

REGISTRY AND DISTRIBUTION SERVICES AGREEMENT

This Registry and Distribution Services Agreement (the “Agreement”) is dated as of XX day of MM YYYY by and between National Internet Exchange of India (NIXI), a not for profit company incorporated under Section 25 of the Indian Companies Act 1956, having its registered office at 5th Floor, Incube Business Centre, 18, Nehru Place, New Delhi 110 019 hereinafter known as “NIXI” (which expression shall unless repugnant to the context or meaning thereof mean and include its successors, executors, attorneys, and assignees);

AND

Name of TSP, a Company incorporated under the Indian Companies Act, 1956 having its registered office at TSP ADDRESS hereinafter known as “Technical Service Provider or TSP” (which expression shall unless repugnant to the context or meaning thereof mean and include its successors, executors, attorneys and assignees)

TSP and NIXI may be referred to herein individually as a “Party” and collectively as the “Parties”.

WHEREAS, NIXI has been granted the exclusive right to operate and maintain certain ccTLD servers and zone files for the .IN ccTLD (hereinafter referred to as the “Business”) by virtue of the office Order No. 7 (3) / 04 – issued on 20th November 2004 by the Department of Electronics And Information Technology, Ministry of Communications and Information Technology, Government of India and also by virtue of the Board Resolution No. 3 dated 24th November 2004 passed by the Board of Directors of NIXI;

WHEREAS, NIXI has selected TSP to provide technical services for the “.IN” domain registry pursuant to a competitive bidding process.. TSP has been awarded the assignment to provide NIXI with Technical and Support Services for the operation of the Business vide Letter of Award dated XX/MM/YYYY communicated to TSP.

WHEREAS, TSP has accepted the award for provision of Technical and Support Services of the Business vide their reply letter dated XX/MM/YYYY

NOW, THEREFORE, for and in consideration of the mutual promises, benefits and covenants contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agrees as follows:

1. DEFINITIONS

- 1.1 “Allocable Revenue” means the total amount of Registry Service Fees in effect at the time of registration/renewal/transfer of domain names in the ccTLD and attributable to the one-year period following the registration or renewal (including renewals on transfer) and including one time fees i.e. RGP restore fees. With respect to multi-year registrations, each Anniversary Date of such registration shall constitute a renewal for purposes of this paragraph, and one year’s worth of Registry Service Fees attributable at the initial registration or subsequent renewal of such domain name shall be included in the Allocable Revenue for the month in which the Anniversary Date occurs, regardless of whether such domain name has been deleted outside of the grace period from the Registry System in the interim.

For registrations existing on the Effective Date, Allocable Revenue shall also include any revenues up to the first Anniversary Date (after the Effective Date of this agreement) of such registrations calculated on the basis of the Registry Services Fees in effect at the time of registration/renewal/transfer. With effect from the said Anniversary Date, these registrations shall be considered as renewals. TSP shall raise a separate one-time invoice

for such registrations existing on the Effective Date up to the first Anniversary Date registration, calculated as per Table 1 of clause 5 and based on the revenue sharing percentage as on the Effective Date.

For Blocked/Reserved Names, prior collected revenue shall be treated as Allocable Revenue. This position shall continue till the exhaustion of prior collected revenue, after which the scenario stated in clause 1.3 shall prevail.

- 1.2 Anniversary Date means the annual observance of the date on which a domain name was created. For example, a domain name created on July 14, 2012 shall observe an Anniversary Date on July 14 of every year from 2013 onwards.
- 1.3 "ccTLD" means the country code top-level domain .IN (or its IDN equivalents) in the DNS and shall include any second-level domain and/or third-level domain under .IN (or its IDN equivalents) in the DNS for which TSP provides services to NIXI as part of the Registry System.
- 1.4 "ccTLD Zone Files" means files that contain the list of all domains in the ccTLD with respect to which nameservers are associated, along with their corresponding hosts and IP Addresses.
- 1.5 "Confidential Information" means any information (whether or not in material form and whether or not disclosed before or after the Effective Date) of whatever kind disclosed or revealed by one Party ("Disclosing Party") to the other Party ("Receiving Party") in relation to this agreement that:
- a. is by its nature confidential;
 - b. is designated by a Party as confidential;
 - c. the receiving Party knows or reasonably ought to know is confidential; or
 - d. Pertains to the business of the Disclosing Party and its operations, including but not limited to, equipment, programs, strategies, sales and marketing programs, and organisation.

Provided, however, that the term Confidential Information shall not include any information that: (i) is or subsequently becomes publicly available without the Receiving Party's breach of any obligation owed the Disclosing Party; (ii) became legally known to the Receiving Party prior to the Disclosing Party's disclosure of such information to the Receiving Party; (iii) became legally known to the Receiving Party from a source other

than the Disclosing Party other than by the breach of an obligation of confidentiality owed to the Disclosing Party.

1.6 “DNS” means the Internet Domain Name System.

1.7 Domain Year means one year of a domain name registration from date on which domain name was created.

1.8 “Effective Date” means the 1st day of January, 2013.

1.9 “Force Majeure” means

a. any act, event or cause (other than lack of funds), which is beyond the reasonable control of the affected Party including but not limited to: act of God, war, sabotage, terrorism, riot, civil disorder, revolution, national or state emergency, martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse or exceptionally severe weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the affected Party), epidemic, quarantine, radiation or radioactive contamination; or

b. any act of government or other competent authority (including any Court of competent jurisdiction), such as expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, decree or other legally enforceable order.

1.10 “IDN” means Internationalized Domain Name.

