



REGISTRY-REGISTRAR AGREEMENT

by and between

mTLD TOP LEVEL DOMAIN, LLC

and

[Registrar]

[Date]

TABLE OF CONTENTS

	Page
1	DEFINITIONS 1
2	OBLIGATIONS OF REGISTRY OPERATOR 6
2.1	Access to Registry System 6
2.2	Maintenance of Registrations Sponsored by Registrar 6
2.3	Provision of Tool Kit; License 6
2.4	Changes to System 6
2.5	Engineering and Customer Service Support 7
2.6	Handling of Personal Data 7
2.7	Service Level Agreement..... 8
2.8	ICANN Requirements..... 8
3	OBLIGATIONS OF REGISTRAR 8
3.1	Accredited Registrar 8
3.2	Communication with Registered Name Holder.....8
3.3	Registrar Cooperation.....8
3.4	Registry Policies.....8
3.5	Registrar Responsibility for Customer Support..... 9
3.6	Registrar’s Registration Agreement..... 10
3.7	Indemnification Required of Registered Name Holders 10
3.8	Compliance with Terms and Conditions..... 11
3.9	Data Submission Requirements.....14
3.10	Security..... 14
3.11	Resolution of Technical Problems..... 15
3.12	Time 16
3.13	Change in Registrar Sponsoring Domain Name..... 16
3.14	Restrictions on Registered Names 16

4	FEES	16
4.1	Amount of Registry Operator Fees	16
4.2	Payment of Registry Operator Fees	17
4.3	Non-Payment of Fees	17
4.4	Parity of ICANN Support Fees	17
5	CONFIDENTIALITY AND INTELLECTUAL PROPERTY	17
5.1	Use of Confidential Information	17
5.2	Intellectual Property.	19
6	INDEMNITIES AND LIMITATION OF LIABILITY	20
6.1	Indemnification	20
6.2	Representation and Warranty	21
6.3	Limitation of Liability	22
6.4	Disclaimer of Warranties.....	22
6.5	Reservation of Rights.....	23
7	INSURANCE	23
7.1	Insurance Requirements	23
8	DISPUTE RESOLUTION	23
8.1	Definitions.	23
8.2	Arbitration	24
8.3	Notice of Arbitration and Appointment of Arbitrators.....	24
8.4	Interim and Injunctive Relief	24
8.5	Submission to Jurisdiction.....	25
8.6	Arbitral Award	25
8.7	Nonprevailing Party Costs and Fees	25
8.8	Claim of Immunity	25
9	TERM AND TERMINATION.....	26
9.1	Term of the Agreement; Revisions	26

9.2	Termination	26
9.3	Effect of Termination.....	27
9.4	Survival	28
10	MISCELLANEOUS	28
10.1	Assignments.	28
10.2	Notices.....	29
10.3	Third-Party Beneficiaries	30
10.4	Relationship of the Parties	31
10.5	Force Majeure	31
10.6	Amendments	31
10.7	Waivers.....	31
10.8	Entire Agreement.....	32
10.9	Counterparts.....	32
10.10	Severability.....	32
10.11	Governing Law.....	32
10.12	Usage	33



REGISTRY-REGISTRAR AGREEMENT

This Registry-Registrar Agreement (including, without limitation, the Exhibits and all other attachments, annexes, appendices and similar documents attached hereto or incorporated herein by reference, this "Agreement"), dated

_____, and effective from _____,

is between mTLD Top Level Domain, Ltd., trading as "dotmobi", a limited liability company organized under the laws of Ireland, with its principal place of business located at 2 La Touche House, IFSC, Dublin 1, Ireland ("Registry Operator"), and [Registrar's name] _____, a [jurisdiction and type of organization] _____, with its principal place of business located at [Registrar's location] _____ ("Registrar").

WHEREAS, Registry Operator has entered a Registry Agreement with the Internet Corporation for Assigned Names and Numbers ("ICANN") to operate a registry and shared registration system and to exercise delegated authority to develop and implement rules, policies, and procedures for the .mobi top-level domain;

WHEREAS, multiple registrars will provide Internet domain name registration services within the .mobi top-level domain (the ".MOBI TLD");

WHEREAS, Registrar wishes to act as a registrar for domain names within the .mobi top-level domain.

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, Registry Operator and Registrar, intending to be legally bound, hereby agree as follows:

1 DEFINITIONS

- 1.1 The "APIs" are the application program interfaces by which Registrar may interact, through the EPP, with the Registry System.



- 1.2 “Authorized Registrar” means an ICANN accredited registrar, selected by the Registry to serve as a registrar for the .MOBI TLD.
- 1.3 “Confidential Information” means all information and materials, including, without limitation, computer software, data, information, intellectual property, databases, protocols, reference implementation and documentation, financial information, statistics and functional and interface specifications, provided by one party (the “Disclosing Party”) to the other party (the “Receiving Party”) under this Agreement and marked or otherwise identified as Confidential, provided that if a communication is oral, the Disclosing Party will notify the Receiving Party in writing, including by email, within 15 days of the disclosure that it is confidential and also information which due to its content and nature the parties have agreed to have treated confidential whether or not so marked.
- 1.4 “DNS” means the Internet Domain Name System.
- 1.5 The “Effective Date” shall be the date stated to be the effective date in the first paragraph of this Agreement.
- 1.6 “EPP” means Extensible Provisioning Protocol, which is the protocol used by the Registry Operator.
- 1.7 The “General Registration Period” means the period beginning Wednesday, October 11, 2006 whereby Registrants may register a .mobi TLD.
- 1.8 “ICANN” means the Internet Corporation for Assigned Names and Numbers.
- 1.9 “ICANN Requirements” consist of the obligations set forth in the Registry Agreement, the obligations set forth in the latest version (including additional appendices) of the ICANN Registrar Accreditation Agreement,



any ICANN Temporary Specifications or Policies and Consensus Policies (as defined in the Registry Agreement), including, without limitation, the latest versions, of policies identified at <http://www.icann.org/general/consensus-policies.htm>.

