

Registrar Data Escrow Agreement

This Registrar Data Escrow Agreement (“Agreement”) among _____ (“Registrar”), a(n) _____, DENIC eG, a German registered cooperative (“Escrow Agent”), and the Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), is effective on _____ (the “Effective Date”).

1. Background.

1.1 ICANN is charged with oversight of the security and stability of the Internet’s domain name system. As a function of this responsibility, ICANN accredits domain name registrars (“Registrar(s)”) who facilitate the registration of Internet domain names. Each accredited Registrar, within its Registrar Accreditation Agreement (“RAA”) with ICANN, has agreed to deposit with ICANN, or a designated agent, certain enumerated registration records (each collection of enumerated records, a Deposit as defined in Section 2.3) pursuant to a schedule, format, and terms established by ICANN and incorporated in the RAA and Registrar Data Escrow Specifications (“RDE Specifications”)¹. The RDE Specifications are incorporated herein by reference and may be amended by ICANN from time to time. Upon expiration without renewal or upon termination of a Registrar’s RAA, the deposited registration records may be utilized by ICANN to provide transitional Registrar services prior to transferring management of the domain name registrations to another Registrar.

1.2 As established in the RAA and described herein, Registrar will send to Escrow Agent domain name registration records for each registered domain name with a generic top-level domain (“gTLD”) under Registrar’s sponsorship, in accordance with the RDE Specifications.

1.3 Escrow Agent will collect, process, verify, receive, and store Registrar’s deposited data and release such data upon the conditions and under the circumstances set out in this Agreement, in accordance with the RDE Specifications.

1.4 ICANN will be responsible for and pay Escrow Agent’s fees for services under this Agreement as set forth in the Master Registrar Data Escrow Service Agreement (the “Master Registrar Escrow Agreement”) between ICANN and Escrow Agent dated 14 May 2018, as may be amended from time to time.

The parties hereto, intending to be legally bound hereby, agree as follows:

2. Definitions. Capitalized terms in this Agreement shall have the meanings ascribed to them in this Section 2 unless otherwise defined.

¹ As of the Effective Date of this Agreement, the current RDE Specifications are available at: <https://www.icann.org/en/system/files/files/rde-specs-09nov07-en.pdf>.

2.1 "Section" refers to any numbered paragraph, section, or subsection of this Agreement unless otherwise specified.

2.2 The "RDE Specifications" are the schedule, format, and terms specified by ICANN, applicable to Registrar's data escrow requirements under the RAA, as it may be amended or modified by ICANN from time to time, and incorporated in the RAA. Registrar and Escrow Agent will be notified of any amendment or modification of the RDE Specifications by email to Registrar and Escrow Agent at the electronic mail address provided for in Section 11 and by posting the most current version of the RDE Specifications on ICANN's website. Amendments and modifications of the RDE Specifications will be effective sixty (60) days following such notification.

2.3 A "Deposit" is all data transmitted from Registrar to Escrow Agent pursuant to this Agreement in any contiguous twenty-four (24) hour period of time.

2.4 An "Electronic Deposit" is a Deposit transmitted to Escrow Agent by electronic means (e.g., SFTP, SCP, or HTTPS) as permitted by the RDE Specifications and as specified in the Escrow Agent's data escrow implementation instructions to Registrar.

2.5 A "Physical Deposit" is a Deposit transmitted on a physical medium (e.g., CD ROM, DVD, or hard drive) by courier or post, as permitted by the RDE Specifications and as specified in the Escrow Agent's data escrow implementation instructions to Registrar. Physical Deposits will not be considered delivered to Escrow Agent until they are physically delivered to Escrow Agent. Risk of loss of Deposit in transit is on Registrar.

2.6 "Online" refers to data that is stored on a live, operational server using redundant re-writable media (i.e., RAID).

2.7 "Offline" refers to data that is stored on DVD, CD ROM, tape, or another medium mutually approved by ICANN and Escrow Agent.

2.8 A "Release" is the retrieval and delivery of Deposits by Escrow Agent to ICANN or its designee pursuant to this Agreement.