1.11 “Licensed Product” means the Registrar Toolkit, as defined herein, as amended, updated or otherwise modified in any manner from time to time, and all documentation associated herewith.

1.12 “Personal Data” means all data including sensitive personal data about any Registrant that identifies or can be used to identify, contact, or locate the Registrant to whom that information pertains. Personal Data shall include, but is not limited to, the following (to the extent collected in the Registry System): name, address, phone number, fax number, email address or any government identifier, and credit card information. Additionally, to the extent any other information (including a personal profile, unique identifier, biometric

information, and/or IP address) is associated or combined with Personal Data and collected by the Registry System, then that information shall also be defined as Personal Data.

1.13 “Registered Name” means each domain name registered and/or maintained through the Registry System.

1.14 “Registrant” means the holder of a Registered Name.

1.15 “Registrar” means any domain name registrar or reseller that (i) is accredited with NIXI pursuant to a Registrar Accreditation Agreement (as herein defined) and (ii) is a party to a valid and current Access Agreement (as herein defined) with TSP.

1.16 “Registrar Toolkit” means the computer software development kit of TSP that will support the development of a Registrar software System for registering Internet domain names in the Registry.

1.17 “Registry Data” means any information received from the Registrars through the Protocol, including but not limited to the following: (1) data for domains sponsored by all Registrars, consisting of domain name, server name for each nameserver, registrar id, updated date, creation date, expiration date, status information; (2) data for nameservers sponsored by all Registrars consisting of server name, each IP address, Registrar id, updated date, creation date, expiration date, and status information; (3) data for Registrars sponsoring registered domains and nameservers, consisting of Registrar id, Registrar address, Registrar telephone number, Registrar e-mail address, WHOIS server, referral URL, updated date and the name, telephone number, and e-mail address of all the Registrar’s administrative, billing and technical contacts; and (4) domain name registrant data deposited with TSP by the Registrars as part of or following registration of a domain name, including any Personal Data. It will also include data contained in the ccTLD data warehouse, data about ccTLD registrars stored in Registry System and data definitions of all fields made available.

1.18 “Registry Service” means services provided hereunder that are related to the storage, modification and / or propagation of Registry Data propagated on a rapid basis, including information technology services in relation to system networking or any other services

primarily in relation to operation of ccTLD computer systems/ networking/ security devices.

1.19 “Registry Service Fees” means the standard (wholesale) price of registrations per domain year according to NIXI’s domain name pricing policy in effect at the time of registration/renewal/transfer, as amended from time to time. NIXI shall provide TSP at least 30 days advance written notice of any change in such domain name pricing policy. Prior to and as of the date of this Agreement, the Registry Service Fee is Rs. 350 per domain year for second-level domain names in the ccTLD, and Rs. 250 per domain year for third-level domain names in the ccTLD.

1.20 “Registry System” means the “.IN” registry system operated by TSP on behalf of NIXI by using computers, computer systems and computer networks for domain names in the ccTLD, as well as updates and redesigns thereof, all in accordance with this Agreement, as amended from time to time.

1.21 “Technical Offer Submissions” means the submissions made by TSP dated XX/MM/YYYY pursuant to the competitive bidding process initiated by NIXI.

1.22 “Technical Service Provider” (“TSP”) means an internationally experienced body corporate that can provide Technical and Support Services for the operation of the Business.

1.23 “Technical and Support Services” means the services provided by TSP in the operation of the Business as detailed in the Scope of Work attached as Schedule A to this Agreement, including all sub-domains in which Registered Names are registered.

1.24 “Term” means the term of this Agreement as defined in Clause 9.1 of this Agreement.

1.25 “WHOIS Record” means the record that shows the DNS information about a domain name including but not limited to the Registrar, registrant, administrative and technical contact details and nameserver information.

2. INTERPRETATION

2.1. Headings are for convenience only and do not affect the interpretation of this Agreement;

2.2. “Party” shall mean either TSP or NIXI and Parties shall refer to both TSP and NIXI together.

2.3. The singular includes the plural and vice versa;

2.4. The existing Schedules to this Agreement and any future modifications to the same, additional schedules, exhibits and such other documents are to be read as part of this Agreement and shall be binding on the Parties in the same manner and on the same terms and conditions as the Agreement.

3. OBLIGATIONS OF PARTIES

3.1 Obligation of TSP

3.1.1 **Initiation of .IN registry operations.** TSP shall initiate the below mentioned activities, of .IN operations, **within the timelines prescribed in response to the RFP:**

S. No.	Activity	Completion by
1	Project Initiation	T
2	SRS Software – Development, testing and go live	T + 2 months
3	Infrastructure setup at two data centers – facility, equipment and bandwidth	T + 2 months
4	Migration of data	T + 3 months
5	Verification of migrated data	T + 3 months
6	EPP client build and OT&E for registrars	T + 3 months
7	Access agreements with registrars	T + 3 months
8	Registry Website takeover	T + 3 months
9	New and old TSP Services Overlap period	T + 4 months
10	Review / verification by NIXI of the operations in overlap period	
11	Transition period activities and initiation of services	

3.1.2 Penalty on delay in service initiation - Any slippage in timelines for initiation of .IN registry operations beyond 31 December 2012 (6 months from 1 July 2012) by the selected TSP, shall incur a penalty of Rs. 7,50,000 (Seven Lakhs and Fifty Thousand only) per day.

Further NIXI also reserves the right to invoke Performance Bank Guarantee in case of delay in service initiation.

