

This System Access Agreement (the “Agreement”) is entered into by and between Tucows (India) Private Limited, with its office address at SN-43/44/1 2 3 4 5, PL. No. 38, Mohdwadi Road, Near Cloud 9 Society N I B M, 411 048, Pune, Maharashtra, India (the “TSP”), and the applicant registrar or registrar completing the Registrar Form on the website [nixiregistry.in](http://nixiregistry.in) (by corporate name and address and either its IANA number or local registration number) (“Registrar”) (each a “Party” and together, the “Parties”) and takes effect as of the date of submission.

TSP is a registry service provider (“Technical Service Provider”) for NIXI TLDs (“Supported TLDs”).

Registrar is accredited in one or more of the Supported TLDs per a Registrar Accreditation Agreement (“the RAA”) or relevant agreement with NIXI, the registry operator of the Supported TLDs and wishes to use the Registry System in order to register domain names in the Supported TLDs.

## Definitions

“Confidential Information” means all information and materials including, without limitation, computer software, data, information, databases, protocols, reference implementation, documentation, and functional and interface specifications, provided by the disclosing party to the receiving party and marked or otherwise identified as Confidential provided that, if a communication is oral, the Disclosing Party will notify the Receiving Party in writing within seven (7) days of the disclosure.

“Console” means TSP’s Registrar console where Registrar can read and acknowledge official announcements from TSP as well as perform various functions including but not limited to: access billing and information as well as manually perform Domain Operations.

“DNS” refers to the Internet domain name system.

“DPA” means the RRA Data Processing Addendum drafted by ICANN as part of the Temporary Specification in force since 25 May 2018 or any GDPR-compliant data processing addendum provided by TSP from time to time.

“Domain Operations” means the act of registering, renewing, transferring, or deleting a domain name in a Supported TLD as well as updating any domain status or nameserver record.

“Emergency Circumstances” means that conditions exist that require the immediate attention of TSP, Registrar, or a Registered Name Holder in order to protect the security, stability, or integrity of the Registry System.

“EPP” means the Extensible Provisioning Protocol.

“ICANN” refers to the Internet Corporation for Assigned Names and Numbers or its successor and references to and abbreviations of its various policies have the meanings assigned to them by ICANN.

“IP” means Internet Protocol.

“Licensed Product” means the intellectual property pertaining to the Registry System including, but not limited to, materials, documentation, guides, Supported Protocol, the APIs, and any associated software and proprietary content, collectively.

“Personal Data” means data about any identified or identifiable natural person which a Registrar may be required to provide to TSP under the terms of this Agreement.

“Registered Name” means a domain name present in the registry database of a Supported TLD. A domain name in a registry database may be a Registered Name even though it does not appear in a TLD zone file (e.g., a registered but inactive name).

“Registered Name Holder” means the person or company owning or otherwise controlling a Registered Name by

virtue of a registration agreement with a Registrar.

“Registry System” means the shared registry system, Console, web interfaces, supported protocols, and Licensed Product.

“Software” means the Registry System software, the interfaces, the account management tools, Registry admin panel, and Registrar consoles.

“Supported Protocol” means TSP's implementation of EPP, or any successor protocols, supported by the Registry System.

“TLD” means a top-level domain of the DNS or a second-level domain operated as a top-level domain.

