pro-rata fee sync for each day beyond the domain registration expiration date (i.e. one day would be 1/365 of the annual registration fee).

~~10) Sunrise and Landrush Application and Registration Fees:~~ Registrar agrees to pay any applicable application fees and ~~US \$ 80 per annual increment of an initial domain name registration, or such other amount as may be established in accordance with RO policies.~~

#### **118) Premium Domain Name Pricing Tiers**

RO has categorized Premium Domain Names into ~~67~~ Premium Domain Name Pricing Tiers as ~~defined below~~posted on the CentralNic Console. All Premium Domain Names will have a renewal fee (per year) and domain name transfer fee equal to the initial registration fee at which the Premium Domain Name was registered. RO reserves the right to move unregistered Premium Domain Names across Premium Domain Name Pricing Tiers at its own discretion, provided RO provides Registrar with 90 days prior notice for all such moves which result in Premium Domain Name price increases, and 30 days prior notice for all such moves which result in Premium Domain Name price reductions and provided that RO agrees to make no more than four (4) such movements across Premium Domain Name Pricing Tiers in any one year period in each Included TLD. Such prior notice may be provided by e-mail, hand, registered mail, courier or express delivery service. RO also reserves the right to add or remove unregistered domain names to or from Premium Domain Name Pricing Tiers in the Included TLD at its own discretion, provided the applicable notice periods for such changes are provided to Registrar, and provided that such additions and removals to and from Premium Domain Name Pricing Tiers shall be considered as movements for the purpose of the established limit of four (4) movements in any one year period in each Included TLD. For the avoidance of doubt, one (1) such movement in any Included TLD may include a combination of price increases and decreases to multiple domain names resulting from moving names across, into, and out of Premium Domain Name Pricing Tiers. Creation of additional Premium Domain Name Pricing Tiers will be effective upon a ninety (90) day prior notice to Registrar.

**Premium Domain Name Pricing Tier**

**Premium Domain Name Pricing (Initial Registration, Renewal and Transfer Pricing)**

Tier 1

\$5,000

Tier 2	\$3,000
Tier 3	\$1,500
Tier 4	\$1,000
Tier 5	\$500
Tier 6	\$250



## Model Terms

### **RRA Data Processing Addendum**

This RRA DATA PROCESSING ADDENDUM (the "**Data Processing Addendum**") is made by and between the undersigned registry (the "**Registry**") and registrar (the "**Registrar**") (each a "**Party**" and together the "**Parties**"), and is effective as of May 25, 2018, and supplements the terms and conditions of the Registry-Registrar Agreement (the "**RRA**") executed between the Parties.

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

### **1. INTRODUCTION**

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

### **2. DEFINITIONS**

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

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

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

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

- iv. To the extent either the Purpose(s) or Subject Matter is not specifically referenced or noted when detailing the respective or shared rights, duties, liabilities or obligations hereunder, the Parties nonetheless mutually acknowledge and agree that the Purpose(s) and Subject Matter is and will be at all times the basis upon which legitimate and lawful processing hereunder may be conducted and performed.

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

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

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

- a. All Parties agree that they are responsible for Processing of Shared Personal Data in accordance with Applicable Laws and this Data Processing Addendum. The Parties shall fully cooperate with each other to the extent necessary to effectuate corrections, amendments, restrictions or deletions of Personal Data as required by Applicable Laws and/or at the request of any Data Subject.
- b. A Party may only transfer Shared Personal Data relating to EU individuals to outside of the European Economic Area ("EEA") (or if such Shared Personal Data is already outside of the EEA, to any third party also outside the EEA), in compliance with the terms of this Data Processing Addendum and the requirements of Applicable Laws, the latter including any relevant Adequacy Decision of the European Commission or the use of EU 'Standard Contractual Clauses'. Where Standard Contractual Clauses for data transfers between EU and non-EU countries are required to be executed between the Parties, they may be found and downloaded, and incorporated herein as Annex 2 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 Data Processing Addendum is applicable, but will abide by the terms of this Data Processing Addendum for the duration of the Processing if in excess of that term, and unless otherwise agreed upon in writing.



