



(“Defendants”) to host, maintain, and support distribution of a fraudulent and malicious mobile application known as “Shopper Helper.” Through Shopper Helper, Defendants are engaged in distributing an application that is intended to profit off of Instacart’s proprietary software and illegally access Instacart’s computer networks. Defendants have leveraged verbatim copying of Instacart’s legitimate Shopper Application (“Shopper App”) and misused Instacart’s intellectual property to create a copy-cat mobile application.

3. Based on my previous experience with similar cybercriminal defendants that conduct their operations using an online infrastructure consisting of a set of websites, domains, and IP addresses, ex parte relief is necessary, as notice to Defendants would allow them to destroy the evidence of their illicit activity and give them an opportunity to move the instrumentalities they used to conduct their unlawful activity. This would render the further prosecution of this matter futile. Based on my prior experience, I am aware that in one attempt to disable a cybercrime infrastructure known as “Rustock,” the operators of the Rustock Botnet—after learning of the attempt to disable the botnet—attempted to migrate that botnet’s command and control infrastructure to new IP addresses and attempted to delete files from the seized host servers.

4. Instacart’s counsel has not attempted to provide notice of the TRO Application to Defendants, and should not be required to provide notice at this time. I respectfully submit that good and sufficient reasons exist for this TRO Application to be made by Order to Show Cause in lieu of by notice of motion. Several companies have previously sought ex parte temporary restraining orders in the United States District Court case in *Microsoft Corporation v. John Does 1-27*, Case No. 1:10-cv-00156 (E.D. Va. 2010) (Brinkema, J.); *Microsoft v. John Does, 1-11*, Case No. 2:11-cv-00222 (W.D. Wa. 2011)

(Robart, J.); *Microsoft Corporation v. Dominique Piatti et al.*, Case No. 1:11-cv-01017 (E.D. Va., 2011) (Cacheris, J.); *Microsoft Corporation et al. v. John Does 1-39 et al.*, Case No. 12-cv-1335 (E.D.N.Y. 2012) (Johnson, J.); *Microsoft Corporation v. Peng Yong et al.*, Case No. 1:12-cv-1005-GBL (E.D. Va. 2012) (Lee, J.); *Microsoft Corp. v. John Does 1-18 et al.*, Case No. 1:13-cv-139-LMB/TCB (E.D. Va. 2013) (Brinkema, J.); *Microsoft v. John Does 1-82*, Case No. 3:13-CV-00319-GCM (W.D. N.C. 2013) (Mullen, J.); *Microsoft v. John Does 1-8*, Case No. A-13-CV-1014-SS (Sparks, J.) (W.D. Tex 2013); *Microsoft v. John Does 1-8*, Case No. 1:14-cv-811-LO-IDD (O’Grady, J.) (E.D. Va. 2014); *Microsoft v. John Does 1-3*, Case No. 1:15-cv-240-LMB/IDO (Brinkema, J.) (E.D. Va. 2015); *Microsoft v. John Does 1-5*, 1:15-cv-06565-JBW-LB (E.D.N.Y. 2015); *Microsoft Corporation v. John Does 1-2*, Case No. 1:16-cv-993 (E.D. Va., 2016) (Lee, J.); and *Microsoft Corporation v. John Does 1-2*, Case No. 1:19-cv-00716-ABJ (D.C. 2019) (Jackson, J.); *Microsoft Corporation v. John Does 1-2*, Case No. 19-cv-1582 (O’Grady, J.); *Sophos v. John Does 1-2*, No. 1:20-cv-502 (E.D. Va. 2020) (O’Grady, J.); *Microsoft Corp., et al. v. John Does 1-2*, No. 1:20-cv-1171 (E.D. Va. 2020) (Trenka, J.). Instacart, however, has not previously sought this particular ex parte relief in this district as to these particular Defendants.

5. Instacart has identified certain Internet domains as part of the infrastructure of Shopper Helper. The domains associated with Shopper Helper’s infrastructure and the contact information for registrants of the domains are set forth at Appendix A to the Complaint. A true and correct copy of Appendix A to the Complaint is attached hereto as **Exhibit 1**.

6. I understand that Instacart’s security engineers and agents have worked to determine the true identities of Defendants. On information and belief, the information

provided by Defendants when registering their domains is false. Based on my prior experience and based on Instacart's research regarding these domains, it is likely that further contact information has been provided by Defendants to the hosting companies and Internet domain name registrars during the domain name registration and maintenance process. This information may include individual and entity names, physical addresses, email addresses, facsimile numbers, and telephone numbers.

7. To the extent Defendants have provided such information, the information most likely to be accurate are e-mail addresses as, upon information and belief, such are necessary to register Internet domains and associated infrastructure. It is more likely that the email addresses exist and are functional than it is likely that the personal names and physical addresses are correct or accurate. I conclude this in part based on the fact that when registrants set up Internet domains and associated infrastructure they must receive confirmation from the Internet domain registrars or hosting companies via email in order to utilize and access the Internet domains and associated IP addresses. Other contact information, such as physical address information, is more likely to be false. I base this conclusion, in part, on past experiences relating to botnets in which IP address or domain registration name, address and telephone number were determined to be fraudulent or stolen, but the email address provided by defendants was, in fact, associated with them. Further supporting this conclusion, in May 2010, the Internet Corporation for Assigned Names and Numbers ("ICANN")—an organization that administers the domain name system—issued a study indicating the ease with which name and physical mailing addresses for domain registrations may be falsified. Attached hereto as **Exhibit 2** is a true and correct copy of the ICANN's May 2010 study, "WHOIS Proxy/Privacy Service Abuse – Definition."

8. Based on my prior experience and from Instacart's research, I believe that the most reliable contact information for effecting communication with Defendants are email addresses that have been discovered to be associated with Defendants domains or IP addresses, and the contact information, particularly email addresses, in possession of the Internet domain registrars or hosting companies. From my research, I conclude that such contact information is likely to be valid, as it is necessary to obtain Internet domain names or web hosting service. Upon provision of such contact information by the Internet domain registrars and web hosting companies to Instacart, notice of this proceeding and service of process may be attempted using such contact information. Through my research, I have not discovered any other information that would enable, at this point, further identification of or contact with Defendants other than that in the possession of these companies. I believe that absent an order directing Doe discovery, these companies will be unlikely to share contact information necessary to provide notice and service to Defendants.

## **II. NOTICE AND SERVICE OF PROCESS**

### **A. Instacart Has Robust Plans To Provide Notice**

9. On behalf of Instacart, Crowell will attempt notice of any TRO and preliminary injunction hearing, as well as service of the Complaint by sending the pleadings and/or links to the pleadings to e-mail addresses, facsimile numbers and mailing addresses associated with Defendants or otherwise provided by Defendants to the Internet domain registrars and IP address hosting companies.

10. On behalf of Instacart, Crowell will attempt notice of any TRO, preliminary injunction hearing and service of the Complaint by publishing those pleadings on a publicly accessible website located at: [noticeofpleadings.com/ShopperHelper](https://noticeofpleadings.com/ShopperHelper). Crowell will publish

such notice on the website for a period of six months. The following information will be made available on the website:

- a. The information contained in the case caption and the content of the summons.
- b. The following summary statement of the object of the complaint and the demand for relief: “Plaintiff Maplebear Inc., dba Instacart (“Instacart”) has sued Defendants John Does 1-2 associated with the Internet infrastructure and activities described in the documents listed below. Instacart alleges that Defendants have violated Federal and state law by hosting, maintaining, and distributing an application, known as “Shopper Helper,” that is intended to profit off of Instacart’s proprietary software and illegally access Instacart’s servers. Defendants have leveraged verbatim copying of Instacart’s legitimate Shopper Application (“Shopper App”) and misused Instacart’s intellectual property to create a copy-cat mobile application. Instacart seeks a preliminary injunction directing the infrastructure providers that Defendants are using to control and distribute Shopper Helper, to take all steps necessary to disable access to and operation of the Defendants’ infrastructure, to ensure that changes or access to the infrastructure cannot be made absent a court order and that all content and material associated with infrastructure are to be isolated and preserved pending resolution of the dispute. Instacart seeks a permanent injunction, other equitable relief and damages. Full copies of the pleading documents are available at [noticeofpleadings.com/ShopperHelper](http://noticeofpleadings.com/ShopperHelper).”
- c. The date of first publication.
- d. The following text: “NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY! You must “appear” in this case or the other side will win automatically. To “appear” you must file with the court a legal document called a “motion” or “answer.” The “motion” or “answer” must be given to the court clerk or administrator within 21 days of the date of first publication specified herein. It must be in proper form and have proof of service on the Instacart’s attorneys, Gabriel M. Ramsey at Crowell & Moring, 3 Embarcadero Center, 26th Floor, San Francisco, CA 94111. If you have questions, you should consult with your own attorney immediately.”

11. On behalf of Instacart, Crowell will serve each of the Internet domain registries listed at Appendix A to the Complaint with all copies of all documents served on Defendants.

12. On behalf of Instacart, Crowell will also attempt notice of any TRO and preliminary injunction hearing, as well as service of the complaint by personal delivery on any Defendant in this case that has provided existing physical addresses in the United States.

13. On behalf of Instacart, Crowell will prepare Requests for Service Abroad of Judicial or Extrajudicial Documents to attempt notice of any TRO and preliminary injunction hearing, as well as service of the Complaint on any Defendants in this case that have provided contact information in foreign countries that are signatories to the Hague Convention on Service Abroad or any similar treaty, and will comply with the requirements of those treaties. Upon entry of any TRO, Crowell will execute and deliver these documents to the appropriate Central Authority and request, pursuant to the Hague Convention or similar treaty, that the Central Authority deliver these documents to the contact information provided by Defendants. I am informed, and therefore believe, that notice of the preliminary injunction hearing and service of the Complaint could take approximately three to six months or longer through this process.

**B. Notice Under ICANN Domain Name Registration Policies**

14. Attached hereto as **Exhibit 3** is a true and correct copy of a document describing ICANN's role. Exhibit 3 reflects the following: ICANN is a not-for-profit partnership formed in 1998. ICANN coordinates domain names and IP addresses (unique identifying numbers for computers throughout the world), which enables the operation of the global Internet. ICANN's responsibilities include running an accreditation system for domain name "registrars." Domain name registrars enter into arrangements with individual "registrants" who wish to register particular domain names. ICANN has a contractual relationship with all accredited registrars that set forth the registrars' obligations. The

purpose of the requirements of ICANN's accreditation agreements with registrars is to provide a consistent and stable environment for the domain name system, and hence the Internet.

15. A true and correct copy of the 2013 ICANN Registrar Accreditation Agreement between ICANN and domain name registrars is attached hereto as **Exhibit 4**.

16. The following summarizes provisions set forth in the ICANN accreditation agreements with registrars at Exhibit 4.

**ICANN Requires That Registrants Agree To Provide Accurate Contact Information**

17. Section 3.7.7.1 of the accreditation agreement provides that domain registrants will provide the registrar accurate and reliable contact information. In particular, the domain name registrant:

“shall provide to Registrar accurate and reliable contact details and correct and update them within seven (7) days of any change during the term of the Registered Name registration, including: the full name, postal address, e-mail address, voice telephone number, and fax number if available of the Registered Name Holder; name of authorized person for contact purposes in the case of an Registered Name Holder that is an organization, association, or corporation....”

18. Section 3.7.7.2 of the accreditation agreement provides that if the registrant fails to respond for over 15 days to a registrar's inquiry about inaccurate contact information, the domain may be cancelled. In particular, the domain name registrant's:

“willful provision of inaccurate or unreliable information, its willful failure to update information provided to Registrar within seven (7) days of any change, or its failure to respond for over fifteen (15) days to inquiries by Registrar concerning the accuracy of contact details associated with the Registered Name Holder's registration shall constitute a material breach of the Registered Name Holder-registrar contract and be a basis for suspension and/or cancellation of the Registered Name registration.”

**ICANN Requires That Registrants Agree To A Dispute Resolution Policy Under Which**

**Notice Is Given By Sending The Complaint To The Registrant's Contact Information**

19. Section 3.8 of the accreditation agreement provides that registrars shall require registrants to agree to the Uniform Domain Name Dispute Resolution Policy (“UDRP”). The UDRP is a policy between a registrar and its customer and is included in registration agreements for all ICANN-accredited registrars. Attached hereto as **Exhibit 5** is a true and correct copy of the UDRP.

20. As part of the registrant's agreement to the UDRP, the registrant agrees to the Rules for Uniform Domain Name Dispute Resolution Policy (“Rules”). Attached hereto as **Exhibit 6** is a true and correct copy of the Rules.

21. Pursuant to the Rules, “Written Notice” of a complaint regarding a domain requires electronic transmittal of the complaint to a domain registrant and hardcopy notification that the complaint was sent by electronic means. In particular, “Written Notice” is defined as:

“hardcopy notification by the Provider to the Respondent of the commencement of an administrative proceeding under the Policy which shall inform the respondent that a complaint has been filed against it, and which shall state that the Provider has electronically transmitted the complaint including any annexes to the Respondent by the means specified herein. Written notice does not include a hardcopy of the complaint itself or any annexes.”

22. Pursuant to the Rules, notice of a complaint may be achieved by the registrar forwarding the complaint to the postal address, facsimile number and e-mail addresses of the domain registrant. In particular, the Rules define the procedure for providing notice as follows:

“(a) When forwarding a complaint, including any annexes, electronically to the Respondent, it shall be the Provider's responsibility to employ reasonably available means calculated to achieve actual notice to Respondent. Achieving actual notice, or employing the following measures to do so, shall discharge this responsibility:

(i) sending Written Notice of the complaint to all postal-mail and facsimile addresses (A) shown in the domain name's

registration data in Registrar's Whois database for the registered domain-name holder, the technical contact, and the administrative contact and (B) supplied by Registrar to the Provider for the registration's billing contact; and

(ii) sending the complaint, including any annexes, in electronic form by e-mail to:

(A) the e-mail addresses for those technical, administrative and billing contacts;

(B) postmaster@<the contested domain name>; and

(C) if the domain name (or "www." followed by the domain name) resolves to an active web page other than a generic page the Provider concludes is maintained by a registrar or ISP for parking domain-names registered by multiple domain-name holders), any e-mail address shown or e-mail links on that web page; and

(iii) sending the complaint, including any annexes, to any e-mail address the Respondent has notified the Provider it prefers and, to the extent practicable, to all other e-mail addresses provided to the Provider by Complainant..."

23. The effect of the UDRP and the Rules is that domain name registrants agree that notice of a complaint relating to their domains may be provided by the foregoing means, including by sending the complaint to postal, facsimile and email addresses provided by registrants.

**ICANN Requires That Registrants Agree That Domains May Be Suspended Or Cancelled Pursuant To The Dispute Resolution Policy**

24. Section 3.7.7.11 of the accreditation agreement provides that registrars shall require that a domain name registrant "shall agree that its registration of the Registered Name shall be subject to suspension, cancellation, or transfer" pursuant to ICANN's policies for the resolution of disputes concerning domain names.

**ICANN Requires That Registrants Agree Not To Use Domains In An Illegal Manner**

25. Under Section 2 of the UDRP, the domain registrant agrees that:

“By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that (a) the statements that you made in your Registration Agreement are complete and accurate; (b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (c) you are not registering the domain for an unlawful purpose; and (d) you will not knowingly use the domain name in violation of any applicable laws or regulations. It is your responsibility to determine whether your domain name registration infringes or violates someone else’s rights.”

26. Similarly, section 3.7.7.9 of the accreditation agreement provides that the domain name registrant “shall represent that, to the best of the Registered Name Holder’s knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party.”

**The Defendants’ Internet Domain Registrars Send Account-Related Information To Customer-Provided Contacts**

27. The terms of service for Internet domain registrars used by Defendants provide that their customers must provide contact information, including the email address, postal address, and a valid telephone number where they can reach their customers. These Internet domain registrars further provide that they may contact their respective customers based on the information provided by that customer. For example, GoDaddy, Inc.’s (“GoDaddy”) Hosting Terms of Service, available at <https://www.godaddy.com/legal/agreements/hosting-agreement>, include such provisions. A true and correct copy of GoDaddy’s Terms of Service attached hereto as **Exhibit 7**.

28. Based on my past experience and my research of third parties that Defendants use to provide domain name services, the other third party Internet hosting companies and Internet domain name registrars require that similar contact information be provided.

**The Defendants’ Internet Domain Name Registrars’ Terms Of Service Prohibit Customers From Using Services In An Illegal Manner**

29. The Internet domain registrars' terms of service prohibit customers, including Defendants, from using the services in an illegal manner, and customer accounts may be terminated for violation of those terms. For example, GoDaddy's agreement prohibits, among other conduct, the registered domain being used to:

- a. infringing upon the Intellectual Property Rights of Others
- b. attacking other networks (i.e. Denial of Service (DoS) attacks);
- c. accessing another network without permission, to probe or scan for vulnerabilities or breach security or authentication measures;
- d. Intercepting or monitoring data without permission;
- e. Distribute any malicious or fraudulent content.
- f. resolve, point or forward to the website with harmful information that violate the country laws and rules, or
- g. engage in other illegal actions.

30. GoDaddy's policies also provide that it may suspend or terminate its customer's services if that customer has been found to engage in prohibited conduct. Based on my past experience and my current research of other Internet domain registrars and hosting companies, and on information and belief, the other Internet domain registrars and hosting companies used by Defendants prohibit similar unlawful conduct.

**Web Hosting Companies Send Account-Related Information to Customer-Provided Contacts**

31. The terms of service of the web-hosting companies provide for sending account-related notices to contact information provided by the customers, including on information and belief, the Defendants.

32. **The Constant Company, LLC ("Choopa")**. Attached hereto as **Exhibit 8** is

a true and correct copy of Choopa's Terms of Service providing that:

- a. "You must provide Us with a primary email address that is checked regularly and frequently. All notices and communications between Us will be sent to the email address You provide, and You are therefore required to keep this address current or notify Us if Your address changes. You should notify Us if any of Your contact and/or billing information changes so that We may update Your account. It is also Your responsibility to make sure that Our domain(s), choopa.com, are not included in any spam block list used by You or Your mail provider."

**The Defendants' Web Hosting Terms of Service Prohibit Customers From Using Services In An Illegal Manner**

33. Choopa's web hosting terms of service and acceptable use policy prohibit customers, including on information and belief, Defendants, from using the services in an illegal manner, and customer accounts may be terminated for violation of the terms.

Attached hereto as **Exhibit 9** is a true and correct copy of Choopa's Acceptable Use Policy:

- a. "All Services provided by Choopa may only be used for lawful purposes."
- b. "As a condition of your use of the Services, you will not use the Services (nor will you permit an end user to use the Services) for any purpose that is unlawful or otherwise prohibited by this AUP. You may not use the Services (nor will you permit an end user to use the Services) in any manner that could damage, disable, overburden, or otherwise impair any of the Services offered by Choopa.com, or any services offered by a third party, or interfere with any other party's use and enjoyment of any of our Services. You may not (nor will you permit your end users to) obtain or attempt to obtain any materials or information through any means not intentionally made available through the Services."
- c. "Choopa may, at its sole discretion, immediately terminate Your access to the Services, and terminate this Agreement for cause, if Your conduct violates the acceptable uses outlined below, or if any of Your end users' or downstream customers' conduct violate such acceptable uses."
- d. "Upload, or otherwise make available files that contain images, photographs, software or other material protected by intellectual property laws, including, by way of example, and not as limitation, copyright or trademark laws (or by rights of privacy or publicity) unless you own or control the rights thereto or have received all necessary consents to do the same."
- e. "Use any material or information, including images or photographs, which are made available through the Services in any manner that infringes any copyright, trademark, patent, trade secret, or other proprietary right of any party."

- f. “Falsify or delete any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded.”
- g. “Harvest or otherwise collect information about others, including e-mail addresses, except as needed to operate your site and as permitted in your site's privacy policy (if any).”
- h. “Violate any applicable laws or regulations.”
- i. “Create a false identity for the purpose of misleading others.”
- j. “Utilizing bots for the purpose of repeatedly and/or automatically acquiring merchandise and anything similar that violates 3rd party ToS that could result in the blocking of Vultr IP space or ASN.”

**E-Commerce Companies Send Account-Related Information to Customer-Provided Contacts**

34. The terms of service of the e-commerce platforms provide for sending account-related notices to contact information provided by the customers, including on information and belief, the Defendants.

35. **Shopify Inc. (“Shopify”)**. Attached hereto as **Exhibit 10** is a true and correct copy of Shopify’s Terms of Service providing that:

- a. “To access and use the Services, you must register for a Shopify account (“Account”) by providing your full legal name, current address, phone number, a valid email address, and any other information indicated as required. Shopify may reject your application for an Account, or cancel an existing Account, for any reason, in our sole discretion.”

**The Defendants’ Web Hosting Terms of Service Prohibit Customers From Using Services In An Illegal Manner**

36. Shopify’s e-commerce platform terms of service and acceptable use policy prohibit customers, including on information and belief, Defendants, from using the services in an illegal manner, and customer accounts may be terminated for violation of the terms.

Attached hereto as **Exhibit 11** is a true and correct copy of Shopify’s Acceptable Use Policy:

- a. “Without limiting any other remedies, Shopify may suspend or terminate your Account if we suspect that you (by conviction, settlement, insurance or escrow investigation, or otherwise) have engaged in fraudulent activity in connection with the use of the Services.”

- b. “You may not offer goods or services, or post or upload Materials, that contravene or that facilitate or promote activities that contravene, the laws of the jurisdictions in which you operate or do business.”
- c. “You may not offer goods or services, or post or upload Materials, that infringe on the copyright or trademarks of others.”
- d. “You may not perform activities or upload or distribute Materials that harm or disrupt the operation of the Services or other infrastructure of Shopify or others, including Shopify’s third party providers. You may not use the Services for deceptive commercial practices or any other illegal or deceptive activities.”

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 16th day of April, 2021, in San Mateo, California.

  
\_\_\_\_\_  
Kayvan M. Ghaffari

# **EXHIBIT 1**

**APPENDIX A****.COM DOMAINS****Registry****VeriSign, Inc.****VeriSign Information Services, Inc.****12061 Bluemont Way****Reston Virginia 20190****United States**

SHOPPER-HELPER.COM	Domain Name: SHOPPER-HELPER.COM Registry Domain ID: 2567501652_DOMAIN_COM-VRSN Registrar WHOIS Server: whois.dnspod.com Registrar URL: https://www.dnspod.com Updated Date: 2020-11-20 17:06:24 Creation Date: 2020-10-22 15:06:23 Registry Expiry Date: 2021-10-22 15:06:23 Registrar: DNSPod, Inc. Registrar IANA ID: 1697 Registrar Abuse Contact Email: <a href="mailto:abuse@dnspod.com">abuse@dnspod.com</a> Registrar Abuse Contact Phone: +86.95716 Domain Status: ok https://www.icann.org/epp#ok Registry Registrant ID: REDACTED FOR PRIVACY Registrant Name: REDACTED FOR PRIVACY Registrant Organization: REDACTED FOR PRIVACY Registrant Street: REDACTED FOR PRIVACY Registrant City: REDACTED FOR PRIVACY Registrant State/Province: an hui sheng Registrant Postal Code: REDACTED FOR PRIVACY Registrant Country: CN Registrant Phone: REDACTED FOR PRIVACY Registrant Phone Ext: REDACTED FOR PRIVACY Registrant Fax: REDACTED FOR PRIVACY Registrant Fax Ext: REDACTED FOR PRIVACY Registrant Email: Select Contact Domain Holder link at <a href="https://whois.cloud.tencent.com/domain?domain=SHOPPER-HELPER.COM">https://whois.cloud.tencent.com/domain?domain=SHOPPER-HELPER.COM</a> Registry Admin ID: REDACTED FOR PRIVACY Admin Name: REDACTED FOR PRIVACY Admin Organization: REDACTED FOR PRIVACY Admin Street: REDACTED FOR PRIVACY Admin City: REDACTED FOR PRIVACY Admin State/Province: REDACTED FOR PRIVACY Admin Postal Code: REDACTED FOR PRIVACY Admin Country: REDACTED FOR PRIVACY Admin Phone: REDACTED FOR PRIVACY Admin Phone Ext: REDACTED FOR PRIVACY Admin Fax: REDACTED FOR PRIVACY Admin Fax Ext: REDACTED FOR PRIVACY
--------------------	---

	<p>Admin Email: Select Contact Domain Holder link at <a href="https://whois.cloud.tencent.com/domain?domain=SHOPPER-HELPER.COM">https://whois.cloud.tencent.com/domain?domain=SHOPPER-HELPER.COM</a></p> <p>Registry Tech ID: REDACTED FOR PRIVACY</p> <p>Tech Name: REDACTED FOR PRIVACY</p> <p>Tech Organization: REDACTED FOR PRIVACY</p> <p>Tech Street: REDACTED FOR PRIVACY</p> <p>Tech State/Province: REDACTED FOR PRIVACY</p> <p>Tech Postal Code: REDACTED FOR PRIVACY</p> <p>Tech Country: REDACTED FOR PRIVACY</p> <p>Tech Phone: REDACTED FOR PRIVACY</p> <p>Tech Phone Ext: REDACTED FOR PRIVACY</p> <p>Tech Fax: REDACTED FOR PRIVACY</p> <p>Tech Fax Ext: REDACTED FOR PRIVACY</p> <p>Tech Email: Select Contact Domain Holder link at <a href="https://whois.cloud.tencent.com/domain?domain=SHOPPER-HELPER.COM">https://whois.cloud.tencent.com/domain?domain=SHOPPER-HELPER.COM</a></p> <p>Registry Billing ID: REDACTED FOR PRIVACY</p> <p>Billing Name: REDACTED FOR PRIVACY</p> <p>Billing Organization: REDACTED FOR PRIVACY</p> <p>Billing Street: REDACTED FOR PRIVACY</p> <p>Billing City: REDACTED FOR PRIVACY</p> <p>Billing State/Province: REDACTED FOR PRIVACY</p> <p>Billing Postal Code: REDACTED FOR PRIVACY</p> <p>Billing Country: REDACTED FOR PRIVACY</p> <p>Billing Phone: REDACTED FOR PRIVACY</p> <p>Billing Email: Select Contact Domain Holder link at <a href="https://whois.cloud.tencent.com/domain?domain=SHOPPER-HELPER.COM">https://whois.cloud.tencent.com/domain?domain=SHOPPER-HELPER.COM</a></p> <p>Name Server: ns2.bodis.com</p> <p>Name Server: ns1.bodis.com</p> <p>DNSSEC: unsigned</p>
--	---

**.VIP DOMAINS**

**Registry**

**Minds + Machines Group Limited**  
**2505 Second Avenue, Suite 520**  
**Seattle, WA 98121**  
**United States**

**Minds and Machines, LLC**  
**3100 Donald Douglas Loop North Hanger 7**  
**Santa Monica, CA 90405**  
**United States**

SHOPPERHELPER.VIP	Domain Name: SHOPPERHELPER.VIP
-------------------	--------------------------------

Registry Domain ID:  
D\_01ADA82A\_AAFDA6F8ED534EA5B4CFB7C99F2C2F  
E1\_0000017265CF37E4-VIP  
Registrar WHOIS Server: whois.godaddy.com  
Registrar URL: http://www.goaustraliadomains.com  
Updated Date: 2020-05-30T06:39:42Z  
Creation Date: 2020-05-30T13:39:38Z  
Registrar Registration Expiration Date: 2021-05-30T13:39:38Z  
Registrar: Go Australia Domains, LLC  
Registrar IANA ID: 1151  
Registrar Abuse Contact Email: abuse@godaddy.com  
Registrar Abuse Contact Phone: +1.4806242505  
Domain Status: clientTransferProhibited  
http://www.icann.org/epp#clientTransferProhibited  
Domain Status: clientUpdateProhibited  
http://www.icann.org/epp#clientUpdateProhibited  
Domain Status: clientRenewProhibited  
http://www.icann.org/epp#clientRenewProhibited  
Domain Status: clientDeleteProhibited  
http://www.icann.org/epp#clientDeleteProhibited  
Registry Registrant ID: CR426069585  
Registrant Name: Registration Private  
Registrant Organization: Domains By Proxy, LLC  
Registrant Street: DomainsByProxy.com  
Registrant Street: 14455 N. Hayden Road  
Registrant City: Scottsdale  
Registrant State/Province: Arizona  
Registrant Postal Code: 85260  
Registrant Country: US  
Registrant Phone: +1.4806242599  
Registrant Phone Ext:  
Registrant Fax: +1.4806242598  
Registrant Fax Ext:  
Registrant Email: shopperhelper.vip@domainsbyproxy.com  
Registry Tech ID: CR426069586  
Tech Name: Registration Private  
Tech Organization: Domains By Proxy, LLC  
Tech Street: DomainsByProxy.com  
Tech Street: 14455 N. Hayden Road  
Tech City: Scottsdale  
Tech State/Province: Arizona  
Tech Postal Code: 85260  
Tech Country: US  
Tech Phone: +1.4806242599  
Tech Phone Ext:  
Tech Fax: +1.4806242598  
Tech Fax Ext:  
Tech Email: shopperhelper.vip@domainsbyproxy.com  
Registry Admin ID: CR426069587

	<p>Admin Name: Registration Private  Admin Organization: Domains By Proxy, LLC  Admin Street: DomainsByProxy.com  Admin Street: 14455 N. Hayden Road  Admin City: Scottsdale  Admin State/Province: Arizona  Admin Postal Code: 85260  Admin Country: US  Admin Phone: +1.4806242599  Admin Phone Ext:  Admin Fax: +1.4806242598  Admin Fax Ext:  Admin Email: shopperhelper.vip@domainsbyproxy.com  Name Server: NS67.DOMAINCONTROL.COM  Name Server: NS68.DOMAINCONTROL.COM  DNSSEC: unsigned</p>
SSQIAN.VIP	<p>Domain Name: SSQIAN.VIP  Registry Domain ID:  D_012A9006_D8C4AB3C35504DA9A8A3E26EC927FC13_0000016CBA249827-VIP  Registrar WHOIS Server: whois.godaddy.com  Registrar URL: <a href="http://www.godaddy.com">http://www.godaddy.com</a>  Updated Date: 2019-08-22T22:47:53Z  Creation Date: 2019-08-22T16:24:16Z  Registrar Registration Expiration Date: 2022-08-22T16:24:16Z  Registrar: GoDaddy.com, LLC  Registrar IANA ID: 146  Registrar Abuse Contact Email: <a href="mailto:abuse@godaddy.com">abuse@godaddy.com</a>  Registrar Abuse Contact Phone: +1.4806242505  Domain Status: clientTransferProhibited  <a href="http://www.icann.org/epp#clientTransferProhibited">http://www.icann.org/epp#clientTransferProhibited</a>  Domain Status: clientUpdateProhibited  <a href="http://www.icann.org/epp#clientUpdateProhibited">http://www.icann.org/epp#clientUpdateProhibited</a>  Domain Status: clientRenewProhibited  <a href="http://www.icann.org/epp#clientRenewProhibited">http://www.icann.org/epp#clientRenewProhibited</a>  Domain Status: clientDeleteProhibited  <a href="http://www.icann.org/epp#clientDeleteProhibited">http://www.icann.org/epp#clientDeleteProhibited</a>  Registrant Organization:  Registrant State/Province: Beijing  Registrant Country: CN  Registrant Email: Select Contact Domain Holder link at <a href="https://www.godaddy.com/whois/results.aspx?domain=ssqian.vip">https://www.godaddy.com/whois/results.aspx?domain=ssqian.vip</a>  Tech Email: Select Contact Domain Holder link at <a href="https://www.godaddy.com/whois/results.aspx?domain=ssqian.vip">https://www.godaddy.com/whois/results.aspx?domain=ssqian.vip</a></p>

	Admin Email: Select Contact Domain Holder link at <a href="https://www.godaddy.com/whois/results.aspx?domain=ssqian.vip">https://www.godaddy.com/whois/results.aspx?domain=ssqian.vip</a> Name Server: BOB.NS.CLOUDFLARE.COM Name Server: CRUZ.NS.CLOUDFLARE.COM DNSSEC: unsigned
--	---

**IP ADDRESS****Hosting Company**

**Choopa LLC**  
**100 Matawan Rd**  
**Matawan, NJ 07747**  
**United States**

**Choopa LLC**  
**The Constant Company, LLC**  
**319 Clematis St. Suite 900**  
**West Palm Beach, FL 33401**  
**United States**

167.179.75.11	irt: IRT-CHOOPALLC-AP address: 100 Matawan Rd, Matawan NJ 07747 e-mail: abuse@choopa.com abuse-mailbox: abuse@choopa.com admin-c: CLA15-AP tech-c: CLA15-AP auth: # Filtered remarks: abuse@choopa.com was validated on 2021-02-09 mnt-by: MAINT-CHOOPALLC-AP last-modified: 2021-02-09T13:51:43Z source: APNIC  role: ABUSE CHOOPALLCAP address: 100 Matawan Rd, Matawan NJ 07747 country: ZZ phone: +0000000000 e-mail: abuse@choopa.com admin-c: CLA15-AP tech-c: CLA15-AP nic-hdl: AC1765-AP remarks: Generated from irt object IRT-CHOOPALLC-AP abuse-mailbox: abuse@choopa.com mnt-by: APNIC-ABUSE last-modified: 2020-06-18T15:26:12Z source: APNIC
---------------	--

	<p>role: Choopa LLC administrator  address: 100 Matawan Rd, Matawan NJ 07747  country: US  phone: +1-973-849-0501  fax-no: +1-973-849-0501  e-mail: abuse@choopa.com  admin-c: CLA15-AP  tech-c: CLA15-AP  nic-hdl: CLA15-AP  mnt-by: MAINT-CHOOPALLC-AP  last-modified: 2014-11-18T00:32:03Z  source: APNIC</p> <p>route: 167.179.64.0/18  origin: AS20473  descr: Choopa, LLC  14 Cliffwood Ave  Suite 300  mnt-by: MAINT-CHOOPALLC-AP  last-modified: 2020-04-21T14:40:04Z  source: APNIC</p>
--	--

**E-COMMERCE ACCOUNT**

**E-Commerce Account Provider**

**Shopify, Inc.**  
**c/o**  
**The Corporation Trust Company**  
**1209 Orange St**  
**Wilmington, DE 19808**  
**United States**

**Shopify (USA), Inc.**  
**33 New Montgomery St., Suite 750**  
**San Francisco, CA 94105-4537**  
**United States**

<p>E-commerce account associated with the domain ShopperHelper.vip</p>	<p>Shopify, Inc.  Shopify (USA), Inc.</p>
--	---

## **EXHIBIT 2**

## WHOIS Proxy/Privacy Abuse Study

---

### Contents

1. Objective .....	1
2. Approach .....	2
3. Inputs.....	2
4. Outputs.....	8
5. References.....	11

### WHOIS Proxy / Privacy Service Abuse Study – Draft Definition

This study will measure how often domains associated with illegal or harmful Internet communication abuse Privacy/Proxy services to obscure the perpetrator’s identity.

*Reviewer feedback is requested on study purpose, methodology, inputs, dependencies, outputs, and limitations – key discussion questions are highlighted by boxes like this one.*

#### 1. Objective

This study is intended to help the ICANN community determine the extent to which Proxy and Privacy services are abused during illegal or harmful Internet communication. Specifically, it will attempt to prove/disprove the following hypothesis:

**A significant percentage of the domain names used to conduct illegal or harmful Internet activities are registered via Privacy or Proxy services to obscure the perpetrator’s identity.**

As defined by [1], "illegal or harmful communication" refers to online activities (e.g., email messages, web transactions, file downloads) that violate criminal or civil law or which harm their targets (e.g., email/download recipients, website visitors). These activities include unsolicited commercial bulk email (spam), online intellectual property or identity theft, email harassment or stalking, phishing websites, online malware dissemination, and cybersquatting. Further examples include DoS attacks, DNS cache poisoning, pirated software (warez) distribution sites, money laundering email (mules scams), advanced fee fraud email (411 scams), and online sale of counterfeit merchandise or pharmaceuticals.

Allegations of actionable harm may require victims, law enforcement officials, and others to contact domain users (i.e., owners or licensees). To facilitate identification and contact, section 3.3.1 of the ICANN Registrar Accreditation Agreement (RAA) [4] requires Registrars to provide an interactive web page and a port 43 WHOIS service to enable free access to up-to-date data concerning all active registered domain names. This WHOIS data includes the name and postal address of the Registered Name Holder and technical and administrative contacts for the domain.

## WHOIS Proxy/Privacy Abuse Study

---

According to [1], Proxy and Privacy registration services provide anonymity or privacy protection for domain users. *Privacy* services hide certain user details from WHOIS by offering alternate contact information and mail forwarding services while not actually shielding the user's identity. *Proxy* services have a third-party register domain names on the user's behalf and then license the use of the domain name so that a third-party's contact information (and not the licensee's) is published in WHOIS. According to the WHOIS Privacy/Proxy Prevalence Study [3], approximately 15 to 25 percent of gTLD domain names are likely to be registered using a Privacy or Proxy service.

Study proposals [8][9][10] suggest that Privacy/Proxy services are being abused to obscure the identity of perpetrators that instigate illegal or harmful Internet communication, thereby impeding investigation. For example, proposal [8] indicates that Privacy/Proxy registrations lengthen phishing website take-down times. Proposal [9] indicates that Privacy/Proxy services are being abused to shield cyber squatters (i.e., parties that register or use a domain name in bad faith to profit from someone else's trademark).

A recent study of 384 domains hosted by ISP 3FN (shut down in June 2009 for abetting criminal activity) found that 38 percent were registered to Proxy services [11]. Of those, approximately half were associated with least one kind of illegal activity. Although small and informal, this study illustrated that domains used by criminals do use Proxy services – in this case, more often than the random domains studied by [3].

To provide the ICANN community with empirical data to evaluate such concerns, this study will methodically analyze a large, broad sample of domains associated with various kinds of illegal or harmful Internet activities. It will measure how often these alleged “bad actors” abuse Privacy/Proxy services, comparing rates for each kind of activity to overall Privacy/Proxy rates measured by [3]. If those rates are found to be significant, policy changes may be warranted to deter Privacy/Proxy abuse.

Note: This study will NOT measure the frequency of illegal/harmful Internet activity. This study will gather a representative sample of illegal/harmful incidents to measure how often Privacy/Proxy services are abused by perpetrators (alleged and confirmed).

### **2. Approach**

This hypothesis will be tested by performing a descriptive study on a representative sample of domains within the top five gTLDs (.biz, .com, .info, .net, .org). To focus on study goals, this sample will be composed exclusively of domains involved in illegal or harmful Internet communication, as documented by organizations that routinely track, investigate, and/or remediate various kinds of activities. To measure frequency of abuse, this study will divvy sampled domain users into those that can be reached directly using WHOIS data and those that must be contacted via a referenced Privacy/Proxy service.

Because creating a single sample that proportionally represents every major kind of illegal or harmful Internet communication is unrealistic, subsamples will be created for each activity to be studied (e.g., a spam sender list, a warez site list). Many domains are

## WHOIS Proxy/Privacy Abuse Study

---

likely to be associated with multiple activities and may thus appear in more than one subsample. However, rates will be measured independently for each subsample to determine which activities most often abuse Privacy/Proxy services.

Furthermore, because the nature and duration of illegal/harmful Internet activities varies, different methods will be required for incident tracking, investigation, and remediation.

- Timely response is essential for extremely **short-lived activities** (e.g., spam, phishing, DoS attacks). Where possible, domain subsamples for these activities will be generated by monitoring **live-feeds** (e.g., real-time blacklists), letting researchers query and record WHOIS data in near-real-time.
- Timely response is less critical for activities associated with **long-lived activities** (e.g., trademark infringement, cybersquatting). Subsamples for these activities would be impossible to generate in near-real-time; live-feeds do not exist. Instead, these domains and WHOIS data will be **recorded over time** by study participants routinely involved in these incidents (e.g., first responders and real-time cybercrime researchers, complaint centers and law enforcement agencies, victim advocates).

To meet this study's goals, Privacy/Proxy determination must be based on WHOIS data as it was at the time of the incident. WHOIS queries usually return Registrant data long after an offending domain's web, file, or mail servers disappear, appear on an RBL, or are taken down. However, WHOIS data may well change following illegal activity, such as when a malicious domain is suspended or re-registered. Study goals can still be met so long as a significant percentage of WHOIS queries performed shortly after incidents do not return recently-updated or no Registrant data.

Note that other WHOIS studies [3][6][7] have been defined to measure the overall frequency of Privacy/Proxy use, what types of entities (e.g., natural or legal persons) commonly use Privacy/Proxy-registered domains and for what apparent purpose (e.g., personal or commercial), and how Privacy/Proxy providers respond to domain user reveal requests. Those questions are therefore outside the scope of this study.

However, overall frequency of Privacy/Proxy use [3] must be considered when sizing this study's subsamples so that they represent the top 5 gTLD domain population with a 95% confidence interval. Furthermore, because harmful/illegal Internet communication tends to originate from certain countries and regions, live-feeds and incident reports may be geographically skewed. To reflect world-wide experiences, subsamples must be generated from input sources with international scope – for example, global RBLs.

Finally, this study should build upon the foundation laid by the WHOIS Accuracy Study [2] and WHOIS Privacy/Proxy Prevalence Study [3] as follows.

- **Sample Cleaning and Coding:** WHOIS data for every domain name must include certain mandatory values (e.g., Registrant Name), but there is no RFC-standard record format or even a single global database from which WHOIS data can be

## WHOIS Proxy/Privacy Abuse Study

---

obtained. The Accuracy Study [2] developed a methodology for cleaning sampled domain WHOIS data to eliminate parsing errors, translate non-ASCII characters, map Registrants to country code/name, and sort the sample by Regional Internet Registry.

- **Registrant Type Classification:** Next, based on WHOIS Registrant Name and Organization values, the Accuracy Study assigned each sampled domain one of the following Apparent Registrant Types: name completely missing or patently false, a natural person, an organization with or without a person's name, a multiple domain name holder (ISP or reseller), or a potential Privacy/Proxy service provider. All potential Privacy/Proxy service providers were then either confirmed or reclassified.

Even though this study's sample design process and parameters differ, researchers are strongly encouraged to apply the same sample cleaning, coding, and classification process to reduce cost and promote consistency across all WHOIS studies. In particular, the Accuracy Study's methodology for confirming potential Privacy/Proxy use should be applied, as this is the key differentiator upon which this study's findings will be based.

### 3. Inputs

The first step in conducting this study will be to generate subsamples of domain names associated with each kind of illegal or harmful Internet communication to be measured. As noted in Section 2, because activity nature and duration varies, this study will employ two different research methods: Live-Feed Monitoring for incidents typically reported in real-time and Offline Third-Party Recording for all other kinds of incidents.

#### **Method 1: Live-Feed Monitoring**

Domain names associated with the following short-live illegal/harmful Internet activities should ideally be collected from live-feed sources. Possible sources are listed below; additional suggestions are welcome. Researchers are expected to refine and finalize this source list during the first phase of the study.

As alleged "bad actors" are identified from live-feeds, reverse DNS lookups and WHOIS queries will be performed in near-real-time<sup>1</sup> to record the Registrant's Name, Organization, and Address for domain names associated with each incident. Note that "associated domain name" depends upon the type of activity (e.g., spam sender, phishing website, malware server).

Note that, after incident investigation, many alleged bad actors do not end up being the real perpetrators. For example, many spam senders and phishing servers will be "bots" -- compromised hosts used by criminals without the Registrant's knowledge. Furthermore, domains may be added to RBLs based on complaints rather than verified incidents.

---

<sup>1</sup> Researchers will need to work around port 43 rate limits by pacing WHOIS queries, retrying failed queries, arranging for preferential access from a WHOIS query provider, or enlisting the help of a live-feed supplier that already has preferential access.

## WHOIS Proxy/Privacy Abuse Study

---

However, these “false positive” incident reports still require investigation; WHOIS Registrant data for those domains plays a role in enabling (or inhibiting) investigation. Therefore, this study must gather and analyze the WHOIS data associated with *all* alleged bad actors (proven or otherwise). To avoid skewing results, this study will *also* analyze refined samples that have been filtered to weed out low-probability cases – for example, eliminating domains associated with fewer than N reported incidents. Objective sample filtering methods should be defined by researchers at study start; suggestions are welcome.

Once sufficiently large subsamples have been collected for each activity, they will be cleaned, coded, and classified by Registrant Type as described in Section 2 for statistical analysis as described in Section 4.

- **Spam:** Live-feeds from several major real-time Domain Name System Blacklists (DNSBLs) could be used to generate a subsample of spam sender IP addresses/ranges and associated unique domain names. Possible sources include [Spamhaus Blocklist](#), [Mailshell Live-Feed](#), [SURBL](#), [URIBL](#), and [SORBS DNSBL](#).
- **Phishing:** Several major Phishing website live-feeds could be used to generate a subsample of phishing URLs and the domain names that host them. Possible sources include OpenDNS [PhishTank](#) and Internet Identity [RealPhish](#).
- **Malware:** A subsample of domains used to host and disseminate malware could be created from live-feeds maintained by major malware researchers and/or Internet security vendors. Possible sources include SRI [Malware Threat Center](#), [FireEye Malware Analysis & Exchange](#), and [Malware Domains](#).
- **Denial-of-Service and DNS Cache Poisoning:** Input is requested on live-feed sources that could be used to generate subsamples of domains that send harmful messages during these time-sensitive attacks. Potential sources include the [IMPACT Global Response Centre NEWS](#) feed and [FIRST](#)-member incident response teams.

### **Method 2: Offline Third-Party Recording**

Domain names associated with less time-critical illegal/harmful activities will be gathered from third-parties that routinely respond to or track such incidents in large volume and might be willing to assist by recording WHOIS data early in their investigation. Candidates include first responders and real-time cybercrime researchers, Internet crime complaint centers and law enforcement agencies, and victim advocates. Possible participants are listed below; additional suggestions are welcome. Researchers are expected to refine and finalize this participant list during the first phase of the study.

Consistency and accuracy of reported data is always a concern whenever numerous independent parties supply input for aggregate statistical analysis. To address this concern, researchers will develop a short, simple incident reporting form and process that participants can use to record the type of illegal/harmful activity, associated domain name, and WHOIS Registrant Name, Organization, and Address in a timely fashion. Here

## WHOIS Proxy/Privacy Abuse Study

---

again, note that "associated domain name" depends upon the type of activity (e.g., phishing website, warez server, money laundering email sender).

