



.ORG Agreement Appendix 2 Registry Data Escrow Agreement (22 August 2013)

This Registry Data Escrow Agreement ("Agreement") is made as of this [enter date] (the "Beginning Date"), by and between Public Interest Registry ("Registry Operator"), Iron Mountain Intellectual Property Management, Inc. ("Escrow Agent"), and the Internet Corporation for Assigned Names and Numbers ("ICANN"). All capitalized terms not defined herein shall have the meaning set forth in the Registry Agreement. All capitalized terms not defined in this Agreement have the meanings set forth in the Registry Agreement.

RECITALS

- A. Registry Operator and ICANN have entered into a Registry Agreement ("Registry Agreement"), which requires Registry Operator, during the period Registry Operator operates the registry for the TLD, to submit certain domain name registration data to a reputable escrow agent to be held in escrow.
- B. Pursuant to the Registry Agreement, Registry Operator intends to deliver periodically to Escrow Agent an electronic copy of the Registry Database, as detailed in Subsection 3.1(c) of the Registry Agreement (each such delivery referred to as a "Deposit").
- C. Registry Operator and ICANN each desire Escrow Agent to hold each Deposit, and, upon certain events, release any retained Deposits (or a copy of the Deposits) to ICANN, in accordance with the terms of this Agreement or as ordered by a court of competent jurisdiction.

Now, therefore, in consideration of the premises and mutual obligations contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

- 1. Content of Deposits.** Deposits will be of two kinds: Full Deposits and Incremental Deposits. Each Full Deposit will consist of Registry Data that reflects the current and complete Registry Database. Incremental Deposits will consist of data that reflects all transactions involving the database that are not reflected in the last previous Full Deposit or Incremental Deposit, as the case may be.
- 2. Schedule for Deposits.** Registry Operator must create and deliver to Escrow Agent a Full Deposit once each week, according to the schedule specified in Exhibit 1 of Appendix 1. Registry Operator must create and deliver to Escrow Agent an Incremental Deposit once each day during which a Full Deposit is not made, according to the schedule specified in Exhibit 1 of Appendix 1.
- 3. Format of Deposits.** The data in each Full Deposit and in each Incremental Deposit shall follow the data format specified in the TLD Registry Data Escrow: Format Specification (the "Format Specification"), attached as Exhibit 2 of Appendix 1.

4. Procedure for Deposits. Each properly formatted Full Deposit and Incremental Deposit shall be processed and electronically delivered in encrypted form to Escrow Agent according to the transfer process described in Exhibit 3 of Appendix 1.

5. Notification of Deposits. Simultaneous with the delivery to Escrow Agent of any Full or Incremental Deposit, Registry Operator shall deliver to Escrow Agent and to ICANN a written statement (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Full or Incremental Deposit by the ICANN-provided software (as described in Exhibit 1) and states that the Full or Incremental Deposit (as the case may be) has been inspected by Registry Operator according to the procedures described in Exhibit 3 of Appendix 1 and is complete and accurate. Escrow Agent shall notify ICANN of all Deposits received, within two business days of receipt.

6. Verification. Within two business days after receiving each Full or Incremental Deposit, Escrow Agent shall verify the format and completeness of each Deposit by performing the verification procedures specified in Exhibit 4 of Appendix 1 and shall deliver to ICANN a copy of the verification report generated for each Deposit (which may be by authenticated e-mail). If Escrow Agent discovers that any Deposit fails the verification procedures, Escrow Agent shall notify by email, Registry Operator and ICANN of such nonconformity within forty-eight hours of discovery. Upon notification of such verification failure, Registry Operator shall begin developing modifications, updates, corrections, and other fixes of the Full or Incremental Deposit necessary for the Deposit to pass the verification procedures and shall deliver such fixes to Escrow Agent as promptly as possible. Escrow Agent shall verify the accuracy or completeness of any such corrected Deposit pursuant to the procedures in this Section 6 and shall give ICANN notice of successful verification within twenty-four hours. The failure of any Full or Incremental Deposit to meet verification procedures and any efforts by Registry Operator to remedy such failure shall not delay the delivery of any subsequent scheduled Full or Incremental Deposits pursuant to the schedule in Exhibit 1 of Appendix 1. Escrow Agent shall deliver, on the first business day of each month, (i) a written certification to ICANN that Escrow Agent has performed such verification procedures on each Deposit received during the last month, and (ii) copies of the verification reports generated for each Deposit received during the last month.

