

# .oprf

## Registry-Registrar Agreement xn--clavg

This Registry-Registrar Agreement (the "Agreement"), dated as of \_\_\_\_\_, is made and entered into by and between PUBLIC INTEREST REGISTRY ("PIR"), a Pennsylvania non-profit corporation with its principal place of business located at 11911 Freedom Drive, 10<sup>th</sup> Floor, Suite 1000, Reston, VA 20190 (PIR), and \_\_\_\_\_, a \_\_\_\_\_, with its principal place of business located at \_\_\_\_\_ ("Registrar"). PIR and Registrar may be referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, PIR has entered a Registry Agreement with the Internet Corporation for Assigned Names and Numbers to operate a shared registration system, TLD nameservers, and other equipment for the xn--clavg top-level domain;

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

WHEREAS, Registrar wishes to act as a registrar for domain names within the xn--clavg top-level domain.

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

### 1. DEFINITIONS

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

**1.2.** "Confidential Information" means all information and materials, including, without limitation, computer software, data, information, intellectual property, databases, protocols, reference implementation and documentation, financial information, statistics and functional and interface specifications, provided by the Disclosing Party to the Receiving Party under this Agreement and marked or otherwise identified as Confidential, provided that if a communication is oral, the Disclosing Party will notify the Receiving Party in writing, including by email, within 15 days of the disclosure that it is confidential.

**1.3.** "DNS" means the Internet domain namesystem.

**1.4.** The "Effective Date" shall be the date first set forth above.

**1.5.** "EPP" means the Extensible Provisioning Protocol, which is the protocol used by the Registry System.

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

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

**1.8.** "Registered Name" refers to a domain name within the domain of the Registry TLD, whether consisting of two or more (e.g., john.smith\_\_\_\_\_) levels, about which PIR 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).

**1.9.** "Registered Name Holder" means the holder of a Registered Name.

**1.10.** The "Registrar Tool Kit" comprises the EPP, APIs and Software.

**1.11.** "Registry Agreement" means the Registry Agreement between PIR and ICANN dated as of November 14, 2013, for the operation of the Registry TLD, as amended from time to time.

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

**1.13.** "Registry Services" Registry Services are: (a) those services that are both (i) operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; and (ii) provided by the Registry Operator for the xn--c1avg registry as of the Effective Date; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy (as defined in the Registry Agreement); (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

**1.14.** "Registry TLD" means the xn--clavg TLD.

**1.15.** The "Registry System" means the system operated by PIR for Registered Names in the Registry TLD.

**1.16.** "Software" means reference client software intended to allow Registrar to develop its system to register second-level domain names through the Registry System.

**1.17.** "Term" means the term of this Agreement, as set forth in Subsection 9.1.

**1.18.** A "TLD" means a top-level domain of the DNS.

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

## **2. OBLIGATIONS OF PIR**

**2.1. Access to Registry System.** Throughout the Term of this Agreement, PIR shall operate the Registry System and provide Registrar with access to the Registry System to transmit domain name registration information for the Registry TLD to the Registry System. Nothing in this Agreement entitles Registrar to enforce any agreement between PIR and ICANN.

**2.2. Maintenance of Registrations Sponsored by Registrar.** Subject to the provisions of this Agreement, ICANN requirements, and PIR requirements authorized by ICANN, PIR shall maintain the registrations of Registered Names sponsored by Registrar in the Registry System during the term for which Registrar has paid the fees required by Subsection 4.1.

**2.3. Provision of Tool Kit; License.** No later than three business days after the Effective Date, PIR shall provide to Registrar a copy of the Registrar Tool Kit, which shall provide sufficient technical specifications to permit registrar interface with the Registry System and employ its features that are available to Registrars. Subject to the terms and conditions of this Agreement, PIR hereby grants Registrar and Registrar accepts a non-exclusive, non-transferable, worldwide limited license to use for the Term and purposes of this Agreement, all components owned by or licensed to PIR in and to the EPP, APIs, any reference client software and any other intellectual property included in the Registrar Tool Kit, as well as updates and redesigns thereof, to provide domain name registration services in the Registry TLD only and for no other purpose.

**2.4. Changes to System.** PIR 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. PIR will provide Registrar with at least ninety days notice prior to the implementation of any material changes to the EPP, APIs, Software or other materials licensed hereunder.