At study start, researchers will identify and invite representative sources to participate. All participants must agree to record and report all incidents encountered as part of their normal operation during a specified study period (e.g., 30 days). In particular, participants shall be asked to report all alleged perpetrators (proven or otherwise), and to indicate whether investigation confirmed or refuted their alleged involvement in the incident. This data collection approach makes it possible to study both the entire sample and a refined sample, filtered to focus on high-probability bad actors.

Although these longer-lived incidents may not be as time-sensitive as those monitored by live-feed, participants must still perform reverse DNS lookups and WHOIS queries on alleged perpetrator IP addresses and domain names as soon as possible after incidents are detected, not at the end of the study period.

A submission process will be designed to minimize participant effort while promoting consistent, accurate reporting. After a sufficiently large/broad set of third-party reports have been submitted, researchers will clean, code, and classify WHOIS data by Registrant Type as described in Section 2 for analysis as described in Section 4.

- **Phishing:** In proposal [8], the Anti Phishing Working Group (APWG) offered to supply a global list of phishing URLs, domains used to host them, and associated shutdown times. Due to the short duration of phishing sites, live-feed monitoring is preferable. However, analyzing this activity with both research methods might be useful to determine whether results differ significantly.
- **Cybersquatting:** Data on domains cited in alleged cybersquatting incidents might be gathered by organizations like the International Trademark Association (INTA). Approved dispute resolution service providers involved in ICANN's Uniform Domain-Name Dispute Resolution Policy (UDRP) are another possible source, although waiting until a dispute is filed to query WHOIS may be too much delay.
- **Intellectual property theft:** Data on domains cited in intellectual property theft complaints might be gathered by organizations like the UK Alliance Against IP Theft or the International Intellectual Property Rights (IPR) Advisory Program. However, data might be more readily available from groups that routinely record and investigate specific kinds of IP theft complaints, described below.
- **Media Piracy:** Data on domain names used by servers that illegally share copyrighted movies and music might be gathered by The International Federation of the Phonographic Industry (IFPI), the Motion Picture Association of America (MPAA), the Recording Industry Association of America (RIAA), and their international counterparts.

## WHOIS Proxy/Privacy Abuse Study

---

- **Software Piracy:** Data on domain names used by servers that illegally distribute copyrighted software might be gathered by major software vendors like Microsoft and Adobe or from an anti-piracy organization like the Business Software Alliance (BSA).
- **Trademark Infringement:** Data on domain names alleged to infringe upon registered trademarks might be gathered by an organization like the International Trademark Association (INTA) or commercial first-responders like Mark Monitor.
- **Counterfeit Merchandise:** Data on domains that send email advertising counterfeit merchandise and illegal pharmaceuticals might be gathered by an investigative agency like the US National Intellectual Property Rights Coordination Center Cyber Crimes Section (CCS). However, given that spam (one primary vector for online sale of counterfeit merchandise) can be studied more easily via live-feed, it might not be necessary to study this activity with method 2.
- **Money Laundering:** Data on domains that send recruiting email associated with fraudulent money laundering scams might be gathered by legitimate job recruitment websites like Monster and HotJobs or by an organization like BobBear that focuses specifically on tracking this type of illegal activity.
- **Advanced Fee Fraud:** Data on domains that send solicitation email associated with advanced fee fraud scams might be gathered by a tracking site like Artists Against 419 or bodies that handle Internet fraud complaints such as the FBI/NWCC Internet Crime Complaint Center (IC3) and its counterparts in other countries.
- **Identity Theft:** Data on domains that send bait email associated with online identity thefts might be gathered by the FBI/NWCC Internet Crime Complaint Center (IC3) or the US National Intellectual Property Rights Coordination Center Identity Fraud Initiative. However, major online identity theft vectors like phishing and malware can be studied more easily via live-feed monitoring; reliably correlating reported identity thefts to specific email messages and domains that caused them could be difficult.
- **Child Pornography:** Data on domain names of servers involved in online distribution of child pornography might be gathered by US National Intellectual Property Rights Coordination Center Cybercrimes Child Exploitation Section (CES) and Operation Predator. However, study [11] found it hard to obtain WHOIS data for child porn domains because, not only were sites taken down, but domain names were suspended.
- **Harassment or Stalking:** Input is requested on how to obtain a representative subsample of domain names that send online harassment and cyber-stalking email. Incidents are reported to local law enforcement agencies like FBI field offices. While HaltAbuse.org tracks statistics, based upon data supplied voluntarily by victims, many victims are reluctant to disclose these crimes. The highly personal nature of these activities could make it difficult to obtain a representative subsample.

## WHOIS Proxy/Privacy Abuse Study

---

- **Other Cybercrimes:** The FBI/NWCC Internet Crime Complaint Center (IC3) might also be able to supply data on perpetrator domains cited in complaints by victims of other cybercrimes, including online auction, investment fraud, and Internet extortion.

Because domain subsamples are likely to have some degree of cross-over, other readily-available online resources can be consulted to confirm and expand upon the kinds of illegal or harmful Internet communication associated with each domain. For example, in addition to RBLs, study [11] searched for domains using ReputationAuthority.org, Google Safe Browsing, McAfee SiteAdvisor, and Malware Domain List (either by searching a published list or by attempting to browse a website).

For each sampled domain, an **Apparent Registrant Type** must be assigned using the methodology defined by the WHOIS Accuracy Study [2], including confirmation of all domains potentially registered using Privacy/Proxy services. After this classification has been completed, the following input data will be available for each sampled domain:

### Raw Data recorded by monitoring live-feed or reported by study participants

- Domain Name
- Registrant Name (may be a Privacy/Proxy service)
- Registrant Organization (may be a Privacy/Proxy service)
- Full WHOIS record for the domain
- Number of Illegal or Harmful Activity reported for this domain
- Kind(s) of Illegal or Harmful Activity reported for this domain
- Input Source(s) which supplied this domain name
- Incident Investigation Outcome (confirmed, refuted, in-progress/unknown)

### Additional Data supplied by researchers

- Apparent Registrant Country Code/Name
- Apparent Registrant Type: missing/false, natural person, organization, multiple domain holder, or Privacy/Proxy service provider
- Additional Kind(s) of Illegal or Harmful Activity associated with this domain, as determined by searching RBLs and site reputation lists

1. *Suggest additional authoritative participants with global scope?*
2. *Will participants be willing (or able) to collect representative data?*
3. *Objective filtering methods or criteria to eliminate false positive reports?*
4. *Other concerns or issues regarding viability of proposed study methods?*

## 4. Outputs

This study will quantify the frequency of Privacy/Proxy use among domains allegedly involved in illegal or harmful communication, broken down by kind of activity. To deliver these empirical results, this study will examine the WHOIS Registrant data associated with each sampled domain as follows.

## WHOIS Proxy/Privacy Abuse Study

---

- During classification, some domains will be found to have missing, patently false, or otherwise unusable WHOIS Registrant data, thereby impeding perpetrator identification. These domains represent another method of WHOIS abuse which should be measured and included in study findings, but do not constitute Privacy/Proxy abuse.
- During classification, some domains will be found to have WHOIS Registrant data that explicitly identifies and supplies direct contact information for a natural person, an organization (with or without a person's name), or a multiple domain holder. These Registrants may or may not actually be responsible for the reported illegal or harmful communication. For example, many domain names will be mapped to spambot-compromised residential broadband hosts or trojan-hacked websites operated by legitimate businesses. However, for the purposes of this study, the users of these domains shall be considered readily-identifiable and directly-contactable using Registrant data returned from a simple WHOIS query.
- The rest of the sample will consist of domains that, following classification, have WHOIS Registrant data that identifies an apparent Privacy/Proxy provider. For the purposes of this study, all such domains will be considered to have abused a Privacy/Proxy service for the purpose of obscuring perpetrator identification. To determine significance, this abuse rate shall be compared to the overall rate of Privacy/Proxy use measured by [3] (15-25%).

For each kind of activity studied, the following measurements will be derived from the entire subsample of alleged bad actors (including bots and other false positives):

- Percentage of entire sample that could not be analyzed, categorized by reason (e.g., false/missing WHOIS, recently modified WHOIS, suspended domain)
- Percentage of entire sample with Registrant NOT obscured via Privacy/Proxy, distributed by gTLD/country
- Percentage of entire sample apparently registered via Privacy service, distributed by gTLD/country
- Percentage of entire sample apparently registered via Proxy service, distributed by gTLD/country

For each kind of activity studied, similar measurements will also be derived from a refined subsample, filtered to reduce false positives and focus on confirmed bad actors:

- Percentage of refined sample that could not be analyzed, categorized by reason
- Percentage of refined sample with Registrant NOT obscured via Privacy/Proxy, distributed by gTLD/country
- Percentage of refined sample apparently registered via Privacy service, distributed by gTLD/country
- Percentage of refined sample apparently registered via Proxy service, distributed by gTLD/country

## WHOIS Proxy/Privacy Abuse Study

---

Finally, these results will be aggregated and used to answer the following questions:

- Are Privacy services abused more/less often by bad actors (alleged or confirmed)?
- Are Proxy services abused more/less often by bad actors (alleged or confirmed)?
- Which illegal/harmful activities are most likely to abuse Privacy/Proxy services?
- Which illegal/harmful activities are least likely to abuse Privacy/Proxy services?
- Were there any kinds of illegal/harmful Internet communication for which Privacy/Proxy abuse could not be studied in a reliable way and why?

## WHOIS Proxy/Privacy Abuse Study

---

### 5. References

- [1] Working Definitions for Key Terms that May be Used in Future WHOIS Studies, GNSO Drafting Team, 18 February 2009
- [2] Proposed Design for a Study of the Accuracy of Whois Registrant Contact Information (6558,6636), NORC, June 3, 2009
- [3] ICANN's Study on the Prevalence of Domain Names Registered using a Privacy or Proxy Service among the top 5 gTLDs, ICANN, September 28, 2009
- [4] Registrar Accreditation Agreement (RAA), ICANN, 21 May 2009
- [5] Terms of Reference for WHOIS Misuse Studies, ICANN, September 2009
- [6] Terms of Reference for WHOIS Registrant Identification Studies, ICANN, Oct 2009
- [7] Terms of Reference for WHOIS Privacy/Proxy Reveal Studies, ICANN, In Progress
- [8] Study Suggestion Number 13b/c, Measure growth of proxy/privacy services vis-à-vis all registrations, Laura Mather
- [9] Study Suggestion Number Study 17, Identify why proxy/privacy service users use those services, Claudio DiGangi
- [10] GAC Data Set 11, What is the percentage of domain names registered using proxy or privacy services that have been associated with fraud or other illegal activity, GAC Recommendations for WHOIS Studies, 16 April 2008
- [11] Private Domain Registrations: Examining the relationship between private domain registrations and malicious domains at 3FN, Piscitello, October 2009

## **EXHIBIT 3**

2/19/2015

Resources - ICANN

Welcome to the new ICANN.org! Learn more, and send us your feedback. [✕ Dismiss](#)

Translations Français Español العربية

Русский 中文

[Log In](#) [Sign Up](#)

Search ICANN.org



[GET STARTED](#) [NEWS & MEDIA](#) [POLICY](#) [PUBLIC COMMENT](#) [RESOURCES](#)

[COMMUNITY](#) [IANA STEWARDSHIP & ACCOUNTABILITY](#)

Resources

## What Does ICANN Do?

▼ [About ICANN](#)

▶ [Learning](#)

▼ [Participate](#)

[What ICANN Does](#)

[Effect on the Internet](#)

[What's Going On Now](#)

[How to Participate](#)

[Newcomers Program](#)

▶ [Fellowships](#)

[President's Corner](#)

[ICANN](#)

This page is available in: العربية | Deutsch | English | Español | Français | Italiano | 日本語 | 한국어 | Português | Русский | 中文

To reach another person on the Internet you have to type an address into your computer - a name or a number. That address has to be unique so computers know where to find each other. ICANN coordinates these unique identifiers across the world. Without that coordination we wouldn't have one global Internet.

ICANN was formed in 1998. It is a not-for-profit partnership of people from all over the world dedicated to keeping the Internet secure, stable and interoperable. It promotes competition and develops policy on the Internet's unique identifiers.

ICANN doesn't control content on the Internet. It cannot stop spam and it doesn't deal with access to the Internet. But through its coordination role of the Internet's naming system, it does have an important impact on the expansion and evolution of the Internet.

### **What is the domain name system?**

2/19/2015

Resources - ICANN

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>Management Organization Chart</li> <li>Staff</li> <li>Careers</li> <li>▶ In Focus</li> <li>▶ For Journalists</li> </ul>   | <p>The domain name system, or <u>DNS</u>, is a system designed to make the Internet accessible to human beings. The main way computers that make up the Internet find one another is through a series of numbers, with each number (called an "<u>IP</u> address") correlating to a different device. However it is difficult for the human mind to remember long lists of numbers so the <u>DNS</u> uses letters rather than numbers, and then links a precise series of letters with a precise series of numbers.</p>   |
| <ul style="list-style-type: none"> <li>▶ Board</li> <li>▶ Accountability &amp; Transparency</li> <li>▶ Governance</li> <li>▶ Groups</li> <li>▶ Contractual Compliance</li> <li>▶ Registrars</li> <li>▶ Registries</li> <li>Operational Metrics</li> <li>▶ Identifier Systems Security, Stability and Resiliency (IS-SSR)</li> <li>▶ ccTLDs</li> <li>▶ Internationalized Domain Names</li> <li>▶ Universal Acceptance Initiative</li> </ul> | <p>The end result is that <u>ICANN</u>'s website can be found at "icann.org" rather than "192.0.32.7" – which is how computers on the network know it. One advantage to this system – apart from making the network much easier to use for people – is that a particular domain name does not have to be tied to one particular computer because the link between a particular domain and a particular <u>IP</u> address can be changed quickly and easily. This change will then be recognised by the entire Internet within 48 hours thanks to the constantly updating <u>DNS</u> infrastructure. The result is an extremely flexible system.</p> <p>A domain name itself comprises two elements: before and after "the dot". The part to the right of the dot, such as "com", "net", "org" and so on, is known as a "top-level domain" or <u>TLD</u>. One company in each case (called a registry), is in charge of all domains ending with that particular <u>TLD</u> and has access to a full list of domains directly under that name, as well as the <u>IP</u> addresses with which those names are associated. The part before the dot is the domain name that you register and which is then used to provide online systems such as websites, email and so on. These domains are sold by a large number of "registrars", free to charge whatever they wish, although in each case they pay a set per-domain fee to the particular registry under whose name the domain is being registered.</p> <p><u>ICANN</u> draws up contracts with each registry*. It also runs an accreditation system for registrars. It is these contracts that provide a consistent and stable environment for the domain name system, and hence the Internet.</p> <p>In summary then, the <u>DNS</u> provides an addressing system for the Internet so people can find particular websites. It is also the basis for email and many other online uses.</p> |

2/19/2015

Resources - ICANN

- ▶ Policy
- ▶ Public Comment
- ▶ Contact
- ▶ Help

### **What does ICANN have to do with IP addresses?**

ICANN plays a similar administrative role with the IP addresses used by computers as it does with the domain names used by humans. In the same way that you cannot have two domain names the same (otherwise you never know where you would end up), for the same reason it is also not possible for there to be two IP addresses the same.

Again, ICANN does not run the system, but it does help co-ordinate how IP addresses are supplied to avoid repetition or clashes. ICANN is also the central repository for IP addresses, from which ranges are supplied to regional registries who in turn distribute them to network providers.

### **What about root servers?**

Root servers are a different case again. There are 13 root servers – or, more accurately, there are 13 IP addresses on the Internet where root servers can be found (the servers that have one of the 13 IP addresses can be in dozens of different physical locations). These servers all store a copy of the same file which acts as the main index to the Internet's address books. It lists an address for each top-level domain (.com, .de, etc) where that registry's own address book can be found.

In reality, the root servers are consulted fairly infrequently (considering the size of the Internet) because once computers on the network know the address of a particular top-level domain they retain it, checking back only occasionally to make sure the address hasn't changed. Nonetheless, the root servers remain vital for the Internet's smooth functioning.

The operators of the root servers remain largely autonomous, but at the same time work with one another and with ICANN to make sure the system stays up-to-date with the Internet's advances and changes.

### **What is ICANN's role?**

As mentioned earlier, ICANN's role is to oversee the huge and complex interconnected network of unique identifiers that allow

2/19/2015

Resources - ICANN

computers on the Internet to find one another.

This is commonly termed “universal resolvability” and means that wherever you are on the network – and hence the world – that you receive the same predictable results when you access the network. Without this, you could end up with an Internet that worked entirely differently depending on your location on the globe.

### **How is ICANN structured?**

ICANN is made up of a number of different groups, each of which represent a different interest on the Internet and all of which contribute to any final decisions that ICANN's makes.

There are three “supporting organisations” that represent:

- The organisations that deal with IP addresses
- The organisations that deal with domain names
- The managers of country code top-level domains (a special exception as explained at the bottom).

Then there are four “advisory committees” that provide ICANN with advice and recommendations. These represent:

- Governments and international treaty organisations
- Root server operators
- Those concerned with the Internet's security
- The “at large” community, meaning average Internet users.

And finally, there is a Technical Liaison Group, which works with the organisations that devise the basic protocols for Internet technologies.

ICANN's final decisions are made by a Board of Directors. The Board is made up of 21 members: 15 of which have voting rights and six are non-voting liaisons. The majority of the voting members (eight of them) are chosen by an independent Nominating Committee and the remainder are nominated members from supporting organisations.

2/19/2015

Resources - ICANN

ICANN then has a President and CEO who is also a Board member and who directs the work of ICANN staff, who are based across the globe and help co-ordinate, manage and finally implement all the different discussions and decisions made by the supporting organisations and advisory committees. An ICANN Ombudsman acts as an independent reviewer of the work of the ICANN staff and Board.

### **How does ICANN make decisions?**

When it comes to making technical changes to the Internet, here is a simplified rundown of the process:

Any issue of concern or suggested changes to the existing network is typically raised within one of the supporting organisations (often following a report by one of the advisory committees), where it is discussed and a report produced which is then put out for public review. If the suggested changes impact on any other group within ICANN's system, that group also reviews the suggested changes and makes its views known. The result is then put out for public review a second time.

At the end of that process, the ICANN Board is provided with a report outlining all the previous discussions and with a list of recommendations. The Board then discusses the matter and either approves the changes, approves some and rejects others, rejects all of them, or sends the issue back down to one of the supporting organisations to review, often with an explanation as to what the problems are that need to be resolved before it can be approved.

The process is then rerun until all the different parts of ICANN can agree a compromise or the Board of Directors make a decision on a report it is presented with.

### **How is ICANN held accountable?**

ICANN has external as well as internal accountabilities.

Externally, ICANN is an organisation incorporated under the law of the State of California in the United States. That means ICANN must abide by the laws of the United States and can be called to account by the judicial system i.e. ICANN can be taken to court.

2/19/2015

Resources - ICANN

ICANN is also a non-profit public benefit corporation and its directors are legally responsible for upholding their duties under corporation law.

Internally, ICANN is accountable to the community through:

- Its bylaws
- The representative composition of the ICANN Board from across the globe
- An independent Nominating Committee that selects a majority of the voting Board members
- Senior staff who must be elected annually by the Board
- Three different dispute resolution procedures (Board reconsideration committee; Independent Review Panel; Ombudsman)

The full range of ICANN's accountability and transparency frameworks and principles are available online.

---

\* There is an important exception to this in the form of "country code top-level domains" (ccTLDs) such as .de for Germany or .uk for the United Kingdom. There are over 250 ccTLDs, some of which have a contract with ICANN; others of which have signed working agreements with ICANN; and some of which have yet to enter any formal agreement with ICANN. ICANN however does carry out what is known as the "IANA function" in which every ccTLD's main address is listed so the rest of the Internet can find it. ICANN is also in the position where it can add new TLDs to the wider system, as it did in 2000 and 2004 when seven and six new TLDs respectively were "added to the root".



YouTube



Twitter



LinkedIn



Flickr



Facebook

2/19/2015

Resources - ICANN



RSS Feeds



Community Wiki



ICANN Blog

<b>Who We Are</b>	<b>Contact Us</b>	<b>Accountability &amp; Transparency</b>	<b>Governance</b>	<b>Help</b>
Get Started	Offices	Accountability Mechanisms	Documents	Dispute Resolution
Learning	Customer Service	Independent Review Process	Agreements	Domain Name Dispute Resolution
Participate	Security Team	Request for Reconsideration	AOC Review	Name Collision
Groups	PGP Keys	Ombudsman	Annual Report	Registrar Problems
Board	Certificate Authority		Financials	WHOIS
President's Corner	Registry Liaison		Document Disclosure	
Staff	AOC Review		Planning	
Careers	Organizational Reviews		Dashboard	
Newsletter	Request a Speaker		RFPs	
	For Journalists		Litigation	
			Correspondence	

© 2014 Internet Corporation For Assigned Names and Numbers. [Privacy Policy](#) [Terms of Service](#)  
[Cookie Policy](#)

**EXHIBIT 4**

**2013 Registrar Accreditation Agreement**

- 1. Registrar Accreditation Agreement**
- 2. Whois Accuracy Program Specification**
- 3. Registration Data Directory Service (Whois) Specification**
- 4. Consensus and Temporary Policy Specification**
- 5. Specification on Privacy and Proxy Registrations**
- 6. Data Retention Specification**
- 7. Registrar Information Specification**
- 8. Additional Registrar Operation Specification**
- 9. Registrants' Benefits and Responsibilities**
- 10. Logo License Specification**
- 11. Compliance Certificate**
- 12. Transition Addendum**

Approved by the ICANN Board on 27 June 2013



## Registrar Accreditation Agreement

---

This REGISTRAR ACCREDITATION AGREEMENT (this "Agreement") is by and between the Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [Organization type and jurisdiction] ("Registrar"), and shall be deemed made on \_\_\_\_\_, at Los Angeles, California, USA.

**1. DEFINITIONS.** For purposes of this Agreement, the following definitions shall apply:

1.1 "Account Holder" means the person or entity that is paying for the Registered Name or otherwise controls the management of the registered name, when that person or entity is not the Registered Name Holder.

1.2 "Accredited" or "Accreditation" means to identify and set minimum standards for the performance of registration functions, to recognize persons or entities meeting those standards, and to enter into an accreditation agreement that sets forth the rules and procedures applicable to the provision of Registrar Services.

1.3 "Affiliate" means a person or entity that, directly or indirectly, through one or more intermediaries, Controls, is controlled by, or is under common control with, the person or entity specified.

1.4 "Affiliated Registrar" is another Accredited registrar that is an Affiliate of Registrar.

1.5 "Applicable Registrar Family" means, with respect to Affiliated Registrars, such Affiliated Registrar as a group.

1.6 "Consensus Policy" has the meaning set forth in the Consensus Policies and Temporary Policies Specification attached hereto.

1.7 "Control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a

**Approved by the ICANN Board on 27 June 2013**

member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

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

1.9 The "Effective Date" is \_\_\_\_\_.

1.10 The "Expiration Date" is \_\_\_\_\_.

1.11 "gTLD" or "gTLDs" refers to the top-level domain(s) of the DNS delegated by ICANN pursuant to a registry agreement that is in full force and effect, other than any country code TLD (ccTLD) or internationalized domain name (IDN) country code TLD.

1.12 "gTLD Zone-File Data" means all data contained in a DNS zone file for the registry, or for any subdomain for which Registry Services are provided and that contains Registered Names, as provided to nameservers on the Internet.

1.13 "Illegal Activity" means conduct involving use of a Registered Name sponsored by Registrar that is prohibited by applicable law and/or exploitation of Registrar's domain name resolution or registration services in furtherance of conduct involving the use of a Registered Name sponsored by Registrar that is prohibited by applicable law.

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

1.15 "Registered Name" refers to a domain name within the domain of a gTLD, whether consisting of two (2) or more (e.g., john.smith.name) levels, about which a gTLD Registry Operator (or an Affiliate or subcontractor thereof 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 zone file (e.g., a registered but inactive name).

1.16 "Registered Name Holder" means the holder of a Registered Name.

1.17 The word "registrar," when appearing without an initial capital letter, refers to a person or entity that contracts with Registered Name Holders and with a Registry Operator and collects registration data about the Registered Name Holders and submits registration information for entry in the Registry Database.

1.18 "Registrar Approval" means the receipt of either of the following approvals:

1.18.1 The affirmative approval of Applicable Registrars accounting for 90% of the Total Registered Names Under Management by the Applicable Registrars; provided that, for purposes of calculating the Total Registered

**Approved by the ICANN Board on 27 June 2013**

Names Under Management by Applicable Registrars, the Total Registered Names Under Management by each Applicable Registrar Family shall not exceed the Total Registered Names Under Management of the Applicable Registrar Family that is the fifth largest Applicable Registrar Family (measured by number of Registered Names Under Management), both for purposes of the numerator and the denominator; or

1.18.2 The affirmative approval of 50% plus one of the Applicable Registrars that participate in the process to approve or disapprove (i.e. vote for or against, but not abstain or otherwise fail to vote) a proposed amendment under Section 6, and the affirmative approval of Applicable Registrars accounting for 66.67% of the Total Registered Names Under Management by all Applicable Registrars; provided that, for purposes of calculating the Total Registered Names Under Management by Applicable Registrars, the Total Registered Names Under Management by each Applicable Registrar Family shall not exceed the total Registered Names Under Management of the Applicable Registrar Family that is the fifth largest Applicable Registrar Family (measured by number of Registered Names Under Management), both for purposes of the numerator and the denominator. An example of these calculations is set forth in Appendix 1 attached hereto.

1.19 "Registrar Services" means the services subject to this Agreement provided by a registrar in connection with a gTLD, and includes contracting with Registered Name Holders, collecting registration data about the Registered Name Holders, and submitting registration information for entry in the Registry Database.

1.20 "Registry Data" means all Registry Database data maintained in electronic form, and shall include gTLD Zone-File Data, all data used to provide Registry Services and submitted by registrars in electronic form, and all other data used to provide Registry Services concerning particular domain name registrations or nameservers maintained in electronic form in a Registry Database.

1.21 "Registry Database" means a database comprised of data about one or more DNS domain names within the domain of a registry 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.

1.22 A "Registry Operator" is the person or entity then responsible, in accordance with an agreement between ICANN (or its assignee) and that person or entity (those persons or entities) or, if that agreement is terminated or expires, in accordance with an agreement between the US Government and that person or entity (those persons or entities), for providing Registry Services for a specific gTLD.

1.23 "Registry Services," with respect to a particular gTLD, shall have the meaning defined in the agreement between ICANN and the Registry Operator for that gTLD.

**Approved by the ICANN Board on 27 June 2013**

1.24 A "Reseller" is a person or entity that participates in Registrar's distribution channel for domain name registrations (a) pursuant to an agreement, arrangement or understanding with Registrar or (b) with Registrar's actual knowledge, provides some or all Registrar Services, including collecting registration data about Registered Name Holders, submitting that data to Registrar, or facilitating the entry of the registration agreement between the Registrar and the Registered Name Holder.

1.25 "Restricted Amendment" means (i) an amendment of the Consensus Policies and Temporary Policies Specification or (ii) the term of this Agreement as specified in Section 5.1, as such term may be extended pursuant to Section 5.2.

1.26 A Registered Name is "sponsored" by the registrar that placed the record associated with that registration into the registry. Sponsorship of a registration may be changed at the express direction of the Registered Name Holder or, in the event a registrar loses Accreditation, in accordance with then-current ICANN Specifications and Policies.

1.27 "Specifications and/or Policies" include Consensus Policies, Specifications (such as the Whois Accuracy Program Specification) referenced in this Agreement, and any amendments, policies, procedures, or programs specifically contemplated by this Agreement or authorized by ICANN's Bylaws.

1.28 "Term of this Agreement" begins on the Effective Date and continues to the earlier of (a) the Expiration Date, or (b) termination of this Agreement.

1.29 "Total Registered Names Under Management" means the total number of Registered Names sponsored by all Applicable Registrars as reflected in the latest monthly reports submitted to ICANN by Registrars.

1.30 "Whois Accuracy Program Specification" means the Whois Accuracy Program Specification attached hereto, as updated from time to time in accordance with this Agreement.

1.31 "Whois Specification" means the Registration Data Directory Service (Whois) Specification attached hereto, as updated from time to time in accordance with this Agreement.

1.32 "Working Group" means representatives of the Applicable Registrars and other members of the community that the Registrar Stakeholder Group appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registrar Agreements (excluding bilateral amendments pursuant to Section 6.9).

Approved by the ICANN Board on 27 June 2013

## 2. ICANN OBLIGATIONS.

2.1 Accreditation. During the Term of this Agreement and subject to the terms and conditions of this Agreement, Registrar is hereby Accredited by ICANN to act as a registrar (including to insert and renew registration of Registered Names in the Registry Database) for gTLDs.

2.2 Registrar Use of ICANN Name, Website and Trademarks. ICANN hereby grants to Registrar a non-exclusive, worldwide, royalty-free license during the Term of this Agreement (a) to state that it is Accredited by ICANN as a registrar for gTLDs, and (b) to link to pages and documents within the ICANN website. Subject to the terms and conditions set forth in the Logo License Specification attached hereto, ICANN hereby grants to Registrar a non-exclusive, worldwide right and license to use the Trademarks (as defined in the Logo License Specification). No other use of ICANN's name, website or Trademarks is licensed hereby. This license may not be assigned or sublicensed by Registrar to any other party, including, without limitation, any Affiliate of Registrar or any Reseller.

2.3 General Obligations of ICANN. With respect to all matters that impact the rights, obligations, or role of Registrar, ICANN shall during the Term of this Agreement:

2.3.1 exercise its responsibilities in an open and transparent manner;

2.3.2 not unreasonably restrain competition and, to the extent feasible, promote and encourage robust competition;

2.3.3 not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and not single out Registrar for disparate treatment unless justified by substantial and reasonable cause; and

2.3.4 ensure, through its reconsideration and independent review policies, adequate appeal procedures for Registrar, to the extent it is adversely affected by ICANN standards, policies, procedures or practices.

2.4 Use of ICANN Accredited Registrars. In order to promote competition in the registration of domain names, and in recognition of the value that ICANN-Accredited registrars bring to the Internet community, ICANN has ordinarily required gTLD registries under contract with ICANN to use ICANN-Accredited registrars, and ICANN will during the course of this agreement abide by any ICANN adopted Specifications or Policies requiring the use of ICANN-Accredited registrars by gTLD registries.

Approved by the ICANN Board on 27 June 2013

### 3. REGISTRAR OBLIGATIONS.

3.1 Obligations to Provide Registrar Services. During the Term of this Agreement, Registrar agrees that it will operate as a registrar for one or more gTLDs in accordance with this Agreement.

3.2 Submission of Registered Name Holder Data to Registry. During the Term of this Agreement:

3.2.1 As part of its registration of Registered Names in a gTLD, Registrar shall submit to, or shall place in the Registry Database operated by, the Registry Operator for the gTLD the following data elements:

3.2.1.1 The name of the Registered Name being registered;

3.2.1.2 The IP addresses of the primary nameserver and secondary nameserver(s) for the Registered Name;

3.2.1.3 The corresponding names of those nameservers;

3.2.1.4 Unless automatically generated by the registry system, the identity of the Registrar;

3.2.1.5 Unless automatically generated by the registry system, the expiration date of the registration; and

3.2.1.6 Any other data the Registry Operator requires be submitted to it.

The agreement between the Registry Operator of a gTLD and Registrar may, if approved by ICANN in writing, state alternative required data elements applicable to that gTLD, in which event, the alternative required data elements shall replace and supersede Subsections 3.2.1.1 through 3.2.1.6 stated above for all purposes under this Agreement but only with respect to that particular gTLD. When seeking approval for alternative required data elements, the data elements set forth in Subsections 3.2.1.1 through 3.2.1.6 should be considered suggested minimum requirements.

3.2.2 Within seven (7) days after receiving any updates from the Registered Name Holder to the data elements listed in Subsections 3.2.1.2, 3.1.2.3, and 3.2.1.6 for any Registered Name that Registrar sponsors, Registrar shall submit the updated data elements to, or shall place those elements in the Registry Database operated by, the relevant Registry Operator.

3.2.3 In order to allow reconstitution of the Registry Database in the event of an otherwise unrecoverable technical failure or a change in the designated Registry Operator, within ten (10) days of any such request by ICANN,

**Approved by the ICANN Board on 27 June 2013**

Registrar shall submit an electronic database containing the data elements listed in Subsections 3.2.1.1 through 3.2.1.6 for all active records in the registry sponsored by Registrar, in a format specified by ICANN, to the Registry Operator for the appropriate gTLD.

**3.3 Public Access to Data on Registered Names. During the Term of this Agreement:**

3.3.1 At its expense, Registrar shall provide an interactive web page and, with respect to any gTLD operating a "thin" registry, a port 43 Whois service (each accessible via both IPv4 and IPv6) providing free public query-based access to up-to-date (i.e., updated at least daily) data concerning all active Registered Names sponsored by Registrar in any gTLD. Until otherwise specified by a Consensus Policy, such data shall consist of the following elements as contained in Registrar's database:

3.3.1.1 The name of the Registered Name;

3.3.1.2 The names of the primary nameserver and secondary nameserver(s) for the Registered Name;

3.3.1.3 The identity of Registrar (which may be provided through Registrar's website);

3.3.1.4 The original creation date of the registration;

3.3.1.5 The expiration date of the registration;

3.3.1.6 The name and postal address of the Registered Name Holder;

3.3.1.7 The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the technical contact for the Registered Name; and

3.3.1.8 The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for the Registered Name.

The agreement between the Registry Operator of a gTLD and Registrar may, if approved by ICANN in writing, state alternative required data elements applicable to that gTLD, in which event, the alternative required data elements shall replace and supersede Subsections 3.3.1.1 through 3.3.1.8 stated above for all purposes under this Agreement but only with respect to that particular gTLD.

3.3.2 Upon receiving any updates to the data elements listed in Subsections 3.3.1.2, 3.3.1.3, and 3.3.1.5 through 3.3.1.8 from the Registered Name Holder,

**Approved by the ICANN Board on 27 June 2013**

Registrar shall promptly update its database used to provide the public access described in Subsection 3.3.1.

3.3.3 Registrar may subcontract its obligation to provide the public access described in Subsection 3.3.1 and the updating described in Subsection 3.3.2, provided that Registrar shall remain fully responsible for the proper provision of the access and updating.

3.3.4 Registrar shall abide by any Consensus Policy that requires registrars to cooperatively implement a distributed capability that provides query-based Whois search functionality across all registrars. If the Whois service implemented by registrars does not in a reasonable time provide reasonably robust, reliable, and convenient access to accurate and up-to-date data, the Registrar shall abide by any Consensus Policy requiring Registrar, if reasonably determined by ICANN to be necessary (considering such possibilities as remedial action by specific registrars), to supply data from Registrar's database to facilitate the development of a centralized Whois database for the purpose of providing comprehensive Registrar Whois search capability.

3.3.5 In providing query-based public access to registration data as required by Subsections 3.3.1 and 3.3.4, Registrar shall not impose terms and conditions on use of the data provided, except as permitted by any Specification or Policy established by ICANN. Unless and until ICANN establishes a different Consensus Policy, Registrar shall permit use of data it provides in response to queries for any lawful purposes except to: (a) allow, enable, or otherwise support the transmission by e-mail, telephone, postal mail, facsimile or other means of mass unsolicited, commercial advertising or solicitations to entities other than the data recipient's own existing customers; or (b) enable high volume, automated, electronic processes that send queries or data to the systems of any Registry Operator or ICANN-Accredited registrar, except as reasonably necessary to register domain names or modify existing registrations.

3.3.6 In the event that ICANN determines, following analysis of economic data by an economist(s) retained by ICANN (which data has been made available to Registrar), that an individual or entity is able to exercise market power with respect to registrations or with respect to registration data used for development of value-added products and services by third parties, Registrar shall provide third-party bulk access to the data subject to public access under Subsection 3.3.1 under the following terms and conditions:

3.3.6.1 Registrar shall make a complete electronic copy of the data available at least one (1) time per week for download by third parties who have entered into a bulk access agreement with Registrar.

**Approved by the ICANN Board on 27 June 2013**

3.3.6.2 Registrar may charge an annual fee, not to exceed US\$10,000, for such bulk access to the data.

3.3.6.3 Registrar's access agreement shall require the third party to agree not to use the data to allow, enable, or otherwise support any marketing activities, regardless of the medium used. Such media include but are not limited to e-mail, telephone, facsimile, postal mail, SMS, and wireless alerts.

3.3.6.4 Registrar's access agreement shall require the third party to agree not to use the data to enable high-volume, automated, electronic processes that send queries or data to the systems of any Registry Operator or ICANN-Accredited registrar, except as reasonably necessary to register domain names or modify existing registrations.

3.3.6.5 Registrar's access agreement must require the third party to agree not to sell or redistribute the data except insofar as it has been incorporated by the third party into a value-added product or service that does not permit the extraction of a substantial portion of the bulk data from the value-added product or service for use by other parties.

3.3.7 To comply with applicable statutes and regulations and for other reasons, ICANN may adopt a Consensus Policy establishing limits (a) on the Personal Data concerning Registered Names that Registrar may make available to the public through a public-access service described in this Subsection 3.3 and (b) on the manner in which Registrar may make such data available. Registrar shall comply with any such Consensus Policy.

3.3.8 Registrar shall meet or exceed the requirements set forth in the Whois Specification.

**3.4 Retention of Registered Name Holder and Registration Data.**

3.4.1 For each Registered Name sponsored by Registrar within a gTLD, Registrar shall collect and securely maintain, in its own electronic database, as updated from time to time:

3.4.1.1 the data specified in the Data Retention Specification attached hereto for the period specified therein;

3.4.1.2 The data elements listed in Subsections 3.3.1.1 through 3.3.1.8;

3.4.1.3 the name and (where available) postal address, e-mail address, voice telephone number, and fax number of the billing contact;

**Approved by the ICANN Board on 27 June 2013**

3.4.1.4 any other Registry Data that Registrar has submitted to the Registry Operator or placed in the Registry Database under Subsection 3.2; and

3.4.1.5 the name, postal address, e-mail address, and voice telephone number provided by the customer of any privacy service or licensee of any proxy registration service, in each case, offered or made available by Registrar or its Affiliates in connection with each registration. Effective on the date that ICANN fully implements a Proxy Accreditation Program established in accordance with Section 3.14, the obligations under this Section 3.4.1.5 will cease to apply as to any specific category of data (such as postal address) that is expressly required to be retained by another party in accordance with such Proxy Accreditation Program.

3.4.2 During the Term of this Agreement and for two (2) years thereafter, Registrar (itself or by its agent(s)) shall maintain the following records relating to its dealings with the Registry Operator(s) and Registered Name Holders:

3.4.2.1 In electronic form, the submission date and time, and the content, of all registration data (including updates) submitted in electronic form to the Registry Operator(s);

3.4.2.2 In electronic, paper, or microfilm form, all written communications constituting registration applications, confirmations, modifications, or terminations and related correspondence with Registered Name Holders, including registration contracts; and

3.4.2.3 In electronic form, records of the accounts of all Registered Name Holders with Registrar.

3.4.3 During the Term of this Agreement and for two (2) years thereafter, Registrar shall make the data, information and records specified in this Section 3.4 available for inspection and copying by ICANN upon reasonable notice. In addition, upon reasonable notice and request from ICANN, Registrar shall deliver copies of such data, information and records to ICANN in respect to limited transactions or circumstances that may be the subject of a compliance-related inquiry; provided, however, that such obligation shall not apply to requests for copies of the Registrar's entire database or transaction history. Such copies are to be provided at Registrar's expense. In responding to ICANN's request for delivery of electronic data, information and records, Registrar may submit such information in a format reasonably convenient to Registrar and acceptable to ICANN so as to minimize disruption to the Registrar's business. In the event Registrar believes that the provision of any such data, information or records to ICANN would

**Approved by the ICANN Board on 27 June 2013**

violate applicable law or any legal proceedings, ICANN and Registrar agree to discuss in good faith whether appropriate limitations, protections, or alternative solutions can be identified to allow the production of such data, information or records in complete or redacted form, as appropriate. ICANN shall not disclose the content of such data, information or records except as expressly required by applicable law, any legal proceeding or Specification or Policy.

3.4.4 Notwithstanding any other requirement in this Agreement or the Data Retention Specification, Registrar shall not be obligated to maintain records relating to a domain registration beginning on the date two (2) years following the domain registration's deletion or transfer away to a different registrar.

3.5 Rights in Data. Registrar disclaims all rights to exclusive ownership or use of the data elements listed in Subsections 3.2.1.1 through 3.2.1.3 for all Registered Names submitted by Registrar to the Registry Database for, or sponsored by Registrar in, each gTLD for which it is Accredited. Registrar does not disclaim rights in the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and Subsections 3.3.1.3 through 3.3.1.8 concerning active Registered Names sponsored by it in each gTLD for which it is Accredited, and agrees to grant non-exclusive, irrevocable, royalty-free licenses to make use of and disclose the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and 3.3.1.3 through 3.3.1.8 for the purpose of providing a service or services (such as a Whois service under Subsection 3.3.4) providing interactive, query-based public access. Upon a change in sponsorship from Registrar of any Registered Name in each gTLD for which it is Accredited, Registrar acknowledges that the registrar gaining sponsorship shall have the rights of an owner to the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and 3.3.1.3 through 3.3.1.8 concerning that Registered Name, with Registrar also retaining the rights of an owner in that data. Nothing in this Subsection prohibits Registrar from (1) restricting bulk public access to data elements in a manner consistent with this Agreement and any Specifications or Policies or (2) transferring rights it claims in data elements subject to the provisions of this Subsection 3.5.

3.6 Data Escrow. During the Term of this Agreement, on a schedule, under the terms, and in the format specified by ICANN, Registrar shall submit an electronic copy of the data described in Subsections 3.4.1.2 through 3.4.1.5 to ICANN or, at Registrar's election and at its expense, to a reputable escrow agent mutually approved by Registrar and ICANN, such approval also not to be unreasonably withheld by either party. The data shall be held under an agreement among Registrar, ICANN, and the escrow agent (if any) providing that (1) the data shall be received and held in escrow, with no use other than verification that the deposited data is complete, consistent, and in proper format, until released to ICANN; (2) the data shall be released from escrow upon expiration without renewal or termination of this Agreement; and (3) ICANN's rights under the escrow agreement shall be assigned with any assignment of this Agreement. The escrow shall provide that in

**Approved by the ICANN Board on 27 June 2013**

the event the escrow is released under this Subsection, ICANN (or its assignee) shall have a non-exclusive, irrevocable, royalty-free license to exercise (only for transitional purposes) or have exercised all rights necessary to provide Registrar Services.

**3.7 Business Dealings, Including with Registered Name Holders.**

3.7.1 In the event ICANN adopts a Specification or Policy that is supported by a consensus of ICANN-Accredited registrars as reflected in the Registrar Stakeholder Group (or any successor group), establishing or approving a Code of Conduct for ICANN-Accredited registrars, Registrar shall abide by that Code of Conduct.

3.7.2 Registrar shall abide by applicable laws and governmental regulations.

3.7.3 Registrar shall not represent to any actual or potential Registered Name Holder that Registrar enjoys access to a registry for which Registrar is Accredited that is superior to that of any other registrar Accredited for that registry.

3.7.4 Registrar shall not activate any Registered Name unless and until it is satisfied that it has received a reasonable assurance of payment of its registration fee. For this purpose, a charge to a credit card, general commercial terms extended to creditworthy customers, or other mechanism providing a similar level of assurance of payment shall be sufficient, provided that the obligation to pay becomes final and non-revocable by the Registered Name Holder upon activation of the registration.

3.7.5 At the conclusion of the registration period, failure by or on behalf of the Registered Name Holder to consent that the registration be renewed within the time specified in a second notice or reminder shall, in the absence of extenuating circumstances, result in cancellation of the registration by the end of the auto-renew grace period (although Registrar may choose to cancel the name earlier).

3.7.5.1 Extenuating circumstances are defined as: UDRP action, valid court order, failure of a Registrar's renewal process (which does not include failure of a registrant to respond), the domain name is used by a nameserver that provides DNS service to third-parties (additional time may be required to migrate the records managed by the nameserver), the registrant is subject to bankruptcy proceedings, payment dispute (where a registrant claims to have paid for a renewal, or a discrepancy in the amount paid), billing dispute (where a registrant disputes the amount on a bill), domain name subject to litigation in a court of competent jurisdiction, or other circumstance as approved specifically by ICANN.

**Approved by the ICANN Board on 27 June 2013**

3.7.5.2 Where Registrar chooses, under extenuating circumstances, to renew a domain name without the explicit consent of the registrant, the registrar must maintain a record of the extenuating circumstances associated with renewing that specific domain name for inspection by ICANN consistent with clauses 3.4.2 and 3.4.3 of this registrar accreditation agreement.

3.7.5.3 In the absence of extenuating circumstances (as defined in Section 3.7.5.1 above), a domain name must be deleted within 45 days of either the registrar or the registrant terminating a registration agreement.

3.7.5.4 Registrar shall provide notice to each new registrant describing the details of their deletion and auto-renewal policy including the expected time at which a non-renewed domain name would be deleted relative to the domain's expiration date, or a date range not to exceed ten (10) days in length. If a registrar makes any material changes to its deletion policy during the period of the registration agreement, it must make at least the same effort to inform the registrant of the changes as it would to inform the registrant of other material changes to the registration agreement (as defined in clause 3.7.7 of the registrars accreditation agreement).

3.7.5.5 If Registrar operates a website for domain name registration or renewal, details of Registrar's deletion and auto-renewal policies must be clearly displayed on the website.

3.7.5.6 If Registrar operates a website for domain registration or renewal, it should state, both at the time of registration and in a clear place on its website, any fee charged for the recovery of a domain name during the Redemption Grace Period.

3.7.5.7 In the event that a domain which is the subject of a UDRP dispute is deleted or expires during the course of the dispute, the complainant in the UDRP dispute will have the option to renew or restore the name under the same commercial terms as the registrant. If the complainant renews or restores the name, the name will be placed in Registrar HOLD and Registrar LOCK status, the WHOIS contact information for the registrant will be removed, and the WHOIS entry will indicate that the name is subject to dispute. If the complaint is terminated, or the UDRP dispute finds against the complainant, the name will be deleted within 45 days. The registrant retains the right under the existing redemption grace period provisions to recover the name at any time during the Redemption Grace Period, and retains the right to renew the name before it is deleted.