- 1.10 The “Land Rush Period” means the registration period beginning Tuesday, September 26th, 2006 and ending Tuesday, October 10, 2006 whereby Registrants may register a .mobi TLD prior to the General Registration Period subject to the terms, rules and conditions of the Land Rush Period as outlined at www.mtld.mobi.
- 1.11 The “Limited Industry Launch” means the registration period beginning Monday, May 22, 2006 and ending Monday, May 29, 2006 that is set aside prior to the Sunrise Launch for a select number of qualified Registrants who operate within the Mobile Constituency subject to the terms, rules and conditions of the Limited Industry Launch as outlined at www.mtld.mobi.
- 1.12 “Personal Data” refers to data about any identified natural person or data that may be used to identify such a person.
- 1.13 The “Premium Name Allocation Process” means the allocation of names subject to the terms, rules and conditions associated with the Premium Name List as outlined at www.mtld.mobi.
- 1.14 The “Premium Name List” means the list of names the Registry has reserved in connection with a defined set of criteria as outlined at www.mtld.mobi and that will be allocated under the Premium Name Allocation Process.
- 1.15 “Registered Name” refers to a domain name within the .mobi domain, whether consisting of two or more (e.g., john.smith.mobi or johnsmith.mobi) levels, about which Registry Operator (whether directly

or via subcontract) maintains data in a Registry Database, arranges for such maintenance, or derives revenue from such maintenance. A name in a Registry Database may be a Registered Name even though it does not appear in a TLD zone file (e.g., a registered but inactive name).

- 1.16 “Registered Name Holder” means the holder of a Registered Name.
- 1.17 The word “Registrar,” when appearing with an initial capital letter, refers to the ICANN accredited registrar who is a party to this agreement.
- 1.18 The word “registrar”, when appearing without an initial capital letter, refers to a person or entity that, consistent with this agreement, contracts with Registrants and with Registry and collects registration data about Registrants and submits registration information for entry in the Registry Database.
- 1.19 “Registrant” means a person or entity that has entered into an agreement, formally or informally, with a Registrar with the intent to register a .mobi TLD.
- 1.20 The “Registrar Tool Kit” comprises the items described in Section 1 of Exhibit A, as well as updates, modifications, redesigns, clarifications, or explanations thereof distributed from time to time by Registry Operator.
- 1.21 “Registry Agreement” means the Registry Agreement between Registry Operator and ICANN for the operation of the Registry TLD.
- 1.22 “Registry Database” means the database comprised of data about one or more DNS domain names within the domain of the Registry TLD that is used to generate either DNS resource records that are published authoritatively or responses to domain-name availability lookup requests or Whois queries, for some or all of those names.

- 1.23 “Registry Operator” means mTLD, Top Level Domain, Limited.
- 1.24 “Registry Policies” include those policies, procedures, guidelines, and criteria promulgated by Registry Operator from time to time, as authorized by ICANN in Appendix S, Section 2 of the Registry Agreement (Delegated Authority), including without limitation, such policies as are set forth from time to time on Registry Operator’s web site at [www.mTLD.mobi], which are incorporated herein by reference. Registrar must review those policies as they form part of this Agreement.
- 1.25 “Registry Services” means services provided as an integral part of the operation of the Registry TLD, as defined in the Registry Agreement, and as such definition may be amended from time to time by ICANN and Registry Operator.
- 1.26 “Registry Services Provider” means Afilias Limited, a company incorporated under the laws of Ireland and having its principle offices at Office 110, 52 Broomhill Road, Tallaght Dublin 24, its successors and assigns.
- 1.27 The “Registry System” means the system operated by Registry Operator for Registered Names in the Registry TLD.
- 1.28 “Registry TLD” means the .mobi TLD.
- 1.29 The “Sunrise Period” means the registration period beginning Monday, May 22, 2006 and ending Friday, September 22, 2006 designed to provide qualified trademark and service mark owners an opportunity to register their respective Trademarks and Service marks, in an equitable process, prior to the registration period for the General Public and subject to the terms and conditions as defined in the Sunrise Rules, Policies and Procedures as outlined at www.mtld.mobi.
- 1.30 “Term” means the term of this Agreement, as set forth in Subsection 9.1

- 1.31 A “TLD” means a top-level domain of the DNS.
- 1.32 Other terms used in this Agreement as defined terms shall have the meanings ascribed to them in the context in which they are defined, which may be in the Registry Policies, or other documents referred to herein.

2 OBLIGATIONS OF REGISTRY OPERATOR

- 2.1 **Access to Registry System.** Throughout the Term of this Agreement, Registry Operator shall provide Registrar with access as a registrar to the Registry System. Nothing in this Agreement entitles Registrar to enforce the Registry Agreement or any other agreement between Registry Operator and ICANN.
- 2.2 **Maintenance of Registrations Sponsored by Registrar.** Subject to the provisions of this Agreement, ICANN Requirements, and Registry Policies, Registry Operator 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 by Subsection 4.1.
- 2.3 **Provision of Tool Kit; License.** No later than three business days after the Effective Date, or as otherwise agreed in writing by the parties hereto, Registry Operator shall provide and license to Registrar a copy of the Registrar Tool Kit, including sufficient technical specifications to reasonably permit Registrar to interface with the Registry System and employ its features that are available to registrars. Section 2 of Exhibit A contains the terms of the license to the Registrar Tool Kit, the terms of which Registrar accepts.
- 2.4 **Changes to System.** Registry Operator (or its agents or licensors) may from time to time modify the EPP, APIs, or other software, materials, or documentation licensed hereunder that may modify, revise, diminish, or augment the features of the Registry System. Registry Operator will use

commercially reasonable efforts to provide Registrar with at least ninety days notice prior to the implementation of any material changes to the EPP, APIs, or software licensed hereunder, but it cannot guarantee that such a ninety-day period will be always feasible.

2.5 **Engineering and Customer Service Support.** Registry Operator shall provide Registrar with engineering and customer service support as set forth below:

2.5.1 **Engineering Support.** Registry Operator agrees to provide Registrar with reasonable engineering telephone support to address engineering issues arising in connection with Registrar's use of the Registry System.

2.5.2 **Customer Service Support.** During the Term of this Agreement, Registry Operator will provide reasonable telephone and e-mail customer service support to Registrar (but not to Registered Name Holders or prospective customers of Registrar), for non-technical issues solely relating to the Registry System and its operation. Registry Operator will provide Registrar with a telephone number and e-mail address for such support during implementation of the Protocol, APIs and Software. First-level telephone support will be available on business days between the hours of 9 a.m. and 5 p.m. Eastern US time.

2.6 **Handling of Personal Data.** Registry Operator shall notify Registrar of the purposes for which Personal Data submitted to Registry Operator by Registrar is collected, the intended recipients (or categories of recipients) of such Personal Data, and the mechanism for access to and correction of such Personal Data. Registry Operator shall take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

- 2.7 **Service Level Agreement (SLA).** Registry Operator shall comply with the provisions of the SLA set forth in the Registry Agreement. .
- 2.8 **ICANN Requirements.** Registry Operator's obligations hereunder are subject to modification at any time as the result of any change in ICANN Requirements. Notwithstanding anything in this Agreement to the contrary, Registrar shall comply with any such ICANN Requirements in accordance with the timeline defined by ICANN.