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

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

**2.5.2. Customer Service Support.** During the Term of this Agreement, PIR will provide reasonable telephone and e-mail customer service support to Registrar (but not to Registered Name Holders or prospective customers of Registrar), for non-technical issues solely relating to the Registry System and its operation. PIR will provide Registrar with a telephone number and e-mail address for such support during implementation of the Protocol, APIs and Software. First-level telephone support will be available on business days between the hours of 9 a.m. and 5 p.m. Eastern US time.

**2.6. Handling of Personal Data.** PIR shall notify Registrar of the purposes for which Personal Data submitted to PIR 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. PIR shall take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction. PIR shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars. PIR may from time to time use the demographic data collected for statistical analysis, provided that this analysis will not disclose individual Personal Data and provided that such use is compatible with the notice provided to registrars regarding the purpose and procedures for such use.

**2.7. ICANN Requirements.** PIR'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. OBLIGATIONS OF REGISTRAR**

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

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

**3.3. Registrar's Registration Agreement.** At all times while it is sponsoring the registration of any Registered Name within the Registry System, Registrar shall have in effect an electronic or paper registration agreement with the Registered Name Holder.

Registrar shall include in its registration agreement those terms required by this Agreement and other terms that are consistent with Registrar's obligations to PIR under this Agreement.

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

**3.5. Compliance with Terms and Conditions.** Registrar shall comply with each of the following requirements, and further shall include in its registration agreement with each Registered Name Holder, as applicable, an obligation for such Registered Name Holder to comply with each of the following requirements:

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

**3.5.2.** operational standards, policies, procedures, and practices for the Registry TLD established from time to time by PIR in a non-arbitrary manner and applicable to all registrars, including affiliates of PIR, and consistent with ICANN's standards, policies, procedures, and practices and PIR'S Registry Agreement with ICANN. Additional or revised PIR operational standards, policies, procedures, and practices for the Registry TLD shall be effective upon thirty days notice by PIR to Registrar. If there is a discrepancy between the terms required by this Agreement and the terms of the Registrar's registration agreement, the terms of this Agreement shall supersede those of the Registrar's registration agreement.

**3.5.3** With respect to proceedings commenced under the Uniform Rapid Suspension ("URS"), Registrar must accept and process payments for the renewal of a domain name by a URS Complainant in cases where the URS Complainant prevailed; provided, however, that the Registrar must not renew a domain name to a URS Complainant who prevailed for longer than one year.

**3.6. Additional Requirements for Registration Agreement.** In addition to the provisions of Subsection 3.5, in its registration agreement with each Registered Name Holder, Registrar shall require such Registered Name Holder to:

**3.6.1.** consent to the use, copying, distribution, publication, modification and other processing of Registered Name Holder's Personal Data by PIR and its designees and agents in a manner consistent with the purposes specified pursuant to Subsection 2.6;

**3.6.2.** submit to proceedings commenced under ICANN's dispute resolution procedures relating to Rights Protection Mechanisms (RPMs), including, without limitation, the obligation to handle payments for renewals or restoration by the Complainant in any proceeding in cases where the Complainant prevails.

**3.6.3.** immediately correct and update the registration information for the Registered Name during the registration term for the Registered Name;

**3.6.4.** agree to be bound by the terms and conditions of the initial launch of the Registry TLD, including without limitation the RPMs and the dispute resolution procedures relating thereto, and further to acknowledge that PIR has no liability of any kind for any loss or liability resulting from the proceedings and processes relating to the RPMs and the dispute resolution procedures relating thereto, including, without limitation: (a) the ability or inability of a registrant to obtain a Registered Name during these periods, and (b) the results of any dispute over the outcome of dispute resolution proceeding; and

**3.6.5.** acknowledge and agree that PIR reserves the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status, that it deems necessary, in its discretion; (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of PIR, as well as its affiliates, subsidiaries, officers, directors, and employees; (4) per the terms of the registration agreement or (5) to correct mistakes made by PIR or any Registrar in connection with a domain name registration. PIR also reserves the right to place upon registry lock, hold or similar status a domain name during resolution of a dispute.

**3.6.6** acknowledge and agree that Registered Name Holders are prohibited from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and further, that consistent with applicable law and any related procedures, any prohibited activity described herein may result in remedial measures including, but not limited to, the denial, cancellation or transfer of any registration or transaction, the placement of or more registry lock functions on any domain name and the suspension of the domain name.