- 3.1.3 **System Operation and Access.** Throughout the Term of this Agreement, TSP shall operate and maintain the Registry System and provide each Registrar with access to the Registry System according to the terms of this Agreement, including but not limited to the obligations and standards detailed in the Service Level Agreement and Scope of Work, attached as Schedules A and B respectively to this Agreement, enabling such Registrar to transmit domain name registration information for the ccTLD to the Registry System according to a protocol specified by TSP in its Technical Offer Submissions (the "Protocol").
- 3.1.4 **Adherence to NIXI Guidelines.** The TSP shall adhere to all the guidelines that are issued from time-to-time, by NIXI, including but not limited to matters such as security registrar accreditation, KYC norms, information sharing with NIXI access to systems etc.
- 3.1.5 **Ownership of .IN Domain:** NIXI shall be the sole owner of the data w.r.t .IN registry and shall have access to the as and when required. TSP shall enable access to NIXI or its agents to access the central systems to undertake queries as required by NIXI for audit, investigation or any other purpose. Mode and time of access will be intimated by NIXI to TSP in advance. Further, TSP will also develop certain specified queries on the database which can be accessed and run online by NIXI or its agents on periodic basis.
- 3.1.6 **Administrative Account; Registrar Toolkit.** Promptly following the Effective Date, TSP shall provide to NIXI (i) documentation necessary to access a web-based administrative account and (ii) if applicable, reference client software, with documentation, that will enable Registrars to develop their respective systems to submit registrations of domain names through the Registry System for the ccTLD (the "Registrar Toolkit").
- 3.1.7 **Data Escrow.** TSP shall establish a data escrow or mirror site policy for the Registry Data compiled by TSP. The escrow agent or mirror-site manager, and the obligations thereof, shall be mutually agreed upon by NIXI and TSP on commercially reasonable standards that are technically and practically sufficient. to allow a successor of TSP to assume management of the .IN ccTLD. To this end, TSP shall provide technical assistance to NIXI and periodically deposit into escrow all Registry Data on a schedule (at least once a week for a complete set of Registry Data and daily for incremental updates) and in an electronic

format mutually approved from time to time by TSP and NIXI, such approval not to be unreasonably withheld by either Party. The schedule, content, format, and procedure for escrow deposits shall be as established by NIXI from time to time, and may be attached as a schedule to this Agreement by mutual agreement between Parties. Changes to the schedule, content, format, and procedure may be made only with the mutual written consent of NIXI and TSP (which neither Party shall unreasonably withhold). The escrow data shall be held under a tripartite agreement and the same may be revised from time to time, among NIXI, TSP and the escrow agent. All fees or other costs incurred in the implementation, set up and operation of any data escrow hereunder shall be borne by NIXI.

3.1.8 **Personal Data.** TSP shall take reasonable steps to protect Personal Data as defined in clause 1.13 above from loss, misuse, unauthorized disclosure, alteration or destruction. TSP shall not use or authorize the use of Personal Data in a way that is incompatible with the policies of NIXI and the law for the time being in force.

3.1.9 **New and Enhanced Services.** NIXI may request TSP to provide new technical services, in addition to those detailed in the Scope of Work attached as Schedule A to this Agreement, on mutually acceptable terms and conditions, to keep the Registry System up to date with the emerging technologies in the field of Business. In the event that NIXI requests any new service, or enhancement, variation, derivative work or modification of the Registry System or Scope of Work during the Term of this Agreement, such requests shall be presented in writing to TSP in the form of a Project Change Request ("PCR"). The PCR will describe at a reasonable level of detail the change, the rationale for the change, and the impact the change may have if it is accepted and if it is rejected, and fees to be charged by TSP as a result of such change, if applicable. Neither party shall be under any obligation with respect to such request unless and until both parties shall agree in writing to the new service, enhancement, variation, derivative work or modification as set forth on the PCR. However, NIXI shall be free to negotiate with third parties to provide such service, provided that no such third party shall be granted direct access to the Registry System without the consent of TSP and NIXI; provided however, that TSP, upon the direction of NIXI, will make a near real-time copy of the Registry Data available to any such third party. Nothing in this paragraph shall be construed to require NIXI to approach TSP about offering a new service prior to negotiating or contracting with third parties to provide such services. All the parties implementing new/additional services shall use the near real time copy of the registry data to be provided by TSP.

3.1.10 **Transition Management Plan:** Within six months of signing this contract, TSP shall submit to NIXI and exit management plan which will provide in details how the operations of .IN registry can be taken over by NIXI or its agent in case of termination or expiry of this contract. Any non-submission of exit management plan within the stipulated time shall be seen as a material breach of contract and may lead to termination of this Agreement.

3.2. **Obligation of NIXI**

3.2.1 **Data Submission Requirement.** During the Term, NIXI shall require that all Registrants submit the data elements required by the functional specifications provided to NIXI by TSP using the Protocol concerning domain name registrations processed through the Registry System ("Data Elements")

3.2.2 **License.** NIXI grants TSP a non-exclusive, and revocable license to the Data Elements for:

- a. Propagation of and the provision of authorized access to the ccTLD zone files;
- b. Propagation of such elements into the DNS;
- c. Display of the WHOIS record for any domain name;
- d. Licensing such data elements to third parties in accordance with any license requirements that may arise from time to time under written approval from TSP.
- e. Providing the services set forth in this Agreement; and
- f. Other than as previously set forth in sections 3.2.2.a through 3.2.2.e above, providing to third party service providers of NIXI or TSP only for the purpose of achieving the objectives of this Agreement under prior approval of and intimation to NIXI.