3 OBLIGATIONS OF REGISTRAR

- 3.1 **Accredited Registrar.** During the Term of this Agreement, Registrar shall at all times maintain in force and effect its accreditation by ICANN as a registrar for the Registry TLD.
- 3.2 **Communication with Registered Name Holder.** Registrar shall not communicate any information to a Registered Name Holder which is inconsistent or otherwise not in compliance with (i) a Policy; (ii) the terms of this Agreement; or (iii) operational standards, procedures and practices for the Registry TLD established from time to time by the Registry Operator. Registrar shall facilitate Registry Operator communication with Registered Name Holder (e.g., for request(s) for additional information regarding compliance requirements) as Registry Operator desires for performance or promotion of Registry Services or other services, in complying with Policy or in complying with law enforcement or a court order.
- 3.3 **Registrar Cooperation.** Registrar, its employees, contractors, agents and delegates, shall not impede Registry Operator's performance under this Agreement and shall reasonably cooperate with Registry Operator in furtherance of such performance.
- 3.4 **Registry Policies.** Registrar shall comply with all Registry Policies, including the style guides set forth therein:

- 3.4.1 Prior to commencing registration activities, Registrar shall establish a dotmobi website that complies with Registry Policies.
- 3.4.2 Registrar shall be licensed to display a “.mobi certified” logo on its website after it has completed all the necessary steps for dotmobi certification and the establishment of the website described in 3.4.1 above.
 - 3.4.2.1 Additional certification levels, along with policies, rules, and guidelines therein, may be instituted by the Registry following a thirty days notice period and the additional compliance procedures of Section 10.2 below. Additionally, the notice, along with the information pertaining to the additional certification levels will be posted on the www.mtld.mobi website.
- 3.4.3 Registrar’s license to use the “dotmobi certified” logo shall terminate immediately in the event of Registrar’s material violation of this Agreement, including without limit failure to enforce Registry Policies or make any payments due to Registry Operator hereunder.
- 3.4.4 Registrar shall be responsible for promptly communicating to the Registrant any non-compliant activity that the Registry might identify, and working with the Registrant to bring the website into compliance with the Style Guide.
- 3.5 **Registrar Responsibility for Customer Support.** Registrar shall provide such customer support as is reasonably needed to receive, accept, and process registrations from qualified entities and individuals desiring to become Registered Name Holders, and to receive, accept, and process orders for cancellation, deletion or transfer of Registered Names. Throughout the term of their registration, Registrar shall provide Registered Name Holders reasonable customer service (including domain name record support) and billing and technical support. In addition, the

Registrar will reasonably cooperate with the Registry Operator in marketing campaigns or community outreach programs that the Registry Operator may commence from time to time.

3.6 **Registrar's Registration Agreement.** At all times while it is sponsoring the registration of any Registered Name within the Registry System, Registrar shall have in effect an electronic or paper registration agreement with the Registered Name Holder sufficient to bind such Holder. The initial form of Registrar's registration agreement is attached as ***Exhibit B*** (which may contain multiple alternative forms of the registration agreement). Registrar may from time to time amend those forms of registration agreement or add alternative forms of registration agreement, provided a copy of the amended or alternative registration agreement is consistent with ICANN Requirements and is furnished to the Registry Operator at least fourteen (14) calendar days in advance of the use of such amended registration agreement. Notwithstanding anything in this Agreement to the contrary, Registrar shall include in its registration agreement those terms required by this Agreement (including, without limitation, Sections 3.7 and 3.8) as set forth in the Registry Policies and other terms that are consistent with Registrar's obligations to Registry Operator under this Agreement, and shall not amend such terms without the express written consent of Registry Operator.

3.7 **Indemnification Required of Registered Name Holders.** Registrar's registration agreement with each Registered Name Holder shall obligate such Registered Name Holder to indemnify, to the maximum extent permitted by law, using the form of indemnification set forth in the Registry Policies, defend and hold harmless Registry Operator, and its directors, officers, employees and agents from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to the Registered Name Holder's domain name registration and or use. The registration agreement shall further require that this indemnification obligation survive the termination or expiration of the registration agreement.

3.7.1 **Indemnification of Registry Services Provider.** The Registrar, in its registration agreement with each Registered Name Holder, Registrar shall require such Registered Name Holder to indemnify, defend and hold harmless Registry Services Provider, its subsidiaries and affiliates, and the directors, officers, employees and agents or each of them, from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to the Registered Name Holder's domain name registration and or use. The registration agreement shall further require that this indemnification obligation survive the termination or expiration of the registration agreement.

3.8 **Compliance with Terms and Conditions.** To the extent Registry Policies are applicable to or contemplate compliance by Registered Name Holders, Registrar shall, in the manner set forth by Registry Operator from time to time in the Registry Policies, obligate such Registered Name Holders to adhere to Registry Policies. Furthermore, and in addition to the provisions of Subsection 3.6 and 3.7, in its registration agreement with each Registered Name Holder, Registrar shall require such Registered Name Holder to:

3.8.1 ICANN requirements, standards, policies, procedures, and practices for which Registry Operator has monitoring responsibility in accordance with the Registry Agreement or other arrangement with ICANN;

3.8.2 Operational standards, policies, procedures, and practices for the Registry TLD established from time to time by Registry Operator in a non-arbitrary manner as Registry Policies, applicable to all registrars and/or Registered Name Holders, and consistent with the Registry Agreement shall be effective upon thirty days notice by Registry Operator to Registrar; and

- 3.8.3 The following provision: “Notwithstanding anything in this Agreement to the contrary, mTLD Top Level Domain Ltd. (“dotmobi”), the Registry Operator of the .mobi TLD, is and shall be an intended third party beneficiary of this Agreement. As such, the parties to this Agreement acknowledge and agree that the third party beneficiary rights of dotmobi have vested and that dotmobi has relied on its third party beneficiary rights under this Agreement in agreeing to [Registrar’s name] _____ being a registrar for the .mobi top-level domain. Additionally, the third party beneficiary rights of dotmobi shall survive any termination or expiration of this Agreement.”
- 3.8.4 Consent to the use, copying, distribution, publication, modification and other processing of Registered Name Holder's Personal Data by Registry Operator and its designees and agents in a manner consistent with the purposes specified pursuant to Subsection 2.6 and with relevant mandatory local data protection, laws and privacy;
- 3.8.5 Submit to proceedings commenced under ICANN's Uniform Domain Name Dispute Resolution Policy ("UDRP");
- 3.8.6 Immediately correct and update the registration information for the Registered Name during the registration term for the Registered Name.; and
- 3.8.7 Agree to be bound by the terms and conditions of the initial launch and general operations of the Registry TLD, including without limitation the Limited Industry Launch, the Sunrise Period, the Land Rush Period, the Sunrise Dispute Resolution Policy, the Premium Name Allocation Process, and the General Registration Period , and further to acknowledge that Registry Operator and the Registry Service Provider has no liability of any kind for any loss or liability resulting from the proceedings and processes relating to the Limited Industry Launch, the Sunrise Period, the Land Rush

Period, the Sunrise Dispute Resolution Policy, the Premium Name Allocation Process, and the General Registration Period including, without limitation: (a) the ability or inability of a registrant to obtain a Registered Name during these periods, and (b) the results of any dispute made during the limited industry launch or over a Sunrise Registration.