**Approved by the ICANN Board on 27 June 2013**

3.7.6 Registrar shall not insert or renew any Registered Name in any gTLD registry in a manner contrary to (i) any Consensus Policy stating a list or specification of excluded Registered Names that is in effect at the time of insertion or renewal, or (ii) any list of names to be reserved from registration as required by the specific Registry Operator for which the Registrar is providing Registrar Services.

3.7.7 Registrar shall require all Registered Name Holders to enter into an electronic or paper registration agreement with Registrar including at least the provisions set forth in Subsections 3.7.7.1 through 3.7.7.12, and which agreement shall otherwise set forth the terms and conditions applicable to the registration of a domain name sponsored by Registrar. The Registered Name Holder with whom Registrar enters into a registration agreement must be a person or legal entity other than the Registrar, provided that Registrar may be the Registered Name Holder for domains registered for the purpose of conducting its Registrar Services, in which case the Registrar shall submit to the provisions set forth in Subsections 3.7.7.1 through 3.7.7.12 and shall be responsible to ICANN for compliance with all obligations of the Registered Name Holder as set forth in this Agreement and Specifications and Policies. Registrar shall use commercially reasonable efforts to enforce compliance with the provisions of the registration agreement between Registrar and any Registered Name Holder that relate to implementing the requirements of Subsections 3.7.7.1 through 3.7.7.12 or any Consensus Policy.

3.7.7.1 The Registered Name Holder shall provide to Registrar accurate and reliable contact details and correct and update them within seven (7) days of any change during the term of the Registered Name registration, including: the full name, postal address, e-mail address, voice telephone number, and fax number if available of the Registered Name Holder; name of authorized person for contact purposes in the case of an Registered Name Holder that is an organization, association, or corporation; and the data elements listed in Subsections 3.3.1.2, 3.3.1.7 and 3.3.1.8.

3.7.7.2 A Registered Name Holder's willful provision of inaccurate or unreliable information, its willful failure to update information provided to Registrar within seven (7) days of any change, or its failure to respond for over fifteen (15) days to inquiries by Registrar concerning the accuracy of contact details associated with the Registered Name Holder's registration shall constitute a material breach of the Registered Name Holder-registrar contract and be a basis for suspension and/or cancellation of the Registered Name registration.

3.7.7.3 Any Registered Name Holder that intends to license use of a domain name to a third party is nonetheless the Registered Name

**Approved by the ICANN Board on 27 June 2013**

Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name. A Registered Name Holder licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it discloses the current contact information provided by the licensee and the identity of the licensee within seven (7) days to a party providing the Registered Name Holder reasonable evidence of actionable harm.

3.7.7.4 Registrar shall provide notice to each new or renewed Registered Name Holder stating:

3.7.7.4.1 The purposes for which any Personal Data collected from the applicant are intended;

3.7.7.4.2 The intended recipients or categories of recipients of the data (including the Registry Operator and others who will receive the data from Registry Operator);

3.7.7.4.3 Which data are obligatory and which data, if any, are voluntary; and

3.7.7.4.4 How the Registered Name Holder or data subject can access and, if necessary, rectify the data held about them.

3.7.7.5 The Registered Name Holder shall consent to the data processing referred to in Subsection 3.7.7.4.

3.7.7.6 The Registered Name Holder shall represent that notice has been provided equivalent to that described in Subsection 3.7.7.4 to any third-party individuals whose Personal Data are supplied to Registrar by the Registered Name Holder, and that the Registered Name Holder has obtained consent equivalent to that referred to in Subsection 3.7.7.5 of any such third-party individuals.

3.7.7.7 Registrar shall agree that it will not process the Personal Data collected from the Registered Name Holder in a way incompatible with the purposes and other limitations about which it has provided notice to the Registered Name Holder in accordance with Subsection 3.7.7.4 above.

3.7.7.8 Registrar shall agree that it will take reasonable precautions to protect Personal Data from loss, misuse, unauthorized access or disclosure, alteration, or destruction.

**Approved by the ICANN Board on 27 June 2013**

3.7.7.9 The Registered Name Holder shall represent that, to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party.

3.7.7.10 For the adjudication of disputes concerning or arising from use of the Registered Name, the Registered Name Holder shall submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (1) of the Registered Name Holder's domicile and (2) where Registrar is located.

3.7.7.11 The Registered Name Holder shall agree that its registration of the Registered Name shall be subject to suspension, cancellation, or transfer pursuant to any Specification or Policy, or pursuant to any registrar or registry procedure not inconsistent with any Specification or Policy, (1) to correct mistakes by Registrar or the Registry Operator in registering the name or (2) for the resolution of disputes concerning the Registered Name.

3.7.7.12 The Registered Name Holder shall indemnify and hold harmless the Registry Operator and its directors, officers, employees, and agents from and against any and all claims, damages, liabilities, costs, and expenses (including reasonable legal fees and expenses) arising out of or related to the Registered Name Holder's domain name registration.

3.7.8 Registrar shall comply with the obligations specified in the Whois Accuracy Program Specification. In addition, notwithstanding anything in the Whois Accuracy Program Specification to the contrary, Registrar shall abide by any Consensus Policy requiring reasonable and commercially practicable (a) verification, at the time of registration, of contact information associated with a Registered Name sponsored by Registrar or (b) periodic re-verification of such information. Registrar shall, upon notification by any person of an inaccuracy in the contact information associated with a Registered Name sponsored by Registrar, take reasonable steps to investigate that claimed inaccuracy. In the event Registrar learns of inaccurate contact information associated with a Registered Name it sponsors, it shall take reasonable steps to correct that inaccuracy.

3.7.9 Registrar shall abide by any Consensus Policy prohibiting or restricting warehousing of or speculation in domain names by registrars.

3.7.10 Registrar shall publish on its website(s) and/or provide a link to the Registrants' Benefits and Responsibilities Specification attached hereto and shall not take any action inconsistent with the corresponding provisions of this Agreement or applicable law.

**Approved by the ICANN Board on 27 June 2013**

3.7.11 Registrar shall make available a description of the customer service handling processes available to Registered Name Holders regarding Registrar Services, including a description of the processes for submitting complaints and resolving disputes regarding the Registrar Services.

3.7.12 Nothing in this Agreement prescribes or limits the amount Registrar may charge Registered Name Holders for registration of Registered Names.

3.8 Domain-Name Dispute Resolution. During the Term of this Agreement, Registrar shall have in place a policy and procedures for resolution of disputes concerning Registered Names. Until ICANN adopts an alternative Consensus Policy or other Specification or Policy with respect to the resolution of disputes concerning Registered Names, Registrar shall comply with the Uniform Domain Name Dispute Resolution Policy ("UDRP") identified on ICANN's website ([www.icann.org/general/consensus-policies.htm](http://www.icann.org/general/consensus-policies.htm)), as may be modified from time to time. Registrar shall also comply with the Uniform Rapid Suspension ("URS") procedure or its replacement, as well as with any other applicable dispute resolution procedure as required by a Registry Operator for which Registrar is providing Registrar Services.

3.9 Accreditation Fees. As a condition of Accreditation, Registrar shall pay Accreditation fees to ICANN. These fees consist of yearly and variable fees.

3.9.1 Registrar shall pay ICANN a yearly Accreditation fee in an amount established by the ICANN Board of Directors, in conformity with ICANN's bylaws and articles of incorporation. This yearly Accreditation fee shall not exceed US\$4,000. Payment of the yearly fee shall be due within thirty (30) days after invoice from ICANN, provided that Registrar may elect to pay the yearly fee in four (4) equal quarterly installments.

3.9.2 Registrar shall pay the variable Accreditation fees established by the ICANN Board of Directors, in conformity with ICANN's bylaws and articles of incorporation, provided that in each case such fees are reasonably allocated among all registrars that contract with ICANN and that any such fees must be expressly approved by registrars accounting, in the aggregate, for payment of two-thirds of all registrar-level fees. Registrar shall pay such fees in a timely manner for so long as all material terms of this Agreement remain in full force and effect, and notwithstanding the pendency of any dispute between Registrar and ICANN.

3.9.3 For any payments thirty (30) days or more overdue, Registrar shall pay interest on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law from later of the date of the invoice or the date the invoice is sent pursuant to Section 7.6 of this Agreement. On reasonable notice given by ICANN to Registrar, accountings submitted by Registrar shall be subject to verification by an audit of

**Approved by the ICANN Board on 27 June 2013**

Registrar's books and records by an independent third-party designated by ICANN that shall preserve the confidentiality of such books and records (other than its findings as to the accuracy of, and any necessary corrections to, the accountings).

3.9.4 The Accreditation 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) that are imposed by or under the authority of any government or any political subdivision thereof on the Accreditation 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 Accreditation fees. All payments due to ICANN shall be made without any deduction or withholding on account of any tax, duty, charge, or penalty except as required by applicable 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, ICANN receives (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.

3.10 Insurance. Registrar shall maintain in force commercial general liability insurance or similar liability insurance as specified by ICANN with policy limits of at least US\$500,000 covering liabilities arising from Registrar's registrar business during the Term of this Agreement.

3.11 Obligations of Registrars under common controlling interest. Registrar shall be in breach of this Agreement if:

3.11.1 ICANN terminates an Affiliated Registrar's accreditation agreement with ICANN (an "Affiliate Termination");

3.11.2 Affiliated Registrar has not initiated arbitration challenging ICANN's right to terminate the Affiliated Registrar's accreditation agreement under Section 5.8 of this Agreement, or has initiated such arbitration and has not prevailed;

3.11.3 the Affiliate Termination was the result of misconduct that materially harmed consumers or the public interest;

3.11.4 a second Affiliated Registrar has pursued, after the Affiliate Termination, the same course of conduct that resulted in the Affiliate Termination; and

3.11.5 ICANN has provided Registrar with written notice that it intends to assert the provisions of this Section 3.11 with respect to Registrar, which notice shall identify in reasonable detail the factual basis for such assertion,

**Approved by the ICANN Board on 27 June 2013**

and Registrar has failed to cure the impugned conduct within fifteen (15) days of such notice.

**3.12 Obligations Related to Provision of Registrar Services by Third Parties.**

Registrar is responsible for the provision of Registrar Services for all Registered Names that Registrar sponsors being performed in compliance with this Agreement, regardless of whether the Registrar Services are provided by Registrar or a third party, including a Reseller. Registrar must enter into written agreements with all of its Resellers that enable Registrar to comply with and perform all of its obligations under this Agreement. In addition, Registrar must ensure that:

3.12.1 Its Resellers do not display the ICANN or ICANN-Accredited Registrar logo, or otherwise represent themselves as Accredited by ICANN, unless they have written permission from ICANN to do so.

3.12.2 Any registration agreement used by reseller shall include all registration agreement provisions and notices required by the ICANN Registrar Accreditation Agreement and any ICANN Consensus Policies, and shall identify the sponsoring registrar or provide a means for identifying the sponsoring registrar, such as a link to the InterNIC Whois lookup service.

3.12.3 Its Resellers identify the sponsoring registrar upon inquiry from the customer.

3.12.4 Its Resellers comply with any ICANN-adopted Specification or Policy that establishes a program for accreditation of individuals or entities who provide proxy and privacy registration services (a "Proxy Accreditation Program"). Among other features, the Proxy Accreditation Program may require that: (i) proxy and privacy registration services may only be provided in respect of domain name registrations by individuals or entities Accredited by ICANN pursuant to such Proxy Accreditation Program; and (ii) Registrar shall prohibit Resellers from knowingly accepting registrations from any provider of proxy and privacy registration services that is not Accredited by ICANN pursuant the Proxy Accreditation Program. Until such time as the Proxy Accreditation Program is established, Registrar shall require Resellers to comply with the Specification on Privacy and Proxy Registrations attached hereto.

3.12.5 Its Resellers' customers are provided with a link to an ICANN webpage detailing registrant educational information, as detailed in subsection 3.16 below.

3.12.6 In the event Registrar learns that a Reseller is causing Registrar to be in breach of any of the provisions of this Agreement, Registrar shall take reasonable steps to enforce its agreement with such Reseller so as to cure and prevent further instances of non-compliance.

**Approved by the ICANN Board on 27 June 2013**

3.12.7 Its Resellers shall publish on their website(s) and/or provide a link to the Registrants' Benefits and Responsibilities Specification attached hereto and shall not take any action inconsistent with the corresponding provisions of this Agreement or applicable law.

Registrar shall use commercially reasonable efforts to enforce compliance with the provisions of the agreement between Registrar and any Reseller that relate to the provisions of Registrar Services.

3.13 Registrar Training. Registrar's primary contact as identified in Subsection 7.6 below or designee (so long as the designee is employed by Registrar or an Affiliated Registrar) shall complete a training course covering registrar obligations under ICANN policies and agreements. The course will be provided by ICANN at no expense to Registrar, and shall be available in an online format.

3.14 Obligations Related to Proxy and Privacy Services. Registrar agrees to comply with any ICANN-adopted Specification or Policy that establishes a Proxy Accreditation Program. Registrar also agrees to reasonably cooperate with ICANN in the development of such program. Until such time as the Proxy Accreditation Program is established, Registrar agrees to comply with the Specification on Privacy and Proxy Registrations attached hereto.

3.15 Registrar Self-Assessment and Audits. Registrar shall complete and deliver to ICANN on a schedule and in the form specified by ICANN from time to time in consultation with registrars a Registrar self-assessment. Registrar shall complete and deliver to ICANN within twenty (20) days following the end of each calendar year, in a form specified by ICANN a certificate executed by the president, chief executive officer, chief financial officer or chief operating officer (or their equivalents) of Registrar certifying compliance with the terms and conditions of this Agreement. ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct on its behalf, contractual compliance audits to assess compliance by Registrar with the terms and conditions of this Agreement. Any audits pursuant to this Section 3.15 shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registrar. As part of such audit and upon request by ICANN, Registrar shall timely provide all responsive documents, data and any other information necessary to demonstrate Registrar's compliance with this Agreement. Upon no less than ten (10) days notice (unless otherwise agreed to by Registrar), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registrar with the terms and conditions of this Agreement. ICANN shall not disclose Registrar confidential information gathered through such audits except as required by applicable law, legal proceedings, or as expressly permitted by any Specification or

**Approved by the ICANN Board on 27 June 2013**

Policy (including ICANN's Documentary Information Disclosure Policy, as such policy may be amended from time to time); provided, however, that, except as required by applicable law or legal proceedings, ICANN shall not release any information that Registrar has marked as, or has otherwise designated in writing to ICANN as, a "confidential trade secret," "confidential commercial information" or "confidential financial information" of Registrar. If any applicable law, legal proceeding or Specification or Policy permits such disclosure, ICANN will provide Registrar no less than fifteen (15) days notice of its intent to disclose such information, unless such notice is prohibited by law or legal proceeding. Such notice shall include to whom and in what manner ICANN plans to disclose such information.

3.16 Link to Registrant Educational Information. ICANN has published an educational webpage summarizing the terms of the Registrar Accreditation Agreement and related Consensus Policies (as of the date of this Agreement, located at: <http://www.icann.org/en/registrars/registrant-rights-responsibilities-en.htm>). Registrar shall provide a link to such webpage on any website it may operate for domain name registration or renewal clearly displayed to its Registered Name Holders at least as clearly as its links to policies or notifications required to be displayed under ICANN Consensus Policies. ICANN may, in consultation with registrars, update the content and/or URL for this website.

3.17 Registrar Contact, Business Organization and Officer Information. Registrar shall provide to ICANN and maintain accurate and current information as specified in the Registrar Information Specification to this Agreement. In addition, Registrar shall publish on each website through which Registrar provides or offers Registrar Services the information specified as requiring such publication in the Registrar Information Specification. Registrar shall notify ICANN within five (5) days of any changes to such information and update Registrar's website(s) within twenty (20) days of any such changes.

3.18 Registrar's Abuse Contact and Duty to Investigate Reports of Abuse.

3.18.1 Registrar shall maintain an abuse contact to receive reports of abuse involving Registered Names sponsored by Registrar, including reports of Illegal Activity. Registrar shall publish an email address to receive such reports on the home page of Registrar's website (or in another standardized place that may be designated by ICANN from time to time). Registrar shall take reasonable and prompt steps to investigate and respond appropriately to any reports of abuse.

3.18.2 Registrar shall establish and maintain a dedicated abuse point of contact, including a dedicated email address and telephone number that is monitored 24 hours a day, seven days a week, to receive reports of Illegal Activity by law enforcement, consumer protection, quasi-governmental or other similar authorities designated from time to time by the national or

**Approved by the ICANN Board on 27 June 2013**

territorial government of the jurisdiction in which the Registrar is established or maintains a physical office. Well-founded reports of Illegal Activity submitted to these contacts must be reviewed within 24 hours by an individual who is empowered by Registrar to take necessary and appropriate actions in response to the report. In responding to any such reports, Registrar will not be required to take any action in contravention of applicable law.

3.18.3 Registrar shall publish on its website a description of its procedures for the receipt, handling, and tracking of abuse reports. Registrar shall document its receipt of and response to all such reports. Registrar shall maintain the records related to such reports for the shorter of two (2) years or the longest period permitted by applicable law, and during such period, shall provide such records to ICANN upon reasonable notice.

3.19 Additional Technical Specifications to Implement IPV6, DNSSEC and IDNs. Registrar shall comply with the Additional Registrar Operations Specification attached hereto.

3.20 Notice of Bankruptcy, Convictions and Security Breaches. Registrar will give ICANN notice within seven (7) days of (i) the commencement of any of the proceedings referenced in Section 5.5.8. (ii) the occurrence of any of the matters specified in Section 5.5.2 or Section 5.5.3 or (iii) any unauthorized access to or disclosure of registrant account information or registration data. The notice required pursuant to Subsection (iii) shall include a detailed description of the type of unauthorized access, how it occurred, the number of registrants affected, and any action taken by Registrar in response.

3.21 Obligations of Registrars Affiliated with Registry Operators. In the event Registrar is Affiliated with any Registry Operator or back-end registry operator (an "Affiliated Relationship") during the Term of this Agreement, Registrar shall comply with all ICANN Specifications and Policies that may be developed from time to time with respect to such Affiliated Relationships, and will notify ICANN within thirty (30) days of the occurrence of the event that created the Affiliate relationship (e.g., the closing of any merger, acquisition or other transaction, or the execution of any agreement, in each case, giving rise to such Affiliated Relationship).

3.22 Cooperation with Emergency Registry Service Providers. In the event that ICANN transitions the operation of a registry for a gTLD in which Registrar sponsors Registered Names to an emergency registry service provider, Registrar shall cooperate in all reasonable respects with such emergency registry service provider, including by entering into a registry-registrar agreement with such provider necessary to effect the transition and by providing all Registered Name Holder data reasonably requested by such emergency operator for the purpose of facilitating an efficient transition of the registry for the gTLD.

Approved by the ICANN Board on 27 June 2013

**4. PROCEDURES FOR ESTABLISHMENT OR REVISION OF SPECIFICATIONS AND POLICIES.**

4.1 Compliance with Consensus Policies and Temporary Policies. During the Term of this Agreement, Registrar shall comply with and implement all Consensus Policies and Temporary Policies in existence as of the Effective Date found at <http://www.icann.org/general/consensus-policies.htm>, and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedures and relate to those topics and subject to those limitations set forth in the Consensus Policies and Temporary Policies Specification to this Agreement.

**5. TERM, TERMINATION AND DISPUTE RESOLUTION.**

5.1 Term of Agreement. This Agreement shall be effective on the Effective Date and shall have an initial term running until the Expiration Date, unless sooner terminated.

5.2 Renewal. This Agreement and Registrar's Accreditation will be renewed for successive periods of five (5) years upon the Expiration Date and the expiration of each successive five-year term thereafter under the terms and conditions of this Agreement, unless:

5.2.1 at the time of such renewal, Registrar no longer meets the ICANN registrar Accreditation criteria then in effect;

5.2.2 Registrar is not in compliance with its obligations under this Agreement at the time of the Expiration Date or at the expiration of any successive five (5) year term thereafter;

5.2.3 Registrar has been given notice by ICANN of three (3) or more material breaches of this Agreement within the two (2) years preceding the Expiration Date or the date of expiration of any successive five (5) year term thereafter; or

5.2.4 this Agreement has terminated prior to the Expiration Date or the expiration date of any successive five (5) year term thereafter.

In the event Registrar intends to renew this Agreement pursuant to this Section 5.2, Registrar shall provide ICANN written notice thereof during the period that is no more than ninety (90) days and no less than sixty (60) days prior to the Expiration Date and each successive five (5) year term thereafter. The provision of such notice shall not be a condition to renewal hereunder. Pursuant to its customary practices (as may be modified by ICANN), ICANN will provide notice to Registrar of the Expiration Date and the date of expiration of any subsequent term hereunder.

**Approved by the ICANN Board on 27 June 2013**

**5.3 Right to Substitute Updated Agreement.** In the event that, during the Term of this Agreement, ICANN adopts a revised form Registrar accreditation agreement (the "Updated RAA"), Registrar (provided it has not received (i) a notice of breach that it has not cured or (ii) a notice of termination or suspension of this Agreement under this Section 5) may elect, by giving ICANN written notice, to enter into the Updated RAA. In the event of such election, Registrar and ICANN shall as soon as practicable enter into the Updated RAA for the term specified in the Updated RAA, and this Agreement will be deemed terminated.

**5.4 Termination of Agreement by Registrar.** This Agreement may be terminated before its expiration by Registrar by giving ICANN thirty (30) days written notice. Upon such termination by Registrar, Registrar shall not be entitled to any refund of fees paid to ICANN pursuant to this Agreement.

**5.5 Termination of Agreement by ICANN.** This Agreement may be terminated before its expiration by ICANN in any of the following circumstances:

5.5.1 There was a material misrepresentation, material inaccuracy, or materially misleading statement in Registrar's application for Accreditation or renewal of Accreditation or any material accompanying the application.

5.5.2 Registrar:

5.5.2.1 is convicted by a court of competent jurisdiction of a felony or other serious offense related to financial activities, or is judged by a court of competent jurisdiction to have:

5.5.2.1.1 committed fraud,

5.5.2.1.2 committed a breach of fiduciary duty, or

5.5.2.1.3 with actual knowledge (or through gross negligence) permitted Illegal Activity in the registration or use of domain names or in the provision to Registrar by any Registered Name Holder of inaccurate Whois information; or

5.5.2.1.4 failed to comply with the terms of an order issued by a court of competent jurisdiction relating to the use of domain names sponsored by the Registrar;

or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing; or

5.5.2.2 is disciplined by the government of its domicile for conduct involving dishonesty or misuse of funds of others; or

**Approved by the ICANN Board on 27 June 2013**

5.5.2.3 is the subject of a non-interlocutory order issued by a court or arbitral tribunal, in each case of competent jurisdiction, finding that Registrar has, directly or through an Affiliate, committed a specific violation(s) of applicable national law or governmental regulation relating to cybersquatting or its equivalent; or

5.5.2.4 is found by ICANN, based on its review of the findings of arbitral tribunals, to have been engaged, either directly or through its Affiliate, in a pattern and practice of trafficking in or use of domain names identical or confusingly similar to a trademark or service mark of a third party in which the Registered Name Holder has no rights or legitimate interest, which trademarks have been registered and are being used in bad faith.

5.5.3 Registrar knowingly employs any officer that is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) days of Registrar's knowledge of the foregoing; or any member of Registrar's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registrar's board of directors or similar governing body within thirty (30) days of Registrar's knowledge of the foregoing.

5.5.4 Registrar fails to cure any breach of this Agreement within twenty-one (21) days after ICANN gives Registrar notice of the breach.

5.5.5 Registrar fails to comply with a ruling granting specific performance under Sections 5.7 or 7.1.

5.5.6 Registrar has been in fundamental and material breach of its obligations under this Agreement at least three (3) times within a twelve (12) month period.

5.5.7 Registrar continues acting in a manner that ICANN has reasonably determined endangers the stability or operational integrity of the Internet after receiving three (3) days notice of that determination.

5.5.8 (i) Registrar makes an assignment for the benefit of creditors or similar act; (ii) attachment, garnishment or similar proceedings are commenced against Registrar, which proceedings are a material threat to Registrar's ability to provide Registrar Services for gTLDs, and are not

**Approved by the ICANN Board on 27 June 2013**

dismissed within sixty (60) days of their commencement; (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registrar or maintains control over any of Registrar's property; (iv) execution is levied upon any property of Registrar, (v) proceedings are instituted by or against Registrar under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) days of their commencement, or (vi) Registrar files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations.

**5.6 Termination Procedures.** This Agreement may be terminated in circumstances described in Subsections 5.5.1 through 5.5.6 above only upon fifteen (15) days written notice to Registrar (in the case of Subsection 5.5.4 occurring after Registrar's failure to cure), with Registrar being given an opportunity during that time to initiate arbitration under Subsection 5.8 to determine the appropriateness of termination under this Agreement. This Agreement may be terminated immediately upon notice to Registrar in circumstances described in Subsections 5.5.7 and 5.5.8.

**5.7 Suspension.**

**5.7.1** Upon the occurrence of any of the circumstances set forth in Section 5.5, ICANN may, in ICANN's sole discretion, upon delivery of a notice pursuant to Subsection 5.7.2, elect to suspend Registrar's ability to create or sponsor new Registered Names or initiate inbound transfers of Registered Names for any or all gTLDs for a period of up to a twelve (12) months following the effectiveness of such suspension. Suspension of a Registrar does not preclude ICANN's ability to issue a notice of termination in accordance with the notice requirements of Section 5.6.

**5.7.2** Any suspension under Subsections 5.7.1 will be effective upon fifteen (15) days written notice to Registrar, with Registrar being given an opportunity during that time to initiate arbitration under Subsection 5.8 to determine the appropriateness of suspension under this Agreement.

**5.7.3** Upon suspension, Registrar shall notify users, by posting a prominent notice on its web site, that it is unable to create or sponsor new gTLD domain name registrations or initiate inbound transfers of Registered Names. Registrar's notice shall include a link to the notice of suspension from ICANN.

**5.7.4** If Registrar acts in a manner that ICANN reasonably determines endangers the stability or operational integrity of the Internet and upon notice does not immediately cure, ICANN may suspend this Agreement for five (5) working days pending ICANN's application for more extended specific performance or injunctive relief under Subsection 7.1. Suspension

**Approved by the ICANN Board on 27 June 2013**

of the Agreement under this Subsection may, at ICANN's sole discretion, preclude the Registrar from (i) providing Registration Services for gTLDs delegated by ICANN on or after the date of delivery of such notice to Registrar and (ii) creating or sponsoring new Registered Names or initiating inbound transfers of Registered Names for any gTLDs. Registrar must also post the statement specified in Subsection 5.7.3.

**5.8 Resolution of Disputes Under this Agreement.** Subject to the limitations set forth in Section 6 and Section 7.4, disputes arising under or in connection with this Agreement, including (1) disputes arising from ICANN's failure to renew Registrar's Accreditation and (2) requests for specific performance, shall be resolved in a court of competent jurisdiction or, at the election of either party, by an arbitration conducted as provided in this Subsection 5.8 pursuant to the International Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration shall be conducted in English and shall occur in Los Angeles County, California, USA. Except as set forth in Section 7.4.5, there shall be one (1) arbitrator agreed by the parties from a list of AAA arbitrators, or if parties do not agree on an arbitrator within fifteen (15) days of the AAA request that the parties designate an arbitrator, the AAA shall choose and appoint an arbitrator, paying due regard to the arbitrator's knowledge of the DNS. The parties shall bear the costs of the arbitration in equal shares, subject to the right of the arbitrator to reallocate the costs in their award as provided in the AAA rules. The parties shall bear their own attorneys' fees in connection with the arbitration, and the arbitrator may not reallocate the attorneys' fees in conjunction with their award. The arbitrator shall render its decision within ninety (90) days of the conclusion of the arbitration hearing. In the event Registrar initiates arbitration to contest the appropriateness of termination of this Agreement by ICANN pursuant to Section 5.5 or suspension of Registrar by ICANN pursuant to Section 5.7.1, Registrar may at the same time request that the arbitration panel stay the termination or suspension until the arbitration decision is rendered. The arbitration panel shall order a stay: (i) upon showing by Registrar that continued operations would not be harmful to consumers or the public interest, or (ii) upon appointment by the arbitration panel of a qualified third party to manage the operations of the Registrar until the arbitration decision is rendered. In furtherance of sub-clause (ii) above, the arbitration panel is hereby granted all necessary authority to appoint a qualified third-party to manage the operations of the Registrar upon the Registrar's request and if the panel deems it appropriate. In selecting the third-party manager, the arbitration panel shall take into consideration, but shall not be bound by, any expressed preferences of Registrar. Any order granting a request for a stay must be issued within fourteen (14) days after the filing of the arbitration. If an order granting a request for a stay is not issued within fourteen (14) days, ICANN has the right to proceed with the termination of this Agreement pursuant to Section 5.5 or suspension of the Registrar pursuant to Section 5.7.1. In the event Registrar initiates arbitration to contest an Independent Review Panel's decision under Subsection 4.3.3 sustaining the ICANN Board of Director's determination that a specification or policy is supported by consensus, Registrar may at the same time request that the arbitration

**Approved by the ICANN Board on 27 June 2013**

panel stay the requirement that it comply with the policy until the arbitration decision is rendered, and that request shall have the effect of staying the requirement until the decision or until the arbitration panel has granted an ICANN request for lifting of the stay. In all litigation involving ICANN concerning this Agreement (whether in a case where arbitration has not been elected or to enforce an arbitration award), jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles, California, USA; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction. For the purpose of aiding the arbitration and/or preserving the rights of the parties during the pendency of an arbitration, the parties shall have the right to seek temporary or preliminary injunctive relief from the arbitration panel or in a court located in Los Angeles, California, USA, which shall not be a waiver of this arbitration agreement.

**5.9 Limitations on Monetary Remedies for Violations of this Agreement.** ICANN's aggregate monetary liability for violations of this Agreement shall not exceed an amount equal to the Accreditation fees paid by Registrar to ICANN under Subsection 3.9 of this Agreement during the preceding twelve-month period. Registrar's monetary liability to ICANN for violations of this Agreement shall be limited to Accreditation fees owing to ICANN under this Agreement and, except in the case of a good faith disagreement concerning the interpretation of this agreement, reasonable payment to ICANN for the reasonable and direct costs including attorney fees, staff time, and other related expenses associated with legitimate efforts to enforce Registrar compliance with this agreement and costs incurred by ICANN to respond to or mitigate the negative consequences of such behavior for Registered Name Holders and the Internet community. In the event of repeated willful material breaches of the agreement, Registrar shall be liable for sanctions of up to five (5) times ICANN's enforcement costs, but otherwise in no event shall either party be liable for special, indirect, incidental, punitive, exemplary, or consequential damages for any violation of this Agreement.

**6. AMENDMENT AND WAIVER.**

6.1 If the ICANN Board of Directors determines that an amendment to this Agreement (including to the Specifications referred to herein, unless such Specifications expressly do not permit amendment thereto) and all other registrar agreements between ICANN and the Applicable Registrars (the "Applicable Registrar Agreements") is desirable (each, a "Special Amendment"), ICANN may adopt a Special Amendment pursuant to the requirements of and process set forth in this Section 6; provided that a Special Amendment may not be a Restricted Amendment.

6.2 Prior to submitting a Special Amendment for Registrar Approval, ICANN shall first consult in good faith with the Working Group regarding the form and substance of such Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following

**Approved by the ICANN Board on 27 June 2013**

such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the "Posting Period") and providing notice of such proposed amendment to the Applicable Registrars in accordance with Section 7.6. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registrars).

6.3 If, within one hundred eighty (180) calendar days following the expiration of the Posting Period (the "Approval Period"), the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment, but must address the subject matter of the Special Amendment posted for public comment, as modified to reflect and/or address input from the Working Group and public comments), ICANN shall provide notice of, and submit, such Special Amendment for approval or disapproval by the Applicable Registrars. If, during the sixty (60) calendar day period following the date ICANN provides such notice to the Applicable Registrars, such Special Amendment receives Registrar Approval, such Special Amendment shall be deemed approved (an "Approved Amendment") by the Applicable Registrars, and shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice of the approval of such Approved Amendment to Registrar (the "Amendment Effective Date"). In the event that a Special Amendment does not receive Registrar Approval, the Special Amendment shall be deemed not approved by the Applicable Registrars (a "Rejected Amendment"). A Rejected Amendment will have no effect on the terms and conditions of this Agreement, except as set forth below.

6.4 If the ICANN Board of Directors reasonably determines that a Rejected Amendment falls within the subject matter categories set forth in Section 1.2 of the Consensus Policies and Temporary Policies Specification, the ICANN Board of Directors may adopt a resolution (the date such resolution is adopted is referred to herein as the "Resolution Adoption Date") requesting an Issue Report (as such term is defined in ICANN's Bylaws) by the Generic Names Supporting Organization (the "GNSO") regarding the substance of such Rejected Amendment. The policy development process undertaken by the GNSO pursuant to such requested Issue Report is referred to herein as a "PDP." If such PDP results in a Final Report supported by a GNSO Supermajority (as defined in ICANN's Bylaws) that either (i) recommends adoption of the Rejected Amendment as Consensus Policy or (ii) recommends against adoption of the Rejected Amendment as Consensus Policy, and, in the case of (i) above, the Board adopts such Consensus Policy, Registrar shall comply with its obligations pursuant to Section 4 of this Agreement. In either case, ICANN will abandon the Rejected Amendment and it will have no effect on the terms and conditions of this Agreement. Notwithstanding the foregoing provisions of this Section 6.4, the ICANN Board of Directors shall not be required to initiate a PDP with respect to a Rejected Amendment if, at any time in the twelve (12) month period preceding the submission of such Rejected Amendment for Registrar Approval pursuant to Section 6.3, the subject matter of such Rejected Amendment was the

**Approved by the ICANN Board on 27 June 2013**

subject of a concluded or otherwise abandoned or terminated PDP that did not result in a GNSO Supermajority recommendation.

6.5 If (i) a Rejected Amendment does not fall within the subject matter categories set forth in Section 1.2 of the Consensus Policies and Temporary Policies Specification, (ii) the subject matter of a Rejected Amendment was, at any time in the twelve (12) month period preceding the submission of such Rejected Amendment for Registrar Approval pursuant to Section 6.3, the subject of a concluded or otherwise abandoned or terminated PDP that did not result in a GNSO Supermajority recommendation, or (iii) a PDP does not result in a Final Report supported by a GNSO Supermajority that either (a) recommends adoption of the Rejected Amendment as Consensus Policy or (b) recommends against adoption of the Rejected Amendment as Consensus Policy (or such PDP has otherwise been abandoned or terminated for any reason), then, in any such case, such Rejected Amendment may still be adopted and become effective in the manner described below. In order for the Rejected Amendment to be adopted, the following requirements must be satisfied:

6.5.1 the subject matter of the Rejected Amendment must be within the scope of ICANN's mission and consistent with a balanced application of its core values (as described in ICANN's Bylaws);

6.5.2 the Rejected Amendment must be justified by a Substantial and Compelling Reason in the Public Interest, must be likely to promote such interest, taking into account competing public and private interests that are likely to be affected by the Rejected Amendment, and must be narrowly tailored and no broader than reasonably necessary to address such Substantial and Compelling Reason in the Public Interest;

6.5.3 to the extent the Rejected Amendment prohibits or requires conduct or activities, imposes material costs on the Applicable Registrars, and/or materially reduces public access to domain name services, the Rejected Amendment must be the least restrictive means reasonably available to address the Substantial and Compelling Reason in the Public Interest;

6.5.4 the ICANN Board of Directors must submit the Rejected Amendment, along with a written explanation of the reasoning related to its determination that the Rejected Amendment meets the requirements set out in subclauses (i) through (iii) above, for public comment for a period of no less than thirty (30) calendar days; and

6.5.5 following such public comment period, the ICANN Board of Directors must (i) engage in consultation (or direct ICANN management to engage in consultation) with the Working Group, subject matter experts, members of the GNSO, relevant advisory committees and other interested stakeholders with respect to such Rejected Amendment for a period of no less than sixty

**Approved by the ICANN Board on 27 June 2013**

(60) calendar days; and (ii) following such consultation, reapprove the Rejected Amendment (which may be in a form different than submitted for Registrar Approval, but must address the subject matter of the Rejected Amendment, as modified to reflect and/or address input from the Working Group and public comments) by the affirmative vote of at least two-thirds of the members of the ICANN Board of Directors eligible to vote on such matter, taking into account any ICANN policy affecting such eligibility, including ICANN's Conflict of Interest Policy (a "Board Amendment").

Such Board Amendment shall, subject to Section 6.6, be deemed an Approved Amendment, and shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice of the approval of such Board Amendment to Registrar (which effective date shall be deemed the Amendment Effective Date hereunder). Notwithstanding the foregoing, a Board Amendment may not amend the registrar fees charged by ICANN hereunder, or amend this Section 6.

6.6 Notwithstanding the provisions of Section 6.5, a Board Amendment shall not be deemed an Approved Amendment if, during the thirty (30) calendar day period following the approval by the ICANN Board of Directors of the Board Amendment, the Working Group, on the behalf of the Applicable Registrars, submits to the ICANN Board of Directors an alternative to the Board Amendment (an "Alternative Amendment") that meets the following requirements:

6.6.1 sets forth the precise text proposed by the Working Group to amend this Agreement in lieu of the Board Amendment;

6.6.2 addresses the Substantial and Compelling Reason in the Public Interest identified by the ICANN Board of Directors as the justification for the Board Amendment; and

6.6.3 compared to the Board Amendment is: (a) more narrowly tailored to address such Substantial and Compelling Reason in the Public Interest, and (b) to the extent the Alternative Amendment prohibits or requires conduct or activities, imposes material costs on Affected Registrars, or materially reduces access to domain name services, is a less restrictive means to address the Substantial and Compelling Reason in the Public Interest.

Any proposed amendment that does not meet the requirements of subclauses 6.6.1 through 6.6.3 in the immediately preceding sentence shall not be considered an Alternative Amendment hereunder and therefore shall not supersede or delay the effectiveness of the Board Amendment. If, following the submission of the Alternative Amendment to the ICANN Board of Directors, the Alternative Amendment receives Registrar Approval, the Alternative Amendment shall supersede the Board Amendment and shall be deemed an Approved Amendment hereunder (and shall be effective and deemed an amendment to this Agreement on

**Approved by the ICANN Board on 27 June 2013**

the date that is sixty (60) calendar days following the date ICANN provided notice of the approval of such Alternative Amendment to Registrar, which effective date shall be deemed the Amendment Effective Date hereunder), unless, within a period of sixty (60) calendar days following the date that the Working Group notifies the ICANN Board of Directors of Registrar Approval of such Alternative Amendment (during which time ICANN shall engage with the Working Group with respect to the Alternative Amendment), the ICANN Board of Directors by the affirmative vote of at least two-thirds of the members of the ICANN Board of Directors eligible to vote on such matter, taking into account any ICANN policy affecting such eligibility, including ICANN's Conflict of Interest Policy, rejects the Alternative Amendment. If (A) the Alternative Amendment does not receive Registrar Approval within thirty (30) days of submission of such Alternative Amendment to the Applicable Registrars (and the Working Group shall notify ICANN of the date of such submission), or (B) the ICANN Board of Directors rejects the Alternative Amendment by such two-thirds vote, the Board Amendment (and not the Alternative Amendment) shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice to Registrar (which effective date shall be deemed the Amendment Effective Date hereunder). If the ICANN Board of Directors rejects an Alternative Amendment, the board shall publish a written rationale setting forth its analysis of the criteria set forth in Sections 6.6.1 through 6.6.3. The ability of the ICANN Board of Directors to reject an Alternative Amendment hereunder does not relieve the Board of the obligation to ensure that any Board Amendment meets the criteria set forth in Section 6.5.1 through 6.5.5.

6.7 In the event that Registrar believes an Approved Amendment does not meet the substantive requirements set out in this Section 6 or has been adopted in contravention of any of the procedural provisions of this Section 6, Registrar may challenge the adoption of such Special Amendment pursuant to the dispute resolution provisions set forth in Section 5.8, except that such arbitration shall be conducted by a three-person arbitration panel. Any such challenge must be brought within sixty (60) calendar days following the date ICANN provided notice to Registrar of the Approved Amendment, and ICANN may consolidate all challenges brought by registrars (including Registrar) into a single proceeding. The Approved Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process.

6.8 Registrar may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registrar hereunder, an "Exemption Request") during the thirty (30) calendar day period following the date ICANN provided notice to Registrar of such Approved Amendment.

6.8.1 Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registrar.

**Approved by the ICANN Board on 27 June 2013**

6.8.2 An Exemption Request may only be granted upon a clear and convincing showing by Registrar that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registrar. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants.

6.8.3 Within ninety (90) calendar days of ICANN's receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement.

6.8.4 If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement; provided, that any conditions, alternatives or variations of the Approved Amendment required by ICANN shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registrar may, within thirty (30) calendar days following receipt of ICANN's determination, appeal ICANN's decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Section 5.8.

6.8.5 The Approved Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registrar that are approved by ICANN pursuant to this Article 6 or through an arbitration decision pursuant to Section 5.8 shall exempt Registrar from any Approved Amendment, and no Exemption Request granted to any other Applicable Registrar (whether by ICANN or through arbitration), shall have any effect under this Agreement or exempt Registrar from any Approved Amendment.

6.9 Except as set forth in Section 4, Subsection 5.3, this Section 6, Section 7.4 and as otherwise set forth in this Agreement and the Specifications hereto, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 6 or Section 7.4 shall restrict ICANN and Registrar from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to

Approved by the ICANN Board on 27 June 2013

enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Section 6 or Section 7.4 shall be deemed to limit Registrar's obligation to comply with Section 4.

6.10 Notwithstanding anything in this Section 6 to the contrary, (a) if Registrar provides evidence to ICANN's reasonable satisfaction that the Approved Amendment would materially increase the cost of providing Registrar Services, then ICANN will allow up to one-hundred eighty (180) calendar days for the Approved Amendment to become effective with respect to Registrar, and (b) no Approved Amendment adopted pursuant to Section 6 shall become effective with respect to Registrar if Registrar provides ICANN with an irrevocable notice of termination pursuant to Section 5.4.

## 7. MISCELLANEOUS PROVISIONS.

7.1 Specific Performance. While this Agreement is in effect, either party may seek specific performance of any provision of this Agreement in the manner provided in Section 5.8, provided the party seeking such performance is not in material breach of its obligations.

7.2 Handling by ICANN of Registrar-Supplied Data. Before receiving any Personal Data from Registrar, ICANN shall specify to Registrar in writing the purposes for and conditions under which ICANN intends to use the Personal Data. ICANN may from time to time provide Registrar with a revised specification of such purposes and conditions, which specification shall become effective no fewer than thirty (30) days after it is provided to Registrar. ICANN shall not use Personal Data provided by Registrar for a purpose or under conditions inconsistent with the specification in effect when the Personal Data was provided. ICANN shall take reasonable steps to avoid uses of the Personal Data by third parties inconsistent with the specification.

7.3 Assignment: Change of Ownership or Management.

7.3.1 Except as set forth in this Section 7.3.1, either party may assign or transfer this Agreement only with the prior written consent of the other party, which shall not be unreasonably withheld. If ICANN fails to expressly provide or withhold its consent to any requested assignment (an "Assignment Request") of this Agreement by Registrar within thirty (30) calendar days of ICANN's receipt of notice of such Assignment Request (or, if ICANN has requested additional information from Registrar in connection with its review of such request, sixty (60) calendar days of the receipt of all requested written information regarding such request) from Registrar, ICANN shall be deemed to have consented to such requested assignment. Notwithstanding the foregoing, (i) ICANN may assign this Agreement without the consent of Registrar upon approval of the ICANN Board of Directors in conjunction with

**Approved by the ICANN Board on 27 June 2013**

a reorganization, reconstitution or re-incorporation of ICANN upon such assignee's express assumption of the terms and conditions of this Agreement, (ii) Registrar may assign this Agreement without the consent of ICANN to a wholly-owned subsidiary of Registrar upon such subsidiary's express assumption of the terms and conditions of this Agreement, and (iii) ICANN shall be deemed to have consented to an Assignment Request in which the assignee associated with such Assignment Request is a party to a Registrar Accreditation Agreement with ICANN on the terms set forth in this Agreement (provided that such assignee is then in compliance with the terms and conditions of such Registrar Accreditation Agreement in all material respects), unless ICANN provides to Registrar a written objection to such Assignment Request within ten (10) calendar days of ICANN's receipt of notice of such Assignment Request pursuant to this Section 7.3.1.

7.3.2 To the extent that an entity acquires a Controlling interest in Registrar's stock, assets or business, Registrar shall provide ICANN notice within seven (7) days of such an acquisition. Such notification shall include a statement that affirms that Registrar meets the Specification or Policy on Accreditation criteria then in effect, and is in compliance with its obligations under this Agreement. Within thirty (30) days of such notification, ICANN may request additional information from the Registrar establishing compliance with this Agreement, in which case Registrar must supply the requested information within fifteen (15) days. Any disputes concerning Registrar's continued Accreditation shall be resolved pursuant to Section 5.8.

#### 7.4 Negotiation Process.

7.4.1 If either the Chief Executive Officer of ICANN ("CEO") or the Chairperson of the Registrar Stakeholder Group ("Chair") desires to discuss any revision(s) to this Agreement, the CEO or Chair, as applicable, shall provide written notice to the other person, which shall set forth in reasonable detail the proposed revisions to this Agreement (a "Negotiation Notice"). Notwithstanding the foregoing, neither the CEO nor the Chair may (i) propose revisions to this Agreement that modify any Consensus Policy then existing, (ii) propose revisions to this Agreement pursuant to this Section 7.4 on or before June 30, 2014, or (iii) propose revisions or submit a Negotiation Notice more than once during any twelve month period beginning on July 1, 2014.

7.4.2 Following receipt of the Negotiation Notice by either the CEO or the Chair, ICANN and the Working Group shall consult in good faith negotiations regarding the form and substance of the proposed revisions to this Agreement, which shall be in the form of a proposed amendment to this Agreement (the "Proposed Revisions"), for a period of at least ninety (90) calendar days (unless a resolution is earlier reached) and attempt to reach a mutually acceptable agreement relating to the Proposed Revisions (the "Discussion Period").