## **1. Obligations of TSP**

- 1.1. System Operation and Access. Throughout the term of this Agreement, TSP shall operate the Registry System and provide Registrar with access to the Registry System to transmit domain name registration information for the Supported TLDs to the Registry System. TSP provides maintenance of the registrations sponsored by Registrar.
- 1.2. Maintenance of Registrations Sponsored by Registrar. Subject to the provisions of this Agreement, ICANN requirements, and the Registry requirements including, without limitation, those authorized by ICANN, TSP shall maintain the registrations of Registered Names sponsored by Registrar in the Registry System during the term for which Registrar has paid the fees required under this Agreement.
- 1.3. Distribution of EPP, APIs, and Software. No later than three (3) business days after the Effective Date of this Agreement, TSP shall make available to Registrar (i) full documentation of the Supported Protocol; (ii) use of application program interfaces (“APIs”) to the Supported Protocol with documentation; and (iii) its reference client software that will allow Registrar to develop its system to register second-level domain names through the Registry System for the Supported TLDs. When TSP modifies or upgrades the APIs or Supported Protocol, TSP shall provide documentation to Registrar promptly. Unless Emergency Circumstances require a shorter time period, TSP shall provide commercially reasonable notice of any changes to the Registry System in order to provide Registrar time and opportunity to implement any modifications or upgrades; no advance notice of a modification or upgrade shall be required if TSP maintains backwards compatibility with existing Registrar operations.
- 1.4. Logos. TSP grants to Registrar a non-exclusive, non-assignable, royalty-free license to use TSP's provided marketing materials for the sole purpose of promoting and marketing the Supported TLDs. Registrar shall use supplied logos and artwork and shall not merge the logos or artwork with any other trademark or otherwise alter them. All goodwill arising from the use of the logos and artwork shall inure to the benefit of TSP or, if applicable, the registry operator.
- 1.5. Registrar Notification of Changes. TSP will provide Registrar with notice via EPP poll message within thirty (30) minutes of any cancellation, transfer, or other change made to any registration by TSP that was not initiated by Registrar. Maintenance, system changes, or other important notices will be sent via email to Registrar.
- 1.6. Compliance with Policies, Laws, and Regulations. In addition to complying with relevant standards, policies, procedures, and practices limiting domain names that may be registered, Registrar agrees to comply with applicable terms from the registry operator, public statutes, and regulations limiting the domain names that may be registered.
- 1.7. Engineering Support. TSP agrees to provide Registrar with reasonable engineering telephone support to address engineering issues arising in connection with Registrar's use of the Registry System. Such support for Emergency Circumstances shall be available 24x7x365 and, for all other circumstances, during business hours in Los Angeles, CA, US.
- 1.8. Customer Support for Accounts and Billing Issues. The Company provides reasonable telephone and email support for accounts and billing issues during business hours in Toronto, ON, CA.
- 1.9. Customer Service Support. During the term of this Agreement, TSP will provide reasonable telephone, web-

based, and email customer service support exclusively to Registrar for nontechnical issues solely relating to the Registry System.

- 1.10 Handling of Personal Data. TSP shall take reasonable steps to protect Personal Data 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 notice provided to registrars. TSP may from time to time use the demographic data collected for statistical analysis, provided that this analysis will not disclose individual Personal Data and provided that such use is compatible with the notice provided to registrars regarding the purpose and procedures for such use. Except for circumstances related to a termination, TSP shall never use Personal Data of a Registered Name Holder acquired under this Agreement, (a) to contact the Registered Name Holder with a communication intended or designed to induce the Registered Name Holder to change Registrars or (b) for the purpose of offering or selling non-registry services to the Registered Name Holder. Notwithstanding the foregoing, nothing in this Agreement shall prevent TSP or its related companies from offering or selling products or services to Registered Name Holders who are known to TSP because of existing customer relationships or who are identified through independent mechanisms.