- 3.8.8 You hereby acknowledge and agree that the Registry and Registry Services Provider, acting in consent with the Registry, reserves the right to deny, cancel or transfer any registration that it deems necessary, in its discretion (i) to protect the integrity and stability of the registry; (ii) to comply with all applicable laws, government rules or requirements, requests of law enforcement, in compliance with any dispute resolution process; (iii) to avoid any liability, civil or criminal, on the part of the Registry as well as its affiliates, subsidiaries, officers, directors, representatives, employees, and stockholders; (iv) for violations of the terms and conditions herein; or (v) to correct mistakes made by the Registry or any registrar in connection with a domain name registration. The Registry also reserves the right to freeze a Registered Name during resolution of a dispute.
- 3.8.9 Acknowledge and agree that they must comply with the requirements, standards, policies, procedures and practices set forth in the dotmobi Style Guide (www.mtld.mobi) and consent to the monitoring of the website as described in the dotmobi Style Guide monitoring guidelines (www.mtld.mobi) for compliance with the Style Guide. Furthermore, Registrant acknowledges and agrees that this Style Guide is subject to modification by the Registry with any such changes appearing at the previously designated URL, and that Registrant must promptly comply with any such changes in the time allotted.

3.9 **Data Submission Requirements.** As part of its registration and sponsorship of Registered Names in the Registry TLD, Registrar shall submit complete data as reasonably required by the Registry Operator from time to time, and shall update such data from time to time in order to maintain the accuracy thereof. Registrar hereby grants Registry Operator a non-exclusive, non-transferable, limited license to such data for propagation of and the provision of authorized access to the TLD zone files and as otherwise required in Registry Operator's operation of the Registry TLD, and for no other purpose.

3.9.1 **Proxy Registrations.** Registrations by Proxy or Proxy Registrations will not be allowed during the Sunrise Period, the Limited Industry Launch and the Premium Name Allocation and Auction Period. A Registration by Proxy or Proxy Registration during any or all of these periods will be seen as a material breach to this contract.

3.10 **Security.** Registrar shall develop and employ in its domain name registration business technical, physical, and administrative measures as needed to ensure that its connection to the Registry System is secure, that all data exchanged between Registrar's system and the Registry System is protected from unauthorized access or unintended disclosure. Registrar shall employ technical, physical, and administrative measures as needed to prevent its access to the Registry System granted hereunder from being used to (i) access the Registry System without authorization from Registry Operator; (ii) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of commercial advertising or solicitations to entities other than its own existing customers (to the extent permitted by applicable law); or (iii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator, any other registry operated under an agreement with ICANN, or any ICANN-accredited registrar, except as reasonably necessary to register domain names or modify existing registrations. In addition, Registry Services Provider may require other reasonable security provisions (both

technical and non-technical) to ensure that the Registry System is secure and stable.

3.10.1 Each session wherein Registrar accesses the Registry System shall be authenticated and encrypted using two-way secure socket layer ("SSL") protocol. At a minimum, Registrar shall authenticate every client connection with the Registry System using both an X.509 server certificate issued by a commercial certification authority identified by the Registry Services Provider and its Registrar password. Registrar shall disclose only its Registrar password to its employees with a need to know. Registrar agrees to notify Registry Services Provider within four 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.

3.10.2 Registrar shall not provide identical Registrar-generated <authinfo> codes for domain names registered by different registrants. Registry Services Provider in its sole discretion may choose to modify <authinfo> codes for one or more given domains sponsored by Registrar and shall notify Registrar of such modifications that may be verified by Registrar via EPP compliant mechanisms (i.e. EPP<poll> or EPP<domain:Info>). Documentation of these mechanisms shall be included in the Registrar toolkit provided by the Registry Services Provider or otherwise provided by Registry Services Provider to Registrar. Registrar shall provide the Registered Name Holder with timely access to the <auth-info> code along with the ability to modify the <auth-info> code in accordance with the provisions of the ICANN Transfer Policy (<http://www.icann.org/transfers/policy-12jul04.htm>).

3.11 **Resolution of Technical Problems.** Registrar shall employ such employees, contractors, or agents with sufficient technical training and experience as reasonably necessary to fulfill its obligations hereunder, and

to respond to and fix all technical problems concerning the use of the EPP, the APIs and the systems of Registry Operator in conjunction with Registrar's systems. In the event of significant degradation of Registry operations or other emergency, Registry Operator may, in its sole discretion, temporarily suspend Registrar's access to the Registry System. Such temporary suspensions shall be applied in a non-arbitrary manner and shall apply fairly to any registrar similarly situated. Registry Operator accepts no liability whatsoever and howsoever incurred for losses to the Registrar caused or linked to such a suspension of service.

- 3.12 **Time.** 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 the Registry records shall be deemed the definitive registration entry time.
- 3.13 **Change in Registrar Sponsoring Domain Name.** Registrar may assume or transfer sponsorship of a Registered Name Holder's existing domain name registration from or to another registrar in accordance with all applicable ICANN Requirements, including without limitation, the Policy on Transfer of Registrations Between Registrars (the Transfer Policy), and applicable Registry Policies..
- 3.14 **Restrictions on Registered Names.** In addition to complying with Registry Policies and ICANN requirements limiting or prohibiting registration of specified domain names that may be registered, Registrar agrees to comply with applicable statutes and regulations limiting the domain names that may be registered.

4 FEES

- 4.1 **Amount of Registry Operator Fees.** Registrar agrees to pay Registry Operator the fees set forth in ***Exhibit C*** for initial and renewal registrations and other services provided by Registry Operator to Registrar (collectively, "Fees"). Registry Operator reserves the right to revise the Fees prospectively upon thirty days advanced written notice to Registrar, to the



extent and in the manner that such adjustments are permitted by the Registry Agreement.