3.2.3 **Obligation to communicate with regulatory authorities.** NIXI shall be responsible for communication with all the applicable regulatory authorities, including without limitation the Department of Information Technology ("DIT"), Internet Corporation for Assigned Names and Numbers ("ICANN") and Internet Assigned Numbers Authority ("IANA"), and TSP shall extend all facilities and technical assistance as requested by NIXI for compliance with all regulatory matters. NIXI shall immediately intimate TSP in writing of any communication received from, or issued by NIXI to, any regulatory authority or any other party involving any potential material change to the Agreement or the obligations of TSP hereunder. NIXI is under no obligation to provide, and TSP is not entitled to, a copy of any such communication received from, or issued by NIXI to, any regulatory authority.

3.3 Agreement with Registrar.

- 3.3.1 **Access Agreement.** As a condition of TSP providing any Registrar with access to the Registry System, such Registrar shall be required to enter into a registrar access agreement with TSP (an "Access Agreement"). Each such Access Agreement shall be in a form acceptable to both the Parties in their reasonable discretion. A copy of all such agreements shall be sent by TSP to NIXI as soon as they are executed. In the event any Registrar violates the terms of such Access Agreement or, by mutual opinion of the Parties, is otherwise compromising the integrity of the Registry System, TSP shall have the right to suspend access to the Registry System for such Registrar until such violation is cured. TSP shall immediately intimate NIXI of the same in writing.
- 3.3.2 **Registrar Accreditation Agreement.** As a condition of TSP providing any Registrar with access to the Registry System, such Registrar shall be required to enter into a registrar accreditation agreement with NIXI, in a form approved by the Parties in their reasonable discretion (a "Registrar Accreditation Agreement"). A copy of all such agreements shall be sent by NIXI to TSP. TSP reserves the right to deny access to the Registry System to any Registrar with respect to which TSP has not received a copy of Registrar Accreditation Agreement required hereby.
- 3.3.3 **Suspension of Registrar's Access.** TSP may take such actions as provided in the Access Agreement with respect to any Registrar that violates the terms set forth in any agreement between TSP and such Registrar and such violation is not cured according to the terms of the Access Agreement. Notwithstanding the foregoing, TSP reserves the right to suspend or terminate any Registrar's access to the Registry System immediately to protect the integrity and security of the Registry System. TSP shall immediately intimate NIXI of the same in writing.
- 3.3.4 **Non-Payment of Fees by Registrar.** Timely payment of Service Fees is a material condition of performance under this Agreement. The Parties hereto agree that if, at any time during the Term, any Registrar's deposit account balance is fully depleted, TSP shall stop accepting registrations and other billable transactions from such Registrar, and further may delete the domain names associated with any invoices not paid in full from the Registry System database, suspend access to the system by such Registrar or take any other action available pursuant to the Access Agreement between TSP and such Registrar. NIXI shall be immediately informed of such suspension or action.

- 3.4 Time.** Both Parties agree that in the event of any dispute concerning the time of the entry of a domain name registration into the Registry System, the time shown in records of the Registry System shall control and prevail.

4. LICENSE

- 4.1. **License Grant.** Subject to the terms and conditions of this Agreement, TSP hereby grants NIXI a non-exclusive, worldwide limited license to use for the Term and purposes of this Agreement the Licensed Product free of cost to access the Registry System and for no other purpose whatsoever. NIXI shall have the right to sublicense the Licensed Product free of cost to any Registrar who has agreed to the terms of the Access Agreement, solely as required to submit registration request.
- 4.2. **Limitation on Use.** Notwithstanding any other provisions in this Agreement, except with the written consent of TSP, NIXI shall not: (i) except as set forth in Clause 4.1, sublicense the Licensed Product or otherwise permit any use of the Licensed Product by or for the benefit of any party other than TSP, (ii) publish, distribute or permit disclosure of the Licensed Product other than to employees, contractors, and agents of NIXI for use in the domain name registry business of NIXI, or (iii) decompile, reverse engineer, copy or re-engineer the Licensed Product. In no event shall NIXI use or permit use of the Licensed Product in violation of any laws, rules, regulations, bye-laws, guidelines including the ones made to run the Registry System.
- 4.3. **Changes to Licensed Product.** TSP may from time to time make modification to the Licensed Product hereunder, at no charge to NIXI. TSP will communicate to NIXI and the Registrars prior to the implementation of any material changes to the Licensed Product and shall take reasonable measures to ensure the smooth operations of the Registry System.

5. FEES AND COSTS

5.1. Fees

- 5.1.1 During the Term, with respect to each Registration, NIXI shall pay TSP a percentage revenue share of the Allocable Revenue on the terms set forth in this Section 5 inclusive of all taxes, including service tax.

- 5.1.2. Once every month, on receipt of the billing statement from TSP, NIXI shall settle accounts and pay to TSP the determined percentage of Allocable Revenue collected during the previous month so due to TSP as per the formula stipulated in Table 1 below. With respect to each month, TSP shall provide an invoice to NIXI following the end of such month setting forth the amount due to TSP under Table 1 on account of such month's Allocable Revenue. From MM/YY onwards, NIXI shall pay such amount to TSP within twenty-one (21) days following the date of TSP invoice.

Table 1

Revenue Splits %	Year I	Year II	Year III	Year IV	Year V
Marketing Fund					
NIXI					
TSP					
Total	100	100	100	100	100

Note. Except as otherwise provided, all payments to be made under this Agreement pursuant to this Clause 5 shall only be a percentage of the Allocable Revenue, inclusive of all taxes, including service tax.