**Approved by the ICANN Board on 27 June 2013**

7.4.3 If, following the conclusion of the Discussion Period, an agreement is reached on the Proposed Revisions, ICANN shall post the mutually agreed Proposed Revisions on its website for public comment for no less than thirty (30) calendar days (the "Posting Period") and provide notice of such revisions to all Applicable Registrars in accordance with Section 7.6. ICANN and the Working Group will consider the public comments submitted on the Proposed Revisions during the Posting Period (including comments submitted by the Applicable Registrars). Following the conclusion of the Posting Period, the Proposed Revisions shall be submitted for Registrar Approval and approval by the ICANN Board of Directors. If such approvals are obtained, the Proposed Revisions shall be deemed an Approved Amendment by the Applicable Registrars and ICANN, and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registrar.

7.4.4 If, following the conclusion of the Discussion Period, an agreement is not reached between ICANN and the Working Group on the Proposed Revisions, either the CEO or the Chair may provide the other person written notice (the "Mediation Notice") requiring each party to attempt to resolve the disagreements related to the Proposed Revisions through impartial, facilitative (non-evaluative) mediation in accordance with the terms and conditions set forth below. In the event that a Mediation Notice is provided, ICANN and the Working Group shall, within fifteen (15) calendar days thereof, simultaneously post the text of their desired version of the Proposed Revisions and a position paper with respect thereto on ICANN's website.

7.4.4.1 The mediation shall be conducted by a single mediator selected by the parties. If the parties cannot agree on a mediator within fifteen (15) calendar days following receipt by the CEO or Chair, as applicable, of the Mediation Notice, the parties will promptly select a mutually acceptable mediation provider entity, which entity shall, as soon as practicable following such entity's selection, designate a mediator, who is a licensed attorney with general knowledge of contract law and, to the extent necessary to mediate the particular dispute, general knowledge of the domain name system. Any mediator must confirm in writing that he or she is not, and will not become during the term of the mediation, an employee, partner, executive officer, director, or security holder of ICANN or an Applicable Registrar. If such confirmation is not provided by the appointed mediator, then a replacement mediator shall be appointed pursuant to this Section 7.4.4.1.

7.4.4.2 The mediator shall conduct the mediation in accordance with the rules and procedures for facilitative mediation that he or she determines following consultation with the parties. The parties shall

**Approved by the ICANN Board on 27 June 2013**

discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute.

7.4.4.3 Each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator.

7.4.4.4 If an agreement is reached during the mediation, ICANN shall post the mutually agreed Proposed Revisions on its website for the Posting Period and provide notice to all Applicable Registrars in accordance with Section 7.6. ICANN and the Working Group will consider the public comments submitted on the agreed Proposed Revisions during the Posting Period (including comments submitted by the Applicable Registrars). Following the conclusion of the Posting Period, the Proposed Revisions shall be submitted for Registrar Approval and approval by the ICANN Board of Directors. If such approvals are obtained, the Proposed Revisions shall be deemed an Approved Amendment by the Applicable Registrars and ICANN, and shall be effective and deemed an amendment to this Agreement upon sixty (60) days notice from ICANN to Registrar.

7.4.4.5 If the parties have not resolved the dispute for any reason by the date that is ninety (90) calendar days following receipt by the CEO or Chair, as applicable, of the Mediation Notice, the mediation shall automatically terminate (unless extended by agreement of the parties). The mediator shall deliver to the parties a definition of the issues that could be considered in future arbitration, if invoked. Those issues are subject to the limitations set forth in Section 7.4.5.2 below.

7.4.5 If, following mediation, ICANN and the Working Group have not reached an agreement on the Proposed Revisions, either the CEO or the Chair may provide the other person written notice (an "Arbitration Notice") requiring ICANN and the Applicable Registry Operators to resolve the dispute through binding arbitration in accordance with the arbitration provisions of Section 5.8, subject to the requirements and limitations of this Section 7.4.5.

7.4.5.1 If an Arbitration Notice is sent, the mediator's definition of issues, along with the Proposed Revisions (be those from ICANN, Registrars or both) shall be posted for public comment on ICANN's website for a period of no less than thirty (30) calendar days. ICANN and the Working Group will consider the public comments submitted on the Proposed Revisions during the Posting Period (including comments submitted by the Applicable Registrars), and information regarding such comments and consideration shall be provided to the a three (3) person arbitrator panel. Each party may modify is Proposed Revisions before and after the Posting Period. The arbitration

**Approved by the ICANN Board on 27 June 2013**

proceeding may not commence prior to the closing of such public comment period, and ICANN may consolidate all challenges brought by registrars (including Registrar) into a single proceeding. Except as set forth in this Section 7.4.5.1, the arbitration shall be conducted pursuant to Section 5.8.

7.4.5.2 No dispute regarding the Proposed Revisions may be submitted for arbitration to the extent the subject matter of the Proposed Revisions (i) relates to Consensus Policy, (ii) falls within the subject matter categories set forth in Section 1.2 of the Consensus Policies and Temporary Policies Specification, or (iii) seeks to amend any of the following provisions or Specifications of this Agreement: Sections 2, 4 and 6; subsections 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 3.8, 3.9, 3.14, 3.19, 3.21, 5.1, 5.2 or 5.3; and the Consensus Policies and Temporary Policies Specification, Data Retention Specification, WHOIS Accuracy Program Specification, Registration Data Directory Service (WHOIS) Specification or the Additional Registrar Operation Specification.

7.4.5.3 The mediator will brief the arbitrator panel regarding ICANN and the Working Group's respective proposals relating to the Proposed Revisions.

7.4.5.4 No amendment to this Agreement relating to the Proposed Revisions may be submitted for arbitration by either the Working Group or ICANN, unless, in the case of the Working Group, the proposed amendment has received Registrar Approval and, in the case of ICANN, the proposed amendment has been approved by the ICANN Board of Directors.

7.4.5.5 In order for the arbitrator panel to approve either ICANN or the Working Group's proposed amendment relating to the Proposed Revisions, the arbitrator panel must conclude that such proposed amendment is consistent with a balanced application of ICANN's core values (as described in ICANN's Bylaws) and reasonable in light of the balancing of the costs and benefits to the business interests of the Applicable Registrars and ICANN (as applicable), and the public benefit sought to be achieved by the Proposed Revisions as set forth in such amendment. If the arbitrator panel concludes that either ICANN or the Working Group's proposed amendment relating to the Proposed Revisions meets the foregoing standard, such amendment shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registrar and deemed an Approved Amendment hereunder.

**Approved by the ICANN Board on 27 June 2013**

7.4.6 With respect to an Approved Amendment relating to an amendment proposed by ICANN, Registrar may apply in writing to ICANN for an exemption from such amendment pursuant to the provisions of Section 6.8.

7.4.7 Notwithstanding anything in this Section 7.4 to the contrary, (a) if Registrar provides evidence to ICANN's reasonable satisfaction that the Approved Amendment would materially increase the cost of providing Registrar Services, then ICANN will allow up to one-hundred eighty (180) calendar days for the Approved Amendment to become effective with respect to Registrar, and (b) no Approved Amendment adopted pursuant to Section 7.4 shall become effective with respect to Registrar if Registrar provides ICANN with an irrevocable notice of termination pursuant to Section 5.4.

7.5 No Third-Party Beneficiaries. This Agreement shall not be construed to create any obligation by either ICANN or Registrar to any non-party to this Agreement, including any Registered Name Holder.

7.6 Notices and Designations. Except as provided in Section 4.4 and Section 6, all notices to be given under this Agreement shall be given in writing at the address of the appropriate party as set forth below, unless that party has given a notice of change of address in writing. Each party shall notify the other party within thirty (30) days of any change to its contact information. Any written notice required by this Agreement shall be deemed to have been properly given when delivered in person, when sent by electronic facsimile with receipt of confirmation of delivery, when scheduled for delivery by internationally recognized courier service, or when delivered by electronic means followed by an affirmative confirmation of receipt by the recipient's facsimile machine or email server. For any notice of a new Specification or Policy established in accordance with this Agreement, Registrar shall be afforded a reasonable period of time after notice of the establishment of such Specification or Policy is e-mailed to Registrar and posted on the ICANN website in which to comply with that specification, policy or program, taking into account any urgency involved. Notices and designations by ICANN under this Agreement shall be effective when written notice of them is deemed given to Registrar.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, California 90094-2536 USA  
Attention: Registrar Accreditation Notices  
Telephone: 1/310/823-9358  
Facsimile: 1/310/823-8649

If to Registrar, addressed to:

Approved by the ICANN Board on 27 June 2013

[Registrar Name]  
[Courier Address]  
[Mailing Address]  
Attention: [contact person]  
Registrar Website URL: [URL]  
Telephone: [telephone number]  
Facsimile: [fax number]  
e-mail: [e-mail address]

7.7 Dates and Times. All dates and times relevant to this Agreement or its performance shall be computed based on the date and time observed in Los Angeles, California, USA.

7.8 Language. All notices, designations, and Specifications or Policies made under this Agreement shall be in the English language.

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

7.10 Entire Agreement. Except to the extent (a) expressly provided in a written agreement executed by both parties concurrently herewith or (b) of written assurances provided by Registrar to ICANN in connection with its Accreditation, this Agreement (including the specifications, which form part of it) constitutes the entire agreement of the parties pertaining to the Accreditation of Registrar and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

7.11 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement; (b) the balance of this Agreement shall be interpreted as if such provision were so excluded; and (c) the balance of this Agreement shall be enforceable in accordance with its terms.

[signature page follows]

**Approved by the ICANN Board on 27 June 2013**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives.

**ICANN**

**[Registrar]**

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

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

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

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

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

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

Approved by the ICANN Board on 27 June 2013

### WHOIS ACCURACY PROGRAM SPECIFICATION

Registrar shall implement and comply with the requirements set forth in this Specification, as well as any commercially practical updates to this Specification that are developed by ICANN and the Registrar Stakeholder Group during the Term of the Registrar Accreditation Agreement.

1. Except as provided for in Section 3 below, within fifteen (15) days of (1) the registration of a Registered Name sponsored by Registrar, (2) the transfer of the sponsorship of a Registered Name to Registrar, or (3) any change in the Registered Name Holder with respect to any Registered Name sponsored by Registrar, Registrar will, with respect to both Whois information and the corresponding customer account holder contact information related to such Registered Name:
  - a. Validate the presence of data for all fields required under Subsection 3.3.1 of the Agreement in a proper format for the applicable country or territory.
  - b. Validate that all email addresses are in the proper format according to RFC 5322 (or its successors).
  - c. Validate that telephone numbers are in the proper format according to the ITU-T E.164 notation for international telephone numbers (or its equivalents or successors).
  - d. Validate that postal addresses are in a proper format for the applicable country or territory as defined in UPU Postal addressing format templates, the S42 address templates (as they may be updated) or other standard formats.
  - e. Validate that all postal address fields are consistent across fields (for example: street exists in city, city exists in state/province, city matches postal code) where such information is technically and commercially feasible for the applicable country or territory.
  - f. Verify:
    - i. the email address of the Registered Name Holder (and, if different, the Account Holder) by sending an email requiring an affirmative response through a tool-based authentication method such as providing a unique code that must be returned in a manner designated by the Registrar, or
    - ii. the telephone number of the Registered Name Holder (and, if different, the Account Holder) by either (A) calling or sending an SMS to the Registered Name Holder's telephone number providing a unique code that must be returned in a manner designated by the Registrar, or (B) calling the Registered Name Holder's telephone number and requiring the Registered Name Holder to provide a unique code that was sent to the

Approved by the ICANN Board on 27 June 2013

Registered Name Holder via web, email or postal mail.

In either case, if Registrar does not receive an affirmative response from the Registered Name Holder, Registrar shall either verify the applicable contact information manually or suspend the registration, until such time as Registrar has verified the applicable contact information. If Registrar does not receive an affirmative response from the Account Holder, Registrar shall verify the applicable contact information manually, but is not required to suspend any registration.

2. Except as provided in Section 3 below, within fifteen (15) calendar days after receiving any changes to contact information in Whois or the corresponding customer account contact information related to any Registered Name sponsored by Registrar (whether or not Registrar was previously required to perform the validation and verification requirements set forth in this Specification in respect of such Registered Name), Registrar will validate and, to the extent required by Section 1, verify the changed fields in the manner specified in Section 1 above. If Registrar does not receive an affirmative response from the Registered Name Holder providing the required verification, Registrar shall either verify the applicable contact information manually or suspend the registration, until such time as Registrar has verified the applicable contact information. If Registrar does not receive an affirmative response from the Account Holder, Registrar shall verify the applicable contact information manually, but is not required to suspend any registration.
3. Except as set forth in paragraph 4 below, Registrar is not required to perform the above validation and verification procedures in Section 1(a) through 1(f) above, if Registrar has already successfully completed the validation and verification procedures on the identical contact information and is not in possession of facts or knowledge of circumstances that suggest that the information is no longer valid.
4. If Registrar has any information suggesting that the contact information specified in Section 1(a) through 1(f) above is incorrect (such as Registrar receiving a bounced email notification or non-delivery notification message in connection with compliance with ICANN's Whois Data Reminder Policy or otherwise) for any Registered Name sponsored by Registrar (whether or not Registrar was previously required to perform the validation and verification requirements set forth in this Specification in respect of such Registered Name), Registrar must verify or re-verify, as applicable, the email address(es) as described in Section 1.f (for example by requiring an affirmative response to a Whois Data Reminder Policy notice). If, within fifteen (15) calendar days after receiving any such information, Registrar does not receive an affirmative response from the Registered Name Holder providing the required verification, Registrar shall either verify the applicable contact information manually or suspend the registration, until such time as Registrar has verified the applicable contact information. If, within fifteen (15) calendar days after receiving any such information, Registrar does not receive an affirmative response from the customer paying for the Registered Name, if applicable, providing the required verification, Registrar shall verify the applicable

Approved by the ICANN Board on 27 June 2013

contact information manually, but is not required to suspend any registration.

5. Upon the occurrence of a Registered Name Holder's willful provision of inaccurate or unreliable WHOIS information, its willful failure promptly to update information provided to Registrar, or its failure to respond for over fifteen (15) calendar days to inquiries by Registrar concerning the accuracy of contact details associated with the Registered Name Holder's registration, Registrar shall either terminate or suspend the Registered Name Holder's Registered Name or place such registration on clientHold and clientTransferProhibited, until such time as Registrar has validated the information provided by the Registered Name Holder.
6. The terms and conditions of this Specification shall be reviewed by ICANN in consultation with the Registrar Stakeholder Group on or about the first anniversary of the date that the form of this Agreement is first executed by a registrar.
7. Nothing within this Specification shall be deemed to require Registrar to perform verification or validation of any customer account holder information where the customer account holder does not have any Registered Names under sponsorship of Registrar.

**Approved by the ICANN Board on 27 June 2013**

Approved by the ICANN Board on 27 June 2013

### WHOIS ACCURACY PROGRAM SPECIFICATION

Registrar shall implement and comply with the requirements set forth in this Specification, as well as any commercially practical updates to this Specification that are developed by ICANN and the Registrar Stakeholder Group during the Term of the Registrar Accreditation Agreement.

1. Except as provided for in Section 3 below, within fifteen (15) days of (1) the registration of a Registered Name sponsored by Registrar, (2) the transfer of the sponsorship of a Registered Name to Registrar, or (3) any change in the Registered Name Holder with respect to any Registered Name sponsored by Registrar, Registrar will, with respect to both Whois information and the corresponding customer account holder contact information related to such Registered Name:
  - a. Validate the presence of data for all fields required under Subsection 3.3.1 of the Agreement in a proper format for the applicable country or territory.
  - b. Validate that all email addresses are in the proper format according to RFC 5322 (or its successors).
  - c. Validate that telephone numbers are in the proper format according to the ITU-T E.164 notation for international telephone numbers (or its equivalents or successors).
  - d. Validate that postal addresses are in a proper format for the applicable country or territory as defined in UPU Postal addressing format templates, the S42 address templates (as they may be updated) or other standard formats.
  - e. Validate that all postal address fields are consistent across fields (for example: street exists in city, city exists in state/province, city matches postal code) where such information is technically and commercially feasible for the applicable country or territory.
  - f. Verify:
    - i. the email address of the Registered Name Holder (and, if different, the Account Holder) by sending an email requiring an affirmative response through a tool-based authentication method such as providing a unique code that must be returned in a manner designated by the Registrar, or
    - ii. the telephone number of the Registered Name Holder (and, if different, the Account Holder) by either (A) calling or sending an SMS to the Registered Name Holder's telephone number providing a unique code that must be returned in a manner designated by the Registrar, or (B) calling the Registered Name Holder's telephone number and requiring the Registered Name Holder to provide a unique code that was sent to the

Approved by the ICANN Board on 27 June 2013

Registered Name Holder via web, email or postal mail.

In either case, if Registrar does not receive an affirmative response from the Registered Name Holder, Registrar shall either verify the applicable contact information manually or suspend the registration, until such time as Registrar has verified the applicable contact information. If Registrar does not receive an affirmative response from the Account Holder, Registrar shall verify the applicable contact information manually, but is not required to suspend any registration.

2. Except as provided in Section 3 below, within fifteen (15) calendar days after receiving any changes to contact information in Whois or the corresponding customer account contact information related to any Registered Name sponsored by Registrar (whether or not Registrar was previously required to perform the validation and verification requirements set forth in this Specification in respect of such Registered Name), Registrar will validate and, to the extent required by Section 1, verify the changed fields in the manner specified in Section 1 above. If Registrar does not receive an affirmative response from the Registered Name Holder providing the required verification, Registrar shall either verify the applicable contact information manually or suspend the registration, until such time as Registrar has verified the applicable contact information. If Registrar does not receive an affirmative response from the Account Holder, Registrar shall verify the applicable contact information manually, but is not required to suspend any registration.
3. Except as set forth in paragraph 4 below, Registrar is not required to perform the above validation and verification procedures in Section 1(a) through 1(f) above, if Registrar has already successfully completed the validation and verification procedures on the identical contact information and is not in possession of facts or knowledge of circumstances that suggest that the information is no longer valid.
4. If Registrar has any information suggesting that the contact information specified in Section 1(a) through 1(f) above is incorrect (such as Registrar receiving a bounced email notification or non-delivery notification message in connection with compliance with ICANN's Whois Data Reminder Policy or otherwise) for any Registered Name sponsored by Registrar (whether or not Registrar was previously required to perform the validation and verification requirements set forth in this Specification in respect of such Registered Name), Registrar must verify or re-verify, as applicable, the email address(es) as described in Section 1.f (for example by requiring an affirmative response to a Whois Data Reminder Policy notice). If, within fifteen (15) calendar days after receiving any such information, Registrar does not receive an affirmative response from the Registered Name Holder providing the required verification, Registrar shall either verify the applicable contact information manually or suspend the registration, until such time as Registrar has verified the applicable contact information. If, within fifteen (15) calendar days after receiving any such information, Registrar does not receive an affirmative response from the customer paying for the Registered Name, if applicable, providing the required verification, Registrar shall verify the applicable

Approved by the ICANN Board on 27 June 2013

contact information manually, but is not required to suspend any registration.

5. Upon the occurrence of a Registered Name Holder's willful provision of inaccurate or unreliable WHOIS information, its willful failure promptly to update information provided to Registrar, or its failure to respond for over fifteen (15) calendar days to inquiries by Registrar concerning the accuracy of contact details associated with the Registered Name Holder's registration, Registrar shall either terminate or suspend the Registered Name Holder's Registered Name or place such registration on clientHold and clientTransferProhibited, until such time as Registrar has validated the information provided by the Registered Name Holder.
6. The terms and conditions of this Specification shall be reviewed by ICANN in consultation with the Registrar Stakeholder Group on or about the first anniversary of the date that the form of this Agreement is first executed by a registrar.
7. Nothing within this Specification shall be deemed to require Registrar to perform verification or validation of any customer account holder information where the customer account holder does not have any Registered Names under sponsorship of Registrar.

**Approved by the ICANN Board on 27 June 2013**

Approved by the ICANN Board on 27 June 2013

## REGISTRATION DATA DIRECTORY SERVICE (WHOIS) SPECIFICATION

1. **Registration Data Directory Services.** Until ICANN requires a different protocol, Registrar will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service providing free public query-based access to at least the elements set forth in Section 3.3.1.1 through 3.3.1.8 of the Registrar Accreditation Agreement in the format set forth in Section 1.4 of this Specification. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registrar will implement such alternative specification as soon as reasonably practicable.

Following the publication by the IETF of a Proposed Standard, Draft Standard or Internet Standard and any revisions thereto (as specified in RFC 2026) relating to the web-based directory service as specified in the IETF Web Extensible Internet Registration Data Service working group, Registrar shall implement the directory service specified in any such standard (or any revision thereto) no later than 135 days after such implementation is requested by ICANN. Registrar shall implement internationalized registration data publication guidelines according to the specification published by ICANN following the work of the ICANN Internationalized Registration Data Working Group (IRD-WG) and its subsequent efforts, no later than 135 days after it is approved by the ICANN Board.

- 1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registrar, and of the user querying the database.
- 1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.
- 1.3. For fields where more than one value exists, multiple numbered key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

### 1.4. Domain Name Data:

1.4.1. **Query format:** whois -h whois.example-registrar.tld EXAMPLE.TLD

1.4.2. **Response format:**

The format of responses shall contain all the elements and follow a semi-free text format outline below. Additional data elements can be added at the end of the text

Approved by the ICANN Board on 27 June 2013

format outlined below. The data element may, at the option of Registrar, be followed by a blank line and a legal disclaimer specifying the rights of Registrar, and of the user querying the database (provided that any such legal disclaimer must be preceded by such blank line).

Domain Name: EXAMPLE.TLD  
Registry Domain ID: D1234567-TLD  
Registrar WHOIS Server: whois.example-registrar.tld  
Registrar URL: http://www.example-registrar.tld  
Updated Date: 2009-05-29T20:13:00Z  
Creation Date: 2000-10-08T00:45:00Z  
Registrar Registration Expiration Date: 2010-10-08T00:44:59Z  
Registrar: EXAMPLE REGISTRAR LLC  
Registrar IANA ID: 5555555  
Registrar Abuse Contact Email: email@registrar.tld  
Registrar Abuse Contact Phone: +1.1235551234  
Reseller: EXAMPLE RESELLER<sup>1</sup>  
Domain Status: clientDeleteProhibited<sup>2</sup>  
Domain Status: clientRenewProhibited  
Domain Status: clientTransferProhibited  
Registry Registrant ID: 5372808-ERL<sup>3</sup>  
Registrant Name: EXAMPLE REGISTRANT<sup>4</sup>  
Registrant Organization: EXAMPLE ORGANIZATION  
Registrant Street: 123 EXAMPLE STREET  
Registrant City: ANYTOWN  
Registrant State/Province: AP<sup>5</sup>  
Registrant Postal Code: A1A1A1<sup>6</sup>  
Registrant Country: AA  
Registrant Phone: +1.5555551212  
Registrant Phone Ext: 1234<sup>7</sup>  
Registrant Fax: +1.5555551213  
Registrant Fax Ext: 4321  
Registrant Email: EMAIL@EXAMPLE.TLD  
Registry Admin ID: 5372809-ERL<sup>8</sup>

<sup>1</sup> Data element may be deleted, provided that if the data element is used, it must appear at this location.

<sup>2</sup> Note: all applicable statuses must be displayed in the Whois output.

<sup>3</sup> May be left blank if not available from Registry.

<sup>4</sup> For the Registrant, Admin and Tech contact fields requiring a "Name" or "Organization", the output must include either the name or organization (or both, if available).

<sup>5</sup> All "State/Province" fields may be left blank if not available.

<sup>6</sup> All "Postal Code" fields may be left blank if not available.

<sup>7</sup> All "Phone Ext", "Fax" and "Fax Ext" fields may be left blank if not available.

<sup>8</sup> May be left blank if not available from Registry.

Approved by the ICANN Board on 27 June 2013

Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE  
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION  
Admin Street: 123 EXAMPLE STREET  
Admin City: ANYTOWN  
Admin State/Province: AP  
Admin Postal Code: A1A1A1  
Admin Country: AA  
Admin Phone: +1.5555551212  
Admin Phone Ext: 1234  
Admin Fax: +1.5555551213  
Admin Fax Ext: 1234  
Admin Email: EMAIL@EXAMPLE.TLD  
Registry Tech ID: 5372811-ERL<sup>9</sup>  
Tech Name: EXAMPLE REGISTRANT TECHNICAL  
Tech Organization: EXAMPLE REGISTRANT LLC  
Tech Street: 123 EXAMPLE STREET  
Tech City: ANYTOWN  
Tech State/Province: AP  
Tech Postal Code: A1A1A1  
Tech Country: AA  
Tech Phone: +1.1235551234  
Tech Phone Ext: 1234  
Tech Fax: +1.5555551213  
Tech Fax Ext: 93  
Tech Email: EMAIL@EXAMPLE.TLD  
Name Server: NS01.EXAMPLE-REGISTRAR.TLD<sup>10</sup>  
Name Server: NS02.EXAMPLE-REGISTRAR.TLD  
DNSSEC: signedDelegation  
URL of the ICANN WHOIS Data Problem Reporting System:  
<http://wdprs.internic.net/>  
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

- 1.5. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers, email addresses, date and times must conform to the mappings specified in EPP RFCs 5730-5734 (or its successors), and IPv6 addresses format should conform to RFC 5952 (or its successor), so that the display of this information (or values returned in WHOIS responses) can be uniformly processed and understood.

## **2. Service Level Agreement for Registration Data Directory Services (RDDS)**

### **2.1 Definitions**

<sup>9</sup> May be left blank if not available from Registry.

<sup>10</sup> All associated nameservers must be listed.

Approved by the ICANN Board on 27 June 2013

- **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.
- **Probes.** Network hosts used to perform tests (see below) that are located at various global locations.
- **RDDS.** Registration Data Directory Services refers to the collective of WHOIS and Web based WHOIS services.
- **RTT.** Round-Trip Time or **RTT** refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.
- **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

## 2.2 Service Level Agreement Matrix

	Parameter	SLR (monthly basis)
RDDS	RDDS availability	less than or equal to 864 min of downtime
	RDDS query RTT	less than or equal to 4000 ms, for at least 95% of the queries
	RDDS update time	less than or equal to 60 min, for at least 95% of the probes

Registrar is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. Since substantial downtime is already incorporated in the availability metric, planned outages or similar; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

**2.2.1 RDDS availability.** Refers to the ability of all the RDDS services for the Registrar to respond to queries from an Internet user with appropriate data from the relevant registrar system. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.

**2.2.2 WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

**2.2.3 Web-based-WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the

Approved by the ICANN Board on 27 June 2013

reception of the HTTP response for only one HTTP request. If Registrar implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

- 2.2.4 RDDS query RTT.** Refers to the collective of “**WHOIS query RTT**” and “**Web-based- WHOIS query RTT**”.
- 2.2.5 RDDS update time.** Refers to the time measured from the receipt of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.
- 2.2.6 RDDS test.** Means one query sent to a particular “**IP address**” of one of the servers of one of the RDDS services. Queries shall be about existing objects in the registrar system and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.
- 2.2.7 Measuring RDDS parameters.** Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered “**IP addresses**” of the servers for each RDDS service of the Registrar being monitored and make an “**RDDS test**” to each one. If an “**RDDS test**” result is undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.
- 2.2.8 Collating the results from RDDS probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.
- 2.2.9 Placement of RDDS probes.** Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

### **2.3 Covenants of Performance Measurement**

Registrar shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registrar shall respond to the measurement tests described in this Specification as it would do with any other request from Internet users (for RDDS).

Approved by the ICANN Board on 27 June 2013

## CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

### 1. Consensus Policies.

- 1.1. "*Consensus Policies*" are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.
- 1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including registrars. Consensus Policies shall relate to one or more of the following:
  - 1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet, Registrar Services, Registry Services, or the Domain Name System ("DNS");
  - 1.2.2. functional and performance specifications for the provision of Registrar Services;
  - 1.2.3. registrar policies reasonably necessary to implement Consensus Policies relating to a gTLD registry;
  - 1.2.4. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names, but including where such policies take into account use of the domain names); or
  - 1.2.5. restrictions on cross-ownership of registry operators and registrars or Resellers and regulations and restrictions with respect to registrar and registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or Reseller are affiliated.
- 1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:
  - 1.3.1. principles for allocation of registered names in a TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
  - 1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;
  - 1.3.3. reservation of registered names in a TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);
  - 1.3.4. maintenance of and access to accurate and up-to-date information concerning Registered Names and name servers;
  - 1.3.5. procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility among continuing registrars of the Registered Names sponsored in a TLD by a registrar losing accreditation; and
  - 1.3.6. the transfer of registration data upon a change in registrar sponsoring one or more Registered Names.

Approved by the ICANN Board on 27 June 2013

- 1.4. In addition to the other limitations on Consensus Policies, they shall not:
  - 1.4.1. prescribe or limit the price of Registrar Services;
  - 1.4.2. modify the limitations on Temporary Policies (defined below) or Consensus Policies;
  - 1.4.3. modify the provisions in the Registrar Accreditation Agreement regarding terms or conditions for the renewal, termination or amendment of the Registrar Accreditation Agreement or fees paid by Registrar to ICANN; or
  - 1.4.4. modify ICANN's obligations to not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and to not single out Registrar for disparate treatment unless justified by substantial and reasonable cause, and exercise its responsibilities in an open and transparent manner.
2. **Temporary Policies.** Registrar shall comply with and implement all specifications or policies established by the ICANN Board of Directors (the "**Board**") on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registrar Services, Registry Services or the DNS or the Internet ("**Temporary Policies**").
  - 2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.
    - 2.1.1. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.
    - 2.1.2. If the period of time for which the Temporary Policy is adopted exceeds 90 days, the Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one year period expires or, if during such one year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registrar shall no longer be required to comply with or implement such Temporary Policy.
3. **Notice and Conflicts.** Registrar shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registrar Services and Consensus Policies or any Temporary Policy, the Consensus Policies or Temporary Policy shall control, but only with respect to subject matter in conflict. For the avoidance of doubt, Consensus Policies that meet the requirements of this Specification may supplement or supersede provisions of the agreements between Registrar and ICANN, but only to the extent that such Consensus Policies relate to the matters set forth in Section 1.2 and 1.3 of this Specification.

Approved by the ICANN Board on 27 June 2013

## **SPECIFICATION ON PRIVACY AND PROXY REGISTRATIONS**

Until the earlier to occur of (i) January 1, 2017, and (ii) the date ICANN establishes and implements a Privacy and Proxy Accreditation Program as referenced in Section 3.14 of the Registrar Accreditation Agreement, Registrar agrees to comply, and to require its Affiliates and Resellers to comply, with the terms of this Specification, provided that ICANN and the Working Group may mutually agree to extend the term of this Specification. This Specification may not be modified by ICANN or Registrar.

1. **Definitions.** For the purposes of this Specification, the following definitions shall apply.
  - 1.1 "P/P Customer" means, regardless of the terminology used by the P/P Provider, the licensee, customer, beneficial user, beneficiary, or other recipient of Privacy Services and Proxy Services.
  - 1.2 "Privacy Service" is a service by which a Registered Name is registered to its beneficial user as the Registered Name Holder, but for which alternative, reliable contact information is provided by the P/P Provider for display of the Registered Name Holder's contact information in the Registration Data Service (Whois) or equivalent services.
  - 1.3 "Proxy Service" is a service through which a Registered Name Holder licenses use of a Registered Name to the P/P Customer in order to provide the P/P Customer use of the domain name, and the Registered Name Holder's contact information is displayed in the Registration Data Service (Whois) or equivalent services rather than the P/P Customer's contact information.
  - 1.4 "P/P Provider" or "Service Provider" is the provider of Privacy/Proxy Services, including Registrar and its Affiliates, as applicable.
2. **Obligations of Registrar.** For any Proxy Service or Privacy Service offered by the Registrar or its Affiliates, including any of Registrar's or its Affiliates' P/P services distributed through Resellers, and used in connection with Registered Names Sponsored by the Registrar, the Registrar and its Affiliates must require all P/P Providers to follow the requirements described in this Specification and to abide by the terms and procedures published pursuant to this Specification.
  - 2.1 **Disclosure of Service Terms.** P/P Provider shall publish the terms and conditions of its service (including pricing), on its website and/or Registrar's website.

Approved by the ICANN Board on 27 June 2013

- 2.2 Abuse/Infringement Point of Contact. P/P Provider shall publish a point of contact for third parties wishing to report abuse or infringement of trademarks (or other rights).
  - 2.3 Disclosure of Identity of P/P Provider. P/P Provider shall publish its business contact information on its website and/or Registrar's website.
  - 2.4 Terms of service and description of procedures. The P/P Provider shall publish on its website and/or Registrar's website a copy of the P/P Provider service agreement and description of P/P Provider's procedures for handling the following:
    - 2.4.1 The process or facilities to report abuse of a domain name registration managed by the P/P Provider;
    - 2.4.2 The process or facilities to report infringement of trademarks or other rights of third parties;
    - 2.4.3 The circumstances under which the P/P Provider will relay communications from third parties to the P/P Customer;
    - 2.4.4 The circumstances under which the P/P Provider will terminate service to the P/P Customer;
    - 2.4.5 The circumstances under which the P/P Provider will reveal and/or publish in the Registration Data Service (Whois) or equivalent service the P/P Customer's identity and/or contact data; and
    - 2.4.6 A description of the support services offered by P/P Providers to P/P Customers, and how to access these services.
  - 2.5 Escrow of P/P Customer Information. Registrar shall include P/P Customer contact information in its Registration Data Escrow deposits required by Section 3.6 of the Agreement. P/P Customer Information escrowed pursuant to this Section 2.5 of this Specification may only be accessed by ICANN in the event of the termination of the Agreement or in the event Registrar ceases business operations.
3. Exemptions. Registrar is under no obligation to comply with the requirements of this specification if it can be shown that:
    - 3.1 Registered Name Holder employed the services of a P/P Provider that is not provided by Registrar, or any of its Affiliates;

Approved by the ICANN Board on 27 June 2013

- 3.2 Registered Name Holder licensed a Registered Name to another party (i.e., is acting as a Proxy Service) without Registrar's knowledge; or
- 3.3 Registered Name Holder has used P/P Provider contact data without subscribing to the service or accepting the P/P Provider terms and conditions.

Approved by the ICANN Board on 27 June 2013

### DATA RETENTION SPECIFICATION

1. During the Term of this Agreement, for each Registered Name sponsored by Registrar within a gTLD, Registrar shall collect and securely maintain in its own electronic database (as updated from time to time) the data specified below:
  - 1.1. Registrar shall collect the following information from registrants at the time of registration of a domain name (a "Registration") and shall maintain that information for the duration of Registrar's sponsorship of the Registration and for a period of two additional years thereafter:
    - 1.1.1. First and last name or full legal name of registrant;
    - 1.1.2. First and last name or, in the event registrant is a legal person, the title of the registrant's administrative contact, technical contact, and billing contact;
    - 1.1.3. Postal address of registrant, administrative contact, technical contact, and billing contact;
    - 1.1.4. Email address of registrant, administrative contact, technical contact, and billing contact;
    - 1.1.5. Telephone contact for registrant, administrative contact, technical contact, and billing contact;
    - 1.1.6. WHOIS information, as set forth in the WHOIS Specification;
    - 1.1.7. Types of domain name services purchased for use in connection with the Registration; and
    - 1.1.8. To the extent collected by Registrar, "card on file," current period third party transaction number, or other recurring payment data.
  - 1.2. Registrar shall collect the following information and maintain that information for no less than one hundred and eighty (180) days following the relevant interaction:
    - 1.2.1. Information regarding the means and source of payment reasonably necessary for the Registrar to process the Registration transaction, or a transaction number provided by a third party payment processor;
    - 1.2.2. Log files, billing records and, to the extent collection and maintenance of such records is commercially practicable or consistent with industry-wide generally accepted standard practices within the industries in which Registrar operates, other

Approved by the ICANN Board on 27 June 2013

records containing communications source and destination information, including, depending on the method of transmission and without limitation: (1) Source IP address, HTTP headers, (2) the telephone, text, or fax number; and (3) email address, Skype handle, or instant messaging identifier, associated with communications between Registrar and the registrant about the Registration; and

- 1.2.3. Log files and, to the extent collection and maintenance of such records is commercially practicable or consistent with industry-wide generally accepted standard practices within the industries in which Registrar operates, other records associated with the Registration containing dates, times, and time zones of communications and sessions, including initial registration.
2. If, based on the receipt of either (i) a written legal opinion from a nationally recognized law firm in the applicable jurisdiction that states that the collection and/or retention of any data element specified herein by Registrar is reasonably likely to violate applicable law (the "Opinion") or (ii) a ruling of, or written guidance from, a governmental body of competent jurisdiction providing that compliance with the data collection and/or retention requirements of this Specification violates applicable law, Registrar determines in good faith that the collection and/or retention of any data element specified in this Specification violates applicable law, Registrar may provide written notice of such determination to ICANN and request a waiver from compliance with specific terms and conditions of this Specification (a "Waiver Request"). Such written notice shall: (i) specify the relevant applicable law, the allegedly offending data collection and retention elements, the manner in which the collection and/or retention of such data violates applicable law, and a reasonable description of such determination and any other facts and circumstances related thereto, (ii) be accompanied by a copy of the Opinion and governmental ruling or guidance, as applicable, and (iii) be accompanied by any documentation received by Registrar from any governmental authority, in each case, related to such determination, and such other documentation reasonably requested by ICANN. Following receipt of such notice, ICANN and Registrar shall discuss the matter in good faith in an effort to reach a mutually acceptable resolution of the matter. Until such time as ICANN's Procedure for Handling Whois Conflicts with Privacy Law is modified to include conflicts relating to the requirements of this Specification and if ICANN agrees with Registrar's determination, ICANN's office of general counsel may temporarily or permanently suspend compliance and enforcement of the affected provisions of this Specification and grant the Waiver Request. Prior to granting any exemption hereunder, ICANN will post its determination on its website for a period of thirty (30) calendar days. Following such modification of ICANN's Procedure for Handling Whois Conflicts with Privacy Law, all Waiver Requests (whether granted or denied) shall be resolved pursuant to such modified procedures.

Approved by the ICANN Board on 27 June 2013

3. If (i) ICANN has previously waived compliance with the requirements of any requirement of this Data Retention Specification in response to a Waiver Request from a registrar that is located in the same jurisdiction as Registrar and (ii) Registrar is subject to the same applicable law that gave rise to ICANN's agreement to grant such waiver, Registrar may request that ICANN to grant a similar waiver, which request shall be approved by ICANN, unless ICANN provides Registrar with a reasonable justification for not approving such request, in which case Registrar may thereafter make an Waiver Request pursuant to Section 2 of this Data Retention Specification.
4. Any modification of this Data Retention Specification to address violations of applicable law shall only apply during the period of time that the specific provisions of the applicable law giving rise to such violations remain in effect. If the applicable law is repealed or modified (or preempted) in a manner that would no longer prohibit the collection and/or retention of data and information as originally specified in this Data Retention Specification, Registrar agrees that the original version of this Specification will apply to the maximum extent permitted by such modified applicable law.

Approved by the ICANN Board on 27 June 2013

## REGISTRAR INFORMATION SPECIFICATION

Registrar shall provide to ICANN the information specified below, which shall be maintained in accordance with Section 3.17 of the Agreement. With regard to information identified below, ICANN will hold such information pursuant to the disclosure requirements set forth in Section 3.15 of the Agreement.

### General Information

1. Full legal name of Registrar.
2. Legal form of the Registrar (e.g., LLC, Corporation, Government Body, Intergovernmental Organization, etc.).
3. The jurisdiction in which the Registrar's business is registered for legal and financial purposes.
4. The Registrar's business registration number and the name of the authority that issued this number.
5. Every business name and/or trade name used by the Registrar.
6. Provide current documentation demonstrating that the Registrar entity is legally established and in good standing. For proof of establishment, provide charter documents or other equivalent document (e.g., membership agreement) of the entity. If the Registrar is a government body or organization, provide a certified copy of the relevant statute, governmental decision or other instrument under which the government body or organization has been established. With respect to an entity other than a government body or organization, where no such certificates or documents are available in the Registrar's jurisdiction, an affidavit drafted and signed by a notary public or a legal practitioner duly qualified in the courts of the Registrar's jurisdiction, declaring that the organization is established and in good standing, must be provided.
7. Correspondence address for the Registrar.\* This address will be used for contractual purposes, and the Registrar must be able to accept notices and service of legal process at this address. No Post Office boxes are allowed.
8. Primary phone number where the Registrar can be reached for contractual purposes.
9. Primary Fax number where the Registrar can be reached for contractual purposes.
10. Primary Email address where the Registrar can be reached for contractual purposes.

Approved by the ICANN Board on 27 June 2013

11. If the location or address of Registrar's principal place of business is different from the address provided in 7, provide details including address, phone number, fax number and email address.\* Provide ICANN with current documentation demonstrating that the Registrar is legally entitled to do business in the principal place of business.

12. Any other addresses where the Registrar will be operated or managed, if different from either its principal place of business or correspondence address provided above. (If so, please explain.) Provide ICANN with current documentation demonstrating that the Registrar is legally entitled to do business in each location identified.

13. Primary contact name:

Title  
Address  
Phone number  
Fax number  
Email address

14. URL and Location of Port 43 WHOIS server.

#### **Ownership, Directors and Officers Information**

15. Full name, contact information, and position of any persons or entities owning at least 5% of the ownership interest in Registrar's current business entity. For each person listed, please specify such person's percentage ownership.

16. Full name, contact information, and position of all directors of the Registrar.

17. Full name, contact information, and position of all officers of the Registrar.\* (Officer names and positions must be publicly displayed.)

18. Full name, contact information, and position of all senior management and other key personnel overseeing the provision of Registrar Services.

19. For every person or entity mentioned in the answers to questions 15 to 18, indicate if that person or entity:

a) within the past ten years, has been convicted of a felony or of a misdemeanor related to financial activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that is similar or related to any of these;

b) within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of funds of others;

Approved by the ICANN Board on 27 June 2013

c) is currently involved in any judicial or regulatory proceeding that could result in a conviction, judgment, determination, or discipline of the type specified in items 19(a) or 19(b); or

d) is the subject of a disqualification imposed by ICANN.

Provide details if any of the above events in (a)-(d) have occurred.

20. List all Affiliated Registrars, if any, and briefly describe the Affiliation.
21. For any entities listed in item 20, must provide information required in items 1-14 above.
22. List the ultimate parent entity of the Registrar, if applicable.\*

**Other**

23. Does the Registrar or any of its Affiliates offer any Privacy Service or Proxy Service (as such terms are defined in the Specification on Privacy and Proxy Registrations)? If yes, list the entities or individuals providing the Privacy Service or Proxy Service.
24. For any entities listed in item 20, provide information required in 1-14 above.
25. Does the Registrar utilize or benefit from the services of Resellers?
26. If yes, provide a list of all such Resellers known to Registrar. The information specified in this item 26 shall be made available to ICANN upon request. At such time as ICANN develops a secure method for the receipt and retention of such information, such information shall thereafter be provided to ICANN in accordance with Section 3.17 of the Agreement.

Approved by the ICANN Board on 27 June 2013

## **ADDITIONAL REGISTRAR OPERATION SPECIFICATION**

This Specification may be modified by ICANN from time to time after consultation with the Registrar Stakeholder Group (or its successor), provided that such updates are commercially practical with respect to the registrar industry, taken as a whole.

### **1. DNSSEC**

Registrar must allow its customers to use DNSSEC upon request by relaying orders to add, remove or change public key material (e.g., DNSKEY or DS resource records) on behalf of customers to the Registries that support DNSSEC. Such requests shall be accepted and processed in a secure manner and according to industry best practices. Registrars shall accept any public key algorithm and digest type that is supported by the TLD of interest and appears in the registries posted at: <<http://www.iana.org/assignments/dns-sec-alg-numbers/dns-sec-alg-numbers.xml>> and <<http://www.iana.org/assignments/ds-rr-types/ds-rr-types.xml>>. All such requests shall be transmitted to registries using the EPP extensions specified in RFC 5910 or its successors.

### **2. IPv6**

To the extent that Registrar offers registrants the ability to register nameserver addresses, Registrar must allow both IPv4 addresses and IPv6 addresses to be specified.

### **3. IDN**

If the Registrar offers Internationalized Domain Name ("IDN") registrations, all new registrations must comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registrar shall also comply with the IDN Guidelines at <http://www.icann.org/en/topics/idn/implementation-guidelines.htm> which may be amended, modified, or superseded from time to time. Registrar must use the IDN tables published by the relevant registry.

Approved by the ICANN Board on 27 June 2013

### ***Registrants' Benefits and Responsibilities***

#### **Domain Name Registrants' Rights:**

1. Your domain name registration and any privacy/proxy services you may use in conjunction with it must be subject to a Registration Agreement with an ICANN Accredited Registrar.
  - You are entitled to review this Registration Agreement at any time, and download a copy for your records.
2. You are entitled to accurate and accessible information about:
  - The identity of your ICANN Accredited Registrar;
  - The identity of any proxy or privacy service provider affiliated with your Registrar;
  - Your Registrar's terms and conditions, including pricing information, applicable to domain name registrations;
  - The terms and conditions, including pricing information, applicable to any privacy services offered by your Registrar;
  - The customer support services offered by your Registrar and the privacy services provider, and how to access them;
  - How to raise concerns and resolve disputes with your Registrar and any privacy services offered by them; and
  - Instructions that explain your Registrar's processes for registering, managing, transferring, renewing, and restoring your domain name registrations, including through any proxy or privacy services made available by your Registrar.
3. You shall not be subject to false advertising or deceptive practices by your Registrar or through any proxy or privacy services made available by your Registrar. This includes deceptive notices, hidden fees, and any practices that are illegal under the consumer protection law of your residence.

#### **Domain Name Registrants' Responsibilities:**

1. You must comply with the terms and conditions posted by your Registrar, including applicable policies from your Registrar, the Registry and ICANN.
2. You must review your Registrar's current Registration Agreement, along with any updates.

Approved by the ICANN Board on 27 June 2013

3. You will assume sole responsibility for the registration and use of your domain name.
4. You must provide accurate information for publication in directories such as WHOIS, and promptly update this to reflect any changes.
5. You must respond to inquiries from your Registrar within fifteen (15) days, and keep your Registrar account data current. If you choose to have your domain name registration renew automatically, you must also keep your payment information current.

Approved by the ICANN Board on 27 June 2013



## LOGO LICENSE SPECIFICATION to RAA

### LOGO LICENSE SPECIFICATION

The Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [organization type and jurisdiction] ("Registrar") have entered into a Registrar Accreditation Agreement ("Registrar Accreditation Agreement"), of which this appendix ("Logo License Specification") is a part. Definitions in the Registrar Accreditation Agreement apply in this Logo License Specification.