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

Registrant Name: Example Registrant

Street: 1234 Admiralty Way

City: Marina del Rey

State/Province: CA

Postal Code: 90292

Country: US

Phone Number: +1.3105551212

Fax Number: +1.3105551213

Email: registrant@example.tld

Admin Contact: Jane Registrant

Phone Number: +1.3105551214

Fax Number: +1.3105551213

Email: janeregistrar@example-registrant.tld

Technical Contact: John Geek

Phone Number: +1.3105551215

Fax Number: +1.3105551216

Email: johngeek@example-registrant.tld

## **Annex 2**

### **COMMISSION DECISION**

**of 5 February 2010**

**on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council**

**(notified under document C(2010) 593)**

**(Text with EEA relevance)**

**(2010/87/EU)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [\(1\)](#), and in particular Article 26(4) thereof,

After consulting the European Data Protection Supervisor,

Whereas:

- (1) Pursuant to Directive 95/46/EC Member States are required to provide that a transfer of personal data to a third country may only take place if the third country in question ensures an adequate level of data protection and the Member States' laws, which comply with the other provisions of the Directive, are respected prior to the transfer.
- (2) However, Article 26(2) of Directive 95/46/EC provides that Member States may authorise, subject to certain safeguards, a transfer or a set of transfers of personal data to third countries which do not ensure an adequate level of protection. Such safeguards may in particular result from appropriate contractual clauses.
- (3) Pursuant to Directive 95/46/EC the level of data protection should be assessed in the light of all the circumstances surrounding the data transfer operation or set of data transfer operations. The Working Party on the protection of individuals with regard to the processing of personal data established under that Directive has issued guidelines to aid with the assessment.
- (4) Standard contractual clauses should relate only to data protection. Therefore, the data exporter and the data importer are free to include any other clauses on business related issues which they consider as being pertinent for the contract as long as they do not contradict the standard contractual clauses.
- (5) This Decision should be without prejudice to national authorisations Member States may grant in accordance with national provisions implementing Article 26(2) of Directive 95/46/EC. This Decision should only have the effect of requiring the Member States not to refuse to recognise, as providing adequate safeguards, the standard contractual clauses set out in it and should not therefore have any effect on other contractual clauses.
- (6) Commission Decision 2002/16/EC of 27 December 2001 on standard contractual clauses for the transfer of personal data to processors established in third countries, under Directive 95/46/EC [\(2\)](#) was adopted in order to facilitate the transfer of personal data from a data controller established in the European Union to a processor established in a third country which does not offer adequate level of protection.
- (7) Much experience has been gained since the adoption of Decision 2002/16/EC. In addition, the report on the implementation of Decisions on standard contractual clauses for the transfers of personal data to third countries [\(3\)](#) has shown that there is an increasing interest in promoting the use of the standard contractual clauses for international transfers of personal data to third countries not providing an adequate level of protection. In addition, stakeholders have submitted proposals with a view to updating the standard contractual clauses set out in Decision 2002/16/EC in order to take account of the rapidly expanding scope of data-processing activities in the world and to address some issues that were not covered by that Decision [\(4\)](#).
- (8) The scope of this Decision should be limited to establishing that the clauses which it sets out may be used by a data controller established in the European Union in order to adduce adequate safeguards within the meaning of Article 26(2) of Directive 95/46/EC for the transfer of personal data to a processor established in a third country.
- (9) This Decision should not apply to the transfer of personal data by controllers established in the European Union to controllers established outside the European Union which fall within the

scope of Commission Decision 2001/497/EC of 15 June 2001 on standard contractual clauses for the transfer of personal data to third countries, under Directive 95/46/EC [\(5\)](#).

- (10) This Decision should implement the obligation provided for in Article 17(3) of Directive 95/46/EC and should not prejudice the content of the contracts or legal acts established pursuant to that provision. However, some of the standard contractual clauses, in particular as regards the data exporter's obligations, should be included in order to increase clarity as to the provisions which may be contained in a contract between a controller and a processor.
- (11) Supervisory authorities of the Member States play a key role in this contractual mechanism in ensuring that personal data are adequately protected after the transfer. In exceptional cases where data exporters refuse or are unable to instruct the data importer properly, with an imminent risk of grave harm to the data subjects, the standard contractual clauses should allow the supervisory authorities to audit data importers and sub-processors and, where appropriate, take decisions which are binding on data importers and sub-processors. The supervisory authorities should have the power to prohibit or suspend a data transfer or a set of transfers based on the standard contractual clauses in those exceptional cases where it is established that a transfer on contractual basis is likely to have a substantial adverse effect on the warranties and obligations providing adequate protection for the data subject.
- (12) Standard contractual clauses should provide for the technical and organisational security measures to be applied by data processors established in a third country not providing adequate protection, in order to ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected. Parties should make provision in the contract for those technical and organisational measures which, having regard to applicable data protection law, the state of the art and the cost of their implementation, are necessary in order to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access or any other unlawful forms of processing.
- (13) In order to facilitate data flows from the European Union, it is desirable for processors providing data-processing services to several data controllers in the European Union to be allowed to apply the same technical and organisational security measures irrespective of the Member State from which the data transfer originates, in particular in those cases where the data importer receives data for further processing from different establishments of the data exporter in the European Union, in which case the law of the designated Member State of establishment should apply.
- (14) It is appropriate to lay down the minimum information that the parties should specify in the contract dealing with the transfer. Member States should retain the power to particularise the information the parties are required to provide. The operation of this Decision should be reviewed in the light of experience.
- (15) The data importer should process the transferred personal data only on behalf of the data exporter and in accordance with his instructions and the obligations contained in the clauses. In particular the data importer should not disclose the personal data to a third party without the prior written consent of the data exporter. The data exporter should instruct the data importer throughout the duration of the data-processing services to process the data in accordance with his instructions, the applicable data protection laws and the obligations contained in the clauses.