2.9 A "Transaction" is a one (1) year gTLD registration increment consisting of a successful add, renewal, or transfer of a domain name by Registrar. Where a domain name is deleted by Registrar within its "add" or "auto-renew" grace period (as defined in the functional specifications for each respective registry) or transferred to another registrar during the "auto-renew" grace period, the underlying "add" or "renewal" shall not be considered a Transaction.

3. Obligations of Registrar with Respect to Deposits.

3.1 Deposits in Accordance with RDE Specifications. Registrar shall deposit with Escrow Agent the domain registration records enumerated in the RDE Specifications, on the schedule, in the format, and under the terms described in the RDE Specifications. Registrar shall ensure that Deposits and their transmission conform to the implementation instructions provided by Escrow Agent, which may be more specific than the RDE Specifications,

provided that such implementation instructions shall not contradict the RDE Specifications.

3.2 Transmission of Deposits. Registrar shall transmit all Deposits to Escrow Agent as Electronic Deposits unless Registrar has obtained prior written consent from both ICANN and Escrow Agent to submit Deposits as Physical Deposits and such consent has not been withdrawn by either ICANN or Escrow Agent. Consent to submit Deposits as Physical Deposits will only be granted in extraordinary circumstances.

3.3 Transmission of Physical Deposits. In transmitting any Physical Deposit, Registrar shall include with such Deposit a completed copy of the Physical Deposit Transmittal Form provided in Appendix B.

3.4 Registrant Notice of Data Escrow. Registrar's registration agreement(s) entered into with registrants shall include notice to the registrant of the obligations of Registrar to escrow data hereunder, as specified in the RAA.

4. Obligations of Escrow Agent with Respect to Deposits.

4.1 Acceptance, Storage, and Reporting of Deposits: Escrow Agent shall:

- 4.1.1. receive Electronic Deposits or Physical Deposits (as designated by the Escrow Agent) from Registrar;
- 4.1.2. receive and process Electronic Deposits in one of two geographically separated, secure, locked and environmentally safe facilities, which are accessible only to authorized representatives;
- 4.1.3. copy Physical Deposits into one of two, geographically separated, secure, locked and environmentally safe facilities, which are accessible only to authorized representatives, for processing and storage;
- 4.1.4. store two (2) copies of all Deposits in electronic format, each copy in geographically separated, secure, locked and environmentally safe facilities which are accessible only to authorized representatives;
- 4.1.5. in the event Registrar misses a scheduled Deposit or a Deposit fails a validation or verification test, contact ICANN and Registrar within twenty-four (24) hours to remedy the failure, which notification shall include the date by which Registrar shall remedy the failure (such date to be agreed between Escrow Agent and ICANN);
- 4.1.6. provide ICANN with monthly statistical summaries of reported issues in a mutually agreed upon format and as requested by ICANN;
- 4.1.7. prepare Deposits for verification testing by decrypting Deposits using encryption technology and uncompressing Deposits to original size;

- 4.1.8. perform checksum validation of uncompressed Deposits and automated inspection of uncompressed Deposits (as defined in the RDE Specification);
- 4.1.9. report all uncorrected- missed Deposits or uncorrected- failed validation or verification test results electronically to ICANN and Registrar within twenty-four (24) hours of the scheduled, but missed date to remediate Deposit;
- 4.1.10. perform manual review of uncompressed Deposits as necessary when verification indicate failed automated inspection or upon request by ICANN for the purpose of verification that the Deposits are complete, consistent, and in proper format;
- 4.1.11. securely store all Deposits for no less than three hundred and sixty-five (365) days unless otherwise agreed by the parties in writing or as required by the RDE Specifications;
 - 4.1.11.1 Escrow Agent shall store all Deposits Online for at least thirty (30) days following receipt.
 - 4.1.11.2 Escrow Agent shall store Deposits Online for a period longer than thirty (30) days if reasonably requested by ICANN.
 - 4.1.11.3 Escrow Agent shall store all Deposits Offline that are less than three hundred sixty-six (366) days aged and are not stored Online.
- 4.1.12. use commercially reasonable efforts and industry standard safeguards to protect the integrity and confidentiality of Deposits, including the use of encryption technology, verification of data validity and confirm authenticity of the sender, and enterprise class software to store data both online and offline;
- 4.1.13. destroy or permanently erase any and all Deposits eighteen (18) or more months old, although Escrow Agent may destroy or permanently erase any or all Deposits older than one (1) full year (prior to the end of eighteen (18) months);
- 4.1.14. administer the receipt, verification, storage, and release (as applicable) of the Deposits using reasonable and appropriate administrative, physical and technical safeguards to protect the privacy and security of the Deposits; and
- 4.1.15. comply with privacy and data protection regulations applicable to the receipt, verification and storage of Deposits by a third party provider of escrow services under applicable law, in accordance with the terms of