## **2. Obligations of Registrar**

- 2.1 Registrar Responsibility for Customer Support. Registrar is responsible for support for its resellers, customers, and Registered Name Holders. Registrar shall provide to Registered Name Holders emergency contact support information for critical situations including domain name hijacking.
- 2.2 Data Submission Requirements. As part of its registration and sponsorship of Registered Names in Supported TLDs, Registrar shall submit complete data as required by technical specifications of the Registry System that are made available to Registrar from time to time. Registrar shall submit any corrections or updates from a Registered Name Holder relating to the registration information for a Registered Name to TSP in a timely manner. Registrar shall also abide by the DPA.
- 2.3 Data Subject Rights. The Parties understand and agree that the Registered Name Holder may be considered a Data Subject under the GDPR. Whenever the Registered Name Holder wishes to exercise their rights, Registrar understands and agrees that TSP will always defer to Registrar to act on the request, as part of Registrar's contractual relationship with the Registered Name Holder. To that end, TSP will forward any such request to Registrar by email upon receipt thereof. Registrar agrees to confirm to TSP in writing that it has resolved the request.
- 2.4 License. Registrar grants TSP a non-exclusive, royalty-free, nontransferable, worldwide, limited license to the data elements consisting of the Registered Name, the Registered Name Holder's contact data for the whois database (or its successor), the IP addresses of nameservers, the identity of the registering registrar, and other data required or permitted by technical specifications of the Registry System as made available to Registrar by TSP from time to time, solely for the propagation and provision of authorized access to the TLD zone files or as otherwise required or permitted by the ccTLD registry or Registry Agreement(s) with ICANN pertaining to the Supported TLDs, as may be amended from time to time.
- 2.5 Registrar's Registration Agreement and Domain Name Dispute Policy. Registrar shall have in effect an electronic or paper registration agreement with the Registered Name Holder or its authorized representative, which may be amended from time to time by Registrar. Registrar shall provide a copy of Registrar's registration agreement, or the URL at which it can be viewed, to TSP upon request. Registrar shall include in its registration agreement those terms required by this Agreement, by any relevant Supported TLD, and other terms that are consistent with Registrar's obligations to TSP under this Agreement.
- 2.5.1 In its registration agreement with each Registered Name Holder, Registrar shall require such Registered Name Holder to: (a) acknowledge and agree that TSP reserves the right to deny, cancel, or transfer any registration or transaction, or place any domain name(s) on registry lock, hold, or similar status, as it deems necessary, in its unlimited and sole discretion to correct mistakes made by TSP, the registry operator, or any Registrar in connection with a domain name registration and (b) indemnify, defend, and hold harmless TSP and its subcontractors, and its and their directors, officers, employees, agents, and affiliates from and against any and all claims, damages, liabilities, costs, and

expenses, including reasonable legal fees and expenses arising out of or relating to, for any reason whatsoever, the Registered Name Holder's domain name registration. The registration agreement shall further require that this indemnification obligation survive the termination or expiration of the registration agreement.

2.5.2 Registrar shall inform Registered Name Holders that Personal Data about the Registered Name Holder may be shared with TSP during the registration process and stored for the purposes of maintaining the domain registration. Registered Name Holder shall be able to exercise its Data Subject Rights in accordance with this Agreement.