- (16) The report on the implementation of Decisions on standard contractual clauses for the transfers of personal data to third countries recommended the establishment of appropriate standard contractual clauses on subsequent onwards transfers from a data processor established in a third country to another data processor (sub-processing), in order to take account of business trends and practices for more and more globalised processing activity.
- (17) This Decision should contain specific standard contractual clauses on the sub-processing by a data processor established in a third country (the data importer) of his processing services to other processors (sub-processors) established in third countries. In addition, this Decision should set out the conditions that the sub-processing should fulfil to ensure that the personal data being transferred continue to be protected notwithstanding the subsequent transfer to a sub-processor.
- (18) In addition, the sub-processing should only consist of the operations agreed in the contract between the data exporter and the data importer incorporating the standard contractual clauses provided for in this Decision and should not refer to different processing operations or purposes so that the purpose limitation principle set out by Directive 95/46/EC is respected. Moreover, where the sub-processor fails to fulfil his own data-processing obligations under the contract, the data importer should remain liable toward the data exporter. The transfer of personal data to processors established outside the European Union should not prejudice the fact that the processing activities should be governed by the applicable data protection law.
- (19) Standard contractual clauses should be enforceable not only by the organisations which are parties to the contract, but also by the data subjects, in particular where the data subjects suffer damage as a consequence of a breach of the contract.
- (20) The data subject should be entitled to take action and, where appropriate, receive compensation from the data exporter who is the data controller of the personal data transferred. Exceptionally, the data subject should also be entitled to take action, and, where appropriate, receive compensation from the data importer in those cases, arising out of a breach by the data importer or any sub-processor under it of any of its obligations referred to in the paragraph 2 of Clause 3, where the data exporter has factually disappeared or has ceased to exist in law or has become insolvent. Exceptionally, the data subject should be also entitled to take action, and, where appropriate, receive compensation from a sub-processor in those situations where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent. Such third-party liability of the sub-processor should be limited to its own processing operations under the contractual clauses.
- (21) In the event of a dispute between a data subject, who invokes the third-party beneficiary clause, and the data importer, which is not amicably resolved, the data importer should offer the data subject a choice between mediation or litigation. The extent to which the data subject will have an effective choice will depend on the availability of reliable and recognised systems of mediation. Mediation by the data protection supervisory authorities of the Member State in which the data exporter is established should be an option where they provide such a service.
- (22) The contract should be governed by the law of the Member State in which the data exporter is established enabling a third-party beneficiary to enforce a contract. Data subjects should be allowed to be represented by associations or other bodies if they so wish and if authorised by national law. The same law should also govern the provisions on data protection of any

contract with a sub-processor for the sub-processing of the processing activities of the personal data transferred by the data exporter to the data importer under the contractual clauses.

- (23) Since this Decision applies only to subcontracting by a data processor established in a third country of his processing services to a sub-processor established in a third country, it should not apply to the situation by which a processor established in the European Union and performing the processing of personal data on behalf of a controller established in the European Union subcontracts his processing operations to a sub-processor established in a third country. In such situations, Member States are free whether to take account of the fact that the principles and safeguards of the standard contractual clauses set out in this Decision have been used to subcontract to a sub-processor established in a third country with the intention of providing adequate protection for the rights of data subjects whose personal data are being transferred for sub-processing operations.
- (24) The Working Party on the protection of individuals with regard to the processing of personal data established under Article 29 of Directive 95/46/EC has delivered an opinion on the level of protection provided under the standard contractual clauses annexed to this Decision, which has been taken into account in the preparation of this Decision.
- (25) Decision 2002/16/EC should be repealed.
- (26) The measures provided for in this Decision are in accordance with the opinion of the Committee established under Article 31 of Directive 95/46/EC,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The standard contractual clauses set out in the Annex are considered as offering adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regards the exercise of the corresponding rights as required by Article 26(2) of Directive 95/46/EC.