this Agreement. Neither ICANN nor Escrow Agent makes any representation or warranty to any other party to this Agreement regarding compliance with applicable privacy and data protection laws and regulations in connection with the transmittal of data to Escrow Agent.

4.1.16. within thirty (30) days after RRI (defined below) becomes generally available, report all Electronic Deposits via ICANN's Registration Reporting Interface ("RRI")², as defined in the ICANN Registrar Interfaces draft-icann-registrar-interfaces ("RRI Specification"), which may be amended by ICANN from time to time

4.2 Confidential Information. Escrow Agent shall use commercially reasonable efforts and industry standard safeguards to protect the confidentiality of the Deposits. Except as provided in this Agreement, Escrow Agent shall not review, disclose, transfer, make available or use the Deposits or any other Registrar data obtained in performance of the Agreement. If Escrow Agent should receive a subpoena or an enforceable decision or any other order from a court or other judicial tribunal or an enforceable decision for a competent authority pertaining to the disclosure or release of the Deposits, Escrow Agent shall promptly provide ICANN and Registrar notice of such order, unless such notice is prohibited by law or regulation. Unless impracticable, Escrow Agent shall provide such notice within two (2) business days after receipt. It shall be the responsibility of Registrar to challenge any such order if desired; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order or decision. Escrow Agent will cooperate with Registrar or ICANN, as applicable, to support efforts to quash or limit any subpoena, order or decision at Registrar's or ICANN's expense, as applicable.

5. Covenants of Escrow Agent. Throughout the term of this Agreement, Escrow Agent covenants as follows:

5.1 Notice of Material Changes. Escrow Agent shall inform ICANN and Registrar of any and all material changes that could reasonably be expected to have a negative effect on the security or stability of Escrow Agent's infrastructure, software, hardware, or premises, or material changes to practices, policies, or procedures related to security or separation of business practices and operations.

5.2 Separation of Conflicting Businesses. Should Escrow Agent ever offer registrar or gTLD registry services, the following shall apply: Escrow Agent shall adhere to strict separation of business practices with respect to such business and its registrar data escrow business. Services provided under this Agreement shall be performed through password-access only networks, protected by internal and external firewalls, which share no common hardware, software or users with those systems used by Escrow Agent's registrar businesses. All Deposits by Registrar will initially be encrypted. Escrow Agent shall ensure that all personnel with access to Deposits in an unencrypted form, if applicable, are provided with strict

² As of the Effective Date of this Agreement, the current RRI Specification is available at: <https://tools.ietf.org/html/draft-icann-registrar-interfaces>.

guidance on conflict of interest avoidance with respect to Escrow Agent's registrar or gTLD registry businesses and the confidentiality obligations set forth in Section 4.2. Escrow Agent shall ensure that no employees providing services to customers in its registrar or gTLD registry businesses have access to Deposits (encrypted or unencrypted) or hardware, software or systems used in Escrow Agent's registrar data escrow business. Escrow Agent shall ensure that no employees providing services to customers in its registrar data escrow business have access to hardware, software or systems used in Escrow Agent's registrar or gTLD registry businesses.

5.3 Staffing. Escrow Agent shall at all times maintain sufficient and commercially reasonable staffing to perform its obligations hereunder. One or more representatives of ICANN will be identified as a resource for Escrow Agent to assist in Escrow Agent communications with Registrar.

5.4 Business Continuity. Escrow Agent shall use commercially reasonable efforts to maintain network and business continuity.