Registrar wishes to acquire from ICANN, and ICANN wishes to grant to Registrar, a license to use the trademarks listed below the signature block of this Logo License Specification ("Trademarks") in connection with Registrar's role as an ICANN-accredited registrar. Pursuant to and subject to the Registrar Accreditation Agreement, Registrar and ICANN hereby agree as follows:

#### LICENSE

1. **Grant of License.** ICANN grants to Registrar a non-exclusive, worldwide right and license to use the Trademarks, during the term of this specification and solely in connection with the provision and marketing of Registrar Services in order to indicate that Registrar is accredited as a registrar of domain names by ICANN. Except as provided in this subsection and Subsection 2.2 of the Registrar Accreditation Agreement, Registrar shall not use the Trademarks, any term, phrase, or design which is confusingly similar to the Trademarks or any portion of the Trademarks in any manner whatsoever.
2. **Ownership of Trademarks.** Any and all rights in the Trademarks that may be acquired by Registrar shall inure to the benefit of, and are hereby assigned to, ICANN. Registrar shall not assert ownership of the Trademarks or any associated goodwill.
3. **No Sublicense.** Registrar shall not sublicense any of its rights under this specification to any other person or entity (including any of Registrar's resellers) without the prior written approval of ICANN.

Approved by the ICANN Board on 27 June 2013

REGISTRATION AND ENFORCEMENT

1. Registration. Registration and any other form of protection for the Trademarks shall only be obtained by ICANN in its name and at its expense.

2. Enforcement. Registrar shall promptly notify ICANN of any actual or suspected infringement of the Trademarks by third parties, including Registrar's resellers or affiliates. ICANN shall have the sole discretion to initiate and maintain any legal proceedings against such third parties; Registrar shall not take any such actions without the prior written approval of ICANN; and ICANN shall retain any and all recoveries from such actions.

3. Further Assurances. Registrar agrees to execute such other documents and to take all such actions as ICANN may request to effect the terms of this specification, including providing such materials (for example URLs and samples of any promotional materials bearing the Trademarks), cooperation, and assistance as may be reasonably required to assist ICANN in obtaining, maintaining, and enforcing trademark registration(s) and any other form of protection for the Trademarks.

TERM AND TERMINATION

This Logo License Specification shall be effective from the date it is signed below by both parties until the Expiration Date, unless this specification or the Registrar Accreditation Agreement is earlier terminated. Each party shall have the right to terminate this specification at any time by giving the other party written notice. Upon expiration or termination of this specification, Registrar shall immediately discontinue all use of the Trademarks.

IN WITNESS WHEREOF, the parties have caused this Logo License Specification to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

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

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

Name:

Title:

Dated: \_\_\_\_\_, 200\_\_

TRADEMARKS:

1. ICANN Accredited Registrar

2.

Approved by the ICANN Board on 27 June 2013



Approved by the ICANN Board on 27 June 2013

**COMPLIANCE CERTIFICATE**

\_\_\_\_\_, 20\_\_

Pursuant to Section 3.15 of Registrar Accreditation Agreement (the "Agreement"), dated \_\_\_\_\_, 20\_\_ by and between the Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [Organization type and jurisdiction] ("Registrar"), the undersigned certifies, in his/her capacity as an officer of the Registrar and not in his/her individual capacity, on behalf of Registrar as follows:

1. The undersigned is the [Chief Executive Officer/President/Chief Operating Officer/Chief Financial Officer or functional equivalent thereof] of Registrar.

2. Registrar has in place processes and procedures intended to establish, maintain, review, test, and modify registrar policies and procedures reasonably designed to achieve compliance with the Agreement.

3. To the best of the undersigned's knowledge and belief, Registrar has performed and complied with all covenants, agreements, obligations and conditions contained in the Agreement that are required to be performed or complied with by it for the calendar year 20\_\_.

The undersigned signs this certificate as of the date indicated under the title.

**[REGISTRAR]**

By: \_\_\_\_\_  
Name:  
Title:

Approved by the ICANN Board on 27 June 2013

### **Transition Addendum to Registrar Accreditation Agreement**

This Transition Addendum (this "Addendum") to the Registrar Accreditation Agreement (the "Agreement") by and between the Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [Organization type and jurisdiction] ("Registrar"), is dated as of \_\_\_\_\_, 2013.

**WHEREAS**, ICANN and Registrar entered into the Agreement as of the date hereof; and

**WHEREAS**, ICANN acknowledges that implementation by Registrar of certain operational provisions of the Agreement is not possible on the date hereof and will require a reasonable grace period.

**NOW THEREFORE**, the parties agree as follows:

1. ICANN will not enforce the following provisions and specifications of the Agreement until January 1, 2014: Sections 3.4.1.1, 3.4.1.5, 3.7.10, 3.7.11, 3.12.4, 3.12.7, 3.14, 3.18 and 3.19 of the Agreement; the first sentence of Section 3.7.8 of the Agreement; the WHOIS Accuracy Specification; the Data Retention Specification; and the service level agreements set forth in Section 2.2 of the Registration Data Directory Service (WHOIS) Specification (collectively, the "Transition Provisions").
2. In addition, if immediately prior to the execution of this Addendum Registrar was party to the form registrar accreditation agreement adopted by ICANN in 2009 (the "2009 RAA"), Registrar may use its existing form of registrant registration agreement until January 1, 2014, provided that such agreement complies with Section 3.7.7 of the 2009 RAA.
3. For the calendar year ended December 31, 2013, any certification required pursuant to Section 3.15 shall not require certification as to compliance with the Transition Provisions and may acknowledge the permissible use of the registrant registration agreement under Section 2 hereof.
4. Notwithstanding the foregoing, Registrar agrees to use commercially reasonable efforts to comply with the obligations set forth in the Transition Provisions and transition to a registrant registration agreement that complies with the terms of the Agreement prior to January 1, 2014.
5. Registrar must be fully compliant with the Transition Provisions and Section 3.7.7 of the Agreement as of January 1, 2014, at which date this Addendum shall automatically terminate without action by any party, except as it relates to Section 4 hereof.
6. ICANN and the Registrar Whois Validation Working Group (as defined below) will work together to identify and specify an appropriate set of tools to enable Registrar to complete the across field validation specified in Section 1(e) of the Whois Accuracy Program Specification to the Agreement (the "Across Field Validation"). When such tools are mutually agreed between ICANN and the Registrar Whois Validation Working Group,

Approved by the ICANN Board on 27 June 2013

ICANN shall provide Registrar written notice of such agreement (which notice shall specify and describe the agreed upon tools). Effective on the one hundred eightieth (180th) calendar day following delivery of such notice by ICANN, Registrar shall comply with the obligations specified in Section 1(e) of the Whois Accuracy Program. Until such time, ICANN will not enforce compliance with such obligations.

For purposes of this Section 6, the Registrar Whois Validation Working Group shall be deemed to have agreed to such Across Field Validation tools when Approval (as defined below) of the then serving members of the group is obtained through a vote of the group (which vote may be conducted through any verifiable means determined by the group, including through electronic means).

The "Registrar Whois Validation Working Group" means that existing working group whose membership has been tasked with identifying and specifying a set of tools to enable registrars to complete the Across Field Validation. The membership of the Registrar Whois Validation Working Group shall be made up of volunteering representatives of ICANN-accredited registrars, and shall initially consist of the members currently serving on the existing working group.

"Approval" is obtained following a vote of the Registrar Whois Validation Working Group, if the votes cast in favor of adoption of the proposed Across Field Validations tools by the then serving members of the group are at least two-thirds of the votes cast by such members, with abstentions or non-votes not being counted as either votes in favor or against adoption of such tools. For purposes of the vote of the group as referenced above, (i) only persons appointed by an ICANN-accredited registrar shall be deemed members of the group and eligible to cast a vote as described above and (ii) no ICANN-accredited registrar nor group of Affiliated Registrars represented in the Registrar Whois Validation Working Group shall have more than one vote.

7. Except as set forth in this Addendum, the Agreement shall be in full force and effect, enforceable by the parties in accordance with its terms.

[signature page follows]

Approved by the ICANN Board on 27 June 2013

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed in duplicate by their duly authorized representatives.

**ICANN**

**[Registrar]**

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

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

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

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

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

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

## **EXHIBIT 5**

2/19/2015

Resources - ICANN

Welcome to the new ICANN.org! Learn more, and send us your feedback. [✖ Dismiss](#)

Translations Français Español العربية

Русский 中文

[Log In](#) [Sign Up](#)

Search ICANN.org



[GET STARTED](#)

[NEWS & MEDIA](#)

[POLICY](#)

[PUBLIC COMMENT](#)

[RESOURCES](#)

[COMMUNITY](#)

[IANA STEWARDSHIP & ACCOUNTABILITY](#)

Resources

- ▶ [About ICANN](#)
- ▶ [Board](#)
- ▶ [Accountability & Transparency](#)
- ▶ [Governance](#)
- ▶ [Groups](#)
- ▶ [Contractual Compliance](#)
- ▶ [Registrars](#)
- ▶ [Registries](#)
- ▶ [Operational Metrics](#)
- ▶ [Identifier Systems](#)

## Uniform Domain Name Dispute Resolution Policy

This page is available in: العربية | Deutsch | English | Español | Français | Italiano | 日本語 | 한국어 | Português | Русский | 中文

Policy Adopted: August 26, 1999

Implementation Documents Approved: October 24, 1999

**Notes:**

**1. This policy is now in effect. See [www.icann.org/udrp/udrp-schedule.htm](http://www.icann.org/udrp/udrp-schedule.htm) for the implementation schedule.**

**2. This policy has been adopted by all ICANN-accredited registrars. It has also been adopted by certain managers of country-code top-level domains (e.g., .nu, .tv, .ws).**

**3. The policy is between the registrar (or other registration authority in the case of a country-code**

2/19/2015

Resources - ICANN

Security, Stability and Resiliency (IS-SSR)

**top-level domain) and its customer (the domain-name holder or registrant). Thus, the policy uses "we" and "our" to refer to the registrar and it uses "you" and "your" to refer to the domain-name holder.**

- ▶ ccTLDs
- ▶ Internationalized Domain Names
  - Uniform Domain Name Dispute Resolution Policy
  - (As Approved by ICANN on October 24, 1999)
- ▶ Universal Acceptance Initiative
- ▶ Policy
- ▶ Public Comment
- ▶ Contact
- ▼ Help
  - Dispute Resolution
  - ▼ Domain Name Dispute Resolution
    - ▶ Charter Eligibility Dispute Resolution Policy
 

**1. Purpose.** This Uniform Domain Name Dispute Resolution Policy (the "Policy") has been adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), is incorporated by reference into your Registration Agreement, and sets forth the terms and conditions in connection with a dispute between you and any party other than us (the registrar) over the registration and use of an Internet domain name registered by you. Proceedings under Paragraph 4 of this Policy will be conducted according to the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules of Procedure"), which are available at <http://www.icann.org/en/dndr/udrp/uniform-rules.htm>, and the selected administrative-dispute-resolution service provider's supplemental rules.
    - ▶ Eligibility Requirements Dispute Resolution Policy
 

**2. Your Representations.** By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that (a) the statements that you made in your Registration Agreement are complete and accurate; (b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (c) you are not registering the domain name for an unlawful purpose; and (d) you will not knowingly use the domain name in violation of any applicable laws or regulations. It is your responsibility to determine whether your domain name registration infringes or violates someone else's rights.
    - ▶ Intellectual Property Defensive Registration Challenge Policy
 

**3. Cancellations, Transfers, and Changes.** We will cancel, transfer or otherwise make changes to domain name registrations under the following circumstances:

      - a. subject to the provisions of Paragraph 8, our receipt of written or appropriate electronic instructions from you or

2/19/2015

Resources - ICANN

- ▶ Qualification Challenge Policy your authorized agent to take such action;
- ▶ Restrictions Dispute Resolution Policy b. our receipt of an order from a court or arbitral tribunal, in each case of competent jurisdiction, requiring such action; and/or
- ▶ Transfer Dispute Resolution Policy c. our receipt of a decision of an Administrative Panel requiring such action in any administrative proceeding to which you were a party and which was conducted under this Policy or a later version of this Policy adopted by ICANN. (See Paragraph 4(i) and (k) below.)
- ▼ Uniform Domain Name Dispute Resolution Policy We may also cancel, transfer or otherwise make changes to a domain name registration in accordance with the terms of your Registration Agreement or other legal requirements.

**4. Mandatory Administrative Proceeding.**

Policy Document  
 Providers  
 Provider Approval Process Rules  
 This Paragraph sets forth the type of disputes for which you are required to submit to a mandatory administrative proceeding. These proceedings will be conducted before one of the administrative-dispute-resolution service providers listed at [www.icann.org/en/dndr/udrp/approved-providers.htm](http://www.icann.org/en/dndr/udrp/approved-providers.htm) (each, a "Provider").

Principal Documents Proceedings Historical Documents  
**a. Applicable Disputes.** You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that

Timeline (i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

▶ Name Collision Registrar Problems (ii) you have no rights or legitimate interests in respect of the domain name; and

Whois Data Correction Independent Review Process (iii) your domain name has been registered and is being used in bad faith.

Request for In the administrative proceeding, the complainant must prove that each of these three elements are present.

2/19/2015

Resources - ICANN

Reconsideration

**b. Evidence of Registration and Use in Bad Faith.** For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

**c. How to Demonstrate Your Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint.** When you receive a complaint, you should refer to Paragraph 5 of the Rules of Procedure in

2/19/2015

Resources - ICANN

determining how your response should be prepared. Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

**d. Selection of Provider.** The complainant shall select the Provider from among those approved by ICANN by submitting the complaint to that Provider. The selected Provider will administer the proceeding, except in cases of consolidation as described in Paragraph 4(f).

**e. Initiation of Proceeding and Process and Appointment of Administrative Panel.** The Rules of Procedure state the process for initiating and conducting a proceeding and for appointing the panel that will decide the dispute (the "Administrative Panel").

**f. Consolidation.** In the event of multiple disputes between you and a complainant, either you or the complainant may petition to consolidate the disputes before a single Administrative Panel. This petition shall be made to the first Administrative Panel appointed to

2/19/2015

Resources - ICANN

hear a pending dispute between the parties. This Administrative Panel may consolidate before it any or all such disputes in its sole discretion, provided that the disputes being consolidated are governed by this Policy or a later version of this Policy adopted by ICANN.

**g. Fees.** All fees charged by a Provider in connection with any dispute before an Administrative Panel pursuant to this Policy shall be paid by the complainant, except in cases where you elect to expand the Administrative Panel from one to three panelists as provided in Paragraph 5(b)(iv) of the Rules of Procedure, in which case all fees will be split evenly by you and the complainant.

**h. Our Involvement in Administrative Proceedings.** We do not, and will not, participate in the administration or conduct of any proceeding before an Administrative Panel. In addition, we will not be liable as a result of any decisions rendered by the Administrative Panel.

**i. Remedies.** The remedies available to a complainant pursuant to any proceeding before an Administrative Panel shall be limited to requiring the cancellation of your domain name or the transfer of your domain name registration to the complainant.

**j. Notification and Publication.** The Provider shall notify us of any decision made by an Administrative Panel with respect to a domain name you have registered with us. All decisions under this Policy will be published in full over the Internet, except when an Administrative Panel determines in an exceptional case to redact portions of its decision.

**k. Availability of Court Proceedings.** The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded. If an

2/19/2015

Resources - ICANN

Administrative Panel decides that your domain name registration should be canceled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) after we are informed by the applicable Provider of the Administrative Panel's decision before implementing that decision. We will then implement the decision unless we have received from you during that ten (10) business day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that you have commenced a lawsuit against the complainant in a jurisdiction to which the complainant has submitted under Paragraph 3(b)(xiii) of the Rules of Procedure. (In general, that jurisdiction is either the location of our principal office or of your address as shown in our Whois database. See Paragraphs 1 and 3(b)(xiii) of the Rules of Procedure for details.) If we receive such documentation within the ten (10) business day period, we will not implement the Administrative Panel's decision, and we will take no further action, until we receive (i) evidence satisfactory to us of a resolution between the parties; (ii) evidence satisfactory to us that your lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing your lawsuit or ordering that you do not have the right to continue to use your domain name.

**5. All Other Disputes and Litigation.** All other disputes between you and any party other than us regarding your domain name registration that are not brought pursuant to the mandatory administrative proceeding provisions of Paragraph 4 shall be resolved between you and such other party through any court, arbitration or other proceeding that may be available.

**6. Our Involvement in Disputes.** We will not participate in any way in any dispute between you and any party other than us regarding the registration and use of your domain name. You shall not name us as a party or otherwise include us in any such proceeding. In the event that we are named as a party in any such proceeding, we reserve the right to raise any and all defenses deemed appropriate, and to take any other action necessary to defend ourselves.

2/19/2015

Resources - ICANN

**7. Maintaining the Status Quo.** We will not cancel, transfer, activate, deactivate, or otherwise change the status of any domain name registration under this Policy except as provided in Paragraph 3 above.

**8. Transfers During a Dispute.**

**a. Transfers of a Domain Name to a New Holder.** You may not transfer your domain name registration to another holder (i) during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded; or (ii) during a pending court proceeding or arbitration commenced regarding your domain name unless the party to whom the domain name registration is being transferred agrees, in writing, to be bound by the decision of the court or arbitrator. We reserve the right to cancel any transfer of a domain name registration to another holder that is made in violation of this subparagraph.

**b. Changing Registrars.** You may not transfer your domain name registration to another registrar during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded. You may transfer administration of your domain name registration to another registrar during a pending court action or arbitration, provided that the domain name you have registered with us shall continue to be subject to the proceedings commenced against you in accordance with the terms of this Policy. In the event that you transfer a domain name registration to us during the pendency of a court action or arbitration, such dispute shall remain subject to the domain name dispute policy of the registrar from which the domain name registration was transferred.

**9. Policy Modifications.** We reserve the right to modify this Policy at any time with the permission of ICANN. We will post our revised

2/19/2015

Resources - ICANN

Policy at <URL> at least thirty (30) calendar days before it becomes effective. Unless this Policy has already been invoked by the submission of a complaint to a Provider, in which event the version of the Policy in effect at the time it was invoked will apply to you until the dispute is over, all such changes will be binding upon you with respect to any domain name registration dispute, whether the dispute arose before, on or after the effective date of our change. In the event that you object to a change in this Policy, your sole remedy is to cancel your domain name registration with us, provided that you will not be entitled to a refund of any fees you paid to us. The revised Policy will apply to you until you cancel your domain name registration



You Tube



Twitter



LinkedIn



Flickr



Facebook



RSS Feeds



Community Wiki



ICANN Blog

© 2014 Internet Corporation For Assigned Names and Numbers.

[Privacy Policy](#)

[Terms of Service](#)

[Cookie Policy](#)

2/19/2015

Resources - ICANN

Who We Are	Contact Us	Accountability & Transparency	Governance	Help
Get Started	Offices	Accountability Mechanisms	Documents	Dispute Resolution
Learning	Customer Service	Independent Review Process	Agreements	Domain Name Dispute Resolution
Participate	Security Team	Request for Reconsideration	AOC Review	Name Collision
Groups	PGP Keys	Ombudsman	Annual Report	Registrar Problems
Board	Certificate Authority		Financials	WHOIS
President's Corner	Registry Liaison		Document Disclosure	
Staff			Planning	
Careers			Dashboard	
Newsletter	AOC Review		RFPs	
	Organizational Reviews		Litigation	
	Request a Speaker		Correspondence	
	For Journalists			

**EXHIBIT 6**

[English \(/translations\)](#) [العربية \(/ar\)](#)

[Español \(/es\)](#) [Français \(/fr\)](#) [Русский \(/ru\)](#)

[中文 \(/zh\)](#)

[Log In \(/users/sign\\_in\)](#) [Sign Up \(/users/sign\\_up\)](#)

Search ICANN.org



[GET STARTED \(/GET-STARTED\)](#)

[NEWS & MEDIA \(/NEWS\)](#)

[POLICY \(/POLICY\)](#)

[PUBLIC COMMENT \(/PUBLIC-COMMENTS\)](#)

[RESOURCES \(/RESOURCES\)](#)

[COMMUNITY \(/COMMUNITY\)](#)

[IANA STEWARDSHIP & ACCOUNTABILITY \(/STEWARDSHIP-ACCOUNTABILITY\)](#)

Resources

- ▶ [About ICANN \(Internet Corporation for Assigned Names and Numbers\) \(/resources/pages/welcome-2012-02-25-en\)](#)
- ▶ [Board \(/resources/pages/board-of-directors-2014-03-19-en\)](#)
- ▶ [Accountability](#)

## Rules for Uniform Domain Name (Domain Name) Dispute Resolution Policy (the "Rules")

This page is available in:

- (/resources/accountability) English | العربية (<http://www.icann.org/resources/pages/udrp-rules-2015-03-12-ar>) |
- ▶ Governance (/resources/pages/governance-2012-02-25-en) Español (<http://www.icann.org/resources/pages/udrp-rules-2015-03-12-es>) | Français (<http://www.icann.org/resources/pages/udrp-rules-2015-03-12-fr>) | 日本語 (<http://www.icann.org/resources/pages/udrp-rules-2015-03-12-ja>) | 한국어 (<http://www.icann.org/resources/pages/udrp-rules-2015-03-12-ko>) | Português (<http://www.icann.org/resources/pages/udrp-rules-2015-03-13-pt>) | Русский (<http://www.icann.org/resources/pages/udrp-rules-2015-03-12-ru>) | 中文 (<http://www.icann.org/resources/pages/udrp-rules-2015-03-12-zh>)
- Business (/resources/pages/business) As approved by the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors on 28 September 2013 (</resources/board-material/resolutions-2013-09-28-en#1.c>).
- ▶ Contractual Compliance (/resources/pages/compliance-2012-02-25-en) **These Rules are in effect for all UDRP (Uniform Domain-Name Dispute Resolution Policy) proceedings in which a complaint is submitted to a provider on or after 31 July 2015. The prior version of the Rules, applicable to all proceedings in which a complaint was submitted to a Provider on or before 30 July 2015, is at <https://www.icann.org/resources/pages/rules-be-2012-02-25-en> (</resources/pages/rules-be-2012-02-25-en>). UDRP (Uniform Domain-Name Dispute Resolution Policy) Providers may elect to adopt the notice procedures set forth in these Rules prior to 31 July 2015.**
- ▶ Registrars (/resources/pages/registrars-0d-2012-02-25-en) Administrative proceedings for the resolution of disputes under the Uniform Dispute Resolution Policy adopted by ICANN (Internet Corporation for Assigned Names and Numbers) shall be governed by these Rules and also the Supplemental Rules of the Provider administering the proceedings, as posted on its web site. To the extent that the Supplemental Rules of any Provider conflict with these Rules, these Rules supersede.
- ▶ Registries (/resources/pages/registries-46-2012-02-25-en)
- Operational Metrics (/resources/pages/metrics-gdd-2015-01-30-en)
- ▶ Identifier 1. Definitions

Systems  
Security,  
Stability  
(Security,  
Stability and  
Resiliency)  
and Resiliency  
(IS-SSR)  
(/resources  
/pages/is-ssr-  
2014-11-24-en)

- ▶ ccTLDs  
(/resources  
/pages/cctlds-  
21-2012-02-25-en)
- ▶ Internationalized  
Domain  
Names  
(/resources  
/pages  
/idn-2012-02-25-en)
- ▶ Universal  
Acceptance  
Initiative  
(/resources  
/pages  
/universal-  
acceptance-  
2012-02-25-en)
- ▶ Policy  
(/resources  
/pages/policy-  
01-2012-02-25-en)
- ▶ Public  
Comment  
(/public-  
comments)
- ▶ Technical  
Functions  
(/resources

#### In these Rules:

**Complainant** means the party initiating a complaint concerning a domain-name registration.

**ICANN (Internet Corporation for Assigned Names and Numbers)** refers to the Internet Corporation for Assigned Names and Numbers.

**Lock** means a set of measures that a registrar applies to a domain name, which prevents at a minimum any modification to the registrant and registrar information by the Respondent, but does not affect the resolution of the domain name or the renewal of the domain name.

**Mutual Jurisdiction** means a court jurisdiction at the location of either (a) the principal office of the Registrar (provided the domain-name holder has submitted in its Registration Agreement to that jurisdiction for court adjudication of disputes concerning or arising from the use of the domain name) or (b) the domain-name holder's address as shown for the registration of the domain name in Registrar's Whois database at the time the complaint is submitted to the Provider.

**Panel** means an administrative panel appointed by a Provider to decide a complaint concerning a domain-name registration.

**Panelist** means an individual appointed by a Provider to be a member of a Panel.

**Party** means a Complainant or a Respondent.

**Pendency** means the time period from the moment a UDRP (Uniform Domain-Name Dispute Resolution Policy) complaint has been submitted by the Complainant to the UDRP (Uniform Domain-Name Dispute Resolution Policy) Provider to the time the UDRP (Uniform Domain-Name Dispute Resolution Policy) decision has been

/pages  
/technical-  
functions-  
2015-10-15-en)

implemented or the UDRP (Uniform Domain-Name Dispute Resolution Policy) complaint has been terminated.

▶ Contact  
(/resources  
/pages  
/contact-  
2012-02-06-en)

**Policy** means the Uniform Domain Name (Domain Name) Dispute Resolution Policy (/en/dndr/udrp/policy.htm) that is incorporated by reference and made a part of the Registration Agreement.

▶ Help  
(/resources  
/pages/help-  
2012-02-03-en)

**Provider** means a dispute-resolution service provider approved by ICANN (Internet Corporation for Assigned Names and Numbers). A list of such Providers appears at <http://www.icann.org/en/dndr/udrp/approved-providers.htm> (/en/dndr/udrp/approved-providers.htm).

**Registrar** means the entity with which the Respondent has registered a domain name that is the subject of a complaint.

**Registration Agreement** means the agreement between a Registrar and a domain-name holder.

**Respondent** means the holder of a domain-name registration against which a complaint is initiated.

**Reverse Domain Name (Domain Name) Hijacking** means using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name.

**Supplemental Rules** means the rules adopted by the Provider administering a proceeding to supplement these Rules. Supplemental Rules shall not be inconsistent with the Policy or these Rules and shall cover such topics as fees, word and page limits and guidelines, file size and format modalities, the means for communicating with the Provider and the Panel, and the form of cover sheets.

**Written Notice** means hardcopy notification by the Provider to the Respondent of the commencement of an administrative proceeding under the Policy which shall

inform the respondent that a complaint has been filed against it, and which shall state that the Provider has electronically transmitted the complaint including any annexes to the Respondent by the means specified herein. Written notice does not include a hardcopy of the complaint itself or of any annexes.

## 2. Communications

(a) When forwarding a complaint, including any annexes, electronically to the Respondent, it shall be the Provider's responsibility to employ reasonably available means calculated to achieve actual notice to Respondent. Achieving actual notice, or employing the following measures to do so, shall discharge this responsibility:

(i) sending Written Notice of the complaint to all postal-mail and facsimile addresses (A) shown in the domain name's registration data in Registrar's Whois database for the registered domain-name holder, the technical contact, and the administrative contact and (B) supplied by Registrar to the Provider for the registration's billing contact; and

(ii) sending the complaint, including any annexes, in electronic form by e-mail to:

(A) the e-mail addresses for those technical, administrative, and billing contacts;

(B) `postmaster@<the contested domain name>`; and

(C) if the domain name (or "www." followed by the domain name) resolves to an active web page (other than a generic page the Provider concludes is maintained by a registrar or ISP (Internet Service Provider) for parking domain-names registered by multiple

domain-name holders), any e-mail address shown or e-mail links on that web page; and

(iii) sending the complaint, including any annexes, to any e-mail address the Respondent has notified the Provider it prefers and, to the extent practicable, to all other e-mail addresses provided to the Provider by Complainant under Paragraph 3(b)(v) (/en/help/dndr/udrp/rules#3bv).

(b) Except as provided in Paragraph 2(a) (/en/help/dndr/udrp/rules#2a), any written communication to Complainant or Respondent provided for under these Rules shall be made electronically via the Internet (a record of its transmission being available), or by any reasonably requested preferred means stated by the Complainant or Respondent, respectively (see Paragraphs 3(b)(iii) (/en/help/dndr/udrp/rules#3biii) and 5(b)(iii) (/en/help/dndr/udrp/rules#5biii)).

(c) Any communication to the Provider or the Panel shall be made by the means and in the manner (including, where applicable, the number of copies) stated in the Provider's Supplemental Rules.

(d) Communications shall be made in the language prescribed in Paragraph 11 (/en/help/dndr/udrp/rules#11).

(e) Either Party may update its contact details by notifying the Provider and the Registrar.

(f) Except as otherwise provided in these Rules, or decided by a Panel, all communications provided for under these Rules shall be deemed to have been made:

(i) if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable; or, where applicable

(ii) if delivered by telecopy or facsimile transmission, on the date shown on the confirmation of transmission; or:

(iii) if by postal or courier service, on the date marked on the receipt.

(g) Except as otherwise provided in these Rules, all time periods calculated under these Rules to begin when a communication is made shall begin to run on the earliest date that the communication is deemed to have been made in accordance with [Paragraph 2\(f\) \(/en/help/dndr/udrp/rules#2f\)](#).

(h) Any communication by

(i) a Panel to any Party shall be copied to the Provider and to the other Party;

(ii) the Provider to any Party shall be copied to the other Party; and

(iii) a Party shall be copied to the other Party, the Panel and the Provider, as the case may be.

(i) It shall be the responsibility of the sender to retain records of the fact and circumstances of sending, which shall be available for inspection by affected parties and for reporting purposes. This includes the Provider in sending Written Notice to the Respondent by post and/or facsimile under Paragraph 2(a)(i).

(j) In the event a Party sending a communication receives notification of non-delivery of the communication, the Party shall promptly notify the Panel (or, if no Panel is yet appointed, the Provider) of the circumstances of the notification. Further proceedings concerning the communication and any response shall be as directed by the Panel (or the Provider).

### 3. The Complaint

(a) Any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules to any Provider approved by ICANN (Internet Corporation for Assigned Names and Numbers). (Due to capacity constraints or for other reasons, a Provider's ability to accept complaints may be suspended at times. In that event, the Provider shall refuse the submission. The person or entity may submit the complaint to another Provider.)

(b) The complaint including any annexes shall be submitted in electronic form and shall:

(i) Request that the complaint be submitted for decision in accordance with the Policy and these Rules;

(ii) Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Complainant and of any representative authorized to act for the Complainant in the administrative proceeding;

(iii) Specify a preferred method for communications directed to the Complainant in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B) material including hard copy (where applicable);

(iv) Designate whether Complainant elects to have the dispute decided by a single-member or a three-member Panel and, in the event Complainant elects a three-member Panel, provide the names and contact details of three candidates to serve as one of the Panelists (these candidates may be drawn from any ICANN (Internet Corporation for

Assigned Names and Numbers)-approved Provider's list of panelists);

(v) Provide the name of the Respondent (domain-name holder) and all information (including any postal and e-mail addresses and telephone and telefax numbers) known to Complainant regarding how to contact Respondent or any representative of Respondent, including contact information based on pre-complaint dealings, in sufficient detail to allow the Provider to send the complaint as described in Paragraph 2(a) (</en/help/dndr/udrp/rules#2a>);

(vi) Specify the domain name(s) that is/are the subject of the complaint;

(vii) Identify the Registrar(s) with whom the domain name(s) is/are registered at the time the complaint is filed;

(viii) Specify the trademark(s) or service mark(s) on which the complaint is based and, for each mark, describe the goods or services, if any, with which the mark is used (Complainant may also separately describe other goods and services with which it intends, at the time the complaint is submitted, to use the mark in the future.);

(ix) Describe, in accordance with the Policy, the grounds on which the complaint is made including, in particular,

(1) the manner in which the domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(2) why the Respondent (domain-name holder) should be considered as having no

rights or legitimate interests in respect of the domain name(s) that is/are the subject of the complaint; and

(3) why the domain name(s) should be considered as having been registered and being used in bad faith

(The description should, for elements (2) and (3), discuss any aspects of Paragraphs 4(b) (/en/dndr/udrp/policy.htm#4b) and 4(c) (/en/dndr/udrp/policy.htm#4c) of the Policy that are applicable. The description shall comply with any word or page limit set forth in the Provider's Supplemental Rules.);

(x) Specify, in accordance with the Policy, the remedies sought;

(xi) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the complaint;

(xii) State that Complainant will submit, with respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name, to the jurisdiction of the courts in at least one specified Mutual Jurisdiction;

(xiii) Conclude with the following statement followed by the signature (in any electronic format) of the Complainant or its authorized representative:

"Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain-name holder and waives all such claims and remedies against (a) the dispute-

resolution provider and panelists, except in the case of deliberate wrongdoing, (b) the registrar, (c) the registry administrator, and (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents."

"Complainant certifies that the information contained in this Complaint is to the best of Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."; and

(xiv) Annex any documentary or other evidence, including a copy of the Policy applicable to the domain name(s) in dispute and any trademark or service mark registration upon which the complaint relies, together with a schedule indexing such evidence.

(c) The complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder.

#### 4. Notification of Complaint

(a) The Provider shall submit a verification request to the Registrar. The verification request will include a request to Lock the domain name.

(b) Within two (2) business days of receiving the Provider's verification request, the Registrar shall provide the information requested in the verification request and confirm that a Lock of the domain name has been

applied. The Registrar shall not notify the Respondent of the proceeding until the Lock status has been applied. The Lock shall remain in place through the remaining Pendency of the UDRP (Uniform Domain-Name Dispute Resolution Policy) proceeding. Any updates to the Respondent's data, such as through the result of a request by a privacy or proxy provider to reveal the underlying customer data, must be made before the two (2) business day period concludes or before the Registrar verifies the information requested and confirms the Lock to the UDRP (Uniform Domain-Name Dispute Resolution Policy) Provider, whichever occurs first. Any modification(s) of the Respondent's data following the two (2) business day period may be addressed by the Panel in its decision.

(c) The Provider shall review the complaint for administrative compliance with the Policy and these Rules and, if in compliance, shall forward the complaint, including any annexes, electronically to the Respondent and Registrar and shall send Written Notice of the complaint (together with the explanatory cover sheet prescribed by the Provider's Supplemental Rules) to the Respondent, in the manner prescribed by [Paragraph 2\(a\) \(/en/help/dndr/udrp/rules#2a\)](/en/help/dndr/udrp/rules#2a), within three (3) calendar days following receipt of the fees to be paid by the Complainant in accordance with [Paragraph 19 \(/en/help/dndr/udrp/rules#19\)](/en/help/dndr/udrp/rules#19).

(d) If the Provider finds the complaint to be administratively deficient, it shall promptly notify the Complainant and the Respondent of the nature of the deficiencies identified. The Complainant shall have five (5) calendar days within which to correct any such deficiencies, after which the administrative proceeding will be deemed withdrawn without prejudice to submission of a different complaint by Complainant.

(e) If the Provider dismisses the complaint due to an administrative deficiency, or the Complainant voluntarily

withdraws its complaint, the Provider shall inform the Registrar that the proceedings have been withdrawn, and the Registrar shall release the Lock within one (1) business day of receiving the dismissal or withdrawal notice from the Provider.

(f) The date of commencement of the administrative proceeding shall be the date on which the Provider completes its responsibilities under Paragraph 2(a) (</en/help/dndr/udrp/rules#2a>) in connection with sending the complaint to the Respondent.

(g) The Provider shall immediately notify the Complainant, the Respondent, the concerned Registrar(s), and ICANN (Internet Corporation for Assigned Names and Numbers) of the date of commencement of the administrative proceeding. The Provider shall inform the Respondent that any corrections to the Respondent's contact information during the remaining Pendency of the UDRP (Uniform Domain-Name Dispute Resolution Policy) proceedings shall be communicated to the Provider further to Rule 5(c)(ii) and 5(c)(iii).

## 5. The Response

(a) Within twenty (20) days of the date of commencement of the administrative proceeding the Respondent shall submit a response to the Provider.

(b) The Respondent may expressly request an additional four (4) calendar days in which to respond to the complaint, and the Provider shall automatically grant the extension and notify the Parties thereof. This extension does not preclude any additional extensions that may be given further to 5(d) of the Rules.

(c) The response, including any annexes, shall be submitted in electronic form and shall:

(i) Respond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain-name holder) to retain registration and use of the disputed domain name (This portion of the response shall comply with any word or page limit set forth in the Provider's Supplemental Rules.);

(ii) Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Respondent (domain-name holder) and of any representative authorized to act for the Respondent in the administrative proceeding;

(iii) Specify a preferred method for communications directed to the Respondent in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B) material including hard copy (where applicable);

(iv) If Complainant has elected a single-member panel in the complaint (see [Paragraph 3\(b\)\(iv\) \(/en/help/dndr/udrp/rules#3biv\)](#)), state whether Respondent elects instead to have the dispute decided by a three-member panel;

(v) If either Complainant or Respondent elects a three-member Panel, provide the names and contact details of three candidates to serve as one of the Panelists (these candidates may be drawn from any ICANN (Internet Corporation for Assigned Names and Numbers)-approved Provider's list of panelists);

(vi) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the complaint;

(vii) State that a copy of the response including any annexes has been sent or transmitted to the Complainant, in accordance with Paragraph 2(b) (/en/help/dndr/udrp/rules#2b); and

(viii) Conclude with the following statement followed by the signature (in any electronic format) of the Respondent or its authorized representative:

"Respondent certifies that the information contained in this Response is to the best of Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."; and

(ix) Annex any documentary or other evidence upon which the Respondent relies, together with a schedule indexing such documents.

(d) If Complainant has elected to have the dispute decided by a single-member Panel and Respondent elects a three-member Panel, Respondent shall be required to pay one-half of the applicable fee for a three-member Panel as set forth in the Provider's Supplemental Rules. This payment shall be made together with the submission of the response to the Provider. In the event that the required payment is not made, the dispute shall be decided by a single-member Panel.

(e) At the request of the Respondent, the Provider may, in exceptional cases, extend the period of time for the filing of the response. The period may also be extended by written stipulation between the Parties, provided the stipulation is approved by the Provider.

(f) If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.

## 6. Appointment of the Panel and Timing of Decision

(a) Each Provider shall maintain and publish a publicly available list of panelists and their qualifications.

(b) If neither the Complainant nor the Respondent has elected a three-member Panel (Paragraphs 3(b)(iv) (/en/help/dndr/udrp/rules#3biv) and 5(b)(iv) (/en/help/dndr/udrp/rules#5biv)), the Provider shall appoint, within five (5) calendar days following receipt of the response by the Provider, or the lapse of the time period for the submission thereof, a single Panelist from its list of panelists. The fees for a single-member Panel shall be paid entirely by the Complainant.

(c) If either the Complainant or the Respondent elects to have the dispute decided by a three-member Panel, the Provider shall appoint three Panelists in accordance with the procedures identified in Paragraph 6(e) (/en/help/dndr/udrp/rules#6e). The fees for a three-member Panel shall be paid in their entirety by the Complainant, except where the election for a three-member Panel was made by the Respondent, in which case the applicable fees shall be shared equally between the Parties.

(d) Unless it has already elected a three-member Panel, the Complainant shall submit to the Provider, within five (5) calendar days of communication of a response in which the Respondent elects a three-member Panel, the names and contact details of three candidates to serve as one of the Panelists. These candidates may be drawn from any ICANN (Internet Corporation for Assigned Names and Numbers)-approved Provider's list of panelists.

(e) In the event that either the Complainant or the Respondent elects a three-member Panel, the Provider shall endeavor to appoint one Panelist from the list of candidates provided by each of the Complainant and the Respondent. In the event the Provider is unable within five (5) calendar days to secure the appointment of a Panelist on its customary terms from either Party's list of candidates, the Provider shall make that appointment from its list of panelists. The third Panelist shall be appointed by the Provider from a list of five candidates submitted by the Provider to the Parties, the Provider's selection from among the five being made in a manner that reasonably balances the preferences of both Parties, as they may specify to the Provider within five (5) calendar days of the Provider's submission of the five-candidate list to the Parties.

(f) Once the entire Panel is appointed, the Provider shall notify the Parties of the Panelists appointed and the date by which, absent exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider.

## 7. Impartiality and Independence

A Panelist shall be impartial and independent and shall have, before accepting appointment, disclosed to the Provider any circumstances giving rise to justifiable doubt as to the Panelist's impartiality or independence. If, at any stage during the administrative proceeding, new circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of the Panelist, that Panelist shall promptly disclose such circumstances to the Provider. In such event, the Provider shall have the discretion to appoint a substitute Panelist.

## 8. Communication Between Parties and the Panel

No Party or anyone acting on its behalf may have any unilateral communication with the Panel. All communications between a Party and the Panel or the Provider shall be made to a case

administrator appointed by the Provider in the manner prescribed in the Provider's Supplemental Rules.

## 9. Transmission of the File to the Panel

The Provider shall forward the file to the Panel as soon as the Panelist is appointed in the case of a Panel consisting of a single member, or as soon as the last Panelist is appointed in the case of a three-member Panel.

## 10. General Powers of the Panel

(a) The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.

(b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

(c) The Panel shall ensure that the administrative proceeding takes place with due expedition. It may, at the request of a Party or on its own motion, extend, in exceptional cases, a period of time fixed by these Rules or by the Panel.

(d) The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.

(e) A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules.

## 11. Language of Proceedings

(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the

Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

(b) The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding.

## 12. Further Statements

In addition to the complaint and the response, the Panel may request, in its sole discretion, further statements or documents from either of the Parties.

## 13. In-Person Hearings

There shall be no in-person hearings (including hearings by teleconference, videoconference, and web conference), unless the Panel determines, in its sole discretion and as an exceptional matter, that such a hearing is necessary for deciding the complaint.

## 14. Default

(a) In the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules or the Panel, the Panel shall proceed to a decision on the complaint.

(b) If a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, these Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

## 15. Panel Decisions

(a) A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance

with the Policy, these Rules and any rules and principles of law that it deems applicable.

(b) In the absence of exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider within fourteen (14) days of its appointment pursuant to [Paragraph 6 \(/en/help/dndr/udrp/rules#6\)](#).

(c) In the case of a three-member Panel, the Panel's decision shall be made by a majority.

(d) The Panel's decision shall be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name(s) of the Panelist(s).

(e) Panel decisions and dissenting opinions shall normally comply with the guidelines as to length set forth in the Provider's Supplemental Rules. Any dissenting opinion shall accompany the majority decision. If the Panel concludes that the dispute is not within the scope of [Paragraph 4\(a\) \(/en/dndr/udrp/policy.htm#4a\)](#) of the Policy, it shall so state. If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name (Domain Name) Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

## 16. Communication of Decision to Parties

(a) Within three (3) business days after receiving the decision from the Panel, the Provider shall communicate the full text of the decision to each Party, the concerned Registrar(s), and ICANN (Internet Corporation for Assigned Names and Numbers). The concerned Registrar(s) shall within three (3) business days of receiving the decision from the Provider communicate to

each Party, the Provider, and ICANN (Internet Corporation for Assigned Names and Numbers) the date for the implementation of the decision in accordance with the Policy.

(b) Except if the Panel determines otherwise (see [Paragraph 4\(j\) \(/en/dndr/udrp/policy.htm#4j\)](#) of the Policy), the Provider shall publish the full decision and the date of its implementation on a publicly accessible web site. In any event, the portion of any decision determining a complaint to have been brought in bad faith (see [Paragraph 15\(e\) \(/en/help/dndr/udrp/rules#15e\)](#) of these Rules) shall be published.

## 17. Settlement or Other Grounds for Termination

(a) If, before the Panel's decision, the Parties agree on a settlement, the Panel shall terminate the administrative proceeding. A settlement shall follow steps 17(a)(i) – 17(a)(vii):

(i) The Parties provide written notice of a request to suspend the proceedings because the parties are discussing settlement to the Provider.

(ii) The Provider acknowledges receipt of the request for suspension and informs the Registrar of the suspension request and the expected duration of the suspension.

(iii) The Parties reach a settlement and provide a standard settlement form to the Provider further to the Provider's supplemental rules and settlement form. The standard settlement form is not intended to be an agreement itself, but only to summarize the essential terms of the Parties' separate settlement agreement. The Provider shall not disclose the completed standard settlement form to any third party.

(iv) The Provider shall confirm to the Registrar, copying the Parties, the outcome of the settlement as it relates to actions that need to be taken by the Registrar.

(v) Upon receiving notice from the Provider further to 17(a)(iv), the Registrar shall remove the Lock within two (2) business days.

(vi) The Complainant shall confirm to the Provider that the settlement as it relates to the domain name(s) has been implemented further to the Provider's supplemental rules.

(vii) The Provider will dismiss the proceedings without prejudice unless otherwise stipulated in the settlement.

(b) If, before the Panel's decision is made, it becomes unnecessary or impossible to continue the administrative proceeding for any reason, the Panel shall terminate the administrative proceeding, unless a Party raises justifiable grounds for objection within a period of time to be determined by the Panel.

## 18. Effect of Court Proceedings

(a) In the event of any legal proceedings initiated prior to or during an administrative proceeding in respect of a domain-name dispute that is the subject of the complaint, the Panel shall have the discretion to decide whether to suspend or terminate the administrative proceeding, or to proceed to a decision.

(b) In the event that a Party initiates any legal proceedings during the Pendency of an administrative proceeding in respect of a domain-name dispute that is the subject of the complaint, it shall promptly notify the Panel and the Provider. See [Paragraph 8 \(/en/help](#)

[/dndr/udrp/rules#8](#) above.

## 19. Fees

(a) The Complainant shall pay to the Provider an initial fixed fee, in accordance with the Provider's Supplemental Rules, within the time and in the amount required. A Respondent electing under [Paragraph 5\(b\)\(iv\) \(/en/help/dndr/udrp/rules#5biv\)](#) to have the dispute decided by a three-member Panel, rather than the single-member Panel elected by the Complainant, shall pay the Provider one-half the fixed fee for a three-member Panel. See [Paragraph 5\(c\) \(/en/help/dndr/udrp/rules#5c\)](#). In all other cases, the Complainant shall bear all of the Provider's fees, except as prescribed under [Paragraph 19\(d\) \(/en/help/dndr/udrp/rules#19d\)](#). Upon appointment of the Panel, the Provider shall refund the appropriate portion, if any, of the initial fee to the Complainant, as specified in the Provider's Supplemental Rules.