- 4.2 **Payment of Registry Operator Fees.** Prior to commencing registrations, Registrar shall establish a letter of credit, deposit account, or other credit facility in a form and with an institution acceptable to Registry Operator, which acceptance will not be unreasonably withheld. Registry Operator shall set no minimum deposit, however the Registrar shall place in this account enough funds to cover expected transactions. All Fees are due immediately upon transaction and payable from, the letter of credit, deposit account, or other credit facility.
- 4.3 **Non-Payment of Fees.** Registrar's timely payment of Fees is a material condition of Registry Operator's obligations under this Agreement. In the event that Registrar fails to pay its Fees within five days of the date when due, Registry Operator may, in its sole discretion: (i) stop accepting new initial or renewal registrations from Registrar; (ii) delete the domain names associated with unpaid invoices from the Registry database; (iii) give written notice of termination of this Agreement pursuant to Subsection 9.2.1; and/or (iv) pursue any other remedy under this Agreement.
- 4.4 **Variable Registry-Level Fees.** In the event that Registry Operator is required to pay Variable Registry-Level Fees to ICANN in accordance with Subsection 7.2(c) of the Registry Agreement, Registry Operator is entitled to collect such Fees from Registrar, and Registrar hereby gives its express approval of Registry Operator's collection, in addition to Fees due to Registry Operator under 4.2 above, of the amount that is equivalent, on a per-name basis, to the Variable Registry-Level Fee paid by Registry Operator to ICANN with respect to Registrar's registrations in the Registry TLD.

5 CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- 5.1 **Use of Confidential Information.** During the Term of this Agreement, each party (the "Disclosing Party") may disclose its Confidential



Information to the other party (the "Receiving Party"). Each party's use and disclosure of the Confidential Information of the other party is subject to the following terms and conditions:

- 5.1.1 The Receiving Party will 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 technical, physical, and administrative security measures and operating procedures.
- 5.1.2 The Receiving Party will use Confidential Information of the Disclosing Party solely for the purpose of exercising its rights and/or performing its obligations under this Agreement and for no other purposes whatsoever.
- 5.1.3 Except as expressly contemplated hereunder, 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, then the Receiving Party may disclose Confidential Information to its officers, employees, contractors and agents who have a demonstrable need to know such Confidential Information and:
 - (a) who have been advised by the Receiving Party of the confidential nature of the Confidential Information and of the procedures required to maintain the confidentiality thereof; and
 - (b) the Receiving Party ensures that they are legally obligated to comply with the terms of this Section 5.1; provided, further, that the Receiving Party shall be responsible for, and will indemnify the Disclosing Party in the manner set forth in Section 6.1 below, against, any unauthorized use or disclosure of any Confidential Information, whether by the Receiving Party or such personnel.
- 5.1.4 The Receiving Party shall not modify or remove any confidentiality legends and/or copyright notices appearing on any Confidential Information of the Disclosing Party.

- 5.1.5 The Receiving Party agrees not to prepare any derivative works based on the Confidential Information.
- 5.1.6 Notwithstanding the foregoing, this Subsection 5.1 imposes no obligation upon the parties with respect to information that, as indicated by reasonable written evidence, (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.
- 5.1.7 The Receiving Party's duties under this Subsection 5.1 shall expire five (5) years after the expiration or termination of this Agreement or earlier, upon written agreement of the parties.

5.2 Intellectual Property.

- 5.2.1 Subject to the licenses granted hereunder, each party will continue to independently own its intellectual property, including all patents, trademarks, trade names, service marks, copyrights, trade secrets, design rights, proprietary processes and all other forms of intellectual property.
- 5.2.2 Without limiting the generality of the foregoing, no commercial use rights or any licenses under any patent, patent application, copyright, trademark, know-how, trade secret, or any other intellectual proprietary rights are granted by the Disclosing Party to the Receiving Party by this Agreement, or by any disclosure of any Confidential Information to the Receiving Party under this Agreement.

6 INDEMNITIES AND LIMITATION OF LIABILITY

6.1 **Indemnification.** Registrar, at its own expense and within thirty (30) days of presentation of a written demand by mTLD under this paragraph, will indemnify, keep indemnified, defend and hold harmless mTLD and its employees, directors, officers, representatives, shareholders, agents, affiliates and subcontractors, against any claim, suit, action, or other proceeding brought against mTLD or any affiliate of mTLD 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; provided, however, that in any such case: (a) mTLD provides Registrar with prompt written notice of any such claim, and (b) upon Registrar's written request, mTLD will provide to Registrar all available information (subject to compliance with local laws including, but not limited to, data protection and privacy laws) and assistance reasonably necessary for Registrar to defend such claim, provided that Registrar reimburses mTLD for its actual and reasonable costs. Registrar will not enter into any settlement or compromise of any such indemnifiable claim without mTLD's prior written consent, which consent shall not be unreasonably withheld provided that consent may be withheld from any settlement or compromise that does not include a complete and unconditional release of mTLD or that does include any injunctive or non-monetary relief applicable to mTLD. Registrar will pay any and all costs, damages (including direct, consequential, and/or special damages), and expenses, including, but not limited to, reasonable legal fees and costs awarded against or otherwise incurred (directly or indirectly) by mTLD in connection with or arising from any such indemnifiable claim, suit, action or proceeding.

6.1.1 Registrar will indemnify, keep indemnified, defend and hold harmless Registry Service Provider and its employees, directors, officers, representatives, shareholders, agents, affiliates and subcontractors, against any claim, suit, action, or other proceeding brought against Registry Service Provider or any affiliate of Registry Service Provider 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; provided, however, that in any such case: (a) Registry Service Provider provides Registrar with prompt written notice of any such claim, and (b) upon Registrar's written request, Registry Service Provider will provide to Registrar all available information (subject to compliance with local laws including, but not limited to, data protection and privacy laws) and assistance reasonably necessary for Registrar to defend such claim, provided that Registrar reimburses Registry Service Provider for its actual and reasonable costs. Registrar will not enter into any settlement or compromise of any such indemnifiable claim without Registry Service Provider's prior written consent, which consent shall not be unreasonably withheld. provided that consent may be withheld from any settlement or compromise that does not include a complete and unconditional release of Registry Service Provider or that does include any injunctive or non-monetary relief applicable to Registry Service Provider. Registrar will pay any and all costs, damages (including direct, consequential, and/or special damages), and expenses, including, but not limited to, reasonable legal fees and costs awarded against or otherwise incurred (directly or indirectly) by Registry Service Provider in connection with or arising from any such indemnifiable claim, suit, action or proceeding.