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

**3.7.1.** As part of its registration and sponsorship of Registered Names in the Registry TLD, Registrar shall submit complete data as required by technical specifications of the Registry System that are made available to Registrar from time to time. Registrar hereby grants PIR

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 PIR'S operation of the Registry TLD.

**3.7.2.** Registrar shall submit any corrections or updates from a Registered Name Holder relating to the registration information for a Registered Name to PIR in a timely manner.

### **3.8. Security.**

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

**3.8.2.** Each session wherein Registrar accesses the Registry System shall be authenticated and encrypted using two-way secure socket layer ("SSL") protocol. At a minimum, Registrar shall authenticate every client connection with the Registry System using both an X.509 server certificate issued by a commercial certification authority identified by the PIR and its Registrar password. Registrar shall disclose only its Registrar password to its employees with a need to know. Registrar agrees to notify PIR within four hours of learning that its Registrar password has been compromised in any way or if its server certificate has been revoked by the issuing certification authority or compromised in any way.

**3.8.3.** Registrar shall not provide identical Registrar-generated authorization <authinfo> codes for domain names registered by different registrants with the same Registrar. PIR in its sole discretion may choose to modify <authinfo> codes for a given domain and shall notify the sponsoring registrar of such modifications via EPP compliant mechanisms (i.e. EPP<poll> or EPP<domain:Info>). Documentation of these mechanisms shall be made available to Registrar by PIR. The Registrar shall provide the Registered Name Holder with timely access to the authorization code along with the ability to modify the authorization code. Registrar shall respond to any inquiry by a Registered Name Holder regarding access to and/or modification of an authorization code within five (5) calendar days.

**3.9. Resolution of Technical Problems.** Registrar shall employ necessary employees, contractors, or agents with sufficient technical training and experience to respond to and

fix all technical problems concerning the use of the EPP, the APIs and the systems of PIR in conjunction with Registrar's systems. In the event of significant degradation of the Registry System or other emergency, PIR may, in its sole discretion, temporarily suspend or restrict Registrar's access to the Registry System. Such temporary suspensions shall be applied in a non-arbitrary manner and shall apply fairly to any registrar similarly situated, including affiliates of PIR.

**3.10. Time.** In the event of any dispute concerning the time of the entry of a domain name registration into the Registry Database, the time shown in the Registry records shall control.

**3.11. Transfer of Registration Sponsorship.** Registrar agrees to implement transfers of Registered Name registrations from another registrar to Registrar and vice versa pursuant to the Policy on Transfer of Registrations Between Registrars as may be amended from time to time by ICANN (the "Transfer Policy").

**3.12. Restrictions on Registered Names.** In addition to complying with ICANN standards, policies, procedures, and practices limiting domain names that may be registered, Registrar agrees to comply with applicable statutes and regulations limiting the domain names that may be registered.

#### **4. REGISTRATION FEES.**

**4.1. Amount of PIR Fees.** Registrar agrees to pay PIR the fees set forth in Exhibit A for services provided by PIR to Registrar (collectively, "Fees"). PIR reserves the right to adjust the Registration Fees in a manner consistent with PIR's Registry Agreement with ICANN. In addition, Registrar agrees to pay PIR the applicable variable fees assessed to Registry Operator by ICANN, as permitted by Subsection 6.3 of the Registry Agreement by no later than ten (10) days after the date of an invoice from Registry Operator for such fees.

**4.2. Payment of PIR Fees.** In advance of incurring Fees, Registrar shall establish a letter of credit, deposit account, or other credit facility accepted by PIR ("Payment Security"), which acceptance will not be unreasonably withheld so long as payment is assured. All Fees are due immediately upon receipt of applications for initial and renewal registrations, registrations associated with transfers of sponsorship, or upon provision of other services provided by PIR to Registrar. Payment shall be made via debit or draw down of the deposit account, letter of credit or other credit facility. PIR shall provide monthly invoice statements to the Registrar. The Registrar must pay this invoice upon receipt in order to ensure timely processing of future domain name registrations.