(b) No action shall be taken by the Provider on a complaint until it has received from Complainant the initial fee in accordance with [Paragraph 19\(a\) \(/en/help/dndr/udrp/rules#19a\)](#).

(c) If the Provider has not received the fee within ten (10) calendar days of receiving the complaint, the complaint shall be deemed withdrawn and the administrative proceeding terminated.

(d) In exceptional circumstances, for example in the event an in-person hearing is held, the Provider shall request the Parties for the payment of additional fees, which shall be established in agreement with the Parties and the Panel.

## 20. Exclusion of Liability

Except in the case of deliberate wrongdoing, neither the

Provider nor a Panelist shall be liable to a Party for any act or omission in connection with any administrative proceeding under these Rules.

## 21. Amendments

The version of these Rules in effect at the time of the submission of the complaint to the Provider shall apply to the administrative proceeding commenced thereby. These Rules may not be amended without the express written approval of ICANN (Internet Corporation for Assigned Names and Numbers).



[You Tube](http://www.youtube.com/icannnews)

[\(<http://www.youtube.com>  
\[/icannnews\]\(http://www.youtube.com/icannnews\)\)](http://www.youtube.com/icannnews)



[Twitter](https://www.twitter.com/icann)

[\(<https://www.twitter.com>  
\[/icann\]\(https://www.twitter.com/icann\)\)](https://www.twitter.com/icann)



[LinkedIn](https://www.linkedin.com/company/icann)

[\(<https://www.linkedin.com>  
\[/company/icann\]\(https://www.linkedin.com/company/icann\)\)](https://www.linkedin.com/company/icann)



[Flickr \(<http://www.flickr.com>](http://www.flickr.com/photos/icann)

[/photos/icann\)](http://www.flickr.com/photos/icann)



[Facebook](http://www.facebook.com/icannorg)

[\(<http://www.facebook.com>  
\[/icannorg\]\(http://www.facebook.com/icannorg\)\)](http://www.facebook.com/icannorg)



[RSS Feeds \(</en/news/rss>\)](/en/news/rss)



[Community Wiki](https://community.icann.org)

[\(<https://community.icann.org>\)](https://community.icann.org)



[ICANN Blog \(</news/blog>\)](/news/blog)

© 2014 Internet Corporation For Assigned Names and Numbers. [Privacy Policy \(</en/help/privacy>\)](/en/help/privacy)

[Terms of Service \(</en/help/tos>\)](/en/help/tos)

[Cookie Policy \(</en/help/privacy-cookie-policy>\)](/en/help/privacy-cookie-policy)

<b>Who We Are</b>	<b>Contact Us</b>	<b>Accountability &amp; Transparency</b>	<b>Governance</b>	<b>Help</b>
<a href="#">Get Started</a> (/get-started)	<a href="https://forms.icann.org/en/contact">Offices</a> (https://forms.icann.org/en/contact)	<a href="#">Accountability Mechanisms</a> (/en/news/in-focus/accountability/mechanisms)	<a href="#">Documents</a> (/en/about/governance)	<a href="#">Dispute Resolution</a> (/en/help/dispute-resolution)
<a href="#">Learning</a> (/en/about/learning)	<a href="#">Global Support</a> (/resources/pages/customer-support-2015-06-22-en)	<a href="#">Independent Review Process</a> (/resources/pages/irp-2012-02-25-en)	<a href="#">Agreements</a> (/en/about/agreements)	<a href="#">Domain Name Dispute Resolution</a> (/en/help/dndr)
<a href="#">Participate</a> (/en/about/participate)	<a href="#">Security Team</a> (/about/staff/security)	<a href="#">Request for Reconsideration</a> (/groups/board/governance/reconsideration)	<a href="#">AOC Review</a> (/en/about/aoc-review)	<a href="#">Name Collision</a> (/en/help/name-collision)
<a href="https://www.icann.org/resources/pages/groups-2012-02-06-en">Groups</a> (https://www.icann.org/resources/pages/groups-2012-02-06-en)	<a href="#">PGP Keys</a> (/en/contact/pgp-keys)	<a href="#">Ombudsman</a> (/help/ombudsman)	<a href="#">Annual Report</a> (/about/annual-report)	<a href="#">Registrar Problems</a> (/en/news/announcements/announcement-06mar07-en.htm)
<a href="#">Board</a> (/resources/pages/board-of-directors-2014-03-19-en)	<a href="#">Certificate Authority</a> (/contact/certificate-authority)	<a href="#">Organizational Reviews</a> (http://forms.icann.org/en/groups/reviews/contact)	<a href="#">Financials</a> (/en/about/financials)	<a href="#">WHOIS</a> (http://whois.icann.org/)
<a href="#">President's Corner</a> (/presidents-corner)	<a href="#">Registry Liaison</a> (/resources/pages/contact-f2-2012-02-25-en)		<a href="#">Document Disclosure</a> (/en/about/transparency)	
<a href="#">Staff</a> (/en/about/staff)			<a href="#">Planning</a> (/en/about/planning)	
<a href="#">Careers</a> (https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&amp;company_id=1602&amp;version=1)	<a href="#">AOC Review</a> (http://forms.icann.org/en/about/aoc-review/contact)		<a href="#">Dashboard Beta</a> (https://www.icann.org/dashboard)	
<a href="#">Newsletter</a> (/en/news/newsletter)	<a href="#">Organizational Reviews</a> (http://forms.icann.org/en/groups/reviews/contact)		<a href="#">RFPs</a> (/en/news/rfps)	
<a href="#">Development and Public Responsibility</a> (https://www.icann.org/development-and-public-responsibility)	<a href="#">Request a Speaker</a> (http://forms.icann.org/en/contact/speakers)		<a href="#">Litigation</a> (/en/news/litigation)	
	<a href="#">For Journalists</a> (/en/news/press)		<a href="#">Correspondence</a> (/en/news/correspondence)	

# **EXHIBIT 7**



Name &amp; Protect

Build &amp; Grow

## GoDaddy - Hosting Agreement

Last Revised: 4/5/2021

### 1 Overview

The Universal Terms of Service Agreement sets forth the general terms and conditions of your use of the Site and the Services. This Hosting Service Agreement this (“Service Agreement”) governs your use of GoDaddy’s Hosting services (“Hosting Services”). Capitalized terms used in this Service Agreement, but not defined are defined in the Agreement.

### 2 DESCRIPTION OF SERVICES

- **Web Hosting:** Web Hosting plans place your site within one or more servers. Resources are shared between many customers on the same servers; however, your site is given a unique address (DNS)
- **Business Hosting:** Managed Hosting plans, you get all of the benefits of having your own VPS or Dedicated Server, but we will manage the server for you including setting up your control panel, patching cycles and back-ups
- **Managed WordPress Hosting:** Managed WordPress Hosting plans give you a streamlined and optimized experience to build and manage WordPress sites. We handle the basic hosting administrative tasks, including: installing WordPress, automated daily backups, WordPress core updates and server-level caching

Contact Us

- **Virtual Private Server (“VPS”):** VPS plans place your site within a server shared with other customers, but you will have full control over your server space and the complete configuration of your virtual instance on the server. You will have administrator (root) access and a dedicated IP address
- **Dedicated Server:** Dedicated Server plans reserve an entire server exclusively for your account and usage. You will have exclusive rights to your server's bandwidth, memory, and storage space, and your server's performance will not be affected by traffic and the usage patterns of other customers
- **Managed Support:** Managed Support plans are monthly subscription plans that provide you with root/administrative access to the service and Plesk or cPanel. We handle core patching, security, monitoring and backups. Additional configurations and installations can be performed for an additional fee
- **Fully Managed Support:** Fully Managed Support plans are monthly subscription plans that provide you with the option to enable root/administrative access and we will handle core patching, security, monitoring, and backups. Additional Expert Services are included with the subscription
- **Hosting Premium Support/Expert Services:** Hosting Premium Support/ Expert Services (“Expert Services”) are additional custom support services available for a set fee. These Expert Services can provide assistance if you need an experienced server administrator for complicated tasks, including: optimizing databases, configuring firewalls, or moving content
- **Hosting Backup:** Hosting backup and restore services saves all your website files to the cloud once per day. These backup and restore services are available with website hosting plans and may be available for an additional fee with our other hosting service plans. For hosting backup services available as part of a Hosting

[Contact Us](#)

subscription plan, those services will be canceled if the Hosting subscription plan is canceled.

### 3 ACCOUNT TERMINATION; LIMITATIONS

**3.1 Migration of Servers:** You acknowledge and agree that as a normal course of business, it may be necessary for us to migrate our servers. As a result, even if you have a dedicated IP, you may be assigned a different IP number. We do not warrant that you will be able to consistently maintain your given IP numbers.

**3.2 Termination of Hosting Services:** You acknowledge and agree that upon expiration or termination of your Hosting Services, you must discontinue use of the Hosting Services and relinquish use of the IP addresses and server names assigned to you in connection with Hosting Services, including pointing the domain name system (“**DNS**”) for your domain name(s) away from our servers. Prior to termination of the Hosting Services, you are responsible for moving your website or server content off our servers. We will not transfer or FTP your website or server content to another provider. If you fail to move your website or server content off our servers prior to cancellation, we will delete all such content and we will not be able to provide a copy of such content.

**3.3 Free Products Credits:** Upon termination of the Hosting Services, all free products provided as part of the Hosting Services will be cancelled or revoked.

**3.4 Notice Regarding Licensed Images on Migration or Export (where available):** Subject to all other applicable licenses terms and conditions, images available and licensed for use are intended for GoDaddy hosted customers only and are subject to the terms and conditions of third-party intellectual property rights and licensing restrictions. To the extent you wish to export or migrate your hosted product or service to another service provider (if available as an option), it is solely your responsibility to ensure your continued right to use any images incorporated therein, and you acknowledge and agree that GoDaddy does not warrant and shall have no responsibility for any claims resulting from you

Contact Us

continued use after migration and/or termination (whichever occurs first).

**3.5 Storage Capacity:** The total amount of usable storage capacity for your particular Hosting Service(s) may differ from the represented capacity, as there is required space for the operating system(s), system file(s), and other supporting file(s).

#### **4 YOUR OBLIGATIONS; REPRESENTATIONS AND WARRANTIES**

**4.1 Justification.** You acknowledge and agree that we shall have the right to seek justification in connection with your use of the Hosting Services, specifically your purchase of IP addresses, and you shall be obligated to provide any and all information reasonably sought by us pursuant to such justification. In connection with such purchase, you acknowledge and agree that your name and justification may be disclosed to certain registries including, but not limited to, the American Registry of Internet Numbers, in accordance with policies promulgated by any and all such registries and such information may be displayed publicly on the Whois database.

**4.2 Abusive Activities and Other Threats.** You acknowledge and agree that you may not use our servers and your website as a source, intermediary, reply to address, or destination address for mail bombs, Internet packet flooding, packet corruption, denial of service, or other abusive activities that threaten the stability of our network or will damage the systems of, or cause a disruption of internet services to, GoDaddy, our customers, or third-parties. Server hacking or other perpetration of security breaches is prohibited and we reserve the right to remove sites containing information about hacking or links to such information. Use of your website as an anonymous gateway is prohibited. We prohibit the use of software or scripts run on our servers that cause the server to load beyond a reasonable level, as determined by us. You agree that we reserve the right to remove your website temporarily or permanently from our servers if you are in violation of this Service Agreement and/or there are activities

[Contact Us](#)

that threaten the stability of our network. You acknowledge and agree that all websites associated with your hosting account may be removed if one website is in violation of this Service Agreement. You further acknowledge and agree that GoDaddy reserves the right to scan your hosted account for malicious content (e.g., malware), and that, in the event any such content is discovered, it may be removed in GoDaddy's discretion for security purposes.

**4.3 Storage and Security.** You shall be solely responsible for undertaking measures to: (1) prevent any loss or damage to your website or server content; (2) maintain independent archival and backup copies of your website or server content; and (3) ensure the security, confidentiality and integrity of all your website or server content transmitted through or stored on our servers.

Our servers are not an archive and we shall have no liability to you or any other person for loss, damage or destruction of any of your content. **The Hosting Services are not intended to provide a PCI (Payment Card Industry) or HIPAA (Health Insurance Portability and Accountability Act) compliant environment and therefore should not be used or considered as one. You shall not use the Service in any way, in our sole discretion, that shall impair the functioning or operation of our services or equipment.** Specifically by way of example and not as a limitation, you shall not use the Hosting Services as: (1) a repository or instrument for placing or storing archived files; and/or (2) placing or storing material that can be downloaded through other websites. You acknowledge and agree that we have the right to carry out a forensic examination in the event of a compromise to your server or account.

**4.4 Website/Server Content.** You shall be solely responsible for providing, updating, uploading and maintaining your website or server and any and all files, pages, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through your website or server including, but not limited to, trade or service marks, images, photographs, illustrations, graphics, audio clips, video clips,

Contact Us

email or other messages, meta tags, domain names, software and text. You acknowledge and agree that in the course of providing you with technical assistance, it may be necessary for our support staff to modify, alter or remove the content of your hosted product. Your website or server content shall also include any registered domain names provided by you or registered on behalf of you in connection with the Hosting Services.

If access to a third-party hosting website is required in the provision of any Service, you represent and warrant that you are authorized to provide us with access to the third-party hosting account for the purposes of this Service Agreement. You agree that you retain sole contractual and any other legal or fiduciary responsibilities related to your third-party hosting account.

If you request that we install any Third Party Software (defined below) not provided as part of the Hosting Services, you represent and warrant that (1) you have the right to use and install the Third Party Software, (2) you have paid the applicable licensing fees for the Third Party Software, and (3) the Third Party Software does not and shall not infringe on the intellectual property rights of any other person or entity.

## **5 PROVISIONS SPECIFIC TO WEB, BUSINESS AND MANAGED WORDPRESS HOSTING**

**5.1 Storage and Plan Limits.** All Web Hosting and WordPress Hosting plans, including the unlimited plans, are subject to a limit of no more than 250,000 inodes per account for Linux® hosting accounts or 500,000 files and folders per account for Windows® hosting accounts. The plans are also limited to no more than 1,000 tables per database and no more than one gigabyte of storage per database. Any account or database that exceeds these limits may be issued a network violation warning and will be required to reduce the number of inodes, files and folders, tables or gigabytes (as the case may be), or may be temporarily or permanently suspended, in our sole discretion. All Linux hosting plans are subject to the following limitations: no more than a) 25% of one CPU core; b) 512MB

[Contact Us](#)

of RAM; c) 100 website connections; d) 100 active processes; e) 1 MB/s disk IO. In the event these limitations are exceeded, your site may slow down or not be served until more resources are added. More resources may be added for additional fees.

WordPress Hosting may only be used to host a WordPress website. Only a single WordPress installation is allowed per website. Any WordPress hosting account found to be hosting a non-WordPress website may be issued a network violation warning and will be required to remove the non-WordPress website, or may be temporarily or permanently suspended, in our sole discretion. Additionally, you may be required to purchase an appropriate hosting plan in order to host the non-WordPress site should you wish to continue hosting the non-WordPress site on our network.

Free Trial hosting credits are subject the following limitations: no more than a) 25% of one CPU core; b) 256MB of RAM; c) 10 website connections; d) 100 active processes; e) .5 MB/s disk IO; f) 50,000 inodes; g) 1 GB disk space; h) 10 GB monthly bandwidth. In the event these limitations are exceeded, your site may slow down or not be served until more resources are added. More resources may be added by upgrading to a paid plan.

**You acknowledge and agree that inbound UDP is not supported in shared hosting environments.**

**5.2 Website/Server Content.** Your website may not include any of the following content (1) image hosting scripts that allow an anonymous user to upload an image for display on another website (similar to Photobucket or Tinypic); (2) banner ad services for display on other websites or devices (commercial banner ad rotation); (3) file dump/mirror scripts that allow an anonymous user to upload a file for other to download (similar to rapidshare); (4) commercial audio streaming (more than one or two streams); (5) push button mail scripts that allow the user to specify recipient email addresses; (6) anonymous or bulk SMS gateways; (7) backup of content from another computer or website; (8) Bittorrent

[Contact Us](#)

trackers; or (9) any script that causes a degradation in the performance of our server or network environment.

**5.3 Unlimited Disk Space/Bandwidth/Website Plans.** Web Hosting and WordPress Hosting plans are designed to host most personal, small business and organization websites, and thus we offer unlimited bandwidth and some plans offer unlimited disk space and websites. This means that we do not set a limit on the amount of bandwidth, websites or disk space you may use in the operation of your website, provided it complies with this Service Agreement. In the event the bandwidth, number of websites or disk space usage of your website presents a risk to the stability, performance or uptime of our servers, data storage, networking or other infrastructure, you may be required to upgrade to a VPS or Dedicated Server, or we may take action to restrict the resources your website is utilizing.

**5.4 Website Accelerator Service.** Our Website Accelerator service (“**Website Accelerator**”) provides a content delivery network (CDN) designed to optimize your website performance through caching and secure distribution of static website content on a network of nationally dispersed servers. You acknowledge and agree that your website content will be stored throughout the United States. You acknowledge and agree that Website Accelerator may be discontinued or suspended at any time, and your participation is subject to eligibility, as detailed below.

**In order to be eligible for Website Accelerator, you acknowledge and agree that you meet and will keep in compliance with the following criteria: (1) your website must be hosted in Phoenix, AZ; (2) your domain name and hosting must be in the same account; (3) you must have DNS with us; (4) you must not use DNSSEC; (5) you may not have or add SSL certificates; if you add an SSL with CDN activated, the SSL certificate will not function; (6) you must have an Ultimate web hosting plan; and (7) you may not change operating systems.**

[Contact Us](#)

5.5 **WHMCS License.** In the event you add WHMCS license to your Business Hosting plan, you agree to be bound by both the [WHMCS Terms of Service](#) and End User License Agreement, which are both hereby incorporated by reference.

Your hosting plan may provide you with access to use ManageWP. ManageWP is a website management console which allows its users to administer any number of websites including, but not limited to, management monitoring, backups, deployment, publishing, and security tools. You acknowledge and agree that your use of ManageWP is subject to the terms of service located [here](#), which are hereby incorporated by reference.

## 6 PROVISIONS SPECIFIC TO VPS AND DEDICATED HOSTING

6.1 **Server Access.** If you purchase MS SQL or Managed Backups, you hereby authorize us to log into your server for purposes of installing and configuring the MS SQL or Managed Backups.

6.2 **IP Addresses.** You acknowledge and agree you are required to begin using at least ninety percent (90%) of your purchased IP addresses within thirty (30) days of assignment of such IP addresses to you. In the event you do not begin using at least ninety percent (90%) of your assigned IP addresses within thirty (30) days of assignment, you acknowledge and agree that we shall have the right to reclaim any unused IP addresses.

6.3 **FTP Back-Up.** We offer an FTP Backup option for an extra fee. You acknowledge and agree that purchasing FTP Backup may require additional down time to install and maintain. You further acknowledge and agree that in utilizing the FTP Backup option, you shall be subject to a maximum disk space and bandwidth usage according to the plan you purchase. Subject to the terms and conditions of this Service Agreement, we shall use commercially reasonable efforts to provide FTP Backup services on a twenty-four (24) hours per day, seven (7) days per week basis throughout the term of this Service Agreement. You acknowledge and agree that from time-to-time the FTP Backup services may be

Contact Us

inaccessible or inoperable for any reason, including, without limitation: (1) equipment malfunctions; (2) periodic maintenance procedures or repairs that we may undertake from time to time; or (3) causes beyond our control or that are not reasonably foreseeable including, but not limited to, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures. FTP Back-up may not be available on all hosting plans.

**6.4 Configuration Add-Ons.** We offer multiple configuration options (“**Configuration Add-Ons**”) for an extra fee. The specific Configuration Add-Ons available depend on which hosting package you purchase, but may include a control panel, database, external firewall or RAID. You acknowledge and agree that installing a Configuration Add-On will use some of your available storage, may require additional provisioning time, will require us to install Third Party Software (defined below), third party hardware or internally developed custom software to your server, and, in some cases, may limit the versions of Third Party Software available for use with your server. Third Party Software, third party hardware and internally developed customer software will be supported by us. If you wish to cancel RAID, you will be required to cancel your server and purchase a new one.

- **Plesk.** In the event you add Plesk to your server, you agree to be bound by the [Plesk EULA](#), which is hereby incorporated by reference.
- **cPanel.** In the event you add cPanel to your server, you agree to be bound by the [cPanel EULA](#), which is hereby incorporated by reference.
- **cPanel Fair Usage Policy:** This policy is a guide to understand the intended uses of our Services, and to prevent exploitation and abuse of the unlimited features offered in our plans. VPS and dedicated hosting with cPanel offers unlimited number of accounts. Although we do not wish to set a specific limit, as a guideline, a threshold of 100 accounts will be considered normal,

Contact Us

reasonable use. We evaluate your usage in comparison to typical levels of usage engaged in by other users. In the event that you exceed this threshold, GoDaddy may in its sole and absolute discretion, assess additional usage charges for accounts in excess of the threshold or restrict additional accounts from being created. Where possible, GoDaddy will provide a notice of your usage in excess of the normal use.

## 7 PROVISIONS SPECIFIC TO MANAGED SSL

If you purchased Managed SSL and are using an SSL certificate on a website hosted by us, we will generate and securely store a corresponding private key. For security reasons, at no time will we release your private key, even per your request. If you wish to export your SSL certificate for use on a non-GoDaddy server, request a re-key of the SSL certificate - your current SSL certificate will become invalid and we will issue a new certificate for use on your non-GoDaddy server.

We will **automatically validate**, issue and install the new certificate every two years for subscribing customers using our hosting products. Customers using 3<sup>rd</sup> party hosting products will be required to reinstall the new certificate after we automatically validate and issues a new certificate. We will alert customers when to take action via the product dashboard and email.

You are permitted to assign a representative the authority to (1) sign and submit, or approve a certificate request on your behalf, (2) sign and submit a Subscriber Agreement on your behalf and/or (iii) to acknowledge the Terms of Use on your behalf, provided you acknowledge and agree that you are and will remain subject to and bound by all terms and conditions of this Agreement.

## 8 PROVISIONS SPECIFIC TO SUPPORT PLANS

**8.1 WordPress (“WP”) Premium Support.** If you elect to use our WP Premium Support Services (either as a subscription or as a one-time Service), we reserve the right to charge any or all of the fees for such Services prior to the commencement of

[Contact Us](#)

any work being performed. All services, both subscription and one time, will be listed as a "Best Effort Service." Even after taking all reasonable steps, we may not be able to resolve certain issues. We are not responsible for and will not provide assistance with any issue(s) that arise beyond fourteen days of any use of WP Premium Support Services. We may install a plugin on your hosted WordPress site for the purpose of facilitating your WP Premium Support Services. Its purpose is to facilitate the requested change and maintenance of your WordPress files. The plugin allows us to access, automate updates to core files, other plugins, themes, and other files related to the maintenance of your site. You acknowledge and agree that you shall not use WP Premium Support Services in a manner that, as determined by us in our sole and absolute discretion:

- displays or advertises pornographic, X-rated, sexually explicit, or otherwise tasteless materials, images, products or services (including, but not limited to: massage, dating, escort or prostitution services); or
- uses pornographic, X-rated, sexually explicit keywords or images in video names, descriptions or listings.

Further, you are responsible for ensuring that any product posted for sale on your website is in compliance with all applicable laws and regulations where your items can be purchased. We reserve the right and sole discretion to determine whether the sale of any particular item is illegal or otherwise prohibited and cancel your Services.

**8.2 Managed and Fully Managed Hosting Support Plans.** If you purchase a Managed or Fully Managed Hosting Support Plan ("**Managed Hosting Plan**") with VPS, we may install a limited number of applications ("**Supported Applications**") on your server at your request. A full list of Supported Applications is available from our support team upon request. If you request the installation of a Supported Application, we will install and configure the Supported Application on our server as long as the server has available resources (e.g., storage, RAM, processing power) to support that particular application.

Contact Us

We will then provide the primary (administrator) username and password to you, at which point you will take over the managed and additional configuration of that particular application. We will not be responsible for content customization, or any other activities associated with the Supported Application, including any repair of the Supported Application should it stop working

We shall limit technical support of an inoperable Supported Application to restoring said Supported Application to its original state (fresh installation, with no data or customization). The backups offered with these support plans are snapshots taken on a 10-day cycle. Restores are available upon request and may require an additional fee.

**8.3 Hosting Premium Support/Expert Services.** If we determine that any support request falls outside the scope of your plan, you can request custom support services (“**Expert Services**”) for a fee, or on a per service basis, which we will quote to you before providing the custom support service. If you elect to use our Expert Services, we reserve the right to charge any or all of the fees for such Services prior to the commencement of any work being performed. Expert Services fees are non-refundable. You must, within fourteen days of any Expert Services, notify us if there are any issues with the Expert Services. We are not responsible for and will not provide assistance with any issue(s) that arise beyond fourteen days of any Expert Services.

**8.4 Hosting Migrations.** If you have your domain name registered with us and the web hosting associated with the domain is provided by a third-party, we may, at your request and in our sole discretion, attempt to assist you to move the web hosting for the domain name to us (“**Hosting Migration**”). Hosting Migrations are provided as a courtesy service, and we do not make any guarantee regarding the availability, possibility, or time required to complete a Hosting Migration. Each hosting company is configured differently, and some hosting platforms save data in an incompatible or proprietary format, which may make us unable to assist you

[Contact Us](#)

in the transfer of data from a third-party host.

You are solely responsible for reviewing the functionality and accuracy of migrated content in its new location following a Hosting Migration. If you are satisfied with the data migration, you will need to update the DNS record for the domain name in order to publish the website in its new location. We will not perform website backups or archives in connection with a Hosting Migration, and we recommend that you back up your third-party hosted website before migration to ensure that no data is lost. You agree not to make any changes or revisions to your website during the migration process.

You agree that we are not liable for any delay in website resolution or loss of data related to your Hosting Migration. Hosting Migrations are not available for websites with over 10GB of data or more than 100,000 files.

We may install a plugin on your external WordPress site for the purpose of facilitating your WordPress migration into our own Managed WordPress hosting environment. This plugin will not change anything on your source site. Its purpose is to facilitate the Hosting Migration of your WordPress files. You are welcome to disable the plugin on your source site after the Hosting Migration has been completed.

## 9 SERVICE UPTIME GUARANTEE

We offer a Service uptime guarantee of 99.9% (“**Service Uptime Guarantee**”) of available time per month. If we fail to maintain this Service Uptime Guarantee in a particular month (as solely determined by us), you may contact us and request a credit of 5% of your monthly hosting fee for that month. The credit may be used only for the purchase of further products and services from us, and is exclusive of any applicable taxes. The Service Uptime Guarantee does not apply to service interruptions caused by: (1) periodic scheduled maintenance or repairs we may undertake from time to time; (2) interruptions caused by you from custom scripting, coding or the installation of third-party applications; (3) outages that do not affect the appearance of your website but merely affect

[Contact Us](#)

access to your website such as FTP and email; (4) causes beyond our control or that are not reasonably foreseeable; and (5) outages related to the reliability of certain programming environments.

## 10 THIRD PARTY SOFTWARE

**10.1 Definition and Scope.** As part of the Hosting Services, you may be allowed to use certain software, widgets, or other applications (“Software”) developed, owned, or licensed by a third-party. Your use of this Software may be subject to additional terms. If the Software is accompanied by or requires a license agreement from the third-party provider, your use of the Software is subject to that license agreement, in addition to this Service Agreement.

**10.2 Terms and Conditions Applicable to all Software and Operating Software.** You may use the Software and Operating Software solely as part of the Services. You may not remove, modify, or obscure any copyright, trademark, or other proprietary rights notices that are contained in or on the Software. Additionally, you may not sell, modify, re-use reverse-engineer, decompile, disassemble, reverse compile, create derivative works of or attempt to derive the source code from the Software.

GoDaddy may provide your personal information to third-party providers as required to provide the third-party Software. GoDaddy reserves the right to modify, change, or discontinue provision of the Software at any time.

GoDaddy makes no representations or warranties about any third-party Software offered in connection with the Hosting Services, and expressly disclaims any liability.

You will indemnify, defend, and hold harmless GoDaddy from and against any and all claims imposed upon or inured by GoDaddy directly or indirectly arising from your use or misuse of the third-party Software. The providers of the third-party Software are third-party beneficiaries to this Services Agreement for purposes of enforcing their rights under this Services Agreement.

[Contact Us](#)

The Hosting Services may be operated in both Linux® and Windows® environments. Each time you commission a server, we will provision the server with the operating system you choose.

We reserve the right to modify, change, or discontinue any Third-Party Software at any time, and you agree to cooperate in performing such steps as may be necessary to install any updates to the Third-Party Software. The Third-Party Software is neither sold nor distributed to you, and you may use the Third-Party Software solely as part of the Hosting Services. You may not use the Third-Party Software outside of the Hosting Services. We may provide your personal information to third-party providers as required to provide the Third-Party Software. You acknowledge and agree that your use of the Third-Party Software is subject to our agreement(s) with the third-party providers. In addition, if the Third-Party Software is accompanied by or requires consent to a service or license agreement from the third-party provider, your use of the Third-Party Software is subject to such service or license agreement. You may not download, install, or use any Third-Party Software that is accompanied by or requires consent to a service or license agreement from a third-party provider unless you first agree to the terms and conditions of such service or license agreement. You may not remove, modify, or obscure any copyright, trademark, or other proprietary rights notices that are contained in or on the Third-Party Software. You may not reverse engineer, decompile, or disassemble the Third-Party Software, except and only to the extent that such activity is expressly permitted by applicable law. You acknowledge and agree that the third-party providers (and their affiliates and suppliers) make no representations or warranties about any Third-Party Software offered in connection with the Hosting Services, and expressly disclaim any liability or damages (whether direct, indirect, or consequential) arising from the use of the Third-Party Software. You acknowledge and agree that any Third-Party Software will be supported by us and not by the third-party providers (or their affiliates or suppliers).

[Contact Us](#)

**10.3 Additional Terms and Conditions Applicable to images and Software.** The third-party providers listed in this section make no representations or warranties about any Software offered in connection with the Hosting Services, and expressly disclaim any liability or damages (whether direct, indirect, or consequential) arising from the use of the Software.

You are responsible for managing and maintaining in good standing any paid subscription and/or account required with a third-party provider. You must cancel or terminate your paid subscription and/or account with the applicable third-party provider and not GoDaddy.

Your use of the following Software is subject to the applicable linked terms, which are incorporate by reference:

- **Acronis Hosting Backup.** Your use of Acronis Hosting backup is subject to the the software license agreement located [here](#).

Regarding this Section 9.3, “Personal Data” means any information relating to an identified or identifiable natural person or, to the extent applicable under Applicable Laws, a household; an identifiable person is one who can be defined, directly or indirectly, notably but not limited to by reference to a user identification or unique identifier, such as name, identification number, precise geo-location data, online user identification, or by reference to one or more factors specific to physical, physiological, genetic, economic, cultural, or social identity. “Personal Data” does not include aggregated, anonymous, or de-identified data, such as Usage Data.

“Usage Data” as used herein means any and all information reflecting the access or use of the Hosting Services by or on your behalf, including, but not limited to visit-, session-, steam-data and statistical or other analysis, information or data based on or derived from any of the foregoing. You acknowledge and agree that you have no rights to Usage Data. , as such terms are defined by Applicable Laws.

Any use of any Hosting Services involving GoDaddy’s

[Contact Us](#)

Dedicated Servers running on the DED4 Platform that involves You storing specially protected data is subject to the following additional terms:

- You will not submit through the Hosting Services any unencrypted Protected Health Information, as defined in the Health Insurance Portability and Accountability Act (“HIPAA”) (“PHI”);
- You will not submit through the Hosting Services any encrypted PHI unless the Parties have entered into a mutually acceptable Business Associate Agreement (“BAA”) in accordance with HIPAA;
- You will not submit through the Hosting Services any unencrypted Personal Data subject to regulatory protection under Applicable Laws of the United States federal, state, or local governmental authorities; and
- You will not submit through the Hosting Services any encrypted Personal Data without providing prior notice and obtaining prior consent from the data subject, as required by Applicable Law.

## We love taking your call.



---

## Sign up for news and special offers

Email address

Contact Us

[Sign Up](#)

[About GoDaddy](#)

+

[Help Center](#)

+

[Resources](#)

+

[Partner Programs](#)

+

[Account](#)

+

[Shopping](#)

+

[United States - English](#) ^

[USD](#) ^

[Legal](#)

[Privacy Policy](#)

[Advertising Preferences](#)

[Cookies](#)

[Do not sell my personal information](#)

Copyright © 1999 - 2021 GoDaddy Operating Company, LLC. All Rights Reserved. The GoDaddy word mark is a registered trademark of GoDaddy Operating Company, LLC in the US and other countries. The "GO" logo is a registered trademark of GoDaddy.com, LLC in the US.

Use of this Site is subject to express terms of use. By using this site, you signify that you agree to be bound by these Universal Terms of Service.

[Contact Us](#)

## **EXHIBIT 8**

[Dedicated Servers](#) [Cloud Hosting](#) [Datacenter & Network Solutions](#) [Worry-Free Services](#) [Our Infrastructure](#)[Terms of Service](#) | [Privacy Policy](#) | [Acceptable Use Policy](#) | [Anti-spam Policy](#) | [Cookie Policy](#) | [GDPR Privacy Notice](#) | [CCPA](#)

Last modified: March 25, 2021

The use of services provided by The Constant Company, LLC (hereafter referred to as "Choopa") is subject to the following Terms and Conditions.

**Important Notice**Terms of Service/AUP Violations: [abuse@choopa.com](mailto:abuse@choopa.com) (customers will be copied on all reports)Other Legal and Law Enforcement Inquiries: [legal@choopa.com](mailto:legal@choopa.com)**Party Definitions and Introductory Terms** - The operative parties referred to in this Agreement are defined as follows:

1. Choopa is the publisher and operator of [www.choopa.com](http://www.choopa.com) (the "Site") whereby Choopa makes certain web hosting services (the "Services") available. For purposes of this Agreement, when "Site" or "Services" are referenced, such reference includes all hardware, software, and network resources necessary to provide said Site and/or Service.

When first-person pronouns are used in this Agreement, (Us, We, Our, Ours, etc.) these provisions are referring to Choopa. Additionally, when the terms "the Site" or "Site" are used, these terms refer to any site published by Us, unless a site is specifically exempt from this policy.

2. **You, the Client** - As Our Client and the user of the Site or Services, this Agreement will refer to You through any second-person pronouns, such as "Your," "Yours," etc.

PLEASE READ THE FOLLOWING HOSTING SERVICES TERMS AND CONDITIONS. BY SUBSCRIBING TO CHOOPA'S SERVICES, YOU AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT (the "AGREEMENT"). IF YOU AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, CLICK "I ACCEPT," (OR SIMILAR SYNTAX) OR CHECK THE APPROPRIATE BOX MANIFESTING YOUR INTENT TO BE BOUND BY THESE TERMS AND CONDITIONS AND CONTINUE WITH THE ACCOUNT SET-UP PROCESS. YOU SHOULD PRINT-OUT OR OTHERWISE SAVE A COPY OF THIS AGREEMENT FOR FUTURE REFERENCE. IF YOU DO NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, CLICK THE "BACK" BUTTON ON YOUR BROWSER AND DO NOT SUBSCRIBE TO CHOOPA'S SERVICES. CHOOPA AGREES TO PROVIDE SERVICES TO YOU ONLY IF YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN. YOUR ELECTRONIC ACCEPTANCE OF THIS AGREEMENT IS PERMITTED BY THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (E-SIGN ACT) AND SIMILAR FEDERAL AND STATE LAWS. ANY USE OF CHOOPA'S SERVICES SHALL CONSTITUTE AN ACT OF ACCEPTANCE OF THE CURRENT HOSTING SERVICES TERMS AND CONDITIONS.

**Incorporations by reference.**

Although this Agreement represents the primary terms and conditions of service for Choopa's Services, additional guidelines and rules are hereby incorporated by reference. For Clients residing outside the EEA, the documents which can be found on Our Site, and which are specifically incorporated by reference, and are therefore part and parcel of this Agreement are the following:

- Our Privacy Policy (<http://www.choopa.com/legal/privacy/>)
- Our Acceptable Use Policy ([http://www.choopa.com/legal/use\\_policy/](http://www.choopa.com/legal/use_policy/))

For Clients residing in the EEA, the document(s) that can be found on Our Site, and which are specifically incorporated by reference and therefore part and parcel of this Agreement, are the following:

- Our Acceptable Use Policy ([http://www.choopa.com/legal/use\\_policy/](http://www.choopa.com/legal/use_policy/))

Clients residing in the EEA are invited to read our GDPR Privacy Notice before registering for the Services.

## 1. SERVICES

1.1 At the time of initial registration, You will select from the list of available Services the service plan(s) to which You wish to subscribe. All subscriptions to Services are subject to formal acceptance by Choopa. Your subscription to the Services will be deemed accepted by Choopa when Choopa delivers a confirmation of the subscription to You. Choopa reserves the right to refuse to provide You with any Service for any reason. Notwithstanding Our Uptime Guarantee found in Section 17 of this Agreement, Choopa also reserves the right to interrupt access to the Services to perform regular and emergency maintenance as needed. You may order additional Services at any time, provided that You agree to pay the then-current fees for such additional Services. All additional Services shall be considered "Services" hereunder. All Services provided are subject to availability and to all of the terms and conditions of this Agreement.

## 2. REVISIONS TO USER AGREEMENT

This Agreement contains the complete and entire terms and conditions that apply to Your use of Choopa's Services (as defined below). Choopa may modify the terms of this Agreement, including the Fees (as defined below) at any time.

2.1 From time to time, We may revise this Agreement. We reserve the right to do so, and You agree that We have this unilateral right. You agree that all modifications or changes to this Agreement are in force and enforceable immediately upon posting. The updated or edited version supersedes any prior versions immediately upon posting, and the prior version is of no continuing legal effect unless the revised version specifically refers to the prior version and keeps the prior version or portions thereof in effect. To the extent any amendment of this Agreement is deemed ineffective or invalid by any court, the parties intend that the prior, effective version of this Agreement be considered valid and enforceable to the fullest extent.

2.2 We agree that if We change anything in this Agreement, We will change the "last modified date" at the top of this Agreement. You agree to periodically re-visit this web page, and to use the "refresh" button on Your browser when doing so. You agree to note the date of the last revision to this Agreement. If the "last modified" date remains unchanged from the last time You reviewed this Agreement, then You may presume that nothing in the Agreement has been changed since the last time You read it. If the "last modified" date has changed, then You can be certain that something in the Agreement has been changed.

2.3 Should You wish to terminate this Agreement due to any revisions made by Us, You must do so in writing via the cancellation form within thirty (30) days of the "last modified" date described above. Your continued use of the Services after the effective date of any such notice constitutes Your acceptance of such changes.

2.4 Waiver - if You fail to periodically review this Agreement to determine if any of the terms have changed, You assume all responsibility for such omission and You agree that such failure amounts to Your affirmative waiver of Your right to review the amended terms. We are not responsible for Your neglect of Your legal rights.

## 3. DURATION OF AGREEMENT AND CANCELLATION POLICY

3.1 The Initial Term shall begin upon confirmation of Your order or commencement of the Services to You and receipt of lawful funds. The term's length is chosen by You and shall be indicated when You order Our Services. This Agreement may not be terminated by You during the Initial Term (and any renewals thereof) except in the event of a breach by Choopa. After the Initial Term, this Agreement shall automatically renew for successive terms, equal in length to the Initial Term, unless terminated or canceled by either party as provided herein.

3.2 Choopa may also terminate this Agreement in its sole discretion at any time for any reason or no reason. ("Termination without Cause"). In such case, Choopa will provide You with thirty (30) days written notice before the discontinuation of Services.

3.3 If Choopa cancels this Agreement pursuant to any of the terms outlined in this Agreement, with the exception of Termination without Cause pursuant to paragraph 3.2, Choopa shall not refund to You any fees paid or prepaid in advance of such cancellation and You shall be obligated to pay all fees and charges accrued prior to the effectiveness of such cancellation. In the event that Choopa terminates the Agreement for cause, all prepaid hosting fees will be forfeited and are not refundable. The termination of this Agreement does not relieve You of Your obligation to pay any Fees accrued or payable to Choopa.com prior to the effective date of termination of this Agreement.

3.4 In addition to Choopa's right to terminate this Agreement provided elsewhere in this Agreement, Choopa may terminate this Agreement effective immediately if, based on Choopa's sole judgment, it determines that You or any of Your end-users: (a) have breached the Acceptable Use Policy ("AUP") as described in Section 12 of this Agreement, and incorporated herein, (b) have infringed or violated any intellectual property right or privacy or publicity right of a third party, (c) have not complied with any applicable law, statute or regulation, or (d) have uploaded, published or disseminated any images, text, graphics, code or video which Choopa considers illegal or high risk, in its discretion. Nothing contained in this Agreement is intended to, or shall, impose any duty or obligation upon Choopa to monitor or review Your Content or the content of Your end-users at any time. You remain solely responsible for Your Content, and any liability generated therefrom.

3.5 The termination of this Agreement will terminate Your access to the Services and Your license to the Host Materials (as defined in Section 5.2 of this Agreement). Choopa shall not be liable to You or to any third party for termination of the Services permitted under this agreement. Upon termination of this Agreement, Choopa reserves the right to maintain copies of Your data files and records for archival purposes, but does not undertake any obligation to do so. Choopa reserves the right to impose an early termination charge for all Services terminated prior to the last day of the billing cycle.

3.6 If either party cancels or terminates this Agreement for any reason, You shall be solely responsible for making all necessary arrangements for securing a replacement host and moving all electronic data, graphics, images, video or text to the new service provider. Upon termination of this Agreement, provisions that by their nature would be expected to survive termination shall survive and remain in full force and effect in accordance with their terms.

## 4. ACCOUNT SET UP

4.1 When You register for the Services, You will choose a login (email) and password. You may use the Services or modify Your data and content only through such user ID and password. You are entirely responsible for maintaining the confidentiality of Your user ID and password and for any and all activities which occur using those credentials. You agree to immediately notify Us of any unauthorized use of Your account or any other breach of security known to You.

4.2 You must provide Us with a primary email address that is checked regularly and frequently. All notices and communications between Us will be sent to the email address You provide, and You are therefore required to keep this address current or notify Us if Your address changes. You should notify Us if any of Your contact and/or billing information changes so that We may update Your account. It is also Your responsibility to make sure that Our domain(s), choopa.com, are not included in any spam block list used by You or Your mail provider.

4.3 Providing false or inaccurate contact information of any kind may result in the Termination for Cause of Your account per Section 3 of this Agreement.

4.4 You are responsible for all activity transpiring under Your account. We therefore highly recommend that You secure file, directory, and script permissions to the most restrictive settings possible. You agree that You have the technical ability to properly operate a web site and that You are responsible for any actions performed under Your account, including but not limited to, damage caused to Your site, Choopa's site and/or equipment, and any other site.

## 5. INTELLECTUAL PROPERTY RIGHTS

All Services provided by Choopa may only be used for lawful purposes.

5.1 As between You and Choopa, Choopa acknowledges that it claims no proprietary rights in or to the content (including without limitation, text, software, music, sound, audio visual works, motion pictures, photographs, animation, video and graphics) supplied by You for use on Your web site ("Your Content"). You hereby grant to Choopa a non-exclusive, worldwide and royalty-free license to copy, make derivative works, display, perform, use, broadcast and transmit on and via the Internet Your Content, solely for the benefit of You and to enable Choopa to perform its obligations hereunder.

**5.2** In connection with performance of the Services and at the sole discretion of Choopa, Choopa may (but is not obligated to) provide You with certain materials, including, without limitation, computer software (in object code or source code form), data, documentation or information developed or provided by Choopa or its suppliers under this Agreement, domain names, electronic mail addresses and other network addresses assigned to You, and other know-how, methodologies, equipment, and processes used by Choopa to provide You with the Services ("Host Materials"). Subject to the terms and conditions of this Agreement, Choopa hereby grants You a limited, revocable, non-transferable, non-exclusive license to use the Host Materials solely in connection with the Services. This license terminates when this Agreement terminates. As between You and Choopa, You acknowledge and agree that Choopa owns all right, title, and interest or otherwise has acquired all applicable licenses for the Host Materials, and all copyright, trade secret, patent, trademark and other intellectual property rights therein. Any use of the Host Materials after termination of this Agreement is not licensed and strictly prohibited. You agree that You will not upload, transmit, reproduce, distribute or in any way exploit any Host Materials obtained through the Services without first obtaining the express written permission to do so from Choopa.

**5.3** This Agreement does not constitute a license to use Choopa's trade names, service marks or any other trade insignia. Any use of any of Choopa's trade names, service marks or any other trade insignia is strictly prohibited, absent Choopa's prior written consent.

**5.4** If We are required to enlist the assistance of an Attorney or other person to collect any liquidated damages or any other amount of money from You, or if We are required to seek the assistance of an Attorney to pursue injunctive relief against You, or if We are required to file an ICANN complaint against You in order to bring about the transfer of an offending URL to Us from You, then You additionally agree that You will reimburse Us for all fees incurred in order to collect these liquidated damages, or in order to seek injunctive relief from You, or in order to file and prosecute an ICANN complaint.

**5.5** You understand that even a nominal amount of damages may require the expenditure of extensive legal fees, travel expenses, costs, and other amounts that may dwarf the liquidated damages themselves. You agree that You will pay all of these fees and costs.

## 6 DMCA Notice and Takedown Policy

### 6.1 Introduction

Choopa.com ("Choopa") implements the following DMCA Notice and Takedown Policy. Choopa respects the intellectual property rights of third parties, and expects others to do the same. As part of our effort to recognize the copyrights of third parties, Choopa complies with the U.S. Digital Millennium Copyright Act ("DMCA") and is therefore protected by the limitations on liability recognized by 17 U.S.C. § 512; commonly known as the "safe harbor" provisions of the DMCA. Choopa's infringement notification procedure, counter-notification procedure, and takedown policies, are set forth below.

## 7 Notice of Claimed Infringement

### 7.1 Abuse Warning

The DMCA permits copyright owners, or their authorized agents, to submit notifications to service providers, such as Choopa, requesting that infringing material hosted on Choopa's servers be disabled or removed. Importantly, the DMCA imposes significant penalties - including court costs and attorneys fees - on those who abuse the infringement notification procedure, by misrepresenting either that material is infringing, or was removed by mistake. See; 17 U.S.C. § 512(f). Choopa will pursue those who abuse its DMCA notice or counter-notification procedure, and will cooperate with law enforcement in any investigation of such abuse. Please make sure that you meet all the qualifications before submitting a DMCA notice to our Designated Agent identified below.