7. Retention and Confidentiality.

7.1 Retention. Escrow Agent shall hold and maintain the Deposits in a secure, locked, and environmentally safe facility which is accessible only to authorized representatives of Escrow Agent. Escrow Agent shall use commercially reasonable efforts to protect the integrity of the Deposits. Each of ICANN and Registry Operator shall have the right to inspect Escrow Agent's written records with respect to this Agreement upon reasonable prior notice and during normal business hours.

7.2 Destruction of Deposits. At all times, Escrow Agent shall retain the four most recent Full Deposits and all Incremental Deposits after the earliest of those four Full Deposits, all of which must have passed the verification procedures specified in Exhibit 4 of Appendix 1. Registry Operator may destroy any Deposits prior to these four most recent Full Deposits.

7.3 Confidentiality. Escrow Agent shall use commercially reasonable efforts to protect the confidentiality of the Deposits. Except as provided in this Agreement, Escrow Agent shall not disclose, transfer, make available, or use any Deposit (or any copies of any Deposit). Should Escrow Agent be put on notice that it is required to disclose any Deposits by statute, rule, regulation, order, or other requirement of a governmental agency, legislative body, court of competent jurisdiction, or binding arbitral body (other than any requirement pursuant to Sections 9.1.6, 11.2, and 13 of this Agreement), Escrow Agent shall notify ICANN and Registry Operator within seven days or as soon as practicable and reasonably cooperate with Registry Operator and/or ICANN in any contest of the disclosure. Should any contest prove unsuccessful, Escrow Agent shall not be held liable for any

disclosure pursuant to such governmental, legislative, judicial, or arbitral order, statute, rule, regulation, or other requirement.

8. Duplication. Escrow Agent may duplicate any Deposit by any commercially reasonable means in order to comply with the terms and provisions of this Agreement, provided that Registry Operator shall bear the expense of such duplication. Alternatively, Escrow Agent, by notice to Registry Operator, may reasonably require Registry Operator to promptly duplicate any Deposit. In the event the Registry Operator is unable or unwilling to produce the copy or bear the expense of copying, the party requesting the copy shall bear the cost.

9. Release of Deposit. Within five business days after receipt of any required documents and/or notices specified in this Section 9, Escrow Agent shall deliver to ICANN or its designee all Deposits in Escrow Agent's possession, in the event that the Escrow Agent receives all of the following:

9.1 One of the following notices:

9.1.1 A written notice by the Registry Operator requesting Escrow Agent to effect such delivery to ICANN; or

9.1.2 A written notice by ICANN that the Registry Agreement has: (i) expired without renewal, pursuant to Section 4.1 of the Registry Agreement, or (ii) been terminated, in accordance with Article VI of the Registry Agreement; or

9.1.3 A written notice by ICANN that all of the following have occurred:

9.1.3.1 ICANN failed, with respect to (a) any Full Deposit or (b) five Incremental Deposits within any calendar month, to receive, within five calendar days after the Deposit's scheduled delivery date, notification of receipt from Escrow Agent; and

9.1.3.2 ICANN gave notice to Escrow Agent and Registry Operator of that failure; and

9.1.3.3 ICANN has not, within seven calendar days after the notice under Section 9.1.3.2, received notice from Escrow Agent that the Deposit has been received; or

9.1.4 A written notice by ICANN that all of the following have occurred:

9.1.4.1 ICANN has received notification from Escrow Agent of failed verification of a Full Deposit or of failed verification of five Incremental Deposits within any calendar month; and

9.1.4.2 ICANN gave notice to Registry Operator of that receipt; and

9.1.4.3 ICANN has not, within seven calendar days after the notice under Section 9.1.4.2, received notice from Escrow Agent of verification of a remediated version of the Deposit; or

9.1.5 A written notice by ICANN that release of the Deposits is mandated by non-payment of any fees due to Escrow Agent, pursuant to Section 15 of this Agreement; or