- 2.6 Secure Connection. Registrar agrees to develop and employ in its domain name registration business all necessary technology and restrictions to ensure that its connection to the System is secure. All data exchanged between Registrar's system and the Registry System shall be protected to avoid unintended disclosure of information. Registrar shall employ commercially reasonable measures to prevent its access to the Registry System granted hereunder from being used to (i) allow, enable, or otherwise support the transmission by email, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than its own existing customers or (ii) enable high volume, automated, electronic processes that send queries or data to the Registry System, except as reasonably necessary to register domain names or modify existing registrations. Each EPP session shall be authenticated and encrypted using two-way transport layer security ("TLS") protocol or any successor thereof. Registrar agrees to authenticate every EPP client connection with the Registry System using both a certificate issued by either a commercial certification authority identified by TSP, or by TSP itself, and its Registrar client identifier (clid) and password, which it shall disclose only to its employees with a need-to-know. Registrar agrees to notify Registry within twenty-four (24) hours of learning that its Registrar password has been compromised in any way or if its server certificate has been revoked by the issuing certification authority or compromised in any way. Upon commercially reasonable prior written notification to Registrar, TSP may require other industry standard security provisions, practices, or technology to ensure that the Registry System is secure and stable, which TSP may adopt from time to time in its reasonable discretion.
- 2.7 Authorization Codes. Registrar shall not provide identical Registrar-generated transfer authorization <authInfo> codes ("TAC") for domain names registered by different registrants with the same Registrar; each TAC shall be unique and follow best practice complexity rules to prevent unauthorized transfers. Registrar shall provide the Registered Name Holder with timely access to the TAC along with the ability to modify the TAC in accordance with the Transfer Policy (as defined below).
- 2.9 Transfer of Sponsorship of Registrations. Registrar agrees to implement transfers of domain name registrations from another registrar to Registrar and vice versa pursuant to the ICANN Inter-Registrar Transfer Policy or the applicable ccTLD rules, each as may be amended from time to time (the "Transfer Policy").
- 2.10 Time. Registrar agrees that, in the event of any dispute concerning the time of the entry of a domain name registration into the registry database, the time shown in TSP records shall control.
- 2.11 Compliance with Operational Requirements. Registrar shall comply with each of the following requirements and shall include in its registration agreement with each Registered Name Holder an obligation for such Registered Name Holder to comply with each of the following requirements, whenever applicable: (a) ICANN standards, policies, procedures, and practices for which TSP has monitoring responsibility in accordance with its agreement with the registry operator(s) or other arrangement with ICANN and (b) operational standards, policies, procedures, and practices for the TSP Supported TLDs established from time to time by registry operator or TSP in a non-arbitrary manner and applicable to all registrars ("Operational Requirements") upon TSP's or registry operator's notification to Registrar of the establishment of those Operational Requirements.
- 2.12 Resolution of Technical Problems or Breach of Agreement. Registrar agrees to employ reasonably necessary employees, contractors, or agents with sufficient technical training and experience to respond to and fix all technical problems concerning the use of the Supported Protocol, the APIs, and the Registry System in conjunction with Registrar's systems. Registrar agrees that, in the event of significant degradation of the Registry System or other emergency, or upon Registrar's breach of this Agreement, TSP may, in its sole

discretion, temporarily suspend or restrict access to the Registry System. Such temporary suspensions or restrictions shall be applied in a nonarbitrary manner and shall apply fairly to any registrar similarly situated.

- 2.13 Regular Communications. During the term of this Agreement, TSP may, in compliance with ICANN regulations or due to registry operator changes of policies, need to update its policies. Registrar shall consult the Console regularly to acknowledge any change announced by TSP or the registry operator. Such changes will also be announced by email.
- 2.14 Payments. Registrar shall be responsible for the timely payment of all amounts as they become due under this Agreement, whether to TSP or to the registry operator, as applicable under the respective RRA(s). Registrar agrees to pay any and all applicable charges, including relevant taxes or fees, in accordance with the relevant price schedule as communicated by the registry operator or as available on the Console.

### 3. License

- 3.1 License Grant. Subject to the terms and conditions of this Agreement, TSP grants Registrar and Registrar accepts a non-exclusive, royalty-free, nontransferable, worldwide, limited license to use for the term and purposes of this Agreement the Licensed Product, Software, as well as updates and redesigns thereof, to provide domain name registration services in the Supported TLDs only and for no other purpose. The Licensed Product, as well as any updates and redesigns, will enable Registrar to provide all services in the Supported TLDs.
- 3.2 Limitations on Use. Notwithstanding any other provisions in this Agreement, except with the written consent of TSP, Registrar shall not: (i) sublicense the Licensed Product, Software, or otherwise permit any use of the Licensed Product by or for the benefit of any party other than Registrar or its authorized resellers; (ii) publish, distribute, or permit disclosure of the Licensed Product other than to employees, contractors, and agents of Registrar for use in Registrar's domain name registration business; (iii) decompile, reverse engineer, copy, or re-engineer the Licensed Product; or (iv) use or permit use of the Licensed Product in violation of any federal, state, or local rule, regulation, or law, or for any unlawful purpose.