6.2 Representation and Warranty. Registrar represents and warrants that: (i) it is a company, corporation duly incorporated, validly existing and in good

standing under the law of the jurisdiction of its formation, (ii) it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement, (iii) the execution, performance and delivery of this Agreement has been duly authorized by Registrar, that (iv) no further approval, authorization or consent of any governmental or regulatory authority or of ICANN is required to be obtained or made by Registrar in order for it to enter into and perform its obligations under this Agreement, and (v) that it will provide services to its [customers/users] using all due skill, care, diligence and professionalism.

6.3 Limitation of Liability. SUBJECT TO SECTIONS 6.1 AND 6.1.1, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES RESULTING FROM LOSS OF PROFITS OR BUSINESS INTERRUPTION, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE MAXIMUM AGGREGATE LIABILITY OF REGISTRY OPERATOR AND ITS SUBCONTRACTORS EXCEED THE LESSER OF (i) THE TOTAL AMOUNT PAID TO THE REGISTRY OPERATOR UNDER THE TERMS OF THIS AGREEMENT FOR THE IMMEDIATELY PRECEDING 12 MONTH PERIOD, OR (ii) \$100,000 USD.

6.4 Disclaimer of Warranties. THE REGISTRAR TOOL KIT, AND ALL OTHER ITEMS PROVIDED BY THE REGISTRY OPERATOR OR ITS SUBCONTRACTORS, ARE PROVIDED "AS-IS" AND WITHOUT ANY WARRANTY OF ANY KIND. REGISTRY OPERATOR EXPRESSLY DISCLAIMS ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. REGISTRY OPERATOR DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE REGISTRAR TOOL KIT WILL MEET REGISTRAR'S REQUIREMENTS, OR THAT THE OPERATION OF THE REGISTRAR TOOL KIT WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE REGISTRAR TOOL KIT WILL BE CORRECTED.



FURTHERMORE, REGISTRY OPERATOR DOES NOT WARRANT NOR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE REGISTRAR TOOL KIT OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. SHOULD THE REGISTRAR TOOL KIT PROVE DEFECTIVE, REGISTRAR ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION OF REGISTRAR'S OWN SYSTEMS AND SOFTWARE.

6.5 Reservation of Rights. Registry Operator reserves the right to deny, cancel or transfer any registration or transaction that it deems necessary, in its discretion; (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, in compliance with any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of the Registry Operator, as well as its affiliates, subsidiaries, officers, directors, and employees; (4) for violations of this Agreement and its Exhibits; or (5) to correct mistakes made by the Registry Operator or any Registrar in connection with a domain name registration. The Registry Operator also reserves the right to place a domain name on hold, lock, or similar status during resolution of a dispute.

7 INSURANCE.

7.1 Insurance Requirements. Registrar shall acquire, on or before the Effective Date, at least US \$1,000,000 in comprehensive general liability insurance from a reputable insurance provider with a rating equivalent to an A.M. Best rating of "A" or better and shall maintain insurance meeting these requirements throughout the Term of this Agreement. Registrar shall provide a copy of the insurance policy to Registry Operator current as of the Effective Date upon execution of this Agreement, and from time to time thereafter upon Registry Operator's reasonable request.

8 DISPUTE RESOLUTION

8.1 Definitions.

8.1.1 “Dispute” means any difference, controversy or claim (whether based on contract, tort, statute, or any other legal basis) arising out of or relating to this Agreement (including, without limitation, the formation, existence, validity, enforceability, performance, expiration, or termination of this Agreement or the arbitration provision herein) or the products and services supplied by either party to this Agreement and includes an application for provisional or protective relief.

8.1.2 “ICC” means the International Court of Arbitration of the International Chamber of Commerce, or its successor.

8.1.3 “Rules” means the Rules of Arbitration of the ICC then in effect.

8.2 Arbitration. Any Dispute shall be finally, confidentially, and individually resolved by arbitration by three (3) arbitrators in accordance with the Rules; provided that this Agreement shall control if there is a conflict between it and the Rules. The seat of the arbitration shall be Dublin, Ireland. The language of the arbitration shall be English, and all documentation, testimony, or other materials submitted to the arbitrators shall be in the English language.

8.3 Notice of Arbitration and Appointment of Arbitrators. To commence an arbitration under this Section 8, the party hereto desiring arbitration shall notify the other party hereto in writing in accordance with the Rules. Each party shall designate one (1) arbitrator. The two (2) arbitrators so designated shall within fifteen (15) days designate the presiding arbitrator. If a Party fails to designate its arbitrator within fifteen (15) days after the delivery of the notice of arbitration, that Party’s arbitrator shall be selected by the ICC. If the two arbitrators to be appointed by the Parties fail to agree on a presiding arbitrator within fifteen (15) days of appointment of the second arbitrator, the presiding arbitrator shall be appointed by the ICC.

8.4 Interim and Injunctive Relief. The arbitral tribunal shall have the authority, inter alia, to order interim or injunctive relief. Prior to the constitution of the

arbitral tribunal, any party hereto may apply to any competent court for interim or injunctive relief. The parties hereto each acknowledge and agree that, for the purposes of an application for interim or injunctive relief, damages would not be an adequate remedy in respect of, inter alia, any breach or failure fully to perform Section 0 of this Agreement.

8.5 Submission to Jurisdiction. The parties hereto hereby irrevocably and unconditionally submit to the nonexclusive jurisdiction of Ireland for the purposes of: (i) enforcing this arbitration provision; (ii) obtaining interim or injunctive relief before the arbitral tribunal is constituted; (iii) obtaining discovery from third parties; and (iv) recognizing or enforcing any arbitral award.

8.6 Arbitral Award. The arbitral award shall be: (a) reasoned and in writing, (b) binding and final upon all parties to the proceeding, (c) confidential, and (d) the sole and exclusive remedy between them regarding any Dispute. The arbitrators are authorized to award pre-award and post-award interest at commercial rates. Any monetary award by the arbitrators shall be made and payable in US dollars. Judgment on any award rendered by the arbitrators may be entered and enforced in any court having jurisdiction thereof.

8.7 Nonprevailing Party Costs and Fees. The nonprevailing party hereto shall be responsible for the compensation of the arbitrators, but each party hereto respectively agrees that it shall be solely responsible for its own costs and fees of representation.