9.1.6 A written notice by ICANN that a court, arbitral, 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 Registry Operator) that mandates the release of the Deposits to ICANN; and

9.2 Copies of notices with proof of delivery submitted to Escrow Agent that ICANN or Registry Operator (whichever gave the notice under Section 9.1) has previously notified the other party in writing; and

9.3 Written instructions from ICANN that the Deposits be released and delivered to a designated party; and

9.4 A written undertaking by ICANN that the Deposits will be used only as permitted under the terms of the Registry Agreement. Upon release of any Deposits to ICANN, Escrow Agent shall at the same time deliver to Registry Operator a photostatic copy of the notice it received from ICANN under Sections 9.1.2 to 9.1.6, as applicable.

10. Release of Deposit to Registry Operator. Escrow Agent shall deliver all Deposits to Registry Operator upon termination of this Agreement in accordance with Sections 14.1 and 14.2.1 of this Agreement.

11. Procedure After Release.

11.1 Right to Use Deposits. Upon release of any Deposits to Registry Operator pursuant to Section 9, Registry Operator (or its assignee in accordance with the Registry Agreement), and subject to Section 9.4 above, shall immediately have the right to exercise or have exercised all rights in the Deposits necessary to provide registry services. Upon release of any Deposits to ICANN pursuant to Section 9, ICANN (or its assignee in accordance with the Registry Agreement) shall immediately have the right, subject to Section 9.4 above, to exercise or have exercised all rights in the Deposits pursuant to the Registry Agreement, including as necessary to provide registry services.

11.2 Objection Notice. Upon release of any Deposits to ICANN pursuant to Section 9, Registry Operator shall have thirty calendar days to notify Escrow Agent and ICANN in writing (the "Objection Notice") of its objection to the release of the Deposits to ICANN and request that the issue of entitlement to the Deposits be resolved pursuant to the dispute resolution procedures in the Registry Agreement (the "Dispute Resolution Procedures"). Registry Operator and ICANN agree to resolve any disputes they may have as between themselves under this Agreement in accordance with Section 17.2 hereof. The parties agree that (i) Registry Operator shall have no rights (other than pursuant to this Section 11.2) to object to any release of the Deposits, and (ii) the delivery of an Objection Notice and the commencement of Dispute Resolution Procedures shall not delay release of any Deposits to ICANN pursuant to Section 9.

11.3 Dispute Resolution Procedures. The parties agree that any proceedings brought pursuant to the Dispute Resolution Procedures shall be conducted consistently and in accordance with any prior arbitration or court orders/decisions involving the Registry Agreement. The parties further agree that any proceedings relating to this Agreement and brought pursuant to the Dispute Resolution Procedures shall not examine, re-evaluate, reconsider, or otherwise subject to review any issues, causes of action, or other claims which were decided, or which a party had a reasonable opportunity to raise, in proceedings which involved the Registry Agreement.

11.4 Withdrawal of Objection Notice. Registry Operator may, at any time, notify Escrow Agent and ICANN that Registry Operator wishes to withdraw its Objection Notice. Upon receipt of such withdrawal from Registry Operator, Escrow Agent shall promptly deliver to ICANN any Deposits that have not previously been delivered to ICANN.

11.5 Dispute Resolution Decisions.

11.5.1 If the release of Deposits under Section 9 to ICANN is determined in Dispute Resolution

Procedures to have been proper, Escrow Agent shall promptly deliver to ICANN, in accordance with the instructions specified in Section 9.3, any Deposits that have not previously been delivered.

11.5.2 If the release of Deposits to ICANN is determined in Dispute Resolution Procedures to have been improper, ICANN shall promptly return or destroy, at Registry Operator's discretion, the Deposits received by ICANN under Section 9.

12. Indemnity. Registry Operator and ICANN shall, jointly and severally, indemnify and hold harmless Escrow Agent and each of its directors, officers, agents and employees ("Escrow Agent Indemnitees") absolutely and forever, from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Escrow Agent Indemnitees in connection with this Agreement or the performance of Escrow Agent or any Escrow Agent Indemnitees hereunder (with the exception of any claims based on the misrepresentation, negligence, or misconduct of Escrow Agent, its directors, officers, agents, employees, contractors, and stockholders). Escrow Agent shall likewise indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents and employees ("Indemnitees") absolutely and forever, from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence, or misconduct of Escrow Agent, its directors, officers, agents, employees, contractors, and stockholders.