### 4. Fees

- 4.1 Registration Fees. Registrar agrees to pay NIXI, or TSP as the case may be, the non-refundable fees set forth in the fee schedule available through the Console (the "Registration Fees"). Registration Fees may be adjusted, provided that any renewal price increase shall be made only upon notice to Registrar. Current prices and effective dates of price increases will be found in the Console.
- 4.2 URS: Registration Fees for Registered Names. Should the URS be supported by the registry operator, Registrar must accept and process payments for the renewal of a domain name by a URS complainant in cases where the URS complainant prevailed. Registrar must not renew a domain name to a URS complainant who prevailed for longer than one year.
- 4.3 Security Check or Payment Security. Registrars shall either (a) pass a financial credit and security check, to TSP's satisfaction, or (b) provide TSP, or the registry operator as the case may be, a payment security comprised of an irrevocable letter of credit, cash deposit, or credit card (the "Payment Security"). The amount of the Payment Security establishes Registrar's credit limit in the Registry System and is based on anticipated monthly level of registrations and other billable transactions. Registrar agrees to modify its Payment Security to support increases in billable transaction volumes as required by TSP. TSP will invoice Registrar monthly in arrears for each month's Registration Fees.
- 4.4 Fees Due. All Registration Fees are due immediately upon receipt of monthly invoices. TSP, or the registry operator as the case may be, will invoice Registrar after the end of each calendar month for Registration Fees due. Each invoice will detail the Supported TLDs and the Registration Fees due for each. In order to satisfy any outstanding account balances, TSP may draw upon Registrar's Payment Security. If this occurs, Registrar agrees to replenish Payment Security to the pre-draw level immediately upon completion of draw. If Registrar's Payment Security is depleted, registration of domain names for Registrar will be suspended and new registrations will not be accepted until the Payment Security is replenished.
- 4.5 Taxes. Registration Fees due under this Agreement are exclusive of taxes, duties, fees, and other

governmental charges of any kind. All payments due to TSP, or to the registry operator as the case may be, shall be made without any deduction or withholding on account of any tax, duty, charge, or penalty except as required by law, in which case, the sum payable by Registrar from which such deduction or withholding is to be made shall be increased to the extent necessary to ensure that, after making such deduction or withholding, TSP, or the registry operator as the case may be, receives and retains (free from any liability with respect thereof) a net sum equal to the sum it would have received but for such deduction or withholding being required.

- 4.6 Change in Registrar Sponsoring Domain Name. Registrar may assume sponsorship of a Registered Name Holder's existing domain name registration from another registrar by following the Transfer Policy. TSP will allow and support bulk transfer to Registrar, at no charge, and without extension of the registration term. For each transfer of the sponsorship of a domain-name registration under the Transfer Policy, Registrar agrees to pay TSP the renewal registration fee associated with a one-year extension. The losing registrar's Registration Fees will not be refunded as a result of any such transfer. For a transfer approved by the registry operator, Registrar agrees to pay TSP US\$0 (for transfers of 50,000 names or fewer) or US\$50,000 (for transfers of more than 50,000 names). Fees under this Section shall be due immediately upon receipt of TSP's invoice.
- 4.7 Non-Payment of Fees. Timely payment of fees owing under this Section is a material condition of performance under this Agreement. In the event that Registrar fails to pay its fees within 10 (ten) business days of receipt of a past due notice, TSP may: (i) stop accepting new initial or renewal registrations from Registrar; (ii) give written notice of termination of this Agreement; and (iii) pursue any other remedy under this Agreement.