5.5 Separation of Escrow Agent and Registrar. Each of Escrow Agent and Registrar represent and warrant to ICANN that Escrow Agent and Registrar are not, directly or indirectly, an Affiliate of such other party. In the event Escrow Agent and Registrar are or become Affiliates for any reason, Escrow Agent shall terminate this Agreement and release all Deposits to ICANN pursuant to this Agreement. For purposes of this Agreement: (a) "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, and (b) "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, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

6. Term and Termination.

6.1 Term. The initial term of this Agreement shall be for a period of one (1) year from the Effective Date. At the end of the initial term, this Agreement shall automatically renew for an additional one (1) year period and upon each anniversary thereafter unless terminated according to the terms hereof.

6.2 Termination of Agreement upon Termination of Registrar's RAA. This Agreement shall be terminated upon termination of or expiration without renewal of Registrar's RAA, in which case ICANN shall notify Escrow Agent of such termination or expiration, provided, however, that such termination of Registrar's RAA shall not modify or relieve Escrow Agent of its responsibilities and duties hereunder to the extent provided herein. Thereupon Deposits shall be released to ICANN as provided in Section 7 hereof.

6.3 Termination by ICANN or Escrow Agent. This Agreement may be terminated by ICANN, with or without cause, by providing the other parties to this Agreement notice of termination at least sixty (60) days in advance of the termination. This Agreement may be

terminated by Escrow Agent only in the event of termination of the Master Registrar Escrow Agreement or pursuant to Section 5.5. If the Master Registrar Escrow Agreement is terminated or if Section 5.5 becomes applicable, and accordingly the Escrow Agent terminates this Agreement, Escrow Agent shall so notify Registrar in writing. In the event of such termination of this Agreement (i) by ICANN for any reason, or (ii) concurrent with termination of the Master Registrar Escrow Agreement or pursuant to Section 5.5 as provided herein, Escrow Agent and Registrar shall fully cooperate to allow the transfer of the Deposits and all responsibilities of the Escrow Agent to a successor escrow agent hereunder if requested by ICANN. This Section shall not negate, reduce, or otherwise modify the obligations of ICANN and Escrow Agent to each other under the Master Registrar Escrow Agreement.

6.4 Termination by Registrar.

6.4.1. In the event Registrar is no longer obligated by its RAA to deposit registration data with ICANN or otherwise escrow its registration data, this Agreement shall be deemed terminated and ICANN will notify Escrow Agent, provided, however, that such termination shall not modify or relieve Escrow Agent of its responsibilities and duties hereunder or in the Master Registrar Escrow Agreement.

6.4.2. In accordance with the RDE Specifications, Registrar may elect to use an alternate, approved Third Party Provider ("TPP") of escrow services in lieu of the services provided by Escrow Agent hereunder. Where Registrar makes such an election, Registrar's Deposit obligations under this Agreement and Escrow Agent's responsibilities and duties hereunder and under the Master Registrar Escrow Agreement shall continue until ICANN confirms that Registrar successfully made its initial Deposit with a TPP, at which time, ICANN will notify Escrow Agent that this Agreement shall be deemed terminated.

6.4.2.1 Upon termination of this Agreement pursuant to Section 6.4.2, Escrow Agent shall continue to store and maintain Registrar's Deposits as described in Section 4, unless and until Registrar effects a transfer of all Deposits aged fewer than three hundred sixty-six (366) days to the Registrar's approved TPP at Registrar's expense and effort, and ICANN confirms receipt and storage by TPP of same.

6.4.2.2 Following termination of this Agreement pursuant to Section 6.4.2, Registrar shall fulfill its data escrow obligations under the RAA with an approved TPP for at least a term of three hundred sixty-five (365) days or until Registrar is no longer obligated to escrow data under its RAA.

7. Release of Deposits.

7.1 Notice for Release of Deposits. Escrow Agent shall effect a Release within twenty-four (24) hours following receipt of any of the following:

- 7.1.1. Written notice executed jointly by ICANN and Registrar requesting Escrow Agent effect such Release; or
- 7.1.2. Written notice by ICANN that Registrar's RAA has expired without renewal or been terminated, with confirmation by ICANN that such Release is in accordance with the RAA; or
- 7.1.3. Written notice by ICANN that such Release is otherwise permitted by the RAA, as it may be amended from time to time, and that ICANN has complied with the RAA's requirements (if any) to provide notice of the Release to Registrar; or
- 7.1.4. Written notice by ICANN that a court or arbitral tribunal or legislative or government agency that ICANN finds to be of competent jurisdiction has issued an order, rule, statute, regulation, or other requirement (a copy of which ICANN has provided to Registrar) that mandates the Release.