8.8 Claim of Immunity. To the extent that any party hereto may claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise), or other legal process in any jurisdiction and to the extent that there may be attributed to itself or its assets such immunity (whether or not claimed) in any such jurisdiction, such party hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction. The parties hereto acknowledge that this Agreement is a commercial agreement.

9 TERM AND TERMINATION

9.1 Term of the Agreement; Revisions. The Term of this Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with the provisions of this Agreement, shall expire on the last day of the calendar month which is sixty months after the Effective Date. The Term of this agreement shall automatically renew for additional one (1) year periods unless either party provides notice to the other, in writing, of termination at least thirty-days prior to end of the initial or any renewal term. In the event that the Registry Operator elects to amend this Registry-Registrar Agreement, Registrar will either execute an amendment substituting the revised agreement in place of this Agreement or, at its option exercised within fifteen days after the Registry Operator provides notice of such amendment, terminate this Agreement immediately by giving written notice to Registry Operator. If Registry Operator does not receive the executed amendment or notice of termination from Registrar within the fifteen day period, Registrar shall be deemed to have terminated this Agreement effective upon the expiration of such fifteen day period.

9.2 Termination. This Agreement may be terminated as follows:

9.2.1 Termination For Cause. In the event that either party materially breaches any of its obligations under this Agreement and such breach is not substantially cured within thirty calendar days after written notice thereof is given by the other party, then the non-breaching party may, by giving written notice thereof to the other party, terminate this Agreement as of the date specified in such notice of termination, with such date not being earlier than the date such notice is provided.

9.2.2 Termination at Option of Registrar. Registrar may terminate this Agreement at any time by giving Registry Operator thirty days notice of termination.

9.2.3 Termination Upon Loss of Registrar's Accreditation. This Agreement shall terminate in the event Registrar's accreditation by ICANN is terminated or expires without renewal.

9.2.4 Termination in the Event of Termination of Registry Agreement. This Agreement shall terminate in the event that the Registry Agreement is terminated or expires without entry of a subsequent registry agreement with ICANN and assignment of this Agreement under Subsection 10.1.1.

9.2.5 Termination in the Event of Insolvency or 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, or 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.

9.3 Effect of Termination. Upon the expiration or termination of this Agreement for any reason:

9.3.1 Registry Operator will complete the registration of all domain names processed by Registrar prior to the effective date of such expiration or termination, provided that Registrar's payments to Registry Operator for Fees are current.

9.3.2 Registrar shall immediately transfer its sponsorship of Registered Names to another ICANN-accredited registrar in compliance with any procedures established or approved by ICANN.

9.3.3 All Confidential Information of the Disclosing Party in the possession of the Receiving Party shall be immediately returned to the Disclosing Party.

9.3.4 All Fees owing to Registry Operator shall become immediately due and payable.

9.3.5 In the event of pending or actual termination in accordance with the provisions of Subsections 9.2.1, 9.2.2, or 9.2.3, Registry Operator 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 dotmobi-accredited registrars.

9.4 Survival. In the event of termination or expiration of this Agreement, the following shall survive: (i) Sections 3.6, 3.7, 3.7.1, 3.8, 4, 5, 6, and 8, and (ii) the Registered Name Holder's indemnification obligations. Neither party shall be liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with its terms.

10 MISCELLANEOUS

10.1 Assignments.

10.1.1 Assignment to Successor Registry Operator. In the event the Registry Operator's Registry Agreement is terminated or expires without entry by Registry Operator and ICANN of a subsequent registry agreement, Registry Operator's rights under this Agreement may be assigned to a company with a registry agreement covering the Registry TLD upon ICANN's giving Registrar written notice within sixty days of the termination or expiration, provided that the subsequent registry operator assumes the duties of Registry Operator under this Agreement.

10.1.2 Assignment in Connection with Assignment of Agreement with ICANN. In the event that the Registry Agreement is validly assigned, Registry Operator's rights under this Agreement shall be automatically assigned to the assignee of the Registry Agreement, provided that the assignee assumes the duties of Registry Operator under this Agreement.



10.1.3 Other Assignments. Except as otherwise expressly provided in this Agreement, the provisions of this Agreement shall inure to the benefit of and be binding upon, the successors and permitted assigns of the parties. Neither party shall assign or transfer any or all of its rights or obligations under this Agreement (whether by operation of law or otherwise) without the prior written consent of the other party, which shall not be unreasonably withheld. Any assignment or transfer in contravention of this Section 10.1.3 shall be null and void.

10.2 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 e-mail or by fax during business hours) to the address or fax number set forth beneath the name of such party below, unless such party has given a notice of a change of address or individual representation in writing:

If to Registrar:

phone:

Fax:

email:



with copy to:

phone:
Fax:
email:

If to Registry Operator:

Ireland
phone:
Fax:
email:

with a copy to:

10.3 Third-Party Beneficiaries. The parties expressly agree that ICANN is an intended third-party beneficiary of this Agreement. Otherwise, this Agreement shall not be construed to create any obligation by either party to any non-party to this Agreement, including any Registered Name

Holder. Registrar expressly acknowledges that, notwithstanding anything in this Agreement to the contrary, it is not an intended third-party beneficiary of the Registry Agreement.

10.4 Relationship of the Parties. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS CREATING AN EMPLOYER-EMPLOYEE OR AGENCY REALATIONSHOP, A PARTNERSHIP OR A JOINT VENTURE BETWEEN THE PARTIES.

10.5 Force Majeure. Neither party shall be liable to the other for any loss or damage resulting from any cause beyond its reasonable control (a "Force Majeure Event") including, but not limited to, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government or other competent authority, compliance with any statutory obligation or executive order, industrial disputes of any kind (whether or not involving either party's employees), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, and acts or omissions of persons for whom neither party is responsible. Upon occurrence of a Force Majeure Event and to the extent such occurrence interferes with either party's performance of this Agreement, such party shall be excused from performance of its obligations (other than payment obligations) during the first six months of such interference, provided that such party uses commercially reasonable efforts to avoid or remove such causes of nonperformance as soon as possible.

10.6 Amendments. No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties. Any amendment, supplement, or modification in contravention of this Section 10.6 shall be null and void.

10.7 Waivers. 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 under this Agreement, shall operate as a waiver of such 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. Neither 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; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

10.8 Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter hereof.

10.9 Counterparts. All executed copies of this Agreement are duplicate originals, equally admissible as evidence. This Agreement may be executed in counterparts, and such counterparts taken together shall be deemed the Agreement. A facsimile copy of a signature of a party hereto shall have the same effect and validity as an original signature.