- 5.1.3. The percentage of Allocable Revenue due to TSP as detailed in Table 1 is subject to a minimum average fee per domain year payable to TSP for all registrations and renewals (including renewals on transfer) of .IN domain names in the prior month (attributable to the one year period following the date of such registration or renewal) as given in the following table, with the exception of any promotional pricing that may be mutually agreed upon between TSP and NIXI.

	Year I	Year II	Year III	Year IV	Year V
Minimum average Fee Due to TSP per domain year in Rs.					

No Other Payments. Unless provided in this Agreement or otherwise agreed mutually between the Parties, TSP is entitled only to the percentage of Allocable Revenue as determined in this Clause 5 with respect to services performed under this Agreement.

Revenue Sharing: The Revenue Sharing shall be based on the Allocable Revenue as defined in clause 1.1

TSP shall raise invoices every month. Such invoice amount shall be calculated as per Table 1 of clause 5 and based on the revenue sharing percentage as on the month attributable to the Allocable Revenue. If the year in which Allocable Revenue is due overlaps the calendar year then the Revenue Sharing will be computed based on the revenue sharing percentage in effect for each calendar year pro-rated for the number of months in each year.

For example, if a domain name is registered/renewed on 25th June 2008 for a period of 5 years, NIXI shall make the payment to TSP for the first year calculated based on the sum of the revenue share of 42 percent for a period of 7 months of 2008 and the revenue share of 41.5 percent for 5 months of 2009. For the second year, the payment to TSP would be calculated based on the sum of the revenue share of 41.5 percent for 7 months and 41 percent for 5 months. The third year payment would be computed as the sum of the revenue share of 41 percent for 7 months and 40.5 percent for 5 months. The payment for the fourth year would be computed as the sum of the revenue share of 40.5 percent for 7 months and 40 percent for 5 months. The payment to TSP for the fifth year will be the revenue share of 40 percent for 7 months.

As illustrated in the example given above, if the period of domain spills beyond date of termination of the agreement (i.e. 31st December 20XX), share due to TSP will be limited to 31st December 20XX.

6. MARKETING AND PROMOTION

- 6.1 TSP and NIXI shall be jointly responsible for the marketing and promotion activities related to the “.IN” domain (“Marketing and Promotion Activities”). These activities shall include but are not limited to:
- a. Determining the strategies to be followed for marketing and promotion of “.IN” domains, including the implementation of registrar discount and/or registrar rebate programs. Such registrar rebates, incentives etc. arising on account of Marketing and Promotion Activities shall be disbursed out of the Marketing Budget Account and will not have an effect on the calculations of Allocable Revenue;
 - b. Achieving broad distribution and channel management (Registrars);

- c. Developing support materials such as banner ads, newsletters, fact sheets, point of sale materials;
- d. Designing channel promotion programs and sales incentive plans;
- e. Developing and deploying public relations programs;
- f. Devising advertising strategy;
- g. Developing and applying positioning concepts that establish “.IN” domain’s unique position in the marketplace; and
- h. Selecting and managing creative resources such as advertising and public relations agencies and providing assistance in development and deployment of public relations and advertising programs.

6.2 The percentage of Allocable Revenue in each year designated as Marketing Fund in Table 1, in Clause 5 of the Agreement, shall be directly diverted by NIXI to an escrow account established and operated by NIXI (“the Marketing Budget Account”), on the completion each Month, for exclusive utilization of the funds for Marketing and Promotion Activities. This fund shall not lapse, but shall be continuing throughout the Term. NIXI shall be responsible for accounting functions related to the Marketing Budget Account, including, without limitation, providing the Committee (defined below) with monthly reports showing activity in the Marketing Budget Account, including the status of funds and the sources and uses of funds. Further, NIXI shall be responsible for the timely disbursement of funds in accordance with agreements made during the implementation of marketing plans.

6.3 A committee shall be constituted by NIXI, which shall consist of equal representation from the management of both NIXI and TSP, to oversee the Marketing and Promotion Activities and to control the inflow and disbursement of funds in the Marketing Budget Account (“the Committee”). The Committee shall take all decisions by consensus.

6.4 The Committee shall meet at least once every quarter and take all steps to ensure that funds in the Marketing Budget Account be spent in each calendar year during the term of this Agreement solely for the marketing of .IN domains. Within 10 days after the end of each calendar year, the Committee shall furnish a performance report of marketing activities, monies spent, and the results of such activities to both parties. Further, if at the end of the agreement period, if there are any unspent amounts in the Marketing Budget Account, such amounts shall be shared between the parties on modalities to be mutually agreed between both the parties.

6.5 **PRIMARY AND SECONDARY REGISTRY SITES** TSP shall be responsible for the procurement, setup and deployment of all the equipment and hardware for both registry site. TSP shall also be entirely responsible for the operations and maintenance of the both registry site. Further, all the data, information or records in primary and secondary registry sites shall remain under the ownership of NIXI.

7. **PUBLICATION ON WEBSITE At all times** during the Term of this Agreement, TSP shall be responsible for and bear all the expenses of designing, hosting, maintaining and updating the “.IN” registry website (at www.registry.in or at any other URL where the “.IN” registry website is maintained at in the future) on behalf of NIXI. It will be hosted in India and TSP will take all steps to incorporate any design and content changes as per the requirements of NIXI. TSP shall provide NIXI a control panel for updating “.IN” Registry website. The copyright and all other intellectual property rights in this website, other than the intellectual property rights of TSP, shall vest with NIXI and the necessary copyright notices and disclaimers, terms of use, privacy policy etc. shall be placed on the website in accordance with the policies of NIXI. TSP shall claim no rights, in respect of this website, except with respect to TSP’ intellectual property and proprietary information.