**4.3. Non-Payment of Fees.** In the event Registrar has insufficient funds deposited or available through the letter of credit or credit facility with PIR, PIR may do any or all of the following: (a) stop accepting new initial or renewal registrations, or registrations associated with transfers of sponsorship, from Registrar; (b) delete the domain names associated with any negative balance incurred or invoice not paid in full from the Registry

database (c) give written notice of termination of this Agreement pursuant to Subsection 9.2.1; and (d) pursue any other remedy under this Agreement.

**4.4 Taxes.** All Fees due under this Agreement are exclusive of tax. All taxes, duties, fees and other governmental charges of any kind (including sales, turnover, services, use and value-added taxes, but excluding taxes based on the net income of PIR) which are imposed by or under the authority of any government or any political subdivision thereof on the fees for any services, software and/or hardware shall be borne by Registrar and shall not be considered a part of, a deduction from or an offset against such Fees. All payments due to PIR 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, PIR receives and retains (free from any liability with respect thereof) a net sum equal to the sum it would have received but for such deduction or withholding being required.

## **5. CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

**5.1. Use of Confidential Information.** During the Term of this Agreement, each party (the "Disclosing Party") may disclose its Confidential Information to the other party (the "Receiving Party"). Each party's use and disclosure of the Confidential Information of the other party shall be subject to the following terms and conditions:

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

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

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

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

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

**5.1.6.** Notwithstanding the foregoing, this Subsection 5.1 imposes no obligation upon the parties with respect to information that (i) is disclosed in the absence of a confidentiality agreement and such disclosure was agreed to by the Disclosing Party in writing prior to such disclosure; or (ii) is or has entered the public domain through no fault of the Receiving Party; or (iii) is known by the Receiving Party prior to the time of disclosure; or (iv) is independently developed by the Receiving Party without use of the Confidential Information; or (v) is made generally available by the Disclosing Party without restriction on disclosure; or (vi) is required to be disclosed by law, regulation or court order; provided, that in the event the Receiving Party is required by law, regulation or court order to disclose any of Disclosing Party's Confidential Information, Receiving Party will promptly notify Disclosing Party in writing prior to making any such disclosure in order to facilitate Disclosing Party seeking a protective order or other appropriate remedy from the proper authority, at the Disclosing Party's expense. Receiving Party agrees to cooperate with Disclosing Party in seeking such order or other remedy. Receiving Party further agrees that if Disclosing Party is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, it will furnish only that portion of the Confidential Information which is legally required.

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

## **5.2. Intellectual Property.**

**5.2.1.** Subject to the licenses granted hereunder, each party will continue to independently own its intellectual property, including all patents, trademarks, trade names, service marks, copyrights, trade secrets, proprietary processes and all other forms of intellectual property.

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

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

**6.1. Indemnification.** Registrar, at its own expense and within thirty days after presentation of a demand by PIR under this Section, will indemnify, defend and hold harmless PIR and its subcontractors, and the directors, officers, employees, representatives, agents and affiliates of each of them, against any claim, suit, action, or other proceeding brought against any such party(ies) based on or arising from any claim or alleged claim: (i) relating to any product or service of Registrar; (ii) relating to any

agreement, including Registrar's dispute policy, with any Registered Name Holder or Registrar; or (iii) relating to Registrar's domain name registration business, including, but not limited to, Registrar's advertising, domain name application process, systems and other processes, fees charged, billing practices and customer service. PIR shall provide Registrar with prompt notice of any such claim, and upon Registrar's written request, PIR will provide to Registrar all available information and assistance reasonably necessary for Registrar to defend such claim, provided that Registrar reimburses PIR for PIR'S actual and reasonable costs incurred in connection with providing such information and assistance. Registrar will not enter into any settlement or compromise of any such indemnifiable claim without PIR'S prior written consent, which consent shall not be unreasonably withheld. Registrar will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by PIR in connection with or arising from any such indemnifiable claim, suit, action or proceeding.

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

**6.3. Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES RESULTING FROM LOSS OF PROFITS OR BUSINESS INTERRUPTION, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE MAXIMUM AGGREGATE LIABILITY OF PIR AND ITS SUBCONTRACTORS EXCEED THE LESSER OF (i) THE TOTAL AMOUNT PAID TO PIR UNDER THE TERMS OF THIS AGREEMENT FOR THE IMMEDIATELY PRECEDING 12 MONTH PERIOD, OR (ii) \$100,000 USD.