10.10 Severability. If any provision of this Agreement or the application thereof to any person, entity, or circumstances is determined to be invalid, illegal, or unenforceable in any jurisdiction, the remainder hereof, and the application of such provision to such person, entity, or circumstances in any other jurisdiction, shall not be affected thereby, and to this end the provisions of this Agreement shall be severable.

10.11 Governing Law. This Agreement and its interpretation (including its interpretation by the arbitrators in accordance with Section 8) shall be governed by the laws of Ireland and shall inure to the benefit of and be binding upon each Party and its respective affiliates, successors and assigns, including, without limitation, any successor to all or substantially all of such Party's assets or business.

Both Parties hereby submit to the exclusive jurisdiction of the Irish Courts provided that nothing in this clause shall limit:

10.11.1 The right of the parties to seek provisional or protective relief in the courts of another State prior to, during or after any substantive proceedings have been instituted in Ireland; or

10.11.2 The right of the parties to bring enforcement proceedings in another State on foot of a judgment of the Irish Courts.

10.12 **Usage.** The defined terms herein shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. All references herein to "Articles", "Sections", "Exhibits", "Annexes", and "Schedules" shall be deemed to be references to Articles and Sections of, and Exhibits, Annexes, and Schedules to, this Agreement unless the context shall otherwise require. All Exhibits, Annexes, and Schedules shall be deemed incorporated herein as if set forth in full herein and, unless otherwise defined therein, all terms used in any Exhibit, Annex, or Schedule shall have the meaning ascribed to such term in this Agreement. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." Whenever any payment hereunder is to be paid in "cash," payment shall be made in the legal tender of United States dollars and the method for payment shall be by wire transfer of immediately available funds. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise expressly provided herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by



succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. Unless otherwise expressly provided, wherever the consent of any person or entity is required or permitted herein, such consent may withheld in the sole discretion of such person or entity. Time is of the essence in this Agreement.

[Signature Page Follows]



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date signed.

mTLD Top Level Domain Ltd.

[Registrar]

By: _____

By: _____

Name: Trey Harvin

Name: _____

Title: Chief Executive Officer

Title: _____

Date: _____

Date: _____

REGISTRAR TOOL KIT

3 Registrar Tool Kit

The Registrar Tool Kit consists of a working Java API and samples, and C samples. These can be used to implement the EPP protocol that is used to communicate between the Registry System and Registrar (the “Registry-Registrar Protocol”) and accompanying documentation. The Tool Kit includes information on assembling and forwarding XML requests (Registration Events) to the Registry Operator for processing, and a reference implementation that conforms to the Registry-Registrar Protocol. The Tool Kit documentation describes the Registry-Registrar Protocol specification, including the commands to be sent to the Registry System to support domain registration events, as well as responses that may be returned by the Registry Operator. The documentation also describes the software that implements the Registry-Registrar Protocol, and includes a description of the software package hierarchy and an explanation of the defined objects and methods (including calling parameter lists, and expected response behavior).

3 License

Subject to the terms and conditions of this Agreement, Registry Operator hereby grants to Registrar and Registrar accepts a limited, nonexclusive, nontransferable worldwide license during the term of this Agreement to use the Registrar Tool Kit commercially pursuant to this Agreement to provide Internet domain name registration services within the Registry TLD and for no other purpose.

Registrar receives no rights to, and agrees not to: (a) modify the source code, port, translate, localize, or create derivative works of the Registrar Tool Kit or any portion thereof; (b) decompile, disassemble, reverse engineer, or attempt to reconstruct, identify, or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Registrar Tool Kit or any portion thereof by any means whatever, or disclose any of the foregoing; (c) sell, lease, license, sublicense, copy, market, or distribute the Registrar Tool Kit or any portion thereof except in



accordance with the terms of this Agreement or as agreed in writing by Registry Operator; (d) encumber or suffer to exist any lien or security interest on the Registrar Tool Kit or any portion thereof; or (e) knowingly take any action that would cause the Registrar Tool Kit or any portion thereof to be placed in the public domain.

Registrar agrees that except for the specific license set forth in this Agreement, Registry Operator and its licensors retain all right, title, and interest in and to the original and any copies of the Registrar Tool Kit. Notwithstanding anything herein to the contrary, ownership of all patent, copyright, design, trade secret, trademark, and other intellectual property rights pertaining thereto shall be and remain the sole property of Registry Operator or its licensors, as applicable. To the extent permitted by applicable law, Registry Operator and its licensors reserve all rights not expressly granted under this Agreement.

REGISTRAR'S REGISTRATION AGREEMENT

[To be supplied by Registrar]

REGISTRATION FEES

1. Domain-Name Initial Registration Fee

Registry Operator will charge a fee per year for each .mobi TLD registered in the Registry TLD, as set forth in Registry Operator's Price List, as amended from time to time (the "Price List"). The Price List, and any amendments to thereto, will be available to Registrars at www.mtld.mobi.

The Price List may include the most recent prices for a .mobi TLD offered to a Registrar, including, but not limited to; (i) the price per .mobi TLD during the Limited Industry Launch and Sunrise Periods, (ii) the price per .mobi TLD during the Land Rush Period, (iii) the price per .mobi TLD during the General Registration Period, and (iv) any promotions, incentives and opportunities afforded to Registrars pertaining to the sale of a .mobi TLD.

The Price List is subject to change at any time and all Initial Registration Fees shall be paid in full by the Registrar at the time of Registration.

2. Domain-Name Renewal Fee

Registrar shall pay a fee per year for each domain name registration renewal (the "Renewal Fee") in the Registry TLD. The Renewal Fee shall be paid in full by Registrar at the time of renewal.

3. Fees for Transfers of Sponsorship of Domain-Name Registrations

Where the sponsorship of a .mobi name is transferred from one ICANN-accredited registrar to another ICANN-accredited registrar, the receiving Registrar is required to secure a one year renewal for the name. In connection with that extension, Registrar shall pay a Renewal Fee. The transfer shall result in an extension according to the renewal request, subject to a ten-year maximum on the future term of any domain-name registration. The Renewal Fee shall be paid in full at the time of the transfer by the ICANN-accredited registrar receiving sponsorship of the domain name.

4. ICANN Variable Fees

The pricing for initial and renewal registrations set forth above shall be adjusted to reflect Variable Registry Level Fees paid by Registry Operator to ICANN in accordance with Section 7.2(b) of the Registry Agreement between Registry Operator and ICANN.

5. Bulk Transfer Fee

For a bulk transfer approved by ICANN under Part B of the Transfer Policy, the Registry Operator will charge the gaining registrar US \$0 (for transfer of 50,000 names or fewer) or US \$50,000 (for transfers of more than 50,000 names).