13. Interpleader.

13.1 Escrow Agent may submit any dispute under this Agreement to any court of competent jurisdiction in an interpleader or similar action. Any and all costs incurred by Escrow Agent in connection therewith, including reasonable attorneys' fees and costs, shall be borne 50% by each of Registry Operator and ICANN.

13.2 Escrow Agent shall perform any acts ordered by any court of competent jurisdiction, without any liability or obligation to any party hereunder by reason of such act.

14. Term and Termination.

14.1 Term. The initial term of this Agreement shall be one year, commencing on the Beginning Date (the "Initial Term"). This Agreement shall be automatically renewed for an additional term of one year ("Additional Term") at the end of the Initial Term and each Additional Term hereunder unless, on or before ninety days prior to the end of the Initial Term or an Additional Term, a party notifies the other parties that it wishes to terminate this Agreement at the end of such term. In the event a party gives the other parties such notice of termination, and Registry Operator and ICANN cannot agree to resolve, by the end of the then-current term, any disputes regarding the renewal of this Agreement or the establishment of a replacement escrow agent: (i) Registry Operator and ICANN shall resolve any such disputes through the Dispute Resolution Procedures; (ii) this Agreement shall continue to remain in effect during the resolution of any such disputes; and (iii) Escrow Agent shall have the right to invoice either Registry Operator or ICANN for the data escrow services provided during this dispute resolution period at the rates listed in Exhibit E. This paragraph in no way limits the Registry Operator's rights under the Registry Agreement to change to a different Escrow Agent mutually approved by Registry Operator and ICANN, such approval not to be unreasonably withheld by either of them, provided that such Escrow Agent will agree to substantially similar terms as in the present document and there is no significant interruption of Deposits.

14.2 Termination. This Agreement shall terminate upon the occurrence of any of the following:

14.2.1 Termination of this Agreement by both Registry Operator and ICANN upon having delivered to Escrow Agent a written notice signed by both Registry Operator and ICANN indicating their mutual intent to terminate this Agreement upon ninety days' notice;

14.2.2 Termination of this Agreement by Escrow Agent pursuant to Section 15; or

14.2.3 Release of the Deposit(s) to ICANN pursuant to Section 9 and, if an Objection Notice is made and not withdrawn, a final decision that the release of materials to ICANN was proper at the end of the Dispute Resolution Procedures.

15. Fees and Payments. Registry Operator shall pay to Escrow Agent the applicable fees and charges listed in Exhibit E as compensation for Escrow Agent's services under this Agreement. If Registry Operator fails to pay any fees or charges invoiced by Escrow Agent by the due date(s), Escrow Agent shall give written notice to Registry Operator of non-payment of any such past-due fees hereunder and, in that event, the Registry Operator shall have the right to pay the past-due fee(s) within ten business days after receipt of the notice from Escrow Agent. Upon payment of the past-due fee by Registry Operator, this Agreement shall continue in full force and effect. If Registry Operator fails to pay the past-due fee(s) within the applicable periods under this Section 15, Escrow Agent shall have the right to terminate this Agreement immediately by sending notice of termination to all other parties, and, upon termination, Escrow Agent shall deliver to ICANN all Deposits held by Escrow Agent.

16. Ownership of Deposit. Subject to the provisions (including Subsection 6.5) of the Registry Agreement, the parties recognize and acknowledge that ownership of the Deposit during the effective term of this Agreement shall remain with the Registry Operator at all times.

17. Miscellaneous.

17.1 Remedies. For the purposes of fulfilling its obligations under this Agreement, Escrow Agent may act in good faith reliance on, and shall not be held liable for, any written notice, instruction, instrument, or other writing signed or presented by a person with apparent authority to act on behalf of Registry Operator or ICANN.