## 5. Term and Termination

- 5.1 Term of the Agreement; Revisions. The duties and obligations of the Parties under this Agreement shall apply from the Effective Date through and including the last day of the calendar month sixty (60) months from the Effective Date (the "Initial Term"). Upon conclusion of the Initial Term, all provisions of this Agreement will automatically renew for successive five (5) year renewal periods until the Agreement has been terminated as provided herein, Registrar elects not to renew, or TSP ceases to operate the registry for Supported TLDs.
- 5.2 Compliance and Termination for Cause. In the event that either Party materially breaches any term of this Agreement, including any of its representations or warranties, and such breach is not substantially cured within thirty (30) calendar days after written notice of the breach is given by the other Party, then the non-breaching Party may, by giving written notice to the other Party, terminate this Agreement as of the date specified in such notice of termination. In the event that Registrar fails to comply with the terms of this Agreement, TSP may impose, at its election and after providing notice of breach to Registrar, graduated sanctions in lieu of issuing a termination notice, which sanctions may include limiting the ability of a Registrar (or a specific reseller of Registrar) to register new domain names, limiting the ability of a Registrar (or a specific reseller of Registrar) to update or modify records associated with Registered Names, or such other similar operational sanctions until Registrar has become compliant with the terms of this Agreement. In the event that the cause of a Registrar's failure to comply with the terms of this Agreement is confined to the failure of a Registrar's reseller to comply, Registrar may, at its election, comply with the terms of this Agreement by terminating or suspending its reseller and assuming direct responsibility, if applicable, for any affected Registered Names.
- 5.3 Termination at Option of Registrar. Registrar may terminate this Agreement at any time by giving TSP thirty (30) days' notice of termination.
- 5.4 Termination Upon Loss of Registrar's Accreditation. This Agreement shall terminate immediately in the event Registrar's accreditation for Supported TLDs is terminated or expires without renewal.
- 5.5 Termination in the Event of Bankruptcy. Either Party may terminate this Agreement if the other Party is adjudged insolvent or bankrupt or if proceedings are instituted by or against a Party seeking relief, reorganization, or arrangement under any laws relating to insolvency, seeking any assignment for the benefit of creditors, or seeking the appointment of a receiver, liquidator, or trustee of a Party's property or assets or the liquidation, dissolution, or winding up of a Party's business.



- 5.6 Effect of Termination. Upon termination of this Agreement:
- 5.6.1 TSP will, to the extent it has the authority to do so, allow for Domain Operations processed by Registrar prior to the date of such termination. TSP reserves the right to immediately contact any and all Registered Name Holders to facilitate the orderly and stable transition of Registered Name Holders to other registrars accredited in the Supported TLD.
- 5.6.2 Registrar shall (i) transfer its sponsorship of Registered Name registrations to another licensed registrar(s) of the Registry, in compliance with any procedures established or approved ICANN or the registry operator, as appropriate, and (ii) either return to TSP or certify to TSP the destruction of all Confidential Information it has received under this Agreement. All fees owing to TSP shall become immediately due and payable.
- 5.7 Survival. In the event of termination of this Agreement, sections 6 (Limitations, Warranties, and Disclaimers) and 7 (Miscellaneous) shall survive. Neither Party shall be liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with its terms but each Party shall be liable for any damage arising from any breach by it of this Agreement.