7.2 Notice from Escrow Agent to Registrar upon Release of Deposits. Upon any Release or within twenty-four (24) hours of any Release, Escrow Agent shall provide Registrar with written notice of same.

8. Indemnification. Escrow Agent shall hold and save ICANN and Registrar (subject to the limitation set forth in Section 10 below) and their respective officers, directors, agents and employees harmless from liability, claims, suits, causes of action, fees, charges, costs, damages and any other expenses whatsoever of any nature or kind, for or on account of any or all suits or damages whatsoever resulting from injuries or damages sustained, arising or resulting from the negligence or willful misconduct of Escrow Agent, its parent, subsidiaries, officers, directors or employees.

9. Arbitration.

9.1 Disputes Between ICANN and Registrar. In the event of any dispute between ICANN and Registrar arising under Registrar's RAA, including without limitation the termination thereof and release of Deposits to ICANN hereunder, Section 5 of the RAA including, but not limited to Section 5.6 ("Termination Procedures") and Section 5.8 ("Resolution of Disputes Under the Agreement") shall control the resolution of such dispute, or, as the case may be, any successor dispute resolution provision under the RAA as the same may be amended from time to time.

9.2 Disputes Involving Escrow Agent. Upon the occurrence of a dispute between the parties arising from alleged performance or non-performance of any obligation under this Agreement or any obligation relating thereto that is not the subject of Section 9.1 above, the

matter shall be finally settled by arbitration, held in Los Angeles County, California, such arbitration to be conducted through JAMS and subject to the terms of this Section 9.2 unless otherwise expressly specified in Appendix A hereto. There shall be three arbitrators, including one nominee of Registrar, one nominee of ICANN, and one nominee of Escrow Agent. A prevailing party or parties in the arbitration shall have the right to recover its costs and reasonable attorneys' fees, which the arbitrators shall include in their awards. Any party that seeks to confirm or vacate an arbitration award issued under this Section 9 may do so only pursuant to the applicable arbitration statutes. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles County, 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 a temporary stay or injunctive relief from the arbitration panel or a court, which shall not be a waiver of this agreement to arbitrate.

9.3 Specific Performance. ICANN, Escrow Agent and Registrar agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrators specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

9.4 Time is of Essence. Prompt resolution of any dispute is important to all parties to this Agreement. The parties agree that the arbitration of any dispute shall be conducted expeditiously. The arbitrators shall be instructed and directed to assume case management initiative and control over the arbitration process (including scheduling of events, pre-hearing discovery and activities, and the conduct of the hearing), in order to complete the arbitration as expeditiously as is reasonably practical for obtaining a just resolution of the dispute.

10. Limitation of Liability and Consequential Damage Waiver.

10.1 Liability of ICANN. ICANN's aggregate monetary liability to Registrar for any claims, suits, causes of action, fees, charges, costs, damages and any other expenses whatsoever of any nature or kind arising under, related to, or in connection with this Agreement, shall be determined under Section 5 of the RAA, or, as the case may be, any successor provision relating to monetary liabilities under the RAA as the same may be amended from time to time.

10.2 Liability of Escrow Agent.

10.2.1. Notwithstanding anything else in this Agreement (but subject to paragraph 10.2.2 below), all liability, if any, whether arising in contract, tort (including negligence) or otherwise, of Escrow Agent to Registrar shall be limited to an amount equal to three times the then current annual fees paid or owed to Escrow Agent by ICANN under the Master Registrar Agreement with respect to this Agreement. Upon request by Registrar, Escrow Agent shall provide a statement as to the current liability limitation under this Section 10.2.1 to Registrar.