### 7.2. Notification Contents and Procedure

If you believe that your work has been copied, reproduced, altered or published in a way that constitutes copyright infringement under federal law, or your copyrights have been otherwise violated, please submit a DMCA notice to Choopa's Designated Copyright Agent, containing the following:

1. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
2. a description of the copyrighted work or other intellectual property that you claim has been infringed;
3. a description of where the material that you claim is infringing is located on Choopa's servers (preferably including specific URL's associated with the material);
4. your full name, address, telephone number, and email address;
5. a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent(s), or the law; and
6. a statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

Claimants may send their Notice of Claimed Infringement to:

David Gucker, DMCA Agent  
 319 Clematis Street Suite 900  
 West Palm Beach, FL 33401  
 201-221-8875 (fax)  
 dmca [at] choopa [dot] com

Please do not send other inquiries or information to our Designated Agent.

## 8. Takedown Policies and Procedures

Choopa implements the following Takedown Policies and Procedures. Upon receipt of any notification of claimed copyright infringement, Choopa will act expeditiously to notify its customer of the alleged infringement, and take steps to disable or remove the subject material. DMCA Notices are generally processed within two (2) business days from receipt, absent extenuating circumstances. Choopa reserves the right at any time to disable access to, or remove any material or expressive work accessible on or from its servers or services, that is claimed to be infringing via a valid DMCA Notice, or based on facts or circumstances from which infringing activity is apparent. It is the firm policy of Choopa to terminate the account of repeat copyright infringers, when appropriate, and Choopa will act expeditiously to remove access to all material that infringes on another's copyright, according to the procedure set forth in 17 U.S.C. §512 of the DMCA. The procedure for notifying Choopa of claimed copyright

infringement is set forth in Section 7.2, hereof. If the DMCA notice does not comply with §512 of the DMCA, but does substantially comply with the (3) three requirements for identifying infringing works according to §512 of the DMCA, Choopa shall attempt to contact or take other reasonable steps to reach the complaining party to assist that party comply with sending a compliant DMCA Notice. As noted above, when Choopa's Designated Agent receives a valid notice, Choopa will act expeditiously to remove and/or disable access to the infringing material and shall notify the affected customer or subscriber. Then, the affected customer or subscriber may submit a counter-notification to the Designated Agent, using the counter-notification procedures set forth below. Choopa reserves the right to modify, alter or add to this policy, and all affected persons should regularly check back to this page to stay current on any modifications.

## 9. Counter-Notification Procedures

If the Recipient of a Notice of Claimed Infringement ("Notice") believes that the Notice is erroneous or false, and/or that allegedly infringing material has been wrongly removed/disabled in accordance with the procedures outlined above in Section III above, the Recipient is permitted to submit a counter-notification pursuant to 17 U.S.C. § 512(g)(2) & (3). A counter-notification is the proper method for the Recipient to dispute the improper removal or disabling of material pursuant to a Notice. The information that a Recipient provides in a counter-notification must be accurate and truthful, and the Recipient will be liable for any misrepresentations contained in the counter-notification pursuant to 17 U.S.C. § 512(f).

9.1 To initiate a counter-notification, the Recipient must submit to Choopa's Designated Copyright Agent the following information:

1. a specific description of the material that was removed or disabled pursuant to the Notice.
2. a description of where the material was located within Choopa or the Content before such material was removed and/or disabled (preferably including specific URL's associated with the material.)
3. a statement reflecting the Recipient's belief that the removal or disabling of the material was done so erroneously. For convenience, the following language may be utilized:  
*"I swear, under penalty of perjury, that I have a good faith belief that the referenced material was removed or disabled by the service provider as a result of mistake or misidentification of the material to be removed or disabled."*
4. a statement that the Recipient consents to the jurisdiction of the Federal District Court in and for the judicial district where the Recipient is located, or if the Recipient is outside of the United States, for any judicial district in which the service provider may be found, and that the Recipient will accept service of process from the person who provided the Notice, or that person's agent.
5. the Recipient's physical address, telephone number, and email address.

Counter Notifications can be sent to:

The Constant Company, LLC  
David Gucker, DMCA Agent  
319 Clematis Street Suite 900  
West Palm Beach, FL 33401  
201-221-8875 (fax)  
dmca [at] choopa [dot] com

**Please do not send other inquiries or information to our Designated Agent.**

After receiving a DMCA-compliant counter-notification, Our Designated Copyright Agent will forward the counter-notification to the original claimant who first provided the Notice identifying the allegedly infringing material.

Within ten to fourteen (10-14) days from Choopa's receipt of a valid counter-notification, Choopa will replace or cease disabling access to the disputed material unless Choopa's Designated Agent receives notification that the original claimant has filed an action seeking a court order to restrain the Recipient from engaging in infringing activity relating to the material on Choopa's system or network.

## 10. Service Provider Customers of Choopa

Some of Choopa's customers are, themselves, "Service Providers" within the meaning of 17 U.S.C. § 512(k)(1). Accordingly, Choopa requests that any DMCA Notices relating to alleged infringement by third party users, customers or subscribers of Choopa's Service Provider Customers be submitted directly to the DMCA Agent designated by such customer.

## 11. Modifications

Choopa reserves the right to modify, alter or add to the DMCA policy set forth in Sections 6-10 above, and all users should regularly check back regularly to stay current on any such changes.

## 12. CONTENT AND ACCEPTABLE USE POLICY

12.1 You agree to comply with Choopa's Acceptable Use Policy ("AUP"), which may be found by accessing Choopa's web site at [http://www.choopa.com/legal/use\\_policy/](http://www.choopa.com/legal/use_policy/), which policy is hereby incorporated by reference as an indispensable part of this Agreement. Choopa reserves the right to modify the AUP at any time by posting the modified policy on its web site. You agree to monitor the Choopa.com home page for any changes to the AUP. Your continued use of the Services after the effective date of any changes to the AUP constitutes Your manifestation of intent to be bound by such changes. Choopa may, at its sole discretion, immediately terminate Your access to the Services, or this Agreement, if Your conduct violates the AUP, or if any of Your end users' conduct violates the AUP.

12.2 Choopa will not actively monitor the content of the web sites being hosted by Choopa.com, although Choopa.com, at its sole discretion, may elect to electronically monitor its network and may disclose any content or records concerning Your account as necessary to satisfy any law, regulation, or other governmental request or to properly operate Our network and protect any of Our customers. Choopa will investigate complaints of a violation of a third party right or of the AUP. Choopa will cooperate with those attempting to minimize Internet abuse and reserves the right to institute "filters" or other mechanisms for that purpose. Choopa will cooperate with law enforcement authorities and reserves the right to notify such authorities if it suspects that You or any of Your end users are engaged in illegal activities. Nothing contained in this Section, or anywhere in this Agreement, is intended to bestow any rights on any third party, and no third parties shall be entitled to enforce any terms of this Agreement between the Parties.

12.3 You acknowledge and expressly agree that Choopa will not be liable to You or any of Your end users for any action Choopa takes to remove or restrict access to the Services for any alleged violation of the AUP, or exercising its rights as a Good Samaritan under the Telecommunications Act of 1996 (47 U.S.C. § 230(d)) or under the Digital Millennium Copyright Act of 1998 (See Section 12.8 below).

12.4 Choopa may, at its sole discretion, immediately terminate Your access to the Services, and terminate this Agreement for cause, if Your conduct violates the acceptable uses outlined below, or if any of Your end users' or downstream customers' conduct violate such acceptable uses.

12.5 Choopa takes the issue of child pornography very seriously, and any potential harm to minors using our services is strictly prohibited. Content that is or may be perceived to be child pornography will be immediately removed from public access upon notification or detection by Us. Additionally, Choopa reserves the right to terminate any account whose website(s) hosts or links to child pornography immediately and without notice to You. If the account is a Choopa reseller account, the account will be suspended and the reseller will be directed to terminate the responsible account. You agree to cooperate in any such efforts. Content or communications seeking to solicit, lure or entice minors into sexual activity or lewd behavior is also strictly prohibited, and will be treated the same as, or similar to, child pornography, consistent with applicable law. You agree to cooperate with Choopa in any effort to investigate, disable or remove such content originating with Your end-users. Consistent with federal law, Choopa will cooperate with law enforcement authorities and will notify such authorities if it suspects that You or any of Your downstream customers or end users are engaged in any such illegal activities.

12.6 In accordance with the reporting requirements of 18 U.S.C. § 2258A, We will report to the CyberTipline ([www.cybertipline.com](http://www.cybertipline.com)) any actual knowledge of apparent violations of 18 U.S.C §§ 2251, 2251A, 2252, 2252A, 2252B, 2260, or 1466A. If You suspect any instances of child pornography appearing on sites hosted by Choopa, We encourage You to send such reports to Our abuse address ([abuse@choopa.com](mailto:abuse@choopa.com)), and include the file name and/or URL (or other location on the customer's site), victim (if known), date of birth, date of production, and any other information about the suspect image(s). Do not send the image(s) in question. Alternately, You may use the CyberTipline to report suspected child pornography. Reports involving sites not hosted by Choopa should be directed to law enforcement or to a cooperating child pornography organization such as: <https://www.asacp.org/index.php?content=report>.

12.7 We respect the intellectual property rights of all parties and have adopted a policy regarding termination of repeat copyright infringers under the Digital Millennium Copyright Act. Copies of Our Repeat Infringer Policy are available on request to our clients.

12.8 Section 230 Notice: You acknowledge Your responsibility to prevent minors under Your care from accessing harmful or inappropriate material on Your site. You agree not to allow minors to view any such site, and agree to take responsible measures to prevent them from doing so. Numerous commercial online safety filters are available which may help users limit minors' access to harmful or inappropriate material. Pursuant to 47 U.S.C. §230(d), you are hereby informed that you can research such services at websites, such as [www.asacp.org](http://www.asacp.org). Please note that this Site makes no representation or warranty regarding any of the products or services referenced on such sites, and recommend that the user conduct appropriate due diligence before purchasing or installing any online filter. You agree to take particular steps to prevent minors from viewing this site if Your computer can be accessed by a minor. Finally, You agree that if You are a parent or guardian of a minor child, it is Your responsibility, not Ours, to keep any age-restricted content on Our Site from being displayed or accessed by Your children or wards.

Pursuant to the Communications Decency Act ("CDA"), 47 U.S.C. § 230(c)(1), and court decisions interpreting the scope of the CDA, You acknowledge and understand that Choopa operates as the provider of an interactive computer service. Thus, We are immune from, and cannot be held responsible for, claims arising from the publication of Your content (including third-party content published on Your website(s)). We do not create such content, and We are not responsible for the publication of remarks or communications of You or third-parties that may arguably rise to the level of being actionable under federal or state laws including, but not limited to, the publication of material that might be considered defamatory, or violative of privacy or publicity rights. Note, that federal law allows Choopa to remove any content found to be offensive, defamatory, obscene or otherwise violative of Our policies, without impacting Our immunity status as an interactive computer service. Nothing contained in this paragraph is intended to limit or alter the immunity from claims provided by Section 230 of the Communications Decency Act. In the event that any court finds that any third party communication or third party content hosted by us falls outside of the realm of the immunity provided by the CDA, this shall not be deemed to be a waiver of any legal protections provided by Section 230 for any and all other content posted on our Website or hosted via our Services.

#### 12.9 Specific Requirements for Service Provider and User-Generated Content Subscribers

If You use Our Services for any site, sub-domain, page or business model that allows Your end users or customers to control or upload material to Internet space assigned to You by Us, You shall be deemed to be acting as a "Service Provider" with respect to such services and/or customers. Service Providers include but are not limited to Clients which; a) resell bandwidth as hosts to third parties; b) operate user-generated content sites such as forums, "tube" sites, review sites, and online classified advertising sites; c) operate search engines; or d) operate peer-to-peer file sharing networks. Clients acting as a Service Provider for third party users shall comply with the following provisions:

- You shall notify Us of all domains, web pages or IP addresses for which You are acting as Service Provider.
- You shall comply with 17 U.S.C. §512 of the DMCA by properly designating an agent for receipt of copyright infringement notices, and You shall publish a link on the home page of any website for which You are a Service Provider to a DMCA Notice and Takedown Policy, identifying the website's designated agent and associated contact information.
- You shall provide Us with a current link to Your DMCA Notice and Takedown Policy and further advise Us of any changes to Your Designated Agent contact information. This shall be a continuing obligation for as long as You use Our Services.

It is the policy of Choopa to provide any infringement notices it receives relating to Service Provider Subscribers, directly to the Subscriber's Designated DMCA Agent, and to further notify any copyright claimants of the identity and contact information for the Service Provider Subscriber's Designated DMCA Agent. Failure to maintain compliance with this section shall constitute a material breach of this Agreement. Nothing contained herein should be interpreted as legal advice, and You are encouraged to consult your personal attorney regarding DMCA safe harbor compliance, or any other legal matter.

12.10 In keeping with Our DMCA policies and obligations set forth above, You understand, agree, and expressly allow Us to access and subsequently disable public access to any files or data residing on the server, disk, partition, or other data space under Your control as Our customer when such files or data, in Our discretion; 1), have been identified in a substantially compliant DMCA notice under 17 U.S.C. § 512; or 2) when We become aware of facts or circumstances indicating that such files or data are infringing on the copyrights or other intellectual property rights of third parties. Given that Our customers may employ various methods of securing files in conjunction with Our Services, and in an attempt to avoid material disruption of Our customers' Services, You agree that You will provide Us with Your preferred procedure for disabling access to material identified under this provision. If We forward You a substantially compliant DMCA Notice and which concerns content under Your control, You are obligated under this Agreement to immediately disable or remove access to such content. Irrespective of the above, We reserve the right to disable or remove access to such content, in Our discretion, and without claim of damage or injury by You. While We will attempt to simply disable access to such content without fully deleting it, or suspending all services to your account, We make no warranties concerning harm or injury to the content, and reserve the right to take any necessary actions to disable access to the identified material, including suspension or termination of

Services. It is therefore in Your best interest to promptly respond to any DMCA Notices You may receive. Should You or Your website's users feel that such DMCA Notice was erroneously or improperly sent, You must follow the Counter-Notification procedure set forth above, and wait the required period of time, before We allow public access to the content to resume.

12.11 Nothing contained in this Section, or any part of this Agreement, shall constitute legal or professional advice regarding any matter referenced therein. You are responsible for obtaining your own legal advice regarding compliance with any and all applicable laws or regulations.

## 13. ZERO TOLERANCE SPAM POLICY

13.1 You agree to comply with Choopa's Anti-Spam Policy which may be found at [http://www.choopa.com/legal/antispam\\_policy/](http://www.choopa.com/legal/antispam_policy/) and which is hereby incorporated by reference as an indispensable part of this Agreement. Use of Choopa's services for any illegal spam activities is strictly prohibited.

13.2 Choopa reserves the right to modify the Anti-Spam Policy at any time by posting the modified policy on its web Site. You agree to monitor Choopa's home page for any changes to the Anti-Spam Policy. Your continued use of the Services after the effective date of any changes to the Anti-Spam Policy constitutes Your manifestation of intent to be bound by such changes.

## 14. PAYMENT

14.1 Payment for Services is due in advance of the time period for which such payment covers. Services are billed on an automatic and recurring basis unless and until you follow Choopa's cancellation procedure set forth in this Agreement.

14.2 Unless separately negotiated by You and Us, and confirmed by separate written agreement, the initial and recurring Fees for the Services selected by You shall be as provided in the initial on-line order form. All set-up fees and special programming fees are non-refundable. Fees for Services are payable in advance. Failure to make payment of Fees for Services when due may result in the suspension or termination of Services.

14.3 At the time of registration, You must select a payment method. Choopa reserves the right to contract with a third party to process all payments. Such third party may impose additional terms and conditions governing payment processing. If You do not pay all Fees when due, Your account will be deemed past due. For any past due Fees, Choopa will charge You interest at one and one-half percent (1.5%) or the highest rate allowed by applicable law, whichever is lower, per month of the unpaid amount, until paid.

14.4 You agree to pay any and all taxes, including personal property, value added, or sales taxes, resulting from Your use of the Services. Choopa is not responsible for any bank fees incurred by You due to Your use of check cards, automatic payment services, insufficient funds, and any and all other fees your financial institution may impose due to Your use of the Services. If Choopa should receive less than full payment of the Fees due to taxes, bank charges, transfer fees, or the like, Choopa will invoice You for the difference between payment received and the Fees due.

14.5 You also agree to pay all attorney and collection fees arising from Choopa's efforts to collect any past due Fees. If you cancel any Service prior to the expiration of the pre-paid Fees, You understand and agree that Choopa will not issue You any refund whatsoever, including but not limited to any remaining pre-paid Fees, set up Fees, and/or special programming Fees.

14.6 Coupons and Discount Codes - From time to time, Choopa may offer coupons or other discount codes which may be used when signing up for hosting with Us. Coupons and discount codes are for first-time customers of Choopa and must be used at the time of Your initial purchase with Us - they may not be applied after Your service with Us has already been initiated. Unless expressly provided, such coupons and discount codes may not be used toward upgrades to Your account. Any account We deem to be attempting unauthorized coupon or discount code use may be subject to Termination for Cause.

## 15. BACK UPS & DATA LOSS

15.1 You agree that Your use of Choopa's Services is at Your own risk, and that Choopa is not liable for any data loss in connection with its Services. You are solely responsible for creating backups of Your Content. If, during Our own routine maintenance, We do create a backup of Your Content which You later request Us to restore to Your account, We cannot guarantee that we will be able to do so, or that Your Content will be unharmed as a result of the initial data loss or the subsequent restore procedure. To that end, We highly recommend that You establish Your own routine backup procedure and that You periodically test restoring files from Your backup media to ensure that You are making viable backups.

15.2 Should you wish for Choopa to provide you with routine backup service, in addition to the Services provided under this Agreement please contact Us. We offer many different backup solutions as an add-on service to Our regular Services, and all such services are provided through a separate, written agreement.

## 16. RESOURCE USAGE & SECURITY

16.1 Choopa does not impose hard set limits on each account's system resources. We do not actively disable accounts until they greatly exceed an acceptable level of usage. There are numerous activities that could cause such problems; these include: CGI scripts, FTP, PHP, HTTP, etc. Choopa will advise You of a temporary block placed on any account found to be consuming an inordinate amount of system resources, to the point of degrading overall system performance.

16.2 Except where expressly permitted by law, You may not translate, reverse-engineer, decompile, disassemble, or make derivative works from the Site and/or Materials. You hereby agree not to use any automatic device or manual process to monitor or reproduce the Site or Materials, and will not use any device, software, computer code, or virus to interfere or attempt to disrupt or damage Our Services and Site or any communications on it. If You do not adhere to this provision of this Agreement, in addition to monetary damages and other remedies available to Choopa, You hereby agree to pay liquidated damages of \$5000.00 plus any and all fees associated with recovery of these damages, including attorneys' fees and costs.

16.3 SECURITY Any violation of the security to the Site and/or Services is prohibited and may result in criminal and civil liability. Unauthorized Access of the servers used to provide the Site, Services, and/or Materials (the "Servers") is strictly prohibited and is a violation of this Agreement and the AUP per Section 6 of this Agreement. You agree not to engage in such activity or to attempt to breach the Servers for the purpose of altering or manipulating the hardware and software, compromising the Servers, or for any other unauthorized use commonly known as "hacking." In addition, You are prohibited from the following:

1. Any form of unauthorized access to or use of data, systems or networks, including the Site and/or Services;
2. Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network;

3. Unauthorized interference with service to any user, host or network;
4. Introducing a malicious program into the network or server (e.g. viruses and worms), including the Site and/or Services;
5. Circumventing user authentication or security of any host, network or account;
6. Using an account with another provider to promote Your site with Us in an abusive manner.
7. Utilizing Our Services for the purpose of compromising the security or tampering with system resources or accounts on computers at Our site or any other site.

In the event You are involved in any violation of system security, We reserve the right to release information about You to system administrators at other sites in order to assist in resolving security incidents, and We shall also cooperate with any law enforcement agency investigating a criminal violation of system or network security. Additionally, any violation of these security provisions may, at Our sole discretion, be grounds for Termination for Cause of Your account per Section 3 of this Agreement.

**16.6 FAIR USE POLICY** We provide specific Services to our Clients and define normal, fair, and reasonable use in terms of our Choopa Virtual Private Servers as use that is consistent throughout any given billing period. We expect regular usage patterns from individual component machines and the client solution as a whole. Should we at our sole discretion determine a Client is not using this Service as defined under this Fair Use Policy, we may take actions to mitigate negative impact to Service delivery systems including but not limited to the following:

1. Rate-limit the data the Client may send and/or receive from the individual machine to the entire solution level
2. Adjust pricing to a standard bandwidth rate (market-dependent)
3. Suspend or terminate Service to any or all Client machines

## 17. UPTIME GUARANTEE

**17.1** Choopa will offer You a Service Level Agreement ("SLA") guaranteeing certain availability of Our Services. If applicable, the terms of any such SLA were separately negotiated between You and Us, and such SLA, if any, is hereby incorporated by reference as an indispensable part of this Agreement.

To be eligible for any credits to Your account, You must follow the specific procedures set forth in the SLA for notifying Us of Your desire for credits. You understand and agree that the failure to follow the procedure in the SLA within three (3) days of the triggering event will result in Your waiver of any right to receive credits.

## 18. PRICE CHANGE

The amount You pay for hosting will never increase during a specific term or time period for which you have signed up for Our Services. We reserve the right to change prices listed on choopa.com at any time, without notice, and the right to modify the amount of resources given to plans at any time. Additionally, if we terminate this agreement without cause pursuant to paragraph 3.2 of the Agreement, You understand that if We agree to provide Services to You in the future, the amount You paid under any prior term or time period is not determinative of the amount You pay should We provide Services to You again. It is Your responsibility to check Our website for plan or price changes should You wish to take advantage of plan or price changes which may have occurred. Choopa does not automatically update Your plan. All upgrades or downgrades will be performed at Your request and may include modification fees or require reinitiating service with Us.

## 20. INDEMNIFICATION

You agree to defend, indemnify, and hold Choopa and its Affiliates harmless from and against any and all claims and liabilities, including reasonable attorneys' and experts' fees, related to or arising from (a) any breach of Your covenants under this Agreement; (b) Your use of the Services; (c) any defamatory, libelous or illegal material contained within Your Content or Your information and data; (d) any claim or contention that Your Content or Your information and data infringes any third party's patent, copyright or other intellectual property rights or violates any third party's rights of privacy or publicity; (e) any third party's access or use of Your Content or Your information and data; (f) any violation of the applicable Acceptable Use Policy. In the event of a claim under this section, Choopa shall be permitted to select legal counsel to provide a defense to such claim. Choopa reserves the right, at its own expense, to participate in the defense of any matter otherwise subject to indemnification from You, but shall have no obligation to do so. You shall not settle any such claim or liability without the prior written consent of Choopa, which shall not be unreasonably withheld.

## 21. NO WARRANTIES

YOU EXPRESSLY AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE AND EXCLUSIVE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS, WITH ALL FAULTS" AND "AS AVAILABLE" BASIS. CHOOPA EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. OTHER THAN AS SET FORTH IN PARAGRAPH 11, CHOOPA MAKES NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES CHOOPA MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICES OR THAT DEFECTS IN ANY SOFTWARE, HARDWARE OR THE SERVICES WILL BE CORRECTED. ANY STATEMENTS MADE REGARDING SUCH MATTERS IN PROMOTIONAL MATERIALS SHALL BE CONSIDERED ADVERTISING REFERENCES, AND NOT WARRANTIES. YOU UNDERSTAND AND AGREE THAT ANY USE YOU MAKE OF ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS AT YOUR OWN DISCRETION AND RISK, AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA.

CHOOPA MAY MAKE THIRD-PARTY GOODS, SERVICES AND/OR SOFTWARE AVAILABLE TO YOU THAT ARE NOT PART OF THE SERVICES ("THIRD-PARTY SERVICES"). CHOOPA HAS NO CONTROL OVER THE CONTENT OF THIRD-PARTY SERVICES. USE OF ANY THIRD-PARTY SERVICES WILL BE AT YOUR OWN AND SOLE RISK AND SUBJECT TO THE TERMS AND CONDITIONS OF A SEPARATE AGREEMENT BETWEEN YOU AND THE THIRD-PARTY.

CHOOPA MAKES NO WARRANTY REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH THE SERVICES OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICES.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM CHOOPA OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY, WHETHER BY IMPLICATION, ESTOPPEL OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY MARKETING OR PROMOTIONAL MATERIALS DESCRIBING THE SERVICES ON CHOOPA'S WEBSITE.

UNLESS OTHERWISE AGREED TO IN WRITING, CHOOPA DOES NOT MAKE A BACK-UP OF YOUR SITE(S) AS PART OF THE SERVICES. ACCORDINGLY, WE ENCOURAGE YOU TO MAKE A BACK-UP OF YOUR SITE(S) ON A REGULAR BASIS.

## 22. LIMITATION ON LIABILITY

YOU ARE SOLELY RESPONSIBLE FOR THE PROPER OPERATION OF YOUR WEB-SITE AND/OR CONDUCT OF YOUR BUSINESS AND ALL OTHER MATTERS UNDER YOUR CONTROL. IN NO EVENT SHALL CHOOPA BE LIABLE TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO YOUR OPERATION OF YOUR WEB-SITE AND/OR BUSINESS OR FAILURE TO OPERATE YOUR WEB-SITE AND/OR BUSINESS.

THIS SECTION APPLIES TO ALL CLAIMS BY YOU OR YOUR END USERS IRRESPECTIVE OF THE CAUSE OF ACTION UNDERLYING THE CLAIM, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, STRICT LIABILITY, FRAUD, AND/OR MISREPRESENTATION.

REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, YOU AGREE THAT IN NO EVENT WILL CHOOPA, OUR AFFILIATES, CONTRACTORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OR LICENSORS, OR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING OR DELIVERING THE SERVICES, TECHNOLOGY, OR CONTENT AVAILABLE ON THE SERVICES ("AFFILIATES"), BE LIABLE TO YOU IN ANY MANNER WHATSOEVER: (A) FOR ANY DECISION MADE OR ACTION OR NON-ACTION TAKEN BY YOU IN RELIANCE UPON THE INFORMATION PROVIDED THROUGH THE SERVICES; (B) FOR LOSS OR INACCURACY OF DATA OR, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (C) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUES, LOSS OF PROFITS OR LOSS OF REPUTATION, FOR BUSINESS INTERRUPTION OR SIMILAR ACTION, EVEN IF CHOOPA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE TOTAL AGGREGATE AND MAXIMUM LIABILITY OF CHOOPA AND THE AFFILIATES, ARISING FROM OR OTHERWISE RELATING TO THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION OR CLAIM) IS LIMITED TO ANY AMOUNTS YOU HAVE PAID TO CHOOPA DURING THE SIX (6) MONTHS PRIOR TO THE ACCRUAL OF THE CAUSE OR CAUSES OF ACTION.

## 23. GENERAL PROVISIONS

**23.1. Jurisdiction, Venue, and Choice of Law.** This Agreement and all matters arising out of or otherwise relating to this Agreement shall be governed by the laws of the State of Florida, excluding its conflict of law provisions. The parties hereby submit to the personal jurisdiction of the state and federal courts of Orange County, Florida in the event litigation permitted under this Agreement is initiated. Exclusive venue for any litigation permitted under this Agreement shall be with the state and federal courts located in Orange County, Florida.

The parties agree that this choice of venue, jurisdiction, and forum as set out in the following parts of this Agreement is mandatory and not permissive in nature, thereby precluding any possibility of litigation between the parties with respect to, or arising out of, this Agreement in jurisdiction other than that specified in this Section.

All parties hereby waive any right to assert the doctrine of *forum non-conveniens* or similar doctrines, or to object to venue with respect to any proceeding brought in accordance with this paragraph or with respect to any dispute under this Agreement whatsoever.

Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it, as contemplated by this paragraph by registered or certified mail, Federal Express, proof of delivery or return receipt requested, to the parties address for the giving of notices as set forth in this Agreement.

**23.2. Arbitration.** If there is a dispute between the parties arising out of or otherwise relating to this Agreement, the parties shall meet and negotiate in good faith to attempt to resolve the dispute. If the parties are unable to resolve the dispute through direct negotiations, then, except as otherwise provided herein, either party shall submit the issue to binding arbitration in accordance with the then-existing Commercial Arbitration Rules of the American Arbitration Association. Arbitral Claims shall include, but are not limited to, contract and tort claims of all kinds, and all claims based on any federal, state or local law, statute, or regulation, excepting only claims under applicable worker's compensation law, unemployment insurance claims, intellectual property claims, actions for injunctions, attachment, garnishment, and other equitable relief. The arbitration shall be conducted in Orange County, Florida and conducted by a single arbitrator, knowledgeable in Internet and e-Commerce. Except as provided below, the party bringing the action shall be responsible for paying all costs for arbitration, including the arbitrator's fees. Each party shall bear its own attorneys' fees (except if the matter is for the collection of a debt owed, the prevailing party shall be awarded its attorneys fees, all arbitration costs and arbitrator fees, in addition to all other applicable remedies). The arbitrator shall have no authority to award any punitive or exemplary damages; certify a class action; add any parties; vary or ignore the provisions of this Agreement, and shall be bound by governing and applicable law. The arbitrator shall be willing to execute an oath of neutrality. The arbitrator shall render a written opinion setting forth all material facts and the basis of his or her decision within thirty (30) days of the conclusion of the arbitration proceeding. THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY IN REGARD TO ARBITRAL CLAIMS.

**23.3. Assignment.** The rights and liabilities of the parties hereto will bind and inure to the benefit of their respective assignees, successors, executors, and administrators, as the case may be. Neither this Agreement nor any rights granted hereunder may be sold, leased, assigned or otherwise transferred, in whole or in part by You.

**23.4. Severability.** If for any reason a court of competent jurisdiction or arbitrator finds any provision of this Agreement, or any portion thereof, to be unenforceable, that provision will be enforced to the maximum extent permissible and the remainder of this Agreement will continue in full force and effect.

**23.5. No Waiver.** Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision, and no waiver of one breach will constitute a waiver of subsequent breaches of the same or of a different nature.

**23.6. Complete Agreement.** This Agreement (including all other policies incorporated herein) constitutes the entire agreement between the parties with respect to the Services, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. No amendment to or modification of this Agreement will be binding unless in writing and signed by a duly authorized representative of both parties.

**23.7. Relationship Between the Parties.** Choopa is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties.

**23.8. Non-Solicitation.** Beginning upon commencement of the Services to You and continuing for a period of two (2) years after the termination of this Agreement or after any other cancellation or termination of Your account or Services with Us, You agree not to directly or indirectly, solicit, hire, contract, or otherwise employ any Choopa employee who was an employee during the term of this Agreement (including the Initial Term and any successive terms), to work for You or any other firm, person or business, of whatever character, corporate or otherwise.

**23.9. Headings.** Section and subsection headings of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

**23.10. Force Majeure.** Choopa shall not be responsible for any failure to perform due to unforeseen circumstances or to causes beyond its reasonable control, including but not limited to: acts of God; war, riot, embargoes, acts of civil or military authority, or terrorism; fire, flood, earthquakes, hurricanes, tropical storms or other natural disasters; fiber cuts; strikes, or shortages in transportation, facilities, fuel, energy, labor or materials; failure of the telecommunications or information services infrastructure; hacking, SPAM, or any failure of a computer, server or software for so long as such event continues to delay Choopa's performance.

**23.11. Export.** You understand and acknowledge that the software elements of the Host Materials may be subject to regulation by agencies of the U.S. Government, including the U.S. Department of Commerce, which prohibits export or diversion of software to certain countries and third parties. You will not assist or participate in any such diversion or other violation of applicable U.S. laws and regulations. You warrant that You will not license or otherwise permit anyone not approved to receive controlled commodities under applicable U.S. laws and regulations and that You will abide by such laws and regulations.

**23.12. Complaints - California Residents:** The Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs may be contacted at: <http://www.dca.ca.gov/consumers/complaints/consumer.shtml>.

**23.13. Government Rights.** The software elements of the Host Materials have been developed at private expense and are "commercial computer software" or "restricted computer software" within the meaning of the FARs, the DFARs, and any other similar regulations relating to government acquisition of computer software. Nothing contained herein will be deemed to: (i) grant any government agency any license or other rights greater than are mandated by statute or regulation for commercial computer software developed entirely at private expense, or (ii) restrict any government rights in any extensions or custom solutions provided hereunder and developed at government expense.

**23.14. Notices Electronic Communications.** All notices permitted or required under this Agreement may be sent by e-mail, fax, express mail, mail, or registered mail to the e-mail address, fax number, or address most recently provided by You and will be effective upon transmission. Evidence of successful transmission shall be retained. Each of the parties may communicate with the other by electronic means as described in this Agreement. Each of the parties agrees to the following for all electronic communications: (i) The user identification of a sender, contained in an electronic communication, is legally sufficient to verify the sender's identity and the communication's authenticity; (ii) An electronic communication sent by You containing Your user identification establishes You as its originator and has the same effect as a document with Your written signature on it; and (iii) An electronic communication, or any computer printout of it, is valid proof of the validity of the original document of the electronic communication.

TECHNOLOGY PARTNERS



QUALITY HOSTING SOLUTIONS

- Dedicated Servers
- Cloud Hosting
- Datacenter Colocation
- IP Transit

A FULL SUITE OF MANAGED SERVICES

- Backup Solutions
- Geographically Balanced DNS
- IPv6 Hosting

FULLY REDUNDANT INFRASTRUCTURE

- Premium IP Network
- Tier4 Data Center Facilities
- 24x7x365 Support
- Comprehensive SLAs

CORPORATE POLICIES AND INFORMATION

- Terms of Service | Privacy | AUP | AntiSpam | Cookies | GDPR

Contact Us 24x7:

1-866-224-6672

[sales@choopa.com](mailto:sales@choopa.com)

LIVE CHAT

© 2021 Choopa.com, All rights reserved. Choopa ® is a registered trademark of The Constant Company, LLC.

## **EXHIBIT 9**

[Dedicated Servers](#) [Cloud Hosting](#) [Datacenter & Network Solutions](#) [Worry-Free Services](#) [Our Infrastructure](#)[Terms of Service](#) | [Privacy Policy](#) | [Acceptable Use Policy](#) | [Anti-spam Policy](#) | [Cookie Policy](#) | [GDPR Privacy Notice](#) | [CCPA](#)

The following is **Choopa.com's Acceptable Use Policy ('AUP')**. By using Choopa.com's Hosting services ('Services'), you agree to comply with this AUP. You also agree to require your end users to comply with this AUP. Choopa.com reserves the right to amend this AUP at any time, with or without notice to you. Choopa.com agrees to post any changes to this AUP on the Choopa.com's Homepage (located at: <http://www.choopa.com>) and you agree to periodically review this AUP as modified from time to time. You agree to be bound to this AUP, as modified from time to time, every time you use or access the Services.

Pursuant to your Hosting Services Agreement, Choopa.com may, at its sole discretion, immediately terminate your access to the Services if your conduct violates (or appears to violate) the AUP. In addition, Choopa.com may, at its sole discretion, immediately terminate your access to the Services, if any of your end users violate the AUP.

## NO UNLAWFUL OR PROHIBITED USE

As a condition of your use of the Services, you will not use the Services (nor will you permit an end user to use the Services) for any purpose that is unlawful or otherwise prohibited by this AUP. You may not use the Services (nor will you permit an end user to use the Services) in any manner that could damage, disable, overburden, or otherwise impair any of the Services offered by Choopa.com, or any services offered by a third party, or interfere with any other party's use and enjoyment of any of our Services. You may not (nor will you permit your end users to) obtain or attempt to obtain any materials or information through any means not intentionally made available through the Services.

## USE OF SERVICES

The Services are designed to enable you and your end users to communicate with others via the Internet. You agree to use the Services (and to require your users to use the Services) only to post, send and receive messages and material that is proper and, when applicable, related to the particular Service. By way of example, and not as a limitation, you agree that when you (or your end users are) using a Service, you (and your end users) will not:

- Use the Service in connection with unlawful contests, lotteries, or gambling; pyramid schemes, chain letters, junk email, spamming or any duplicative or unsolicited messages (commercial or otherwise).
- Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.
- Publish, post, upload, distribute, traffic or disseminate any defamatory, obscene, or otherwise unlawful content, such as child pornography or virtual child pornography.
- Publish, post, upload, distribute or disseminate any topic, name, material or information that incites discrimination, hate or violence towards one person or a group because of their belonging to a race, a religion or a nation.
- Upload, or otherwise make available files that contain images, photographs, software or other material protected by intellectual property laws, including, by way of example, and not as limitation, copyright or trademark laws (or by rights of privacy or publicity) unless you own or control the rights thereto or have received all necessary consents to do the same.
- Use any material or information, including images or photographs, which are made available through the Services in any manner that infringes any copyright, trademark, patent, trade secret, or other proprietary right of any party.
- Upload files that contain viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs that may damage the operation of another's property.
- Download any file posted by another user of a Service that you know, or reasonably should know, cannot be legally distributed in such manner.
- Falsify or delete any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded.
- Restrict or inhibit any other user from using and enjoying the Services.
- Violate any code of conduct or other guidelines which may be applicable for any particular Service.
- Harvest or otherwise collect information about others, including e-mail addresses, except as needed to operate your site and as permitted in your site's privacy policy (if any).
- Violate any applicable laws or regulations.
- Create a false identity for the purpose of misleading others.
- Host TOR exit nodes.
- Use, download or otherwise copy, or provide (whether or not for a fee) to a person or entity any directory of users of the Services or other user or usage information or any portion thereof.
- Network probing or port scanning tools are only permitted if explicitly authorized by the destination host and/or network. Unauthorized port scanning, for any reason, is strictly prohibited.
- Utilizing bots for the purpose of repeatedly and/or automatically acquiring merchandise and anything similar that violates 3rd party ToS that could result in the blocking of Vultr IP space or ASN.

Choopa.com reserves the right at all times to disclose any information as Choopa.com deems necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in Choopa.com's sole discretion.

Choopa.com does not control or endorse the content, messages or information found in any Service and, therefore, Choopa.com specifically disclaims any liability with regard to the Services and any actions resulting from your participation in any Service.

In the event any instance uses excessive CPU from activities such as cryptocurrency CPU mining, Choopa.com reserves the right to limit the CPU available to your instances in order to maintain a consistent level of performance on all our nodes.

## TERMINATION/ACCESS RESTRICTION

Choopa.com has no obligation to monitor the Services. However, Choopa.com reserves the right to review materials posted to a Service and to remove any materials in its sole discretion. Choopa.com reserves the right, in its sole discretion, to terminate your access to any or all Services and the related services or any portion thereof at any time, with or without notice, for violating this AUP. Your rights and obligations upon termination of any Service are governed by the Hosting Terms of Service. Upon termination of the Service, your right to use the Service immediately ceases. Choopa.com shall have no obligation to maintain any content termination of the Services.

## NO SPAM; DAMAGES

Choopa.com will immediately terminate any account which it believes, in its sole discretion, is transmitting or is otherwise connected with any spam or other unsolicited bulk email.

## NOTICE OF CLAIMED INFRINGEMENT

Choopa.com respects the intellectual property of others, and we ask our users to do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please provide Choopa.com's Copyright Agent the following information:

- an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
- a description of the copyrighted work or other intellectual property that you claim has been infringed;
- a description of where the material that you claim is infringing is located on the Services;
- your address, telephone number, and email address;
- a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- a statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

You may send your Notice of Claimed Infringement to:

The Constant Company, LLC  
David Gucker  
319 Clematis Street Suite 900  
West Palm Beach, FL 33401  
[dmca@choopa.com](mailto:dmca@choopa.com)

Please do not send other inquires or information to our Designated Agent.

## NOTICE AND TAKE DOWN PROCEDURES

Choopa.com reserves the right at any time to implement a 'notice and takedown' procedure upon receipt of any notification of claimed infringement. Choopa.com reserves the right at any time to disable access to, or remove any material or activity accessible on or from any site or any materials claimed to be infringing or based on facts or circumstances from which infringing activity is apparent.

### TECHNOLOGY PARTNERS



#### QUALITY HOSTING SOLUTIONS

Dedicated Servers  
Cloud Hosting  
Datacenter Colocation  
IP Transit

#### A FULL SUITE OF MANAGED SERVICES

Backup Solutions  
Geographically Balanced DNS  
IPv6 Hosting

#### FULLY REDUNDANT INFRASTRUCTURE

Premium IP Network  
Tier4 Data Center Facilities  
24x7x365 Support  
Comprehensive SLAs

#### CORPORATE POLICIES AND INFORMATION

[Terms of Service](#) | [Privacy](#) | [AUP](#) | [AntiSpam](#) | [Cookies](#) | [GDPR](#)

Contact Us 24x7:

1-866-224-6672

[sales@choopa.com](mailto:sales@choopa.com)

LIVE CHAT

© 2021 Choopa.com, All rights reserved. Choopa ® is a registered trademark of The Constant Company, LLC.

# **EXHIBIT 10**

[Log in](#)

## Terms of Service

Last updated on: December 10, 2020

By signing up for a Shopify Account (as defined in Section 1) or by using any Shopify Services (as defined below), you are agreeing to be bound by the following terms and conditions (the “Terms of Service”).

As used in these Terms of Service, “we”, “us” and “Shopify” means the applicable Shopify Contracting Party (as defined in Section 4 below).

The services offered by Shopify under the Terms of Service include various products and services to help you sell goods and services to buyers, whether online (“Online Services”) by enabling you to create and build your own online store, in person (“POS Services”), or both. Any such services offered by Shopify are referred to in these Terms of Services as the “Services”. Any new features or tools which are added to the current Services shall be also subject to the Terms of Service. You can review the current version of the Terms of Service at any time at <https://www.shopify.com/legal/terms>. Shopify reserves the right to update and change the Terms of Service by posting updates and changes to the Shopify website. You are advised to check the Terms of Service from time to time for any updates or changes that may impact you. and if you do not accept such amendments, you must cease using the Services.

You must read, agree with and accept all of the terms and conditions contained or expressly referenced in these Terms of Service, including Shopify’s [Acceptable Use Policy \(“AUP”\)](#) and [Privacy Policy](#), and, if applicable, the [Supplementary Terms of Service for E.U. Merchants](#) (“EU Terms”), the Shopify [API License and Terms of Use \(“API Terms”\)](#), and the Shopify [Data Processing Addendum \(“DPA”\)](#) before you may sign up for a Shopify Account or use any Shopify Service. Additionally, if you offer goods or services in relation to COVID-19, you must read, acknowledge and agree to the [Rules of Engagement for Sale of COVID-19 Related Products](#).

**Everyday language summaries are provided for convenience only and appear in bold under each section, but these summaries are not legally binding. Please read the Terms of Service, including any document referred to in these Terms of Service, for the complete picture of your legal requirements.**

**By using Shopify or any Shopify services, you are agreeing to these terms. Be sure to occasionally check back for updates.**

---

## 1. Account Terms

To access and use the Services, you must register for a Shopify account (“Account”) by providing your full legal name, current address, phone number, a valid email address, and any other information indicated as required. Shopify may reject your application for an Account, or cancel an existing Account, for any reason, in our sole discretion.

You must be the older of: (i) 18 years, or (ii) at least the age of majority in the jurisdiction where you reside and from which you use the Services to open an Account.

You confirm that you are receiving any Services provided by Shopify for the purposes of carrying on a business activity and not for any personal, household or family purpose.

You acknowledge that Shopify will use the email address you provide on opening an Account or as updated by you from time to time as the primary method for communication with you. You must monitor the primary Account email address you provide to Shopify and your primary Account email address must be capable of both sending and receiving messages. Your email communications with Shopify can only be authenticated if they come from your primary Account email address.

You are responsible for keeping your password secure. Shopify cannot and will not be liable for any loss or damage from your failure to maintain the security of your Account and password.

You acknowledge that you are responsible for the creation and operation of your Shopify Store.

Shopify is not a marketplace. Any contract of sale through your Shopify Store is directly between you and the buyer.

You are responsible for all activity and content such as photos, images, videos, graphics, written content, audio files, code, information, or data uploaded, collected, generated, stored, displayed, distributed, transmitted or exhibited on or in connection with your Account (“Materials”).

A breach or violation of any term in the Terms of Service, including the AUP, as determined in the sole discretion of Shopify may result in an immediate termination of your Services.

### **WHICH MEANS**

You are responsible for your Account and any Materials you upload to the Shopify Service. Remember that if you violate these terms we may cancel your service.

If we need to reach you, we will send you an email.

## 2. Account Activation

### 2.1 Store Owner

Subject to section 2.1(2), the person signing up for the Service by opening an Account will be the contracting party (“Store Owner”) for the purposes of our Terms of Service and will be the person who is authorized to use any corresponding Account we may provide to the Store Owner in connection with the Service. You are responsible for ensuring that the name of the Store Owner (including the legal name of the company that owns the Store, if applicable) is clearly visible on the Store’s website. If you are signing up for the Services on behalf of your employer, your employer shall be the Store Owner. If you are signing up for the Services on behalf of your employer, then you must use your employer-issued email address and you represent and warrant that you have the authority to bind your employer to our Terms of Service.

Your Shopify Store can only be associated with one Store Owner. A Store Owner may have multiple Shopify Stores. “Store” means the online store or physical retail location(s) associated with the Account.

### 2.2 Staff Accounts

Based on your Shopify pricing plan, you can create one or more staff accounts (“Staff Accounts”) allowing other people to access the Account. With Staff Accounts, the Store Owner can set permissions and let other people work in their Account while determining the level of access by Staff Accounts to specific business information (for example, you can limit Staff Account access to sales information on the Reports page or prevent Staff Accounts from changing general store settings). The Store Owner is responsible and liable for the acts, omissions and defaults arising from use of Staff Accounts in the performance of obligations under these Terms of Service as if they were the Store Owner’s own acts, omissions or defaults.

The Store Owner and the users under Staff Accounts are each referred to as a “Shopify User”.

### 2.3 PayPal Express Checkout and Shopify Payments Accounts

Upon completion of sign up for the Service, Shopify will create a PayPal Express Checkout account on your behalf, using your email address. Depending on your location, Shopify may also create a Shopify Payments account on your behalf.