8. **TRAINING AND OTHER SERVICES** TSP will take all steps for capacity building of NIXI staff at various times, as per the requirements of Section 8 of Schedule A. Training of NIXI staff will be done periodically at mutually agreed convenience. TSP will also provide reporting to NIXI as detailed in section 8 of Schedule A.

9. TERM OF AGREEMENT AND TERMINATION

9.1. **Term of Agreement.** The term of the Agreement shall commence on the Effective Date and unless terminated in accordance with the provisions of the Agreement shall expire at the end of five (5) years from that date (“the Term”). 180 days prior to the date of termination of this Agreement, NIXI shall select a TSP for the further operation of the Business after such termination. In the unlikely event that such a selection has not been made within the said time period, the Parties shall mutually agree on a further course of action, in order to provide continued Registry Services for the ccTLD without interruption.

9.2. **Termination for Cause.** In the event that either Party materially breaches any term of this Agreement including any of its representations and warranties hereunder and such breach

is not cured within thirty (30) calendar days after written notice thereof is given by the other Party (or such longer period as may be commercially reasonable under the circumstances), then the non-breaching Party may, by giving written notice thereof to the other Party, terminate this Agreement as of the date of such notice of termination.

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

9.4. **During the five year contract duration,** in case of termination of services of TSP by NIXI, NIXI shall reserve the right to take over the .IN operations unconditionally and run the .IN operations thereafter by itself or through its agent or any third party. The contract entered by TSP with all its third party service providers in relation to .IN operations (data center vendor etc) shall provide for the necessary clauses and undertakings. NIXI shall be given copy of such agreements which TSP enters with all its third party service providers. Any exception to such situations shall only be on the sole discretion of NIXI. TSP shall be responsible for honouring all its liabilities prior to take over by NIXI with these service providers. TSP shall extend all assistance to NIXI for the smooth continuation of this operation using the existing support till such time the NIXI is able to select and appoint a new TSP.

9.5 Transfer of operation to a new TSP upon Termination

9.5.1. NIXI will complete the registration of all domain names processed by TSP prior to the effective date of such expiration or termination.

9.5.2. Immediately upon any expiration or termination of this Agreement, TSP shall handover working system (including hardware and software) for .IN registry operations to NIXI or any such third party appointed by NIXI.

9.5.3. Further NIXI undertakes that it shall not use Confidential Information and proprietary data of TSP.

- 9.5.4. Subject to the requirements of Section 9.5.4, immediately upon any expiration or termination of this Agreement, TSP shall return to NIXI a current copy of all Registry Data, and shall certify to NIXI that all other copies of the current Registry Data residing on TSP' systems have been deleted or otherwise destroyed to the satisfaction of NIXI. TSP shall be required to give an undertaking/certificate to this effect.
- 9.5.5. At the expiration or termination of this Agreement in accordance, the Parties agree to work cooperatively to facilitate and implement the transition of the operation of the ccTLD registry in accordance with the transition plan provided by the TSP. TSP shall agree to provide NIXI with any data regarding operations of the registry for the .IN ccTLD necessary to maintain operations that may be requested to ensure that registry operations can be quickly, smoothly and efficiently transferred to NIXI, or to any entity designated by NIXI, so as to minimize disruption of the registry functions. NIXI may extend the services of the selected TSP for a period of 90 days from the date of termination or expiration, and may be extended by NIXI for up to four (4) additional periods of ninety days each. The operations during such extensions will be as per the terms and conditions of this contract and there shall be no additional payments. TSP should have a minimum one month overlap period of running .IN registry operations with the new TSP. Services shall be rendered by TSP during such transition period as per the terms and conditions of this Agreement, without any deterioration in SLA.
- 9.5.6 The bidder shall transfer all the assets including all its software, hardware etc to NIXI at the end of contract period at no additional cost to NIXI.
- 9.5.7. Any and all expenditures, capital investments or other investments made by TSP in connection with this Agreement shall be at TSP' own risk and NIXI shall have no obligation to reimburse TSP for any such expense, capital expenditure or investment.
- 9.5.8. Upon termination of the Agreement on account of a material breach by TSP pursuant to section 9.2, NIXI shall be entitled to offset its damages incurred as a result of such breach against fees otherwise owed to TSP hereunder, and shall further be entitled to draw on the Performance Security in an amount equal to such damages to the extent not offset against fees owed to TSP.

9.5.9 Survival. In the event of termination of this Agreement, the following Clauses shall survive: 4.2, 6.5, 7, 8, 9, 10, 11, 12, 15.1, 15.2, 16.9 & 16.10.

10 PREVALENCE OF MOU WITH GOVERNMENT TSP agrees that the delegation of the Technical & Support Services under this Agreement is an exercise of public right and not an item of property. Therefore, in the event of a natural disaster, national emergency or for any other reason determined by the Government of India, requiring that the operation of the .IN ccTLD to be taken over/resumed by the Government of India, either on a temporary or permanent basis, TSP shall comply with any orders made by the Government of India to ensure a smooth migration to the entity designated by the Government of India and/or NIXI. For purposes of clarity, the parties acknowledge that NIXI is a section 25 company, and as such, for purposes of this paragraph, the term “Government of India” shall not mean NIXI.

11. RIGHTS IN REGISTRY DATA

- 11.1 NIXI shall exclusively own all rights in the Registry Data, provided, however, that TSP shall be entitled to use the Registry Data and the information contained therein to provide the services hereunder and for purposes related to “Business” as has been described above and for purposes relating only to statistical and trend analysis on a consolidated basis.
- 11.2 In the event that Registry Data is released from escrow, rights, if any, held by TSP in such data shall, automatically be given to NIXI or to a party designated in writing by NIXI.
- 11.3 TSP shall not be entitled to claim any intellectual property rights in Registry Data.