10.2.2. Notwithstanding the foregoing, in the event Escrow Agent through negligence causes Registrar's information held in escrow to be delivered or made available to a person or entity other than a "Designated Party" (which shall be defined as ICANN or its designee, Registrar, or any named third-party pursuant to Registrar's written instructions), Escrow Agent's liability for damages suffered by Registrar in such circumstances shall not exceed (i) One Hundred Thousand US Dollars (\$100,000.00) (if Registrar completed 100,000 or more domain name Transactions during the preceding ICANN fiscal quarter) or its foreign equivalent or (ii) Fifty Thousand US Dollars (\$50,000.00) (if Registrar completed fewer than 100,000 domain name Transactions in the preceding ICANN fiscal quarter) or its foreign equivalent, provided, however, that notwithstanding the foregoing, Escrow Agent's liability shall be unlimited in any circumstances where there is: (i) gross negligence or willful misconduct (including for delivering or making available Registrar's information held in escrow to anyone other than a Designated Party); (ii) any claim of infringement of any patent, copyright, or trademark; (iii) liability for death or bodily injury; or (iv) proven theft.

10.3 Consequential Damages Waiver. In no event shall any party to this Agreement be liable to another party for any incidental, special, punitive or consequential damages, lost profits, any costs or expenses for the procurement of substitute services, or any other indirect damages, whether arising in contract, tort (including negligence) or otherwise even if the possibility thereof may be known in advance to one or more parties.

11. Notices. Notices shall be deemed received on the fifth (5th) day after being sent by first class U.S. mail, or on the following day if sent overnight by U.S. commercial express courier to an address within the United States, or on the third (3rd) day after being sent by international express courier. With the exception of notices regarding the amendment or modification of the RDE Specifications as provided under Section 2.2, all notices under this Agreement shall be in writing and addressed and sent to the person(s) listed in the space provided below:

ICANN

Company: Internet Corporation for Assigned Names and Numbers
Attention: Registrar Data Escrow
Copy to: General Counsel
Address: 12025 Waterfront Drive, Suite 300
City, State, Zip: Los Angeles, CA 90094
Telephone: 310.301.5800
Fax: 310.823.8649

Escrow Agent

Company: DENIC eG

Attn: DENIC Escrow Services
Address: Kaiserstrasse 75-77
City, State, Zip: 60329 Frankfurt/Main,
Germany
Telephone: +49 69 27 23 50
Fax: +49 69 27 23 52 35
Email: escrow@denic.de

Registrar (See Appendix A for Registrar Notice Contact)

Fax: _____

Email: _____

IANA _ID: _____

11.1 Any party may change its address for delivery of notices as set forth above by delivering notice of such change as provided herein.

12. Miscellaneous.

12.1 This Agreement and any and all Appendices hereto shall constitute the entire agreement by and among the parties hereto with regard to the subject matter hereof, provided, however, that (i) with respect to matters determined under the RAA as set forth herein, the RAA (as the same may be modified, amended or superseded from time to time) shall control and (ii) as between Escrow Agent and ICANN, with respect to any matters herein that conflict with the Master Registrar Agreement, the Master Registrar Agreement (as the same may be modified, amended or superseded from time to time) shall control. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by each party, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

12.2 ICANN shall be allowed to communicate on an as needed basis with Escrow Agent regarding the Escrow Agent's Registrar Data Escrow service, with or without the Registrar's participation or authorization. Such communications include, but are not limited to, the review of existing and ongoing Registrar Data Escrow processes to help identify and implement opportunities for improvement.

12.3 Each party, in performance of the obligations set forth in this Agreement, shall comply with all laws and regulations applicable to such party's duties and responsibilities under this Agreement.

12.4 Nothing contained in this Agreement shall be deemed to imply or constitute any party as the agent or representative of another party for any purpose other than as expressly set forth herein.

12.5 Each reference to “days” herein shall mean calendar days, unless otherwise specified herein.

12.6 The waiver by any party of a breach or a default of any provision of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of any party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by such party.

12.7 This Agreement, and the rights and obligations hereunder, may not be assigned, in whole or in part by Escrow Agent without the prior written consent of Registrar and ICANN. In the case of any permitted assignment or transfer of or under this Agreement, this Agreement or the relevant provisions shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and assigns of the parties hereto. It is the intent of Escrow Agent to create a subsidiary entity (DENIC Services GmbH & Co KG (“DENIC Services”)) to operate its registrar data escrow services. At such time as DENIC Services is successfully operational and ICANN has approved the assignment of the Master Registrar Escrow Agreement and the registrar data escrow services hereunder to DENIC Services (which approval shall be communicated to Registrar by ICANN), the parties agree that this Agreement shall be assigned to DENIC Services without further approval by Registrar or amendment of this Agreement. At such time, Escrow Agent shall cause DENIC Services to accept all rights and obligations of this Agreement and DENIC Services shall be deemed the Escrow Agent hereunder.