#### *Article 2*

This Decision concerns only the adequacy of protection provided by the standard contractual clauses set out in the Annex for the transfer of personal data to processors. It does not affect the application of other national provisions implementing Directive 95/46/EC that pertain to the processing of personal data within the Member States.

This Decision shall apply to the transfer of personal data by controllers established in the European Union to recipients established outside the territory of the European Union who act only as processors.

#### *Article 3*

For the purposes of this Decision the following definitions shall apply:

- (a) 'special categories of data' means the data referred to in Article 8 of Directive 95/46/EC;
- (b) 'supervisory authority' means the authority referred to in Article 28 of Directive 95/46/EC;
- (c) 'data exporter' means the controller who transfers the personal data;

- (d) 'data importer' means the processor established in a third country who agrees to receive from the data exporter personal data intended for processing on the data exporter's behalf after the transfer in accordance with his instructions and the terms of this Decision and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (e) 'sub-processor' means any processor engaged by the data importer or by any other sub-processor of the data importer and who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for the processing activities to be carried out on behalf of the data exporter after the transfer in accordance with the data exporter's instructions, the standard contractual clauses set out in the Annex, and the terms of the written contract for sub-processing;
- (f) 'applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (g) 'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

#### *Article 4*

1. Without prejudice to their powers to take action to ensure compliance with national provisions adopted pursuant to Chapters II, III, V and VI of Directive 95/46/EC, the competent authorities in the Member States may exercise their existing powers to prohibit or suspend data flows to third countries in order to protect individuals with regard to the processing of their personal data in cases where:

- (a) it is established that the law to which the data importer or a sub-processor is subject imposes upon him requirements to derogate from the applicable data protection law which go beyond the restrictions necessary in a democratic society as provided for in Article 13 of Directive 95/46/EC where those requirements are likely to have a substantial adverse effect on the guarantees provided by the applicable data protection law and the standard contractual clauses;
- (b) a competent authority has established that the data importer or a sub-processor has not respected the standard contractual clauses in the Annex; or
- (c) there is a substantial likelihood that the standard contractual clauses in the Annex are not being or will not be complied with and the continuing transfer would create an imminent risk of grave harm to the data subjects.

2. The prohibition or suspension pursuant to paragraph 1 shall be lifted as soon as the reasons for the suspension or prohibition no longer exist.

3. When Member States adopt measures pursuant to paragraphs 1 and 2, they shall, without delay, inform the Commission which will forward the information to the other Member States.

#### *Article 5*

The Commission shall evaluate the operation of this Decision on the basis of available information three years after its adoption. It shall submit a report on the findings to the Committee established under Article 31 of Directive 95/46/EC. It shall include any evidence that could affect the evaluation concerning the adequacy of the standard contractual clauses in the Annex and any evidence that this Decision is being applied in a discriminatory way.

#### *Article 6*

This Decision shall apply from 15 May 2010.

#### *Article 7*

1. Decision 2002/16/EC is repealed with effect from 15 May 2010.
2. A contract concluded between a data exporter and a data importer pursuant to Decision 2002/16/EC before 15 May 2010 shall remain in force and effect for as long as the transfers and data-processing operations that are the subject matter of the contract remain unchanged and personal data covered by this Decision continue to be transferred between the parties. Where contracting parties decide to make changes in this regard or subcontract the processing operations that are the subject matter of the contract they shall be required to enter into a new contract which shall comply with the standard contractual clauses set out in the Annex.

#### *Article 8*

This Decision is addressed to the Member States.

Done at Brussels, 5 February 2010.

*For the Commission*

Jacques BARROT

*Vice-President*

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[\( <sup>1</sup> \) OJ L 281, 23.11.1995, p. 31 .](#)

[\( <sup>2</sup> \) OJ L 6, 10.1.2002, p. 52 .](#)

[\( <sup>3</sup> \) SEC\(2006\) 95, 20.1.2006.](#)

[\( <sup>4</sup> \)](#) The International Chamber of Commerce (ICC), Japan Business Council in Europe (JBCE), EU Committee of the American Chamber of Commerce in Belgium (Amcham), and the Federation of European Direct Marketing Associations (FEDMA).