**6.4. Disclaimer of Warranties.** THE REGISTRAR TOOL KIT AND ALL OTHER ITEMS PROVIDED BY PIR HEREUNDER ARE PROVIDED "AS-IS" AND WITHOUT ANY WARRANTY OF ANY KIND. PIR 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. PIR DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE REGISTRAR TOOL KIT WILL MEET REGISTRAR'S REQUIREMENTS, OR THAT THE OPERATION OF THE REGISTRAR TOOL KIT WILL BE UNINTERRUPTED

OR ERROR-FREE, OR THAT DEFECTS IN THE REGISTRAR TOOL KIT WILL BE CORRECTED. FURTHERMORE, PIR DOES NOT WARRANT NOR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE REGISTRAR TOOL KIT OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. SHOULD THE REGISTRAR TOOL KIT PROVE DEFECTIVE, REGISTRAR ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION OF REGISTRAR'S OWN SYSTEMS AND SOFTWARE.

**6.5. Reservation of Rights.** PIR reserves the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status, that it deems necessary, in its discretion; (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of PIR, as well as its affiliates, subsidiaries, officers, directors, and employees; (4) for violations of this Agreement, including, without limitation, the exhibits hereto; or (5) to correct mistakes made by PIR or any Registrar in connection with a domain name registration. PIR also reserves the right to place a domain name on registry hold, registry lock, or similar status during resolution of a dispute.

## **7. INSURANCE**

**7.1. Insurance Requirements.** Registrar shall acquire, on or before the Effective Date, at least US \$500,000 in comprehensive general liability insurance from a reputable insurance provider with a rating equivalent to an A.M. Best rating of "A" or better and shall maintain insurance meeting these requirements throughout the Term of this Agreement. Registrar shall provide a copy of the insurance policy to Registry Operator, current as of the Effective Date, upon execution of this Agreement, and from time to time thereafter upon Registry Operator's reasonable request. Such insurance shall entitle PIR to seek compensation under such policy on behalf of PIR and its subcontractors, and the directors, officers, employees, representatives, agents, and affiliates of each of them, in respect of all costs and damages (including reasonable attorney fees) which any of them may suffer by reason of Registrar's failure to meet its indemnification obligations under this Agreement.

## **8. DISPUTE RESOLUTION**

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

reallocate the attorneys' fees in conjunction with their award. The arbitrators shall render their decision within ninety days of the initiation of arbitration. Any litigation brought to enforce an arbitration award shall be brought in the state or federal courts of the state of Virginia, U.S.A.; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction. For the purpose of aiding the arbitration and/or preserving the rights of a party during the pendency of an arbitration, each party shall have the right to seek temporary or preliminary injunctive relief from the arbitration panel or a court located in the state or federal courts in the Commonwealth of Virginia, U.S.A., which shall not be a waiver of this arbitration agreement.

## **9. TERM AND TERMINATION**

**9.1. Term of the Agreement; Revisions.** The Term of this Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with the provisions of this Agreement, shall expire on the last day of the calendar month which is two (2) years following the Effective Date. This Agreement shall automatically renew for additional successive two (2) year terms unless Registrar provides notice of termination to Registry Operator at least thirty (30) days prior to the end of the initial or any renewal term. In the event that ICANN requires revisions to this form of Registry-Registrar Agreement, Registrar will either execute an amendment substituting an agreement incorporating such revisions in place of this Agreement or, at its option exercised within fifteen (15) days after receiving notice of such amendment, terminate this Agreement immediately by giving written notice to PIR. In the event that PIR does not receive such executed amendment or notice of termination from Registrar within such fifteen day period, Registrar shall be deemed to have terminated this Agreement effective immediately.

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

**9.2.1. Termination For Cause.** In the event that either party materially breaches any of its obligations under this Agreement and such breach is not substantially cured within thirty calendar days after written notice thereof is given by the other party, then the non-breaching party may, by giving written notice thereof to the other party, terminate this Agreement as of the date specified in such notice of termination.

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

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

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

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

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

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

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

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

**9.3.4.** In the event of termination in accordance with the provisions of Subsections 9.1, 9.2.1, 9.2.2, 9.2.3 or 9.2.5, PIR reserves the right to immediately contact any and all Registered Name Holders to facilitate the orderly and stable transition of Registered Name Holders to other ICANN-accredited registrars.