17.2 Dispute Resolution. Registry Operator and ICANN further agree to resolve any disputes they may have as between themselves under this Agreement pursuant to the Dispute Resolution Procedures.

17.3 Limitation of Liability. The parties shall not be liable to each other for special, indirect, incidental, or consequential damages hereunder. As between ICANN and Registry Operator the liability limitations of Subsection 5.3 of the Registry Agreement also apply. Notwithstanding anything else herein, all liability of Escrow Agent, if any, under this Agreement, whether arising in contract, tort (including negligence) or otherwise shall be limited to the amount equal to one (1) year of fees paid or owed to Escrow Agent under this Agreement.

17.4 Independent Contractor. Escrow Agent is an independent contractor and is not an employee or agent of either Registry Operator or ICANN.

17.5 No Third-Party Beneficiaries. This Agreement shall not be construed to create any obligation by Registry Operator, ICANN, or Escrow Agent to any non-party to this Agreement, including but not limited to any domain-name holder or registrar.

17.6 Amendments. This Agreement shall not be modified or amended except in writing executed by

each of the parties.

17.7 Assignment. Neither Registry Operator nor ICANN may assign or transfer this Agreement (by merger, sale of assets, operation of law, or otherwise), except that the rights and obligations of Registry Operator or ICANN automatically shall be transferred to the assignee of one of those parties' rights and obligations under the Registry Agreement. Escrow Agent may not assign or transfer this Agreement without the prior written consent of both Registry Operator and ICANN.

17.8 Entire Agreement. This Agreement, including all exhibits, supersedes all prior discussions, understandings, and agreements between Escrow Agent and the other parties with respect to the data escrow services for the Registry TLD. The parties acknowledge and agree that, as between ICANN and Registry Operator, the Registry Agreement (including all its appendices) is intended to co-exist with this Agreement, this Agreement is supplementary to the Registry Agreement, and the Registry Agreement shall control in the event of any conflict.

17.9 Counterparts. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement.

17.10 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without regard to its conflicts-of-laws principles. The parties consent and agree that jurisdiction and venue for any legal proceedings relating to this Agreement shall lie with the state and federal courts of Los Angeles County in the State of California.

17.11 Notices. All notices, requests, demands or other communications required or permitted to be given or made under this Agreement shall be in writing and shall be delivered by hand, by commercial overnight delivery service which provides for evidence of receipt, by certified mail, return receipt requested, postage prepaid, by facsimile, or by e-mail (e-mail to be followed promptly at receiver's request by a copy delivered by one of the other means of delivery) to the corresponding addresses listed on the signature page of this Agreement. If delivered personally, by commercial overnight delivery service, by facsimile, or by e-mail, the date on which the notice, request, instruction or document is delivered shall be the date on which delivery is deemed to be made, and if delivered by mail, the date on which such notice, request, instruction or document is received shall be the date on which delivery is deemed to be made. Any party may change its address for the purpose of this Agreement by notice in writing to the other parties as provided herein.

17.12 Survival. The obligation of confidentiality in Section 7, Sections 9, 10, 11, 12, 13, 17.3 and this Section 17.12 shall survive any termination of this Agreement.

17.13 No Waiver. No failure on the part of any party hereto to exercise, and no delay in exercising any right, power or single or partial exercise of any right, power or remedy by any party will preclude any other or further exercise of that or any other right, power, or remedy. No express waiver or assent by any party to any breach of or default in any term or condition of this Agreement shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other term or condition.

IN WITNESS WHEREOF each of the parties has caused its duly authorized officer to execute this Agreement as of the date and year first above written.

Escrow Agent
Iron Mountain Intellectual Property Management, Inc.
2100 Norcross Parkway, Suite 150
Norcross, GA. 30071
Phone: 770-239-9200

Fax: 770-239-9201

By: _____
[Jeanna Israel]

[Director, Operations]

Registry Operator
Public Interest Registry
1775 Wiehle Avenue, Suite 102A
Reston, VA 20190
E-mail: _____
Phone: 1-703-464-7005
Fax: 1-703-464-7006

By: _____
[name of signer]
[title of signer]

ICANN

12025 E Waterfront Dr, Suite 300
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By: _____
Akram Atallah
President, Generic Domains Division