## **6. Limitations, Warranties, and Disclaimers**

- 6.1 LIMITATION OF LIABILITY. IN NO EVENT WILL TSP BE LIABLE TO REGISTRAR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES RESULTING FROM LOSS OF PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF TSP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- EXCEPT FOR A BREACH OF THE INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL THE MAXIMUM AGGREGATE LIABILITY OF THE PARTIES EXCEED THE TOTAL AMOUNT PAID OR PAYABLE TO TSP UNDER THE TERMS OF THIS AGREEMENT FOR THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD.
- 6.2 Registrar's Representations and Warranties. Registrar represents and warrants that: (a) it is a corporation duly incorporated, validly existing, and in good standing under the law of its jurisdiction; (b) it has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement; (c) the execution, performance, and delivery of this Agreement has been duly authorized by Registrar.
- 6.3 TSP's Representations and Warranties. TSP represents and warrants that: (1) it is a corporation duly incorporated, validly existing, and in good standing under the laws of India; (2) it has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement; and (3) the execution, performance, and delivery of this Agreement has been duly authorized by TSP.
- 6.4 Disclaimer of Warranties. The EPP, APIs, and Software are provided "as-is" and without any warranty of any kind.
- TSP EXPRESSLY DISCLAIMS ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD-PARTY RIGHTS.
- TSP DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE EPP, APIs, OR SOFTWARE WILL MEET REGISTRAR'S REQUIREMENTS; THAT THE OPERATION OF THE EPP, APIs, OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE; OR THAT DEFECTS IN THE EPP, APIs, OR SOFTWARE WILL BE CORRECTED. TSP DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE EPP, APIs, SOFTWARE, OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. SHOULD THE EPP, APIs, OR SOFTWARE PROVE DEFECTIVE, REGISTRAR ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION OF REGISTRAR'S OWN SYSTEMS AND SOFTWARE.

## **7. Miscellaneous**

- 7.1 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 Registered Name Holder, with any remedy, claim, cause of action, or privilege. Nothing in this Agreement shall be construed as creating an employer–employee relationship, agency relationship, a partnership, or a joint venture between the Parties.

- 7.2 Force Majeure. Neither Party shall be responsible for any failure to perform any obligation (other than payment obligations) or provide service hereunder because of any act of god, strike, work stoppage, governmental acts or directives, war, riot or civil commotion, epidemic, equipment or facilities shortages, failure of telecommunications services, or other similar force beyond such Party's reasonable control.
- 7.3 Further Assurances. Each Party shall execute and/or cause to be delivered to each other Party 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.
- 7.4 Amendments. Any amendment or supplement to this Agreement shall be subject to the written agreement of both Parties. Any new services offered by TSP after the date of execution of this Agreement shall be deemed accepted in the event Registrar opts to offer such future approved services.
- 7.5 Attorneys' Fees. If any legal action or other legal proceeding (including arbitration) relating to the performance under this Agreement or the enforcement of any provision of this Agreement is brought against either Party hereto, the prevailing Party shall be entitled to recover reasonable attorneys' fees, costs, and disbursements (in addition to any other relief to which the prevailing Party may be entitled).
- 7.6 Dispute Resolution; Choice of Law; Venue. The Parties shall attempt to resolve any disputes between them prior to resorting to litigation.
- 7.6.1 This Agreement is to be construed in accordance with and governed by the laws of India. Any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement shall be brought or otherwise commenced in a court located in New Delhi.
- 7.6.1 Each Party to this Agreement expressly and irrevocably consents and submits to the jurisdiction and venue of the courts of New Delhi in connection with any such legal proceeding.
- 7.7 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, or by email) to the address or email(s) provided by Registrar below or as updated in the Console.
- 7.8 Assignment. TSP may assign its rights or obligations under this Agreement, in whole or in part, to an affiliate, assignee, or successor without the consent of Registrar.
- 7.8.1 Assignment in Connection with Assignment of Agreement with ICANN. In the event that Registrar's accreditation agreement with ICANN or the ccTLD registry operator is validly assigned, Registrar's rights under this Agreement shall be automatically assigned to the assignee of the accreditation agreement, provided that the subsequent registrar assumes the obligations of Registrar under this Agreement.
- 7.8.2 Assignment in Connection with Redelelegation of a Supported TLD. In the event that there is a change of Manager for any of the Supported TLDs, TSP's rights under this Agreement may be automatically assigned.
- 7.9 Use of Confidential Information. During the term of this Agreement, each Party (the "Disclosing Party") may disclose Confidential Information to the other Party (the "Receiving Party"). Each Party's use and disclosure of Confidential Information is subject to the following:
- 7.9.1 The Receiving Party shall treat as strictly confidential and use all reasonable efforts to preserve the secrecy and confidentiality of all Confidential Information of the Disclosing Party, including implementing reasonable physical security measures and operating procedures.
- 7.9.2 The Receiving Party agrees that it will use any Confidential Information of the Disclosing Party solely for the purpose of exercising its rights or performing its obligations under this Agreement and for no other purposes whatsoever.