12.8 This Agreement shall not be construed to create any obligation to any non-party to this Agreement, including any registered name holder. There shall not be any third-party intended beneficiaries under this Agreement.

12.9 The obligations of the parties intended to survive the termination of this Agreement are only those provisions of Sections 4.1.11, including subsections (storage of Deposits), 4.1.12 (protection of Deposits), 4.1.13 (destruction of aged Deposits), 4.1.15 (compliance with data privacy laws), 4.2 (confidentiality), 5 (covenants of Escrow Agent), 7 (Releases), 8 (indemnification), 9 (arbitration), 10 (limitation of liability and consequential damages waivers), 11 (notices), and 12 (miscellaneous), which shall survive the termination of this Agreement for any reason.

12.10 This Agreement shall be fairly interpreted in accordance with its terms and without any strict construction in favor of or against either of the parties. Captions and headings contained in this Agreement have been included for ease of reference and convenience and shall not be considered in interpreting or construing this Agreement.

12.11 This Agreement shall be governed by the laws of the State of California without regard to conflicts of law principles unless otherwise expressly specified in Appendix A hereto.

12.12 This Agreement may be executed in any number of multiple counterparts, each of which is to be deemed an original, and all of such counterparts together shall constitute one

and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Registrar

Signature: _____

Name: _____

Title: _____

Date: _____

Internet Corporation for Assigned Names and Numbers

Signature: _____

Name: _____

Title: _____

Date: _____

DENIC eG

Signature: _____

Name: _____

Title: _____

Date: _____

Appendix A

I. Registrar Notice Contact

Pursuant to Section 11 (Notices), the Registrar Notice_Contact is as follows:

Registrar Notice Contact

Fax: _____
Email: _____
IANA _ID: _____

II. Governing Law and Disputes

Notwithstanding Section 9.2 (Disputes Involving Escrow Agent), the parties consent and agree that legal proceedings or actions not brought by or against ICANN or involving ICANN shall be finally settled between Registrar and Escrow Agent

ALTERNATIVE 1*

by the competent courts in Frankfurt/Main, Germany, with the proceedings to be conducted in German. Escrow Agent shall promptly provide ICANN with an English translation of the final judgment. Furthermore, notwithstanding Section 12.11, this Agreement shall be governed by the laws of Germany, without regard to conflicts of law principles, as far as duties of and to ICANN are not concerned.

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by arbitration, held in Geneva, Switzerland, such arbitration to be conducted in the English language through the Swiss Chambers' Arbitration Institution (SCAI). Furthermore, notwithstanding Section 12.11, this Agreement shall be governed by the laws of Germany, without regard to conflicts of law principles, as far as duties of and to ICANN are not concerned.

*Escrow Agent and respective registrar will decide before signing the respective contract which alternative they choose to use in the contract.

Appendix B

Physical Deposit Transmittal Form

Date Deposit Sent: _____

Registrar Company Name: _____

Registrar Company IANA Number: _____

Deposit Media (Please Label All Media with Date Sent and IANA Number)

Media Type	Quantity		Media Type	Quantity
CD-ROM / DVD			Hard Drive / CPU	
DLT Tape				
DAT Tape				

Certification of Usage of ICANN-Approved Registrar Data Escrow Agreement Template

By signing this certificate, a duly authorized person (officer, owner, director, agent or representative) of the Escrow Agent with the requisite power and authority to act on its behalf, certifies that the ICANN-approved registrar data escrow agreement template (the “Template”) was used for the purposes of this Agreement. Additionally, the Template has not been edited or modified in any material respect from the Template posted here <https://www.icann.org/resources/pages/registrar-data-escrow-2015-12-01-en> at the time of the execution of this certificate.

We hereby certify that the above information is correct.

Escrow Agent Signature

We hereby confirm that we have read and accepted the above information.

Registrar Signature