You acknowledge that PayPal Express Checkout and/or Shopify Payments will be your default payments gateway(s) and that it is your sole responsibility as the Store Owner to activate and maintain these accounts. If you do not wish to keep either of the payment accounts active, it is your responsibility to deactivate them. For the avoidance of doubt, PayPal Express Checkout is a Third Party Service, as defined in Section 17 of these Terms of Service.

### 2.4 Apple Pay for Safari Account

Upon completion of sign up for the Service, Shopify will create an Apple Pay for Safari (“Apple Pay”) account on your behalf, using the URL(s) and business name associated with your Account. Depending on your location, Shopify may activate your Apple Pay account on your behalf, otherwise you will be required to activate your Apple Pay account within your Account admin. If you do not wish to keep your Apple Pay account active, it is your responsibility to deactivate it. For the avoidance of doubt, Apple Pay is a Third Party Service, as defined in Section 17 of these Terms of Service. If you use an Apple Pay supported payment gateway and your customers have enabled Apple Pay on their device, customers may purchase goods and services from your Store using Apple Pay. By using Apple Pay on your Store, you are agreeing to be bound by the [Apple Pay Platform Web Merchant Terms and Conditions](#), as they may be amended by Apple from time to time. If Apple amends the Apple Pay Platform Web Merchant Terms and Conditions, the amended and restated version will be posted here: <https://www.shopify.com/legal/apple-pay>. Such amendments to the Apple Pay Platform Web Merchant Terms are effective as of the date of posting. Your continued use of Apple Pay on your Store after the amended Apple Pay Platform Web Merchant Terms are posted constitutes your agreement to, and acceptance of, the amended Apple Pay Platform Web Merchant Terms. If you do not agree to any changes to the Apple Pay Platform Web Merchant Terms, de-activate your Apple Pay account and do not continue to use Apple Pay on your Store.

## 2.5 Google Payment

Upon completion of sign up for the Service, if you have been enrolled in Shopify Payments, Shopify will also create a Google Payment account on your behalf. If you do not wish to keep your Google Payment account active, it is your responsibility to deactivate it. For the avoidance of doubt, Google Payment is a Third Party Service, as defined in Section 17 of these Terms of Service.

If you use a Google Payment supported payment gateway and your customers have enabled Google Payment, customers may purchase goods and services from your Store using Google Payment.

By using Google Payment on your Store, you are agreeing to be bound by the [Google Payment API Terms of Service](#), as they may be amended by Google from time to time. If Google amends the [Google Payment API Terms of Service](#), the amended and restated version will be posted here: <https://payments.developers.google.com/terms/sellertos>. Such amendments to the Google Payment API Terms of Service are effective as of the date of posting. Your continued use of Google Payment on your Store after the amended Google Payment API Terms of Service are posted constitutes your agreement to, and acceptance of, the amended Google Payment API Terms of Service. If you do not agree to any changes to the Google Payment API Terms of Service, de-activate your Google Payment account and do not continue to use Google Payment on your Store.

## 2.6 Domain Names

Upon purchasing a domain name through Shopify, domain registration will be preset to automatically renew each year so long as your Shopify Account remains active. You acknowledge that it is your sole

responsibility to deactivate the auto-renewal function should you choose to do so.

## WHICH MEANS

Only one person can be the “Store Owner”, usually the person signing up for the Shopify Service. The Store Owner is responsible for the Account, is bound by these Terms of Service and is responsible for the actions of others accessing the Account. If you sign up on behalf of your employer, your employer is the Store Owner responsible for your Account.

We automatically create certain accounts for you to accept payments. You are responsible for activating and deactivating these accounts and complying with their terms, which are with various third parties.

Any domain you purchase through us will automatically renew unless you opt out.

## 3. General Conditions

You must read, agree with and accept all of the terms and conditions contained in these Terms of Service, including the [AUP](#), the [Privacy Policy](#), and, if you operate a E.U. based Store, the [EU Terms](#), before you may become a Shopify User. Additionally, you acknowledge and agree to the [Rules of Engagement for the Sale of COVID-19 Related Products](#) if you sell such products.

Technical support in respect of the Services is only provided to Shopify Users.

The Terms of Service shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without regard to principles of conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms of Service and is hereby expressly excluded.

You acknowledge and agree that Shopify may amend these Terms of Service at any time by posting the relevant amended and restated Terms of Service on Shopify’s website, available at <https://www.shopify.com/legal/terms> and such amendments to the Terms of Service are effective as of the date of posting. Your continued use of the Services after the amended Terms of Service are posted to Shopify’s website constitutes your agreement to, and acceptance of, the amended Terms of Service. If you do not agree to any changes to the Terms of Service, do not continue to use the Service. If the EU Terms apply to your Store, then amendments to these Terms of Service will be provided in accordance with the EU Terms.

You may not use the Shopify Services for any illegal or unauthorized purpose nor may you, in the use of the Service, violate any laws in your jurisdiction (including but not limited to copyright laws), the laws applicable to you in your customer’s jurisdiction, or the laws of Canada and the Province of Ontario. You will comply with all applicable laws, rules and regulations in your use of the Service and your performance of obligations under the Terms of Service.

The Shopify API License and Terms of Use at <https://www.shopify.com/legal/api-terms> govern your access to and use of the Shopify API (as defined therein). You are solely responsible for the activity

that occurs using your API Credentials (as defined in the API Terms) and for keeping your API Credentials secure.

You agree not to reproduce, duplicate, copy, sell, resell or exploit any portion of the Service, use of the Services, or access to the Services without the express written permission by Shopify.

You shall not purchase search engine or other pay per click keywords (such as Google Ads), or domain names that use Shopify or Shopify trademarks and/or variations and misspellings thereof.

Questions about the Terms of Service should be sent to [Shopify Support](#).

You understand that your Materials (not including credit card information), may be transferred unencrypted and involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices. Credit card information is always encrypted during transfer over networks.

The Services allow you to send certain communications to your customers by short message service (SMS) messaging (for example, sending order confirmation notifications via SMS) (the "SMS Services"). You will only use the SMS Services in compliance with these Terms of Service, Nexmo Inc.'s [Acceptable Use Policy](#), and the laws of the jurisdiction from which you send messages, and in which your messages are received.

You acknowledge and agree that your use of the Services, including information transmitted to or stored by Shopify, is governed by its privacy policy at <https://www.shopify.com/legal/privacy>.

The Terms of Service may be available in languages other than English. To the extent of any inconsistencies or conflicts between these English Terms of Service and Shopify's Terms of Service available in another language, the most current English version of the Terms of Service at <https://www.shopify.com/legal/terms> will prevail. Any disputes arising out of these Terms of Service will be resolved in English unless otherwise determined by Shopify (acting in its sole discretion) or as required by applicable law.

All the terms and provisions of the Terms of Service shall be binding upon and inure to the benefit of the parties to the Terms of Service and to their respective heirs, successors, permitted assigns and legal representatives. Shopify shall be permitted to assign these Terms of Service without notice to you or consent from you. You shall have no right to assign or otherwise transfer the Terms of Service, or any of your rights or obligations hereunder, to any third party without Shopify's prior written consent, to be given or withheld in Shopify's sole discretion.

If any provision, or portion of the provision, in these Terms of Service is, for any reason, held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision (or the unaffected portion of the provision) of the Terms of Service, and the Terms of Service will be construed as if such invalid, illegal or unenforceable provision, or portion of the provision, had never been contained within the Terms of Service.

Sections 1, 3(2)-(5), 4, 6-8, 14-15, 17(8)-(10), 19, 21 and 22 will survive the termination or expiration of these Terms of Service.

## **WHICH MEANS**

The Shopify service belongs to us. You are not allowed to rip it off or use it for any illegal or sketchy purpose. If you or your employees or contractors use Shopify's APIs, you will comply with our API terms.

Your Materials may be transferred unencrypted and may be altered, but credit card information is always encrypted.

## 4. Shopify Contracting Party

If the billing address of your Store is located in the United States or Canada, this Section 4(1) applies to you:

- a. "Shopify Contracting Party" means Shopify Inc., a Canadian corporation, with offices located at 151 O'Connor Street, Ground floor, Ottawa, Ontario, K2P 2L8.
- b. The parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of the Province of Ontario with respect to any dispute or claim arising out of or in connection with the Terms of Service. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms of Service and is hereby expressly excluded.

If the billing address of your Store is located in [the Asia Pacific region](#) (including Australia, New Zealand, China, Japan, Singapore), this Section 4(2) applies to you:

- a. "Shopify Contracting Party" means Shopify Commerce Singapore Pte. Ltd, a corporation formed under the laws of Singapore, with offices located at 77 Robinson Road, #13-00 Robinson 77, Singapore 068896.
- b. The parties irrevocably agree that the courts of Singapore are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the Terms of Service and that accordingly any proceedings arising out of or in connection with the Terms of Service shall be brought in such courts. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms of Service and is hereby expressly excluded.

If the billing address of your Store is located in [EMEA region](#) or other jurisdictions not listed in Section 4(1) or 4(2), including Europe and Russia, the Middle East, Africa, South America, Caribbean, or Mexico this Section 4(3) applies to you:

- a. "Shopify Contracting Party" means Shopify International Limited, a private company limited by shares, incorporated in Ireland under registration number 560279, with its registered offices located at 2nd Floor Victoria Buildings, 1-2 Haddington Road, Dublin 4, D04 XN32, Ireland, VAT number IE 3347697KH and its website is at <https://www.shopify.com/>.
- b. You irrevocably and unconditionally agree to submit to the jurisdiction of Irish courts, which have jurisdiction to settle any disputes which may arise out of or in connection with the validity, effect,

interpretation or performance of these Terms of Service and you similarly irrevocably and unconditionally waive any objection to any claim that any suit, action or proceeding has been brought by Shopify in any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms of Service and is hereby expressly excluded.

#### **WHICH MEANS**

If a dispute arises you may bring an action, depending on your location, in either the Province of Ontario (Canada), Ireland or Singapore depending upon your location.

## 5. Shopify Rights

We reserve the right to modify or terminate the Services for any reason, without notice at any time. Not all Services and features are available in every jurisdiction and we are under no obligation to make any Services or features available in any jurisdiction.

We reserve the right to refuse service to anyone for any reason at any time.

We may, but have no obligation to, remove Materials and suspend or terminate Accounts if we determine in our sole discretion that the goods or services offered via a Store, or the Materials uploaded or posted to a Store, violate our [Acceptable Use Policy \(“AUP”\)](#) or these Terms of Service. Verbal or written abuse of any kind (including threats of abuse or retribution) of any Shopify customer, Shopify employee, member, or officer will result in immediate Account termination. Shopify does not pre-screen Materials and it is in our sole discretion to refuse or remove any Materials from the Service, including your Store.

We reserve the right to provide our services to your competitors and make no promise of exclusivity in any particular market segment. You further acknowledge and agree that Shopify employees and contractors may also be Shopify customers/merchants and that they may compete with you, although they may not use your Confidential Information (as defined in Section 6) in doing so. In the event of a dispute regarding Account ownership, we reserve the right to request documentation to determine or confirm Account ownership. Documentation may include, but is not limited to, a scanned copy of your business license, government issued photo ID, the last four digits of the credit card on file, your status as an employee of an entity, etc.

Shopify retains the right to determine, in our sole judgment, rightful Account ownership and transfer an Account to the rightful Store Owner. If we are unable to reasonably determine the rightful Store Owner, without prejudice to our other rights and remedies, Shopify reserves the right to temporarily disable an Account until resolution has been determined between the disputing parties.

#### **WHICH MEANS**

We can modify, cancel or refuse the service at anytime.

In the event of an ownership dispute over a Shopify account, we can freeze the account or transfer it to the rightful owner, as determined by us.

## 6. Confidentiality

“Confidential Information” shall include, but shall not be limited to, any and all information associated with a party’s business and not publicly known, including specific business information, technical processes and formulas, software, customer lists, prospective customer lists, names, addresses and other information regarding customers and prospective customers, product designs, sales, costs (including any relevant processing fees), price lists, and other unpublished financial information, business plans and marketing data, and any other confidential and proprietary information, whether or not marked as confidential or proprietary. Shopify’s Confidential Information includes all information that you receive relating to us, or to the Services, that is not known to the general public including information related to our security program and practices.

Each party agrees to use the other party’s Confidential Information solely as necessary for performing its obligations under these Terms of Service and in accordance with any other obligations in these Terms of Service including this Section 6. Each party agrees that it shall take all reasonable steps, at least substantially equivalent to the steps it takes to protect its own proprietary information, to prevent the duplication, disclosure or use of any such Confidential Information, other than (i) by or to its employees, agents and subcontractors who must have access to such Confidential Information to perform such party’s obligations hereunder, who each shall treat such Confidential Information as provided herein, and who are each subject to obligations of confidentiality to such party that are at least as stringent as those contained herein; or (ii) as required by any law, regulation, or order of any court of proper jurisdiction over the parties and the subject matter contained in these Terms of Service, provided that, if legally permitted, the receiving party shall give the disclosing party prompt written notice and use commercially reasonable efforts to ensure that such disclosure is accorded confidential treatment. Confidential Information shall not include any information that the receiving party can prove: (A) was already in the public domain, or was already known by or in the possession of the receiving party, at the time of disclosure of such information; (B) is independently developed by the receiving party without use of or reference to the other party’s Confidential Information, and without breaching any provisions of these Terms of Service; or (C) is thereafter rightly obtained by the receiving party from a source other than the disclosing party without breaching any provision of these Terms of Service.

### **WHICH MEANS**

Both you and Shopify agree to use the Confidential Information of the other only to perform the obligations in these Terms of Service. Confidential Information must be protected and respected.

## 7. Limitation of Liability

You expressly understand and agree that, to the extent permitted by applicable laws, Shopify shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages,

including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses resulting from the use of or inability to use the Service.

To the extent permitted by applicable laws, in no event shall Shopify or our suppliers be liable for lost profits or any special, incidental or consequential damages arising out of or in connection with our site, our Services or these Terms of Service (however arising including negligence). You agree to indemnify and hold us and (as applicable) our parent, subsidiaries, affiliates, Shopify partners, officers, directors, agents, employees, and suppliers harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your breach of these Terms of Service or the documents it incorporates by reference (including the AUP), or your violation of any law or the rights of a third party.

Your use of the Services is at your sole risk. The Services are provided on an "as is" and "as available" basis without any warranty or condition, express, implied or statutory.

Shopify does not warrant that the Services will be uninterrupted, timely, secure, or error-free.

Shopify does not warrant that the results that may be obtained from the use of the Services will be accurate or reliable.

Shopify is not responsible for any of your tax obligations or liabilities related to the use of Shopify's Services.

Shopify does not warrant that the quality of any products, services, information, or other materials purchased or obtained by you through the Services will meet your expectations, or that any errors in the Services will be corrected.

#### **WHICH MEANS**

We are not responsible if you break the law, breach this agreement or go against the rights of a third party, especially if you get sued.

Service is "as is" so it may have errors or interruptions and we provide no warranties and our liability is limited.

## **8. Waiver, Severability, and Complete Agreement**

The failure of Shopify to exercise or enforce any right or provision of the Terms of Service shall not constitute a waiver of such right or provision. If any provision of the Terms of Service, including all terms and conditions and other documents it incorporates by reference, is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provision of the Terms of Service shall remain in full force and effect.

The Terms of Service, including the documents it incorporates by reference, constitute the entire agreement between you and Shopify and govern your use of the Services and your Account, superseding any prior agreements between you and Shopify (including, but not limited to, any prior versions of the Terms of Service).

**WHICH MEANS**

If Shopify chooses not to enforce any of these provisions at any time, it does not mean that we give up that right later.

These Terms of Service make up the agreement that applies to you. This means that any previous agreements between you and Shopify don't apply if they conflict with these terms.

## 9. Intellectual Property and Customer Content

We do not claim any intellectual property rights over the Materials you provide to the Shopify Service. All Materials you upload to your Shopify Store remains yours. You can remove your Shopify Store at any time by deleting your Account.

By uploading Materials, you agree: (a) to allow other internet users to view the Materials you post publicly to your Store; (b) to allow Shopify to store, and in the case of Materials you post publicly, display and use your Materials; and (c) that Shopify can, at any time, review and delete all the Materials submitted to its Service, although Shopify is not obligated to do so.

You retain ownership over all Materials that you upload to the Store; however, by making your Store public, you agree to allow others to view Materials that you post publicly to your Store. You are responsible for compliance of the Materials with any applicable laws or regulations.

Shopify shall have the non-exclusive right and license to use the names, trademarks, service marks and logos associated with your Store to promote the Service.

**WHICH MEANS**

Anything you upload remains yours and is your responsibility.

## 10. POS Services

In addition to the terms applicable to Services generally, the following terms apply to your access and use of the POS Services. The POS Services include the Shopify POS software ("POS Software"), the Shopify POS website, located at /pos, programs, documentation, apps, tools, internet-based services and components, Shopify's POS hardware ("POS Equipment") and any updates thereto provided to you by Shopify.

Access to and use of the POS Services requires that you have an active and valid Account.

If your POS Services are enabled with Shopify Payments, you cannot concurrently use any other payment processing service. The payment gateway used for your POS Services must be the same as that used for your Online Services, if applicable.

You can terminate your POS Services without terminating your Account or any other Services you subscribe to, and in such case, you will continue to be billed, and will pay for, the Services (other than the terminated POS Services).

You agree to use the POS Services in accordance with all procedures that may be provided by Shopify from time to time.

While the POS Services use encryption technology, and the law generally prohibits third parties from monitoring transmission, we cannot guarantee security with respect to the connection to the POS Services, and we will not be liable for any unauthorized access to or use of data transmitted via the POS Services.

POS Equipment is purchased, and not leased. Purchase of the POS Equipment is subject to the POS Equipment Agreement, located at <https://www.shopify.com/legal/notice>. Upon payment by you for the POS Equipment, and confirmation to you of shipment of the POS equipment, you will acquire ownership of and title to the hardware components of the POS Equipment, and you will be licensed to access and use all POS Software installed in the POS Equipment (and any updates thereto), on a limited, non-exclusive, revocable, non-sublicensable, non-transferable basis, solely for the purposes of using the POS Services. POS Equipment is subject to our Return Policy, which can be found at <https://hardware.shopify.com/pages/return-policy>. Returns and refunds are not available for the Chip & Swipe Reader, Swipe (Audio Jack) and physical gift cards purchased from the Shopify Hardware Store.

The Fees for POS Services shall be determined based on the number of locations at which you are using the POS Services. Locations are defined by business address and are used for associating orders with a specific business address. Locations are added through the Shopify web administrative console associated with your Account. The number of locations using POS Services will also be detected by us and billed accordingly as part of your regular billing cycle. In the event of any discrepancy between the number of locations added by you through the Shopify web administrative console and the number of locations detected by Shopify, the number of locations detected by Shopify shall be deemed to be correct.

#### **WHICH MEANS**

If you use our POS Services, you must use the same payment processor that you use for the Online Services. You can cancel your POS Services at any time and still keep your Online Services active. We take data security very seriously, but we can't guarantee that all transmissions using the POS Equipment are 100% secure. All transactions transmitted using the POS Equipment are at your own risk. Remember that the POS equipment is purchased, not leased. Our POS Equipment return policy applies to all POS equipment, except Chip & Swipe Reader, Swipe (Audio Jack) and physical gift cards.

## **11. Shopify Shipping**

You can purchase shipping labels from within your Shopify administrative console ("Shopify Shipping") for delivery of goods purchased from you from your Shopify Store. In addition to these Terms of Service, your access to and use of Shopify Shipping is subject to the Shopify Shipping Terms of Service, located at (a) <https://www.shopify.com/legal/terms-shipping-us> if you are located in the United States; (b) <https://www.shopify.com/legal/terms-shipping-ca>, if you are located in Canada; and

(c) <https://www.shopify.com/legal/terms-shipping-global>, if you are located outside of Canada and the United States.

#### **WHICH MEANS**

If you use Shopify Shipping you must comply with the Shopify Shipping Terms of Service.

## 12. Theme Store

You may establish the appearance of your Shopify Store with a design template from Shopify's Theme Store ("a Theme"). If you download a Theme, you are licensed to use it for a single Store only. You are free to transfer a Theme to a second one of your own Stores if you close your first Store. To initiate a transfer of a Theme to a second one of your Stores, please contact [Shopify Support](#). You are not permitted to transfer or sell a Theme to any other person's Store on Shopify or elsewhere. Multiple Stores require multiple downloads and each download is subject to the applicable fee. Shopify gives no assurance that a particular Theme will remain available for additional downloads.

You may modify the Theme to suit your Store. Shopify may add or modify the footer in a Theme that refers to Shopify at its discretion. Shopify may modify the Theme where it contains, in our sole discretion, an element that violates the Shopify AUP or other provisions of the Terms of Service, even if you received the Theme in that condition. Shopify may modify the Theme to reflect technical changes and updates as required.

The intellectual property rights of the Theme remain the property of the designer. If you exceed the rights granted by your purchase of a Theme, the designer may take legal action against you, and, without prejudice to our other rights or remedies, Shopify may take administrative action such as modifying your Store or closing your Store.

Technical support for a Theme is the responsibility of the designer, and Shopify accepts no responsibility to provide such support. Shopify may be able to help you contact the designer.

It is the responsibility of the user, and not Shopify, to ensure that the installation of a new theme does not overwrite or damage the current or preexisting theme, or UI, of the user.

#### **WHICH MEANS**

You can purchase our Themes to use for one Store at a time. Feel free to modify our Theme, but respect that the designers own their Themes, so don't infringe on their rights. For Theme-related problems, contact the designer. Note that Themes may disappear over time and are subject to change.

## 13. Shopify Email

You may generate or send email from your Account using the Shopify email services (the "Email Services"). In addition to the terms applicable to the Services generally (including Shopify's

[Acceptable Use Policy](#), and [Privacy Policy](#)), the following terms apply to your access and use of the Email Services:

Shopify employs certain controls to scan the content of emails you deliver using the Email Services prior to delivery (“Content Scanning”). Such Content Scanning is intended to limit spam, phishing, or other malicious content that contravenes these Terms of Service, or Shopify’s Acceptable Use Policy (collectively, “Threats”). By using the Email Services, you explicitly grant Shopify the right to employ such Content Scanning. Shopify does not warrant that the Email Services will be free from Threats, and each Shopify merchant is responsible for all content generated by their respective Stores.

BY GENERATING OR SENDING EMAIL THROUGH THE EMAIL SERVICES, YOU AGREE TO COMPLY WITH THE FOLLOWING REQUIREMENTS (THE “EMAIL SERVICES REQUIREMENTS”). SHOPIFY, OR ITS THIRD PARTY PROVIDERS, MAY SUSPEND OR TERMINATE YOUR ACCESS TO AND USE OF THE EMAIL SERVICES IF YOU DO NOT COMPLY WITH THE EMAIL SERVICES REQUIREMENTS.

Your use of the Email Services must comply with all applicable laws. Examples of applicable laws include laws relating to spam or unsolicited commercial email (“UCE”), privacy, security, obscenity, defamation, intellectual property, pornography, terrorism, homeland security, gambling, child protection, and other applicable laws. It is your responsibility to know and understand the laws applicable to your use of the Email Services and the emails you generate or send through the Email Services.

Your use of the Email Services must comply with Shopify’s [Privacy Policy](#). It is your responsibility to read and understand the Privacy Policy applicable to your use of the Email Services and the emails you generate or send through the Email Services.

You will use commercially reasonable efforts not to send sensitive personal data, including information regarding an individual’s medical or health condition, race or ethnic origin, political opinions, religious or philosophical beliefs, or other sensitive data (collectively, “Sensitive Data”) through the Email Services. It is your responsibility to read and understand your obligations in relation to Sensitive Data.

Your use of the Email Services must follow all applicable guidelines established by Shopify. The guidelines below are examples of practices that may violate the Email Services Requirements when generating, or sending emails through the Email Services:

using non-permission based email lists (i.e., lists in which each recipient has not explicitly granted permission to receive emails from you by affirmatively opting-in to receive those emails);

using purchased or rented email lists;

using third party email addresses, domain names, or mail servers without proper permission;

sending emails to non-specific addresses (e.g., [webmaster@domain.com](#) or [info@domain.com](#));

sending emails that result in an unacceptable number of spam or UCE complaints (even if the emails themselves are not actually spam or UCE);

failing to include a working “unsubscribe” link in each email that allows the recipient to remove themselves from your mailing list;

failing to comply with any request from a recipient to be removed from your mailing list within 10 days of receipt of the request;

failing to include in each email a link to the then-current privacy policy applicable to that email;

disguising the origin or subject matter of any email or falsifying or manipulating the originating email address, subject line, headers, or transmission path information for any email;

failing to include in each email your valid physical mailing address or a link to that information; or

including “junk mail,” “chain letters,” “pyramid schemes,” incentives (e.g., coupons, discounts, awards, or other incentives) or other material in any email that encourages a recipient to forward the Email to another recipient.

If You or a customer knows of or suspects any violations of the Email Services Requirements, please notify Shopify at [abuse@shopify.com](mailto:abuse@shopify.com). Shopify will determine compliance with the Email Services Requirements in its discretion.

Shopify’s Email Services utilize Third Party Providers, including SendGrid (a Twilio Company). Your use of the Email Services is subject to SendGrid’s [Acceptable Use Policy](#) as it may be amended by SendGrid from time to time.

#### **WHICH MEANS**

By using the Email Services, you agree that Shopify may use certain tools to ensure the content of the emails sent through the service is safe and compliant with our policies.

## 14. Payment of Fees

You will pay the Fees applicable to your subscription to Online Service and/or POS Services (“Subscription Fees”) and any other applicable fees, including but not limited to applicable fees relating to the value of sales made through your Store when using all payment providers other than Shopify Payments (“Transaction Fees”), and any fees relating to your purchase or use of any products or services such as Shopify Payments, POS Equipment, shipping, apps, Themes, domain names, Experts Marketplace, or Third Party Services (“Additional Fees”). Together, the Subscription Fees, Transaction Fees and the Additional Fees are referred to as the “Fees”.

You must keep a valid payment method on file with us to pay for all incurred and recurring Fees. Shopify will charge applicable Fees to any valid payment method that you authorize (“Authorized Payment Method”), and Shopify will continue to charge the Authorized Payment Method for applicable Fees until the Services are terminated, and any and all outstanding Fees have been paid in full. Unless otherwise indicated, all Fees and other charges are in U.S. dollars, and all payments shall be in U.S. currency.

Subscription Fees are paid in advance and will be billed in 30 day intervals (each such date, a “Billing Date”). Transaction Fees and Additional Fees will be charged from time to time at Shopify’s discretion. You will be charged on each Billing Date for all outstanding Fees that have not previously been charged. Fees will appear on an invoice, which will be sent to the Store Owner via the email provided.

As well, an invoice will appear on the Account page of your Store's administration console. Users have approximately two weeks to bring up and settle any issues with the billing of Subscription Fees. If we are not able to process payment of Fees using an Authorized Payment Method, we will make a second attempt to process payment using any Authorized Payment Method 3 days later. If the second attempt is not successful, we will make a final attempt 3 days following the second attempt. If our final attempt is not successful, we may suspend and revoke access to your Account and the Services. Your Account will be reactivated upon your payment of any outstanding Fees, plus the Fees applicable to your next billing cycle. You may not be able to access your Account or your storefront during any period of suspension. If the outstanding Fees remain unpaid for 60 days following the date of suspension, Shopify reserves the right to terminate your Account.

All Fees are exclusive of applicable federal, provincial, state, local or other governmental sales, goods and services (including Goods and Sales Tax under the Goods and Services Tax Act, Chapter 117A of Singapore), harmonized or other taxes, fees or charges now in force or enacted in the future ("Taxes"). You are responsible for all applicable Taxes that arise from or as a result of your subscription to or purchase of Shopify's products and services. To the extent that Shopify charges these Taxes, they are calculated using the tax rates that apply based on the billing address you provide to us. Such amounts are in addition to the Fees for such products and services and will be billed to your Authorized Payment Method. If you are exempt from payment of such Taxes, you must provide us with evidence of your exemption, which in some jurisdictions includes an original certificate that satisfies applicable legal requirements attesting to tax-exempt status. Tax exemption will only apply from and after the date we receive evidence satisfactory to Shopify of your exemption. If you are not charged Taxes by Shopify, you are responsible for determining if Taxes are payable, and if so, self-remitting Taxes to the appropriate tax authorities in your jurisdiction.

For the avoidance of doubt, all sums payable by you to Shopify under these Terms of Service shall be paid free and clear of any deductions or withholdings whatsoever. Other than Taxes charged by Shopify to you and remitted to the appropriate tax authorities on your behalf, any deductions or withholdings that are required by law shall be borne by you and paid separately to the relevant taxation authority. Shopify shall be entitled to charge the full amount of Fees stipulated under these Terms of Service to your Authorized Payment Method ignoring any such deduction or withholding that may be required.

You are responsible for all applicable Taxes that arise from or as a result of any sale on your Shopify Store.

You must maintain an accurate location in the administration menu of your Shopify Store. If you change jurisdictions you must promptly update your location in the administration menu.

Shopify does not provide refunds.

#### **WHICH MEANS**

A valid payment method (like a credit card) is required for all stores. You will be billed for your Subscription Fees every 30 days. Any Transaction Fees or Additional Fees will be charged to your payment method. If we are not able to process payment of Fees using your payment method, we will

try again in 3 days. If we are unable to process payment of Fees on the second attempt, we will make a third and final attempt three days later. If payment of Fees is unsuccessful after three attempts, Shopify may freeze your store. You may be required to remit Taxes to Shopify or to self-remmit to your local taxing authority. No refunds.

## 15. Cancellation and Termination

You may cancel your Account and terminate the Terms of Service at any time by contacting [Shopify Support](#) and then following the specific instructions indicated to you in Shopify's response.

Upon termination of the Services by either party for any reason:

Shopify will cease providing you with the Services and you will no longer be able to access your Account;

unless otherwise provided in the Terms of Service, you will not be entitled to any refunds of any Fees, pro rata or otherwise;

any outstanding balance owed to Shopify for your use of the Services through the effective date of such termination will immediately become due and payable in full; and

your Store website will be taken offline.

If you purchased a domain name through Shopify, upon cancellation your domain will no longer be automatically renewed. Following termination, it will be your sole responsibility to handle all matters related to your domain with the domain provider.

If at the date of termination of the Service, there are any outstanding Fees owing by you, you will receive one final invoice via email. Once that invoice has been paid in full, you will not be charged again.

We reserve the right to modify or terminate the Shopify Service, the Terms of Service and/or your Account for any reason, without notice at any time (unless otherwise required by applicable law). Termination of the Terms of Service shall be without prejudice to any rights or obligations which arose prior to the date of termination.

**Fraud:** Without limiting any other remedies, Shopify may suspend or terminate your Account if we suspect that you (by conviction, settlement, insurance or escrow investigation, or otherwise) have engaged in fraudulent activity in connection with the use of the Services.

### **WHICH MEANS**

To initiate a termination contact [Support](#). Shopify will respond with specific information regarding the termination process for your account. Once termination is confirmed, domains purchased through Shopify will no longer be automatically renewed. If you cancel in the middle of your billing cycle, you'll have one last email invoice.

We may change or terminate your account at any time. Any fraud and we will suspend or terminate your account.

## 16. Modifications to the Service and Prices

Prices for using the Services are subject to change upon 30 days' notice from Shopify. Such notice may be provided at any time by posting the changes to the Shopify Site (shopify.com) or the administration menu of your Shopify Store via an announcement.

Shopify reserves the right at any time, and from time to time, to modify or discontinue, the Services (or any part thereof) with or without notice (unless otherwise required by applicable law).

Shopify shall not be liable to you or to any third party for any modification, price change, suspension or discontinuance of the Service.

### **WHICH MEANS**

We may change or discontinue the service at anytime, without liability.

## 17. Third Party Services, Experts, and Experts Marketplace

Shopify may from time to time recommend, provide you with access to, or enable third party software, applications ("Apps"), products, services or website links (collectively, "Third Party Services") for your consideration or use, including via the Shopify App Store, or Experts Marketplace. Such Third Party Services are made available only as a convenience, and your purchase, access or use of any such Third Party Services is solely between you and the applicable third party services provider ("Third Party Provider"). In addition to these Terms of Service, you also agree to be bound by the additional service-specific terms applicable to services you purchase from, or that are provided by, Third Party Providers.

Shopify Experts is an online directory of independent third parties ("Experts") that can help you build and operate your Shopify Store.

You can engage and work with an Expert directly or through Experts Marketplace. [Experts Marketplace](#) provides you with recommendations on Experts that can assist you with different aspects of your Store. Using Experts Marketplace, you can find, hire, and communicate with Experts directly from your Account admin.

Any use by you of Third Party Services offered through the Services, Shopify Experts, Experts Marketplace or Shopify's website is entirely at your own risk and discretion, and it is your responsibility to read the terms and conditions and/or privacy policies applicable to such Third Party Services before using them. In some instances, Shopify may receive a revenue share from Third Party Providers that Shopify recommends to you or that you otherwise engage through your use of the Services, Shopify Experts, Experts Marketplace or Shopify's website.

We do not provide any warranties or make representations to you with respect to Third Party Services. You acknowledge that Shopify has no control over Third Party Services and shall not be responsible or liable to you or anyone else for such Third Party Services. The availability of Third Party Services on Shopify's websites, including the Shopify App Store or Experts Marketplace, or the integration or enabling of such Third Party Services with the Services does not constitute or imply an endorsement,

authorization, sponsorship, or affiliation by or with Shopify. Shopify does not guarantee the availability of Third Party Services and you acknowledge that Shopify may disable access to any Third Party Services at any time in its sole discretion and without notice to you. Shopify is not responsible or liable to anyone for discontinuation or suspension of access to, or disablement of, any Third Party Service. Shopify strongly recommends that you seek specialist advice before using or relying on Third Party Services, to ensure they will meet your needs. In particular, tax calculators should be used for reference only and not as a substitute for independent tax advice, when assessing the correct tax rates you should charge to your customers.

If you install or enable a Third Party Service for use with the Services, you grant us permission to allow the applicable Third Party Provider to access your data and other Materials and to take any other actions as required for the interoperation of the Third Party Service with the Services, and any exchange of data or other Materials or other interaction between you and the Third Party Provider is solely between you and such Third Party Provider. Shopify is not responsible for any disclosure, modification or deletion of your data or other Materials, or for any corresponding losses or damages you may suffer, as a result of access by a Third Party Service or a Third Party Provider to your data or other Materials. Google Maps is a Third Party Service that is used within the Services. Your use of the Services is subject to your acceptance of the Google Maps and Earth Enterprise Universal [Acceptable Use Policy](#), Google Maps and Google Earth [Additional Terms of Service](#) and Google [Privacy Policy](#) as it may be amended by Google from time to time.

You acknowledge and agree that: (i) by submitting a request for assistance or other information through Experts Marketplace, you consent to being contacted by one or more Experts at the Store Owner's registered email address (or such other email address provided by you) as well as the applicable user email address; and (ii) Shopify will receive all email communications exchanged via Experts Marketplace or in any reply emails (each a "Reply") that originate from Experts Marketplace (directly or indirectly) between yourself and Experts. You further agree that Shopify may share your contact details and the background information that you submit via the Experts Marketplace with Experts. Experts may require access to certain admin pages on your Shopify Store. You choose the pages that the Experts can access.

The relationship between you and any Third Party Provider is strictly between you and such Third Party Provider, and Shopify is not obligated to intervene in any dispute arising between you and a Third Party Provider.

Under no circumstances shall Shopify be liable for any direct, indirect, incidental, special, consequential, punitive, extraordinary, exemplary or other damages whatsoever, that result from any Third Party Services or your contractual relationship with any Third Party Provider, including any Expert. These limitations shall apply even if Shopify has been advised of the possibility of such damages. The foregoing limitations shall apply to the fullest extent permitted by applicable law. You agree to indemnify and hold us and (as applicable) our parent, subsidiaries, affiliates, Shopify partners, officers, directors, agents, employees, and suppliers harmless from any claim or demand, including reasonable attorneys' fees, arising out of your use of a Third Party Service or your relationship with a Third Party Provider.

**WHICH MEANS**

We are not responsible for third party services so use them at your own risk. If you use Third Party Services on the Shopify platform, you permit us to send your data to those services. If you use Third Party Services you agree that we do not provide a warranty, so get advice beforehand.

## 18. Beta Services

From time to time, Shopify may, in its sole discretion, invite you to use, on a trial basis, pre-release or beta features that are in development and not yet available to all merchants (“Beta Services”). Beta Services may be subject to additional terms and conditions, which Shopify will provide to you prior to your use of the Beta Services. Such Beta Services and all associated conversations and materials relating thereto will be considered Shopify Confidential Information and subject to the confidentiality provisions in this agreement. Without limiting the generality of the foregoing, you agree that you will not make any public statements or otherwise disclose your participation in the Beta Services without Shopify’s prior written consent. Shopify makes no representations or warranties that the Beta Services will function. Shopify may discontinue the Beta Services at any time in its sole discretion. Shopify will have no liability for any harm or damage arising out of or in connection with a Beta Service. The Beta Services may not work in the same way as a final version. Shopify may change or not release a final or commercial version of a Beta Service in our sole discretion.

## 19. Feedback and Reviews

Shopify welcomes any ideas and/or suggestions regarding improvements or additions to the Services. Under no circumstances shall any disclosure of any idea, suggestion or related material or any review of the Services, Third Party Services or any Third Party Provider (collectively, “Feedback”) to Shopify be subject to any obligation of confidentiality or expectation of compensation. By submitting Feedback to Shopify (whether submitted directly to Shopify or posted on any Shopify hosted forum or page), you waive any and all rights in the Feedback and that Shopify is free to implement and use the Feedback if desired, as provided by you or as modified by Shopify, without obtaining permission or license from you or from any third party. Any reviews of a Third Party Service or Third Party Provider that you submit to Shopify must be accurate to the best of your knowledge, and must not be illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties or objectionable. Shopify reserves the right (but not the obligation) to remove or edit Feedback of Third Party Services or Third Party Providers, but does not regularly inspect posted Feedback.

## 20. DMCA Notice and Takedown Procedure

Shopify supports the protection of intellectual property and asks Shopify merchants to do the same. It’s our policy to respond to all notices of alleged copyright infringement. If someone believes that

one of our merchants is infringing their intellectual property rights, they can send a DMCA Notice to Shopify's designated agent using our form. Upon receiving a DMCA Notice, we may remove or disable access to the Materials claimed to be a copyright infringement. Once provided with a notice of takedown, the merchant can reply with a counter notification using our form if they object to the complaint. The original complainant has 14 business days after we receive a counter notification to seek a court order restraining the merchant from engaging in the infringing activity, otherwise we restore the material. For more information, see our [DMCA Notice and Takedown Procedure](#).

#### **WHICH MEANS**

Shopify respects intellectual property rights and you should too. If we receive a DMCA Notice, we may disable access or remove the allegedly infringing content from your website. If you don't think the claim is valid, you can proceed with a counter notification.

If you believe one of our merchants is infringing your intellectual property rights, you can send Shopify a DMCA Notice. We will expeditiously disable access or remove the content and notify the merchant.

## 21. Rights of Third Parties

Save for Shopify and its affiliates, Shopify Users or anyone accessing Shopify Services pursuant to these Terms of Service, unless otherwise provided in these Terms of Service, no person or entity who is not a party to these Terms of Service shall have any right to enforce any term of these Terms of Service, regardless of whether such person or entity has been identified by name, as a member of a class or as answering a particular description. For the avoidance of doubt, this shall not affect the rights of any permitted assignee or transferee of these Terms.

#### **WHICH MEANS**

Only Shopify, Shopify Users and persons accessing Shopify Services have any rights under these Terms of Service.

## 22. Privacy & Data Protection

Shopify is firmly committed to protecting the privacy of your personal information and the personal information of your customers. By using the Service, you acknowledge and agree that Shopify's collection, usage and disclosure of this personal information is governed by our [Privacy Policy](#).

Additionally, if: (a) you are established in the European Economic Area (EEA); (b) you provide goods or services to customers in the EEA; or (c) you are otherwise subject to the requirements of the EU General Data Protection Regulation, Shopify's collection and use of personal information of any European residents is also subject to our [Data Processing Addendum](#).

#### **WHICH MEANS**

Shopify’s use and collection of personal information is governed by our Privacy Policy. Additionally, if you or your customers are located in Europe, Shopify’s use and collection of European personal information is further governed by our Data Processing Addendum.

Shopify Inc.  
151 O’Connor Street, Ground floor  
Ottawa, ON K2P 2L8  
Canada

[About](#) [Careers](#) [Press and Media](#) [Shopify Plus](#) [Sitemap](#)

**ONLINE STORE**

- Sell online
- Features
- Examples
- Website editor
- Online retail
- Ecommerce website
- Domain names
- Themes
- Shopping cart
- Ecommerce hosting
- Mobile commerce
- Ecommerce software
- Online store builder
- Oberlo
- Dropshipping Business
- Store themes
- Cross-Border Ecommerce

**POINT OF SALE**

- Point of sale
- Features
- Hardware

**SUPPORT**

- 24/7 support
- Shopify Help Center
- Forums
- API documentation
- Free tools
- Free stock photos
- Websites for sale
- Hatchful
- Business name generator

**SHOPIFY**

- Contact
- Partner program
- Affiliate program
- App developers
- Investors
- Shopify events

[Terms of Service](#) [Privacy Policy](#) [USA](#)

# **EXHIBIT 11**

# Shopify Acceptable Use Policy

---

Shopify is a commerce platform that provides the tools and technology for merchants to set up an online store and sell products and services on their own website, at physical retail locations, marketplaces and more. While we believe the free and open exchange of ideas and products is a key tenet of commerce, there are some activities that are incompatible with Shopify's mission to make commerce better for everyone. This Acceptable Use Policy ("AUP") describes activities that are prohibited in connection with your use of the Services.

Any capitalized terms used in this AUP are defined on the Shopify AUP definitions page, located at <https://www.shopify.com/legal/aup-definitions>.

The following activities are prohibited:

**Child exploitation:** You may not offer goods or services, or post or upload [Materials](#) that exploit or abuse children, including but not limited to images or depictions of child abuse or sexual abuse, or that present children in a sexual manner.

**COVID-19:** You may only offer goods or services in relation to COVID-19 that comply with the [Rules of Engagement for the Sale of COVID-19 Related Products](#).

**Harassment, bullying, defamation and threats:** You may not offer goods or services, or post or upload Materials, that harass, bully, defame or threaten a specific individual.

**Hateful content:** You may not use the Services to promote or condone hate or violence against people based on race, ethnicity, color, national origin, religion, age, gender, sexual orientation, disability, medical condition, veteran status or other forms of discriminatory intolerance. You may not use the Services to promote or support organizations, platforms or people that: (i) promote or condone such hate; or (ii) threaten or condone violence to further a cause.

**Illegal activities:** You may not offer goods or services, or post or upload Materials, that contravene or that facilitate or promote activities that contravene, the laws of the jurisdictions in which you operate or do business.

**Intellectual property:** You may not offer goods or services, or post or upload Materials, that infringe on the copyright or trademarks of others.

**Malicious and deceptive practices:** You may not use the Services to transmit malware or host phishing pages. You may not perform activities or upload or distribute Materials that harm or disrupt the operation of the Services or other infrastructure of Shopify or others, including Shopify's third party providers. You may not use the Services for deceptive commercial practices or any other illegal or deceptive activities.

**Personal, confidential, and protected health information:** You may not post or upload any Materials that contain personally identifiable information, sensitive personal information, or confidential information, such as credit card numbers, confidential national ID numbers, or account passwords unless you have consent from the person to whom the information belongs or who is otherwise authorized to provide such consent. You may not use the Services to collect, store, or process any



Log in

processing, use, or disclosure of protected health information.

**Restricted Items:** You may not offer goods or services that are, or appear to be, [Restricted Items](#).

**Self-harm:** You may not offer goods or services, or post or upload Materials, that promote self-harm.

**Spam:** You may not use the Services to transmit unsolicited commercial electronic messages.

**Terrorist organizations:** You may not offer goods or services, or post or upload Materials, that imply or promote support or funding of, or membership in, a terrorist organization.

We may, at any time and without notice, remove any Materials, and suspend or terminate your Account or your access to the Services if you engage in activities that violate the letter or spirit of this AUP, including activities outside of your use of the Services.

Shopify has the right, but not the obligation, to monitor or investigate any Materials and your use of the Services at any time for compliance with this AUP and the Shopify Terms of Service, or any other agreement between you and Shopify governing your use of the Services (collectively, the **"Terms"**). Our determination of whether a violation of this AUP has occurred will be final and binding, and any action taken with respect to enforcing this AUP, including taking no action at all, will be at our sole discretion.

Shopify may modify this AUP, including the list of Restricted Items, at any time by posting a revised version at <https://www.shopify.com/legal/aup>. By continuing to use the Services or access your Account after a revised version of the AUP has been posted, you agree to comply with the latest version of the AUP. In the event of a conflict between the AUP and the Terms, this AUP will take

precedence, but only to the extent required to resolve such conflict. Capitalized terms used but not defined in this AUP shall have the meanings set forth in the Terms.

If you feel that a user of the Services has violated this AUP, please contact us at <https://www.shopify.com/legal/report-aup-violation>.

Last updated: April 15, 2020  
© 2021 Shopify Inc.

- [About](#)
- [Careers](#)
- [Press and Media](#)
- [Shopify Plus](#)
- [Sitemap](#)

**ONLINE STORE**

- [Sell online](#)
- [Features](#)
- [Examples](#)
- [Website editor](#)
- [Online retail](#)
- [Ecommerce website](#)
- [Domain names](#)
- [Themes](#)
- [Shopping cart](#)
- [Ecommerce hosting](#)
- [Mobile commerce](#)
- [Ecommerce software](#)
- [Online store builder](#)
- [Oberlo](#)
- [Dropshipping Business](#)
- [Store themes](#)
- [Cross-Border Ecommerce](#)

**POINT OF SALE**

- [Point of sale](#)
- [Features](#)
- [Hardware](#)

**SUPPORT**

- [24/7 support](#)
- [Shopify Help Center](#)
- [Forums](#)
- [API documentation](#)
- [Free tools](#)
- [Free stock photos](#)
- [Websites for sale](#)
- [Hatchful](#)
- [Business name generator](#)

**SHOPIFY**

- [Contact](#)
- [Partner program](#)
- [Affiliate program](#)
- [App developers](#)
- [Investors](#)
- [Shopify events](#)

---

[Terms of Service](#) [Privacy Policy](#) [USA](#)