- 7.9.3 The Receiving Party shall make no disclosures whatsoever of any Confidential Information of the Disclosing Party to others provided that, if the Receiving Party is a corporation, partnership, or similar entity, disclosure is permitted to the Receiving Party's officers, employees, contractors, and agents who have a demonstrable need to know such Confidential Information, so long as the Receiving Party advises such personnel of the confidential nature of the Confidential Information and takes reasonable steps to maintain the confidentiality thereof.
- 7.9.4 The Receiving Party shall not modify or remove any confidentiality demarcations and/or copyright notices appearing on any Confidential Information of the Disclosing Party.
- 7.9.5 The Receiving Party agrees not to prepare any derivative works based on the Confidential Information.
- 7.9.6 Notwithstanding the foregoing, this section imposes no obligation upon the Parties with respect to information that (i) is disclosed in the absence of a confidentiality agreement and such disclosure was agreed to by the Disclosing Party in writing prior to such disclosure; (ii) is or has entered the public domain through no fault of the Receiving Party; (iii) is known by the Receiving Party prior to the time of disclosure; (iv) is independently developed by the Receiving Party without use of the Confidential Information; or (v) is made generally available by the Disclosing Party without restriction on disclosure. In the event the Receiving Party is required by law, regulation, or court order to disclose any of Disclosing Party's Confidential Information, Receiving Party will promptly notify Disclosing Party in writing prior to making any such disclosure in order to facilitate Disclosing Party seeking a protective order or other appropriate remedy from the proper authority, at the Disclosing Party's expense. Receiving Party agrees to cooperate with Disclosing Party in seeking such order or other remedy. Receiving Party further agrees that if Disclosing Party is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, it will furnish only that portion of the Confidential Information that is legally required.
- 7.10 Delays or Omissions; Waivers. No failure or delay on the part of either Party to exercise any power, right, privilege, or remedy under this Agreement shall operate as a waiver of such power, right, privilege, or remedy; 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 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; any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.
- 7.11 Construction. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement.
- 7.12 Intellectual Property. Except as expressly provided otherwise herein, 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.
- 7.13 Indemnification. Registrar, at its own expense, will indemnify, defend, and hold harmless TSP and its employees, directors, officers, representatives, agents, and affiliates against any claim, suit, action, or other proceeding brought against TSP or any affiliate of TSP based on or arising from any claim or alleged claim (i) relating to any product or service of Registrar; (ii) relating to any agreement, including Registrar's dispute policy, with any Registered Name Holder of Registrar; or (iii) relating to Registrar's domain name registration business, including but not limited to Registrar's advertising, domain name application process, systems and other processes, fees charged, billing practices, and customer service.

In the event of an indemnified event: (a) TSP will provide Registrar with prompt notice of any such claim and, (b) upon Registrar's written request, TSP will provide to Registrar all available information and assistance reasonably necessary for Registrar to defend such claim, provided that Registrar reimburses TSP for its actual and reasonable costs. TSP shall have the right to control the defense of TSP to any claim or in litigation, through counsel of its choice, whose fees shall be subject to indemnification as provided herein. Registrar will not enter into any settlement or compromise of any such indemnifiable claim without TSP's prior written

consent, which consent shall not be unreasonably withheld. Registrar will pay any and all costs, damages, and expenses, including but not limited to reasonable attorneys' fees and costs awarded against or otherwise incurred by TSP in connection with or arising from any such indemnifiable claim, suit, action, or proceeding.

- 7.14 Entire Agreement; Severability. This Agreement 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. Parties agree that in the event of a conflict or inconsistency between the Agreement and the DPA, the DPA shall control.