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

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

## **10. MISCELLANEOUS**

### **10.1. Assignments.**

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

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

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

**10.2. Notices.** Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service, by e-mail or by telecopier during business hours) to the address or telecopier number set forth beneath the name of such party below, unless such party has given a notice of a change of address in writing:

If to Registrar:

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with copy to:

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If to PIR:

Public Interest Registry  
11911 Freedom Drive, 10<sup>th</sup> Floor, Suite 1000  
Reston, VA 20190, U.S.A.  
Telephone: +1 703-889-5778  
Facsimile: +1 703-889-5779  
Attention: President and Chief Executive Officer  
Email: (As specified from time to time.)

with a copy to:

Public Interest Registry  
11911 Freedom Drive, 10<sup>th</sup> Floor, Suite 1000  
Reston, VA 20190, U.S.A  
Attention: General Counsel

**10.3. Third-Party Beneficiaries.** The parties expressly agree that ICANN is an intended third-party beneficiary of this Agreement. Otherwise, this Agreement shall not be construed to create any obligation by either party to any non-party to this Agreement, including any holder of a Registered Name. Registrar expressly acknowledges that, notwithstanding anything in this Agreement to the contrary, it is not an intended third-party beneficiary of the Registry Agreement.

**10.4. Relationship of the Parties.** Nothing in this Agreement shall be construed as creating an employer-employee or agency relationship, a partnership or a joint venture between the parties.

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

**10.6. Amendments.** No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties.

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

**10.8. Entire Agreement.** This Agreement (including its exhibits, which form a part of it) constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein.

**10.9. Counterparts.** All executed copies of this Agreement are duplicate originals, equally admissible as evidence. This Agreement may be executed in counterparts, and such counterparts taken together shall be deemed the Agreement. A facsimile copy of a signature of a party hereto shall have the same effect and validity as an original signature.

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

PUBLIC INTEREST REGISTRY [Registrar] \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

## Exhibit A

### REGISTRATION FEES

#### 1. Domain-Name Initial Registration Fee

PIR will charge a fee per annual increment of an initial registration of a Registered Name (the "Initial Registration Fee"). The Initial Registration Fee shall be paid in full by Registrar sponsoring the domain name at the time of registration. The current Initial Registration Fee as of the Effective Date is US\$ 8.25

#### 2. Domain-Name Renewal Fee

PIR will charge a fee per annual increment of a renewal of a Registered Name (the "Renewal Fee") in the Registry TLD. The Renewal Fee shall be paid in full by Registrar sponsoring the domain name at the time of renewal. The current Renewal Fee as of the Effective Date is US\$8.25.

#### 3. Fees for Transfers of Sponsorship of Domain-Name Registrations

Where the sponsorship of a domain name is transferred from one ICANN-Accredited Registrar to another ICANN-Accredited Registrar, PIR will require the registrar receiving the sponsorship to request a renewal of one year for the name. In connection with that extension, PIR will charge a Renewal Fee for the requested extension as provided in item 2 above. The transfer shall result in an extension according to the renewal request, subject to a ten-year maximum on the future term of any domain-name registration. The Renewal Fee shall be paid in full at the time of the transfer by the ICANN-Accredited Registrar receiving sponsorship of the domain name.

**4. Bulk Transfers.** For a bulk transfer approved by ICANN under Part B of the Transfer Policy, Registrar shall pay PIR US \$0 (for transfer of 50,000 names or fewer) or US \$50,000 (for transfers of more than 50,000 names).

**5. Restore Fee.** Registrar shall pay PIR a fee (the "Restore Fee") per Registered Name restored during the Redemption Grace Period; provided that PIR reserves the right, in its sole discretion, to lower such fee based on extenuating circumstances. The current Restore Fee as of the Effective Date is US\$40 per Registered Name Restored.

**6. Excess Deletion Fee.** PIR may charge registrars a fee (the "Excess Deletion Fee") for each Registered Name deleted within the five day add grace period in the event Grace Period Deletes with respect to any one calendar month are in excess of (i) ninety percent (90%) of the total number of initial registrations made by the registrar or (ii) fifty (50) domain names, whichever is greater, over that time period. The Excess Deletion Fee shall be US\$.05 (five cents) per Grace Period Delete."