12. LIMITATION OF LIABILITY AND INDEMNIFICATION

- 12.1 TSP shall take steps in due diligence to ensure smooth and secure running of the .IN Registry at all times during the Term of the Agreement. Except as set forth in this Agreement, NIXI agrees that TSP will not be liable for any act that is not attributable to TSP and beyond its reasonable control.
- 12.2 TSP agrees to keep NIXI indemnified against loss, damages or costs arising on account of claims, demands, actions, suits initiated against NIXI, its CEO, Directors, employees and advisors arising from the breach by TSP or its agents, contractors, sub-contractors, servants or employees of their duties under the Agreement.
- 12.3 TSP shall indemnify NIXI, its CEO, Directors, employees and advisors against all liabilities and losses suffered, as a result of the infringement of any intellectual property, arising out of the use of such intellectual property for or in relation to the Technical Support and

Services provided under this Agreement, or TSP' or NIXI's inability to lawfully use such intellectual property.

- 12.4 TSP shall be promptly notified of any claim made against NIXI, arising out of matters specified in Clauses 12.2 and 12.3 of this Agreement. TSP may, at its own cost, conduct negotiations for the settlement of such claim, and any litigation that may arise, in such reasonable manner as NIXI shall, from time to time approve (such approval shall not be unreasonably withheld). NIXI shall provide TSP with all reasonable assistance required in the course of such negotiations, proceedings, etc., including but not limited to the execution of documents.
- 12.5 NIXI agrees to keep TSP indemnified against loss, damages or costs arising on account of claims, demands, actions, suits initiated against TSP, arising from the breach by NIXI or its agents, contractors, sub-contractors, servants or employees of their duties under the Agreement.
- 12.6 NIXI shall indemnify TSP against all liabilities and losses suffered, as a result of the infringement of any intellectual property, arising out of the use of such intellectual property for or in relation to the Technical Support and Services provided under this Agreement, or NIXI's or TSP' inability to lawfully use such intellectual property.
- 12.7 NIXI shall be promptly notified of any claim made against TSP, arising out of matters specified in Clause 12.5 of this Agreement. NIXI may, at its own cost, conduct negotiations for the settlement of such claim, and any litigation that may arise, in such reasonable manner as TSP shall, from time to time approve (such approval shall not be unreasonably withheld). TSP shall provide NIXI with all reasonable assistance required in the course of such negotiations, proceedings, etc., including but not limited to the execution of documents.

13. Performance Bank Guarantee

- 13.1 TSP shall furnish NIXI with a Performance security by way of an irrevocable Bank Guarantee, of INR 5,00,00,000 (Rupees Five Crores Only) issued by a nationalized scheduled bank in India in favour of NIXI.
- 13.2 This Performance Bank Guarantee shall be a revolving on-demand bank guarantee for a period of five years and claim period of three months , renewed as often as required for maintaining its validity throughout the operation of this Agreement in order to ensure satisfactory compliance with the provisions of the SLA ("the Performance Bank Guarantee").
- 13.3, NIXI shall not request any draw against the Performance Bank Guarantee with respect to TSP' non-compliance with the contractual obligation until NIXI has given TSP written notice of the non-compliance and a minimum of thirty (30) day opportunity to rectify the non-compliance to the satisfaction of NIXI.

14. REPRESENTATIONS AND WARRANTIES

- 14.1 That each party represents and warrants that: (1) it is a company duly formed and validly existing under the law of the jurisdiction noted in the introductory paragraph, (2) it has, and during the Term of the Agreement will continue to have, respective obligations to engage and perform Services hereunder, (3) it has respective obligation to execute, perform and deliver in accordance with terms of this Agreement, and (4) it is bound under such licences, authorization, agreement, undertakings or other obligations.
- 14.2 That NIXI further agrees that TSP shall be the Technical Service Provider of NIXI for providing Technical and Support services for running of .IN Registry purely within ambit of the .IN Internet policy name policy framework and implementation document dated 28.10.2004 or any other regulation/policy framework/document that comes into existence at a later date.
- 14.3 NIXI shall be the designated point of contact for .IN ccTLD in the ICANN (Internet Corporation for Assigned Names and Numbers) CCNSO (Country Code Names Server Organization). TSP shall provide technical and administrative consultation where required by NIXI with regard to building capacity for such representation at different forums.
- 14.4 **Warranties:** The Licensed Product is provided on "AS-IS" basis and covered under Warranty for the entire duration of this Agreement from the effective date as defined in this agreement. This Warranty shall be against any defects that may arise from product deficiency or from any act or omission that may develop under normal use of the same. In case any defect is detected it shall be corrected or the product will be replaced by TSP expeditiously at its own costs and risks.

15. MISCELLANEOUS

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

- 15.2 **Force Majeure.** Upon occurrence of a Force Majeure event and to the extent such occurrence interferes with either Party's performance of the Agreement, such Party shall be excused from performance of its obligations (other than payment obligations) provided that such Party uses best efforts to avoid or remove such causes of non-performance as soon as possible and shall immediately adopt the Disaster Recovery Plan as detailed in section 8 of Schedule A pending such non-performance.
- 15.3 **Further Assurances.** Each Party hereto shall execute and/or cause to be delivered to each other Party hereto such instruments and other documents, and shall take such other actions, as such other Party may reasonably request for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.
- 15.4 **Amendment in Writing.** Any amendment or supplement to this Agreement shall be in writing and duly executed by both Parties.
- 15.5 **Third Party Audit of Services.** TSP shall allow for third party audit of its operations including but not limited to systems, processes, data and pricing method adopted towards offering .IN domains to registrars.