[\( <sup>5</sup> \) OJ L 181, 4.7.2001, p. 19 .](#)

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## **ANNEX**

### **STANDARD CONTRACTUAL CLAUSES (PROCESSORS)**

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

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(the data **exporter**)

And

Registry Operator

(the data **importer**)

each a 'party'; together 'the parties',

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

### **Clause 1**

#### **Definitions**

For the purposes of the Clauses:

- (a) 'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [\(1\)](#);
- (b) 'the data exporter' means the controller who transfers the personal data;
- (c) 'the data importer' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) 'the sub-processor' means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) 'the applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) 'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

### **Clause 2**

#### **Details of the transfer**



The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

### **Clause 3**

#### **Third-party beneficiary clause**

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

### **Clause 4**

#### **Obligations of the data exporter**

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented

by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

#### **Clause 5**

##### **Obligations of the data importer [\(2\)](#)**

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
  - (ii) any accidental or unauthorised access; and

- (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data-processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

## **Clause 6**

### **Liability**

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.  
  
The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.
3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer,

unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

#### ***Clause 7***

##### **Mediation and jurisdiction**

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
  - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
  - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

#### ***Clause 8***

##### **Cooperation with supervisory authorities**

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

#### ***Clause 9***

##### **Governing law**

The Clauses shall be governed by the law of the Member State in which the registrant is established or domiciled.

#### ***Clause 10***

##### **Variation of the contract**

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

#### ***Clause 11***

## **Sub-processing**

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses [\(3\)](#). Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.
2. The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established, namely ...
4. The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

## **Clause 12**

### **Obligation after the termination of personal data-processing services**

1. The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

#### **On behalf of the data exporter:**

**Registrar:**

Registrar \_\_\_\_\_ agreed and accepted date: \_\_\_\_\_

#### **On behalf of the data importer:**

**RO (Radix FZC)**

By:

Name: Sandeep Ramchandani

Title: CEO

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(<sup>1</sup>) Parties may reproduce definitions and meanings contained in Directive 95/46/EC within this Clause if they considered it better for the contract to stand alone.

(<sup>2</sup>) Mandatory requirements of the national legislation applicable to the data importer which do not go beyond what is necessary in a democratic society on the basis of one of the interests listed in Article 13(1) of Directive 95/46/EC, that is, if they constitute a necessary measure to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of breaches of ethics for the regulated professions, an important economic or financial interest of the State or the protection of the data subject or the rights and freedoms of others, are not in contradiction with the standard contractual clauses. Some examples of such mandatory requirements which do not go beyond what is necessary in a democratic society are, inter alia, internationally recognised sanctions, tax-reporting requirements or anti-money-laundering reporting requirements.

(<sup>3</sup>) This requirement may be satisfied by the sub-processor co-signing the contract entered into between the data exporter and the data importer under this Decision.

## **Appendix 1**

### **to the Standard Contractual Clauses**

This Appendix forms part of the Clauses and must be completed and signed by the parties

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

#### **Data exporter**

The data exporter is (please specify briefly your activities relevant to the transfer):

...

...

...

#### **Data importer**

The data importer is (please specify briefly activities relevant to the transfer):

...

...

...

#### **Data subjects**

The personal data transferred concern the following categories of data subjects (please specify):

...

...

### **Categories of data**

The personal data transferred concern the following categories of data (please specify):

The categories of data will be registrants with domain names. ...

Registrant Name: Example Registrant

Street: 1234 Admiralty Way

City: Marina del Rey

State/Province: CA

Postal Code: 90292

Country: US

Phone Number: +1.3105551212

Fax Number: +1.3105551213

Email: registrant@example.tld

Admin Contact: Jane Registrant

Phone Number: +1.3105551214

Fax Number: +1.3105551213

Email: janeregistrar@example-registrant.tld

Technical Contact: John Geek

Phone Number: +1.3105551215

Fax Number: +1.3105551216

Email: johngeek@example-registrant.tld

...

...

### **Special categories of data (if appropriate)**

The personal data transferred concern the following special categories of data (please specify):

...

...NONE

...

### **Processing operations**

The personal data transferred will be subject to the following basic processing activities (please specify):

...

...Recording in the registry database registrant associated information, sending to the registry servers in the UK, storing for Data Escrow and available to ICANN in accordance with the Registry Agreement or in compliance with registry policies or ICANN policies

...

DATA EXPORTER

**Registrar:**

Registrar \_\_\_\_\_ agreed and accepted date: \_\_\_\_\_

DATA IMPORTER

**RO (Radix FZC)**

By:

Name: Sandeep Ramchandani

Title: CEO

## **Appendix 2**

### **to the Standard Contractual Clauses**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

#### **Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):**

Secure EPP API for the transmission of personal data from Registrar to the registry database in accordance with RRA section 3.12 Secure Connection.