16. Dispute Resolution; Choice of Law; Venue.

- 16.1 If any difference or dispute arises between NIXI and the TSP in connection with the validity, interpretation, implementation or alleged breach of any provision of this Agreement, such dispute shall be referred to a sole arbitrator appointed by NIXI or in case of disagreement as to the appointment of the sole arbitrator to three arbitrators, two of which will be appointed by NIXI and TSP respectively and the third appointed by the two arbitrators. The arbitration proceedings shall be conducted in accordance with the (Indian) Arbitration and Conciliation Act, 1996 and amendments thereof.
- 16.2 The place of arbitration shall be New Delhi, India.
- 16.3 The proceedings of arbitration shall be conducted in the English language.
- 16.4 The arbitrator's award shall be substantiated in writing and binding on the parties.
- 16.5 The arbitration proceedings shall be completed within a period of one hundred eighty (180) days from the date of reference of the dispute to arbitration.
- 16.6 **APPLICABLE LAW & JURISDICTION:** This Agreement shall be governed by and construed in accordance with the laws of India and shall be subject to exclusive jurisdiction of Courts located at Delhi, India only.
- 16.7 **Notices.** Any notice or other communication required or permitted to be delivered to any Party under this Agreement shall be in writing and shall be deemed properly delivered, given

and received when delivered (by hand, by registered mail, by courier or express delivery service, by digitally signed email or by facsimile) to the address or facsimile number set forth beneath the name of such Party below, unless Party has given a notice of a change of address in writing:

If to NIXI:

(Name), (Designation)

5th Floor, Incube Business Centre, 18, Nehru Place, New Delhi 110 019

E-mail: legal@nixi.in Fax: +91 11 30614269 Phone no: +91 11 30614627

TSP Address

16.8 Assignment/Sublicense. Except as otherwise expressly provided herein, the provisions of this Agreement shall inure to the benefit of and be binding upon, the successors and permitted assigns of the Parties hereto. TSP hereto shall not assign, sublicense or transfer this Agreement to any third person without the prior written consent of NIXI.

16.9 Use of Confidential Information. Both Parties shall treat as strictly confidential, and use all reasonable efforts to preserve the secrecy and confidentiality of all Confidential Information of the other Party, including implementing reasonable physical security measures and operating procedures. Both Parties shall use any Confidential Information of the other Party solely for the purpose of exercising its rights or performing its obligations under this Agreement and for no other purposes whatsoever. Except as otherwise permitted hereunder, or as agreed by a Disclosing Party hereunder, neither Party shall make any disclosures whatsoever of any Confidential Information of the other Party to others; provided, however, that disclosure is permitted to the concerned Government officials; officers, employees, contractors and agents of either Party who have a demonstrable need to know such Confidential Information, provided that the receiving Party shall advise such personnel of the confidential nature of the Confidential Information and of the procedures required to maintain the confidentiality thereof, and shall require them to acknowledge in writing that they have read, understand, and agree to be individually bound by the confidentiality terms of this Agreement.

16.10 Compliance with Laws. Both Parties agree to comply with all applicable laws and regulations of India that relate to the performance of their respective obligations under the Agreement.

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

16.12 Authorized Contact. Both Parties shall at all times during the Term designate an authorized contact with whom the other Party may correspond with respect to issues involving the subject matter of this Agreement and who shall have the authority to make decisions on behalf of that Party with respect to the subject matter hereof. The initial Authorized Contact of both Parties shall be the person named below as signatory of the Parties hereto. The Authorized Contact may only be changed by either Party upon prior written notice to the other Party.

16.13 Intellectual Property; Use of Logos.

16.13.1 Each Party will continue to independently own its intellectual property, including all patents, trademarks, trade names, service marks, copyrights, trade secrets, proprietary processes and all other forms of intellectual property. NIXI specifically acknowledges that TSP owns all rights, title and interest in the proprietary software used in the Registry System and Licensed Products of TSP. Similarly, NIXI specifically owns all rights, title and interest in the Registry Data.

16.13.2 NIXI shall not use TSP' name and/or logo in any manner whatsoever, including in advertising and promotional materials or in any communications with third parties, without prior written permission of TSP.

Similarly, TSP shall not use NIXI's name and/or logo in any manner whatsoever, including in advertising and promotional materials or in any communications with third parties, without prior written permission of NIXI.

17.ENTIRE AGREEMENT; SEVERABILITY. This Agreement, including all exhibits, constitutes the entire Agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.

18. SERVICE LEVEL ASSOCIATED PENALTIES. If the TSP fails to deliver or perform the services within stipulated time schedule or as per the specification as decided in SLA, NIXI shall, without prejudice to its other remedies available under the agreement/ contract, raise a “debit note” accordingly, until satisfactory performance is ensured. NIXI reserves all the rights to levy the penalties under the contract in case satisfactory services are not restored.

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

TSP

National Internet Exchange of India

By:

By:

Name:

Name:

Title:

Title:

WITNESSES

1.

2.

Schedule A

Scopes of work referred above in agreement are the following sections of the Request for Proposal –

Section 7 – Scope of Services – Broad Outline

Section 8 - Scope of Technical Services and Solutions

Section 9 – Current Facilities and Systems

Section 10 – Software Solutions, System Monitoring Tools and Features

Section 11 – Service Level Agreements and Associated Penalty

Section 12 – Others

Section 13 – Annexure to Scope of Work